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Gender-inclusive and Gender-sensitive Interpretation of Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**Paper Prepared by
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Introduction

The Charter of the United Nations, which entered into force in 1945, contains a significant number of references to “human rights and fundamental freedoms for all without the distinction as to race, *sex*, language or religion.”¹ These provisions have provided the background to the appearance of a substantial body of multilateral conventions and practices by the organs of the United Nations. The principle of equality and non-discrimination has been reaffirmed and strengthened in for example, the Universal declaration of Human Rights, 1948,² the International Convention on the Elimination of Racial Discrimination, 1965, the International Covenant on Civil and Political Rights, 1996,³ the International Covenant on Economic, Social and Cultural rights, 1966,⁴ the Convention on the Elimination of All Forms of Discrimination against Women, 1979,⁵ and the Convention on the Rights of the Child, 1989.⁶

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, which aims to provide effective protection against torture and other cruel inhuman or degrading treatment or punishment, neither refers to sex or gender in particular, nor does it make reference in the text to the standard of non-discrimination in general. This textual omission does not, however, mean that the equal application of the Convention against Torture to men and women can be questioned. The intention to provide universal protection from torture is expressly affirmed in the following phrases of the preamble to the Convention:

“*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognizing the *equal* and inalienable rights of *all* members of human family is the foundation of freedom, justice and peace in the world.” (emphasis added).

“*Considering* the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,”⁷

“*Having regard* to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,”

In 1993, the Vienna Conference on Human Rights expressed the need for integration of the human rights of women into the work of human rights treaty bodies.⁸ The theme of integration was reiterated in the Platform for Action, adopted at the Fourth World Conference on Women in Beijing, in 1995, in which governments committed themselves to the promotion of an active and visible policy of mainstreaming a gender perspective into all policies and programmes.⁹ The Platform also emphasised that the full realisation of human rights for all requires explicit attention

¹ See articles 1(3), 13 (1), 55, 56, 62 (2) and 76.

² See articles 2 and 7.

³ See articles 2(1), 3 and 26.

⁴ See article 2(2) and 3.

⁵ See article 1, 2, 3, 4 and 5.

⁶ See article 2 (1).

⁷ Article 55 of Charter continues: “for all without distinction as to race, sex, language or religion.”

⁸ Vienna Declaration and Programme of Action, part II, para 42.

⁹ *Ibid.*, Para 38.

to the systemic nature of discrimination against women in the application of human rights instruments.¹⁰

While women are victims of gender specific forms of violence at the hands of State officials, much violence against women takes place within the private sphere and for this reason, OMCT has decided to concentrate in this position paper on violence against women perpetrated by non-state actors. State responsibility arising out of acts by private individuals lies at the heart of a gender-inclusive and gender-sensitive interpretation of the Convention against Torture and, in particular, of the definition of torture, contained in article 1 of the Convention.

According to article 1, torture means not only acts **by** a public official, but also **at the instigation of or with the consent or acquiescence** of a public official or other person acting in the official capacity, of severe pain and suffering intentionally inflicted on a person for certain purposes or **for any reason based on discrimination**. Thus, while it is obvious that not all violence against women can be qualified as torture within the meaning of the Convention against Torture, the mere fact the perpetrator is a private individual rather than a state official should not automatically lead to the exclusion of this violence from the scope of the Convention against Torture.

The first chapter of this paper begins with an analysis of the responsibility of states for acts by private persons when they fail to exercise due diligence to prevent, investigate, prosecute violations of human rights.

In the second chapter, it moves on to examine how the Committee against Torture, the Human Rights Committee, the Special Rapporteur on torture, the Special Rapporteur on violence against women, its causes and its consequences, and the Special Rapporteur on extrajudicial, summary or arbitrary executions have recognized violence against women by a private individual as a form of torture.

The third chapter discusses cases of torture by private individuals based on OMCT's urgent appeals relating to violence against women and alternative country reports on violence against women, which OMCT has submitted over the last 5 years to the different United Nations human rights treaty monitoring bodies, including the Committee against Torture. The submission of alternative country reports and urgent appeals to United Nations human rights mechanisms by OMCT's Violence against Women programme forms part of the programme's focus which is to integrate a gender perspective into the work of the United Nations human rights mechanisms.

The report ends with the conclusion that depending on the severity and the circumstances giving rise to State responsibility, violence against women perpetrated by private individuals can constitute a form of torture or cruel, inhuman or degrading treatment under the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

1. State Responsibility Arising Out of Acts of Private Individuals – The concept of Due Diligence

State responsibility arising out of acts of private individuals has long been a controversial field in international human rights law. The traditional framework of international human rights law, with its public/private distinction and its failure to adequately address economic, social and cultural

¹⁰ Ibid., Para 222.

rights, has frequently failed to effectively promote and protect the human rights of women. Indeed, in the past, human rights protection was interpreted narrowly and State inaction to prevent and punish human rights abuses by private individuals was not viewed as a failure to protect human rights.

However, over the past decade, a growing body of international human rights law has recognised State responsibility for private acts when these acts are covered by the provisions of a treaty or when the State fails to exercise due diligence in preventing, investigating, prosecuting, punishing and repairing human rights violations. The "due diligence" standard has been generally accepted as a measure for evaluating State responsibility for violations of human rights by private actors.¹¹

The Velásquez Rodríguez Case has become a classic judicial opinion in international human rights law because of its clarification of a state's duty to exercise due diligence with respect to violence committed by non-governmental actors.¹² The Inter-American Court of Human Rights held that:

"An illegal act which violates human rights and which is initially not directed imputable to the State (for example, because it is an act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."¹³

The Court further stated:

"The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, impose the appropriate punishment and ensure the victim adequate compensation."¹⁴

The trend towards holding States responsible for actions of private actors is specifically reflected in the gender specific instruments: both the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women as well as in regional instruments such as Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. For example, article 2 (e) of the Women's Convention states that states parties are required:

"to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise."

In General Recommendation 19 entitled "violence against Women," the Committee on the Elimination of Discrimination against Women emphasised that:

"Under general international human rights law, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and providing compensation."¹⁵

¹¹ See Ian Brownlie, "Principles, Principles of Public International", Fourth edition, 1990, p. 441 and 528.

¹² Inter-American Court of Human Rights, 1988, Ser. C, no. 4, 9 Human Rights L. J. 212 (1988).

¹³ Ibid, para 172.

¹⁴ Ibid., para. 174.

¹⁵ U.N. Doc. HRI/GEN/1/Rev.1.

Article 4 (c) of the Declaration on the Elimination of Violence against Women explicitly proclaims that states should

"exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons."

Coming back to the Velásquez Rodríguez Case, elaborating on the due diligence standard, the Inter-American Court of Human Rights stated that one single violation of a human right or just one investigation with an unsuccessful result does not establish a state's lack of due diligence. The test is rather whether the State undertakes its obligations seriously. This requirement encompasses the duty to provide and enforce adequate remedies to survivors of private violence. Thus, the existence of a legal system criminalising and providing sanctions for private violence would not in itself be sufficient; the government would have to perform its functions to effectively ensure that incidents of family violence are *de facto* investigated and punished.¹⁶

As will be discussed in part II of this paper, many countries fall short of this standard. Under many jurisdictions, violence against women perpetrated by private actors attracts less government attention and severe punishments than similar crimes against men.

Therefore, as Radhika Coomaraswamy, the Special Rapporteur on violence against women stated in her first report, "this emergence of State responsibility for violence in society plays an absolutely crucial role in efforts to eradicate gender-based violence and is perhaps one of the most important contributions of the women's movement to the issue of human rights."¹⁷

2 Private Individuals and Torture as Seen by United Nations Treaty Bodies and Special Rapporteurs

2.1 Committee against Torture

In its recent sessions, the Committee against Torture has seriously begun to integrate a gender-perspective into its work. While in the past the Committee's consideration of the situation of women, or gender issues during the dialogue with State parties fell into the following broad categories: rape and sexual offence by State officials, segregation of male and female prisoners and the situation of pregnant women, the Committee has also recently started to address issues including domestic violence, marital rape and trafficking in women. However, for a long time, none of the Committee's concluding comments made any reference to the situation of women in general.

During its twenty-first session, the Committee expressed for the first time, in its concluding comments, its concern over gender-specific official torture.¹⁸ When considering the report of Tunisia, the CAT stated that it was "particularly disturbed by the abuses directed against women members of the families of detainees and exiled persons." It further added that it "has been reported that dozens of women were subjected to violence and sexual threats in order to put

¹⁶ See Inter-American Court of Human Rights, 1988, Ser. C, no. 4, 9 Human Rights L. J. 212 (1988), para 167.

¹⁷ U.N. Doc. E/CN.4/1995/42, para 107.

¹⁸ U.N. Doc. HRI/MC/1998/6, para 50.

pressure on or to punish their imprisoned or exiled relatives.”¹⁹ At its twenty-second session, when addressing the situation in Egypt, the Committee expressed its concern about the “allegation from the World Organization against Torture of treatment of female detainees, by both the police and the State Security Intelligence, which sometimes involves sexual abuse or threat of such abuse in order to obtain information relating to husbands or other family members.”²⁰

Moreover, the Committee against Torture has increasingly expressed its concern about the absence of information in the State reports regarding torture and ill-treatment affecting women and girls²¹ and has recommended that a several state parties provide relevant data disaggregated by gender in their future reports to the Committee.²²

Although much of the violence suffered by women at the hands of private actors has not yet been reflected in its concluding comments, the Committee against Torture during its Twenty-sixth session (May 2001) when considering the reports of Georgia and Greece recommended that steps be taken to prevent, prosecute and punish trafficking of women and other forms of violence against women.²³

2.2 Human Rights Committee

In March 2000, the Human Rights Committee adopted a comprehensive General Comment, No 28, on equality of rights between men and women, which updates its earlier General Comment on that topic adopted in 1981.²⁴ General Comment 28 explains what article 3 of the International Covenant on Civil and Political Rights involves and spells out the kind of information States Parties are expected to provide in their reports. It also identifies some of the factors affecting the equal enjoyment of these rights by women under the Covenant. The Human Rights Committee states very clearly that the right to gender equality is not merely a right to non-discrimination; positive measures are required.

In paragraph 11 of the General Comment, the Committee addresses the fact that much of the violence suffered by women is violence suffered at the hands of private individuals and recognises that this violence can amount to torture which is prohibited by article 7 of the Covenant. The paragraph reads: “To assess compliance with article 7 of the Covenant, as well as with article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practices with regard to domestic and other forms of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape. The States Parties should also provide the Committee information on measures to prevent forced abortion or forced sterilisation. In States Parties where the practice of genital mutilation exists, information on its extent and on measures to eliminate it should be provided. The information provided by

¹⁹ U.N. Doc. CAT/C/TUN, para. 12.

²⁰ U.N. Doc. A/54/44/para 209.

²¹ Kazakhstan, U.N. Doc. CAT/C/XXVI/Concl.7/Rev.1 and China, U.N. Doc. A/55/44, para 117.

²² Kazakhstan, U.N. Doc. CAT/C/XXVI/Concl.7/Rev.1, China, U.N. Doc. A/55/44, para 130, Netherlands, U.N. Doc. A/55/44, para 188, Georgia U.N. Doc. CAT/C/XXVI/Concl.1/Rev.2, and Slovakia U.N. Doc. CAT/C/XXVI/Concl.4/Rev.1.

²³ Georgia U.N. Doc. CAT/C/XXVI/Concl.1/Rev.2 and Greece U.N. Doc. CAT/C/XXVI/Concl.2/Rev.1.

²⁴ The complete text is available on the website of the Office of the High Commissioner for Human Rights: www.unhchr.ch and can be obtained under the symbol: CCPR/C/21/Rev.1/Add.10.

States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated.”

But already in 1992, the Human Rights Committee seemed open to the inclusion of violence at the hands of private actors under the notion of torture, by stating in General Comment 20, that “the provision of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone the protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”

2.3 *Special Rapporteur on Torture*

In 1986, the first U.N. Special Rapporteur on Torture, Professor Kooijmans, while discussing in his first report the notion of the “qualified perpetrator”, argued that:

“the authorities’ passive attitude regarding customs broadly accepted in a number of countries (i.e. sexual mutilation and other tribal traditional practices) might be considered as “consent or acquiescence” particularly when these practices are not prosecuted as criminal offences under domestic law, probably because the State itself is abandoning its function of protecting its citizens from any kind of torture.”²⁵

The subsequent Special Rapporteur on Torture, Sir Nigel Rodley, for a long time remained silent on the question of the responsibility of the State, to prevent, and to take action in response to, acts perpetrated by private individuals. However, like the Committee against Torture, the Special Rapporteur’s concerns with the gender-specific forms and consequences of torture have increasingly received more attention, including violence against women at the hands of private individuals. For example, in his last report to the Commission on Human Rights the Special Rapporteur notes, that in a letter to the Government of Bangladesh dated 10 October 2000 sent in conjunction with the Special Rapporteur on violence against women, its causes and consequences,

“the Special Rapporteur advised the Government that he had received information concerning the alleged increase in the number of women who are subject to the practice of burning with acid following, for example, family disputes, rejections of marriage or sexual advances. It is reported that in a number of cases there has been neither an investigation nor attempt to bring the perpetrators to justice.”²⁶

With regard to a rape case in India, the Special Rapporteur wrote in the same report that:

“Bhanwari Devi, a saathin (village development worker) working with the State-sponsored Women’s Development Programme in Bhatari village, Rajasthan, to eradicate child marriage, was allegedly raped by five men of a higher caste on 22 September 1992. The rape was believed to be a punishment for her activities. The police reportedly initially refused to record her statement. The inquiry by the Central Bureau of Investigation (CBI) allegedly subjected her to excessive questioning about the incident. The trial began in a lower court only in October 1994. In a verdict given in November 1995, the Court found

²⁵ U.N. Doc. E/CN.4/1986/15, para 38.

²⁶ U.N. Doc. E/CN.4/2001/66, para 140.

that the delay in filing her complaint with the police and in obtaining a medical examination indicated that she had made the story up. The men were reportedly acquitted of the charge of gang rape but convicted of minor crimes. An appeal against this judgement was lodged in the Rajasthan High Court.”²⁷

Moreover, with regard to a domestic violence case in Uganda:

“the Special Rapporteur on Torture advised the Government by letter dated 5 October 2000, that he had received information on Margaret Arach, who married Livingstone Sikuku in 1997. The Special Rapporteur on violence against women, its causes and consequences, sent a communication on her behalf on 22 July 1999 to which it is believed no response has been received so far. Since 1997, her husband has allegedly physically and psychologically abused her. Her efforts to obtain help from the police and the local authorities were said to have remained without result. In September 1998, her husband allegedly stabbed both Margaret’s mother and youngest sister with a knife known as a panga. They later died in the nearby Lacor hospital. Livingstone Sikuku then handed himself in to the authorities. Although he is in police custody he has never been charged and denies any involvement in the murder.”²⁸

Moreover, in his report on his visit to Azerbaijan, the UN Special Rapporteur on Torture, while comparing the definition of torture of the Azerbaijani Criminal Code with article 1 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, states:

“it must be noted that the notion of “with the consent or acquiescence of a public official” contained in the Convention definition is absent from the Azerbaijani definition. Under international law, this element of the definition makes the State responsible for acts committed by private individuals which it did not prevent from occurring or, if need be, for which it did not provide appropriate remedies. Hence, criminal liability of public officials having consented or acquiesced to such acts by private individuals is not provided for by the Azerbaijani Criminal Code. Such behaviour by a public official constitutes in itself a human rights violation and a crime under international law.”²⁹

2.4 Special Rapporteur on violence against women, its causes and consequences

While reporting on violence against women in the family, the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, explained the concept of due diligence in the following way:

“a State can be held complicit where it fails systematically to provide protection from private actors who deprive any person of his/her human rights. However, unlike for direct State action, the standard for establishing State complicity in violations committed by private actors is more relative. Complicity must be demonstrated

²⁷ U.N. Doc. E/CN.4/2001/66, para 531.

²⁸ U.N. Doc. E/CN.4/2001/66, para 1141. OMCT had issued an urgent appeals on this case as well as a follow up, the latter reporting that Livingstone Sikuku has been found guilty and sentenced to death for the crimes he committed. Cases UGA020699VAW and UGA 020699.1VAW.

²⁹ U.N. Doc. E/CN.4/2001/66/Add.1, para 73

by establishing that the State condones a pattern of abuse through pervasive non-action. Where States do not actively engage in acts of domestic violence or routinely disregard evidence of murder, rape or assault of women by their intimate partners, States generally fail to take the minimum steps necessary to protect their female citizens' rights to physical integrity and, in extreme cases, to life. This sends a message that such attacks are justified and will not be punished. To avoid such complicity, States must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses.”³⁰

2.5 *Special Rapporteur on extrajudicial, summary or arbitrary executions*

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, explained in her first report that she will take action in situations where “deaths due to attacks or killings by (...) private forces co-operating with or tolerating by the State.”³¹ In the same report she expressed concern about reports of so-called “honour killings”, where husbands, fathers or brothers have gone unpunished after having murdered their wives, daughters or sisters in order to defend the honour of the family.³²

In her last report to the Commission on Human Rights, the Special Rapporteur, while mentioning again that she has received a considerable amount of information regarding traditional practices, particularly “honour killings”, targeting women, states she

“does not take up all cases of such killings, but has limited herself to act where the State either approves of or supports these acts, or extends impunity to these perpetrators by giving tacit support to the practice.”³³

3. Violence Perpetrated by Private Individuals Amounting to Torture

3.1 *Violence against Women in the Family*

OMCT’s worldwide research on violence against women in 1998-1999, revealed that domestic violence continues to be a universal problem that has been a persistent obstacle to the promotion and advancement of women's human rights.³⁴ Although the distinct social, cultural, and political contexts in which domestic violence exists give rise to different forms of domestic violence, its prevalence and pattern are remarkably consistent, spanning national and socio-economic borders and cultural identities. It also became clear that while there are some encouraging signs of progress in the development and implementation of new legislation and procedures with respect to violence against women, the research reveals that States are overwhelmingly failing to uphold their international as well as national obligations to prevent, investigate, prosecute and punish domestic violence against women.

³⁰ U.N. Doc. E/CN.4/1996/53, paras 32-33.

³¹ U.N. Doc. E/CN.4/1999/39, para 6 (e).

³² U.N. Doc. E/CN.4/1999/39, para 74.

³³ U.N. Doc. E/CN.4/2001/9, para 41.

³⁴ Carin Benninger-Budel and Anne-Laurence Lacroix, *The World Organisation Against Torture, Violence against Women: A report*, 1999.

In certain countries, wife battering is still not considered as a crime and no legal sanctions exist against the perpetrator. In other countries, domestic violence is often dealt with under the laws of general criminal assault. But these laws ignore the fact that the violence takes place in the family, between persons who are emotionally and financially involved with each other.

Even in cases where countries have “criminalised” domestic violence, much still depends on the role and the power of the police and other law enforcement officials and their willingness to prevent, investigate, prosecute and punish perpetrators of domestic violence. Domestic violence is often seen by them as a private issue.

Marital Rape

In many countries, marital rape is not recognised as a crime. For example, in Egypt, a husband who forces his wife to have sexual intercourse is not considered by the law to have committed a criminal offence. A study conducted by the New Women Research Centre and El-Nadim Centre found that 93% of the women interviewed considered intercourse under such conditions as rape. However, 46% of the men in the sample said that they were entitled to force their wives to have intercourse.³⁵

3.2 Crimes against Women Committed in the Name of Honour

Crimes against women committed in the name of honour are a gender specific form of violence which is either approved or supported by states in many parts of the world, including: Argentina, Bangladesh, Brazil, Ecuador, Egypt, Guatemala, Iran, Israel, Jordan, Palestinian Autonomous Areas, Pakistan, Peru, Texas/USA, Turkey and Venezuela. Husbands, fathers or brothers have gone unpunished after murdering their wives, daughters or sisters in order to defend the “honour” of the family or their own “honour”. The killing or mutilation occurs when a woman allegedly steps outside her socially prescribed role, especially, but not only, with regard to her sexuality and to her interaction with men outside her family.

This type of crime is often explicitly or implicitly condoned by the law and the community. Crimes in the name of honour have the effect of perpetuating the total subordination of women to men in society by forcing women to live their lives in fear. In this atmosphere, all the fundamental human rights of women are compromised, for example, if death is the feared penalty, women cannot exercise their rights to freedom of speech, freedom of assembly, and freedom of movement.

States are required under international law to exercise due diligence to prevent and investigate crimes committed in the name of honour and to punish the perpetrators.³⁶

Acid Attacks in Bangladesh

Acid attacks constitute an extreme form of violence against women and are often committed in the name of honour. Every month, about 20 persons reportedly become victims of acid attacks in Bangladesh. Most of them are women and girls. When acid is thrown on a person, the results are horrific. Sulfuric acid melts away skin and muscle, and sometimes even dissolves the bone.

³⁵ OMCT, *Violence against Women in Egypt*, report submitted to CEDAW

³⁶ Expert Panel discussion on crimes against women committed in the name of honour during the Commission on Human Rights, 2001, organised by OMCT.

When acid attacks the eyes, women become blind. Reported reasons for acid attacks include refusal of an offer of marriage, dowry disputes, domestic violence and arguments over property. Bangladesh is not lacking laws that attempt to protect Bangladeshi women. However, there is reportedly a lack of commitment by the judiciary and law enforcement officials to apply these laws and criminal processes are slow.³⁷

3.3 *Rape Committed with Impunity*

The Case of Sri Lanka

At about 2pm on 12 August, Sita, a 16 year old student at Tamil Maha Vidyalaya Talawakelle, in Sri Lanka's Central Province, was allegedly forcefully abducted by two men – Rameez and Piyal Nakala – whilst she was walking home after Sunday mass and confirmation classes at her local church. She was allegedly repeatedly raped inside a vehicle by both men before being dropped off near the Hindu Kovil in Talawakelle at about 6pm.

Sita was able to report the incident to the police and to identify the suspected perpetrators who were later arrested. She was subsequently taken to Kotagala Hospital and then to Nuwara Eliya Hospital for medical examinations and she was discharged from hospital on 16 August. The suspects were held in remand until 28 August.

A public protest was held in the town of Hatton on 26 August in order to demand justice for Sita. The case came before the local court on 28 August and the two accused were granted bail. According to the information received, the police did not undertake a vigorous investigation of the case and they failed to bring important information concerning the victim's circumstances to the attention of the judge during the initial trial proceedings.

Reports of rape and other forms of violence against Tamil women and girls in Sri Lanka are frequent and there is a prevailing climate of impunity for the perpetrators of this violence. Sri Lanka does not fulfill its obligation under international law to prevent, prosecute and punish acts of violence with due diligence, irrespective of whether these acts have been committed by State or non-State actors.³⁸

The Case of Zambia

It has been reported that in Zambia, the widespread view that men infected with HIV or other sexually transmitted diseases may cure themselves if they have sex with a virgin has contributed to the increased incidence of rape.³⁹ Despite the fact that there are provisions in the Penal Code which criminalize sexual violence including rape and "defilement", these are inconsistently and unevenly applied. There is evidence to suggest that in spite of the heavy penalties provided under the Penal Code, the perpetrators of rape are often punished with little more than a small fine, thus sending the message that rape is not considered by the judiciary to constitute a serious criminal

³⁷ Case BGD 260700VAW.

³⁸ Case LKA 100901 CC.VAW.

³⁹ *The Times of Zambia*, "Unreported sexual offences worrying women's law body", 3 May 2001; Dean E. Murphy, "Africa's Silent Shame", *Los Angeles Times*, 16 August 1998, quoted in OMCT, *Violence against Women in Zambia*, report submitted to the Committee against Torture 2001.

offence which should be met with an appropriately severe punishment.⁴⁰ In addition, the application of customary law, particularly in cases of "defilement" has led to these crimes commonly being settled through the payment of money to the victim's family rather than being pursued through the criminal justice system, thereby reinforcing the idea that the rape of women and girls is an offence against family status rather than constituting a serious criminal offence against the victim herself.⁴¹

3.4 Reparatory Marriage

In several countries around the world, a rapist is not punished when he marries the victim. For example, in Bolivia where article 317 of the Penal Code, despite being amended in 1999 to include the concept of "free consent", still provides that there shall be no punishment in the cases of rape, sexual abuse or kidnapping when the perpetrators marry their victims, with free consent, before the execution of the judgment. This provision may lead to a woman being pressured into marrying her rapist in order to preserve her family's "honour."

3.5 Trafficking in Women and State Complicity

Trafficking in women has become one of the world's most profitable businesses. Traffickers and organized crime syndicates are taking advantage of poverty, lack of opportunities, political and social violence in the countries of origin, in conjunction with the decreased possibilities for legal migration in many parts of the world while demand for foreign labour has remained constant. Trafficking in women is directed through a web of deceit, false promises of work as models, dancers, au pairs or domestic workers, as well as straight-forward claims that women can earn more money through jobs such as prostitution. Other methods such as kidnapping and selling girls and young women to sex clubs, strip shows, pimps etc., are also used by the traffickers.

OMCT is very concerned about trafficking in women and the extreme forms of violence against women that it involves and it has documented this crime in several countries around the world, including in Armenia, Azerbaijan, Belarus, China, Georgia, Israel, Kyrgyzstan, Nepal, Thailand and Vietnam. In all cases, the treatment of trafficked women is characterised by some of the most horrendous violations of human rights. The majority of trafficked women are subject to long working hours of often heavy labour, deprived of time off, food and more often than not, wages. Access to health and medical services is frequently denied. Moreover, when trafficked from abroad, unable to either read, write or speak the language, they remain imprisoned in their work place, and are subsequently prevented from contact with the outside world, enduring psychological, physical and sexual violence. Furthermore, as illegal immigrants, they often lack documents and are unregistered with the proper authorities and therefore live in constant fear of police arrest, fines, imprisonment and expulsion. Moreover, women are often trafficked into debt bondage meaning that they are forced to work for free for their "employers".

The issue of trafficking is being considered by international and regional human rights mechanism including by the Commission of Human Rights. However, states around the world

⁴⁰ Perpetual Sichikwenkwe, "WLSA Studies Justice Delivery System", *The LRF News*, No. 26, April 2001, www.lrf.org.zm/Newsletter/april2001, quoted in OMCT, Violence against Women in Zambia, report submitted to the Committee against Torture 2001.

⁴¹ "Jail all defilers – Kajoba", *The LRF News*, No. 15, March 2000, www.lrf.org.zm/Newsletter/march00, OMCT, Violence against Women in Zambia, report submitted to the Committee against Torture 2001.

continue to allow trafficking to grow with near impunity and without passing legislation to protect the rights of trafficked persons.

The Case of Georgia

The current social and economic conditions in Georgia together with the resulting civil unrest have increased the instance of both prostitution of and trafficking in women. Around 46 % of women in Georgia have lost their jobs during the last few years.⁴² Poverty and unemployment force Georgian women and girls into prostitution or to seek work abroad in countries such as Turkey, Israel, Greece, or other European countries, as unskilled cheap labour or as prostitutes. According to Interpol data, in 1997 alone, 98 female citizens of Georgia were detained in Turkey and four in Greece for practicing prostitution.⁴³

Traffickers usually recruit through agencies offering jobs abroad, advertising for example “for women to work as waitresses.” They collect a group of women and prepare their travel documentation such as visas, tickets etc. Upon arrival, the women's passports are frequently confiscated and they are often forced to work as prostitutes.⁴⁴ The International Helsinki Federation for Human Rights reports that although there are no official statistics on the issue, according to materials in the mass media it is possible to conclude that trafficking in women has been “legalised” in Georgia.⁴⁵

OMCT is very concerned by the fact that the government of Georgia does not seem to recognise that trafficking in women has become a serious problem in Georgia.⁴⁶ The State has neither adopted a policy to address the problem of trafficking nor does it provides any assistance to trafficked women.⁴⁷ Moreover, trafficking in women is not prosecuted as a separate offence under Georgian criminal law.

The absence of specific laws on trafficking makes it difficult to pursue criminal cases against suspected traffickers. Moreover, police indifference to the problem of trafficking leads to impunity for this violation of women's human rights.⁴⁸

Conclusion

In all regions of the world, violence against women is a reality, and the perpetrators of this violence are often private individuals. Women and girls are the victims of domestic violence, they are subjected to crimes committed in the name of honour and to harmful cultural practices

⁴² Information received from Marina Meskhi, Head of the Women's Rights Studying Group of the Georgian Young Lawyers' Association, quoted in Violence against Women in Georgia, Report submitted to the Committee against Torture, May 2001.

⁴³ Quoted in Natia Turavana, General Conditions of Poverty and Impact on Women, in Status of Women in Georgia, a report supported by UNDP, 2000, p. 32.

⁴⁴ International Helsinki Federation for Human Rights, *A Form of Slavery: Trafficking in Women in OSCE Member States*, report to the OSCE Supplementary Human Dimension Meeting on Trafficking in Human Rights, Vienna 2000, p. 20.

⁴⁵ Ibid.

⁴⁶ Information received from Marina Meskhi, Head of the Women's Rights Studies Group of the Georgian Young Lawyers' Association, quoted in Violence against Women in Georgia, Report submitted to the Committee against Torture, May 2001.

⁴⁷ Ibid.

⁴⁸ Violence against Women in Georgia, report submitted to the Committee against Torture, April 2001.

they are subjected to rape and become victims of trafficking and forced prostitution. These forms of violence against women are generally derived from the perceived inferiority of women and their unequal status as provided by law and societal norms. Although it is the duty of the states under international law to ensure that violence against women at the hands of private individuals is prevented, investigated, prosecuted, punished and repaired with due diligence, the cases referred to above show that state policies, laws and inaction perpetuate or condone violence within the domestic and community sphere.

OMCT believes that the Committee against Torture should devote more attention to the issue of violence against women by non-state actors. When due diligence is not exercised in the prevention, investigation, prosecutions and punishment of this form of violence, the Committee should consider it as a form of torture or ill-treatment under the terms of article 1 (or article 16) of the Convention against Torture.