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**World Organisation Against Torture (OMCT) Statement to the
Committee on Economic, Social and Cultural Rights:
Lists of Issues on Kenya and the Philippines**

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- OMCT has submitted two lists of issues for consideration by the Committee, one in response to the initial periodic report of Kenya – in collaboration with ICJ Kenya and the Centre for Minority Rights Development - and the other arising from the initial-fourth periodic report of the Philippines – with contributions from Karapatan and Pax Christi.
 - These two lists share a common approach based on the conviction that torture and cruel, inhuman and degrading treatment or punishment and other forms of violence are related in many ways to disrespect for economic, social and cultural rights.¹ If, therefore, these phenomena are to be effectively eliminated, then their economic, social and cultural root causes must be, first, understood and, secondly, effectively addressed.
 - We would also like to draw attention to the fact that the converse equally applies: acting to reduce levels of violence in a given society is a fundamental step toward ensuring the widespread enjoyment of economic, social and cultural rights. In both Kenya and the Philippines, conflict and lack of security expose citizens to situations that severely impede their possibility of escaping from poverty, of working in just and favourable conditions, of providing care and education to their children and of enjoying an adequate standard of living and the highest attainable standard of health.
 - OMCT recognises that the social, economic and cultural root causes of violence is an issue that the Committee has been concerned with for many years, and our objective in compiling these lists of issues is to contribute to the preparation of practical recommendations that can be both implemented and monitored.
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KENYA

- In the case of Kenya, OMCT recognises that the State party submission to the Committee is open in reporting not only achievements, but also obstacles to the enjoyment of economic, social and cultural rights. OMCT would, however, like to draw attention to the following issues and their implications for the incidence of torture, ill treatment and other forms of violence.
- First, there is a high incidence of absolute poverty in Kenya, and OMCT is concerned that ill treatment of the poor and unemployed by the police – and especially of young men in urban areas – is widespread and that police corruption is common. OMCT recognises the significance of the Government's Economic Recovery Strategy for Wealth and Employment Creation, but it also wishes to draw attention to the risks inherent in privileging rapid economic growth over other measures of development: especially as regards the impact on the poorest and most marginalised sectors of society.
- In rural areas, land is an important source of livelihood, but it is also the source of disputes and conflict, frequently along ethnic lines. The privatization of land has led to the fragmentation of traditional, communally-owned areas. In turn this has generated competition and conflict over diminishing resources and the growth of social and economic inequality among pastoralist and indigenous communities. It is known that there have been police abuses in relation to social protest associated with land right claims involving ill-treatment and arrest of community members.
- OMCT would also like to draw attention to the issue of forced evictions from housing and land. The majority of forced evictions in recent years have involved forest areas. Irrespective of the validity or otherwise of the justifications given for moving population from these areas, the associated evictions have been characterised by violence, lack of adequate resettlement and the absence of appropriate human rights principles.
- In urban areas, and in Nairobi in particular, evictions have been associated with so-called slum-upgrading initiatives. The result of these activities is often that the poor residents of these informal settlements must leave their homes, to be replaced by a wealthier population. Poorly targeted upgrading potentially leads to social conflict, in particular when adequate alternative housing is not provided.
- With regard to poor urban areas OMCT is also concerned at the influence of Kenya's Mungiki sect, which reportedly extorts payments from residents in order to access communal latrines and for security at night. Not only are the poorest members of society directly exploited and threatened by this sect, they are also caught up in police reprisals against the Mungiki – including arbitrary arrests and unlawful killings.
- In rural and urban areas alike, the informal sector represents an important source of livelihood for many Kenyans, but the Government has so far failed to establish clear policies to govern the rights of workers in this sector. Workers on the margins of society are vulnerable to arbitrary arrest and ill-treatment by the police and local authorities.

- OMCT would like to point out that the persistence of adverse cultural norms, practices and traditions, and well as entrenched gender stereotypes, perpetuate discrimination against girls and women and increase their vulnerability to violence, exploitation and trafficking. OMCT notes that the Kenyan penal code does not contain specific provisions against domestic violence. OMCT is further concerned at women's relative powerlessness in the face of violations of their property rights, which in turn increases their vulnerability to violence, including sexual violence, and undermines their capacity to negotiate safe sex practices.
 - Finally, as regards children in Kenya, OMCT would like to highlight that harsh economic conditions and the spread of HIV/AIDS exacerbate the problem of child-headed households, school drop out, homelessness and children living on the street. Street children are vulnerable to harassment by the police, as well as to exploitation and physical and sexual abuse.
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THE PHILIPPINES

- With respect to the Philippines, OMCT would like to underline that while the country possesses a comprehensive legal framework that de jure offers a wide range of safeguards to Filipino citizens, this framework is often inconsistently implemented and enforced. This is due in part to loopholes in the law itself and in part to endemic problems related to poor governance and corruption.
- As is the case with Kenya, poverty frequently lies at the root of torture and other forms of violence in the country.
- In urban areas, the poor live in inadequate housing and are vulnerable to forced and violent eviction.
- Poverty is also among the main factors driving emigration from the Philippines. Many of those looking for work overseas rely on informal channels, and these can turn out to be vehicles for various forms of exploitation, violence and trafficking.
- In rural areas, poverty is extensive, and the large majority of farmers and peasants do not own the land on which they work. Not only has the country's Land Reform Programme been ineffective, but landowners are increasingly converting agricultural land to agri-business or other forms of economic activity. The resulting landlessness is a root cause of conflict and violence.
- In order to attract foreign capital and accelerate domestic economic development, the Government of the Philippines has engaged in liberalization initiatives that risk undermining the economic, social and cultural rights of the poorest and most marginalised communities. OMCT is concerned that workers' rights are jeopardised or disregarded by foreign investment companies in the context of so-called "export economic zones". OMCT is also concerned at the use of force by private security guards protecting the interests of companies active in these zones as well as in mining areas.
- Indigenous peoples are among the most marginalised groups in the Philippines. While, on paper, indigenous peoples' rights are guaranteed by the 1997 Indigenous People's Rights Act, the provisions of this act are systematically undermined by other laws, inter alia, the 1995 Mining Code. Often indigenous activists are harassed, detained, imprisoned and even assassinated for their efforts to protect the economic, social and cultural rights of their communities.
- Other populations vulnerable to violence and ill-treatment associated with the denial of economic, social and cultural rights include women from poor rural communities who are forced by lack of economic opportunities to migrate to urban areas, where they face a greater risk of exploitation and trafficking. Furthermore, the absence of a law on divorce, and lack of legislation granting women and men the same rights to administer property during marriage effectively make married women economically dependent upon their husbands, hence increasing their vulnerability to sustained domestic violence.

- Similarly, poor and marginalised children are more vulnerable to exploitation, including harmful forms of child labour. They are also more likely to come into conflict with the law. Again, there is an inconsistency between juvenile justice legislation as granted by the law and de facto practice, with the result that poor children do not enjoy the protection that is their right and are vulnerable to torture and ill-treatment while in custody.
- Finally, OMCT would like to express its concern at the extrajudicial executions and forced disappearances of human rights defenders engaged in protecting economic, social and cultural rights. Perpetrators of these acts are rarely prosecuted, and the Government has failed to implement effective measures to investigate such crimes. OMCT is also aware of concerns that the 2007 Human Security Act may represent a further impediment to the work of human rights defenders, and will render human rights activist still more vulnerable to being apprehended under the guise of antiterrorist operations.

OMCT looks forward to continuing to work with the Committee and the relevant Governments to prepare practical recommendations to further promote the enjoyment of economic, social and cultural rights in Kenya and the Philippines.

ⁱ See OMCT, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study*, Geneva, 2006, www.omct.org. In his role as UN Special Rapporteur on the Question of Torture, Sir Nigel Rodley noted, “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 aspirations for a life of dignity and respect for all”, UN Doc.A/55/290, Report of the Secretary-General transmitting the 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, §37.