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**PAPER PRESENTED BY THE WORLD
ORGANISATION AGAINST TORTURE (OMCT)
TO THE UNITED NATIONS COMMITTEE
AGAINST TORTURE**

**Torture And Violations of Economic, Social and
Cultural Rights: Appraisal of the Link and
Relevance to the Work of the United Nations
Committee Against Torture**

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The submission of this paper to the Committee against Torture forms part of the Programme on Economic, Social and Cultural Rights of the World Organisation Against Torture (OMCT). This programme focuses on altering the socio-economic conditions which pave the way for the emergence of torture.¹

1. Preliminary Observations: the interdependence, indivisibility and interrelatedness of all human rights

The authors of the Universal Declaration on Human Rights knew from experience that the defence of human rights required not only a legal system for the protection of the individuals and groups, but that, in addition, it required the creation of the economic, social political and cultural conditions necessary for the promotion of individual and collective rights.² The United Nations Charter, which preceded the Universal Declaration on Human Rights, is also very clear about this. It lays down the foundations for peace, the security of law, the security of justice and the realization of progress in the economic and social spheres.³

Since then, the United Nations have reiterated the notion of the indivisibility, interdependence and interrelatedness of all human rights on numerous occasions.⁴ Human dignity and security of the person cannot be protected fully and effectively in societies where economic, social and cultural rights are ignored. Putting this idea into practice, however, has proved to be difficult.

The prevalent dichotomy between civil and political rights and economic, social and cultural rights led to the conception that the struggle against torture was limited to the development of civil and political rights.⁵ However, the establishment of international instruments for the struggle against torture cannot be solely conceived in legal terms: an effective strategy to fight against torture must also focus on altering the socio-economic or political conditions that pave the way for the emergence of torture.⁶ The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) implicitly recognises that the prevention of torture involves other measures besides legislative, administrative or judicial ones. Indeed, article 2 of the CAT provides that "each State Party shall take effective legislative, administrative, judicial *or other measures* to prevent acts of torture in any territory under its jurisdiction". The Committee Against Torture itself recognised the relevance of the socio-economic context to the protection against torture.⁷ (See also part 5)

¹ OMCT, *Manila 91 : International Symposium on Democracy, Development and Human Rights*, 1992, p. 17; OMCT, *Torture and Violations of Economic, Social and Cultural Rights: Appraisal of the Link and Relevance to the Work of the United Nations Committee Against Torture*, 2001

² Universal Declaration of Human Rights (1948), Preamble and article 28

³ Charter of the United Nations (1945), Preamble and article 1

⁴ U.N. Doc. A/CONF. 157/23, 12 July 1993, *Vienna Declaration and Programme of Action*; U.N. Doc. E/CN.4/SUB.2/RES/2001/2; U.N. Doc. E/CN.4/SUB.2/RES/2000/8; U.N. Doc. E/CN.4/SUB.2/RES/1999/29; U.N. Doc. E/CN/RES/2001/31; U.N. Doc. E/CN/RES/2001/30, para 4(a)(d); U.N. Doc. E/CN/RES/2000/9, para 3(a)(d); U.N. Doc. E/CN/RES/1999/59

⁵ OMCT, *Manila 91 : International Symposium on Democracy, Development and Human Rights*, 1992, p. 21

⁶ OMCT, *Manila 91 : International Symposium on Democracy, Development and Human Rights*, 1992, p. 17

⁷ See part 5 for further developments; U.N. Doc. CAT/C/XXV/Concl.4., *Concluding Observations of the Committee Against Torture: Canada*, para 4(f); U.N.Doc. CAT/C/XXV/Concl.3, *Concluding Observations of the Committee Against Torture: Australia*, paras 5(e), 7(g); U.N. Doc. CAT/C/XXV/Concl.5, *Concluding Observations of the Committee Against Torture: Cameroon*, para 5

A lack of economic and social development cannot, under any circumstance, justify violations of civil and political rights. However, civil and political rights will not thrive in a situation where economic, social and cultural rights are neglected. In this regard, the United Nations High Commissioner for Human Rights expressed concern that the current socio-economic context, in which economic, social and cultural rights are being denied to most of the world's population, puts at risk the fundamental assumptions on which the international human rights system is based.⁸

While the World Bank highlights, in its 2000/2001 report, that wealth, communications and technological capabilities have never been greater, it also acknowledges that the distribution of these "global gains" is extraordinarily unequal.⁹ Indeed, the benefits of economic globalisation still need to reach most of the world's population which continues to live in dire destitution and poverty, often revealing a situation of widespread violations of economic, social and cultural rights. Unequitable distribution of wealth at the global level is replicated at national levels. The 2001 UNDP Human Development Report shows clearly that the gap between the "haves" and the "have nots" is still growing.¹⁰ Indeed, concentration of wealth and income in the hands of a small portion of the population remains a constant in most countries of Africa, Asia and Latin America.

The current context of economic globalisation, with its undeniable impact on income distribution, poverty and on the enjoyment of economic, social and cultural rights, reveals in clearer terms than ever that the fight against torture cannot be accomplished without addressing the socio-economic context in which it takes place.¹¹

In this respect, OMCT believes that the Committee against Torture, which monitors the implementation of the CAT, has a crucial role to play. Indeed, the concretisation of the notion of indivisibility, interdependence and interrelatedness of human rights bears strong implications for the work of the CAT, including its constructive dialogue with State parties, the formulation of recommendations, and its collaboration with other treaty bodies such as the UN Committee on Economic, Social and Cultural Rights.

The direct or indirect influence of the socio-economic context on the protection against torture is particularly obvious in some specific circumstances, countries or cases. In this regard, the following parts indicate some situations or perspectives in which the socio-economic context bears a direct or indirect influence on the protection against torture.

⁸ United Nations High Commissioner for Human Rights and the Committee on Economic, Social and Cultural Rights: *Plan of Action to Strengthen the Implementation of the International Covenant on Economic, Social and Cultural Rights*, at www.unhchr.ch

⁹ WORLD BANK, *World Development Report 2000/2001: Attacking Poverty*, p. 3; See also the 1995 Copenhagen Declaration on Social Development

¹⁰ UNDP, *Human Development Report 2001*, pp 182-185

¹¹ U.N. Doc. E/CN.4/SUB. 2/RES/2001/5, Globalisation and its impact on the full enjoyment of all human right; U.N. Doc. E/CN.4/SUB., Intellectual Property and Human Rights; U.N. Doc. E/CN.4/SUB.2/RES/2001/4, Liberalization of trade in services and human rights

2. The risk of torture, the incidence of poverty and violations of economic, social and cultural rights

Torture remains prevalent in all regions of the world and can affect any individual, regardless of his/her origin, sex, social status, ideology, religion, residence or any other factor. However, as far as the risk of being subjected to torture and other cruel, inhuman or degrading treatment or punishment is concerned, the poor are disproportionately affected. Indeed, evidence collected by daily monitoring performed by the World Organisation Against Torture (OMCT), as well as by the work of regional and international human rights mechanisms shows that an increasing number of the victims of torture are poor and common criminals. This is also recognised by some United Nations thematic mechanisms.

For instance, in his 2000 interim report to the General Assembly, the Special Rapporteur on the question of torture observed that “the overwhelming majority of those subjected to torture and ill-treatment are ordinary common criminals from the lowest strata of society”.¹²

In his 2001 report on Brazil, the Special Rapporteur reiterates the same observation stating that “torture is widespread and, most of the time, concerns persons from the lowest strata of the society”.¹³ The annex to the report on Brazil, which lists individual cases of torture, shows that the poor and those whose economic, social and cultural rights are being neglected represent the majority of torture victims. The following examples, listed in the annex to the report, illustrate and give a hint into the relationship between the occurrence of torture, issues of poverty and violations of economic, social and cultural rights:

- Hélio Pereira da Silva Júnior was arrested on 8 April 1999 for having stolen a soft drink and died after having being allegedly beaten by the police;¹⁴
- Cícero Rosendo da Silva, a street vendor, was arrested on 15 May 1998 by civil police officers for theft, and was allegedly beaten in custody;¹⁵
- Francisco Antônio Moraes do Nascimento, a shoe shiner, was allegedly beaten up, kicked and whipped by a military policeman because he did not have the necessary papers with him for plying his trade;¹⁶
- Milton da Penha, a street vendor, was allegedly beaten with a rubber hose by two police officers on suspicion of selling mineral water illegally;¹⁷
- Cláudio Pereira dos Santos, a street vendor, was arrested and reportedly severely beaten by a police officer on suspicion of selling products illegally in the bus station.¹⁸

¹² U.N. Doc. A/55/290, Report by the Secretary General, incorporating Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, 11 August 2000, para 35

¹³ U.N. Doc. E/CN.4/2001/66/Add.2, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit to Brazil, 30 March 2001, para 9

¹⁴ *Ibid.*, para 5

¹⁵ *Ibid.*, para 6

¹⁶ *Ibid.*, para 22

¹⁷ *Ibid.*, para 57

¹⁸ *ibid.*, para 62

The Special Rapporteur's other reports on Kenya and Venezuela draw similar conclusions.¹⁹ In his 2000 report on Kenya, the Special Rapporteur insists that "the poor are reported to be victims of police violence" and that "police raids on shantytowns are conducted at night without search warrants, with the police ending up beating up people".²⁰ The report on Venezuela highlights that torture is used as a method for obtaining information or as a punishment, "especially when dealing with low-income sectors of the population".²¹

Similarly, the Independent Expert on human rights and extreme poverty underlines that extreme poverty often brings people into conflict with the laws.²² The Independent Expert further points out that prison populations consist mainly of poor people, and that very often the sole state interlocutor of a poor person will be a police officer.²³

Cases of torture and other cruel, inhuman or degrading treatment or punishment, summary executions and forced disappearances received by the International Secretariat of OMCT also involve an important number of poor and marginalized victims. These are in many instances common criminals who enter into conflict with the law.

The following case in Chad clearly highlights the link between poverty, violations of economic, social and cultural rights and the occurrence of torture. On 22 July 2001, Haman Gongong was accused of having stolen a radio, two boxes of pharmaceutical products and a carpet. Consequently, the Deputy-Commander of the Gendarmerie in the Gounou-Gaya Region (formerly known as the Mayo-Kebbi prefecture) allegedly arbitrarily arrested, detained and carried out beatings upon the family members of the suspected thief.²⁴

Violence perpetrated against the Roma either by State agents or by private individuals with the acquiescence of the State, is also intrinsically linked to the problems of poverty, marginalisation and violations of economic, social and cultural rights. In its report on the Roma in the Czech Republic, OMCT considered that violence perpetrated against the Roma needed to be put into perspective within the overall human rights situation of the Roma, and notably with regard to their enjoyment of economic, social and cultural rights. Indeed, the violence is often triggered and fuelled by a whole range of prejudices which stem directly from the socio-economic condition of the Roma. The report shows that the Roma face grave violations of economic, social and cultural rights and live in severe conditions of destitution. This reality highlights that the questions of discrimination, violations of economic, social and cultural rights, and of civil and political rights have to be considered as a whole and not as separate entities. The infringement of any one of these three elements triggers violations of the others. Discrimination against the Roma in the realm of economic, social and cultural rights tends to maintain or reinforce prejudices which in turn fuel acts of violence.

Similar conclusions can be reached regarding the situation of the Roma in Greece. For the year 2001 alone, OMCT has already documented 3 cases of ill treatment of Roma, including

¹⁹ U.N. Doc. E/CN.4/2000/9/Add.4, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit to Kenya, 9 March 2000, para 17; U.N. Doc. E/CN.4/1997/7/Add.3, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit to Venezuela, 13 December 1996, para 5

²⁰ *Ibid.*

²¹ *Ibid.*

²² U.N. Doc. E/CN.4/2000/53, 25 February 2000, Report submitted by Ms. A.-M. Lizin, independent expert, pursuant to Commission resolution 1999/26, paras 107

²³ *Ibid.*, paras 107-110

²⁴ OMCT Urgent Appeal, Case TCD 300801, August 30th 2001

children by the police.²⁵ OMCT's Programme on Economic Social and Cultural Rights has also condemned the harsh socio-economic conditions faced by the Greek Roma several times during the year.²⁶

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), defined poverty as "a human condition characterised by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights".²⁷ This multi-dimensional understanding of poverty, by reflecting the indivisible and interdependent nature of all human rights, also highlights the broad implication that poverty can have on the enjoyment of all human rights. In this respect, the Committee on Economic, Social and Cultural Rights pointed out that poverty constitutes a denial of human rights.²⁸

Most economic, social and cultural rights, such as the right to work, the right to an adequate standard of living, the right to education and the right to health are of central importance to the poor. Indeed, a situation characterised by widespread poverty often leads or highlights flagrant violations of economic, social and cultural rights. The dimension of poverty is also often coupled with other causes of vulnerability, such as belonging to a minority or to an indigenous population. Similarly, the fact of being a woman or a child also often constitutes an additional factors of vulnerability. In general, these different realities tend to be mutually reinforcing and often lead to further vulnerability as far as the enjoyment of all human rights and the security of the person are concerned.

The notion of risk of being submitted to torture, as well as the type of victims show that the poor as well as those whose economic, social and cultural are being violated, are particularly vulnerable. In this respect, the struggle against torture cannot be conceived solely in legal terms, regardless of the necessity and importance of legislative, administrative or judicial measures to address torture. In a society characterised by widespread poverty, the fight against torture will have to address the structural dimensions of poverty. As will be highlighted in the following sections, poverty often goes hand in hand with violations of economic, social and cultural rights, lack of development opportunities and deep inequalities.

In other words, while the occurrence of torture can be diminished through the adoption of appropriate legal, administrative or judicial measures, an effective approach has to address the structural causes of poverty and therefore the socio-economic context. For instance, the Special Rapporteur on torture recognises that "as long as national societies and indeed the international community fail to address the problems of the poor, the marginalized and the vulnerable, they are indirectly and, as far as the risk of torture is concerned, directly contributing to the vicious circle of brutalisation that is a blot on and a threat to our

²⁵ See OMCT Urgent Appeals on Greece: GRE 130701, July 13th 2001; GRE 170901.CC, September 17th 2001; GRE 190901, September 19th 2001

²⁶ See OMCT Urgent Appeal GRE 310801. ESCRC, August 31st 2001; GRE 200901. ESCRC, September 20th 2001; OMCT Press Release, *Greece: Concern about the Human Rights Situation of the Roma*, 27/06/01

²⁷ U.N. Doc. E/C.12/2001/10, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights*, 4 May 2001, para 8

²⁸ *Ibid.*, para

aspirations for a life of dignity and respect for all”.²⁹ The term “other measures”, included in article 2 of the CAT, contemplates this possibility.

3. The socio-economic context and the protection against torture

As far as the risk of being subjected to torture and the category of victims are concerned, the precedent approach showed a correlation between the occurrence of torture and a situation characterised by poverty, along with violations of economic, social and cultural rights, lack of development opportunities and deep inequalities. This correlation is highlighted by the fact that the poor are overwhelmingly represented, in many situations, among the victims of torture.

While evidence shows that the poor constitute an important proportion of torture’s victims, the dynamics underpinning this reality can be multiple and can involve different realities. Indeed, the socio-economic context can affect personal security in different ways, creating situations favourable to the emergence of torture and other cruel, inhuman or degrading treatment or punishment.

In general, the developments during recent decades, characterised by the collapse of numerous dictatorship in Latin America, Asia, Africa and Central and Eastern Europe, have opened the way for democratic transitions. Often conceived solely from the angle of civil and political institutions, the transitions enabled a number of countries to put a stop to atrocities committed against political opponents, but have often not been able to act upon the socio-economic context frequently characterised by widespread poverty, violations of economic, social and cultural rights, lack of development opportunities and deep inequalities.³⁰ These, in turn, often remained and have, in some instances, even worsened. In the wake of such developments, torture and other forms of cruel, inhuman or degrading treatments or punishment are today not so much the result of forceful imposition of ideologies resisted by the population.³¹ Indeed, these are increasingly the consequence of social tensions created by socio-economic imbalances and the growing number of excluded or marginalized who see their absolute and relative income diminishing and preventing them from filling their most basic needs.³²

3.1. *The emergence of conflicts*

The risk of being submitted to torture is on the rise in times of conflict or internal strife.³³ Similarly, summary executions and forced disappearances are more likely to occur during conflicts. In this regard, issues of economic, social and cultural rights, distribution of income

²⁹ U.N. Doc. A755/290, General Assembly Report: Report by the Secretary General, incorporating Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, 11 August 2000, para 37

³⁰ OMCT, *Manila 91 : International Symposium on Democracy, Development and Human Rights*, 1992, p. 22

³¹ Sottas, E., *NGOs and Human Rights: For Coherent Strategies*, OMCT, November 2000

³² *Ibid.*

³³ See for instance OMCT Urgent Appeals on Colombia, Israel/Palestine and Sudan

and poverty become relevant to the prevention of torture and therefore, to the work of the Committee against Torture.

Conflicts have often to be considered against the socio-economic background of a given region or country. Indeed, the emergence of conflicts is often linked with situations characterized by socio-economic destitution, widespread poverty and gross social inequalities. Non equitable distribution of income³⁴, land and other productive resources, as well as repeated violations of economic, social and cultural rights tend to exacerbate social, ethnic or communitarian tensions. Conflicts are therefore likely to emerge under these socio-economic conditions, especially when the state is unable or unwilling to address them.³⁵ In this respect, torture can be seen as a manifestation of the aggravation of socio-political conflicts that surround the distribution of rare resources and that mobilize social classes or groups, political parties, ethnic groups or individuals.³⁶

The Special Rapporteur on torture highlights, in the conclusions and recommendations to his report on Mexico, the influence that greater precariousness brought by economic developments have on the emergence of conflicts.³⁷ Indeed, the Special Rapporteur recognises the influence that economic adjustments -which accompanied the opening of the Mexican economy to foreign competition following the implementation of the NAFTA Agreement- might have on the protection against torture and other cruel, inhuman or degrading treatment.³⁸ In the same report, the Special Rapporteur further recognises that conflicts, and therefore risks of torture, can emerge from a poverty driven situation.³⁹

In his report on Colombia, the Special Rapporteur on torture also underlines the link between social injustice and the emergence of conflicts, which can ultimately lead to torture.⁴⁰ Indeed,

³⁴ Income distribution, in a neutral sense, is a measurement of the way in which income is distributed in a given society. However, the notion goes beyond purely monetary aspects and include issues of land distribution, other aspects of the legal structures and processes that determine ownership and control of productive resources, as well as the existence or non-existence of redistributive measures, in U.N. Doc. E/CN.4/Sub.2/1994/21, para 17

³⁵ U.N. Doc. A/CONF.157/PC/60/Add.3, *Poverty, Marginalization, Violence and the Realization of Human Rights*, para 32; U.N. Doc. E/CN.4/Sub.2/1994/21, *The Realization of Economic, Social and Cultural Rights: Preparatory document on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution*, para 42-44, 90; U.N. Doc. E/CN.4/Sub.2/1997/9, *The Realization of Economic, Social and Cultural Rights: the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution*, para 3.

³⁶ OMCT, *Manila 91 : International Symposium on Democracy, Development and Human Rights*, 1992, p. 17

³⁷ U.N. Doc. E/CN.4/1998/38/Add.2, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38, Addendum, Visit by the Special Rapporteur to Mexico, para 74: "there have been major economic developments of a structural nature. Partly as a result of the establishment of the Northern American Free Trade Association Agreement, a hitherto tightly protected economy is having to adjust to external competition. This adjustment was felt by many to have lead to increases in unemployment with its attendant financial and social insecurity, which provides fertile ground for political movements to gain support and insurrectionary activities to reappear (...)"

³⁸ *Ibid.*

³⁹ *Ibid.*, para 75: "the picture is also complicated by the existence of a substantial drug-production and trafficking problem (...). An intricate scenario develops in which poor peasants grow and sell plants from which drugs can be manufactured; armed groups gain political support among the same population (...); the security forces move on both fronts (...)"

⁴⁰ U.N. Doc. E/CN.4/1995/111, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1994/37 and 1994/82, Visit of the Special Rapporteurs to the Republic of Colombia, 16 January 1995, para 53: "The persistent economic and social differences and the high level of poverty continue to be an underlying cause of violence and crime. Several observers have pointed out that the benefits derived from steady economic growth and stability have not been

the Special Rapporteur clearly recognises that the high level of poverty, social exclusion, as well as the State's failure to guarantee redistribution of income, land and other productive resources, represent an underlying cause of the Colombian conflict.⁴¹ The Committee on Economic, Social and Cultural Rights also noted that violence in Colombia is brought about by serious inequalities in society, such as enormous disparities in the distribution of national wealth.⁴² Similarly, OMCT expressed concern about the fact that the destitution suffered by internally displaced persons, added to poor socio-economic conditions, might well further reinforce the underlying causes of the Colombian conflict.⁴³

The Special Rapporteur on extrajudicial, summary or arbitrary executions also pointed out in her report on Nepal that the emergence of the Maoist conflict has to be considered against the background of the economic, social and political situation.⁴⁴ Indeed, the Maoist movement emerged in the Rapti zone, which is located in the Western part of the country, where average per capita income amounts to 8000 rupees per year and remains one of the lowest. In comparison, the average per capita income in Katmandu amounts to 25'000 rupees.⁴⁵ Indeed, the traditional Maoist strongholds, situated in the Western regions of Rapti, Rolpa and Jajarkot, represent the least developed region of Nepal.⁴⁶ The political demands of the Maoist movement included, the abolition of royal privileges, the end of oppression, the empowerment of women, and respect of the economic rights of women, peasants, and the homeless.⁴⁷ These were presented to the government as an ultimatum, following which the "People's War" was launched on February 13th 1996.⁴⁸ Both the socio-economic conditions prevalent in the Western regions, as well as the demands of the Maoist movement highlight the fact that the current conflict has been fuelled and continues to be fuelled, to some extent, by the combined effects of poverty, destitution, inequality, and the lack of development opportunities. Since the beginning of the conflict, it is reported that around 1500 people have been killed, with most of the victims being civilians.⁴⁹ Acts of torture and other forms of cruel, inhuman or degrading treatment or punishment, as well as forced disappearances and summary executions, committed by the Maoist United People's Front and the Nepalese police and army, continue to be reported on a large scale and most of the time go unpunished.

The Sub-Commission on the Promotion and Protection of Human Rights also acknowledged the relationship between the socio-economic context and the emergence of conflicts. A study conducted by the Sub-Commission puts into perspective the correlation between poor distribution of income -including land and other productive resources- and the emergence of armed conflicts or militant social movements claiming greater share of the benefits of

employed to resolve the most basic problems of poverty and social exclusion. While 75 percent of the population are said to fall below the level of poverty and 13 percent are completely illiterate, public investment in education, health, housing, food and other social programmes is said to be very low. In addition, land continues to be concentrated in the hands of a small number of landowners"

⁴¹ *Ibid.*

⁴² U.N. Doc. E/C.12/1995/12

⁴³ See OMCT Urgent Appeal "Economic, Social and Cultural Rights Concern", Case COL 120901. ESCR, September 12th 2001

⁴⁴ U.N. Doc. E/CN.4/2001/9/Add.2, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms Asma Jahangir, submitted pursuant to the Commission on Human Rights, resolution 2000/31, para 14

⁴⁵ UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), Nepal Human Development Report, 1998.

⁴⁶ *Ibid.*

⁴⁷ *Supra* note 1

⁴⁸ *Ibid.*

⁴⁹ BBC, *Nepal rebels kill 15*, July 23rd 2001

development.⁵⁰ The study further points out that gross social inequalities, often highlighting widespread poverty and violations of economic, social and cultural rights, threaten the fundamental basis upon which a democratic society relies, especially when the State is unable or unwilling to address these structural problems.⁵¹

3.2. *State's response to social unrest*

In several instances, poverty, deep income disparities and violations of economic, social and cultural rights create social unrest and uprisings. While the ultimate outcome of such situation can be, as mentioned above, the emergence of internal conflicts, social unrest can also be limited to lower scale confrontations, such as demonstrations being violently dispersed by the authorities, or repression of opposition movements and leaders.

A study of the Sub-Commission on the Promotion and Protection of Human Rights recognises the frequent use of repression by states in order to control discontentment with inequality in resource distribution or quests for greater social justice.⁵² While the study acknowledges that in such situations, violations of human rights can be drastically diminished through political reforms and a better control over the repressive apparatus, it also underlines that this is only feasible in countries that do not have an excessively unjust income distribution”.⁵³

For instance, violations of the rights to freely join and form trade unions, enshrined in the ICCPR as well as in the ICESCR, remain a paradigmatic example of how demands for greater social justice are often met with State repression. Indeed, in many societies with great inequalities, poverty and widespread violations of economic, social and cultural rights, trade unionism is blocked and repressed through measures that violate civil and political rights, including the protection against torture and other cruel, inhuman or degrading treatment or punishment.⁵⁴ In this regard, OMCT receives many cases concerning repression against trade union leaders, who are demanding better working conditions and respect for their labour rights. The following cases are but some examples of how trade unionism is repressed in countries characterised by socio-economic problems including poverty, inequality and violations of economic, social and cultural rights.

- In South Korea, around 300 members of the Daewoo Motors Workers Union of the Pupyong Plant been severely beaten by the police on April 10th 2001 as they were trying to go to their office. This incident is linked to the massive dismissal of Daewoo

⁵⁰ U.N. Doc. Preparatory document on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, prepared by Mr. Asbjorn Eide in accordance with Sub-Commission resolution 1993/40, paras 19-20

⁵¹ *Ibid.*, para 42: “growing income disparities (...) serve to polarize excessively and fragment societies into the precarious and destabilizing dualism of ‘haves’ and ‘have nots’. Coupled with the ‘retreating’ State, income disparity provides a dangerous basis for alienation, disenfranchisement and cynicism, which can lead ultimately to a deterioration in the very relations constituting civil society. Income distribution is a critical issue, if for no other reason than the relationship it has with democracy”

⁵² U.N. Doc. E/CN.4/Sub.2/1994/21, *The Realization of Economic, Social and Cultural Rights: Preparatory document on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution*, para 32

⁵³ *Ibid.*

⁵⁴ *Ibid.*, para 19, See also OMCT Urgent Appeals “Economic, Social and Cultural Rights Concern” on Argentina, South Korea and Philippines, PHL 090301. ESCRC, KOR 190401. ESCRC, ARG 220801. ESCRC; OMCT *Human Rights in the Euro-Mediterranean Region and the Barcelona Process*, 2000, p. 6

Motors workers following the impact of the Asia crisis, and the related government-driven structural adjustments.⁵⁵

- In the Philippines, a 6 week-long strike of workers was violently dispersed, on the 7th of March 2001 by the combined forces of the Police and Security Guards. The workers were notably demanding better working conditions and respect for their labour rights⁵⁶
- In Argentina, the response by the Argentinean authorities designed to address the economic crisis have given rise to numerous calls for greater social justice. Such demands have, in turn, often been met with state violence and police brutality. On June 17th 2001, the police, lifting a picket in the north-eastern province of Salta, killed two individuals and injured thirty persons. The province of Salta is one of the poorest, with 60 percent of the population living below the poverty line and 17 percent living in total destitution. Demonstrations in different provinces claiming overdue salary payments, were also violently repressed by the police, killing five persons and injuring twenty-five.⁵⁷
- In Zambia, on October 1998, around 6000 workers of the Roan Antelope Mining Corporation (RAMCOZ) in Luanshya, went on strike demanding payment of housing allowances arrears. The workers were joined by their families at the end of a week-long strike, which turned violent. Two people were shot and killed by the police.⁵⁸

The response of the Brazilian authorities to the demands and actions of the Movement of Landless Peasants (Movimento Sem Terra, MST), a member of the OMCT network, also reveals how claims for a more equitable distribution of resources and land are met with violent state repression. Indeed, Brazil remains a country characterised by deep and pervasive inequalities: the 2001 Human Development Report of the United Nations Development Programme (UNDP) highlights that 63 percent of the national income goes to the 20 richest percent of the population, while the 20 poorest percent of the population only gets 2.6 percent of the national income.⁵⁹ Between January and September 2000 alone, 258 landless peasants were detained, while from January to November of the same year, 12 were assassinated.⁶⁰ For instance, on May 2nd 2000, demonstrations by peasants and indigenous peoples took place in various cities throughout the country. In one such event, hundreds of demonstrators of the Landless Movement were making their way peacefully towards the city of Curitiba, State of Paraná, to demand title deeds for the property and credits for production when they were stopped by numerous heavily armed members of the military police.⁶¹ It has been reported to OMCT that the grave confrontations between the police and demonstrators resulted in the death of Sr. Antonio Tavares Pereira, presumably at the hands of the military police. Many persons were injured, fifty of whom had to be hospitalised, many were detained and it would appear that some disappeared.⁶²

⁵⁵ OMCT Urgent Appeal, KOR 190401. ESCRC, April 19th 2001

⁵⁶ OMCT Urgent Appeal, PHL 090301. ESCRC, March 9th 2001

⁵⁷ OMCT Urgent Appeal ARG 220801. ESCRC, August 22nd 2001

⁵⁸ AFRONET, *The Zambia Human Rights Report 1998*, in OMCT, Report on the Implementation of the Convention Against Torture by Zambia, 2001

⁵⁹ UNDP, *Human Development Report 2001*, pp. 182-185

⁶⁰ OMCT, *Intervention before the Commission on Human Rights, 57th Session-Item 10, Economic, Social and Cultural Rights*

⁶¹ OMCT Urgent Appeal, Case BRA 090500, May 9th 2001

⁶² *Ibid.*

Here again, evidence shows that while “traditional” measures to address torture might prove effective, they will always remain insufficient as long as the socio-economic context is not properly addressed.

In this regard, data from the United Nations Development Programme’s (UNDP) 2001 Human Development Report highlights that inequalities remain prevalent in an important number of countries.⁶³ Armenia, Bolivia, Brazil, Burkina-Faso, Cambodia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Ethiopia, Gambia, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Kenya, Kyrgystan, Lesotho, Madagascar, Malaysia, Mali, Mexico, Niger, Nigeria, Nicaragua, Oman, Panama, Papua New Guinea, Paraguay, the Philippines, the Republic of Moldova, the Russian Federation, South Africa, Swaziland, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uruguay, Venezuela, Zambia and Zimbabwe are the countries where the value of the Gini index is superior to 40, showing great inequalities.⁶⁴

In terms of poverty, and according to the United Nations Development Programme’s (UNDP) 2001 Human Development Report, in Burkina Faso, Gambia, Madagascar, Niger, Nigeria, Sierra Leone, the Central African Republic and Zambia, more than 50 percent of the population are living on less than one dollar a day.⁶⁵ In Botswana, Ethiopia, Ghana, Honduras, India, Lesotho, Mozambique, Namibia, Pakistan, Rwanda, Togo and Zimbabwe, more than 30 percent of the population is living on less than one dollar a day.⁶⁶ Moreover, in Chad, Gambia, Guatemala, Honduras, Madagascar, Malawi, Mauritania, Nicaragua, Niger, Rwanda, Sierra Leone, Tanzania, Viet Nam and Zambia, more than 50 percent of the population are living under the national poverty line. In Bangladesh, Benin, Burundi, Cambodia, Cameroon, El Salvador, Ghana, India, Jamaica, Kenya, Lesotho, Mongolia, Nepal, Nigeria, Pakistan, Panama, Peru, the Dominican Republic, the Lao People’s Democratic Republic, Togo, the Philippines, Uganda and Venezuela, over 30 percent of the population is living under the national poverty line.⁶⁷

3.3. Social destitution, criminality and State’s repression

An important rise in criminality has often been observed in societies characterised by a poor socio-economic situation and economic instability. Indeed, stealing and common criminality can emerge as coping strategies in response to food insecurity, declining living standards, unemployment and inability to provide for one self and family.⁶⁸ In turn, such situations often create a climate of insecurity or fear of crime, and nourish a sense of personal insecurity, fuelling demands for strong and effective official intervention.

In many instances, the authorities, confronted by a high criminality rate and demands for strong intervention, tend to adopt repressive measures, which might include the use of torture,

⁶³ Inequalities are measured with the Gini index, a value of 0 representing perfect equality and a value of 100 perfect inequality.

⁶⁴ UNDP, *Human Development Report 2001*, pp. 182-185, the Gini index measures inequality over the entire distribution of income consumption. A value of 0 represents perfect equality and a value of 100 perfect inequality

⁶⁵ *Ibid.*, pp. 149-151

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ OMCT, Report on the Implementation of the Convention Against Torture by Zambia, 2001

summary executions, forced disappearances and other forms of cruel, inhuman or degrading treatment or punishment. The perception that the government fails to guarantee security and to address petty criminality can often lead to the emergence of private squads, which take up the role of the state and adopt expeditive measures to deal with such issues. In several instances, States fail to exercise due diligence in these circumstances and do not conduct proper and independent investigations in order to identify and punish those responsible and compensate the victims or their families.

The Special Rapporteur on torture, in his reports on Mexico, Venezuela and on the Russian Federation addresses this problem and its direct impact on the occurrence of torture and other forms of cruel, inhuman or degrading treatment or punishment.⁶⁹ Moreover, the Special Rapporteur directly links the emergence of criminality and the subsequent demand for State intervention to the broader socio-economic context characterised by “economic instability” and “stringent economic pressures (...) as a result of macroeconomic structural readjustment measures”.⁷⁰

In his report on Cameroon, the Special Rapporteur addresses the activities of the Maroua “anti-gang” unit which is “responsible for combating the armed highway robbers who attack, rob and kill travellers in the north of the country”.⁷¹ The “anti-gang” unit is apparently arbitrarily detaining, torturing and summarily executing people suspected of being highway robbers or of having information about them.⁷² According to the report of the Special Rapporteur, the “anti-gang” unit is composed of some 40 members of the army and the gendarmerie and belongs to the “ministerial reserve”, which has the role of reinforcing the forces of law and order when public disturbances outstrip local capacities.⁷³ Cameroon remains a very poor country, with 40 percent of the population living below the national poverty line.⁷⁴

OMCT’s report to the UN Committee on the Rights of the Child also shows that since February 2000, the Cameroonian populations of Douala and of the Province of Littoral are subjected to the abuses of the *Commandement opérationnel* (CO).⁷⁵ This special unit was created following a decree by the head of State, with the objective of fighting criminality in the city. Indeed, the end of 1999 saw an upsurge of urban criminality in the form of thefts,

⁶⁹ U.N. Doc. E/CN.4/1998/38/Add.2, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38, Addendum, Visit by the Special Rapporteur to Mexico, para 77; U.N. Doc. E/CN.4/1997/7/Add.3, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit to Venezuela, para 83; U.N. Doc. E/CN.4/1995/34/Add.1, Report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1994/37, visit by the Special Rapporteur to the Russian Federation, para 9

⁷⁰ U.N. Doc. E/CN.4/1998/38/Add.2, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38, Addendum, Visit by the Special Rapporteur to Mexico; U.N. Doc. E/CN.4/1997/7/Add.3, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit to Venezuela; U.N. Doc. E/CN.4/1995/34/Add.1, Report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1994/37, visit by the Special Rapporteur to the Russian Federation

⁷¹ U.N. Doc. E/CN.4/2000/9/Add.2, Report of the Special Rapporteur, Sir Nigel Rodley, Visit to Cameroon, 11 November 1999, para 21

⁷² *Ibid.*

⁷³ *Ibid.*, paras 21, 23

⁷⁴ UNDP, *Human Development Report 2001*, p. 148

⁷⁵ OMCT, *The Rights of the Child in the Republic of Cameroon: Report on the Implementation of the Convention on the Rights of the Child in Cameroon*, August 2001, p. 4

serial rapes, countless assaults, murders, rackets, etc. The CO is now accused of carrying out extrajudicial executions, rapes, acts of torture and other forms of cruel, inhuman or degrading treatment of suspects under arrest, including children. According to Human Rights organisations, over 1000 Cameroonians have allegedly been executed without trial.⁷⁶

Similarly, OMCT's *Violence against Women in Guatemala* report pointed out that "the widely perceived impunity and the ineffectiveness of the judiciary in bringing justice to the victims of common crimes is alleged to be the most important cause of the frequent practice of lynching in the country side."⁷⁷ In this regard, Guatemala remains a very poor country, with 57.9 percent of the population living below the national poverty line.⁷⁸ Inequalities also remain prevalent, with 10 percent of the richest population getting 46 percent of the national income.⁷⁹

The case of street children and the violence they face, perpetrated either by State agents or by private individuals with the acquiescence of the State, also reveals how the perceived threat posed by street children to some sectors of the society might lead to repressive practices. In this regard, the Inter-American Court of Human Rights ruled in the *Villagran Morales et Alcase* judgement that Guatemala violated, amongst other rights, article 5.1 and 5.2 of the American Convention on Human Rights, which provide for the protection against torture and other cruel, inhuman or degrading treatment, as it failed to take necessary steps to investigate the abduction, torture and murder of street children in order to bring those responsible before a Court and compensate the victims' families.⁸⁰

While the socio-economic conditions of the children can in no way be a reason, much less a justification, for the violence perpetrated against them, issues of poverty and violations of economic, social and cultural rights are intrinsically linked to the problem of children living and working in the street and, therefore, the violence they face. For street children, the right not to be subjected to torture and the rights to education, to food, to health and to adequate housing are inseparable. The violation of the last four is closely linked to the first.⁸¹ Consequently, beyond its responsibility to punish those responsible of the violence against street children and compensate the victims, the State is also responsible –in terms of violations of economic, social and cultural rights- for the structural disorder that leads to such dramatic events.⁸²

OMCT's report on "the Rights of the Child in Ethiopia" highlights that street children and children working in the street are victims of raids organised by the police.⁸³ According to the report, street and/or homeless children are estimated to number in the hundreds of thousands and are living in and around bus stations, taxi stops, bars and hotels of the cities and towns of the country.⁸⁴ Article 471(1) of the Ethiopian Penal Code defines vagrancy and mendacity as threats to law and order, placing anyone who does not have a fixed place of residence or

⁷⁶ Tam-Tam, Weekly Cameroonian newspaper, "Les 40 jours du Commandement opérationnel", 22 April 2001.

⁷⁷ Carin Benninger-Budel, *Violence Against Women: 10 Reports/Year 2000*, OMCT, 2000, p. 136

⁷⁸ UNDP, p. 150

⁷⁹ *Ibid.*, p. 184

⁸⁰ Inter-American Court of Human Rights, *Villagran Morales et Alcase (The "Street Children" Case)*, Judgement of November 19, 1999, para 3 (XIV)

⁸¹ Sottas, E., *NGOs and Human Rights: For Coherent Strategies*, OMCT, November 2000

⁸² Sottas, E., *NGOs and Human Rights: For Coherent Strategies*, OMCT, November 2000

⁸³ OMCT, *Rights of the Child in Ethiopia*, 2001, p. 22

⁸⁴ *Ibid.*

visible means of support in conflict with the law.⁸⁵ While the amendment of this legislation will clearly reduce the risk for street children being arrested and facing ill-treatment by police officers, the extent of the phenomenon reveals that legal measures by themselves will remain insufficient in addressing the problem of street children and the violence they face.

In Honduras, more than 720 children and youths were murdered in the period between January 1998 and May 2001. Despite repeated requests to the President of Honduras to urgently address this situation, no action has been taken in over 60% of these cases.⁸⁶ For instance, on 23 May 2001, the bodies of two girls, 14 year old Cinthia Valeska Rivera and her 15 year old friend Wendy (surname unknown), were discovered on the "El Estiquirin" hill in Comayaguela, a suburb of Tegucigalpa.⁸⁷ Cinthia and Wendy were last seen alive on the evening of Sunday 20 May, when at approximately 6.30 p.m., Cinthia, who was living in temporary accommodation constructed for the victims of hurricane Mitch, left home with Wendy and another friend known as "El Trueno", a member of the 18th Street gang.⁸⁸ Following her visit to Honduras, the Special Rapporteur on extra-judicial executions acknowledged the need to empower street children, notably with regard to their socio-economic situation.

The adoption of legal, administrative or judicial measures, along with the fight against impunity, represents an important and indeed fundamental step towards the eradication of such situations. However, these phenomena are likely to remain or reappear if the socio-economic conditions which lie at their origin are not addressed.

3.4. Access to justice: the question of impunity and proper restitution for the victims

Access to justice for poor people often remains illusory. Indeed, the absence or inadequacy of legal defence for indigent people, high official and unofficial legal costs, or the unawareness of one's rights may act as impediments when access to justice, in both criminal and civil cases, is at stake.

The Special Rapporteur on torture points out that, as a result of their socio-economic situation, poor people are often "deprived of the means to claim and ensure the enforcement of their rights, including their right to legal representation and to obtain legal remedies such as compensation".⁸⁹ The Special Rapporteur raised similar concerns in his reports on Romania, Mexico and Venezuela.⁹⁰

⁸⁵ *Ibid.*

⁸⁶ OMCT Urgent Appeal, Case HND 280501. VAW.CC, May 28th 2001

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ U.N. Doc. E/CN.4/2001/66, 25 January 2001, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, para 10; See also U.N. Doc. A/55/150, Report by the Secretary General, incorporating Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, 11 August 2000, para 35

⁹⁰ U.N. Doc. E/CN.4/1997/7/Add.3, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit to Venezuela, paras 14, 80; U.N. Doc. E/CN.4/2000/9/Add.3, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit to Romania, paras 54, 57(m); U.N. Doc. E/CN.4/1998/38/Add.2, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit to Mexico, para 81

Consequently, torture victims, due to their socio-economic situation, may be reluctant to lodge a complaint, notably because they cannot afford the legal costs involved, both the official ones or those due to widespread corruption. As a result, no investigations are carried out, those responsible are not identified and prosecuted, and the victims and their families are not compensated.

Such a situation, in which the victims of torture and other forms of cruel, inhuman or degrading treatment or punishment are reluctant to lodge a complaint, can create a climate of impunity, which hampers further improvement in the human rights situation of a given country. In this regard, poverty acts as a deterrent in the same way as do threats proffered against the victims or the absence of adequate legislation. Consequently, even if an appropriate legal framework to address torture is in place, impunity can remain widespread due to socio-economic factors.

Illiteracy, which affects the poor sectors of a given population, can also limit one's access to justice. Indeed, in order for a violation to be reported in the proper form, the victims and their relatives must first be aware that their rights have been violated, and informed of the legal mechanisms available for their protection.⁹¹ Secondly, they must be in a position to take all the necessary steps involved in making a denunciation, as in some proceedings a written denunciation submitted to the authorities is required to establish the facts.⁹²

In this regard, measures taken at the legislative, administrative or judicial levels to improve the provision of free legal aid, regardless of their necessity and impact, might well remain insufficient as long as the socio-economic context and problems faced by the poor and those whose economic, social and cultural rights are being violated are not addressed.

In the *Airey case*, the European Court for Human Rights (ECHR) recognised that the defendant did not enjoy “an effective right of access to the High Court”, in breach of Article 6(1) of the European Convention for Human Rights guaranteeing the right to a fair trial.⁹³ In this case, the Court ruled that the right to access to a court was effectively denied because of the high cost of proceeding that the defendant, Mrs. Airey, could not afford. The approach of the Court relies on the notion of effective and practical enjoyment of the rights enshrined in the Convention and recognises that, while the Convention protects essentially civil and political rights, many of these rights have implications of a social or economic nature.⁹⁴ The Court, acknowledging that there is no water-tight division separating the socio-economic sphere from the field covered by the Convention, clearly recognised that the effective enjoyment of civil and political rights often involve a particular socio-economic situation. In this ruling, the Court goes well beyond the idea that access to justice is restricted for the poor. Indeed, it clearly affirms that the enjoyment of civil and political rights, including the protection against torture, is dependent upon a certain number of socio-economic factors whose absence makes the realisation of civil and political rights illusory and theoretical.

⁹¹ OMCT, *The Least Developed Countries : Development and Human Rights*, 1990, p. 37

⁹² *Ibid.*

⁹³ para 28

⁹⁴ “The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective” (para 24), para 26

In 1990, the Inter-American Court on Human Rights was requested by the Commission to give an advisory opinion to the question whether “the requirement of the exhaustion of internal legal remedies applies to an indigent, who because of economic circumstances is unable to avail himself of the legal remedies within a country”.⁹⁵ The demand came from the observation, which is similar to the one presented in this paper, that in some instances poverty may act as a barrier to an effective access to justice. In this regard, the Court ruled that the obligation to exhaust domestic remedies is lifted when indigency prevents a person from obtaining legal aid, to the condition that this aid is necessary to guarantee the effective protection of a right.⁹⁶ While the Court placed the burden of proof on the defendant, it also clearly recognised that poverty acts as an obstacle when access to justice is at stake.⁹⁷

4. Violations of economic, social and cultural rights: cruel, inhuman or degrading treatment

Article 16 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) focuses on acts of cruel, inhuman or degrading treatment or punishment by public officials or other persons acting in an official capacity. As opposed to article 1 dealing specifically with torture, the provision does not refer to the purpose of the act. It is therefore justified to conclude that the purpose of the act is irrelevant in determining whether or not a given act should be considered as a form of cruel, inhuman or degrading treatment or punishment.

The level of severity also constitutes a criteria for determining whether a specific act amounts to torture or to ill-treatment.⁹⁸ The assessment of this minimum is relative and depends on all circumstances of a case, such as the durations of treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim.⁹⁹

In the case *Selçuk and Asker v. Turkey*, the European Court for Human Rights (ECHR) ruled that the destruction of the defendants’ homes constitutes a form of ill-treatment, in breach of article 3 of the Convention which states that «no one shall be subjected to torture or to inhuman or degrading treatment or punishment».¹⁰⁰

The right to adequate housing, as a component of the right to an adequate standard of living, is enshrined in the International Covenant on Economic, Social and Cultural Rights. General Comments No. 7 and No. 4 of the United Nations Committee on Economic, Social and Cultural Rights on the right to adequate housing and forced evictions further clarify the content of the right as well as State’s obligations in this respect.

⁹⁵ Exception to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90, August 10, 1990, Inter-Am.Ct.H.R. (Ser.A) No. 11 (1990)

⁹⁶ *Ibid.*, para 31, para 42(1): “if it can be shown that an indigent needs legal counsel to effectively protect a right (...) and his indigency prevents him from obtaining such counsel, he does not have to exhaust the relevant domestic remedies”

⁹⁷ *Ibid.*, para 42(2)

⁹⁸ See the *Tekin v. Turkey* Judgement of 9 June 1998, *Reports* 1998-IV, pp. 1517-18, para 52 and 53

⁹⁹ *Ibid.*

¹⁰⁰ European Court for Human Rights, *Case of Selçuk and Asker v. Turkey* (12/1997/796/998-999), paras 79-80

The decision of the Court sets a precedent in the European jurisprudence, as it qualifies the violation of an economic and social right by a State agent -in this case the right to adequate housing- as a form of cruel, inhuman and degrading treatment. Under the CAT, similar reasoning would lead to an acknowledgment that article 16 has been violated.

In determining the occurrence of ill-treatment, the ECHR recalled that it must attain this a minimum level of severity, dependent upon the circumstances.¹⁰¹ In the *Selçuk and Asker* case, the ECHR judged that these circumstances allowed to qualify a home destruction, ie. a violations of a so called economic, social and cultural right, as a form of cruel, inhuman or degrading treatment. Indeed, the ECHR reached the conclusion that the destruction of the victims' house constituted a form of ill-treatment in examining the way in which the house was destroyed, as well as the psychological and physical impact of the destruction.¹⁰² The fact that the victims were old, left with nothing following the destruction of their house, as well as in a difficult position, given their age, to provide for themselves and find another shelter, were clearly determinative factors in the decision of the ECHR.

While the Court clearly refuted that all destruction of homes amount to ill-treatment, stressing the need to adopt a case by case approach depending upon each case's circumstances, this litigation still represents an important precedent with regard to the qualification of violations of economic, social and cultural rights as ill-treatment. On this basis, the reflection of the ECHR can be clearly applied to other situations, which combine similar features of destitution, vulnerability and suffering resulting from the actions of the State or with its acquiescence, under the principle of due diligence.

A similar approach has been adopted by the United Nations Human Rights Committee. Indeed, the Human Rights Committee considered the impact of violations of the right to adequate housing on civil and political rights. For instance, in its concluding observations on Canada, the Committee addressed the implications of homelessness on the right to life.¹⁰³

5. Economic, Social and Cultural Rights and the Work of the Committee against Torture: Conclusions and Recommendations

The fact that poverty and denial of economic, social and cultural rights tend to negatively affect the security of the person introduces a new dimension as far as the protection against torture is concerned.¹⁰⁴

States Party to the CAT shall submit to the Committee against Torture "reports on the measures they have taken to give effect to their undertaking under this Convention".¹⁰⁵ Article 2 of the CAT recognises that "each State Party shall take effective legislative, administrative, judicial *or other measures* to prevent acts of torture in any territory under its jurisdiction". The term "other measures" can therefore clearly contemplate steps taken by the State Party to

¹⁰¹ *Ibid.*, para 76

¹⁰² *Ibid.*, para 79

¹⁰³ U.N. Doc. CCPR/C/79/Add.105, *Concluding Observations of the Human Rights Committee: Canada 07/04/99*, para 12

¹⁰⁴ See also E/CN.4/Sub.2/1994/21, *Preparatory Document on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution*, prepared by Mr. Asbjorn Eide

¹⁰⁵ See article 19

address the socio-economic context which creates conditions favourable to the emergence of torture. Such an approach clearly broadens the mandate of the Committee to look at socio-economic questions, as long as they are relevant to the question of torture. With reference to this point, this paper highlighted that issues of poverty, income distribution, development opportunities and economic, social and cultural rights are, indeed, all relevant to the issues of torture.

Indeed, issues of poverty, distribution of income and other productive resources, the lack of development opportunities, as well as violations of economic, social and cultural rights, are all socio-economic factors impeding an effective protection against torture, especially when the State is unable or unwilling to address them.

The international context also bears an influence on these factors through the policies and programmes implemented by the major international financial institutions such as the World Bank and the International Monetary Fund (IMF).¹⁰⁶ The same can be said for regional and international trade agreements such as the one concluded within the framework of the WTO.¹⁰⁷

As mentioned above, the Committee against Torture already took into account this context in its review of the implementation of the CAT. In its concluding observations on Cameroon, the Committee recognised that the economic situation constituted a factor impeding the application of the CAT.¹⁰⁸ In its concluding observations on Canada, the Committee recognised that the development of a national strategy and other measures to address the historical social and economic disadvantages experienced by the indigenous population, constitute a positive aspect with regard to the implementation of the CAT.¹⁰⁹ Similarly, in its concluding observations on Australia, the CAT also welcomed the measures taken by the State Party to address the historical and economic underpinning of the disadvantage experienced by the indigenous population.¹¹⁰ Moreover, in its recommendations to Australia, the Committee recommended that “the State Party continues its efforts to address the socio-economic disadvantage that *inter alia* lead indigenous Australians to come disproportionately in contact with the criminal justice system”.¹¹¹ In the cases of Canada and Australia, the positive relationship underlined by the Committee between economic and social disadvantages and the implementation of the CAT highlights that poverty and violations of economic, social and cultural rights do have an impact on the protection against torture. Moreover, the specific reference to socio-economic conditions in the recommendations made by the Committee to Australia constitute an important precedent in terms of the Committee’s ability to make recommendations regarding the socio-economic context and its explicit acknowledgement that socio-economic disadvantages have an impact on the protection against torture.

¹⁰⁶ U.N. Doc. E/CN.4/SUB. 2/RES/2001/5, *Globalisation and its impact on the full enjoyment of all human right*

¹⁰⁷ U.N. Doc. E/CN.4/SUB., *Intellectual Property and Human Rights*; U.N. Doc. E/CN.4/SUB.2/RES/2001/4, *Liberalization of trade in services and human rights*

¹⁰⁸ U.N. Doc. CAT/C/XXV/Concl.5, *Concluding Observations of the Committee Against Torture: Cameroon*, para 5

¹⁰⁹ U.N. Doc. CAT/C/XXV/Concl.4., *Concluding Observations of the Committee Against Torture: Canada*, para 4(f)

¹¹⁰ U.N. Doc. CAT/C/XXV/Concl.3, *Concluding Observations of the Committee Against Torture: Australia*, paras 5(e)

¹¹¹ *Ibid.*, para 7(g)

The Human Rights Committee and the Committee on the Rights of the Child have also adopted similar approaches. Indeed, in its General Comment No. 6, the Human Rights Committee interpreted the expression “inherent right to life” as requiring States to adopt positive measures to reduce infant mortality and increase life expectancy.¹¹² In this regard, the Committee clearly expanded the scope of rights it can monitor to some economic, social and cultural rights, basing its analysis on the notion of the effective enjoyment of the right to life. The United Nations Committee on the Rights of the Child drew similar implicit links between the enjoyment of the right to education and the protection against torture. Indeed, in its General Comment No. 1, the Committee recalled that the aim of education is to support the core values of the Convention on the Rights of the Child, which include the human dignity as well as equal and inalienable rights innate to every child.¹¹³ This clearly encompasses article 37(a) of the CRC which provides for the protection against torture.

While the experts sitting in the CAT might not have the expertise to consider socio-economic issues, they might take advantage of the extensive work of the Committee on Economic, Social and Cultural Rights, of relevant thematic mechanisms and of the work of NGOs in this field.

The case *Selçuk and Asker v. Turkey* of the ECHR, which qualified, under specific circumstances, the violations of economic, social and cultural rights as a form of cruel, inhuman or degrading treatment or punishment opens a whole new area of consideration for the Committee against Torture and other international or regional bodies, as it clearly expands the situations that can fall under the mandate of a body dealing with states’ obligation to prevent the occurrence of torture and other forms of cruel, inhuman or degrading treatment or punishment.

In the light of the precedent developments, OMCT would recommend the Committee Against Torture, when reviewing the implementation of the CAT by a State Party to:

- Consider the relevance of the socio-economic context in identifying the situations which are likely to lead to the occurrence of torture and other forms of cruel, inhuman or degrading treatment and formulate specific recommendations on this issue to the State Party, in light of article 2 of the CAT (see the Concluding Observations on Australia);
- Raise the issue of the provisions of free legal aid for indigent defendants during the constructive dialogue with the State Party and formulate specific recommendations in this respect;
- Extend the collaboration and exchange of information with the UN Committee on Economic, Social and Cultural Rights;
- Press for the ratification of the ICESCR when the State that is examined has not done so;

¹¹² Human Rights Committee, *General Comment No. 6 (article 6)*, Sixteenth session, 1982

¹¹³ Committee on the Rights of the Child, *General Comment No. 1*, para 1

- Consider, on a case by case basis, violations of economic, social and cultural rights as a form of cruel, inhuman or degrading treatment or punishment in breach of article 16 of the CAT, and when falling under this article, make specific recommendations to the State party;
- Consider the possibility of waiving, when deemed necessary, the requirement for the exhaustion of legal remedies for indigent dependents in the light of the Advisory Opinion of the Inter-American Court on Human Rights.