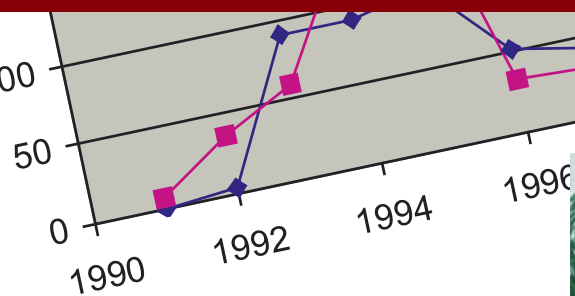


# Attacking the Root Causes of Torture Poverty, Inequality and Violence

## An Interdisciplinary Study



### Preface by Ms. Louise Arbour

UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

Edited by Thomas E. McCarthy



The World Organisation Against Torture (OMCT) coordinates the activities of the SOS-Torture Network, which is the world's largest coalition of non-governmental organisations fighting against torture and ill-treatment, arbitrary detention, extrajudicial executions, forced disappearances, and other serious human rights violations. OMCT's global network currently includes 282 local, national, and regional organisations in 92 countries spanning all regions of the world. In response to the advocacy and capacity-building needs of its members, OMCT operates programmes aimed at communicating appeals for urgent action on cases of torture and other forms of ill-treatments, providing urgent assistance to victims of torture, acting to ensure the respect of children's rights, promoting action to fight violence against women, protecting human rights defenders, and helping national NGOs address international human rights bodies to ensure that States respect their international human rights obligations.

Since its inception, OMCT has recognized that the fight against torture and other serious human rights violations cannot be carried out successfully in isolation from the violations of economic, social and cultural rights, which are all too often at the root of such violence. OMCT thus established its Programme on Economic, Social and Cultural Rights in order to better understand the links between economic, social and cultural factors, and torture and ill-treatment, as well as to support national NGOs in acting on the economic, social and cultural root causes of violence, both nationally and internationally via international human rights mechanisms.

This publication is the result of an international research project launched in 2003 to analyse the socio-economic dimensions of violence, including torture. The first part of the project was this interdisciplinary study, and the second was the hosting of an international conference entitled "Poverty, Inequality and Violence: Is there a human rights response?", which was held in Geneva from October 4-6, 2005, in order to carry out a critical review of the study and its conclusions. The report of the conference is available from OMCT and at [www.omct.org](http://www.omct.org).

**ATTACKING THE ROOT CAUSES OF TORTURE:  
POVERTY, INEQUALITY AND VIOLENCE  
AN INTERDISCIPLINARY STUDY**

*Edited by*

Thomas E. McCarthy

Economic, Social and Cultural Rights Programme Manager  
OMCT

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## **DISCLAIMER**

The views expressed in this publication are those of the authors.

# Table of contents

<b>PREFACE</b>	9
<b>ACKNOWLEDGEMENTS</b>	11
<b>EXECUTIVE SUMMARY</b>	13
<b>INTRODUCTION</b>	17
Objective of the project	17
The context	17
Project methodology	17
International Conference	18
Conclusions and recommendations	18
<b>PART I SOCIO-ECONOMIC INEQUALITY AND VIOLENCE: EMPIRICAL STUDIES</b>	21
<b>Chapter 1 Correlating socio-economic inequality and violence</b>	23
1.1 Introduction	24
1.2 Why correlate socio-economic inequality and violence?	24
1.3 The concept of violence	24
1.4 The concept of socio-economic inequality and development	27
1.5 A note on data	31
1.6 A human rights framework	33
1.7 Methodology	34
1.8 Results at the macro level	37
1.9 Analysis at the micro level (Argentina and South Africa)	57
1.10 Summary and conclusions	76
References	79
Appendix A Countries used for correlations	81
Appendix B Construction of Corruption Perception Index and Rule of Law Index	83
Appendix C Data sent by partners from Egypt and South Africa	85
<b>Chapter 2 The link between home ownership and domestic violence to women</b>	95
2.1 Objective	95
2.2 The sample	95
2.3 Questionnaires received	96
2.4 Analysis of the data	97
2.5 Conclusion	106

<b>Chapter 3 Poverty and violence in developed countries: two studies</b> .....	107
3.1 Poverty and violence in developed countries .....	107
3.2 Methodology .....	107
3.3 Economic recession, welfare problems and victimisation .....	108
3.4 Single mothers and violence .....	113

## **PART II COUNTRY PROFILES AND CASE STUDIES** .....

<b>Chapter 4 Argentina: country profile and case study</b> .....	119
4.1 Political, economic and social overview .....	119
4.2 Violence .....	122
4.3 Case study: the Village .....	127

<b>Chapter 5 Egypt: country profile and case studies</b> .....	135
5.1 Political, economic and social overview .....	135
5.2 Human rights .....	139
5.3 State sponsored violence .....	141
5.4 Violence by non-state actors .....	145
5.5 Violence and economic and social development: conclusion .....	148
5.6 Impact of agrarian reform: the case of Kouta Karoun village .....	148
5.7 Impact of agrarian reform: the case of el Bieda village .....	151
5.8 Conclusion: agrarian reform and its impact on human rights .....	153

<b>Chapter 6 Nepal: country profile and case study</b> .....	155
6.1 Political, economic and social overview .....	155
6.2 The human rights situation .....	159
6.3 Violence .....	163
6.4 Poverty and violence .....	165
6.5 Case study: the Kamaiya system of bonded labour .....	167
6.6 Summary and conclusion .....	173
References .....	175
Appendix A Map of Nepal showing Kamaiya habitation .....	177
Appendix B Development indicators and human rights abuses by district .....	179
Appendix C Correlation of development indicators and levels of human rights abuses, by district	181

<b>Chapter 7 South Africa: country profile</b> .....	185
7.1 Political and legal overview .....	185

7.2	Economic and social overview .....	189
7.3	Violence in South Africa .....	192
<b>Chapter 8 Uzbekistan: country profile and case studies .....</b>		<b>199</b>
8.1	Political, economic and social overview .....	199
8.2	The human rights framework .....	202
8.3	Transition and economic, social and cultural rights .....	205
8.4	Violence in Uzbekistan .....	214
8.5	Migrant workers: case study .....	217
8.6	Domestic violence: case study .....	220
<b>PART III HUMAN RIGHTS MECHANISMS AND INTERNATIONAL ORGANISATIONS .....</b>		<b>225</b>
<b>Chapter 9 Special Procedures of the United Nations Commission on Human Rights .....</b>		<b>227</b>
9.1	Introduction .....	227
9.2	Observations by the experts on the poverty/violence link .....	227
9.3	Joint communications by experts to governments .....	228
9.4	Special procedures for civil and political rights .....	229
9.5	Special procedures for economic, social and cultural rights .....	233
9.6	Special procedures for specific groups .....	237
9.7	Summary and conclusions .....	244
<b>Chapter 10 United Nations Treaty Bodies .....</b>		<b>245</b>
10.1	The Committee on the Rights of the Child .....	245
10.2	The Committee on the Elimination of Discrimination against Women .....	250
10.3	The Committee on the Elimination of Racial Discrimination .....	253
10.4	The Committee on Economic, Social and Cultural Rights .....	256
10.5	The Human Rights Committee .....	262
10.6	The Committee against Torture .....	265
<b>Chapter 11 International Labour Organization .....</b>		<b>269</b>
11.1	Freedom of association and trade union rights .....	269
11.2	The ILO, forced labour and violence .....	272
11.3	The ILO and child labour .....	275
11.4	ILO's analysis of economic and social policy and violence .....	275

<b>Chapter 12 World Bank and International Monetary Fund</b> .....	281
12.1 Overview of the IMF and the World Bank .....	281
12.2 The IMF, the World Bank and violence in recipient countries .....	282
12.3 The IMF and the World Bank: a role in decreasing violence? .....	284
12.4 Conclusions and recommendations .....	286
<b>Chapter 13 World Trade Organization</b> .....	289
13.1 Introduction .....	289
13.2 Child labour, bonded labour and international trade .....	289
13.3 Suicide among farmers in India .....	290
13.4 Access to essential medicines .....	290
13.5 Trade in conflict diamonds: the Kimberly process .....	292
13.6 Concluding remarks .....	293



# Preface

by **Louise Arbour**,  
United Nations High Commissioner for Human Rights

It is my pleasure to make some introductory remarks on the challenging question addressed in the present study: how to prevent or reduce violence, including torture, by acting on its root causes, often found in violations of economic, social and cultural rights? The question goes to the very heart of human rights protection. In considering violence and torture in the context of socio-economic inequality and poverty, the study forcefully shows that human rights cannot be addressed separately or in categories of civil and political or economic, social and cultural rights. The empirical research contained in the study provides examples of the type of analysis needed to illustrate the very real way in which the enjoyment of one right depends on the fulfillment of other rights, showing how different forms of rights deprivation combine and reinforce each other, making persons who are socially and economically marginalized particularly vulnerable to violence.

The recognition of the interdependence and interrelatedness of rights compels us to rethink strategies of human rights implementation. Our response to any human rights problem must be based on that fundamental understanding to be sustainable and effective. Unfortunately, despite the frequent reaffirmation of the interdependence of all human rights, many of our strategies are still based on an unhelpful categorization of rights: between civil and political on the one hand and economic, social and cultural rights on the other. This categorization of rights has worked against their implementation for too long. It has enabled the privileging of some rights over others, sometimes for reasons of political expediency. It has focused attention on violations of specific rights without sufficient analysis of the surrounding conditions leading to violations. It has delayed or negated implementation of economic, social and cultural rights, reducing them to second class rights and vague policy goals rather than binding obligations ensuring minimum standards for a life in dignity. It has also fostered the invidious perception that economic, social and cultural rights are luxury goods, to be claimed and enjoyed only by societies that can "afford" them, or that a healthy market economy provides sufficient safeguards against breaches of those rights.

I believe that we must now move beyond that simplistic and unhelpful categorization of rights towards an understanding of human rights that focuses on people and their capacity to claim the totality of their rights. In dismantling this categorization of rights, I do not wish to suggest that all rights need similar strategies of implementation and remedial action. I do, however, emphasize that differences between rights cut across simplistic categories. For example, aspects of economic, social and cultural rights are immediately realizable in the same way as civil and political rights. The forced and arbitrary eviction of people from housing, the unfair dismissal of a worker, or the exclusion of a pregnant girl from school require the same type of immediate action and redress as does the prohibition of torture or the protection of free speech. Equally, while aspects of economic, social and cultural rights call for long term investments, the same can be also said for some civil and political rights. That is, for example, the case for the establishment of an effective criminal justice system to ensure the right to a fair trial, or the preparations for free and fair elections to guarantee the right to vote.

As we seek to develop a broad-based culture of rights, we must pursue integrated strategies. First, we should consider how to re-conceptualize human rights to move beyond the entrenched categories of rights. Even amongst human rights practitioners, misunderstandings of the interdependence of human rights linger. For example, the rule of law and the right to life are often viewed solely in their civil and political context, without much attention to their economic and social dimensions.

Second, the consideration of human rights in their wider socio-economic context requires the forging of new partnerships and engagement with a range of actors working in the social, economic and cultural areas, including inter-governmental

actors, national ministries dealing with health, education, finance and trade, and the private sector. In doing so, we must convincingly articulate the added value of the human rights framework and overcome resistance among some potential partners, who may see human rights as too political or too legalistic, or argue that they add nothing to their policies and initiatives.

Third, in articulating the importance of human rights to issues of development and peace and security, human rights advocacy must pursue a two-pronged line of argument. One is instrumental: respect for human rights will yield a better, fairer, more durable result; the other is normative: human rights must be respected and implemented even if there is a cost – such as a slower, more expensive process – because the full implementation of all rights is a desirable project in and of itself.

Fourth, strategies focusing on human rights promotion and advocacy must be complemented by strategies to strengthen accountability in the case of violations. Unfortunately, the categorization of rights has for too long delayed State accountability in relation to economic, social and cultural rights. While there is growing acceptance of the justiciability of those rights in many countries, accountability must be further strengthened. Civil society organizations and national human rights institutions can play an important role in this regard, while the elaboration of an individual petitions procedure under an optional protocol to the International Covenant on Economic, Social and Cultural Rights would strengthen accountability at the international level. The private sector can also play an important role, and the growing recognition of its responsibilities to respect human rights is a welcome development. However, means of holding States and non-State actors accountable for their actions in relation to human rights, particularly economic, social and cultural rights, are still wanting.

In the context of ongoing conflict and instability, poverty and underdevelopment, world leaders at the United Nations 2005 World Summit affirmed that peace and security and development and human rights are interlinked and mutually reinforcing and that they constitute the pillars of the international order and the foundation for collective security. World leaders also accepted a collective responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and they recommitted themselves to the Millennium Development Goals as a means of fighting poverty. They stressed “the right of people to live in freedom and dignity, free from poverty and despair” and recognized “that all individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential.” The challenge is to put into practice such political acknowledgement of State responsibility to protect against violence and address socio-economic inequality.

Civil society campaigns have had a crucial role in this regard. Grass roots organizations, such as OMCT, have daily contact with people victimized by violence and socio-economic injustice. They provide a link between people and the justice system informing people of their rights, helping them frame and voice concerns, consolidating group action, accessing legal representation and monitoring decisions. Where change is required at the policy level or in bringing about change in social practice and traditions, civil society plays a crucial role in forging partnerships with policy makers and communities and in identifying and analyzing policy options based on respect for human rights.

I hope the present study will encourage further efforts to promote integrated strategies for the promotion and protection of human rights, moving away from rigid categorizations of rights to a comprehensive understanding that can better achieve improvements in the enjoyment of all human rights by all.

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- Nepal: Rural Reconstruction Nepal (RRN)
- South Africa: Human Rights Institute of South Africa (HURISA)
- Uzbekistan: Legal Aid Society (LAS).

These partners provided country evaluations, statistical information and case studies, often under very difficult circumstances.

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## Executive Summary

Chapter 1 (**Correlating Socio-Economic Inequality and Violence**) explains the importance of quantifying human rights violations, even though human rights by their very nature are highly qualitative. The value of statistical measures lies in their ability to underline the extent and character of human rights violations, to identify the victims most affected, and to clarify responsibility. To narrow the gap between rhetoric and reality, and allocate resources effectively, one needs to know which rights are being violated, why, where and how frequently. A number cannot capture the debasement of dignity experienced by victims of human rights violations nor can it seize the full context of fear generated by a regime, yet it can alert concerned bodies.

A methodology section explains how violence and socio-economic variables can be correlated. Violence variables for non-state violence include homicide and major assaults. For state violence, indicators such as the Political Terror Scale, Torture Scale, Corruption Perception Index, Civil and Political Rights Violation score, Rule of Law Index from independent sources are used along with an incarceration rate based on information from the UN and Interpol. In addition to well-known demographic and economic indicators of socio-economic inequality, the author uses composite indexes relating to gender, as well as the ILO's Income Security Index (ISI) and indexes dealing with democracy and economic freedom. The resulting correlations are presented at the macro level for 63 countries. In order to determine if the correlations hold true for individuals, a micro analysis concerning Argentina and South Africa is also presented.

Chapter 1 concludes that there is a connection between poor economic conditions and high levels of violence, and that inequalities in income, gender development or education are associated to varying degrees with the existence of specific forms of violence. For non-state violence, income inequality, low economic development, unemployment and youth (male) unemployment are strong predictors of the level of violence. State violence, understood as political terror, torture and incarceration, is highly correlated with broader composite socio-economic indexes, with income as the single most powerful explanatory socio-economic factor. Further, greater empowerment and equality of women is related to less state violence. Thus, on the policy level, there is a need to address inequalities in income and gender as a possible avenue for addressing the problem of violence.

Chapter 2 (**The link between home ownership and domestic violence to women**) studies the relationship in South Africa between women's ownership or non-ownership of the home and domestic violence (verbal abuse, emotional abuse and physical

abuse). The study was conducted by questionnaires and interviews in Johannesburg and its suburbs with a population representative of the whole of South Africa.

The study concludes that there is a link between women's home/property ownership and the levels of domestic abuse they will suffer in their everyday lives: women who either owned or partly owned the homes they were living in experienced lower levels of domestic violence compared to those who did not; women with sole home-ownership experienced higher levels of domestic abuse than women with joint home-ownership; and women who contributed to the rent, experienced higher levels of various forms of domestic abuse than those who did not.

Chapter 3 (**Poverty and violence in developed countries: two studies**) presents studies indicating a clear relationship whereby the most economically vulnerable groups are also those most often exposed to violent crime and that people living in poor areas experience more violence. The chapter deals in particular with the situation in Sweden during the economic recession of the 1990s. Two of the groups identified as being among the "losers" of the 1990s, single mothers and people on low incomes, presented a higher level of victimisation at the end of the 1990s than they did at the beginning of the decade. Single mothers on welfare constitute a highly vulnerable group, especially with regard to violence in the home and repeat victimisation. All of the social problems examined – ill-health, limited education, unemployment, poor financial resources and a lack of social relations – involve substantial increases in the risk of exposure to violence. The studies conclude that measures aimed at improving the situation of single mothers, besides producing welfare dividends as they are extended to a wider group of individuals, also have the potential of decreasing levels of violence.

The five country profiles of Part II analyse the human rights situation with particular reference to the links between poverty, inequality, discrimination and violence. Four of the chapters contain case studies focusing more closely on those links. The types of violence described include torture and ill-treatment, executions, disappearances, threats and intimidation, violent eviction from land, violence in the community, domestic violence and violent reactions to demonstrations against violations of economic, social and cultural rights.

Chapter 4 (**Argentina**) analyses the consequences of the serious economic deterioration between 1995 and 2002 and the resulting political instability. Unemployment, underemployment, poverty and income inequality all increased, with negative

effects on health, education and housing, and a growth in shanty towns. This provoked widespread demonstrations, protests and looting of stores. Violence increased in the form of forced evictions, torture and ill-treatment, armed confrontations, extrajudicial and summary executions, killing of persons in detention, threats and intimidation, violent house searches, and the violent searching and surrounding of shanty towns. This violence was the result of the complex interaction of a number of factors, rather than one of them independently. The Argentina case study deals with the violence inflicted on residents of a shanty town near Buenos Aires.

Chapter 5 (**Egypt**) examines recent economic and social changes, in particular as a result of the privatisation of publicly owned enterprises and of agricultural reforms affecting land ownership and support provided to farmers. The country profile links these changes directly to violence by state agents and non-state actors and with religious extremism. Privatisation caused a significant growth in unemployment and early retirement. Land reform resulted in the violent eviction of thousands of tenant peasants and small landholders. Many were injured and killed in police attempts to uproot them from their lands. Protests by those affected were met with official and private violence. State sponsored violence took the form of torture, ill-treatment, killings and executions, repeated or almost continuous detentions, violence during public demonstrations, enforced disappearances, and violence against children, women and other social groups. Violence by non-state actors included murder, beating to death, suicide, torture, violence amongst farmers, violence against older people, armed robbery, violence against children and women. The Egyptian case studies examine the impact of agrarian reform on two villages from the point of view of violations of human rights and violence.

Chapter 6 (**Nepal**) examines the People's War that broke out in 1996 in frustration at the failure of governments in the 1990s to create livelihood opportunities. This denial of rights is a major contributory factor to the conflict and the abuse of civil and political rights by the state has contributed to the escalation of the conflict, which is also a major source of violence directed at civilians. The evaluation states that it is clear from the available data that there is a correlation between levels of violence and poverty: "resource denial and deprivation lie at the heart of violence". The Nepal case study describes the *Kamaiya* system of bonded labour and the state and private violence engendered by that system.

Chapter 7 (**South Africa**) deals with the transition from apartheid to a democracy, and the challenge of moving away from a system characterised by great disparities of wealth, income, and opportunities based on race. One of the most devas-

tating legacies of apartheid has been the formation of a 'culture of violence'. In response to high levels of violent crime and crime in general, vigilante justice and mob justice have increased. In a nutshell, violent crime has become the biggest public concern in contemporary South Africa. It is against this background that the analysis of the relation of women's property ownership and violence contained in Chapter 2 was prepared.

Chapter 8 (**Uzbekistan**) merits particular attention because the clear warnings that the rise in poverty and inequality and the deteriorating economic and social situation could lead to violence went unheeded. Since 1991, Uzbekistan has been in a period of transition from a totalitarian political and social system and a centralised command economy. Unfortunately, the transition has been successful neither in the political sphere nor in the economic, social or cultural spheres. The chapter describes the increasing poverty and inequality since the Soviet period, that combined with a blocked political system offered little or no hope for change. This caused growing social tension to which the government responded with increasingly forceful repressive measures. The causal connections between government policies which failed to provide protection for economic and social rights and increasing violence, including support for extremist groups, was identified with clarity in a 2003 United Nations Development Group report. The Uzbekistan case studies deal with the situation of illegal Uzbek migrant workers in the capital, Tashkent, and domestic violence.

Chapter 9 (**Special Procedures of the United Nations Commission on Human Rights**) assesses to what extent the special procedures of the UN Commission on Human Rights have integrated socio-economic factors and denial of economic, social and cultural rights as causes of violence. Many experts have highlighted the existence of a link between poverty and violence, but few have done so systematically. Their recommendations have been mainly addressed to states and have focused on legislative, institutional and policy reforms rather than directly on the economic and social situation of the poor. However, experts from the economic, social and cultural rights field and those who focus on specific groups have addressed recommendations to the international community. Some mandates have established a conceptual connection between poverty and violence and this holistic approach allows them to consider human rights as indivisible and interrelated, taking into account the linkages between civil, cultural, economic, political and social rights.

Chapter 10 (**United Nations Treaty Bodies**) examines to what extent six United Nations treaty bodies identify poverty, inequality and discrimination as root causes of violence, and what recommendations, if any, are made. Three committees (Committee on the Rights of the Child, Committee on the Elimination of

Discrimination against Women, Committee on the Elimination of Racial Discrimination) focus on the whole range of human rights, either because they are all included in the treaty itself or because they are covered by the non-discrimination provisions of the relevant treaty. This affords them more scope to examine the causal effect of violations of economic, social and cultural rights on violence as well as the impact of violence on the enjoyment of those and other rights. Three other committees (Committee on Economic, Social and Cultural Rights, Human Rights Committee, Committee Against Torture) focus on one right or set of rights. This makes it more difficult for them to consider causes of violations in their mandate arising from violations and conditions outside that mandate.

Chapter 11 (**International Labour Organization**) points out that social injustice as a potential cause of violence was one of the basic premises of the International Labour Organization when it was established in 1919, and was reiterated in 1944 in the ILO's Declaration of Philadelphia. Respect for trade union rights, which allows workers' organisations to protect often otherwise vulnerable sectors of society can, by helping to reduce poverty and inequality, contribute to a reduction of violence. The chapter examines the respect for trade union rights as it relates to violence and the approach that has been taken by the ILO. Violence includes that used against the exercise of trade union rights and the violence of forced labour and child labour. Although highlighted in its founding documents, the issue of social injustice as a causal element in violence does not appear as an explicit theme in the ILO's work. Nevertheless, the relationship between denial of human rights and violence is apparent in each area of the ILO's work, from protecting trade union rights to promoting socio-economic security for the poorest.

Chapter 12 (**World Bank and International Monetary Fund**) considers to what extent activities by international financial

institutions, such as funding projects or lending money, can affect the level of violence in a recipient country. The chapter identifies two areas of potential impact on violence of IFI activities: project-related activities and macro-economic policies. It provides examples of negative human rights impacts of certain Bank activities, and refers to studies linking such policies to violence. Dealing with the question of how the Bank and the IMF could avoid violence, the chapter surveys recent Bank sponsored studies showing the connection between poverty and violence, and the implications for development of gender based violence. Finally, the chapter considers what the international financial institutions could do to avoid or diminish violence connected with their activities.

Chapter 13 (**World Trade Organization**), while recognising that the link between international trade, socio-economic inequalities and levels of violence is not self-evident, explores a number of ways in which the systemic effects of trade liberalisation could lead to the deepening of poverty and ultimately violence. It deals with the impact of trade liberalisation on child labour and forced labour and its impact on suicides of farmers in India. It also describes two instances in which trade liberalisation rules have been modified for social purposes or to promote peace: the granting of access to essential medicines and the authorisation to limit trade in "conflict diamonds". The chapter points out that growth does not necessarily translate into the poor having access to more employment or improving their income, access to medicines or preventing conflict. It also notes that, from the cases presented, it is clear that there is no direct causal relationship between liberalisation of trade, whether in pursuit of WTO rules or not, and the actual occurrence of violence. Further, whether or not there is a "structural relationship" between these factors and violence in a given society is also subject to the presence of a number of concomitant factors.





# Introduction

## ■ Objective of the project

The World Organisation Against Torture (OMCT) has recognised for many years that the fight against torture and other forms of violence, as well as their prevention, cannot be considered in purely legal, administrative or judicial terms, in isolation from their socio-economic context. Since its 1991 General Assembly held in Manila, OMCT has given specific attention to socio-economic considerations.

In 2000 OMCT established a full programme to focus on the socio-economic dimensions of torture, arbitrary detentions, summary executions, enforced disappearances and other forms of ill-treatment. OMCT has also established specific programmes addressing violence against women, violence against children and violence against human rights defenders.

In August 2003, OMCT launched an international research project designed to analyse the socio-economic dimensions of violence, including torture. The first part of the project is the present interdisciplinary study and the second was the International Conference "*Poverty, Inequality and Violence: Is there a human rights response?*" held in Geneva (4<sup>th</sup>-6<sup>th</sup> October 2005) in order to carry out a critical review of the study and its conclusions.<sup>1</sup>

The project's objective is to identify specific actions which the various actors can take to reduce violence by acting on its economic, social and cultural causes. Violence in the context of the project is understood as state sponsored (torture, summary executions, disappearances, etc.), and non-state sponsored (social and domestic violence).

## ■ The context

In the past, the fight against torture and other forms of ill-treatment was carried out within the international human rights framework essentially through the denunciation of cases, the establishment of a normative system, as well as through the search for mechanisms - legal or other - that enable adequate protection and reparation of victims to be guaranteed. These efforts have brought about significant improvements. In addition, the collapse of numerous dictatorships has paved the way for a democratic transition in many countries and has put an end to systematic and institutionalised repression of political opponents.

Nevertheless, these changes, positive as they may be, generally do not go hand in hand with an improvement in socio-economic conditions. Indeed, significant inequalities, along with increasing poverty, still constitute the daily experience of a large number of people.

Claims for basic economic, social and cultural rights are often met with severe repression, as they endanger a system based on privileges. As a result, the overwhelming majority of those who are being subjected to torture and ill-treatment are, today, persons that come from the poorest strata of society.

Violence perpetrated against children and women is significantly influenced by their socio-economic marginalisation. Indeed, violence against children mostly affects socially and economically marginalised minors (often street children or working children). Similarly, violence affecting women is often related to their socio-economic role in societies where they tend to be considered as second-class. States often fail to recognise that it is part of their responsibility to combat this violence.

This paradigm change required a new look at how OMCT combats torture and the other forms of violence within its mandate. While the impact of socio-economic factors on the emergence of violence had already been the subject of research, the question had not been approached from a human rights perspective. In other words, the relationship between the enjoyment of economic, social and cultural rights and violations of civil and political rights - such as the right to life and protection against torture - still needed to be examined.

## ■ Project methodology

OMCT adopted a participatory approach to this project involving relevant actors operating in the human rights field, including human rights NGOs, academics, experts and international organisations. This included collaboration with academic institutions and international organisations including the International Labour Organization, three Special Rapporteurs of the United Nations Human Rights Commission, the Graduate Institute for International Studies, the University of Geneva and the University of Lausanne. This collaborative approach is reflected in the membership of the Scientific Council.

<sup>1</sup> The report of the Conference is available from OMCT Geneva and on the OMCT website [www.omct.org](http://www.omct.org).

This project was also carried out in collaboration with human rights organisations in the field including OMCT's network of country level human rights organisations. In addition, for the country profiles and case studies, OMCT established partnerships with five national human rights organisations: the Centro de Estudios Legales y Sociales, Argentina; the Land Center for Human Rights, Egypt; the Human Rights Institute of South Africa; the Legal Aid Society, Uzbekistan; and Rural Reconstruction Nepal.

The country specific chapters in this study are not intended to describe the present situation in those countries, which may well be undergoing rapid change, but rather to examine the causal links between poverty, inequality and discrimination and violence within the confines of a defined and known framework. Similarly, the understanding and responses of international institutions as reflected in this study may also be undergoing change.

During this project a large amount of information was developed that for reasons of length could not be included in this publication. Many chapters are based on larger studies containing additional information and analysis. The larger studies along with other relevant information and reports are reproduced in the CD-ROM included with this publication.

## International Conference

The study was examined at the above mentioned International Conference "*Poverty, Inequality and Violence: Is there a human rights response?*". Ms. Louise Arbour, United Nations High Commissioner for Human Rights, delivered the keynote address. Human rights defenders from over 40 countries, United Nations human rights experts, representatives of international trade unions, academics, international officials and representatives of donors took part. They examined the causal relationship between poverty, inequalities, discrimination, violations of economic, social and cultural rights and violence and developed wide ranging conclusions and recommendations (see below).

The study and the Conference have provided a solid foundation for preventing violence by acting on the root causes found in failures to respect economic, social and cultural rights. The question is no longer, "*is there a link?*", but "*how do we address that link to prevent violence?*"

## Conclusions and recommendations

Participants, in particular national human rights NGOs, agreed that the causal link between human rights and poverty, inequality and violence, as described in the study, were accurate and that these links were to be seen in their own countries. Participants also agreed that developed as well as developing countries were concerned, although in different manners. They further recognized that other factors must be addressed in combating torture and other forms of violence including access to justice, impunity, empowerment of civil society and education.

Some national NGOs had already addressed the economic and social causes of violence in a preventive way, while for many, the Conference led them to realise the importance of the link and to consider how best to act in their own national context. In addressing the issue, close cooperation with national NGOs was essential as such action had to be tailored to the specific circumstances of the country concerned.

The Conference gave rise to a better understanding of what needed to be done nationally and internationally to support action against the economic, social and cultural root causes of violence. Participants confirmed that action against the root causes of violence should be seen as an integral part of OMCT's mandate and strategy and, in that regard, the activities of OMCT and its network of field organisations (SOS-Torture Network) reinforced each other: "Our strength is collective".

Participants recommended that OMCT develop new forms of action to address the link between poverty, inequality, discrimination and violence and that those elements should be strengthened in OMCT's ongoing work. OMCT was asked to provide leadership and to facilitate the exchange of experience, assist in capacity building and in integrating the elements of root causes into ongoing international activities.

Recommendations were made for *new forms of action* to address specifically the links between economic, social and cultural rights and violence in a *preventive* way with the objective of changing the actions, policies, programmes and agreements of governments, international financial and development institutions and private sector actors in order to improve respect for human rights. It was recognised that it was not within OMCT's competence to define economic policies, but rather to aid those concerned to understand the human rights consequences of policies and denounce the human rights violations those policies are responsible for at the national and international levels. These new forms of action include:

> **Reaching out** by network members to work with other NGOs in their country that deal with economic, social and cultural rights and related policy-making to promote action on the poverty – violence link;

> **Learning of the experiences** and examples of other NGOs in dealing with problems related to that link;

> **Developing new ways of intervening** with governments, international development and financial agencies and private actors to end violations of economic, social and cultural rights which cause or risk causing violence;

> **Providing resources** in terms of the analysis, research and support needed to deal with policies, decisions, projects and agreements likely to adversely affect the enjoyment of economic, social and cultural rights and lead to violence.

Participants further recommended that action against the root causes of violence should be seen as an integral part of OMCT's mandate and that emphasis should be placed on the following on-going OMCT activities:

> **Denouncing acts of violence and torture**, by preparing *alternative reports* to United Nations treaty bodies dealing with the poverty – violence link and preparing *urgent appeals*, *complaints* and other forms of intervention to follow-up those appeals, including *press communiqués*;

> **Following up and monitoring** the implementation of recommendations made by the treaty bodies and other organs with the governments concerned, the World Bank and other institutions;

> **Strengthening judicial systems** at the national and international levels, including *fighting impunity* and *demanding reparations*;

> **Preventing violations** by acting to protect vulnerable groups and through human rights *education and training*, conducting *further research*, and pursuing *advocacy and lobbying* activities; and

> **Strengthening the SOS-Torture Network** by supporting partner NGOs and expanding the role of the OMCT regional delegates.

OMCT's central services should be strengthened in order to support these activities, assist members of the Network and undertake studies.

Conference participants were aware that some of their recommendations would lead network members and OMCT into new and relatively unexplored areas of activity that require growth both in awareness and capacity. This investment was necessary because successful preventive action can reduce violence.



PART I  
Socio-Economic inequality and violence:  
Empirical studies



## Chapter 1

# Correlating Socio-Economic Inequality and Violence<sup>1</sup>

### 1.1 Introduction

This chapter presents an empirical analysis of the relationship between socio-economic inequalities and violence, both state and non-state. Its objective is to ascertain tendencies between incidents of violence and socio-economic inequalities at the macro and micro level, to demonstrate that there is a correlation between violence and socio-economic inequality and development which points to possible wider structural causes of violence globally.

A total of 63 countries serve the macro-level analysis of the paper for which secondary data gathered by OMCT and partner NGOs in five core reference countries –Argentina, Egypt, Nepal, South Africa and Uzbekistan– is available. The micro-level analysis specifically concerns Argentina and South Africa. The two levels of analysis are preceded by a methodology section which examines the measurement approach employed, explaining how violence and socio-economic variables can be correlated.

The merits of the chosen correlation technique lie in its simplicity given that statisticians and human rights specialists rarely often understand each other. Correlations cannot detect non-linear (curvilinear) relationships: for example, the relationship between democracy and human rights violations by the state is said to be an inverted U shape - with most violations occurring in semi-democracies<sup>2</sup> - Nevertheless, the correlations provide a recent empirical snapshot of important associations e.g. torture, which is illustrative since it is a manifestation of the aggravation of political, economic and social conflicts, often in the context of unequal distribution of resources, so to understand it we combine standard-based measures (e.g. Torture Scale) and their socio-economic characteristics.

This study can also act as a platform for a further stage of empirical analysis, which would involve using more sophisticated regression models. Although not originally planned, simple linear regression coefficients of particular interest were generated. The benefit of doing this clearly lies in the fact that rigorous regression does enable one to draw causation between variables by predicting the value of Y (dependent variable - violence) at a given level of X (independent variable – socio-economic variable). For example the global regression coefficient between homicide and the Gini index was 0.66. The slope of 0.66 predicts 0.66 or 660 more homicides (per 100,000 people) for each additional point/percentage increase in the Gini index. A longer time-frame with consistent time series data including politically-

orientated societal behaviour (e.g. terrorism, strikes and guerrilla warfare) and state societal violent behaviour variables (e.g. civil war) spanning many decades would be required to get a complete in-depth causal picture of what, why, how and when variables influence state and non-state violence using multivariate techniques such as regression. This is clearly beyond the scope of this chapter.

As for the study at present, since the draft was written, revisions have been made to satisfy points raised by commentators. Several omissions have been made in the present chapter, including references to the 'Relative deprivation thesis' since comparing the ability of states and individuals to mobilise and act violently is complex and too controversial to include here. Moreover correlations without the outlier South Africa were run to see whether this country disproportionately drove the overall correlation coefficient result. South Africa did drive key results to a degree: the coefficient (or 'r') fell from 0.53 to 0.44 between homicides and the Gini index used to measure income inequality. In other words, income inequality went from being a strong to moderate predictor of homicide, generally speaking. On the contrary, the omission of South Africa had little or no impact on the highly positively correlated relationship between the Political Terror Scale and the Income Security Index, and the highly negatively correlated relationship between the Torture Scale and Gender Development Index.

1 Alan Wood (Former Consultant with the International Labour Organization). For a fuller version of this study, see the CD-ROM enclosed with this publication.

Acknowledgments go to IFP/SES for allowing access to the People's Security Surveys (PSS) and project partners: the Centro de Estudios Legales y Sociales (CELS), Argentina; the Land Center for Human Rights (LCHR), Egypt; the Human Rights Institute of South Africa (HURISA), South Africa; the Legal Aid Society (LAS), Uzbekistan; and Rural Reconstruction Nepal (RRN), for their extensive data gathering. Special thanks go to Meghna Abraham (Programme Manager, OMCT), Jose Figueiredo (Senior Economist, IFP/SES, ILO), Todd Landman (Senior Lecturer, Department of Government, University of Essex) and Rana Crevier (Intern, OMCT) for their invaluable advice and technical support, and Nathalie Mivelaz (Centre on Housing Rights and Evictions) for her earlier comments. The author is solely responsible for the views expressed in the paper and errors that may have remained in it.

2 This is the "More murder in the middle" argument. See Davenport and Armstrong, *Democracy and Violation of Human Rights: A Statistical Analysis from 1976-1996*, *American Journal of Political Science* 48(3): 538-554 2003.

Theoretically and empirically speaking, the study remains invariably ambitious in analysing different types of violence and socio-economic variables, which arguably, have no natural fit. However, if the results are interpreted with caution, they provide a useful comprehensive analysis. The study does not tell you why violence occurs or which policies to employ to decrease violence, but it retains its importance by bringing together a wealth of raw data in a unique and telling fashion. In relation to the entire project, the correlations presented in the study do not replace the more in-depth country specific case studies but complement them by illustrating, measuring and predicting how and which variables of interest interact. Furthermore, the nature of the study renders it dynamic to updates, insertions, alterations and omissions according to varying needs and perspectives. By bringing together data compiled by NGOs, international organisations and human rights experts, this paper is a reference source for those interested in investigating general tendencies related to socio-economic inequalities and violence and aspires to contribute to broadening the global study on the interplay between inequality and violence. Ultimately, it is hoped that certain associations provided in this paper serve as access points relevant to specialist authorities, bodies and institutions seeking to study and/or decrease human rights violations.

## 1.2 Why correlate socio-economic inequality and violence?

The use of statistics to measure and analyse human rights is relatively undeveloped. Attempts to quantify human rights violations are clouded in controversy, given that the nature of human rights is highly qualitative and does not render a definitional consensus *per se*. However, this difficulty provides a challenge to the study of human rights, not a deterrent. To narrow the gap between rhetoric and reality, and allocate resources effectively, one needs to know which rights are being violated, why, where and how frequently.

The added value of statistics lies in its ability to help people to understand and publicise the extent and character of human rights violations, to identify those most affected to the point of profiling the pattern of victimisation, and even clarify responsibility for violations. In the human rights context, this allows making inferences, hypotheses, and various frameworks for analysis.<sup>3</sup> For example, if we are able to observe a relationship between GDP per capita and levels of violence in a country, we can predict levels of violence by regression analysis once the level of GDP per capita has been set.

Collecting and analysing statistics is a complement not a substitute to the expertise and judgement of human rights organisa-

tions/institutions. Even in the absence of statistics and with fragmentary, anecdotal data, we are able to make inferences about the scale and severity of a country's human rights situation on a phenomenon known to exist. A number cannot capture the debasement of dignity experienced by victims of human rights violations nor can it seize the full context of fear generated by a regime, yet it can alert concerned bodies.

This study attempts to utilise the reporting and fact finding missions of NGOs, contribute towards the dissemination of information concerning the abuse of human rights and perhaps provide policy relevant information.

## 1.3 The concept of violence

Violence is a fluid and dynamic concept. At its narrowest, it has been defined as the unlawful exercise of physical force; at its broadest it includes harm caused by structural inequalities in society. The definition used in this study is tailored to the research project rather than a comprehensive enumeration of the term. Violence is accordingly defined as:

Physical, sexual and psychological abuse<sup>4</sup> (including threats of physical or sexual abuse) of an individual, group or community. The severe neglect of an individual or individuals in the care or custody of a person or institution would also fall within the definition.

Table 1.1 presents the specific variables of violence, to be used in the correlations exercise. Included in the State violence category are four 'variables, which combine subjective evaluations and objective criteria to score countries. Although these measures depend on subjective evaluations that experts attribute based on their knowledge, these measures directly concern state violence and are considered relatively unbiased and useful for international comparisons.

3 Maria Green, "What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement," *Human Rights Quarterly* 23 (2001), 1062-1097; Douglas A. Samuelson and Herbert F. Spier, "Uses of Incomplete and Distorted Data in Inference About Human Rights Violations," in *Human Rights and Statistics: Getting the Record Straight*, Thomas B. Jabine & Richard P. Claude eds., 1992.

4 The term abuse has been used to refer to the improper use of force: injuries that are caused accidentally, in the course of lawful behaviour, would not fall within the notion of abuse. The term abuse is also used here to point towards a minimum threshold of severity that the physical or psychological force used must reach before inclusion within the research. This minimum level would be assessed taking into account the level of force used, the circumstances in which it takes place and the individual circumstances or characteristics of the person or persons harmed or affected by the use of force.



**Table 1.1 Explanation and source of violence variables**  
(Averages 1998-2000 or latest year available)

<i>Variable</i>	<i>Explanation</i>	<i>Source</i>
<b>Non-state violence</b>		
Intentional Homicide Rate	Recorded death purposely inflicted by another person, per 100,000 population.	UN World Crime Survey, Seventh issue 1998-2000. Interpol International Crime Statistics 2000.
Intentional Homicide Rate (Firearm)	Recorded intentional homicides with the use of a firearm, per 100,000 population.	Same as above
Major Assault Rate	Recorded deliberate attacks causing grievous bodily harm e.g. unconsciousness, broken bones, knife wounds etc., per 100,000 population.	Same as above

<b>State violence</b>	<b>Violence committed by state agents and others acting with the compliance or consent of state officials against individuals</b>	
Political Terror Scale	Countries scored according to level: <i>Level 1</i> : Under a secure rule of law, political murders and torture are rare. <i>Level 2</i> : Limited amount of imprisonment for non-violent political activity. Political murder is rare. <i>Level 3</i> : Extensive political imprisonment. Unlimited detention, with or without a trial for political views. <i>Level 4</i> : Practice of level 3 expanded to larger numbers. Murder, disappearance, and torture are common. <i>Level 5</i> : Terrors of level 4 expanded to whole population. Leaders place no limits on means to pursue personal or ideological goals.	Mark Gibney, University of North Carolina
Torture Scale	Sections on torture in the US Department of State Country Reports on Human Rights were coded referring to requirements under torture treaties. A country's practices are coded by using key words identified in the reports to indicate the frequency of the use of torture. The author draws on several data sources and cross checks her results against more than one source. Partially subjective measure ranging from 1-5 (5 representing widespread torture)	Oona A. Hathaway, Yale Law School

<i>Variable</i>	<i>Explanation</i>	<i>Source</i>
<b>Democracy, Good Governance and Rule of Law</b>		
Corruption Perception Index (CPI)	Aggregates the perceptions of well-informed people with regard to the extent of corruption, defined as the misuse of public power for private benefit. The extent of corruption reflects the frequency of corrupt payments, the value of bribes paid and the resulting obstacle imposed on businesses. 0 = perceived to be totally corrupt. 10 = perceived to be totally clean. For details on index construction see Appendix B	Transparency International
Civil and Political Rights Violation (CPR) score	Summarises 8 different types of violations, reflecting the extent to which the states are willing and/or able to respect the rights formally and in practice. If all 8 types of violations (extra-judicial killings, torture and ill-treatment, detention without trial, unfair trial, denial of political participation, denial of association, denial of expression and discrimination) exist, the total score is 8. High score indicates low government commitment and vice versa.	Hans-Otto Sano (Danish Centre for Human Rights)
Rule of Law Index	Reflects the statistical compilation of responses on the quality of governance given by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries, as reported by a number of survey institutes, think tanks, non-governmental organisations, and international organisations. For details on index construction see Appendix B.	Daniel Kaufman, Aart Kraay, Massimo Mastruzzi

<b>Penal Conditions</b>		
Incarceration Rate	No. of convicted adults admitted to prison, per 100,000 population.	UN World Crime Survey, Seventh issue 1998-2000. Interpol International Crime Statistics

## 1.4 The concept of socio-economic inequality and development

For the purpose of this exercise, socio-economic inequality is defined as the manifestation of an unequal distribution of resources socially, economically and politically. Table 1.2 organises socio-economic variables according to the level of analysis e.g. macro and micro, and according to theme. Unlike the violence variables in Table 1.1, there is general agreement on the definition of most socio-economic variables e.g. life expectancy or infant mortality etc. with some variables such as the ratio of richest to poorest useful for both intra and inter-country comparisons.

Among the different indicators in Table 1.2 is a 'Composite Index' category composed of separate variables feeding into one

greater composite index. These internationally comparable indexes come from highly accessible and credible secondary data sources.

The 'Survey' category concerns information collected by People's Security Surveys (PSS)<sup>5</sup> carried out in Argentina and South Africa by the InFocus Programme on Socio-Economic Security (IFP/SES) of the International Labour Office (ILO). These essentially household surveys ask representative population samples (up to 3000 people) about their experiences, perceptions and opinions regarding selected offences over a given time. The PSS provides a realistic record of the population affected by violence, as crime rates based on official statistics are universally lower than survey-based victimisation figures. Furthermore the PSS asks how secure the respondent feels about their human rights situation, whether they feel their rights are under threat etc.

**Table 1.2 Explanation and source of socio-economic variables**  
(Averages 1997-1999 or latest year available)

<i>Variable</i>	<i>Explanation</i>	<i>Source</i>
<b>1) Macro level</b>		
<b>a) Demography – proxies/ represents resources stress</b>		
Life expectancy at birth (total)	Indicates the number of years a newborn infant would live if prevailing patterns of mortality at the time of its birth were to stay the same throughout its life.	World Bank's World Development Indicators (WDI 2002 & 2003)
Population density	Midyear population divided by land area in square kilometres.	Same as above.
Population (female)	Female population as a percentage of total population.	Same as above.
Population growth rate	Annual population growth rate. (Population includes all residents regardless of legal status or citizenship — except for refugees not permanently settled).	Same as above.
Male population aged 15-29	Midyear population of males aged 15-29 as % of total population.	U.S. Bureau of the Census, International Database
Urban population	Percentage of total population living in areas defined as urban.	Same as above.
Urban population growth	Mid-year population of areas defined as urban, annual percent	Same as above.

5 ILO (2003). *People's Security Surveys: A Manual for Training and Implementation*. Draft version. Geneva: IFP/SES. <http://www.ilo.org/english/protection/ses/index.htm>.

<b>b) Inequality and Poverty – proxy for economic development in and between countries.</b>		
Aid per capita	Includes both ODA and unofficial aid (e.g. from private individuals, religious organisations etc.), and is calculated by dividing total aid by the midyear population estimate.	World Bank's World Development Indicators (WDI 2002 & 2003)
Daily newspapers	Daily newspapers refer to those published at least four times a week, per 1,000 people.	Same as above.
Electric power consumption	Measures the consumption of electricity (kwh) per capita.	Same as above.
Employment in agriculture	Percent of total employment working in the agricultural sector which includes hunting, forestry, and fishing.	Same as above.
Employment in industry	Percent of total employment working in industrial sector. Includes mining, quarrying (including oil), manufacturing, electricity, gas, water, and construction.	Same as above.
Employment in services	Percent of total employment working in the service sector.	Same as above.
Gini index	Measures extent to which the distribution of income (or, in some cases, consumption expenditure) among individuals/households deviates from a perfectly equal distribution. An index of zero represents perfect equality, while an index of 100 implies perfect inequality.	UNDP Human Development Reports 2001 and 2003
GDP (constant 1995 US\$)	The sum of gross value added by all resident producers in the economy plus any product taxes and minus any subsidies not included in the value of the products.	World Bank's World Development Indicators (WDI 2002 & 2003)
GDP growth	Annual percent growth rate of GDP at market prices based on constant local currency. Aggregates are based on constant 1995 U.S. dollars.	Same as above.
GDP per capita (constant 1995 US\$)	Gross domestic product divided by midyear population.	Same as above.
Illiteracy rate (adult female )	Percentage of females aged 15 and above who cannot, with understanding, read and write a short, simple statement on their everyday life.	Same as above.
Illiteracy rate (adult male )	Percentage of males aged 15 and above who cannot, with understanding, read and write a short, simple statement on their everyday life.	Same as above.

<i>Variable</i>	<i>Explanation</i>	<i>Source</i>
Illiteracy rate (adult total)	Percentage of population aged 15 and above who cannot, with understanding, read and write a short, simple statement on their every-day life.	Same as above.
Illiteracy rate (youth male)	Percentage of people ages 15-24 who cannot, with understanding, read and write a short, simple statement on their everyday life.	Same as above.
Information and communications technology (% of GDP)	IT expenditure (tangible products purchased by businesses, households, governments, institutions and intangible spending on software, capital depreciation), and spending on telecom and office equipment.	Same as above.
Labour Force (children)	Children aged 10-14 in the labour force as a % share of that age group active in the labour force. Labour force comprises all persons who furnish the supply of labour for the production of economic goods and services as defined by the UN systems of national accounts and balances during a specified time-reference period.	Same as above.
Labour Force (female)	Female labour force as a percentage of the total, show the extent to which women are active in the labour force.	Same as above.
Poverty rate (national)	Percentage of the population living below the national poverty line. National estimates are based on population-weighted sub-group estimates from household surveys.	UNDP Human Development Report 2003
Ratio of richest 10% to poorest 10%	Percentage share of income or consumption is the share that accrues to sub-groups of population indicated by deciles, expressed as a ratio.	UNDP Human Development Report 2001 and 2003
Unemployment (total)	Percent share of the labour force that is without work but available for and seeking employment.	World Bank's World Development Indicators (WDI 2002 & 2003)
Unemployment (male)	Percent share of the male labour force that is without work but available for and seeking employment.	World Bank's World Development Indicators (WDI 2002 & 2003)
Youth unemployment (male)	Percent share of the male labour force (ages 15-24) without work but available for and seeking employment.	World Bank's World Development Indicators (WDI 2002 & 2003)

<i>Variable</i>	<i>Explanation</i>	<i>Source</i>
<b>c) Public Services – proxy of resource commitment by state</b>		
Health expenditure	The sum of both public and private health expenditures as a percent of GDP.	World Bank's World Development Indicators (WDI 2002 & 2003)
Improved water source (total)	Percentage of population with reasonable access (20 litres per person per day within 1 km of dwelling) to water from a household connection, public stand-pipe, borehole, protected well or spring, and rainwater collection.	Same as above.
Public education expenditure	Consists of public spending on public education plus subsidies to private education at the primary, secondary, and tertiary levels. Expressed as a percent of GDP.	Same as above.
Physicians	Graduates of any facility or school of medicine who are working in the country in any medical field (practice, teaching, research). Per 1000 population.	Same as above.
Ratio of girls to boys (education)	Percentage of girls to boys enrolled at primary and secondary levels in public and private schools.	Same as above.
Social security expenditure	Total government expenditure on social security as a percentage of GDP.	IMF Government Financial Statistics

<b>d) Composite Indexes</b>		
Gender Development Index (GDI)	Summarises a range of gender-related socio-economic information covering all themes above. The higher the figure, the higher the gender development of a country.	UNDP Human Development Report 2003
Gender Empowerment Measure (GEM)	Composite index measuring gender inequality in 3 basic dimensions of empowerment – economic participation and decision-making, political participation and decision-making and power over economic resources. The higher the figure, the higher the female representation.	UNDP Human Development Report 2003
Income Security Index (ISI)	Index score by how countries ratify Conventions related to income and how countries perform in reality with regards to income security issues. The higher the figure, the higher the income security.	InFocus Programme on Socio-Economic Security (International Labour Office)

Economic Freedom of the World Index	Ranks 123 countries according to components: 1) size of government, 2) legal structure and protection of property rights, 3) access to sound money, 4) freedom to exchange with foreigners and 5) regulation of credit, labour and business.	Frasier Institute
Index of Democracy	Ranks states' democratic status according to formula: (competition * participation)/100. Competition defined as subtracting the percentage of the votes won by the largest party from 100 and participation is percentage of the total population that actually voted, voter turnout.	Tatu Vanhanen, Tampere University, Finland

2) Micro-level (Socio-economic variables of victims)	Explanation	Source
Gender	Gender of the victim of state and non-state violence (respondent).	People's Security Survey (PSS), IFP/SES, ILO (2001)
Age	Age of the victim of state and non-state violence (respondent).	Same as above
Ethnicity	Ethnicity of the victim of state and non-state violence (respondent).	Same as above
Education	Level of educational attainment of the victim of state and non-state violence (respondent).	Same as above
Income	Income of the victim of state and non-state violence (respondent).	Same as above
Occupation	Occupation of the victim of state and non-state violence (respondent).	Same as above

## 1.5 A note on data

Statistical approaches to measuring rights violations are not without their drawbacks. In this exercise, emphasis is placed on crime statistics, which are invariably limited to offences detected, reported and recorded. The quality of reporting systems for both crime statistics and socio-economic variables varies considerably. Compounding this is the fact that the more repressive the regime, the more difficult it is to obtain reliable, time series data for correlations.

The indicators adopted (see Tables 1.1 and 1.2) are designed to capture either different angles of violence or socio-economic contexts by mixing both subjective and objective elements.

'State' violence indexes e.g. Rule of Law Index, are particularly tricky to use since it becomes increasingly difficult to keep human rights at the centre of measurement efforts as indexes tend to go beyond this to a more 'democratisation' focus.

Issues such as sampling errors and bias are common depending on how one interprets the sample size, whether it is too small or unrepresentative etc. Much is left to the discretion of the author designing the study, who bases his or her choice of a particular measure on the time period covered and preferred statistical application etc. Careful interpretation of indicators is required, taking into account the motivation and mandates of different data providers.

Undoubtedly the use of statistics for this exercise involves a trade off between quality and quantity. Carrying out a global study using numerous variables lacks the in-depth, more quality based analysis of case studies, yet case studies lack the coverage of a global study and selection bias is high in the process of choosing case studies.

The violence and socio-economic variables were selected on theoretical grounds. Though not exhaustive, the variables under each heading seem to cover the meaning and underlying theoretical concepts fairly well. The sources rely heavily on the United Nations World Crime Survey ('violence' variables) and World Bank's World Development Indicators Databases ('socio-economic' variables). While datasets of this nature share numerous criticisms – concerns over differences in definition, interpretation errors, aggregation errors, sampling errors, double counting etc. - the following considerations render them sufficiently credible to allow comparisons of figures across many countries.

Given the inherent problems of collecting international crime statistics, attempts were made to verify UN World Crime Survey data with that of Interpol to check for inconsistencies and/or abnormal figures (outliers). As crime statistics are collected by the use of questionnaires sent to a single official statistical body representing a country, they are dependent on the accuracy of the body coordinating the data compilation. The differences in propensity to report in different countries will no doubt influence comparability of the amount of crime known by the police. Therefore rather than accepting all official crime statistics, emphasis was placed on specific salient forms of violence e.g. homicides and major assaults. These statistics are believed to be relatively reliable given the extreme nature of these crimes and subsequent necessity to record them. If one took international crime statistics at face value, then one would be falsely led to believe that New Zealand is the most crime ridden country in the world as total *recorded* crime in 2000 stood at 11,152.5 per 100,000 population.<sup>6</sup>

Concerning measures of state violence emphasis was placed on capturing how countries fare in practice. Although it is hoped that the ratification of torture treaties contributes to better conduct of the state, this is not necessarily true, as shown for example by the Torture Scale. Hathaway's paper shows that countries that ratify conventions on torture do not always have better human rights ratings. The level of ratification of the universal Torture Convention has a relatively flat relationship to recorded levels of torture. Therefore a combination of both quantitative and qualitative analysis is needed. An obvious drawback of statistical inquiry is that the accuracy of the analysis depends on the accuracy of the data on which it rests. To address this problem Hathaway draws on several different data sources and cross checks her results against more than one source.<sup>7</sup>

The same can be said about other partially subjective measures such as the Income Security Index (ISI) in Table 1.2. This index compares data on International Labour Organisation ratifications e.g. Convention 102 on minimum standards for social security with the reality in 96 countries, such as percentage of expenditure on social security. In other words, the ISI captures the theoretical underpinnings and practical aspects of income security around the world.

Land inequality features heavily in studies relating to violence and inequality: maldistribution of land is considered the key determinant of social unrest since land is the most important resource in rural societies. It is excluded from this exercise on the grounds that unrest that can lead to violence is more a function of national income inequality than landlessness; and that most measures of land inequality focus on inequality of land holdings within the group of landowners, thus failing to capture inequalities across the landholders and the landless. For future analyses, but beyond the scope of the present exercise, a preferable index would combine the share of land holdings by size, the share of total agricultural land dominated by the largest farms, landlessness and the relative size of rural population.

Under the framework of the project, state violence at both the macro and micro level is of paramount interest given the challenges of collecting data of this nature. Five organisations in the field have played a crucial role in this respect: the Centro de Estudios Legales y Sociales (CELS), Argentina; the Land Center for Human Rights (LCHR), Egypt; the Human Rights Institute of South Africa (HURISA), South Africa; the Legal Aid Society (LAS), Uzbekistan; and Rural Reconstruction Nepal (RRN), representing the regions of South America, North Africa, Southern Africa, Eurasia and East Asia. These five partners carried out data gathering on state violence between 1998 and 2002 via primary and secondary data sources in their respective countries. Argentina and South Africa are analysed at both macro and micro levels thanks to the strength of data (PSS were carried out in these countries). Data for Uzbekistan are analysed at the macro level only. Data for Egypt and Nepal are analysed in the context of country reports, not according to macro and micro levels, and therefore in a different format from Argentina, South Africa and Uzbekistan. Raw data sent by the Land Center for Human Rights in Egypt (LCHR) and Rural Reconstruction Nepal (RRN) is presented at Appendix C.

6 UNODC. *UN World Crime Survey (Seventh edition)*, 2000. [http://www.unodc.org/unodc/en/crime\\_cicp\\_survey\\_seventh.html#responses](http://www.unodc.org/unodc/en/crime_cicp_survey_seventh.html#responses)

7 Hathaway, O. A.. Do treaties make a difference? *Yale Law Journal* 111, June 2002.



## 1.6 A human rights framework

Sustainable protection against torture and other forms of violence cannot be conceived without conditions ensuring the respect of human rights, including economic, social and cultural rights of each individual. This human rights approach involves the investigation and evaluation of issues related to rule of law, inequalities, access to basic services, marginalisation, vulnerability, etc. concerning a given population.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), constitutes an important tool of reference.<sup>8</sup> The precise content of the rights listed in the ICESCR and the modalities surrounding their implementation is specified on the basis of the work carried out by the UN Committee on Economic, Social and Cultural Rights (review of states reports and interpretation of the ICESCR through General Comments); of the Limburg Principles on the Implementation of the ICESCR; and of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

The realisation of such rights can be measured by proxy indicators shown in Table 1.2 e.g. literacy rates are proxy measures of the right to education and physicians per capita of the right to health<sup>9</sup>. However, investigating the realisation of rights over an extended period of time, or 'progressive realisation', is beyond the scope of this exercise given that the time-frame we are dealing with is relatively short.

The absence of democracy, good governance<sup>10</sup> and the rule of law have often been described as being important causes of violence. In this respect, the absence of corruption; a democratic, transparent, accountable and participatory system of public affairs, which addresses the needs of the populations; as well as a fair distribution of wealth and productive resources have been identified, amongst other features, as essential prerequisites allowing for the reduction of violence.<sup>11</sup>

### > *Human rights indicators*

The International Association for Official Statistics (IAOS) Conference on "Statistics, Development and Human Rights" in Montreux in September 2000 was the first of its kind to seriously promote coordination and dialogue between three branches of experts in the international community: statisticians, development specialists and human rights practitioners. It resulted in an international network of organisations to develop statistical tools to assess human rights conditions and standards.

Several projects have been undertaken since the conference: in

2002, workshops held by the European Commission in Munich and Brussels convened on "Measuring Good Governance" and on "Statistics and Human Rights", and the Mexican Commission for Human Rights, the Swiss Development Co-operation Agency, and the Swiss Federal Statistics Office held a seminar in Merida on "Statistics and Indicators for National Human Rights Diagnosis". In keeping with the spirit of the Montreux and subsequent conferences, the project proposal METAGORA (Measuring Democracy, Human Rights and Good Governance), a two year pilot project, began in 2003. Its aim is to develop statistical assessment of human rights and governance in multiple dimensions.

Indicators, in the human rights context, help categorise important actors and have allowed the international community to begin holding them accountable for their actions. The UNDP has identified several for human rights indicators: making better policies and monitoring progress; identifying unintended impacts of laws, policies and practices; revealing whether the obligations of these actors are being met; giving early warning of potential violations, prompting preventive action; enhancing social consensus on difficult trade-offs to be made in the face of resource constraints; and exposing issues that had been neglected.

Since the UNDP's publication of the Human Development Reports, in 1990, where a number of composite indices were presented e.g. the Human Development Index (HDI), the HPI, the GDI, and GEM – many human rights and democratic development indicators have evolved using both quantitative and qualitative measures. This dual approach has allowed the indicators to benefit from available statistical data as well as collected data on public beliefs and perceptions.

In 1996, the Organization for Economic Cooperation and Development (OECD) discussed the practicability of the introduction of confidence indicators as a means of evaluating trends and behaviours in the field. It had a goal of enabling the study of perceptions of actions and initiatives taken with regard to human rights and development. Other centres have also been working

8 This does not exclude the other instruments - international or regional - containing provisions related to economic, social and cultural rights.

9 Landman, T. and Hausermann, J. *Map-making and analysis of the main international initiatives in developing indicators for democracy and good governance*. Report submitted to Eurostat, 2003.

10 The concept of good governance is to be understood as a participatory, equitable, gender-balanced, transparent, efficient and accountable management of public affairs.

11 Nafziger R, W., *The Economics of Complex Humanitarian Emergencies: Preliminary Approaches and Findings*, The United Nations University/World Institute for Development Economics Research, Working Papers No. 119, September 1996.

on a large number of indicators, yet not without some degree of controversy: the United States Agency for International Development (USAID), Freedom House (FH), the International Centre for Human Rights and Democratic Development (ICHRDD), the Norwegian Agency for Development Cooperation (NORAD), and the International Institute for Democracy and Electoral Assistance (International IDEA).

## ■ 1.7 Methodology

To understand how and why some countries suffer more violence than others, we need to examine the relationship between violence and socio-economic inequality and development from a structural perspective. It is a given that violence and socio-economic inequality affects us all directly or indirectly, however how they interact is somewhat unclear.

Generally it is believed that violence and socio-economic inequalities are positively correlated e.g. countries with *higher* levels of inequality experience *higher* levels of violence, both state and non-state. However, it is methodologically unwarranted, within the scope of this research, to make causal inferences nor is it possible to investigate the impact of violence on socio-economic inequality given that the focus of this study is recent violence data, and comprehensive socio-economic data in series and years to the present is not available yet. Rather, through the use of basic correlation techniques, we can illustrate that the link between violence and socio-economic inequalities can be measured and the evidence is compatible with the theory that there is a significant relationship between inequality and violence.

### > *Analysis at the macro level: correlations*

This first component of the analysis of correlations will focus on macro-level data concerning violence and socio-economic inequality and development that have been collected at the national level in 63 countries. Firstly, using data from 1998 to 2000, violence data (Table 1.1) will be correlated against socio-economic variables (Table 1.2) for an earlier period (averages from 1997 to 1999). From a statistical point of view this lag avoids what is called auto-correlation, when unplanned correlations occur between two values of the same variable at different years. Lagging is used to detect non-randomness in data and makes findings more robust. The exact number of years for which to lag data is arbitrary: the lag chosen for this exercise was based on whether or not meaningful results (robust correlations) could be achieved. A lag of one year for socio-economic data (data was collected and compiled from 1997) produced some good results in preliminary correlation trials and thus was adopted. From a

theoretical point of view, this lag is used to support the notion that socio-economic variables have a delayed effect upon the level of violence.

### > *Analysis at the micro level*

Data derived from the PSS provides the socio-economic profile of victims by categories of sex, age, ethnicity, educational attainment, region and occupation/status. For example, once the socio-economic profile (typology) of the victim has been revealed, then it is possible to demonstrate that violence in terms of frequency and type varies according to a number of socio-economic factors. This information is available for Argentina and South Africa only, but not for Egypt, Nepal or Uzbekistan.

### > *Correlation techniques*

The correlation between two variables represents the degree to which variables are associated. The correlation coefficient ( $r$ ) ranges from  $-1$  to  $+1$ . A value of  $0$  means the two variables are entirely unrelated; a value of  $+1$  means that one of the variables is perfectly proportional to the other and vice versa, and that an increase of one variable corresponds to an increase of the other; a value of  $-1$  means an increase of one corresponds to a decrease of the other.

The usual interpretation is that anything greater than  $0.5$  is large,  $0.5-0.3$  is moderate,  $0.3-0.1$  is small, and anything smaller than  $0.1$  is insubstantial.<sup>12</sup>

12 Cohen, J., *Statistical power analysis for the behavioral sciences* (2nd ed.). New Jersey: Lawrence Erlbaum, 1988.

**Table 1.3** Interpreting the size of correlation coefficients

R = 0.5+	Large
R = 0.5 – 0.3	Moderate
R = 0.3 – 0.1	Small
R = <0.1	Insubstantial, negligible

It is important to repeat that correlation does not necessarily mean causation. Since correlation is bidirectional,<sup>13</sup>  $r^2$  is also the percent of the dependent accounted for by the independent. That is, the researcher must posit the direction of causation, if any, based on considerations external to the correlation.

Four aspects of statistical relationships are important:

- Existence – if no relationship between two variables is said to exist then the other three aspects are irrelevant.
- Direction – positive or negative.
- Strength – determined by size and significance of coefficients.
- Nature – how does the knowledge of a relationship between two variables help us understand and predict outcomes of the dependent variable (violence).

Before employing correlation techniques, preliminary scatter plots will be constructed where violence data for each country is plotted on a vertical scale (y axis) and then socio-economic data for the corresponding country is fed on a horizontal axis (x axis). Scatter plots (as in Figure 1.1 below, for example) show whether there is a linear relationship and how strong the relationship is between violence and socio-economic variables. The vertical scale represents one measurement (conventionally, the dependent variable) and the horizontal the other (independent variable). Once scatter plots have been carried out and basic observations are made, then one is able to progress onto bivariate/two variable correlations between violence and socio-economic variables using SPSS (Statistical Package for the Social Sciences).<sup>14</sup>

One can then analyse these correlations for positive, negative or absence of relationship at 1% and 5% levels of significance (level of significance is denoted by an asterisk in the correlation matrixes). It is possible to have a correlation coefficient that is statistically significant (at 1% or 5% significance) and weak. In plain words, no or very weak relationship (coefficient = <0.1) between two variables can be important for our analysis and

conversely, strong correlation coefficients (0.5+) also signal validity in a relationship between two variables.

Levels of significance at 1% and 5% (in statistical terms 'P values') represent probability - the maximum probability (possibility) that the seeming relationship between a variable (e.g. homicide rate) and a possibly predictive variable (e.g. income inequality) could be just a result of chance. That is, it is the maximum possible probability that there is **not** a true relationship between the two variables. If  $p = 0.01$  (1%), for example, there is only one chance in a hundred that there is not a true relationship (correlation) between the two variables. Low values of  $p$  are therefore desirable, and 5% is typically considered the maximum acceptable as an indication of statistical significance (validity). For example, if the level of significance is 5%, then any result with a  $p$  value of less than 0.05 is significant. A value of 0.05 (5%) means the associated finding is significant at the 95 percent level of confidence, or that one can be 95 percent confident that the finding is true.

13 The correlation calculation (for a population sample) returns the covariance of two variables divided by the product of their standard deviations:

$$\text{Population } x,y = \frac{\text{covariance } (x,y)}{\text{standard deviation of } x * \text{standard deviation of } y}$$

The coefficient 'r' is often reported in terms of its square ( $r^2$ ), which is called the coefficient of determination, interpreted as a percent of variance (the squared mean of standard deviations) in the dependent variable explained by the independent. For instance, if  $r^2$  is .25, then the independent variable (e.g. socio-economic variable) is said to explain 25% of the variance in the dependent variable (e.g. violence). Standard deviations are a measure of dispersion from the mean of a population sample.

14 See Appendix A for the complete list of countries.

**Matrix 1.1 Correlation between violence variables**

	<i>Homicide rate</i>	<i>Homicide rate with firearm</i>	<i>Major assaults rate</i>	<i>Political Terror Scale</i>	<i>Torture scale</i>	<i>CPR</i>	<i>CPI 2003</i>	<i>Incarceration rate</i>	<i>Rule of law index</i>
Homicide rate	1	.89**	.48**	0.36**	.25	-.04	-.27*	.22	-.36**
Homicide rate with firearm	.89**	1	.66**	0.27	.20	-.06	-.21	.25	-.24
Major assaults rate	.48**	.66**	1	0.44**	.10*	-.20	-.02	.35*	-.01
Political Terror Scale	0.36**	0.27	0.44**	1	0.72**	0.67**	-0.39**	0.48**	-0.42**
Torture scale	.13	.12	.31*	0.72**	1	.69**	-.43**	.59*	-.44*
CPR	-.04	-.06	-.20	0.67**	.69**	1	-.51**	-.13	-.64**
CPI 2003	-.27*	-.21	-.02	-0.39**	-.65**	-.51**	1	-.19	.94**
Incarceration rate	.22	.25	.35*	0.48**	.34*	-.13	-.19	1	-.30*
Rule of law index	-.36**	-.24	-.01	-0.42**	-.71**	-.64**	.94**	-.30*	1

\* Correlation is significant at the 0.05 level (2-tailed).

\*\* Correlation is significant at the 0.01 level (2-tailed).

**Matrix 1.1** illustrates the strength of relationships and reveals some interesting facts about the variables. The homicide rates are weakly correlated with other data derived from the latest UN World Crime Survey e.g. major assaults, incarceration etc. However, generally speaking, these other rates are highly correlated with one another and highly correlated with indexes or scales, which are partly based on human rights expert evaluations. Many are falsely led to believe that correlation implies interchangeability of variables, in other words, if one violence variable is highly correlated with another violence variable then

it is deemed reliable and therefore safe to use in further correlations with, for example, socio-economic inequality variables. The assumption that if measures are highly correlated with each other, then findings don't depend on the particular measure is a common pitfall of correlation exercises. The variables above are not substitutes for one another but complements. The correlation matrix (Matrix 1.1) is important as it gives the reader a feel for which violence variables exert a strong or weak relationship with each other, and space for interpretation or alternative conception based on one's understanding.

## 1.8 Results at the macro level

### > *Non-state violence*

The following analysis is conducted for 63 countries\*, depending on data availability. Concerning the violence variables, the United Kingdom excludes Scotland and Northern Ireland whereas for socio-economic variables, they are included. England and Wales carry out separate crime surveys to Scotland and Northern Ireland, and hence exclude victims of terrorist violence in Northern Ireland. The five countries of special interest -

Argentina, Egypt, Nepal, South Africa and Uzbekistan - are highlighted when possible. Again, due to the lack of time series data for Egypt and Nepal, these countries do not feature in our correlations.

Each of the following matrixes illustrates significant correlations (with varying strengths) and some interesting insignificant correlations between one violence variable and socio-economic variables.

\* See Appendix A for the complete list of countries

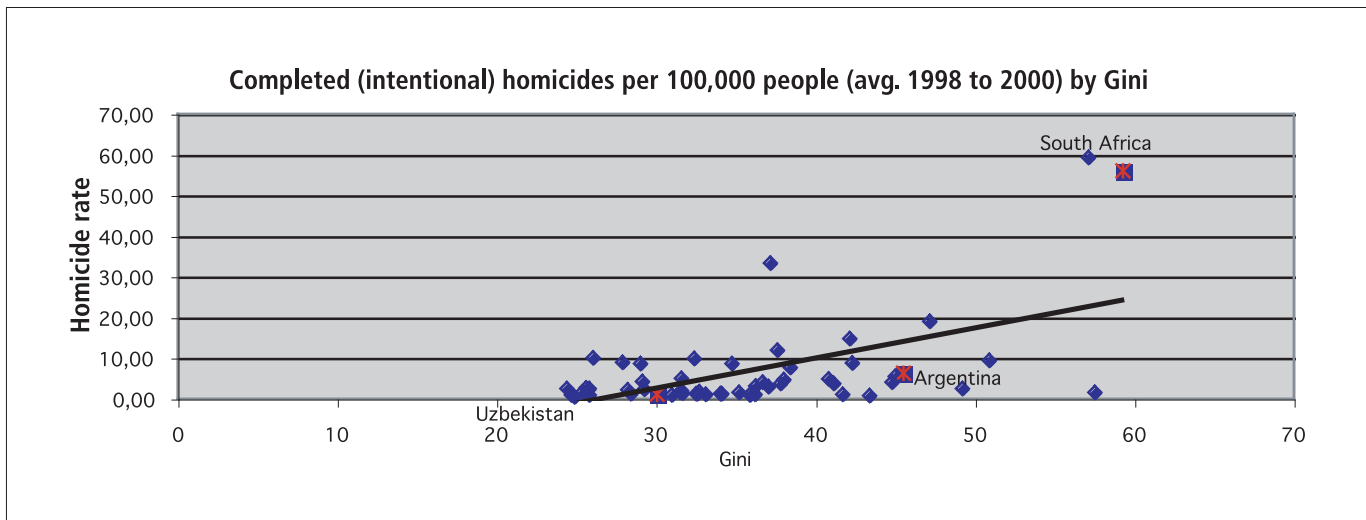
**Matrix 1.2 Correlation between homicides and socio-economic variables**

<i>Socio-economic variables</i>	<i>Homicides</i>
Completed intentional homicides average of 1998-2000 rate per 100,000 population	1
Life expectancy at birth (total) average 1997-1999	-0.28*
Gini index (average HDR 2001 and HDR 2003)	0.53**
Population density (average 1997-1999)	-0.09
Male population aged 15-29 as % of total	0.32*
Average 1997-1999 GDP per capita constant (1995 US\$)	-0.30*
Newspapers per 1000 population (average 1995-1997)	-0.27*
Unemployment rate total (average 1997-1999)	0.33*
Youth unemployment male (average 1997-1999)	0.41**
Income security index IFP/SES	-0.41**
Income share of richest 10% to poorest 10% (HDR 2003)	0.68**
Income share of richest 20% to poorest 20% (HDR 2003)	0.64**
Economic freedom Index	-0.28*
Index of Democracy (Vanhanen) average 1997-1999	-0.30*

\* Correlation is significant at the 0.05 level (2-tailed).

\*\*Correlation is significant at the 0.01 level (2-tailed).

**Matrix 1.2** shows all significant correlations at 1% or 5%, between completed intentional homicides and socio-economic variables listed in Table 1.2. The following matrixes follow the same format.

**Figure 1.1 Homicide and the Gini Index (r = 0.53)**

Note: The Gini index measures inequality over the entire distribution of income or consumption. A value of 0 represents perfect equality, and a value of 100 perfect inequality.

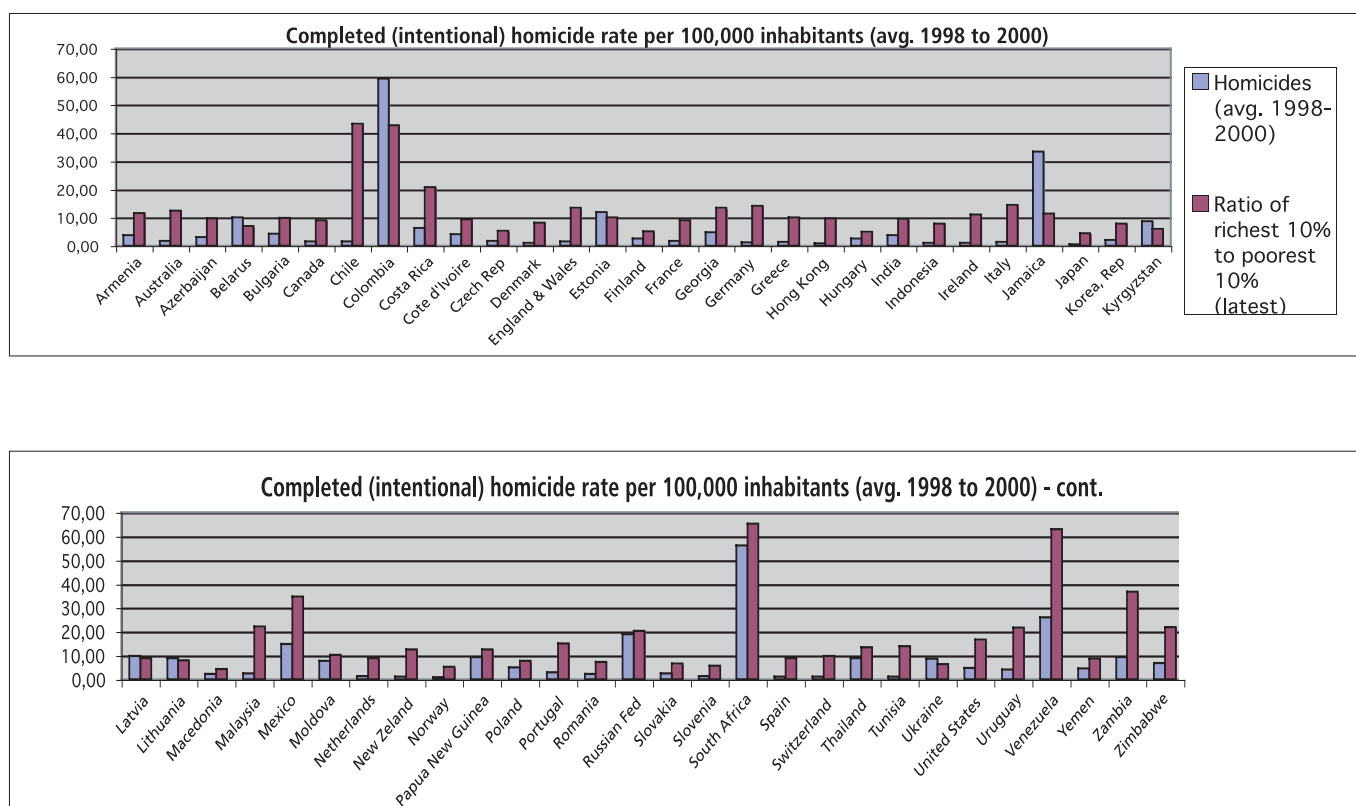
In this scatter plot the slight gradient of the trend line illustrates a positive relationship between homicide rates and the Gini index in 58 countries. A correlation coefficient of 0.53 significant at 1% suggests that it is safe to say that homicides and the Gini index are positively related and the relationship is strong. The greater the income gap as measured by the Gini, the greater the number of homicides. This is clear in the case of South Africa, which has the worst income inequality and the highest level of homicides. South Africa is an outlier in this scatter plot and other scatter plots to follow, but remains important, for outliers drive many of the relationships found in the correlations, hence justifying their inclusion.

Remaining on the topic of income distribution, we employ another inequality measure, the ratio of a country's richest 10 percent and poorest 10 percent expressed as a percentage and correlate this against homicides. When correlating completed (intentional) homicides with the ratio of the richest 10 percent and poorest 10 percent in 56 countries, an interesting relationship can be seen. A correlation coefficient of 0.68 emerges and the line of best fit approaches a 45 degree angle, representing a significant positive relationship between the two variables. This is best represented graphically using the bar chart below, which shows the movement of intentional homicide rates with the Gini across many countries.

It is clear below that both homicides and the ratio of the richest 10 percent to poorest 10 percent in these countries share a

strong positive relationship and the probability that this is just a matter of coincidence is only 1 percent. The greater the inequality in income distribution, the greater the number of homicides in a country. In addition to this, the relationship between homicides and income ratio of the richest 20 percent to poorest 20 percent is also strong at 0.64 as seen in Matrix 1.2.. We cannot prove that income inequality causes a violent act such as homicide, yet we can disprove that there is no significant relationship between the two, and we can claim that income inequality explains, to some degree, the existence of homicides. The findings here reinforce a recent global study, which showed income inequality to be an important determinant of national homicide rates, with the poor being more responsive than the rich.<sup>15</sup>

15 Fajnzylber, P., Lederman, D. and Loayza, N., *What causes violent crime?* World Bank First, 1998. Version [http://econ.worldbank.org/files/15756\\_FajnzylberetalCrimeCauses.PDF](http://econ.worldbank.org/files/15756_FajnzylberetalCrimeCauses.PDF)

**Figure 1.2** Homicides and income ratio of richest 10 percent to poorest 10 percent ( $r = 0.68$ )

After income inequality, the unemployment rate of young males is the next strongest correlate of homicides exerting a moderate positive relationship (0.41 coefficient). Generally speaking, the higher this unemployment rate, the higher the homicides. This could suggest that perhaps homicides are more prevalent where there are less job opportunities for young males. This finding is in accordance with numerous studies on violence (especially urban violence), showing that violence is often higher in areas that combine high unemployment and a high percentage of young males amongst the population. Male youth is often cited as the primary culprit of violence, where violence is worse in areas of socio-economic decay as a result of high unemployment.<sup>16</sup> This is affirmed by the moderate positive relationship exerted between male population aged 15-29 and homicides (0.32) which implies that alone, as a demographic variable, males aged 15-29 influence homicides, i.e. the higher the percentage of males in a country's population, the higher the rate of homicides.

Matrix 1.2 also shows that the Income Security Index (ISI) developed by the ILO is moderately, negatively correlated with homicides. From our previous analysis of the relationship between homicides and Gini and income ratios, one would expect high

homicide rates to be associated with low income security or conversely, low homicide rates to be associated with high income security.

Homicides and population density lie among the weakest and most insignificant relationships (-0.09). This finding implies that this demographic variable does not influence the level of homicides.

16 Gurr, T.R., *Why Men Rebel*. Princeton: Princeton University Press, 1970. Moser, C. & Winton, A., *Violence in the Central American Region: Towards an Integrated Framework for Violence Reduction*. London, 2002: ODI Working Paper 171.

**Matrix 1.3 Correlation between homicides with firearm and socio-economic variables**

<i>Socio-economic variables</i>	<i>Homicides with firearm</i>
Completed intentional homicides with firearm avg. 1998-2000 rate per 100,000 population	1
Life exp at birth (total) average 1997-1999	-0.47**
Gini index (average HDR 2001 and HDR 2003)	0.57**
Population density average 1997-1999	-0.35*
Population growth (average 1997-1999)	0.41*
Male population aged 15-29 as percent of total	0.43**
Electric power consumption (kwh) per capita (average 1997-1999)	0.17
GDP constant 1995 US\$ average 1997-1999	0.05
Military exp as percent of GDP (average 1997-1999)	0.06
Infant mortality rate (average 1997-1999)	0.48**
Physicians per 1000 population (average 1997-1999)	-0.40*
Youth unemployment male (average 1997-1999)	0.46*
Improved water source ( percent population with access) 2000	-0.59**
Gender development index HDR 2003	-0.34*
Income security index IFP/SES	-0.46**
Income share of richest 10 percent to poorest 10 percent (HDR 2003)	0.75**
Income share of richest 20 percent to poorest 20 percent (HDR 2003)	0.74**
Social security exp IMF (average 1995-1999)	-0.34*
Index of Democracy (Vanhanen) average 1997-1999	-0.35*

\* Correlation is significant at the 0.05 level (2-tailed).

\*\* Correlation is significant at the 0.01 level (2-tailed).

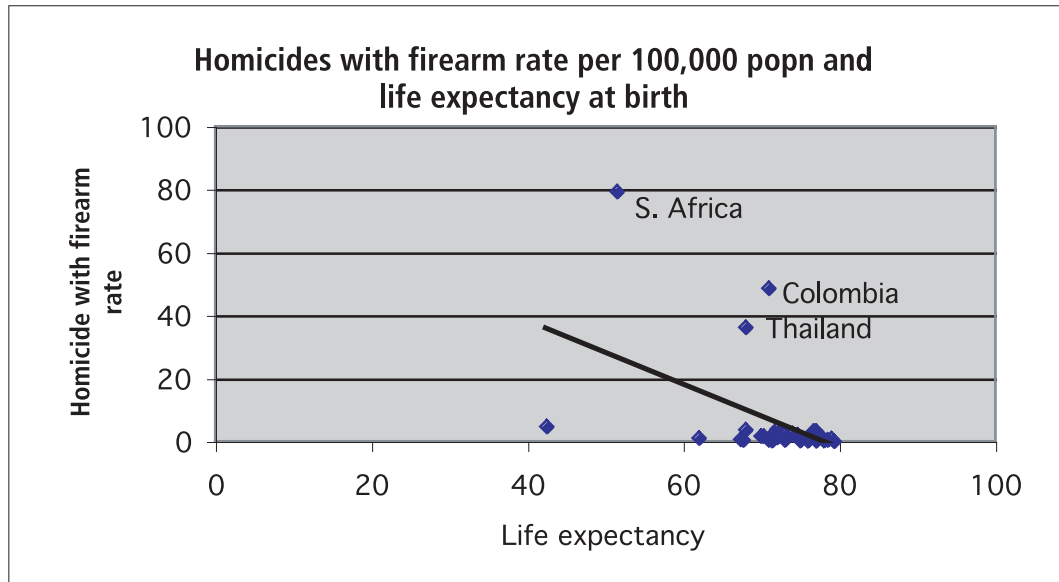
**Matrix 1.2 and 1.3** show that total homicides and homicides with firearms exert a strong positive relationship with the Gini and a very strong positive relationship with the ratio of the richest 10 percent/20 percent and poorest 10 percent/20 percent (with coefficients around 0.75), suggesting that the greater the income inequality, the greater the homicides. A moderate negative relationship between homicides with firearm and the Income Security Index also gives support to this claim.

As with total homicides, the percent of males aged 15-29 in the total population is also positively (but moderately) correlated with homicides with the use of a firearm (0.42), reinforcing the

suggestion that young male population figures influence total homicides, and homicides with firearms. Although just under our threshold value for qualifying as a strong coefficient, the correlation coefficient for homicides with the use of a firearm and life expectancy at birth begs further analysis.

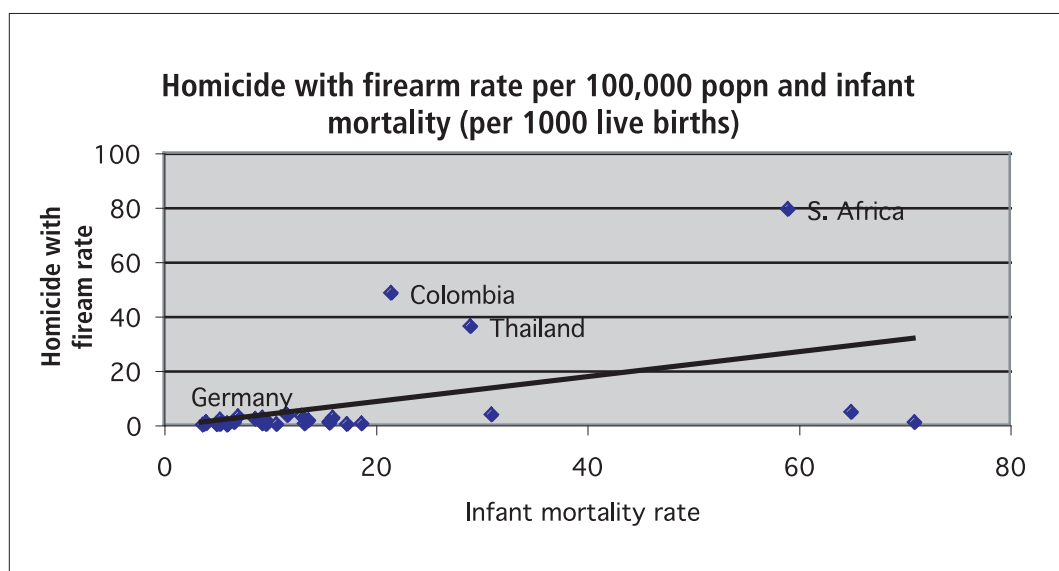
Figure 1.3 shows that once the outlier countries - Colombia, South Africa and Thailand - are excluded, the coefficient between homicides with firearms and life expectancy increases to -0.51 (at 1%), which qualifies it as a strong correlate of homicides with firearms.



**Figure 1.3** Homicides with firearm and life expectancy ( $r = -0.47$ )

However unlike total homicides, homicides with firearms exert a moderate positive relationship with demographic variables such as population density and growth and exert virtually no relationship with what is usually referred to as industrialisation variables. Variables such as GDP and electricity consumption per capita are considered as proxies for industrialisation, reflecting the level of development of a nation. Based on these observations, one may say that homicides with firearms are neither higher nor lower in more or less developed countries. However, firstly, there is a moderate positive relationship (0.48) between homi-

cide with firearms and infant mortality per 1000 live births, which is interesting given that infant mortality also reveals the level of development of a country (e.g. inadequate basic health practices such as universal vaccinations and control of diarrhoea). The trend line below illustrates that higher infant mortality is associated with higher homicides with firearms. Even the three outliers in terms of homicide with firearm are above average infant mortality rate of 19 per 1000 (Germany as an industrialised nation is highlighted as a comparator).

**Figure 1.4** Homicide with firearm and infant mortality ( $r = 0.48$ )

Secondly, the strongest negative relationship is seen between homicides with firearms and improved water sources with a coefficient of  $-0.59$ . It seems that the lower the population with access to improved water sources, the greater the homicides. Improved water sources alone can hardly explain homicides in a country, yet as a basic necessity, it can reflect by proxy the wider picture of economic development of a country, or more importantly the relative level of development between countries. Therefore economic inequality is seen as a powerful variable in

explaining the existence of violent crime such as homicides with the use of a firearm.

A socio-economic variable that exerts virtually no relationship with homicides with a firearm is military expenditure as percent of GDP. It seems that a country's level of spending on arms reveals virtually nothing about the existence of violent crime with a firearm.

#### Matrix 1.4 Correlation between major assaults and socio-economic variables

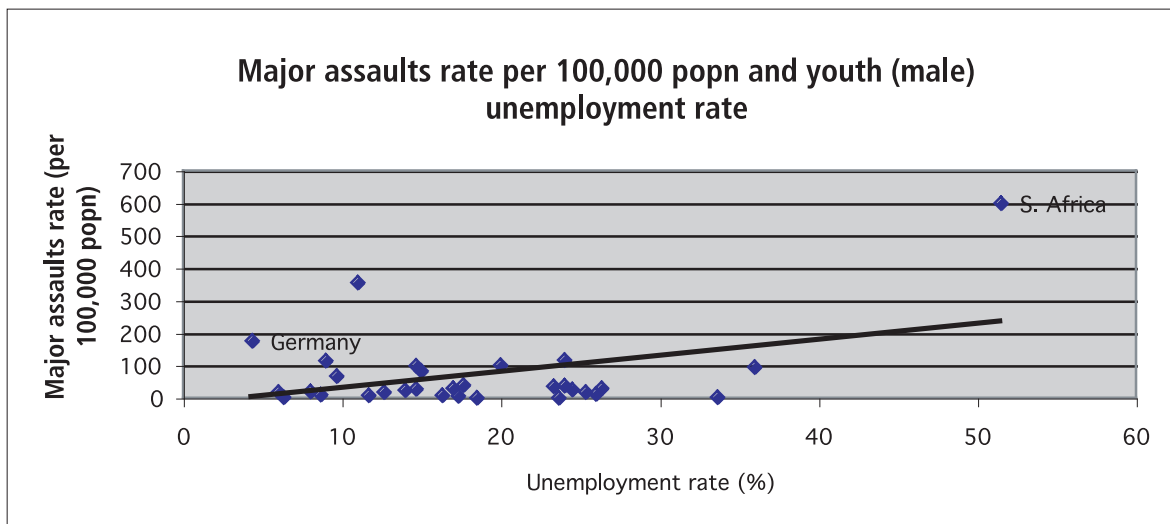
<i>Socio-economic variables</i>	<i>Assaults</i>
Major assaults rate (average) per 100,000 population	1
Life exp at birth (total) average 1997-1999	$-0.37^*$
Male population aged 15-29 as percent of total	$0.35^*$
Gini index (average HDR 2001 and HDR 2003)	$0.46^{**}$
Urban population (average 1997-1999)	0.006
Percent employment in services (average 1997-1999)	$0.34^*$
Improved water source ( percent population with access) 2000	$-0.02$
Infant mortality rate (average 1997-1999)	$0.33^*$
Youth unemployment male (average 1997-1999)	$0.41^*$
Income share of richest 10 percent to poorest 10 percent (HDR 2003)	$0.57^{**}$
Income share of richest 20 percent to poorest 20 percent (HDR 2003)	$0.59^{**}$

\* Correlation is significant at the 0.05 level (2-tailed).

\*\* Correlation is significant at the 0.01 level (2-tailed).

The major assaults rate exerts virtually no relationship with the demographic variables such as urban population, and no relationship with variables that reflect level of economic development such as GDP, energy consumption, access to water etc. Again, like the two previous violence variables, the major assaults variable is highly correlated with income inequality as measured by the Gini (coefficient of 0.46) and the ratio of richest

10 percent/20 percent to poorest 10 percent/20 percent with strong positive coefficients of 0.57 and 0.59 respectively. Therefore the higher the income inequality, the higher the level of the major assaults rate. Apart from income inequality measures, the strongest positive relationship as seen in Matrix 1.4 is between major assaults and youth unemployment amongst males (0.41), with South Africa at one extreme:

**Figure 1.5** Major assaults and youth (male) unemployment ( $r = 0.41$ )

This relates back to what was said earlier with regard to homicides and male youth unemployment. A coefficient of 0.41 between major assaults and male youth unemployment shows a moderate positive relationship, affirming that violent crime is more prevalent where there are less job opportunities for young males. Studies on inequality and violence point to the fact that

violence is more often than not higher in areas that combine high unemployment and a high percentage of young males in the population<sup>17</sup>. Supporting this belief is the coefficient between male population aged 15-29 as a percentage of total population and major assaults, which is moderate in strength (0.35) but significant nonetheless.

17 Gurr, *op. cit.* Moser & Winton, *op. cit.* Fleisher, B., "The Effect of Income on Delinquency". *American Economic Review*, 1966, 56: 118-137.

> *State violence***Matrix 1.5 Correlation between the Political terror scale and socio-economic variables**

<i>Socio-economic variables</i>	<i>Political terror scale</i>
Political terror scale (average 1998-2000)	1
Life exp at birth (total) average 1997-1999	-0.28*
Male population aged 15-29	0.32*
Gini index (average HDR 2001 and HDR 2003)	0.33*
Average 1997-1999 GDP per capita constant (1995 US\$)	-0.29*
Urban population growth (average 1997-1999)	0.27*
Newspapers per 1000 population (average 1995-1997)	-0.38**
Male illiteracy rate (average 1997-1999)	0.33*
Infant mortality rate (average 1997-1999)	0.30*
GDP constant 1995 US\$ (average 1997-1999)	-0.001
Ratio of girls to boys in prim and sec edu (average 1997-1999)	-0.33*
Gender development index HDR 2003	-0.33*
Income security index IFP/SES	-0.45**
Social security exp IMF (average 1995-1999)	-0.34*
Economic Freedom Index	-0.29*
Index of Democracy (Vanhanen) average 1997-1999	-0.50**

\* Correlation is significant at the 0.05 level (2-tailed).

\*\* Correlation is significant at the 0.01 level (2-tailed).

The extremely low coefficient between GDP and the Political Terror Scale suggests that the wealth of a nation tells us virtually nothing about the use of terror tactics by a state. Affirming this is the fact that coefficients between the Political Terror Scale and the usual proxies for development such electricity consumption per capita, employment in services etc. are not significant (neither at 1% nor 5%).

However the level and equity of wealth, measured by GDP per capita (-0.29) and the Income Security Index (-0.45) respectively,

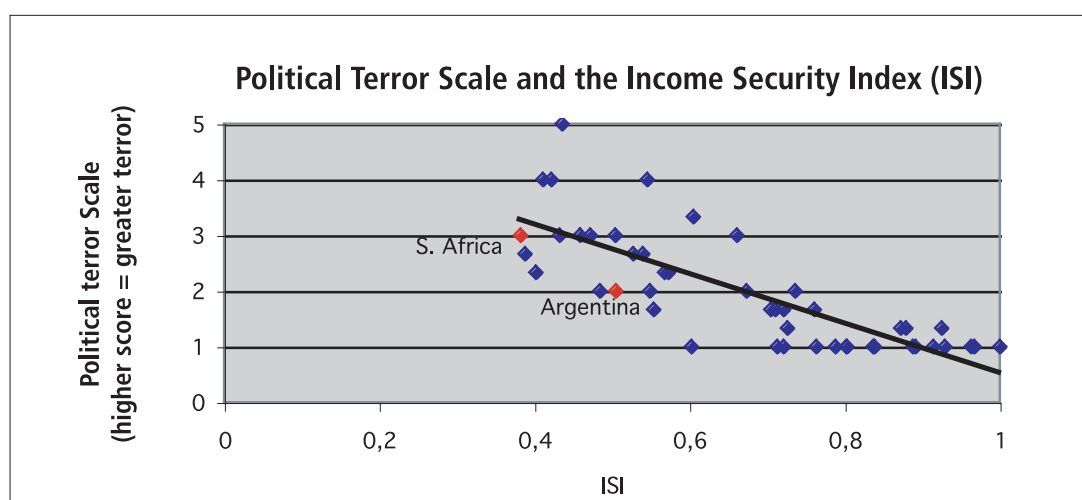
do exert significant negative relationships with the Political Terror Scale, that is, the lower the GDP per capita and income security amongst a given population, the greater the incidence of political terror. Therefore even if the wealth of a country does not influence political terror, economic insecurity and inequity can explain political terror to some extent.

**Matrix 1.6 Correlation between torture scale and socio-economic variables**

<i>Socio-economic variables</i>	<i>Torture scale</i>
Torture scale	1
Life expectancy at birth (total) average 1997-1999	-0.40*
Male population aged 15-29 as percent of total	0.44**
Gini index (average HDR 2001 and HDR 2003)	0.30*
Average 1997-1999 GDP per capita constant (1995 US\$)	-0.50**
Newspapers per 1000 population (average 1995-1997)	-0.45*
Electric power consumption kwh per capita (average 1997-1999)	-0.55*
Improved sanitation ( percent population with access) 2000	-0.59**
Labour force ( percent children) average 1997-1999	0.30*
Military exp percent GDP average 1997-1999	0.26*
Infant mortality rate (average 1997-1999)	0.42*
Health expenditure percent GDP (average 1997-1999)	-0.56**
Improved water source ( percent population with access) 2000	-0.33*
Public spending on education ( percent GDP ) average 1997-1999	-0.38**
Ratio of girls to boys in prim and sec edu (average 1997-1999)	-0.40*
Gender development index HDR 2003	-0.53*
Gender Empowerment Measure HDR 2003	-0.68*
Income security index IFP/SES	-0.69**
Social security exp IMF (average 1995-1999)	-0.32*
Economic Freedom Index	-0.57**
Index of Democracy (Vanhanen) average 1997-1999	-0.55**

\* Correlation is significant at the 0.05 level (2-tailed).

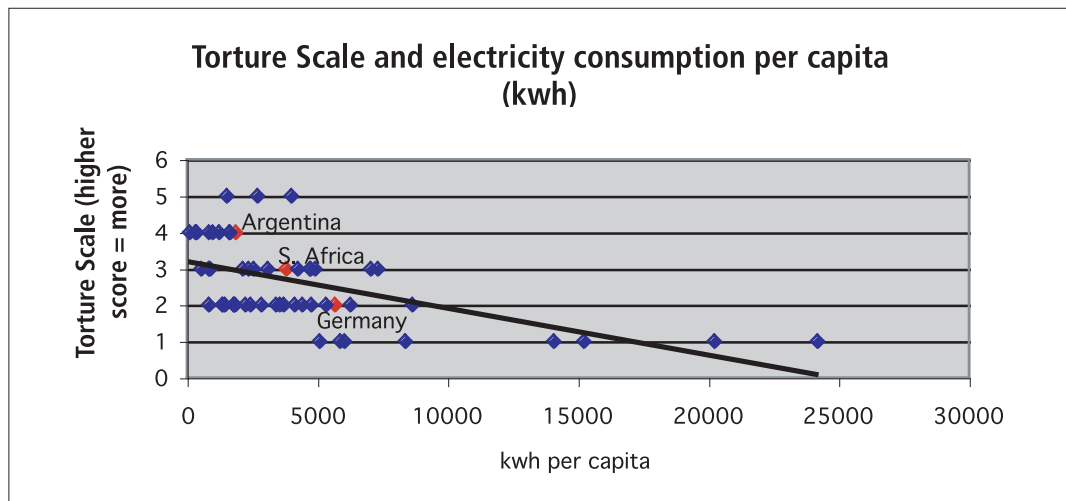
\*\* Correlation is significant at the 0.01 level (2-tailed).

**Figure 1.6 Political terror and income security (r = -0.45)**

Based on the findings above there seem to many predictors of torture as a form of state violence around the world. The correlations suggest that torture is highly correlated with proxy indicators of industrialisation and economic wealth, e.g. GDP per capita (-0.50), electric power consumption (-0.55), improved sanitation (-0.59) and health expenditure (-0.56). The lower the GDP

per capita, electricity consumption and access to improved sanitation, the more torture exists. The trend is clear with Germany, South Africa, Argentina and Uzbekistan lying almost exactly on the trend line. The level of development is thus a strong predictor of torture.

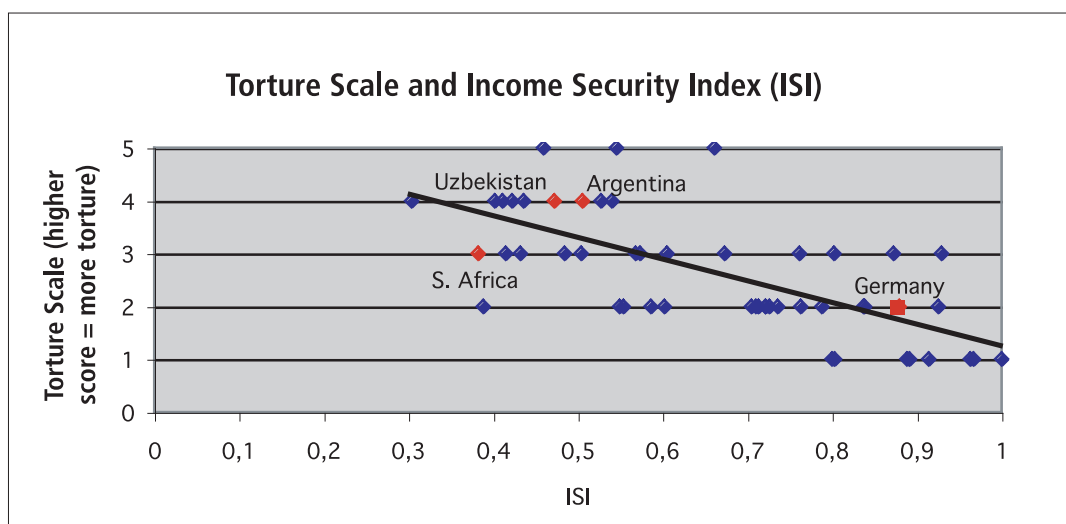
**Figure 1.7** Torture and electricity consumption ( $r = -0.55$ )



The strongest relationship uncovered is between income security as measured by the Income Security Index (ISI). A negative coefficient of  $-0.69$  is very strong, that is, the higher the income insecurity, the greater the torture in a country (denoted by a lower score on the Torture Scale). The trend line shows this relationship

adequately, with Germany representing an industrialised nation with a low Torture Scale and high income security and at the other end of the scale is Uzbekistan with a high torture rating and low income security score.

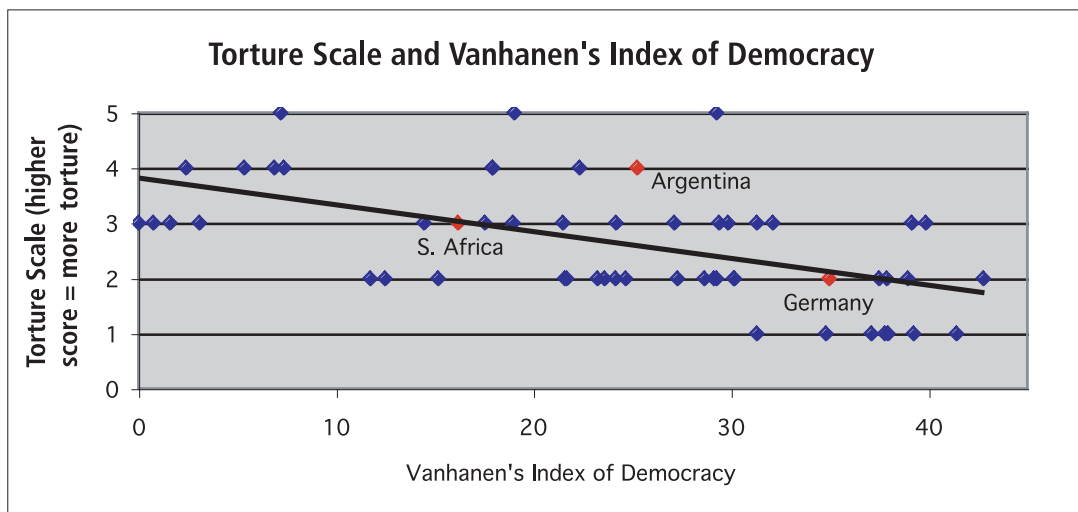
**Figure 1.8** Torture and income security ( $r = -0.69$ )



The Political Terror Scale is strongly correlated with Vanhanen's Index of Democracy (-0.50). Vanhanen's Index of Democracy uses objective criteria to rank states' democratic status and uses a formula to calculate democracy<sup>18</sup>. Vanhanen's index and Hathaway's Torture Scale are negatively (moderate) related, that is, the higher the Index of Democracy (the more democratic a country is), the lower the Torture Scale (less torture in a country) and the less democratic a country is, the more torture there is.

Generally this conforms to what we would expect, less democracy implying greater potential for torture. Comparison of Germany, South Africa and Argentina on the scatter plot below is highly illustrative of this relationship. A coefficient of -0.4 would suggest that differences in democracy as a socio-economic variable/index can be used as a predictor of torture (to a moderate degree) in numerous countries.

**Figure 1.9** Torture scale and Vanhanen's index of democracy ( $r = -0.55$ )



Since Vanhanen's index is a measure of political freedom, it is interesting to test the relationship between the Torture Scale and economic freedom. Like other composite indexes, the Economic

Freedom of the World Index created by the Fraser Institute is generated by feeding many smaller variables (economic) into it. The relationship between the two is illustrated below:

18 Index of Democracy = (competition x participation) / 100

Competition is calculated by subtracting the percentage of the votes won by the largest party from 100; in other words, it is the percentage of votes won by non-winning parties using the most important type of national elections in a given regime. Participation is the percentage of the total population that actually voted (voter turnout).

The problem with such a measure, however, is the idea that turnout is considered to be one measure on the democratic scale. In fact, many countries that are fully democratic by other criteria but have a low voting turnout rank low in Vanhanen's index. Switzerland, for example, is a democracy that ranks relatively low in this measure simply because of its low voter turnout.

Figure 1.10 Torture and economic freedom ( $r = -0.57$ )

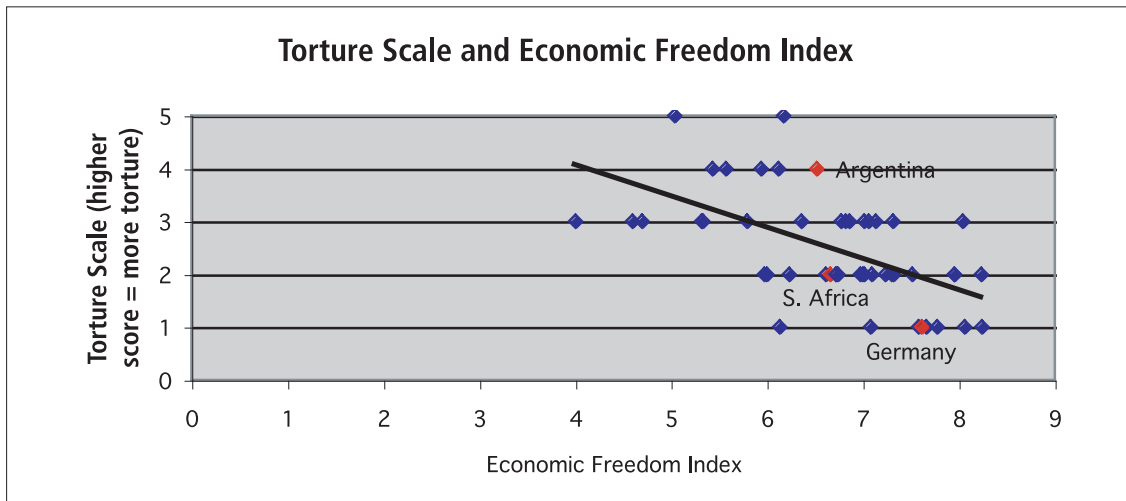
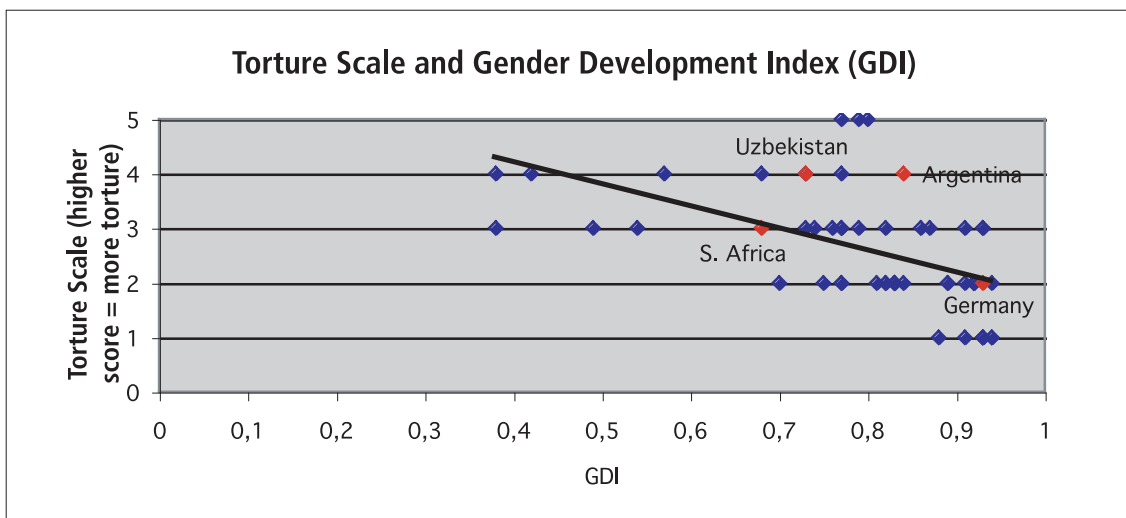


Figure 1.10 shows that the higher the economic freedom as measured by the index, the lower the Torture Scale (less torture). The strong negative correlation suggests that economic freedom is a reliable predictor of torture.

The Torture Scale is found to be highly negatively correlated with the Gender Development Index (GDI) (-0.53) and the Gender

Empowerment Measure (GEM) (-0.68), that is, the lower the political, economic and social development and equality of women in a country, the higher the Torture Scale (more torture). The situation of women in society, politics and the economy is very telling of a state's inclination to use violence of this nature.

Figure 1.11 Torture and gender ( $r = -0.53$ )





> *Penal conditions***Matrix 1.7 Correlation between incarceration rate and socio-economic variables**

<i>Socio-economic variables</i>	<i>Incarceration</i>
Incarceration rate per 100,000 inhabitants (average 1997-1999)	1
Average 1997-1999 GDP per capita constant (1995 US\$)	-0.26*
Percent population female (average 1997-1999)	0.46**
Total Illiteracy rate (average 1997-1999)	-0.35*
Labour force (percent female) average 1997-1999	0.30*
Youth unemployment male (average 1997-1999)	0.34*
Gender Empowerment Measure HDR 2003	-0.37*

\* Correlation is significant at the 0.05 level (2-tailed).

\*\* Correlation is significant at the 0.01 level (2-tailed).

Imprisonment is important to the study of violence since it is the most common universal sanction applied for serious offences, regardless of the type of legal system or level of development: Those imprisoned are extremely vulnerable to state violence. Furthermore, incarceration rates do not appear to be dependent on the amount of crime in the society, but rather on the willingness (punishment hungry) and effectiveness/capacity of law enforcement. Incarceration rates represent 'Penal conditions', which will be used as a state violence variable for the analysis of correlations.

Correlating incarceration rates and socio-economic variables produced some unexpected and interesting relationships. First is the moderate (almost qualifying as strong) positive relationship between incarceration and gender-based variables, most notably percent of total population that is female. This variable itself is

not explanatory yet in combination with other variables it seems unlikely to be a coincidence that the higher the incarceration rate, the lower the illiteracy rate, which suggests that the knock-on-effects of even basic (formal and informal) education can help prevent many to turn to crime. Unfortunately other measures of education can't support this claim, but it still remains a significant relationship that literacy positively impacts on incarceration rates.

All the gender-based measures are related and give a fuller picture of the state of women in countries' societies. There may be many reasons for the curious relationship between gender-based measures and incarceration rates, yet the role of education is unmistakable, for instance, as evidenced by the strong negative relationship between female illiteracy and female labour force participation.

**Matrix 1.8 Correlation between female labour force participation and female illiteracy rates**

<i>Socio-economic variables</i>	<i>Labour force (percent female) average 1997-1999</i>	<i>Female Illiteracy rate (average 1997-1999)</i>
InLabour force (percent female) average 1997-1999	1	-0.55**
Female Illiteracy rate (average 1997-1999)	-0.55**	1

\*\*Correlation is significant at the 0.01 level (2-tailed).

In other words, the lower the illiteracy, the higher the labour force participation of women. The impact of literacy rates is therefore substantial, it directly impacts on incarceration rates and to a large extent it explains female labour force participation, gender development and empowerment – variables which themselves, individually share a significant relationship with incarceration rates.

Unlike homicides and homicides with firearms, incarceration rates have virtually no relationship with measures of income inequality e.g. Gini, income ratios etc. In other words, income inequality in or between countries does not explain the size of a prison population in a country or between countries.

> *Democracy, good governance and rule of law*

**Matrix 1.9 Correlation between Civil and Political Rights (CPR) violation score and socio-economic variables**

<i>Socio-economic variables</i>	<i>CPR</i>
CPR (Civil and Political Rights violation) score	1
Average 1997-1999 GDP per capita constant (1995 US\$)	-0.55**
Percent population female (average 1997-1999)	-0.35*
Population growth (average 1997-1999)	0.31*
Urban population growth (average 1997-1999)	0.35*
Newspapers per 1000 population (average 1995-1997)	-0.45**
Electric power consumption kwh per capita (average 1997-1999)	-0.43**
Female Illiteracy rate (average 1997-1999)	0.42*
Total Illiteracy rate (average 1997-1999)	0.40*
Improved sanitation (percent population with access) 2000	-0.54**
Information and communications exp (percent of GDP) average 1997-1999	-0.43*
Military exp percent of GDP average 1997-1999	0.35*
Health expenditure percent of GDP (average 1997-1999)	-0.49**
Improved water source (percent population with access) 2000	-0.44*
Ratio of girls to boys in prim and sec education (average 1997-1999)	-0.45*
Gender development index HDR 2003	-0.44**
Gender Empowerment Measure HDR 2003	-0.58**
Income security index ISI (IFP/SES)	-0.59**
National poverty (HDR 2003, KILM 2003)	0.41*
Social security exp IMF (average 1995-1999)	-0.42*
Economic Freedom Index	-0.57**
Index of Democracy (Vanhanen) average 1997-1999	-0.59**

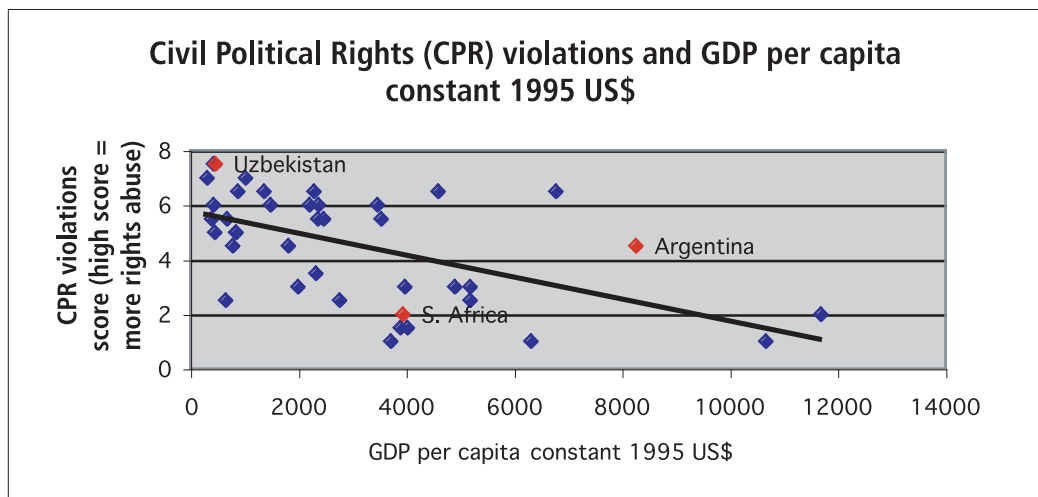
\* Correlation is significant at the 0.05 level (2-tailed).

\*\* Correlation is significant at the 0.01 level (2-tailed).

The CPR uses a combination of the US. State Department Reports on Human Rights, Amnesty International Reports and Human Rights Watch Reports to avoid bias by relying too heavily on one source and to obtain a less elite-based notion of civil and political rights. From M1.9, the CPR is highly negatively correlated with GDP per capita and the ISI (-0.55 and -0.59 at 1% significance respectively), that is, the worse the civil and political rights situation the lower the GDP per capita and the income security

of a populace. One can suggest that differences in the level and equity of income can point to differences in civil and political rights violations (of course, there may be other factors involved). Uzbekistan has the worst civil, political rights score amongst the sample countries used and very low GDP per capita, yet Uzbekistan is important in driving the relationship illustrated below.

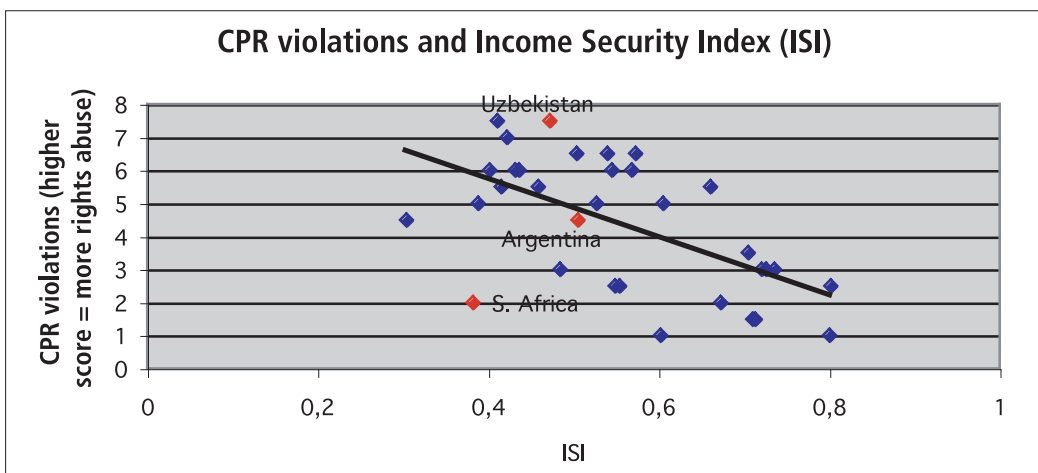
**Figure 1.12 Civil and political rights violations and GDP per capita (r = -0.55)**



In accordance with the previous CPI correlations, the CPR is also highly correlated with the ISI, GEM, Economic Freedom Index and Vanhanen’s Index of Democracy (yet negatively correlated because higher CPR means higher rights abuses whereas higher CPI denotes less corruption/less violence). In other words, higher

income insecurity, lower female equality in terms of political representation, lower economic freedom and less democracy may explain, to a large extent, CPR violations between countries.

**Figure 1.13 Civil and political rights and the income security (r = -0.59)**



At one extreme is Uzbekistan which lies at the high end of the CPR score (many violations) and low in terms of income security. Unfortunately there are only 29 countries from which we can

analyse the relationship between CPR violations and income security, therefore sampling error may have biased this high correlation coefficient.

**Matrix 1.10 Correlation between Corruption Perception Index (CPI) and socio-economic variables**

<i>Socio-economic variables</i>	<i>CPI 2003</i>
CPI 2003	1
Life exp at birth (total) average 1997-1999	0.59**
Male population aged 15-29 as percent of total	-0.63**
Average 1997-1999 GDP per capita constant (1995 US\$)	0.85**
Urban population (average 1997-1999)	0.61**
Newspapers per 1000 population (average 1995-1997)	0.69**
Electric power consumption kwh per capita (average 1997-1999)	0.73**
Percent Employment in agriculture (average 1997-1999)	-0.67**
Percent Employment in services (average 1997-1999)	0.68**
Youth (male) Illiteracy rate (average 1997-1999)	-0.35*
Improved sanitation (percent population with access) 2000	0.50**
Labour force (percent children) average 1997-1999	-0.40**
Infant mortality rate (average 1997-1999)	-0.53**
Unemployment rate total (average 1997-1999)	-0.33*
Unemployment rate male (average 1997-1999)	-0.40**
Youth unemployment male (average 1997-1999)	-0.41**
Health expenditure percent GDP (average 1997-1999)	0.66**
Improved water source (percent population with access) 2000	0.59**
Public spending on education (percent GDP) average 1997-1999	0.29*
Gender development index HDR 2003	0.73**
Gender Empowerment Measure HDR 2003	0.84**
Income security index IFP/SES	0.84**
National poverty (HDR 2003, KILM 2003)	-0.50*
Social security exp IMF (average 1995-1999)	0.32*
Economic Freedom Index	0.80**
Index of Democracy (Vanhanen) average 1997-1999	0.51**

\* Correlation is significant at the 0.05 level (2-tailed).

\*\*Correlation is significant at the 0.01 level (2-tailed).

Using the Corruption Perception Index (CPI), the Civil and Political Rights (CPR) score and the Rule of Law index as violence variables is controversial due to the fact that e.g. corruption, unlike torture, is not necessarily a violent act. These concepts are important to this exercise since we have already established that inequality is closely connected to levels of violence globally, and that by limiting inequality, democracy or characteristics of democracy can influence levels of violence. The CPI, CPR and Rule of Law index contribute to our understanding of state violence, providing different conceptual and empirical angles of measuring state violence. The matrixes demonstrate how socio-economic development and inequality can affect the inclination of a state to use violence or violate specific rights.

**Matrix 1.10** shows that the CPI is strongly and positively correlated with life expectancy at birth, percent male population aged 15-29, GDP per capita, urban population as a percentage of total population, newspapers per 1000 population and electricity consumption. There are no real surprises here since the higher the life expectancy, GDP per capita, urban population and newspapers, one would expect the higher the corruption index score (the less corrupt a country is) since industrialised nations suffer less from corruption than undeveloped countries. It is the indus-

trialised countries that have a longer life expectancy, higher earnings, greater urban concentration and higher literacy/reader-ship than poorer, undeveloped countries. Furthermore, the more industrialised countries are (and less corrupt), the smaller is their workforce's share in agriculture and the larger it is in services, as compared to poorer countries. This is supported in Matrix 1.10 with strong coefficients between the CPI and employment in agriculture (-0.67) and services (0.68).

Unlike other violence variables, the CPI is strongly correlated with a couple of socio-economic variables under the Public Services theme in Table 1.2. The CPI is highly positively correlated with the percentage of GDP spent on health and improved water source (percent of population with access to safe water), which are proxies for resource commitment by the state for its population. This implies that the more the state provides in basic but crucial services such as health and safe drinking water, the less corrupt a country is. Generally speaking, the commitment of resources by the state from a distributional perspective influences the corruption rating (an indicator of democracy, good governance and rule of law) of a state and thus possibly the inclination of the state to violate rights.

**Figure 1.14** Corruption and poverty ( $r = -0.50$ )

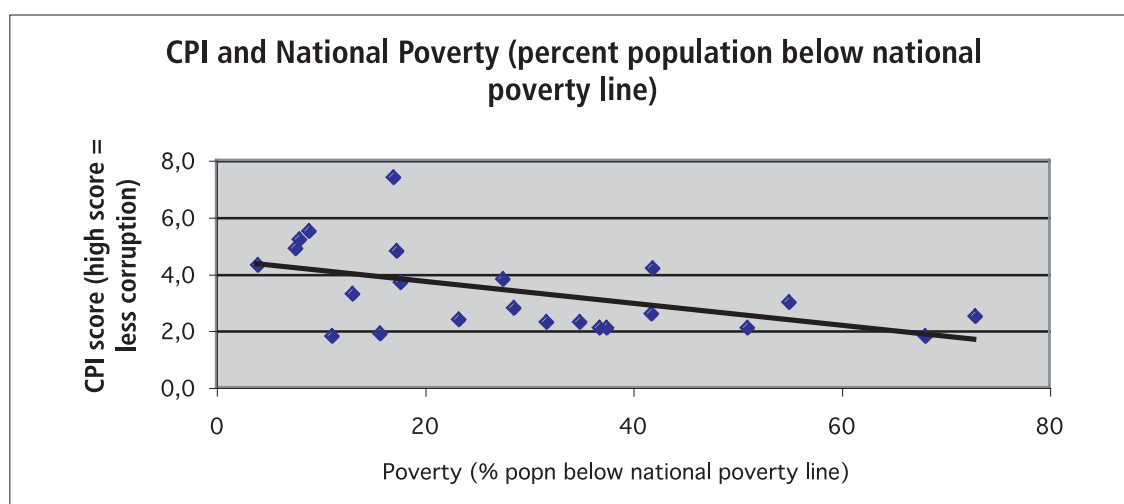
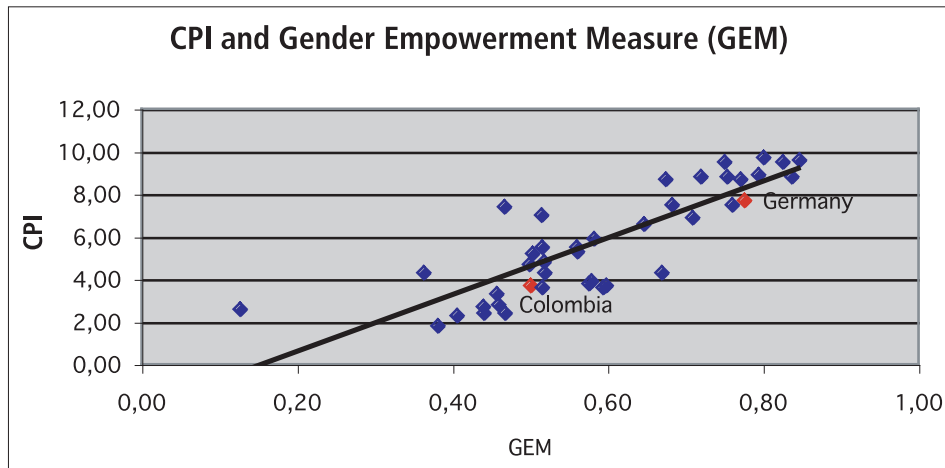


Figure 1.14 captures the strong negative relationship between the CPI and poverty. Poverty no doubt stands as a powerful explanatory variable in and between countries of violence.

Strong positive correlates of the CPI are the Gender Development Index (GDI) and Gender Empowerment Measure (GEM). The scatter plot below illustrates just how strong the relationship is between the CPI and the GEM. Indicated is Germany which scores high in the CPI (little corruption) and high in the

GEM (measured by female share of parliamentary seats, senior officials, managerial positions and female income). This is an interesting finding, suggesting that the greater the equality of women in government and power over economic resources, the lower the level of perceived state corruption. The scatter plot below illustrates this relationship clearly where most countries lie around the trend line with Colombia (developing) and Germany (industrialised) as examples.

**Figure 1.15** Corruption and Gender Empowerment ( $r = 0.84$ )

Other composite indexes highly positively correlated with the CPI include the Economic Freedom Index and Vanhanen's Index of Democracy.

**Matrix 1.11** Correlation between the Rule of law index and socio-economic variables

<i>Socio-economic variables</i>	<i>Rule of law</i>
Rule of law index (KKZ average 1998-2002)	1
Life exp at birth (total) average 1997-1999	0.59**
Male population aged 15-29 as percent of total	-0.59**
Average 1997-1999 GDP per capita constant (1995 US\$)	0.85**
Urban population (average 1997-1999)	0.53**
Newspapers per 1000 population (average 1995-1997)	0.67**
Electric power consumption kwh per capita (average 1997-1999)	0.68**
Percent employment in agriculture (average 1997-1999)	-0.66**
Percent employment in services (average 1997-1999)	0.66**
Improved sanitation (percent population with access) 2000	0.51**
Labour force (percent children) average 1997-1999	-0.35**
Infant mortality rate (average 1997-1999)	-0.51**
Unemployment rate total (average 1997-1999)	-0.34*
Unemployment rate male (average 1997-1999)	-0.45**
Youth unemployment male (average 1997-1999)	-0.49**
Health expenditure percent GDP (average 1997-1999)	0.65**
Improved water source (percent population with access) 2000	0.56**
Gender development index HDR 2003	0.72**
Gender Empowerment Measure HDR 2003	0.83**
Income security index IFP/SES	0.84**
National poverty (HDR 2003, KILM 2003)	-0.60**
Social security exp IMF (average 1995-1999)	0.31*
Economic Freedom Index	0.85**
Index of Democracy (Vanhanen) average 1997-1999	0.55**

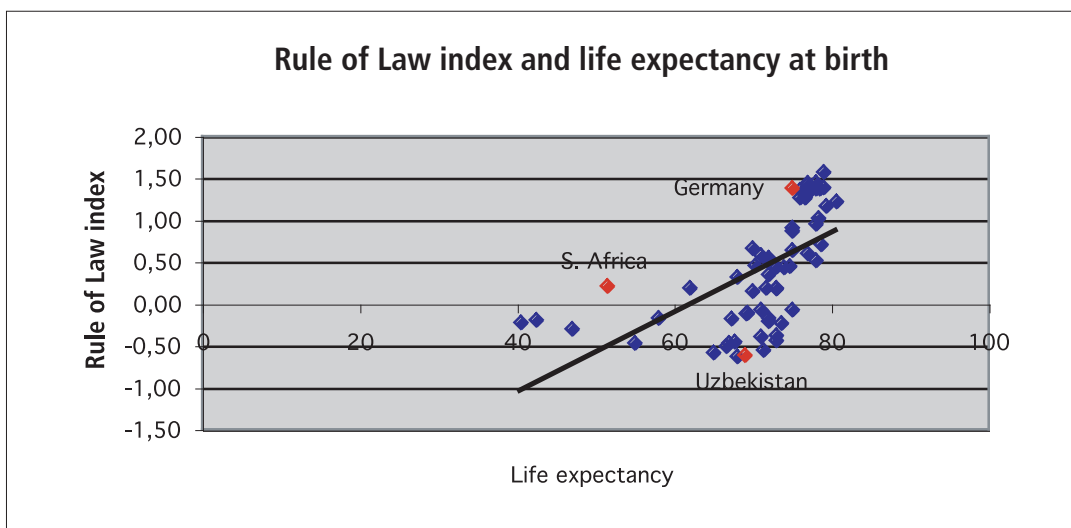
\* Correlation is significant at the 0.05 level (2-tailed).

\*\*Correlation is significant at the 0.01 level (2-tailed).

The Rule of Law index is a robust indicator of democracy, good governance and rule of law, as indicated by the high positive correlations with the GDI, GEM and Vanhanen’s index of democracy. The Rule of Law index is highly correlated with numerous socio-economic variables, such as the strong positive relationship with

life expectancy. Figure 1.16 shows that the higher the life expectancy, the higher the Rule of Law index (the more law abiding the state is the better protected are the rights of civilians).

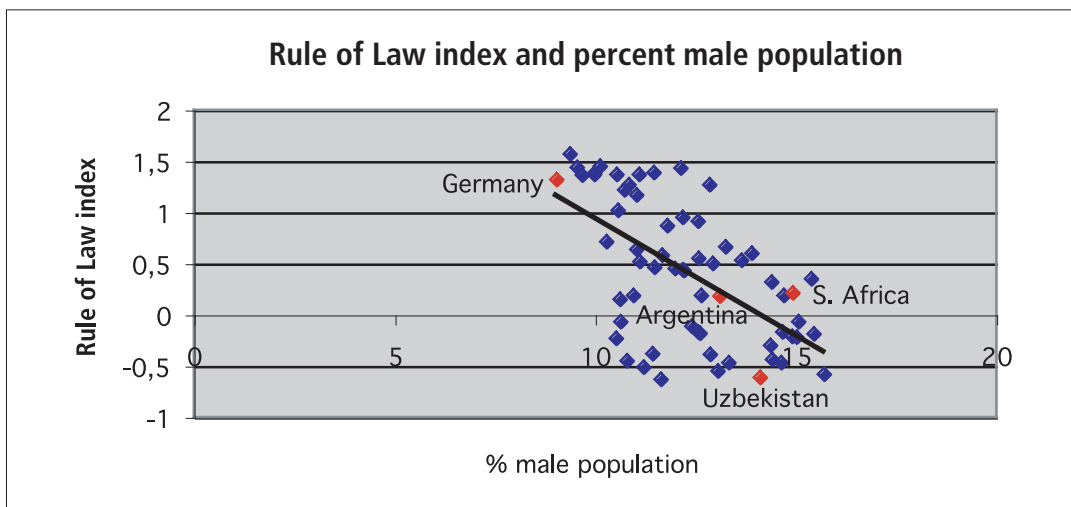
**Figure 1.16 Rule of Law and life expectancy (r = 0.59)**



Differences in life expectancy between Germany and South Africa are indicative of the difference in levels of development.

Life expectancy is a robust measure of the general health of the populace and a proxy for economic development.

**Figure 1.17 Rule of Law and male population (r = -0.59)**



The relationship between the male population variable and the Rule of Law index shares the same strength as that between life expectancy and the Rule of Law index, yet in the opposite direction: the male population and Rule of Law index are negatively correlated. In other words, the higher the percent male popula-

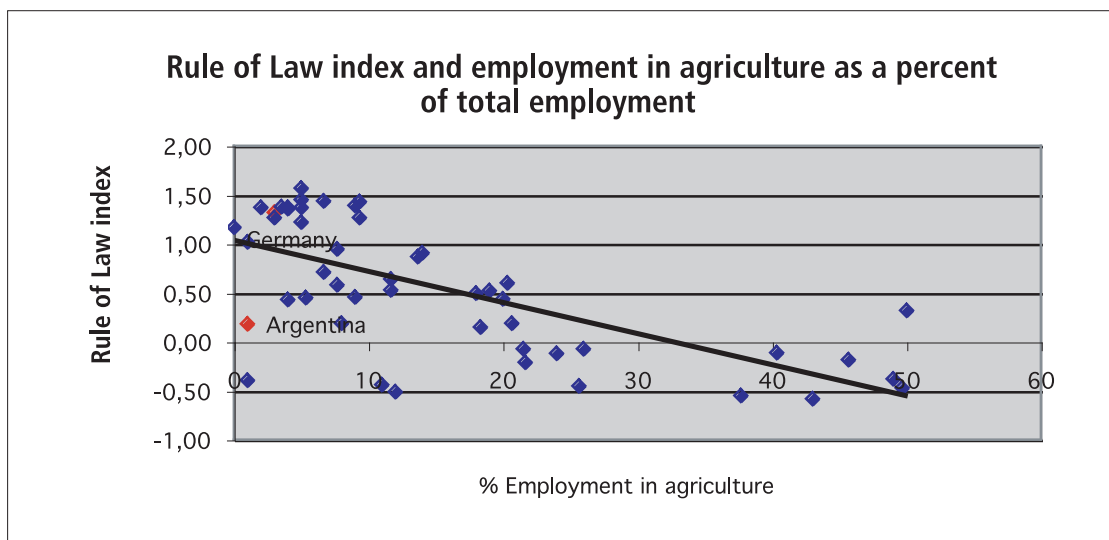
tion, the lower the rule of law, as illustrated by comparing Germany and Uzbekistan.

Other correlates include GDP per capita, electricity consumption per capita and percent employment in agriculture. Generally

speaking, the higher the percentage employed in agriculture, the lower the economic development of a country. Figure 1.18 shows the strong negative relationship between percent employed in agriculture and Rule of Law index that is the higher the percentage employed in agriculture, the less the state respects the law. Supporting this relationship is the same strength relationship

(0.66) but in the opposite direction between percent employed in services and Rule of Law index. This is expected given that high employment in services reflects how advanced an economy is. In sum, the general health and wealth of a population is a very strong predictor of the state of political and civil liberties as measured by the Rule of Law index.

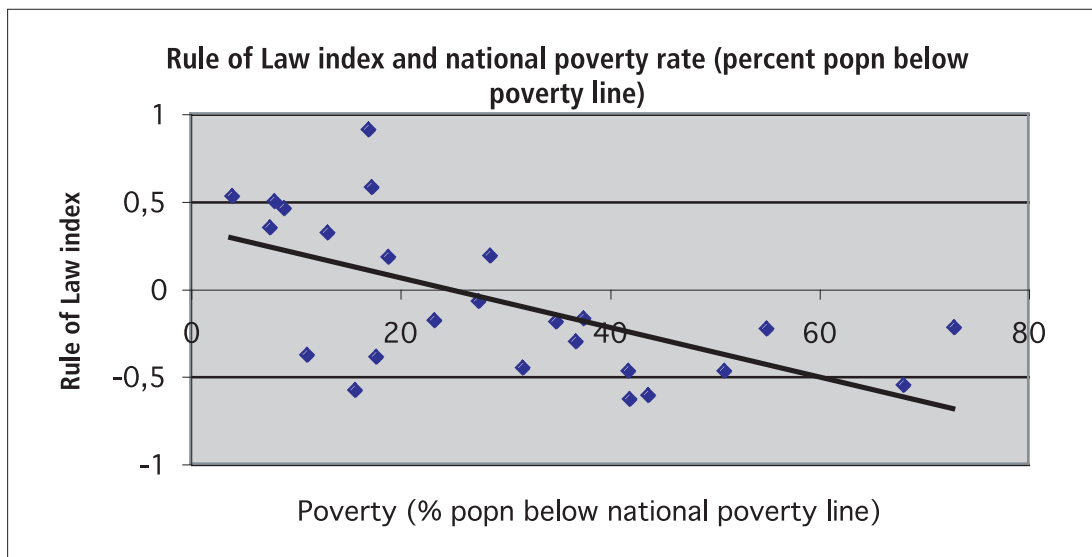
**Figure 1.18** Rule of Law and employment in agriculture ( $r = -0.66$ )



Resource commitment of the state to its populace seems to be closely related to civil and political commitment as well. For example if one examines the relationship of health expenditure and access to improved water source to the Rule of Law index, the strong positive coefficients tell us that the greater the resource commitment, the greater the protection of civil and political rights, and protection against abuses of state power. Higher economic freedom is also associated with higher political freedom as indicated by an extremely high positive coefficient of (0.85) between the Economic Freedom of the World and Rule of

Law index. However, more importantly, we want to assess the magnitude of the relationship between the Rule of Law index and inequalities within and between countries. We turn to the Income Security Index (ISI) and an extremely high positive coefficient of 0.84 indicates that income security is also a strong explanatory variable of the rule of law, that is, the higher the income security, the stronger the rule of law. Affirming this is the strong negative coefficient between national poverty and the Rule of Law index. From Figure 1.19, one can see that as poverty rises, the Rule of Law index falls.



**Figure 1.19** Rule of Law and national poverty ( $r = -0.60$ )

All the matrixes above have established, beyond coincidence, that certain socio-economic variables influence different kinds of violence to varying degrees. Each non-state and state variable has been examined in light of an array of socio-economic trends and the most significant relationships have been briefly analysed. However, if we limit our analysis of violence and socio-economic inequalities to the macro-level, we may not be able to avoid what is termed as the ecological fallacy, which occurs when correlations based on macro data can be incorrectly assumed to hold for individuals. If we are to make generalisa-

tions about a country and its populace then studying people is just as important as studying countries.

Therefore, having made general observations concerning the relationship between violence and socio-economic variables, we now use survey data to reveal how violence varies according to a number of socio-economic factors such as gender, age, ethnicity, income, education and occupation etc. – the typology of victims. This will enable us to analyse the types of violence risks among different groups – the micro level.

## 1.9 Analysis at the micro level (Argentina and South Africa)

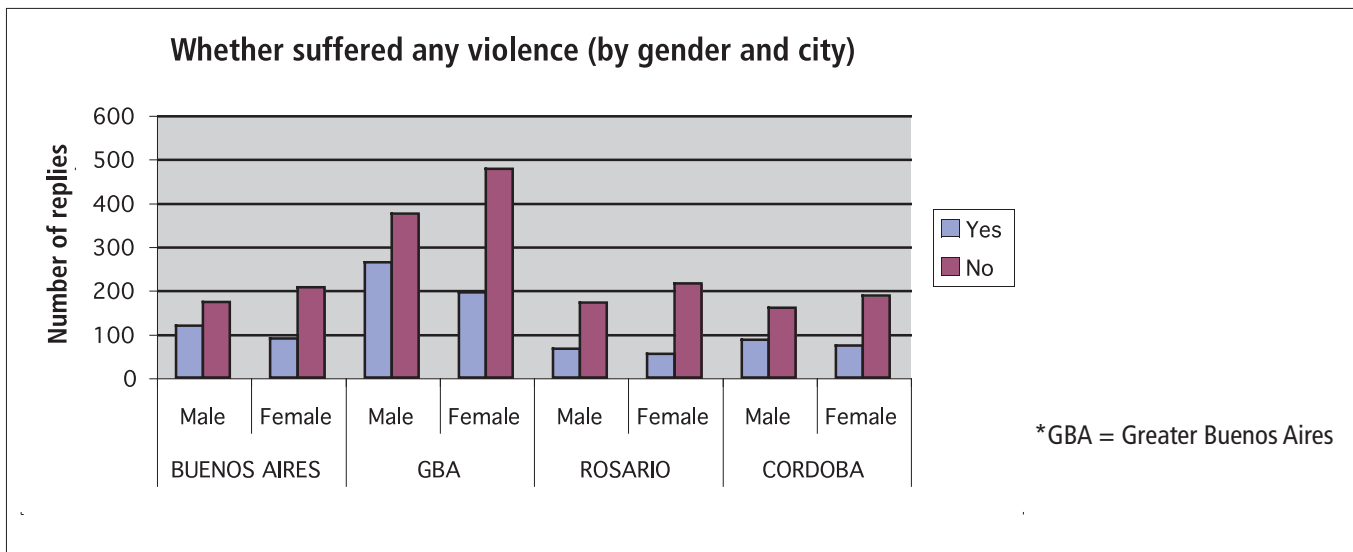
In 2000 the ILO's InFocus Programme on Socio-Economic Security (IFP/SES) launched the People's Security Survey (PSS) with a desire to learn from the voices of the people regarding their security and insecurity in work and life. The PSS is a household survey, which collects information on people's experiences, perceptions and opinions regarding their own security and insecurity and their views on policies that affect their work and life. Although intended for an audience primarily interested in work-

related securities, the PSS contains questions on offences that are highly relevant to this paper. It asks representative population samples (up to 3000 people) about their experiences, perceptions and opinions regarding selected offences over a given time. The PSS deals with incidents that have, or have not, been reported to the police and why people do or do not choose to report them to the police thus providing a realistic picture of the population affected by violence. Furthermore the PSS asks how secure the respondent feels about their human rights situation, whether they feel their rights are under threat etc.

• **Argentina**

**Question** *Did you ever suffer any kind of violence?*

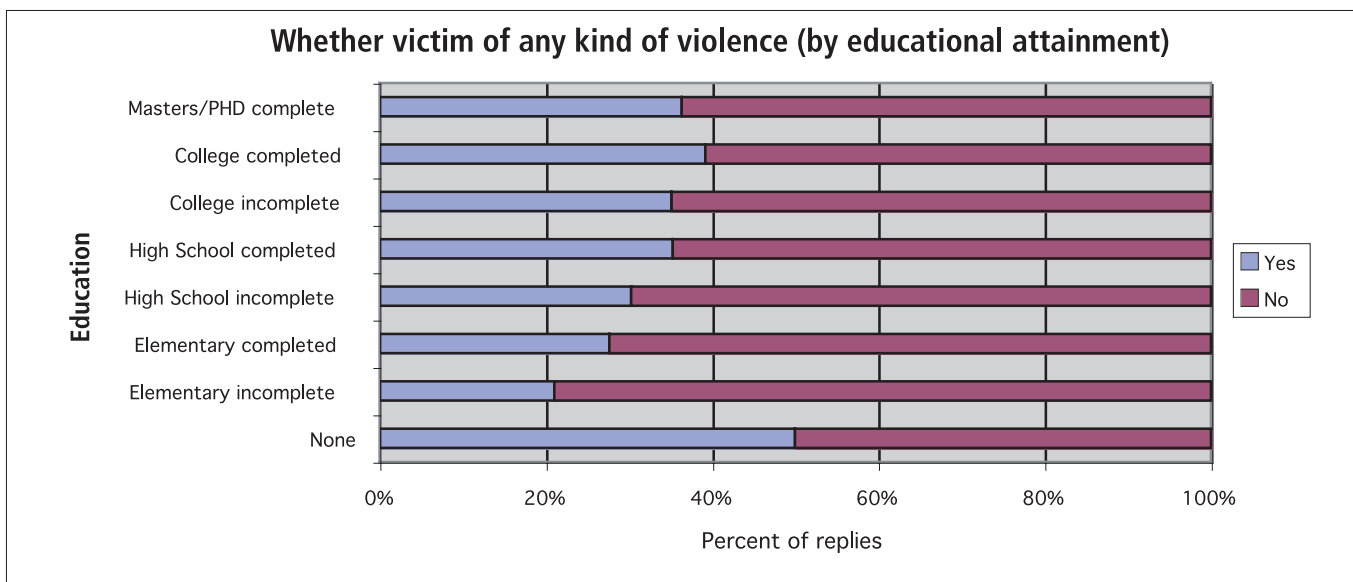
**Figure 1.20** Victims of violence by gender



In all areas and for both sexes, a greater proportion of respondents answered 'no' than 'yes' to whether or not they have suffered from any kind of violence. Notably, due to the larger number of respondents living in the Greater Buenos Aires area (GBA), there were more replies to this question yet in terms of percent

gender composition of those who answered yes or no, GBA resembles that of the other urban areas, that is, generally males experienced violence more than females. Over half of all replies by males in Buenos Aires, GBA and Cordoba are 'yes'.

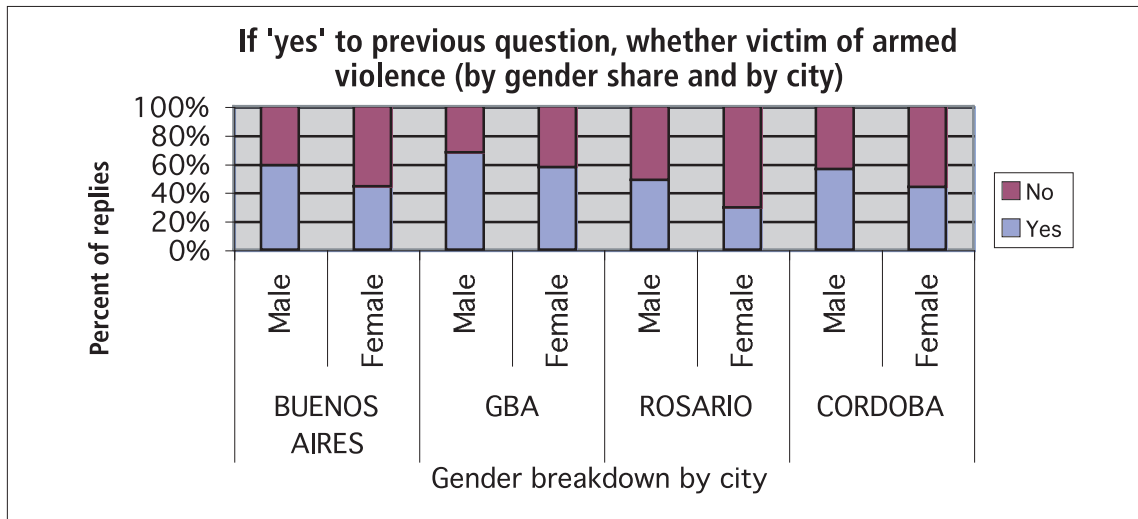
**Figure 1.21** Victims of violence by educational attainment



Clearly one can see that proportionally, those with no education at all were more likely to suffer from some kind of violence. Roughly 50 percent of respondents with no education answered 'yes' to the question.

**Question** *If 'yes' to the previous question, what kind of violence did you experience?*

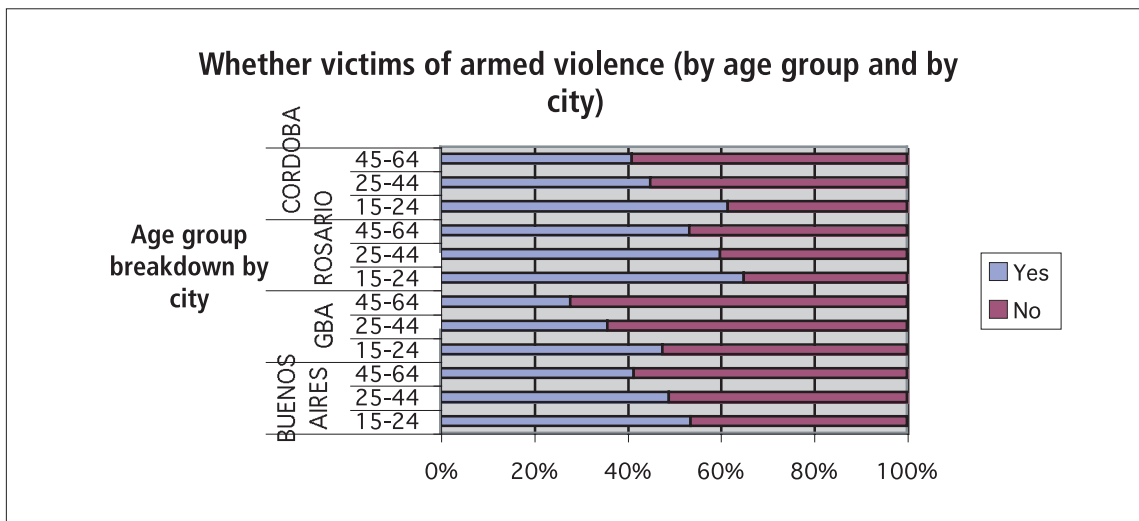
**Figure 1.22** Armed violence by gender



The male/female composition of answers resembles that of the first question: males answer 'yes' proportionally more than females when answering the question with regards to being a

victim of armed violence. Moreover answers to both the first and second questions suggest that the area of Rosario is the least violent with 'no' being a majority answer for males and females.

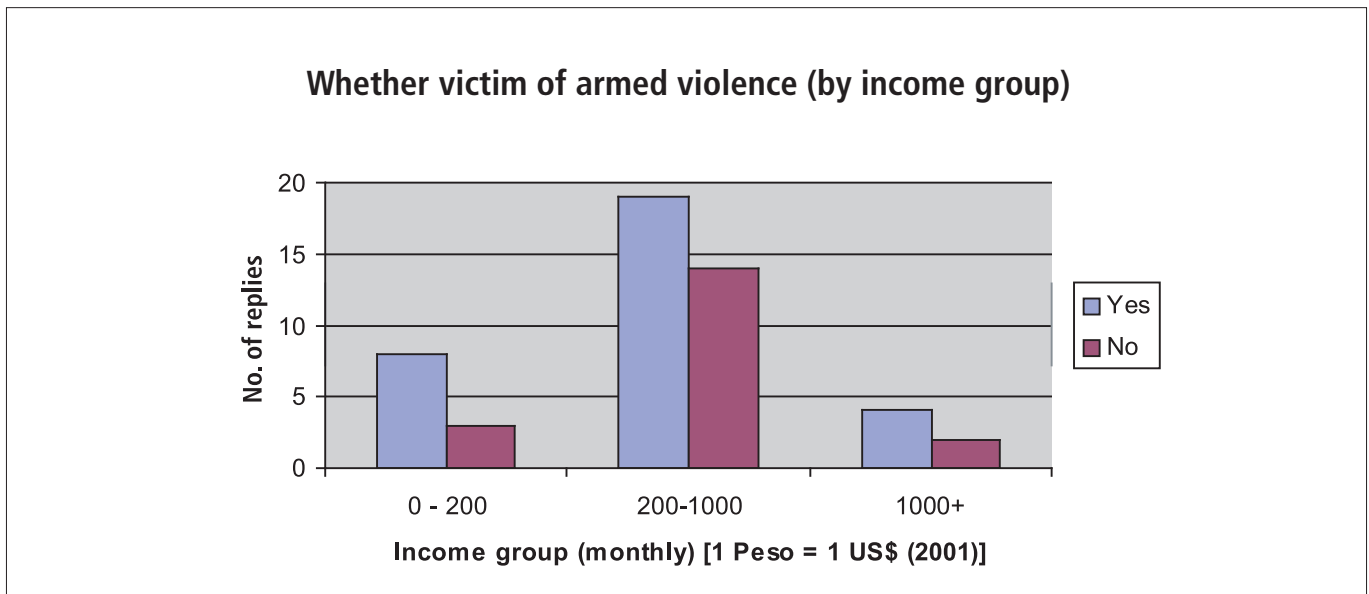
**Figure 1.23** Armed violence by age group



From the graph above a pattern emerges whereby younger age groups across all areas answer 'yes' to being a victim of armed violence, more than their older counterparts. Relatively speaking,

in other words, the older the respondent, the less the chance of being a victim of armed violence.

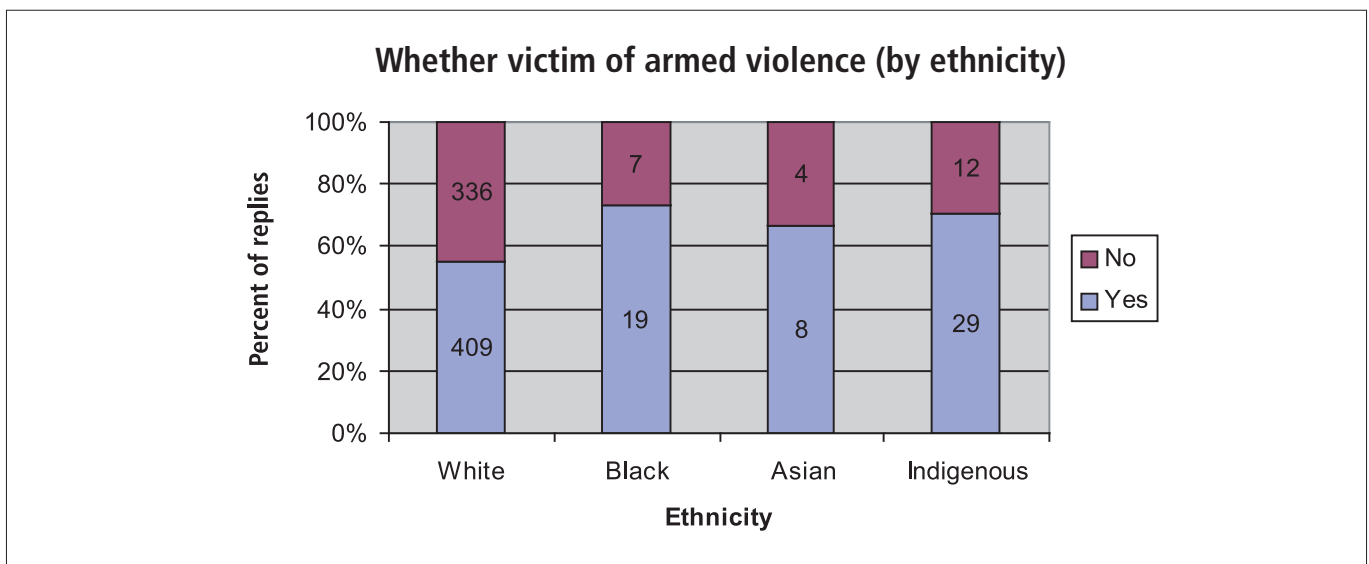
**Figure 1.24 Armed violence by income group**



Respondents at the bottom 10 percent of the income ladder replied proportionally more with 'yes' to being a victim of armed violence, than other income groups. The top 10 percent of earners only constituted two respondents, hence taking 1000+ Pesos as the upper income level. The income group with least exposure

to armed violence is the middle-income group where proportionally speaking, more respondents answered 'no' to being a victim of armed violence compared to other income groups. The general message from the graph is that the majority of respondents in each income group have been a victim of armed violence.

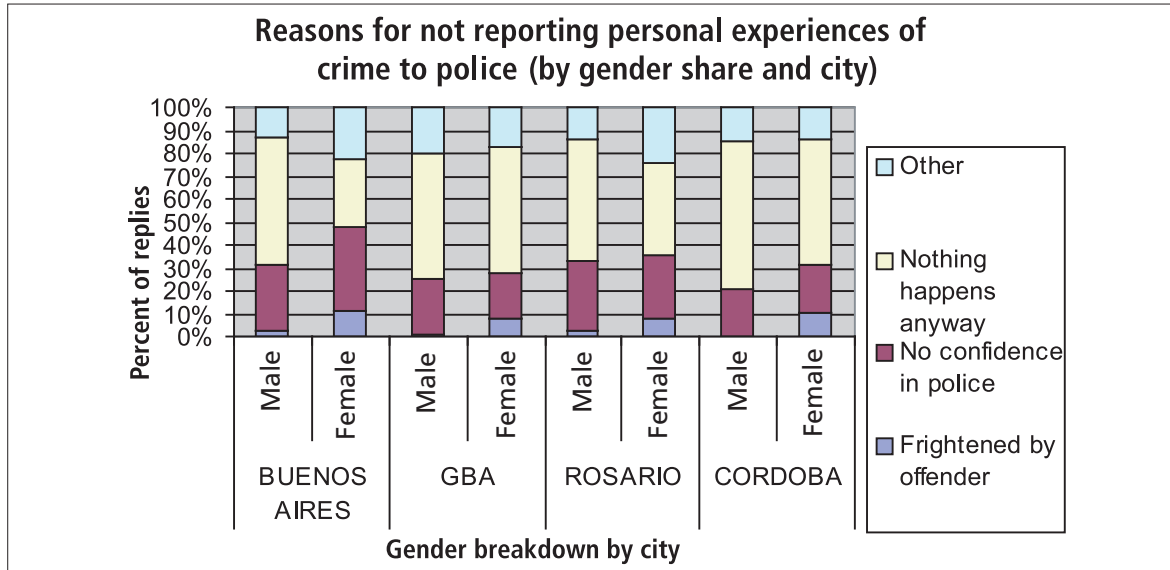
**Figure 1.25 Armed violence by ethnicity**



Black people answered proportionally more with 'yes' rather than 'no' to being a victim of armed violence, in comparison to other ethnic groups. After Blacks, the majority of indigenous persons replied 'yes' to being a victim of armed violence, then follow Asians and lastly, whites.

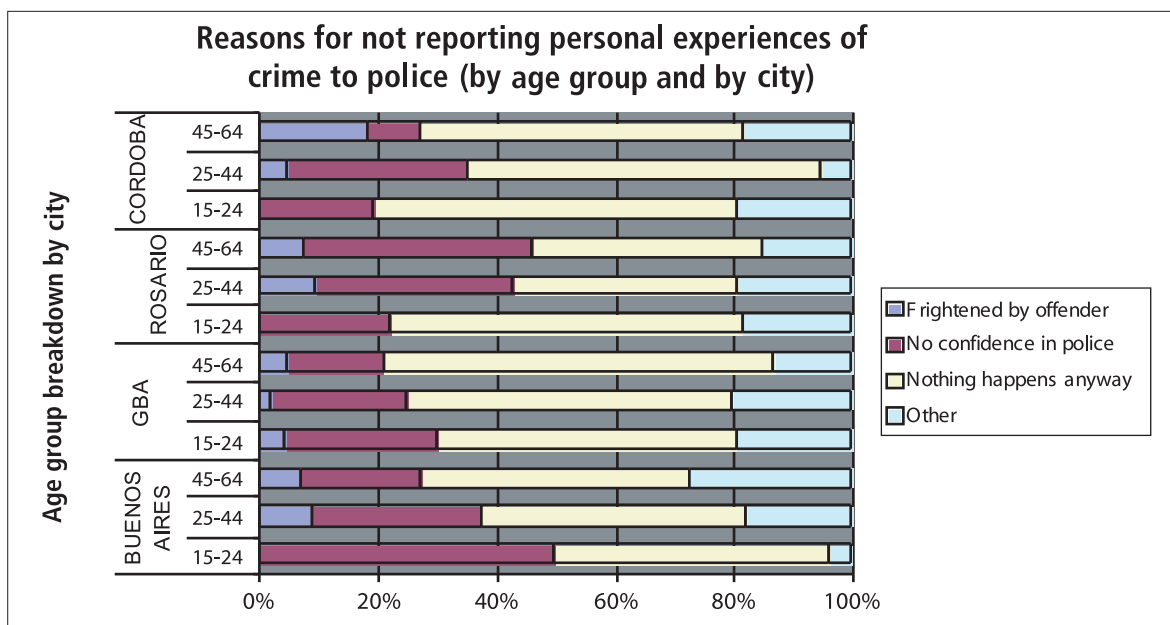
**Question** *Why haven't you reported the crime that most affected you? (Question following on from answering 'yes' to a question asking whether or not the respondent has reported the crime that most affected him/her)*

**Figure 1.26** Not reporting crime by gender



'Nothing happens anyway' is the most common answer among both sexes as to why they hadn't reported the crime to the police. The second most common answer is 'no confidence in police'.

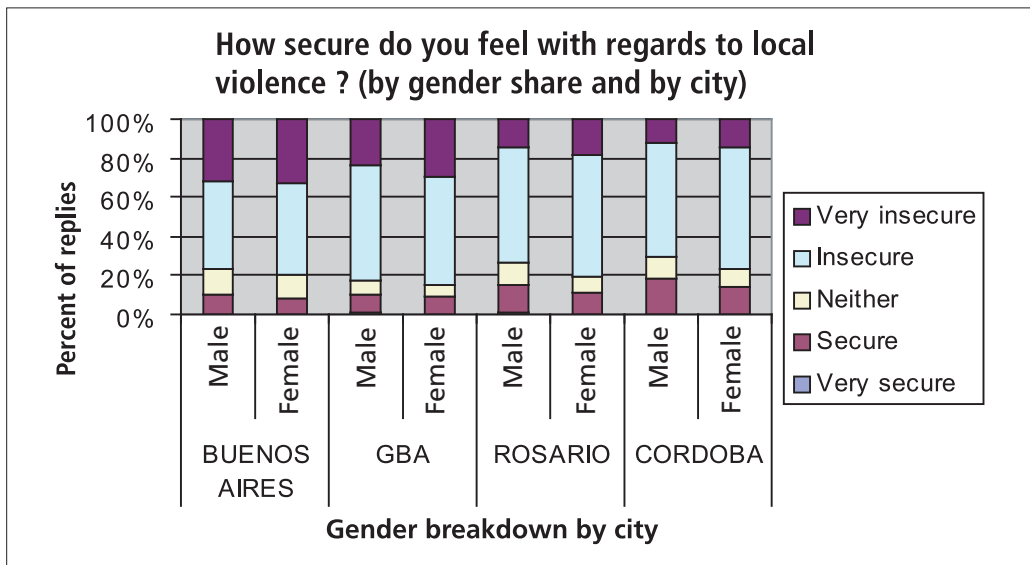
**Figure 1.27** Not reporting crime by age group



Confidence in police increases with age in Buenos Aires, GBA and Cordoba but declines with age in Rosario. Generally speaking, 'nothing happens anyway' is the most common answer (often the majority answer) across all age groups and areas.

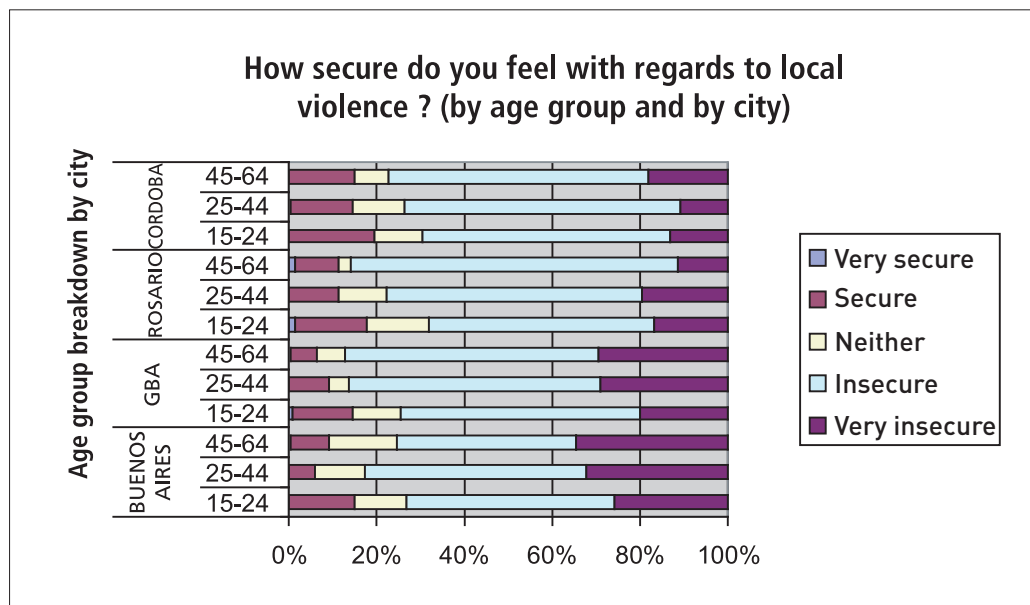
**Question** *Do you and your family feel very safe/safe/neither safe nor unsafe/unsafe/very unsafe about local violence?*

**Figure 1.28** Insecurity by gender



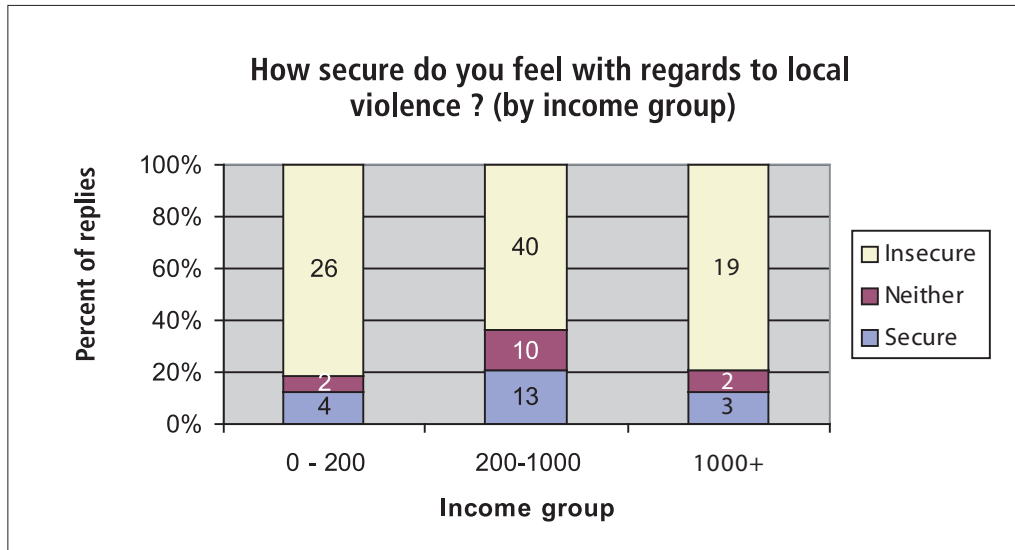
'Insecure' is the majority answer for both males and females from all areas. 'Very insecure' is the second most common answer. Based on the answer to this question, respondents in Cordoba perceive themselves to be safer than respondents from other areas and respondents in Buenos Aires, the worst off.

**Figure 1.29** Insecurity by age group



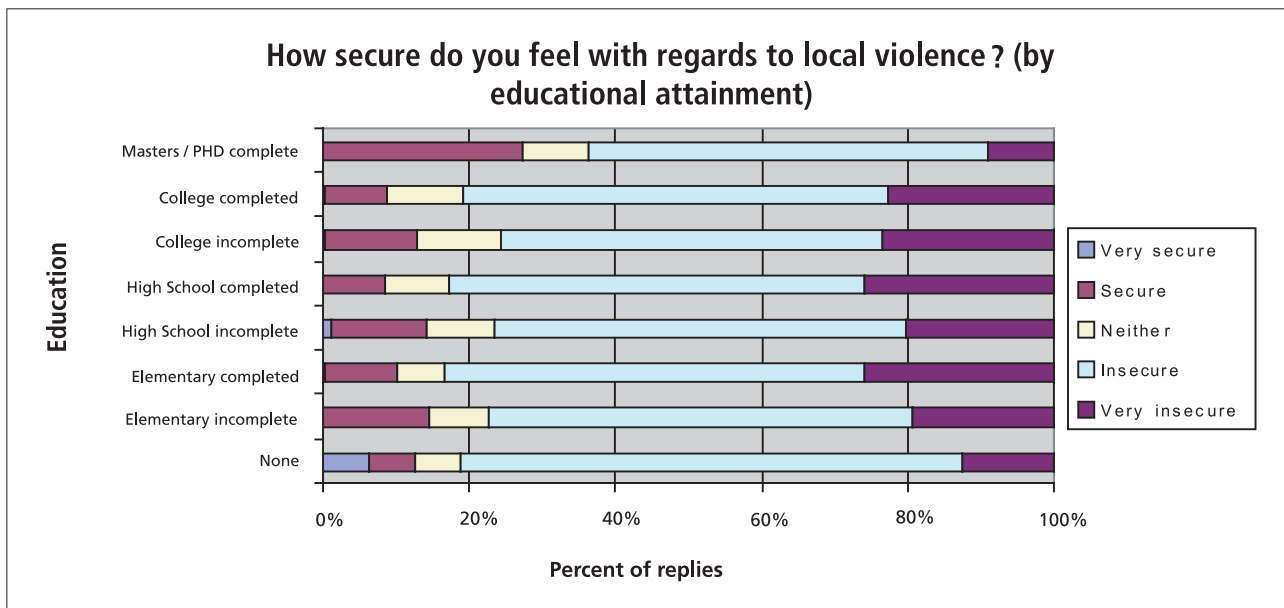
In general, perception of insecurity rises with age. Older age groups answer more in favour of 'very insecure' relatively to other age groups.

**Figure 1.30 Insecurity by income group**



Both ends of the income scale are comparable in terms of how respondents answered, yet the middle income earners answered quite differently. Middle-income earners replied less with 'insecure' and more with 'secure' than the bottom and top earners.

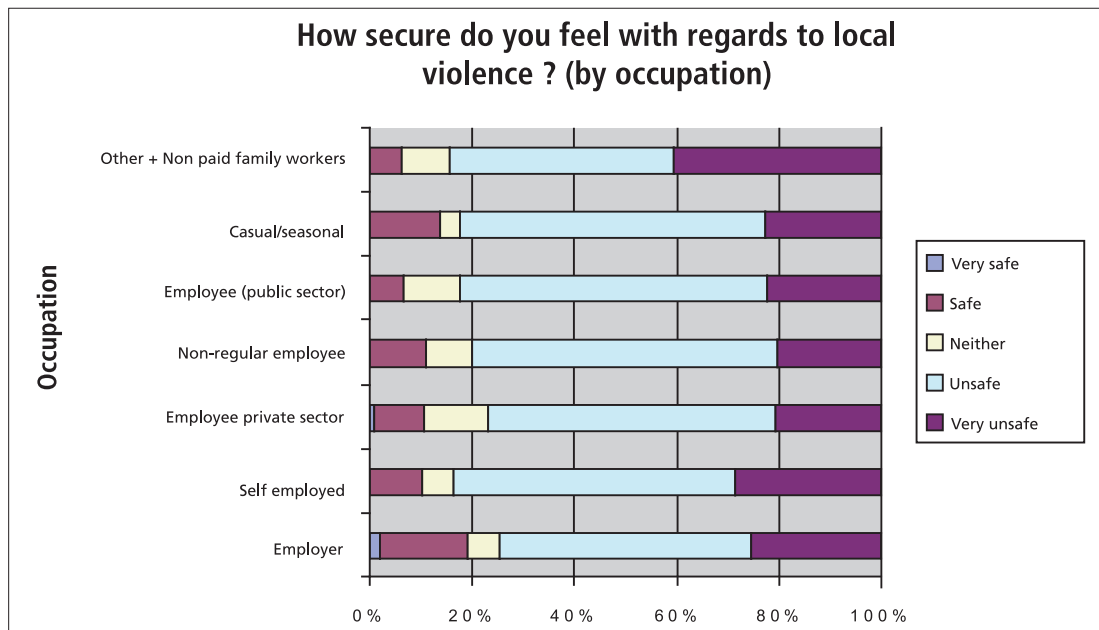
**Figure 1.31 Insecurity by educational attainment**



There is a significant difference in how highly educated respondents, who have completed a Masters/PHD, and respondents with no education answered this question. Those with very high levels of education are far more secure when asked about local violence than uneducated respondents. The vast majority of un-

educated respondents answered 'insecure' (70 percent) as opposed to roughly 45 percent of those highly educated. Nearly 30 percent of highly educated respondents replied with 'secure' compared to 7 percent of those uneducated.

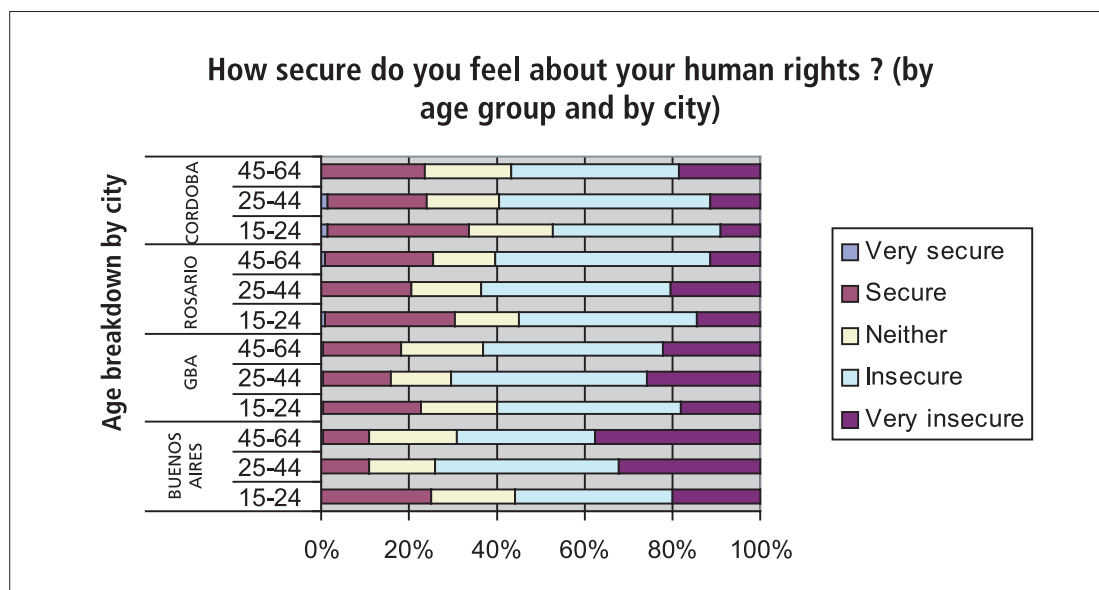
Figure 1.32 Insecurity by occupation



The most common answer is 'unsafe'. Non-paid family workers answered (over 40 percent) with 'very unsafe' with regards to local violence, which was far more than other occupational groups.

**Question:** *Do you and your family feel very safe/safe/neither safe nor unsafe/unsafe/very unsafe about your human rights?*

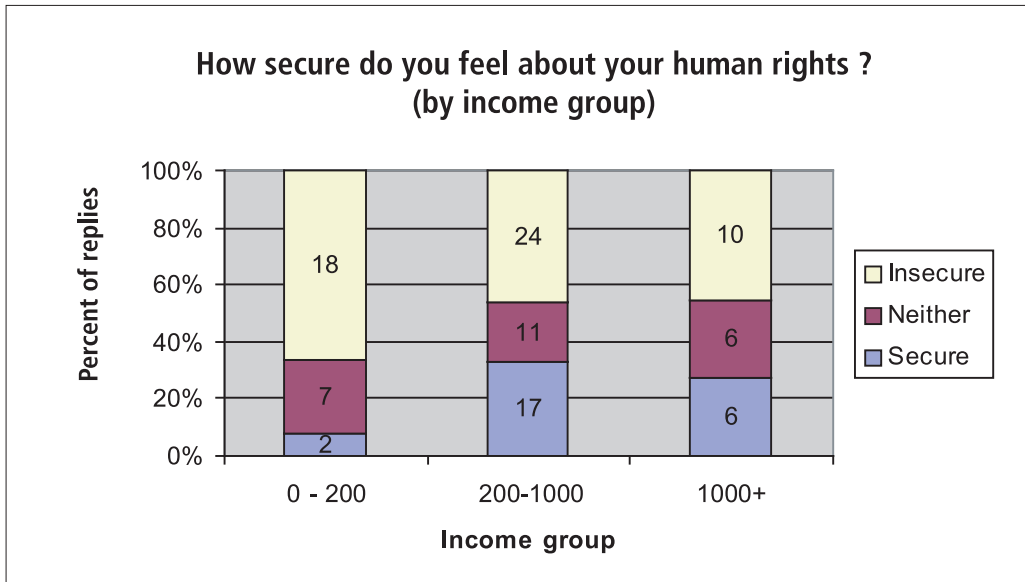
Figure 1.33 Security of human rights by age group



Generally speaking, insecurity rises with old age even in terms of perception of human rights. In comparison to the question regarding how the respondent feels about local violence, the question concerning human rights receives greater extreme replies of 'very secure' and 'very insecure' as if respondents are polarised with regards to perception of their human rights situation.

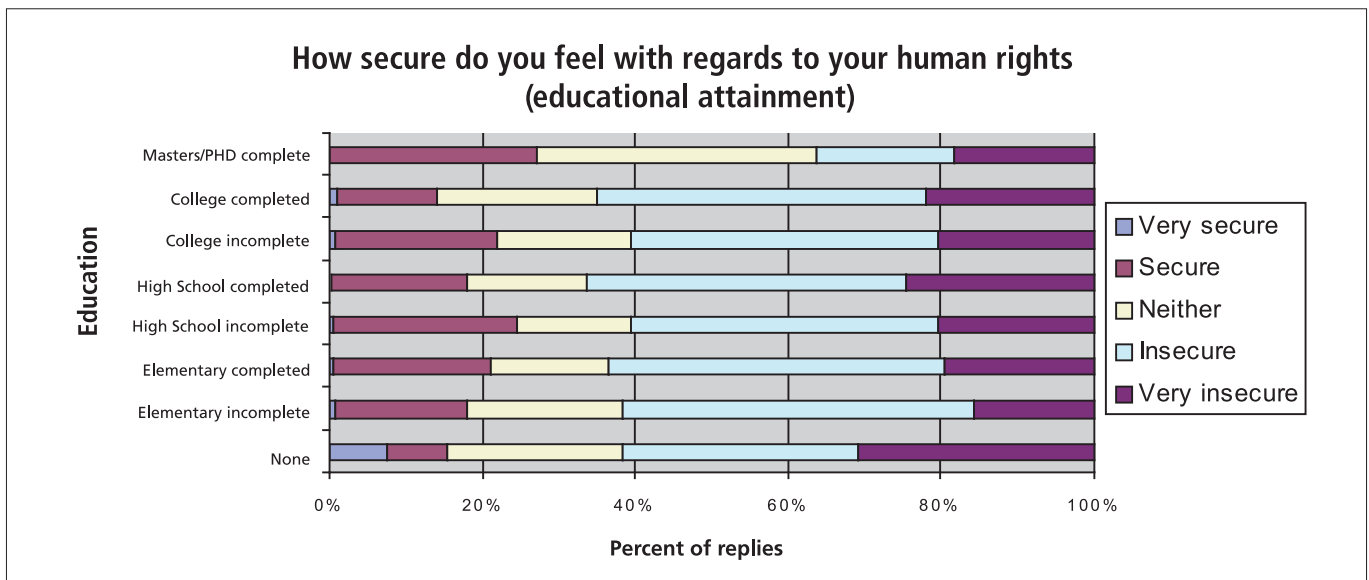


Figure 1.34 Security of human rights by income group



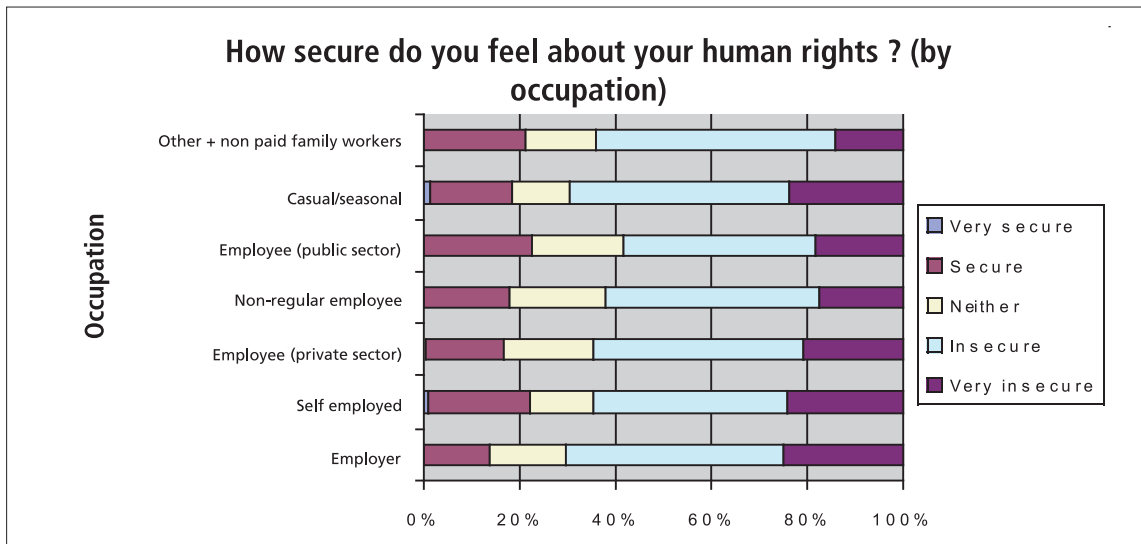
Notably, the lowest income group earning 0-200 Pesos feel most insecure about their human rights situation than their higher earning counterparts. A clear majority answered 'insecure' and a clear minority answered 'secure'.

Figure 1.35 Security of human rights by educational attainment



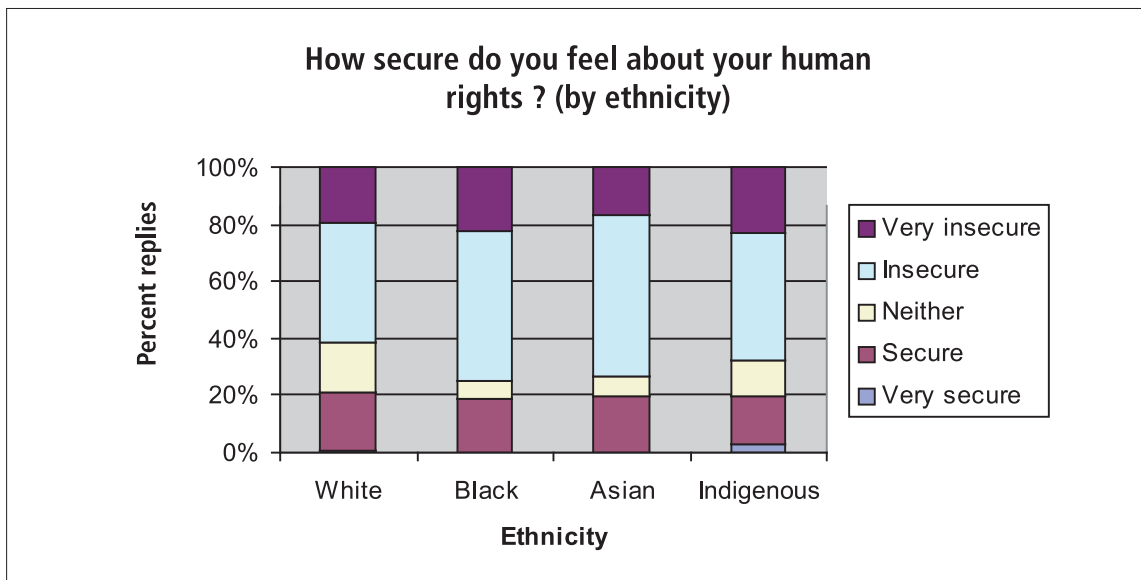
In many ways this mirrors the disparity between how those educated and uneducated answered the question concerning local violence except for the fact that the uneducated respondents are even more insecure about human rights as opposed to local violence, relative to educated respondents. 30 percent of uneducated respondents answered 'very insecure' which is about the same proportion of respondents with completed Masters/PHD that replied 'secure'.

**Figure 1.36 Security of human rights by occupation**



In general, employers feel more insecure than other occupational groups, answering strongly with 'very insecure' and weak with 'secure'.

**Figure 1.37 Security of human rights by ethnicity**



There is no clear difference in the way respondents from different ethnic groups answered this question. 'Insecure' is still the dominant answer to this question but not the majority answer.

• South Africa

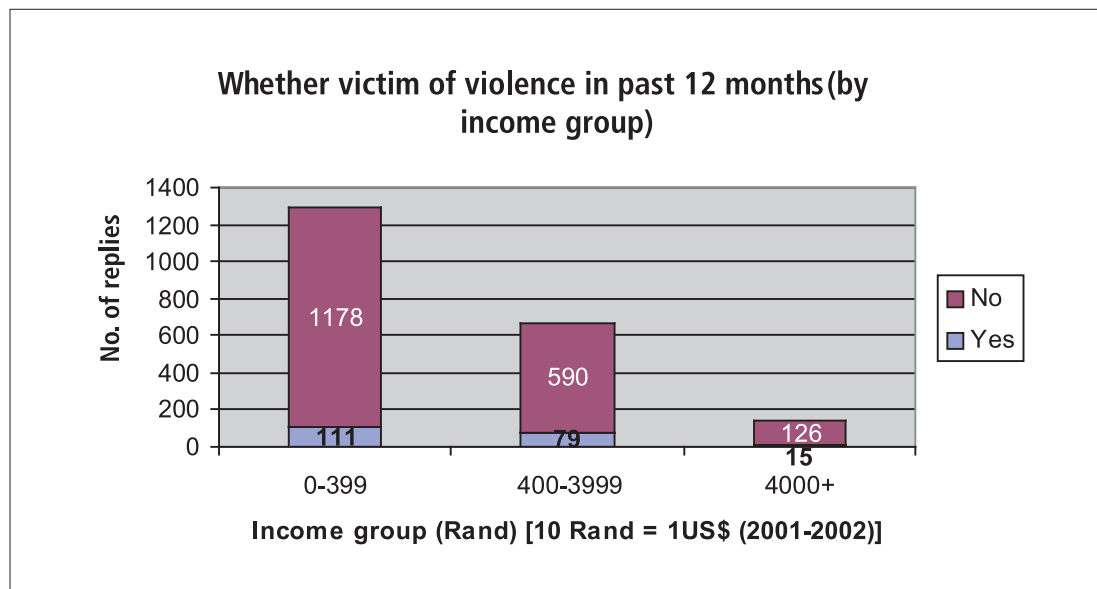
**Question** *In the past 12 months, were you personally ever a victim of any kind of violence?*

Figure 1.38 Victims of violence by gender



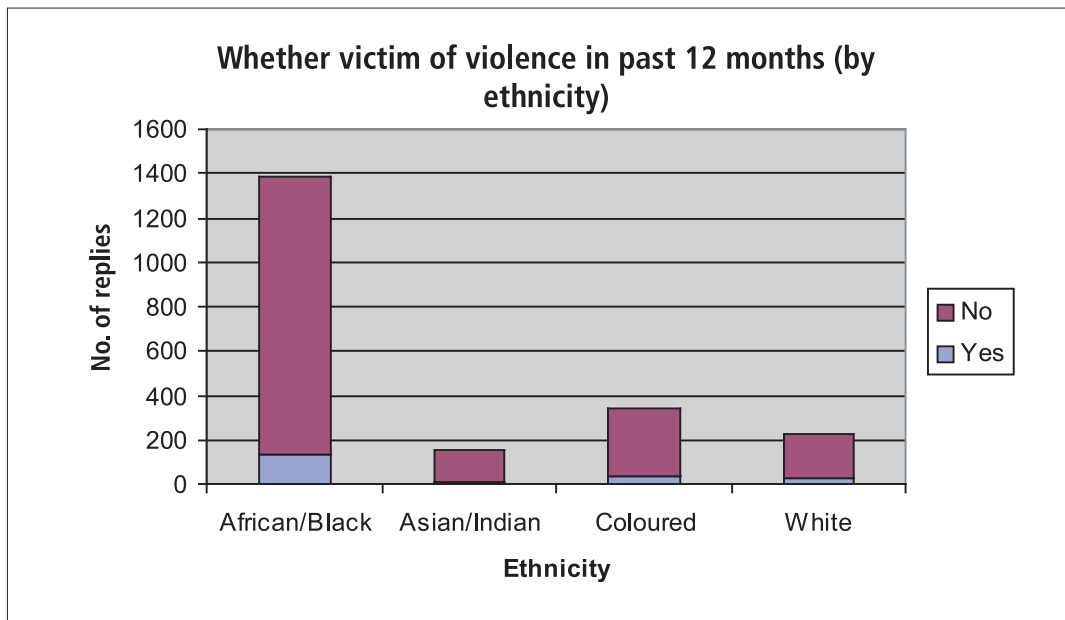
Only a slightly higher proportion of males than females were victims of some form of violence in the past 12 months. The vast majority of respondents answered 'no' to being a victim of violence.

Figure 1.39 Victims of violence by income



Despite large differences in the number of respondents from the lower and higher income levels, it is reasonable to suggest that the PSS survey respondents represented the extremely unequal income distribution of South Africa. Figure 1.39 shows that more people (in absolute terms) from the lowest income group experienced violence than that from other income groups.

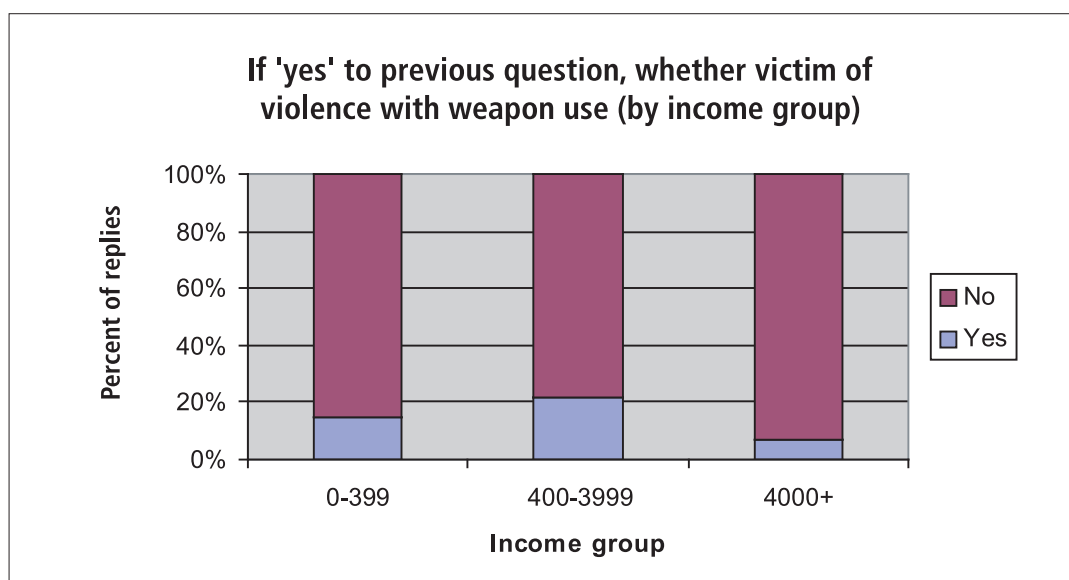
**Figure 1.40** Victims of violence by ethnicity



The trend is clear to see, where African/black people are more likely to be a victim of violence than any other ethnic group.

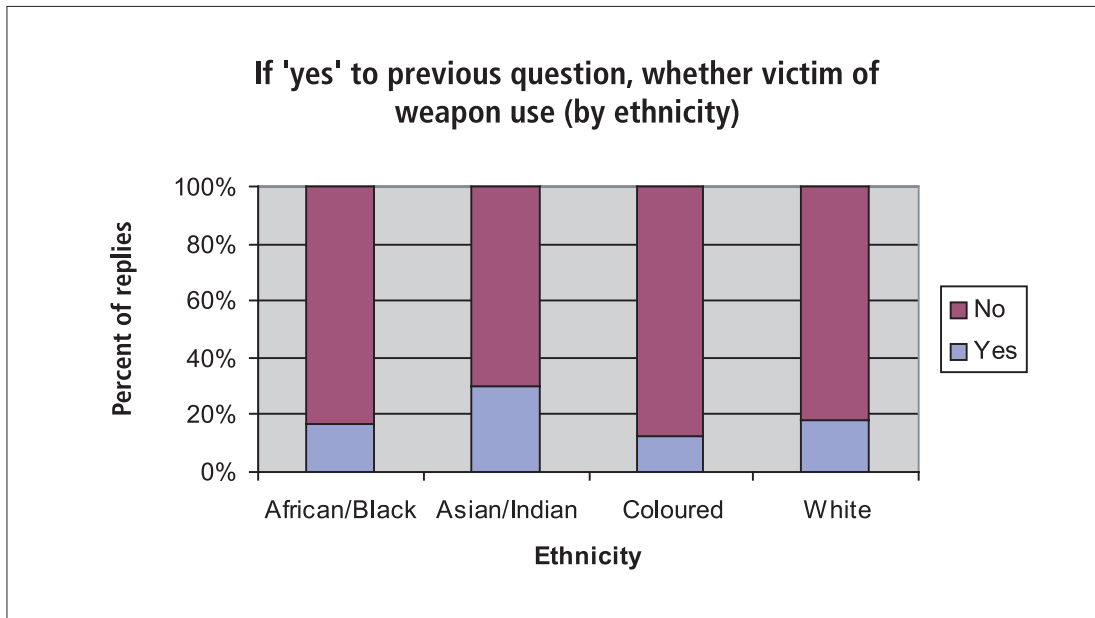
**Question** *If 'yes' to the previous question, what kind of violence?*

**Figure 1.41** Victims of weapon use by income



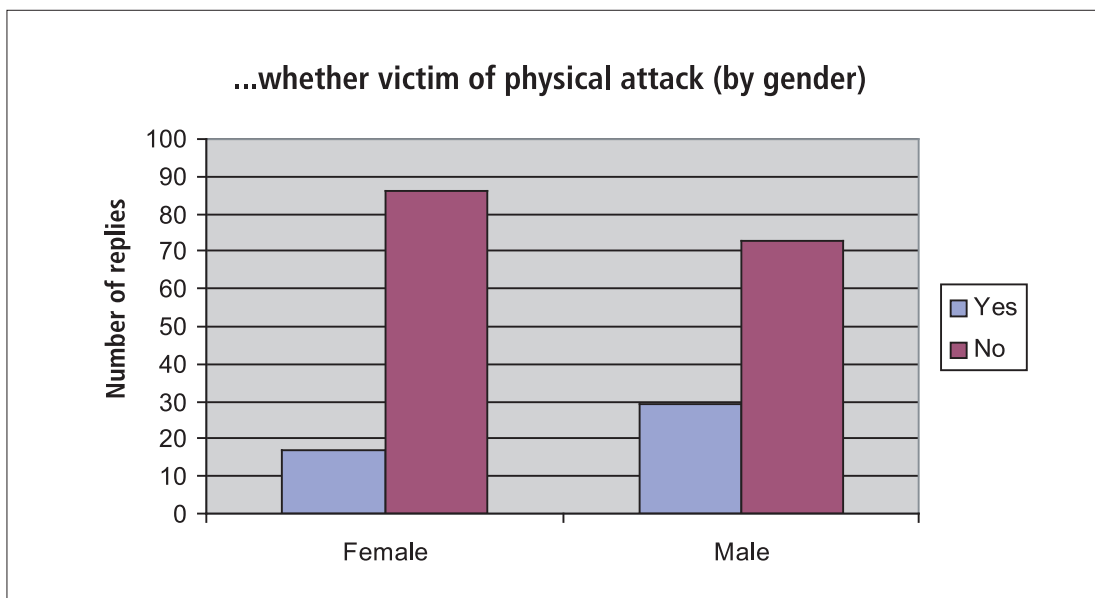
The middle income group answered proportionally more (over 20 percent) to being a victim of violence with the use of a weapon. The least at risk are the respondents who fall into the highest income group

**Figure 1.42** Victims of weapon use by ethnicity



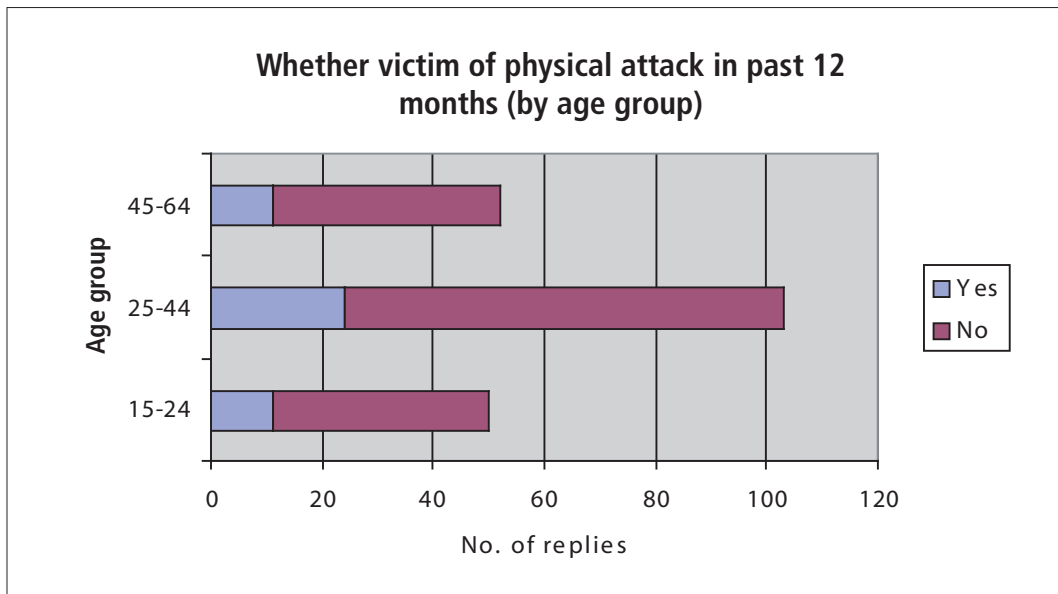
By ethnicity, Asian/Indian people answered proportionally more (30 percent) to being a victim of violence with a use of a weapon than any other ethnic groups.

**Figure 1.43** Victims of physical attack by gender



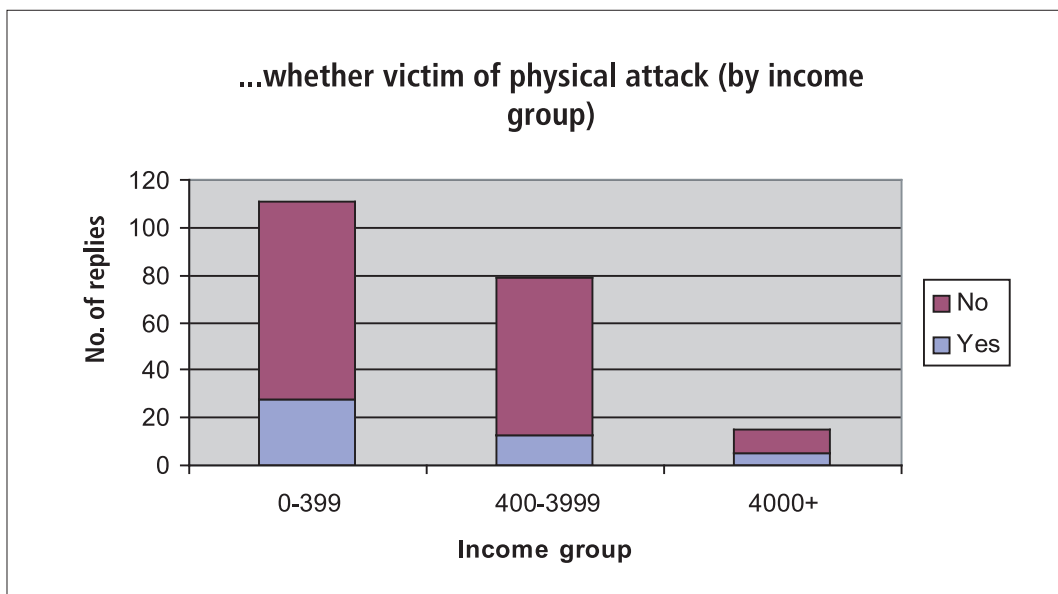
More males were victims of physical attack than females, both absolutely and relatively speaking.

**Figure 1.44** Victims of physical attack by age



Proportionately and in absolute terms, more respondents in the middle age group 25-44 were victims of physical attack (roughly 25 per cent) than in the other age groups.

**Figure 1.45** Victims of physical attack by income



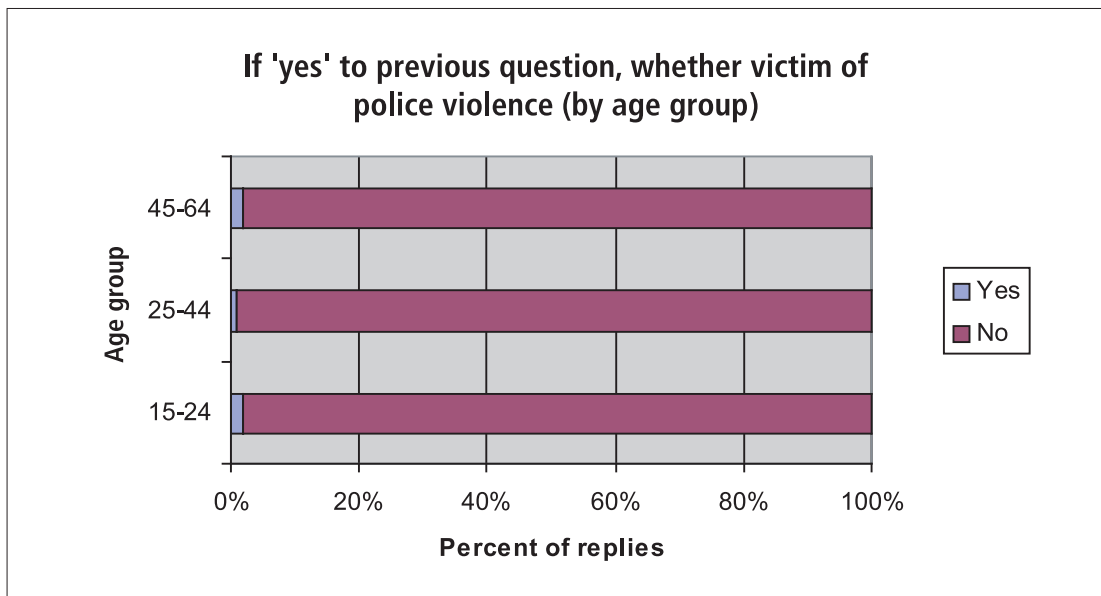
Respondents in the lowest income group suffered more from physical attack than other income groups. However relatively speaking, more respondents in the highest income group (4000+ Rand) were victims of physical attack than in the other groups.

**Figure 1.46** Victims of police violence by gender



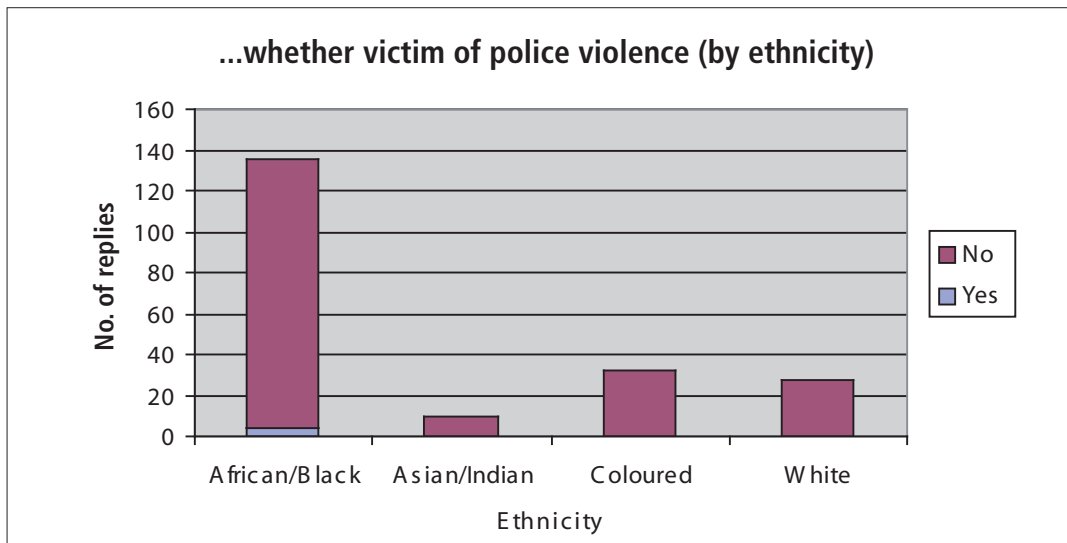
Unlike the general trend of victimisation, proportionally more females were victims of police violence than males.

**Figure 1.47** Victims of police violence by age



Those who answered yes to being a victim of police violence mainly fall into the lowest and highest age groups (15-24 and 45-64).

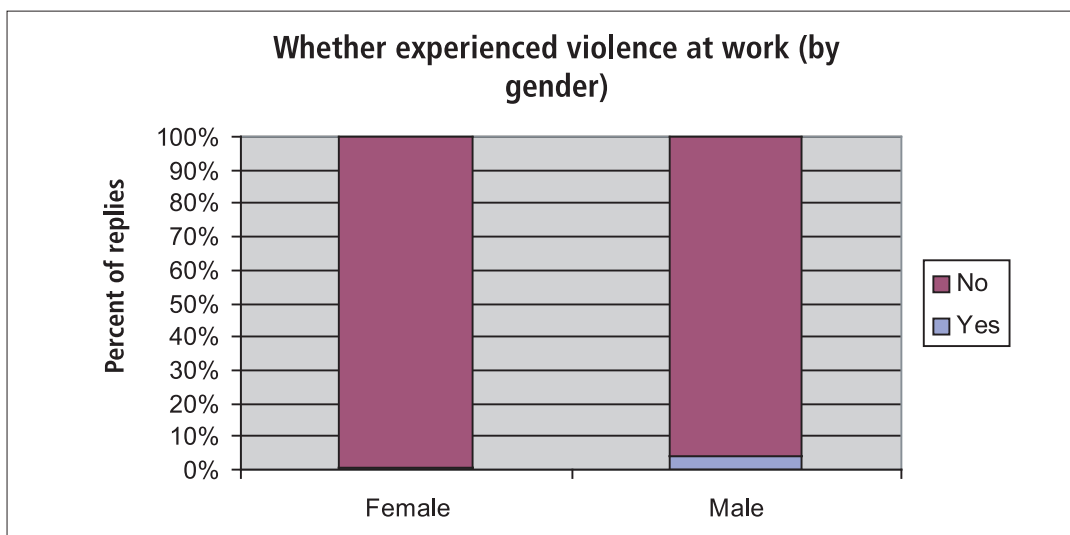
Figure 1.48 Victims of police violence by ethnicity



Only African/Black people answered 'yes' to being a victim of police violence, whilst there were no victims among other ethnic groups.

**Question:** *Have you ever been a victim of violence at work?*

Figure 1.49 Victims of violence at work by gender



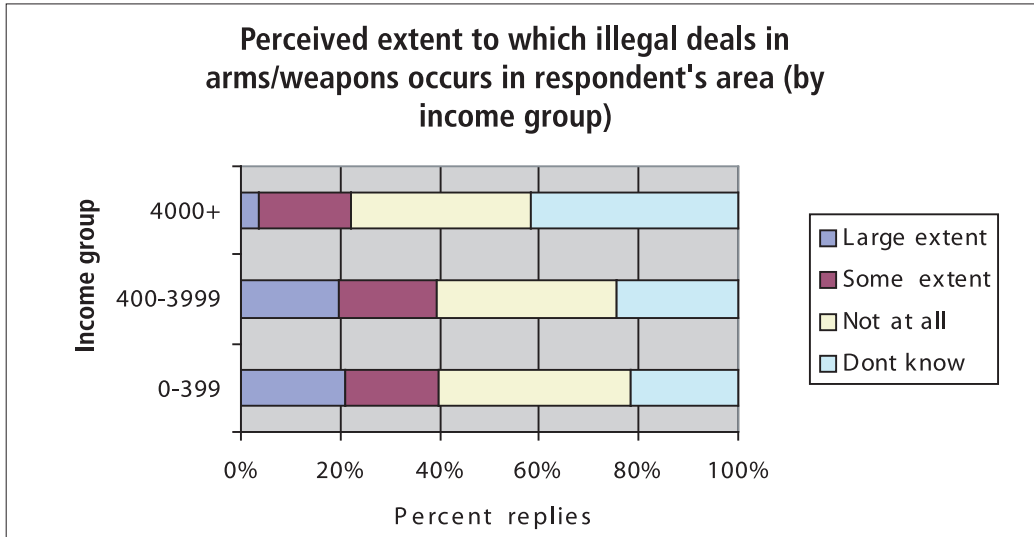
Proportionally more males (5 percent) were victims of violence at work than females (1 percent).

**Question** *Tell me to what extent do you think that each happens in your area. Do you think they happen to a large extent, some extent or not at all?*



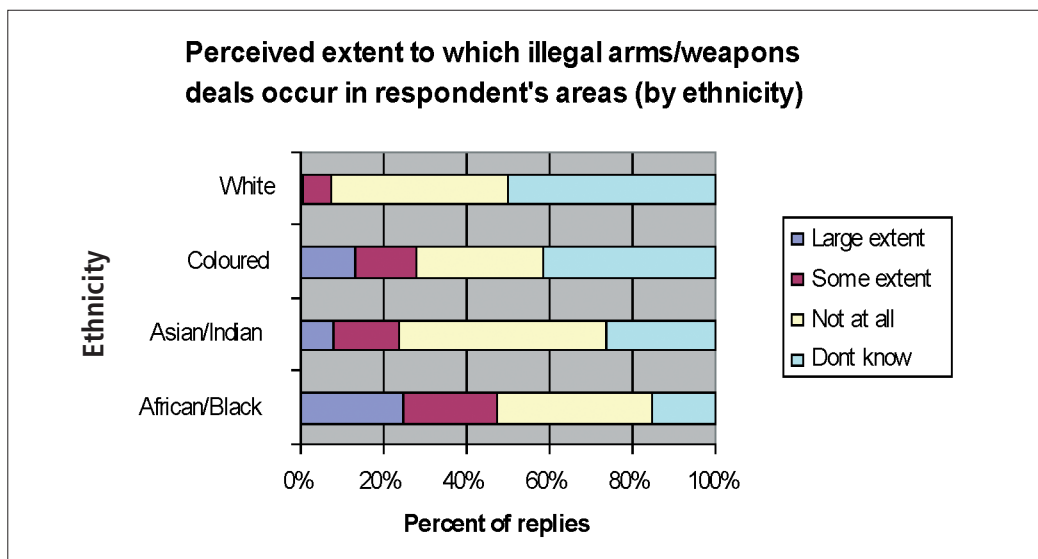
> *Illegal deals in arms/weapons:*

**Figure 1.50** Perception by income group of illegal deals in arms/weapons



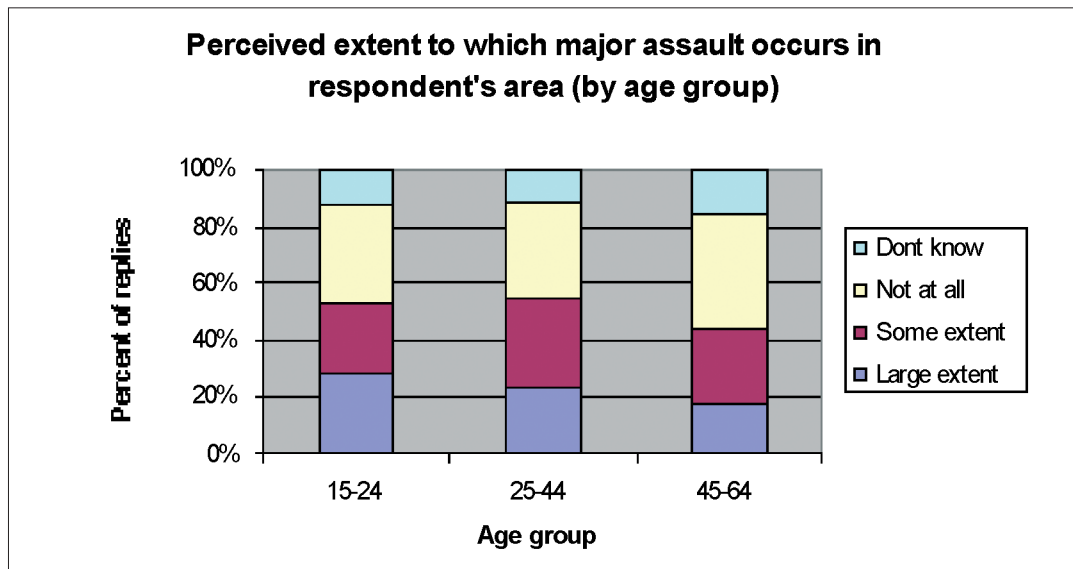
A smaller percentage in the highest income group thought illegal deals in arms/weapons took place in their area. However, the richer respondents also replied with 'don't know' more than others. About 20 percent of respondents from the other two income groups replied that they thought illegal deals in weapons occurred in their area.

**Figure 1.51** Perception by ethnicity of illegal deals in arms/weapons



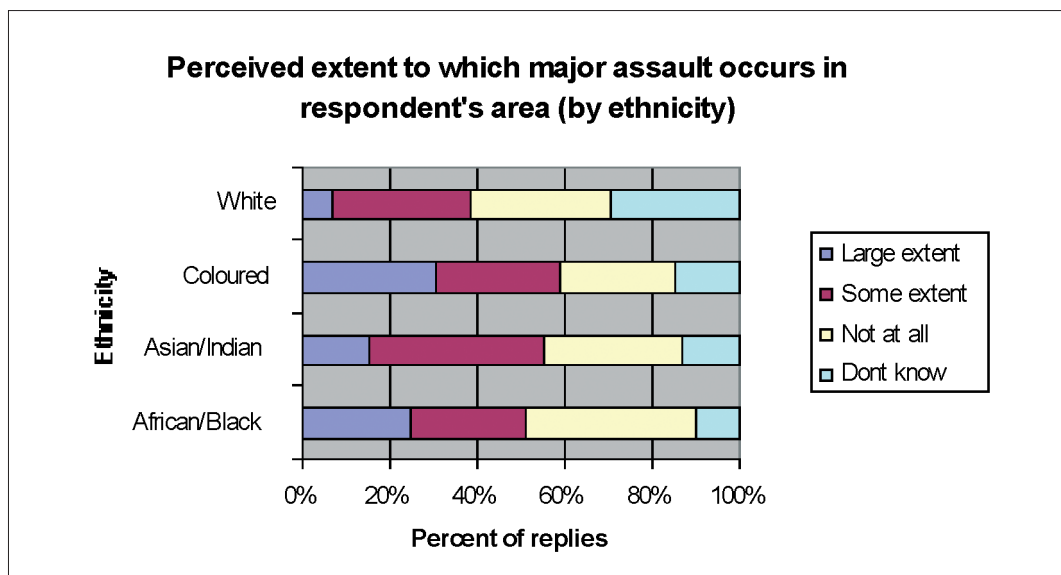
White people perceive illegal deals in weapons less often than other ethnic groups, with over 40 percent answering 'not at all'. African/Black respondents seem more aware of this activity since they reply least with 'don't know', and over 25 percent of them believe that weapon dealings occur to a large extent in their area.

Figure 1.52 Perception by age group of major assault



The extent to which people perceive major assault falls with age: nearly 30 percent of respondents between 15-24 believe major assault occurs to a large extent compared to less than 20 percent of respondents between 45-64.

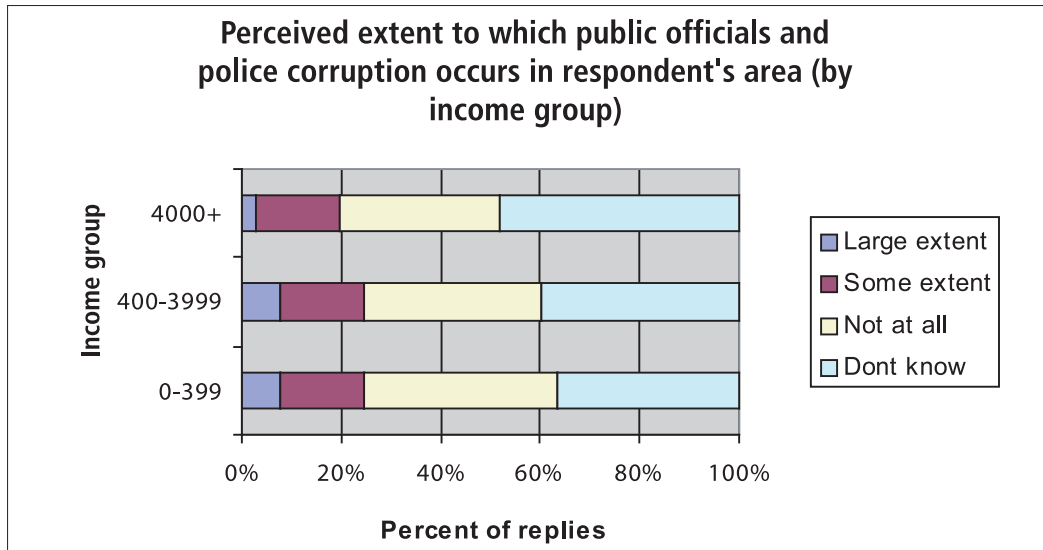
Figure 1.53 Perception by ethnicity of major assault



Over 30 percent of Coloured people answered 'large extent' when asked their opinion about major assault in their area. Proportionally speaking, this is three times the figure for White respondents.

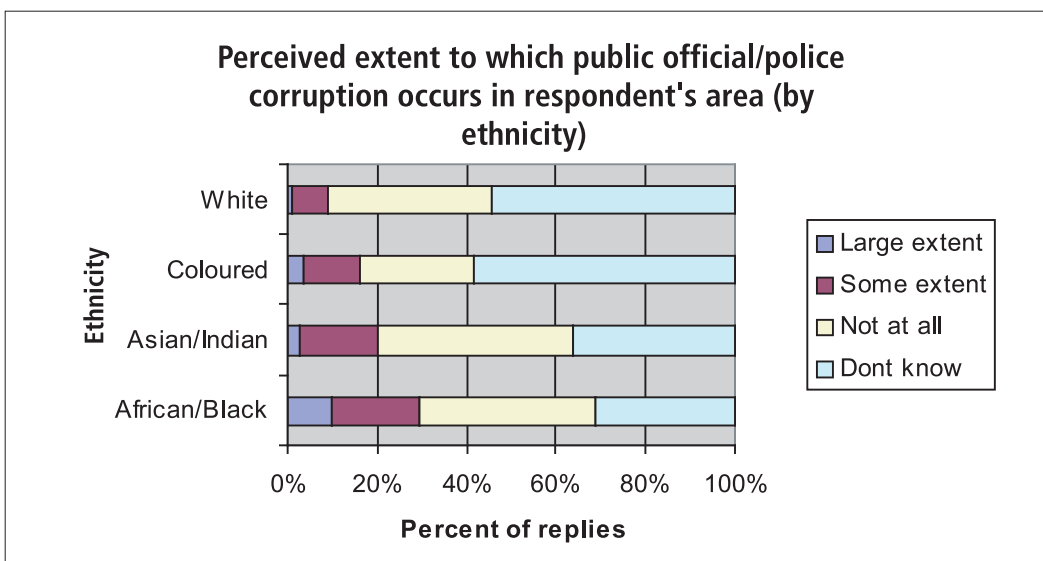
> **Public official/police corruption:**

**Figure 1.54 Perception by income group of corruption**



Respondents from the highest income group answered least with 'large extent' when asked about the extent to which public official/police corruption occurs in their area. The other income groups answered somewhat similarly.

**Figure 1.55 Perception by ethnicity of corruption**



Almost 10 percent of African/Black respondents answered 'large extent' compared to about 1 percent of Whites. However, there seems to be a general lack of perception of this activity as the majority answer among both the White and Coloured respondents was 'don't know'.

## 1.10 Summary and conclusions

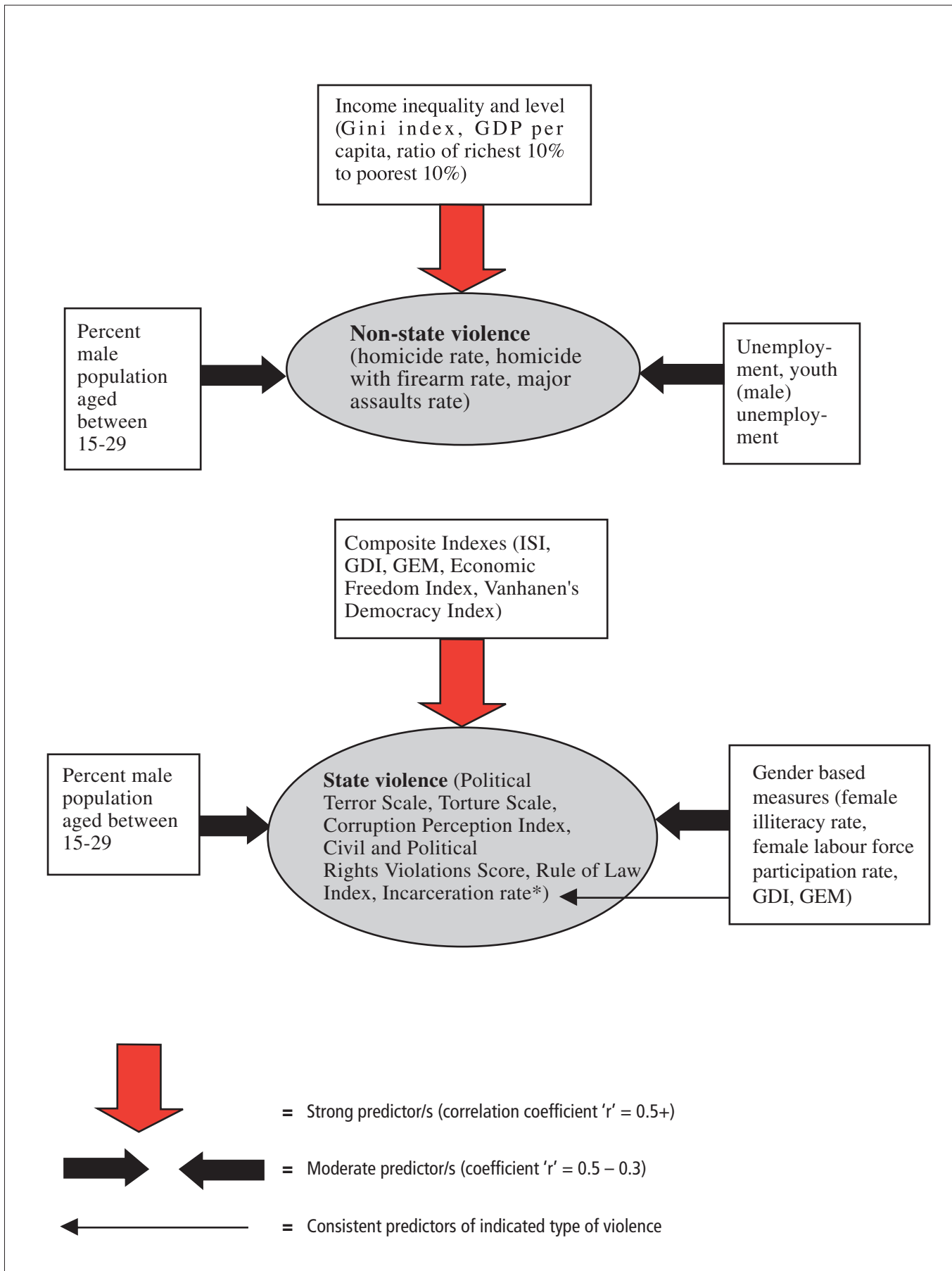
This exercise has attempted to compare many countries in order to draw inferences that have greater global applicability. The general finding is that there is an association between worse economic conditions and high levels of violence. However, we captured a broad range of socio-economic and violence variables to avoid being too categorical (e.g. poorer/unequal countries suffer more violence). Instead, analysing specific variables provides strong evidence that inequalities in income, gender development or education etc. explain to a small, moderate or high degree, the existence of specific types of violence. The consistency of the following key relationships between socio-economic and violence variables, enables us to conclude that minor inaccuracies in data are unlikely to have much affect on general inferences drawn from cross national studies.

- Measures of non-state violence (homicides, major assaults) are highly correlated with specific measures of income inequality (Gini ratios and GDP per capita) and economic development (electricity consumption). In other words, income inequality and economic development are strong predictors of the level of non-state violence: non-state violence is higher in countries where a high proportion of people are economically deprived.
- After income inequality, unemployment and youth (male) unemployment are the most consistent (moderate strength) correlates of non-state violence measures: non-state violence (homicides, major assaults) is higher in countries where unemployment, in particular youth (male) unemployment is higher.
- Measures of state violence (Political Terror Scale, Torture Scale, incarceration rate) are highly correlated with broader composite socio-economic indexes, e.g. ISI, GDI, GEM, Economic Freedom Index and Vanhanen's Democracy Index. As a single powerful explanatory socio-economic variable, income has a great influence on state violence as well as non-state violence.
- Gender-based measures are strong correlates of state violence measures: female literacy rates, female labour force participation, GDI and GEM influence incarceration rates. In other words, the greater empowerment and equality of women, the lower state violence and vice versa.
- Generally speaking, demographic variables (population density, population growth etc.) are not significant and not strong predictors of violence, whether state or non-state. However the variable 'males aged between 15-29 as a percent of the total population' is a consistent explanatory variable of state and non-state violence: the higher the percentage of young males, the greater the likelihood of violence.

In addition to the statistical correlations, the People's Security Surveys in Argentina and South Africa provide an invaluable insight into the socio-economic breakdown of respondents who have or have not experienced violence. The results reinforce the observations made at the macro level regarding income inequalities, economic development and differences in gender empowerment in and between countries as explanatory in analysing variations in the level and type of violence:

- Males are more likely to be a victim of any kind of violence than females, however in South Africa's case, there are proportionally more females who are victims of police violence than males.
- Respondents in the 24-44 age range are more likely to experience non-state and state violence than younger or older age groups. Respondents in the oldest age range 45-64 perceive there to be more violence than younger age groups.
- Those in the middle income bracket are more likely to experience non-state violence than other income groups. Strangely, they also perceive violence to be less of a problem. Those at the bottom income bracket are more likely to experience police violence and those at the top income bracket, least.
- Uneducated respondents are more likely to be a victim of any kind of violence and perceive violence to be more of a problem than those educated.
- Non-paid family workers and casual/seasonal workers are more likely to experience and perceive more violence than other occupational groups.
- Black people experience more violence (especially police violence) and generally perceive violence to be more of a problem than other ethnic groups.

Figure 1.56 Key relationships



As illustrated by the various matrixes throughout the study, relationships between socio-economic variables and violence clearly exist and coefficients have told us the direction (positive or negative) and strength of relationships. The use of robust levels of significance ( $p = 0.01$  and  $p = 0.05$ ) show us that the probability that the relationships highlighted above do not hold, is only between 1% and 5%. The correlations have revealed strong but statistically insignificant (not falling within 1% and 5% significance) relationships and conversely, weak but significant relationships. This study of statistical association cannot prove causal connections (e.g. state that socio-economic variables cause violence) however we have been able to disprove the statement that socio-economic variables have no effect on violence.

More importantly, based on our correlation findings, it is reasonable to suggest that influencing socio-economic development and inequality may be a realistic strategy to provoke change in the levels of violence both non-state and state. The relationships identified in this study have important policy repercussions in that addressing explanatory variables of violence such as inequality in income and gender is a possible avenue for addressing levels of violence. One can speculate that the potential for state and non-state violence is great in a country that has a combination of high income inequality, low economic development, low gender equality and a high percentage of males among its population. These factors do not explain all incidences of our chosen specific measures of violence since there are undoubtedly other factors involved, however they do symbolise/represent greater issues that explain violence to a great extent. For example, based on the findings under incarceration rates, investing in education (measured by literacy rates) can influence female labour force participation which in turn influences gender equality politically, socially and economically.

Diminishing the potential for violence has no quick fix solution, it requires long term socio-economic planning. Provoking change through fostering international compliance with human rights standards is an option open to policymakers, but the gap between what is claimed in principle and what is observed in practice will remain. One such example is torture. Torture is illustrative of one of many salient forms of violence, and compiling and analysing data on this was crucial for this study, even more so when its prohibition is proclaimed internationally. However, countries that ratify conventions on torture do not necessarily have better human rights ratings<sup>19</sup>.

Many interesting variables have not been examined and further analysis requires greater systematic analysis of existing data, allowing better understanding of the context of violence and socio-economic development. A more exhaustive analysis could

strengthen causal inferences but this would require more data and multivariable/multivariate analysis. Even so, this unpretentious study has been generally theory affirming, that is, in accordance to what a large body of existing literature purports – inequality lies at the root of violence.

In sum, the realisation of human rights for all will become increasingly difficult in a climate of violence, which is antithetical to the notion of rights, whether they be economic, social, cultural or political. Violence can undermine people's spiritual and material well-being, compromise human dignity and create a climate of fear that endangers personal security and erodes the quality of life. Living conditions that would permit people to lead peaceful and secure lives require good governance, whereby a state is willing to provide a political and socio-economic enabling environment. Conversely, bad governance can worsen social conditions that contribute to a rise in violence where the fruits of political and socio-economic development are not equitably distributed among the people.

19 Hathaway, O. A. *Do treaties make a difference?* Yale Law Journal 111, June 2002.

## References

- Amnesty International (2003). *Annual Report 2003*. London: Amnesty International.
- Ball, P., Asher, J. Sulmont, D. & Manrique.2003. *How many Peruvians have died?* Report written for the American Association for the Advancement of Science.
- Banks, D. L. 1986. "The Analysis of Human Rights Data over Time". *Human Rights Quarterly* 8, No. 4 (Nov 1986): 667, 669.
- Banks, D.L. 1992. "New Patterns of Oppression: An Updated Analysis of Human Rights Data". In *Human Rights and Statistics: Getting the Record Straight*, ed. Richard P. Claude. Philadelphia: University of Pennsylvania Press.
- Casper, G. & Tufis, C. 2002. "Correlation versus interchangeability: The limited robustness of empirical findings on democracy using highly correlated datasets". *Political Analysis* 11: 2.
- CIA (2003). *Country Factbook 2003*. <http://www.cia.gov/cia/publications/factbook/> (visited Nov. 2003).
- Cingranelli, D & Richards, D. 1999. "Measuring the Level, Pattern and Sequence of Government Respect for Physical Integrity Rights" *International Studies Quarterly* 43: 409-10.
- Deininger, K. & Squire, L. 1996. "A New Dataset Measuring Income Inequality". *The World Bank Economic Review* 10 (3): 565-592.
- Demombynes, G. & Ozler, B. 2002. *Crime and Local Inequality in South Africa*. Washington: World Bank Policy Research Working Paper 2925.
- Edward M. & Seligson, M. 1987. "Inequality and Insurgency". *American Political Science Review* 425, 436.
- Edward M. & Seligson, M. 1993. "Inequality and Political Violence Revisited". *American Political Science Review* 87, No. 4. pp.979.
- Election World. 2003. *Elections Around the World*. <http://www.electionworld.org> (visited Nov. 2003).
- Fajnzylber, P., Lederman, D. & Loayza, N. 1998. *Determinants of Crime Rates in Latin America and the World*. Washington: The World Bank.
- Fajnzylber, P., Lederman, D. & Loayza, N. 2001., forthcoming. "What Causes Violent Crime?" *European Economic Review*.
- Fajnzylber, P., Lederman, D. & Loayza, N. 2001., forthcoming. "Inequality and Violent Crime". *The Journal of Law and Economics*.
- Fleisher, B. 1966. "The Effect of Income on Delinquency". *American Economic Review* 56: 118-137.
- Frasier Institute. 2003. *Economic Freedom of the World Index*. <http://www.freetheworld.com> (visited Dec. 2003).
- Freedom House. 2003. *Freedom in the world: The annual survey of political rights and civil liberties 2003*. New Brunswick: Transaction Publications.
- Glaeser, E. & Sacerdote, B. 1999, forthcoming. "Why is there more crime in cities?" *Journal of Political Economy*.
- Green, M. 2001. "What we talk about when we talk about indicators: Current approaches to human rights measurement". *Human Rights Quarterly* 23: 1062-1097.
- Gurr, T.R. 1970. *Why Men Rebel*. Princeton: Princeton University Press.
- Hathaway, O. A. 2002. *Do treaties make a difference?* *Yale Law Journal* 111, June 2002.
- Institute for Democracy and Electoral Assistance (IDEA). *Voter Turnout* [http://www.idea.int/vt/country\\_view.cfm](http://www.idea.int/vt/country_view.cfm) (visited Nov. 2003).
- ILO 2003. Key Indicators of the Labour Market (KILM) 2003. (CD-ROM) Geneva.
- ILO 2001. *Stopping forced labour*. International Labour Conference, 89<sup>th</sup> Session 2001, Report I (B). Geneva.
- International Criminal Police Organization (Interpol). 2000. *International Crime Statistics* (Paris).
- International Parliamentary Union. 2003. *Parliamentary Election Data*. <http://www.ipu.org> (visited Oct. 2003).
- Jabine, T. & Claude, R. 1992. *Human Rights and Statistics: Getting the Record Straight*. Pennsylvania: University of Pennsylvania Press.

- Kaufmann, D., Kraay, A., and Mastruzzi, M. 2003. "Governance Matters III: Governance Indicators for 1996-2002". Washington: World Bank Policy Research Department Working Paper.
- Kaufmann, D., Kraay, A., and Zoido-Lobaton, P. 1999. *Aggregating Governance Indicators*. Washington: World Bank Policy Research Department Working Paper 2195.
- Landman, T. 1999. "Economic Development and Democracy: the View from Latin America". *Political Studies* XLVII 607-626.
- Landman, T. 2002. "Comparative Politics and Human Rights". *Human Rights Quarterly* 24: 890-923.
- Landman, T. 2002. *Measuring Human Rights: Principle, Practice and Policy*. Paper prepared for the Seminar on Statistics and Human Rights, Brussels 27-29 Nov. 2002.
- Landman, T. and Hausermann, J. 2003. *Map-making and analysis of the main international initiatives in developing indicators for democracy and good governance*. Report submitted to Eurostat.
- Moser, C. & Winton, A. 2002. *Violence in the Central American Region: Towards an Integrated Framework for Violence Reduction*. London: ODI Working Paper 171.
- Moser, C. & McIlwaine, C. 1999. "Participatory Urban Appraisal and its Application for Research on Violence". *Environment and Urbanisation* Vol.11, No.2 203-226.
- Nafziger, W. 1996. *The Economics of Complex Humanitarian Emergencies: Preliminary Approaches and Findings*, The United Nations University/World Institute for Development Economics Research, Working Papers No. 119.
- Newman, G. 1998. "Advance in Comparative Criminology: The United Nations Global Report on Crime and Justice" paper presented at the International Conference on *Surveying Crime: A Global Perspective*, Rome.
- OMCT 2002. *Annual Report 2002*. Geneva.
- Park, H. 1987. "Correlates of Human Rights: Global Tendencies". *Human Rights Quarterly* 9: 405-413.
- PIOOM. 2002. *World Conflict & Human Rights Map 2001/2002*. [http://www.fsw.leidenuniv.nl/www/w3\\_liswo/pioom.htm](http://www.fsw.leidenuniv.nl/www/w3_liswo/pioom.htm) (visited January 2004)
- Poe, S. & Tate C. N. 1994. "Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis". *American Political Science Review* Vol. 88, No.4 pp.853.
- Rahav, G. & Jaamdar, S. 1982. Development and Crime: A Cross-National Study. *Development and Change* Vol. 13 447-462.
- Sano, H. O. 2000. "Civil and Political Rights Violations" in *Human Rights Indicators 2000*. Copenhagen: Danish Centre for Human Rights.
- Transparency International. 2003. *Corruption Perception Index 2003*. [www.transparency.org/cpi/2002/cpi2002/en.html](http://www.transparency.org/cpi/2002/cpi2002/en.html) (visited Oct. 2003).
- UN. 2001. *Indicators of Sustainable Development: Guidelines and Methodologies*. New York: UN.
- UNDP. 2000, 2002, 2003. *Human Development Report 2000, 2002, 2003*. New York: UN.
- UNDP. 2000. *National Human Development Report for South Africa 2000*. New York: UN.
- UNICRI. 2000. *International Crime Victimization Surveys*. [http://www.unicri.it/icvs/publications/pdf\\_files/key2000i/app4.pdf](http://www.unicri.it/icvs/publications/pdf_files/key2000i/app4.pdf) (visited Nov. 2003)
- UNODC.(2000. *UN World Crime Survey (Seventh edition)* [http://www.unodc.org/unodc/en/crime\\_cicp\\_survey\\_seventh.html#responses](http://www.unodc.org/unodc/en/crime_cicp_survey_seventh.html#responses) (visited Oct. 2003)
- U.S. Bureau of Census 2004. *International Database* <http://www.census.gov/ipc/www/idbacc.html> (visited March 2003)
- Vanhanen, T. 1997. *The Prospects of Democracy*. London: Routledge.
- Vanhanen, T. 2000. Polyarchy Dataset 1999-2000.
- World Bank. 2002, 2003. *World Development Indicators (CD-ROM)*. Washington.



**Appendix A: Countries used for correlations**

1. Argentina
2. Armenia
3. Australia
4. Azerbaijan
5. Belarus
6. Bulgaria
7. Canada
8. Chile
9. Colombia
10. Costa Rica
11. Cote D'Ivoire
12. Czech Rep
13. Denmark
14. Dominica
15. Estonia
16. Finland
17. France
18. Georgia
19. Germany
20. Greece
21. Hong Kong
22. Hungary
23. Iceland
24. India
25. Indonesia
26. Ireland
27. Italy
28. Jamaica
29. Japan
30. Korea, Rep
31. Kyrgyzstan
32. Latvia
33. Lithuania
34. Macedonia
35. Malaysia
36. Mauritius
37. Mexico
38. Moldova
39. Netherlands
40. New Zealand
41. Norway
42. Papua New Guinea
43. Poland
44. Portugal
45. Romania
46. Russian Fed
47. Saudi Arabia
48. Slovakia
49. Slovenia
50. South Africa
51. Spain
52. Switzerland
53. Thailand
54. Tunisia
55. Ukraine
56. United Kingdom
57. United States
58. Uruguay
59. Uzbekistan
60. Venezuela
61. Yemen
62. Zambia
63. Zimbabwe



## Appendix B: Construction of Corruption Perception Index and Rule of Law Index

### > *Corruption Perception Index*

See <http://www.transparency.org/cpi/2003/dnld/framework.pdf>

### > *Rule of Law Index*

Several indicators which measure the extent to which agents have confidence in and abide by the rules of society are included: perceptions of the incidence of crime, the effectiveness and predictability of the judiciary, and the enforceability of contracts. Considered together, these indicators measure the success of a society in developing an environment in which fair and predictable rules form the basis for economic and social interactions, and importantly, the extent to which property rights are protected.

### > *Sources of governance data*

- Cross-Country Surveys of Firms: Global Competitiveness Survey, World Business Environment Survey, World Competitiveness Yearbook, Business Environment and Enterprise Performance Survey (BEEPS).
- Cross-Country Surveys of Individuals: Gallup International, Latinobarometro, Afrobarometer
- Expert Assessments from Commercial Risk Rating Agencies: DRI, PRS, EIU, World Markets Online
- Expert Assessments from NGOs, Think Tanks: Reporters Without Borders, Heritage Foundation, Freedom House, Amnesty International
- Expert Assessments from Governments, Multilaterals: World Bank CPIA, EBRD, State Dept. Human Rights Report

### > *Ingredients for Rule of Law Index*

a) Surveys of firms and topic of questions asked:

- BEEPS *Courts Honest? Crime? Property rights protected?*
- Global Competitiveness Survey *Crime, money laundering, judicial independence, protection of financial assets*
- World Competitiveness Yearbook *Justice fairly administered, personal security and private property protected*

b) Surveys of individuals and topic of questions asked:

- Gallup *Trust in legal system*

- Risk Rating Agencies
- BERI *Contract enforcement*
- DRI *Costs of crime, enforceability of contracts*
- EIU *Costs of crime, enforceability of contracts, property rights protection*
- PRS *Law and order*
- World Markets Observer *Judicial independence, crime*
- Think Tanks
- Freedom House *Rule of law*
- Heritage Foundation *Property rights, black market activity*
- Governments
- State Dept Human Rights Report *Judicial independence*

See also:

[HTTP://WWW.WORLDBANK.ORG/WBI/GOVERNANCE/PDF/GOV-MATTERS3.PDF](http://www.worldbank.org/wbi/governance/pdf/gov-matters3.pdf) (pages 8-12).

### > *Aggregation methodology involved in the construction of this index:*

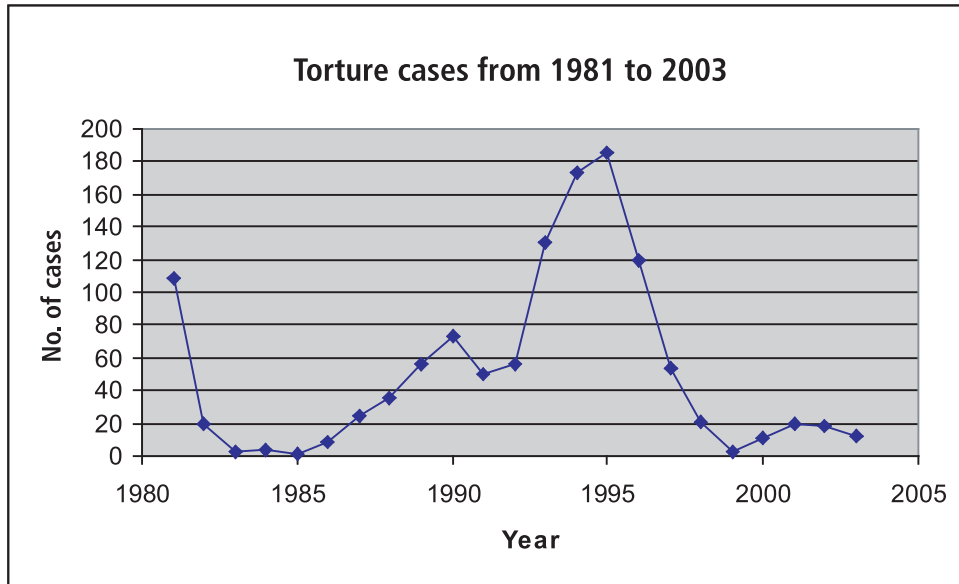
- Unobserved Components Model (UCM) is employed to aggregate the various responses in the broad 6 clusters. This model treats the "true" level of governance in each country as unobserved, and assumes that each of the available sources for a country provides noisy signals of the level of governance.
- Estimate of governance: weighted average of observed scores for each country, re-scaled to common units.
- Weights are proportional to precision of underlying data sources. Precision depends on how strongly individual sources are correlated with each other.
- Margins of error reflect (a) number of sources in which a country appears, and (b) the precision of those sources. The resulting estimates of governance have an expected value (across countries) of zero, and a standard deviation (across countries) of one. This implies that virtually all scores lie between -2.5 and 2.5, with higher scores corresponding to better outcomes.



**Appendix C: Data sent by partners from Egypt and South Africa**

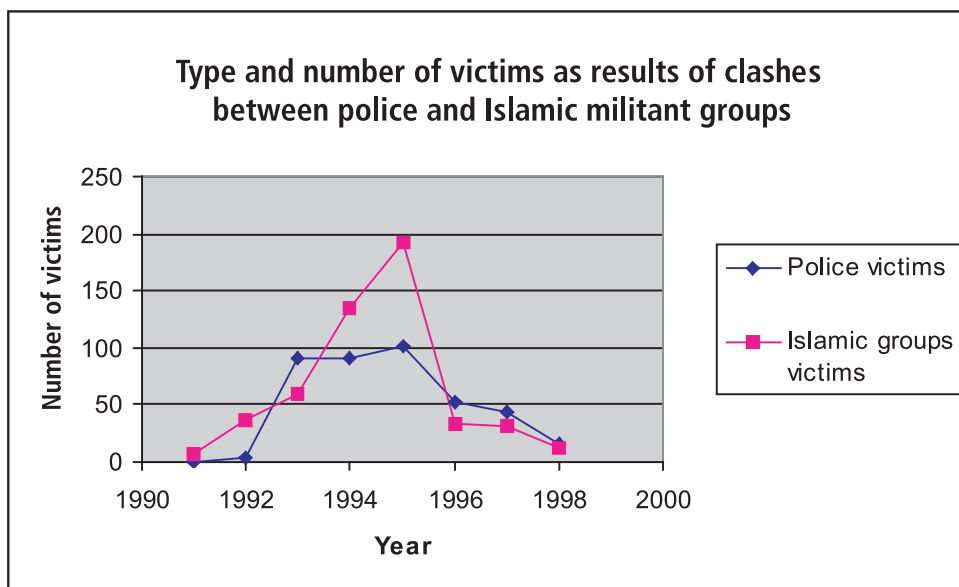
> **State violence in Egypt (Land Centre for Human Rights - LCHR)**

The Human Rights Association and Assistance for Prisoners monitored 1124 cases concerning torture over 1981 – 1999.



Source: LCHR

The number of torture cases peaked at over 180 in 1995. This does not necessarily mean that 1995 was the most violent year in terms of state torture or political violence, but that there were more reported cases for torture and reported deaths as a result of fighting between the police and Islamic groups in 1995 than any other year for Egypt.



Source: The Human Rights Association for the Assistance of Prisoners

The phenomenon of forced disappearances is relatively new to Egypt and is a form of state violence that is not practised as widely as torture and detention. Nonetheless there have been several well recorded cases of forced disappearance and it is rea-

sonable to suggest that fear of state reprisals is possibly a factor in explaining the low numbers of complaints regarding forced disappearances either by the victim themselves or victim's families.

Year	No. of cases of forced disappearance	Share of responsibility		
		Police percent	State security percent	Unidentified security agencies percent
1992	4	50	50	
1993	4	75	25	
1994	8	12.5	87.5	
1995	8	12.5	87.5	
1996	13	23	46	31
1997	10	50	40	10
1998				
1999				
2000	3	100		
2001	2		100	

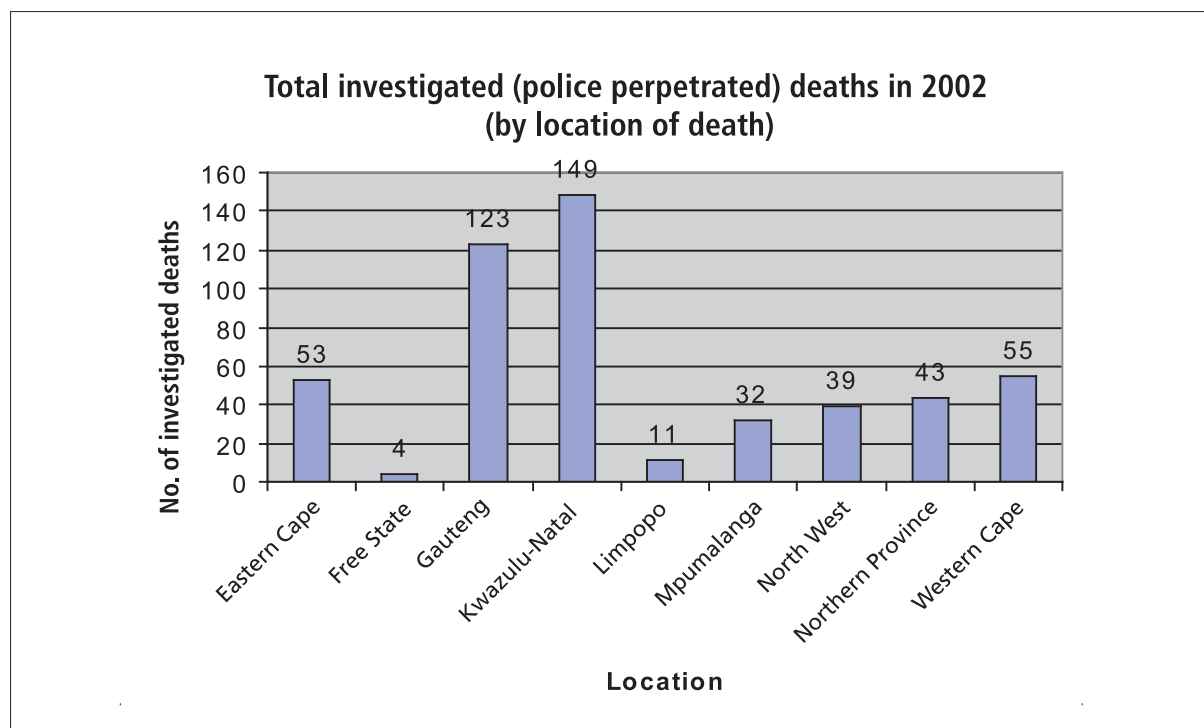
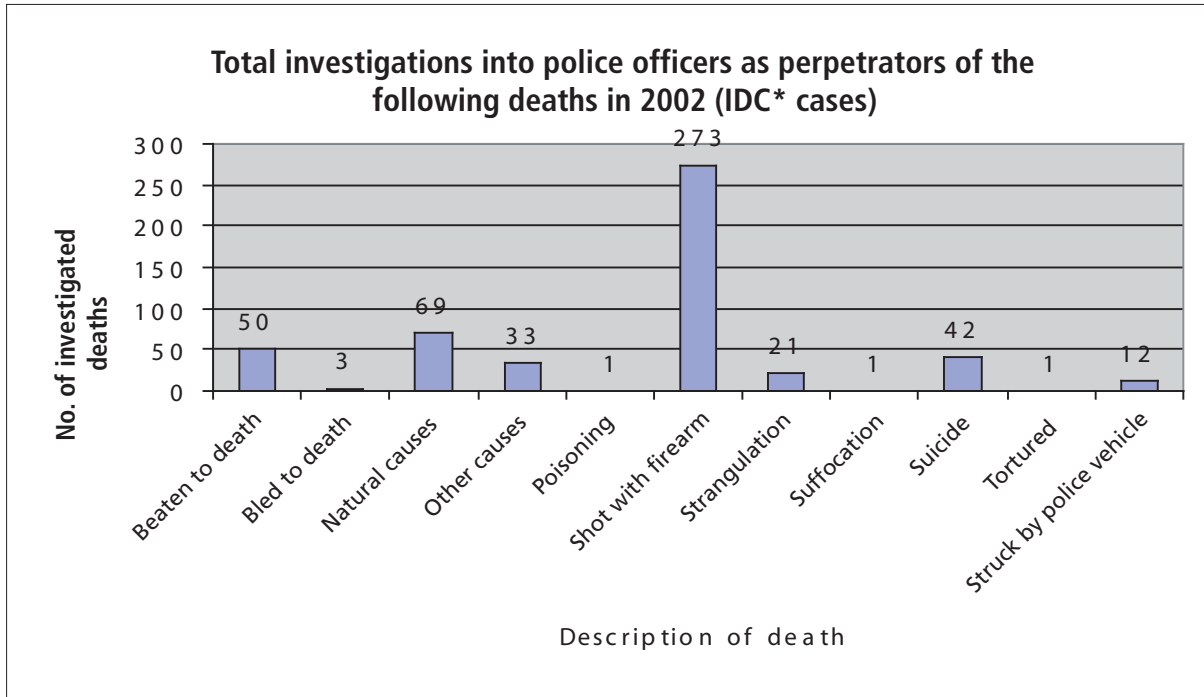
Source: EOHR annual reports of 2001, 2000, 1996, 1991, 1990 and the report by the Human Rights Association for the Assistance of Prisoners, 2001

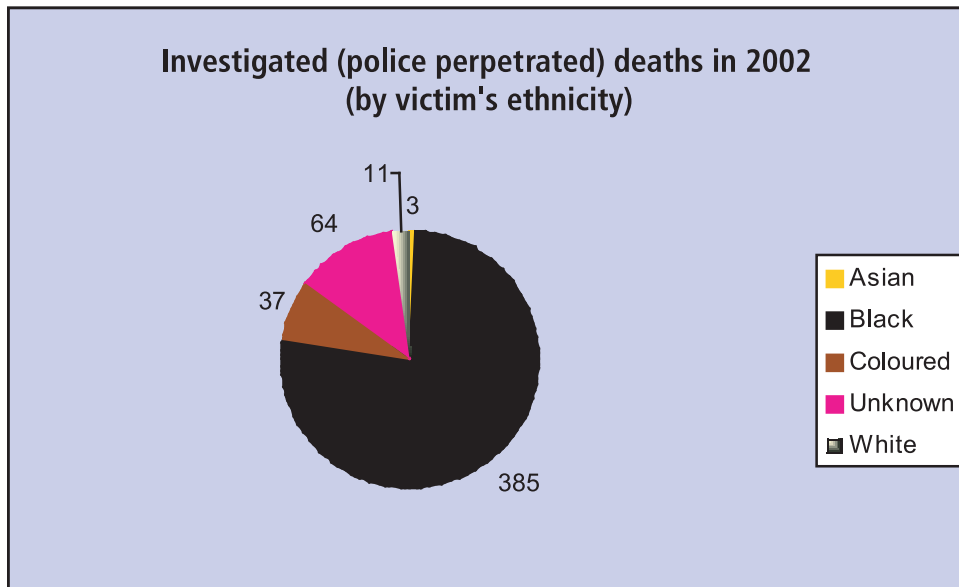
Another noteworthy phenomenon is temporary forced disappearance facing many detainees. According to the data provided by the Committee for Defending Democracy, the number of detainees is estimated at 20,000. The vast majority of such detainees are not allowed to contact their families or to inform them that they have been detained. Moreover, the authorities refuse to provide the families with any information about such

detainees, particularly during the period of detention prior to the issuance of the detention decision. Accordingly, the detainee spends a period of time where he/she is under forced disappearance before family members are given information concerning the detainee or how to contact him/her. A total of 52 cases of coercive disappearance have been monitored from 1992 to 2001.

> **State Violence in South Africa (Human Rights Institute of South Africa – HURISA)**

The Independent Complaints Directorate (ICD) is responsible for investigations into SAPS (police) members as the perpetrators of various criminal activities.

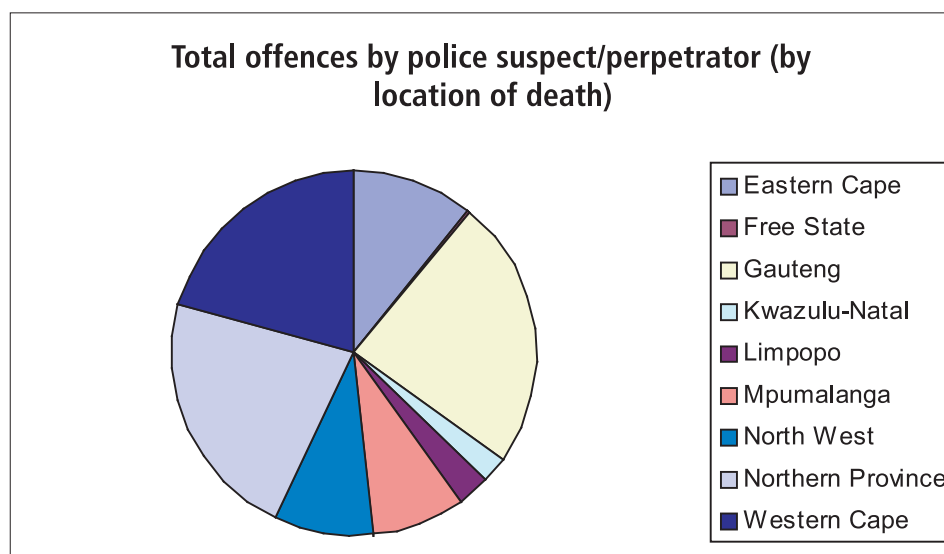
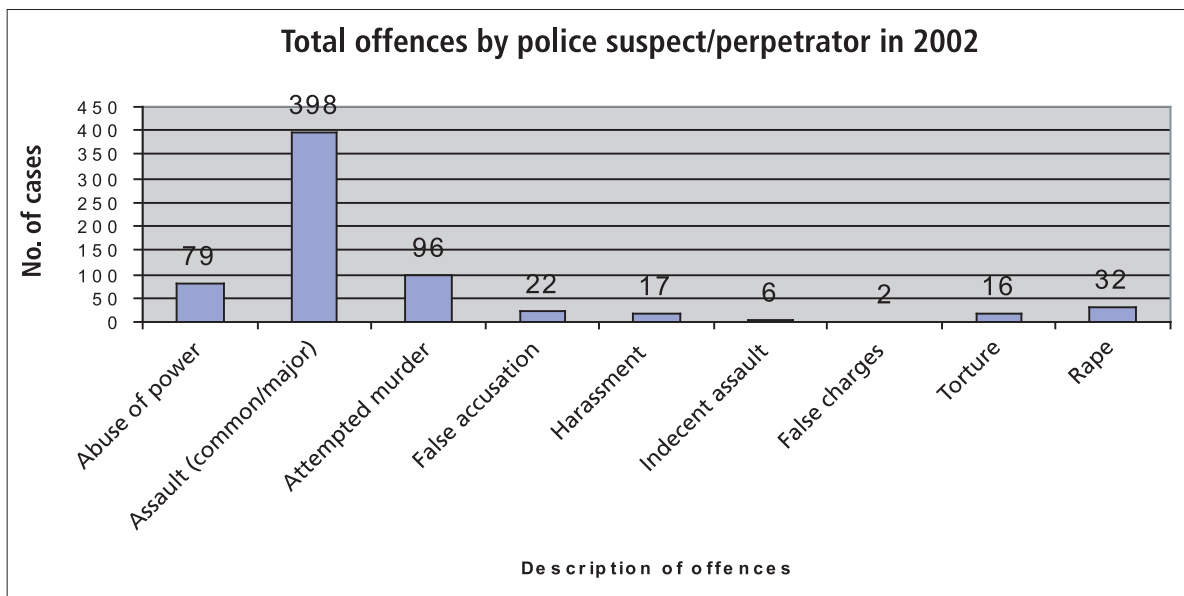


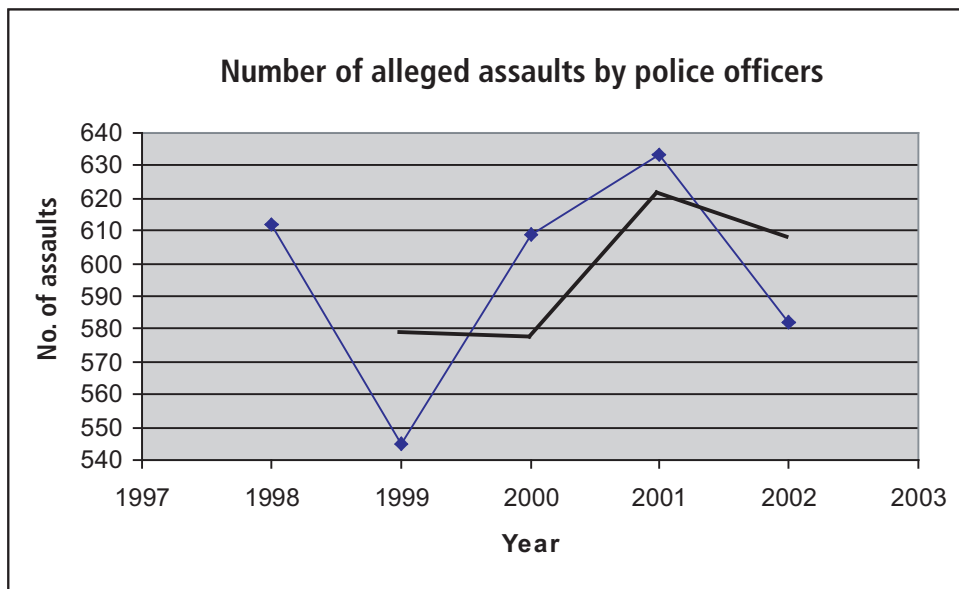
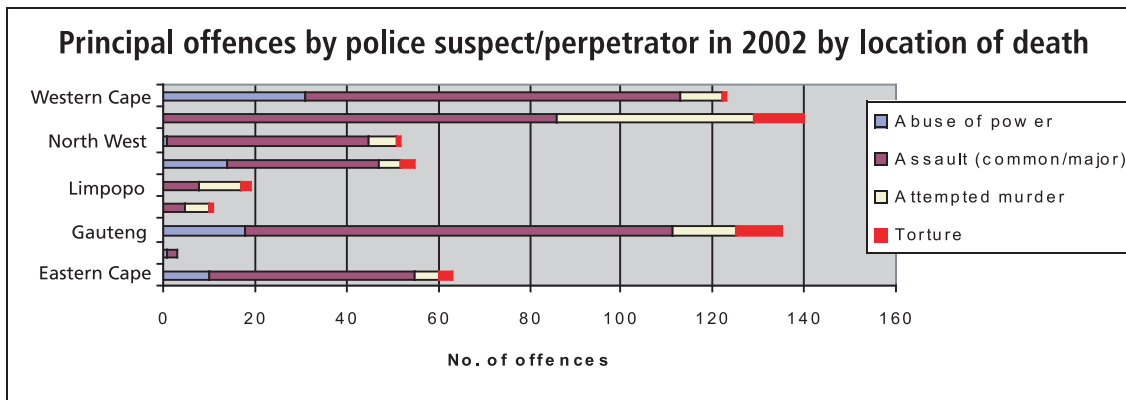


Description of death	Victim's ethnicity			
	Asian	Black	Coloured	White
Beaten to death	1	32	7	0
Bled to death	0	3	0	0
Natural causes	0	50	5	3
Other causes	0	26	0	3
Poisoning	0	1	0	0
Shot with firearm	1	223	9	1
Strangulation	0	11	6	3
Suffocation	0	1	0	0
Suicide	0	30	6	1
Tortured	0	1	0	0
Struck by police vehicle	1	5	4	0



Victim's gender		
	Female	Male
Beaten to death	1	48
Bled to death	0	3
Natural causes	6	57
Other causes	3	29
Poisoning	0	1
Shot with firearm	16	247
Strangulation	4	17
Suffocation	0	1
Suicide	1	36
Tortured	0	1
Struck by police vehicle	4	7



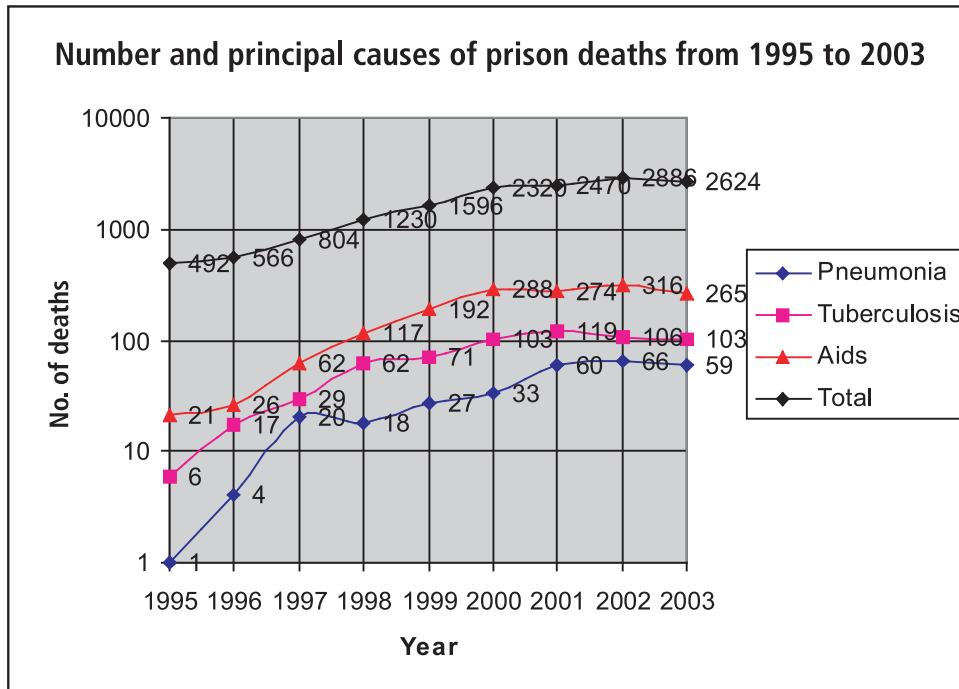


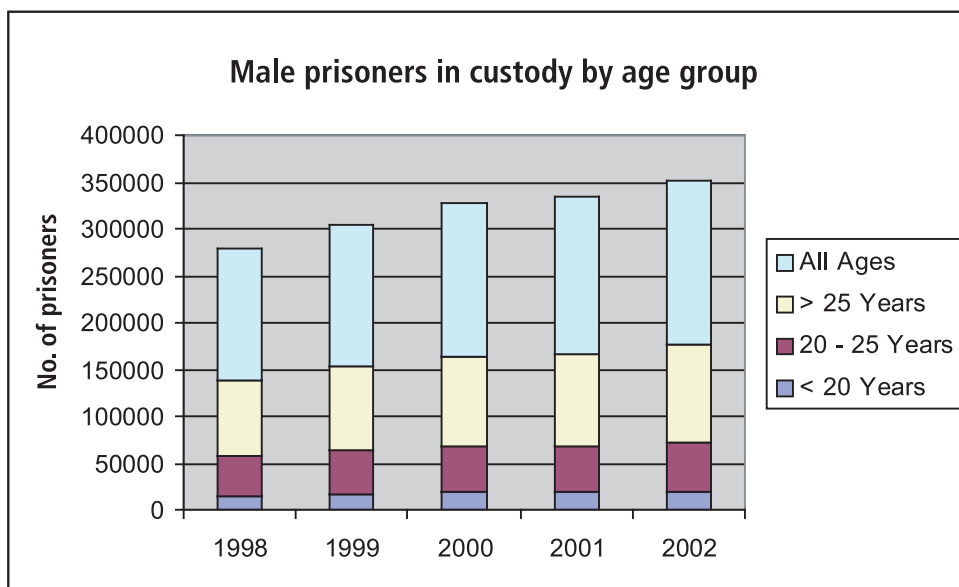
Crimes reported to the Military Police Agency

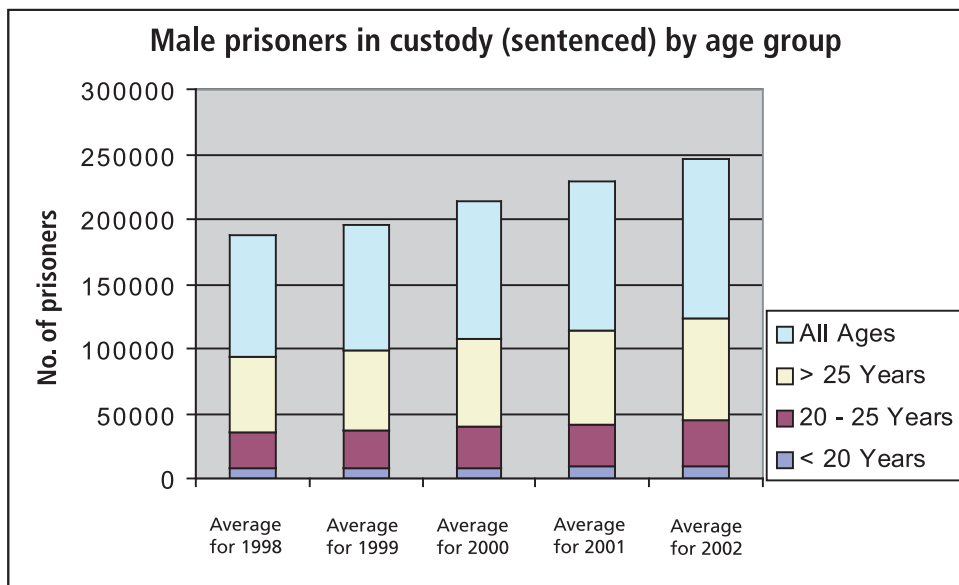
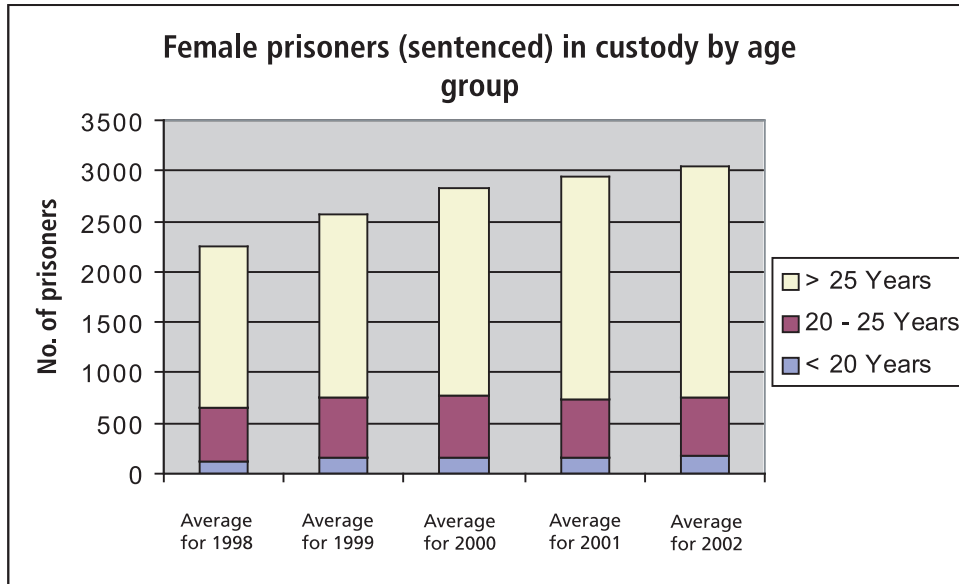
Crime Description	Year				
	1998	1999	2000	2001	2002
Murder	0	0	0	1	0
Attempted Murder	22	15	19	16	19
Sexual Offences		3	6	4	6
Assault - Indecent		7	4	5	16
Assault - Common	298	349	260	261	227
Assault - GBH	46	61	48	51	97
Rape	6	12	3	3	4
Attempted Rape			7	3	4

Crime and punishment

	1998	1999	2000	2001	2002
Total prison population (adult)	120,474	131,062	141,002	144,172	151,775
Total prison population (juvenile)	21,951	24,969	26,565	26,756	28,398









## Chapter 2

### The link between home ownership and domestic violence to women<sup>1</sup>

#### 2.1 Objective

This chapter sets out to test the hypothesis that women: who own the homes they are staying in will experience lower levels of various forms of domestic violence (verbal abuse, emotional abuse and physical abuse) compared to women who do not own them.

The chapter is based on a larger study which deals with a number of issues influencing violence against women including their level of financial independence, their degree of control of family finances, joint decision making with partner, the length of their relationship, the number of children, education, employment level of income and household income. In addition, issues relating to the reaction of women to abuse are dealt with in the larger study.<sup>2</sup>

Further statistical and other information on violence in South Africa, including violence against women, is contained in Chapter 1, section 1.9 and Appendix C, as well as in Part II, Chapter 7.

This is an exploratory case study rather than a detailed, in-depth study of the specific topic. The aim is to explore both the correlation between the two hypothesis variables (women's home ownership/home non-ownership and the levels of domestic violence experienced) and the research methodology used in researching this theme.

The lessons learned from this exercise will make it possible to conduct similar, but more informed research in South Africa in the future, on a larger scale.

#### 2.2 The sample

The case study was based in the urban area of Johannesburg and its surrounding areas/suburbs because it is probably the most ethnic and racially mixed city in the whole of South Africa. The total population of Johannesburg was thus a very representative population of the total urban population of South Africa. This choice fulfilled the most essential criteria to base the selection of the sampling population on, namely socio-economic differences and racial composition. In addition, the fact that the Human Rights Institute of South Africa is based in Johannesburg meant that financial and time constraints were minimised.

A target total of 300 completed questionnaires was chosen in

order to be both feasible (keeping time and financial constraints in mind) and adequate (to show whether a correlation does or does not exist between the hypothesis variables). The target total of 300 questionnaires was divided into two groups: Sample 1 consisting of a target total of 250 questionnaires to be disseminated in five different areas/suburbs/communities of Johannesburg (which means 50 questionnaires per area); and Sample 2 consisting of a target total of 50 questionnaires to be completed in the same five different areas by women respondents who experience domestic abuse (10 questionnaires in each area).

The areas chosen were:

*Lenasia:* a predominantly Indian/Muslim community including families from lower income families to higher middle-income families.

*Hillbrow:* a very cosmopolitan inner-city suburb where the racial composition is not only representative of the South African rainbow, but also in terms of South African nationals and foreigners. Although this area mostly consist of people from the lower strata of society, its unique dynamics with regard to the racial and ethnic composition, make it a important area to include in the case study.

*Soweto:* a predominantly African suburb consisting of mainly African people. It is a very cosmopolitan and mixed African suburb, which thus includes African people from most of the ethnic groups in South Africa. It also consists of families ranging from lower income groups to middle and higher middle income groups.

*Eldorado\_Park:* a predominantly Coloured community including families from lower income groups to middle and higher middle income groups.

*Randburg:* a predominantly White suburb where most of the families are higher middle to higher income families.

1 Cedric Loots, Human Rights Institute of South Africa.

2 The larger study is contained in the CD-ROM included with this publication.

## 2.3 Questionnaires received

Table 2.1 shows the number of completed questionnaires received back from each area.

**Table 2.1** Completed questionnaires received back (target in brackets)

Area/Organisation	Sample 1	Sample 2	Total
Lenasia/Nisaa	53 (52)	3 (10)	56 (62)
Hillbrow/POWA	44 (50)	4 (10)	48 (60)
Soweto/POWA	53 (50)	7 (10)	60 (60)
Eldorado Park/EPWF	53 (50)	10 (10)	63 (60)
Randburg/RTCC	22 (50)	5 (10)	27 (60)
Total	225 (252)	29 (50)	254 (302)

The sample 1 completed questionnaire targets were much better met than the sample 2 targets. Initially, women clients were asked either to self-complete the questionnaire or to be interviewed, after a counselling session. Most women clients were exhausted (physically and particularly emotionally) after their counselling session and didn't have the energy to either self-complete the questionnaire or to be interviewed. The response was to shift the completion of the questionnaire to before the counselling session, but there was often not time to complete it, because the women only arrived at the organisation just before their counselling session started. Some women chose not to complete the questionnaire for various reasons, e.g. it was infringing on their privacy.

Bearing in mind that a research topic on the issue of domestic violence is of a sensitive nature, it is important to place the data within a certain context before looking at the actual data/findings. A workshop was therefore conducted at the various local partner organisations entitled 'Data Contextualisation'. During these workshops, the interview experiences of the various fieldworkers were discussed and the following issues highlighted. It is important to view the actual data/findings through the lenses of these issues:

Fieldworkers in all of the areas sensed that a considerable number of women respondents were holding back information when being interviewed. Some reasons become apparent for this: responses like "The questions are getting too personal" and "Are these questions necessary?" show that respondents thought some of the questions violated their private life. Fieldworkers felt

that many women view the issue of domestic abuse as a domestic/private matter to be resolved in the home itself. On the other hand, those women who do talk about domestic abuse and report it, felt that approaching the police and support organisations was in a lot of instances a waste of time, because of (according to them) a low and unacceptable rate of follow-up. This issue of withholding information implies that the actual data/findings should probably have had much higher levels of domestic abuse experienced.

Older women were usually more open to talking on the topic of domestic abuse compared to younger women. The fieldworkers felt that the ones to withhold information were mainly younger women.

The fieldworkers also believed that many women's interpretation was that the concept of abuse included only physical abuse, but not verbal and emotional. If a woman didn't have any scars or injuries on her body, she was not being abused. This also implies that the actual data/findings could have shown much higher levels of domestic abuse.



## 2.4 Analysis of the data

This section analyses the 225 cases in sample 1. Tables 2.2, 2.3 and 2.4 show the three different forms of abuse - verbal, emotional and physical cross-tabulated with one another. In all of the cross-tabulations, it is evident that the category 'never' will have the highest percentage, followed by 'occasionally' in the middle and 'frequently' with the lowest percentage. This repetitive pat-

tern (i.e. when the frequency of one form of abuse decreases over the three different categories, so will the frequency of another form of abuse decrease and vice versa) illustrates that the data gathered on the respondents experience of the different forms of domestic abuse, is of high validity

**Table 2.2** Cross-tabulation of verbal abuse score by emotional abuse score

			<i>Emotional abuse score</i>			Total
			<i>Never</i>	<i>Occasionally</i>	<i>Frequently</i>	
Verbal abuse score	Never	Number	92	7		99
		% of Total	47.4%	3.6%		51.0%
	<i>Occasionally</i>	Number	24	40	4	68
		% of Total	12.4%	20.6%	2.1%	35.1%
	<i>Frequently</i>	Number	2	7	18	27
		% of Total	1.0%	3.6%	9.3%	13.9%
Total		Number	118	54	22	194
		% of Total	60.8%	27.8%	11.3%	100.0%

**Table 2.3** Cross-tabulation of verbal abuse score by physical abuse score

			<i>Physical abuse score</i>			Total
			<i>Never</i>	<i>Occasionally</i>	<i>Frequently</i>	
Verbal abuse score	Never	Number	91	8		99
		% of Total	46.9%	4.1%		51.0%
	Occasionally	Number	10	48	10	68
		% of Total	5.2%	24.7%	5.2%	35.1%
	Frequently	Number		10	17	27
		% of Total		5.2%	8.8%	13.9%
Total		Number	101	66	27	194
		% of Total	52.1%	34.0%	13.9%	100.0%

**Table 2.4 Cross-tabulation of emotional abuse score by physical abuse score**

			Physical abuse score			Total
			Never	Occasionally	Frequently	
Emotional abuse score	Never	Number	94	23	1	118
		% of Total	48.5%	11.9%	.5%	60.8%
	Occasionally	Number	7	36	11	54
		% of Total	3.6%	18.6%	5.7%	27.8%
	Frequently	Number		7	15	22
		% of Total		3.6%	7.7%	11.3%
Total		Number	101	66	27	194
		% of Total	52.1%	34.0%	13.9%	100.0%

**Approach 1 to prove correlation**

Sample 1: Cross tabulation of Home Ownership (Owns/Partly Owns vs. Does not Own) by Abuse

**Figure 2.1 Home ownership (owns/partly owns vs. doesn't own) by verbal abuse score**

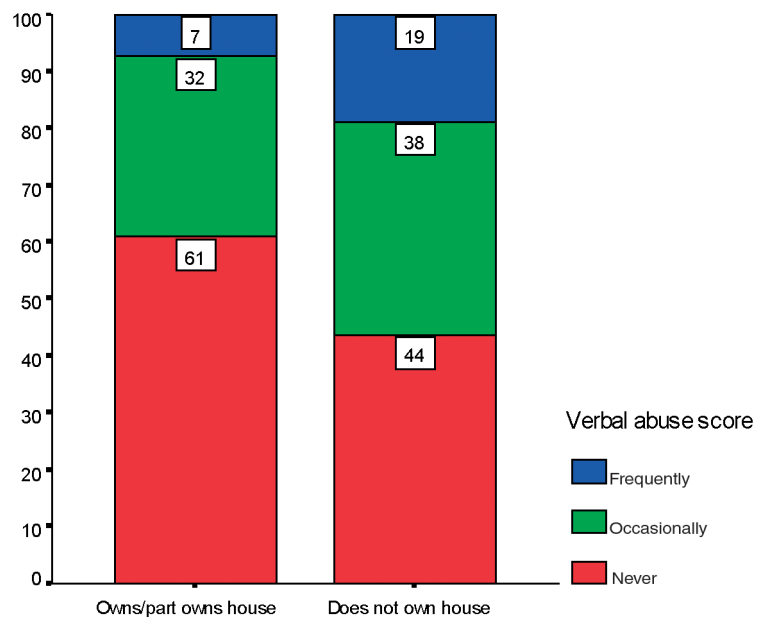


Figure 2.1 shows that women who either owned or partly owned the homes they were staying in experienced lower levels of verbal abuse compared to women who did not own the homes they were staying in.

61 percent of home-owners (women who either owned or partly owned a home), never experienced verbal abuse, while only 44 percent of non-home-owners, never experienced verbal abuse. 32 percent of home-owners experienced occasional verbal

abuse, compared to 38 percent of non-home-owners. Only 7 percent of home-owners experienced frequent verbal abuse, while 19 percent of non-home-owners experienced this.

**Figure 2.2 Home ownership (owns/partly owns vs. doesn't own) by emotional abuse score**

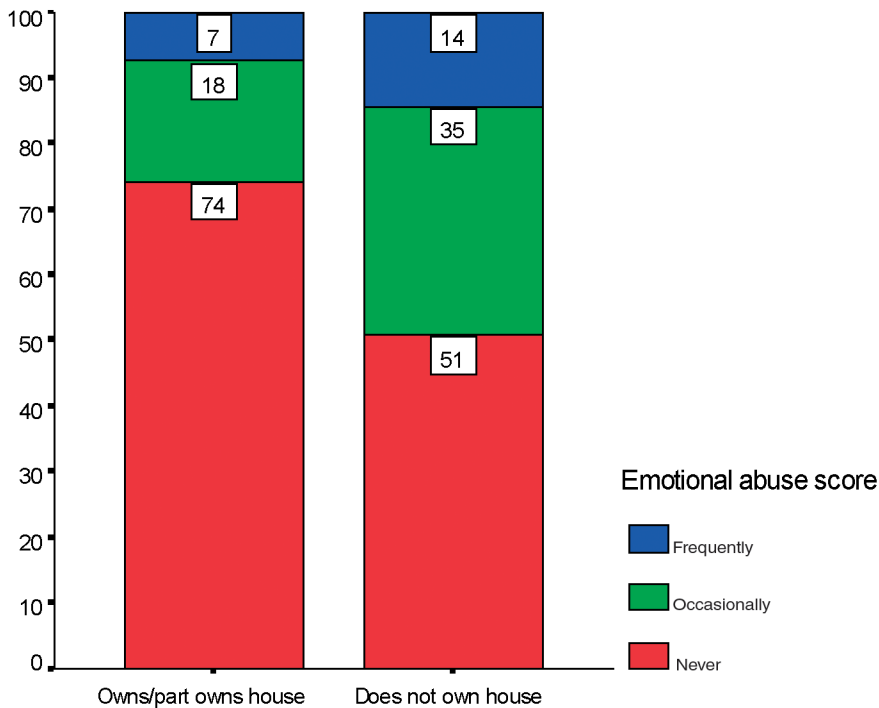
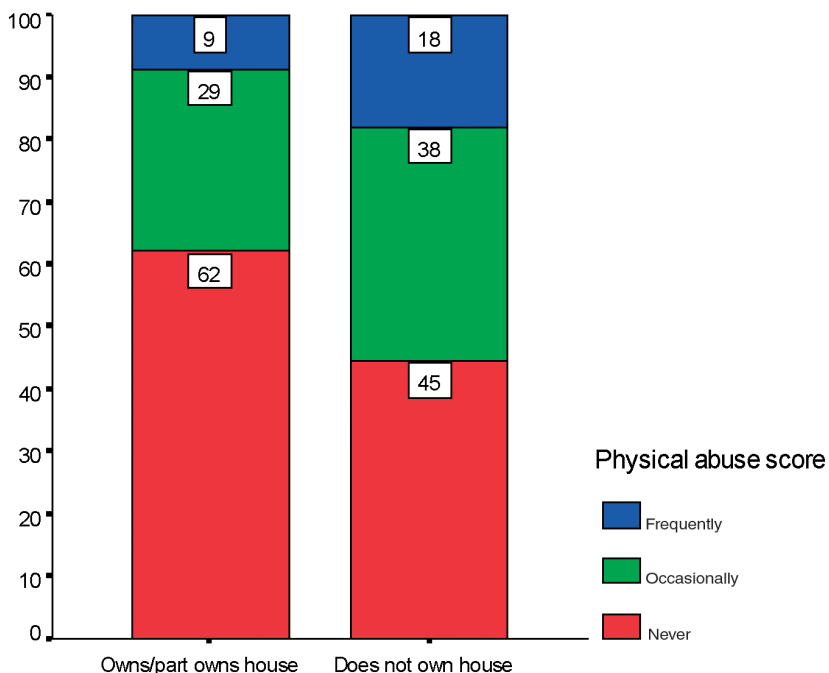


Figure 2.2 indicates that women who either owned or partly owned the homes they lived in experienced lower levels of emotional abuse compared to women who were not owners or part-owners.

74 percent of home-owners (women who either owned or partly owned a home), never experienced emotional abuse, while only 51 percent of non-home-owners (the women who didn't own a home), never experienced emotional abuse. 18 percent of home-owners experienced occasional emotional abuse, while 35 per-

cent of non-home-owners experienced occasional emotional abuse. Only 7 percent of home-owners experienced frequent emotional abuse, while 14 percent of non-home-owners experienced frequent emotional abuse.

**Figure 2.3 Home ownership (owns/partly owns vs. doesn't own) by physical abuse score**



From Figure 2.3, we see that women who either owned or partly owned the homes they were staying in experienced lower levels of physical abuse compared to women who did not own the homes they were staying in.

62 percent of home-owners (women who either owned or partly owned a home), never experienced physical abuse, while only 45 percent of non-home-owners (the women who didn't own a home), never experienced physical abuse. 29 percent of home-owners experienced occasional physical abuse, while 38 percent of non-home-owners experienced occasional physical abuse. Only 9 percent of home-owners experienced frequent physical abuse, while 18 percent of non-home-owners experienced frequent physical abuse.

To summarise, women who either owned or partly owned the homes they were staying in experienced lower levels of various forms of domestic violence (verbal abuse, emotional abuse and physical abuse) compared to women who did not own the homes they were staying in.

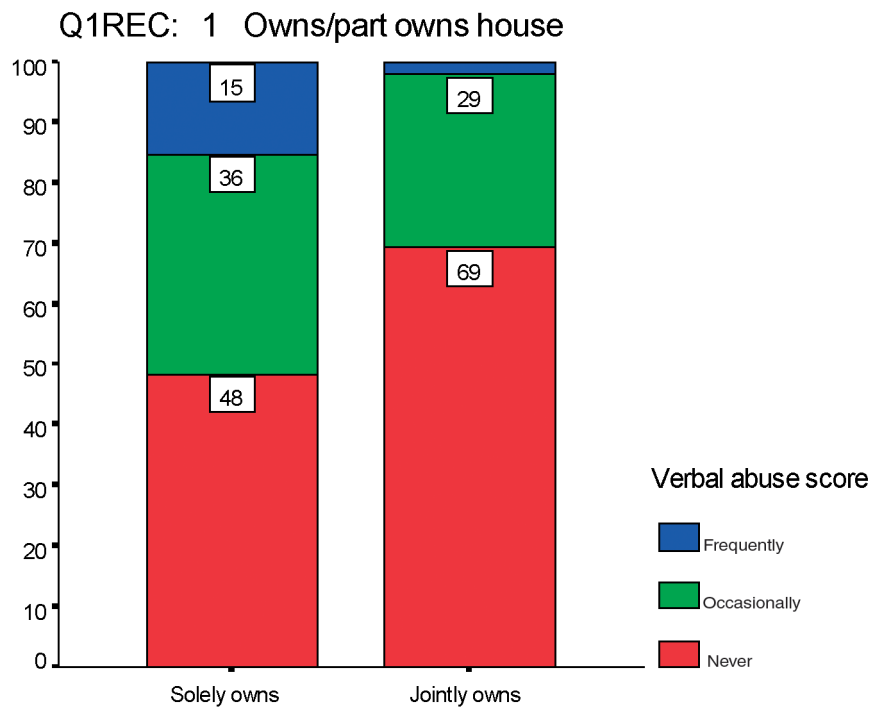
**Approach 2 to prove correlation**

Sample 1: Cross tabulation of two variables: Home Ownership (Solely Owns vs. Jointly Owns and Contribute to Rent vs. Doesn't Contribute Rent) by Abuse

The first category breakdown of home ownership, i.e. 'owns/partly owns' and 'doesn't own', is now broken down into two more categories. The category 'owns/partly owns' was broken down into 'solely owns' and 'jointly owns' and the category 'does not own' into 'contributes to rent' and 'doesn't contribute to rent'. These four categories were then cross-tabulated with the three forms of domestic abuse.

48 percent of women with sole home-ownership never experienced verbal abuse, while 69 percent of women with joint home-ownership never experienced verbal abuse. In other words, 52 percent of women with sole home-ownership did experience verbal abuse, while only 31 percent of women with joint home-ownership experienced verbal abuse. More women with sole ownership experienced occasional and frequent verbal abuse. 36 percent of sole home-owners experienced occasional verbal abuse, while only 29 percent of joint home-owners experienced occasional verbal abuse. 15 percent of sole home-owners experienced frequent verbal abuse, while only a mere 2 percent of joint home-owners experienced frequent verbal abuse.

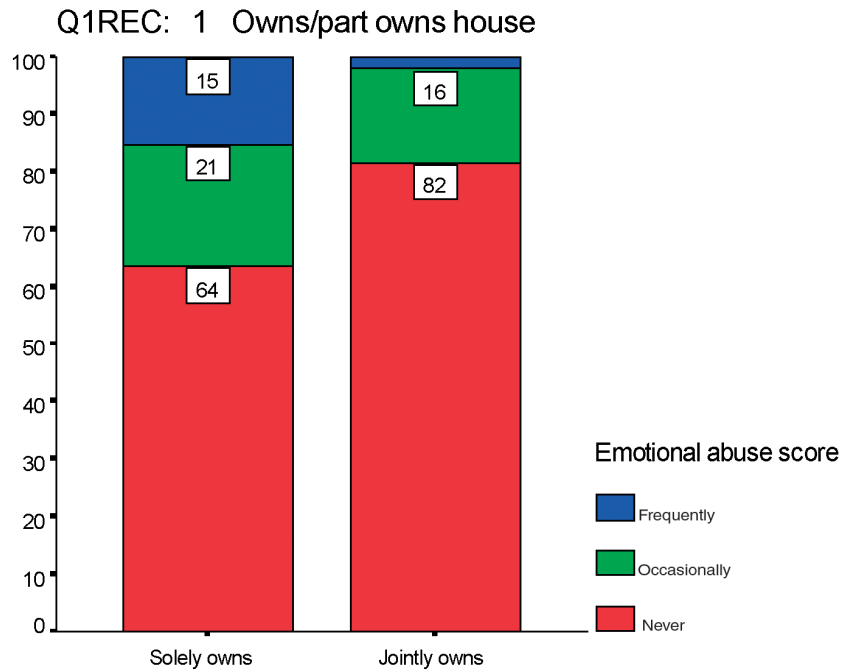
**Figure 2.4 Home ownership (solely owns vs. jointly owns) by verbal abuse score**



36 percent of women with sole home-ownership experienced emotional abuse, while only 18 percent of women with joint home-ownership experienced emotional abuse. 21 percent of sole home-owners experienced occasional emotional abuse,

while 16 percent of joint home-owners experienced occasional emotional abuse. 15 percent of sole home-owners experienced frequent emotional abuse, while only a mere 2 percent of joint home-owners experienced frequent emotional abuse.

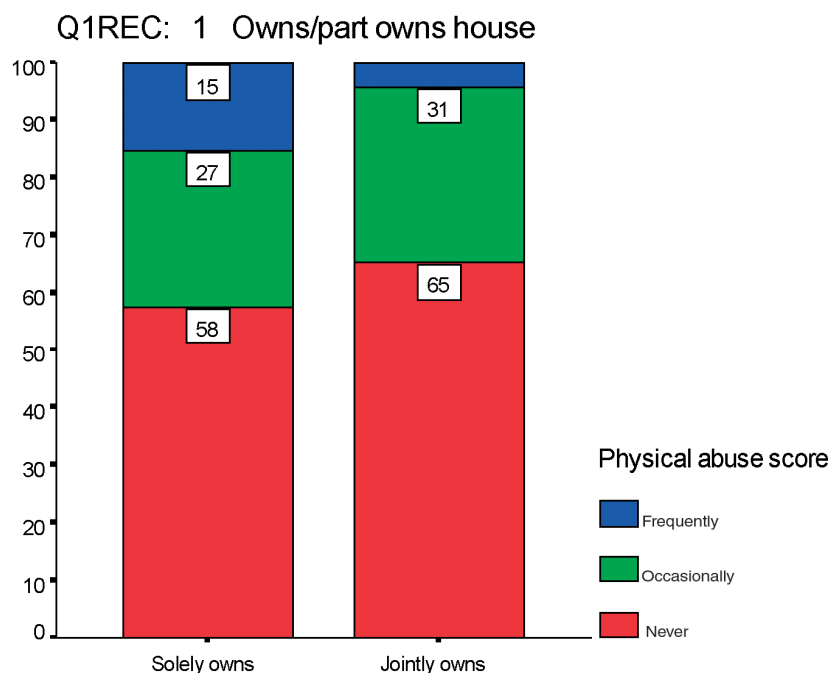
**Figure 2.5 Home ownership (solely owns vs. jointly owns) by emotional abuse score**



42 percent of women with sole home-ownership experienced physical abuse, while only 35 percent of women with joint home-ownership experienced physical abuse. 27 percent of sole home-owners experienced occasional physical abuse, while more joint home-owners (31 percent) experienced occasional physical abuse. 15 percent of sole home-owners experienced frequent physical abuse, while only a mere 4 percent of joint home-owners experienced frequent physical abuse.

In general, the more in-depth 'owns/partly owns home' data show us that women with sole home-ownership experienced higher levels of various forms of domestic abuse (verbal abuse, emotional abuse and physical abuse) than women with joint home-ownership. This is an interesting trend, if we keep in mind that the first category breakdowns of home ownership (owns/partly owns vs. does not own) showed a fairly strong link between home ownership and the levels of domestic abuse experienced.

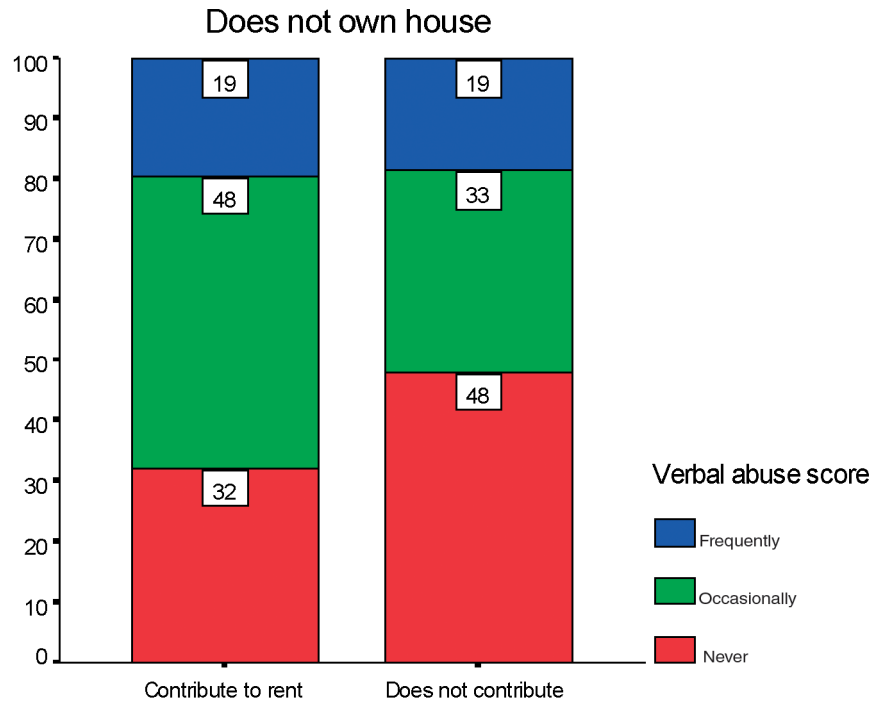
**Figure 2.6 Home ownership (solely owns vs. jointly owns) by physical abuse score**



68 percent of women who don't own a home, but contribute to the rent, experienced verbal abuse, while only 52 percent of women who don't own a home and don't contribute to the rent, experienced verbal abuse. 48 percent of women who don't own a home, but contribute to the rent, experienced occasional verbal abuse, while only 33 percent of women who don't own a home

and don't contribute to the rent, experienced occasional verbal abuse. 19 percent of women, who don't own a home, but contribute to the rent, experienced frequent verbal abuse. 19 percent of women who don't own a home and don't contribute to the rent, experienced frequent verbal abuse.

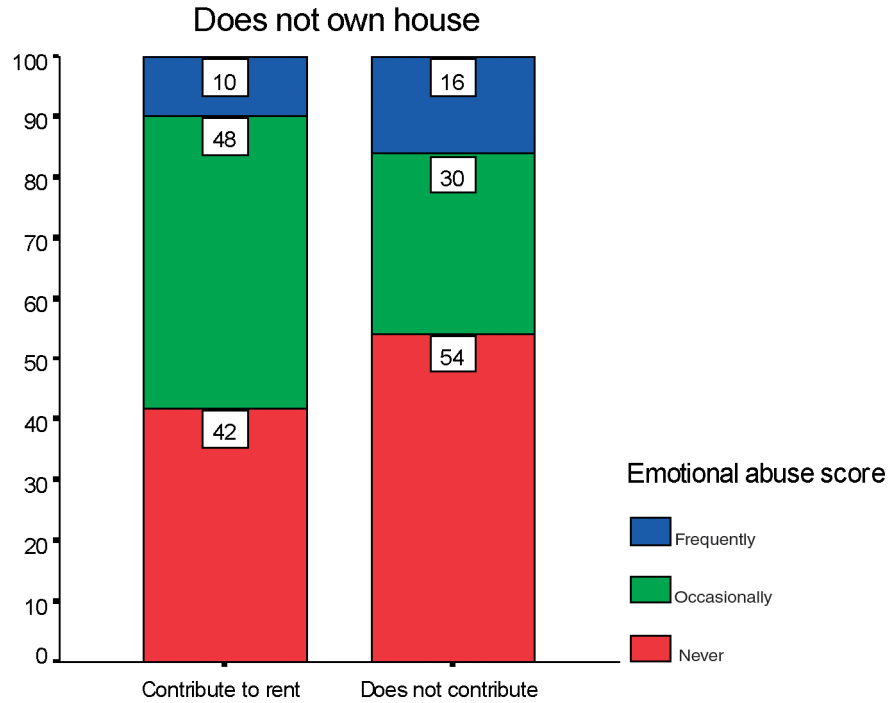
**Figure 2.7** Home ownership (contribute to rent vs. doesn't contribute to rent) by verbal abuse score



58 percent of women who don't own a home, but contribute to the rent, experienced emotional abuse, while only 46 percent of women who don't own a home and don't contribute to the rent, experienced emotional abuse. 48 percent of women who don't own a home, but contribute to the rent, experienced occasional emotional abuse, while only 30 percent of women who don't

own a home and don't contribute to the rent, experienced occasional emotional abuse. 10 percent of women, who don't own a home, but contribute to the rent, experienced frequent emotional abuse. 16 percent of women who don't own a home and don't contribute to the rent, experienced frequent emotional abuse.

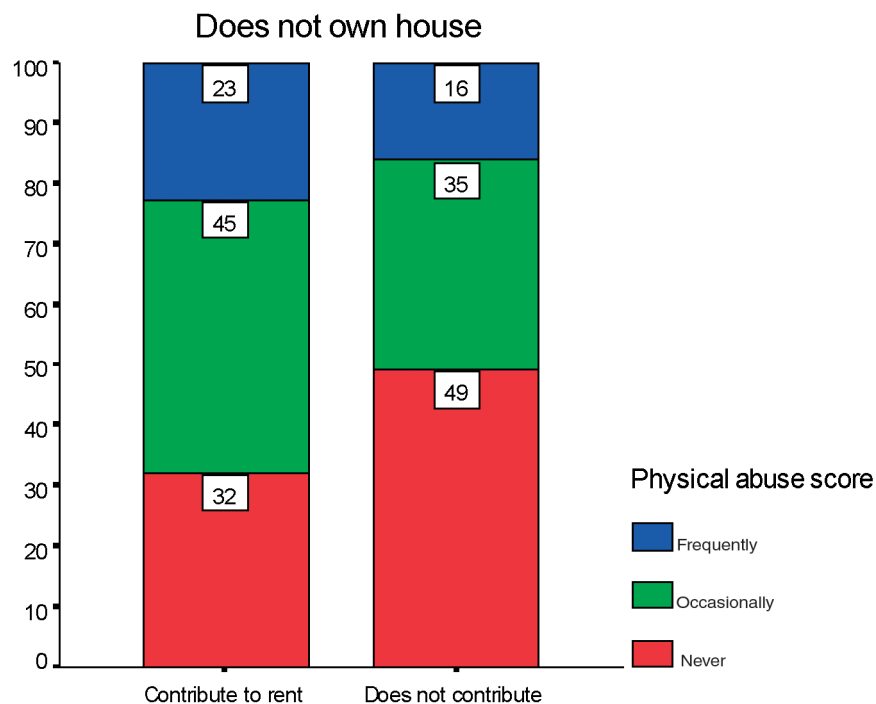
**Figure 2.8 Home ownership (contribute to rent vs. doesn't contribute to rent) by emotional abuse score**



68 percent of women who don't own a home, but contribute to the rent, experienced physical abuse, while only 51 percent of women who don't own a home and don't contribute to the rent, experienced physical abuse. 45 percent of women who don't own a home, but contribute to the rent, experienced occasional physical abuse, while only 35 percent of women who don't own

a home and don't contribute to the rent, experienced occasional physical abuse. 23 percent of women, who don't own a home, but contribute to the rent, experienced frequent physical abuse, while only 16 percent of women who don't own a home and don't contribute to the rent, experienced frequent physical abuse.

**Figure 2.9 Home ownership (contribute to rent vs. doesn't contribute to rent) by physical abuse score**



In general, the more in-depth 'doesn't own home' data show us that women who contributed to the rent, experienced higher levels of domestic abuse than those who did not. This is again an interesting trend bearing in mind the fairly strong link between home ownership and the levels of domestic abuse experienced.

### Approach 3 to prove correlation

Sample 2 consisted of a total of 29 cases, and included abused women only.

Most of the abused women (69 percent) didn't own the home they were living in. Only 31 percent either owned or partly owned the home they were living in.

**Table 2.5 Home ownership of abused women**

	Frequency	Percent	Cumulative Percent
Owens/part owns house	9	31.0	31.0
Does not own house	20	69.0	100.0
Total	29	100.0	

Of the 69 percent who didn't own their home, only 10 percent contributed to the rent, while the majority (59 percent) did not contribute to the rent at all. Of the 31 percent that either owned

or partly owned their home, only 10 percent owned their home alone/solely, while 21 percent owned their home jointly.

**Table 2.6 Home ownership and living costs (abused women)**

	Frequency	Percent	Cumulative Percent
Solely owns	3	10.3	10.3
Jointly owns	6	20.7	31.0
Contribute to rent	3	10.3	41.4
Does not contribute to rent	17	58.6	100.0
Total	29	100.0	

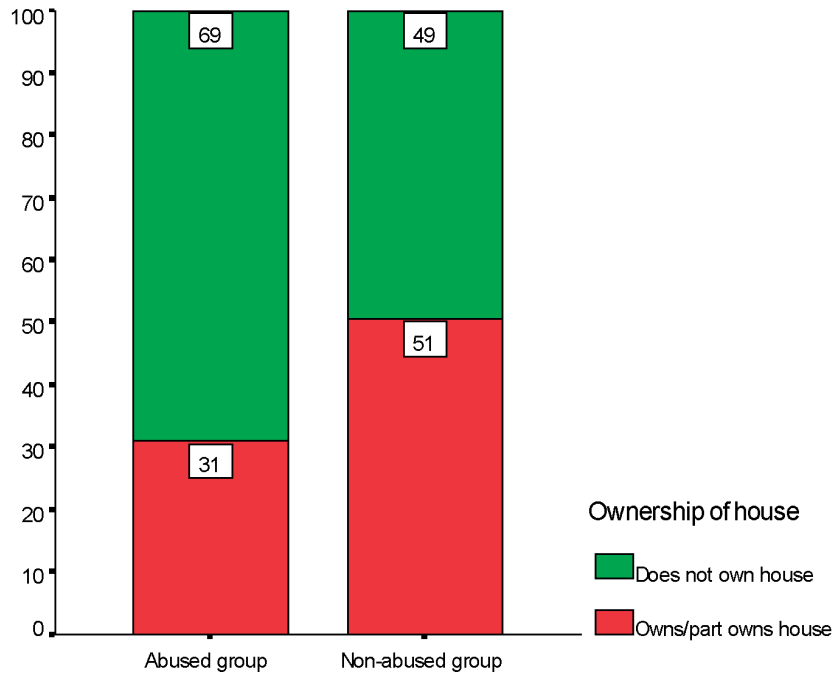
### Approach 4 to prove correlation

Comparative Analysis: Comparing Sample 1 women who never experienced any form of domestic abuse with Sample 2 women who did experience domestic abuse

Only 31 percent of the abused group owned a home, while 51 percent of the non-abused group owned a home.



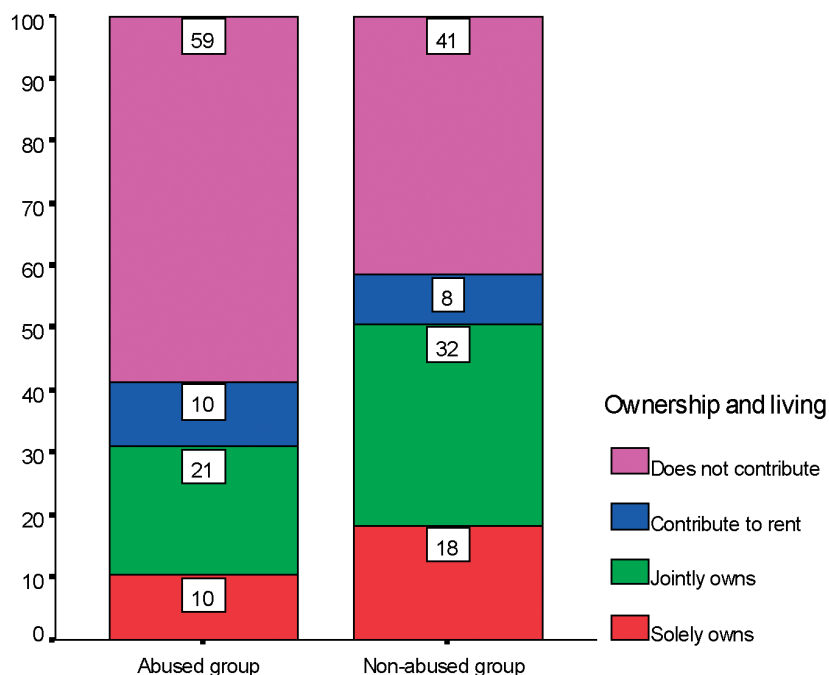
**Figure 2.10 Home ownership by abuse**



Only 10 percent of the abused group solely owned a home, while 18 percent of the non-abused group solely owned a home. Only 21 percent of the abused group jointly owned a home, while 32 percent of the non-abused group jointly owned a home. 59 percent of the abused group didn't contribute to the rent, while only 41 percent of the non-abused group didn't contribute to the rent.

A fairly strong link/correlation does exist between home ownership and the levels of domestic abuse experienced. It showed this correlation, for both the first category breakdowns of home ownership (owns/partly owns vs. does not own) as well as for the majority of the more in-depth categories of home ownership (solely owns vs. jointly owns and doesn't own but contribute to rent vs. doesn't own and doesn't contribute to rent).

**Figure 2.11 Home ownership and living costs by abuse**



## ■ 2.5 Conclusion

Three of the four approaches used to show the correlation between women's home ownership and the domestic violence they suffer, have shown that women who own the homes they are staying in will experience lower levels of various forms of domestic violence compared to women who do not own the homes they are staying in.

Only one of the four approaches used does not show the correla-

tion, but instead has shown a very unexpected and interesting trend. This can be explored in more depth in future research studies on this topic.

## Chapter 3

### Poverty and violence in developed countries: two studies<sup>1</sup>

#### 3.1 Poverty and violence in developed countries

Poverty, and even extreme poverty and social exclusion, affect people in both developed and developing countries, although the gravity and extent of the problem is vastly different in the latter. Nevertheless, it is relevant to investigate whether there is a correlation in developed countries between failures of economic, social and cultural rights, the resulting inequalities and violence. This chapter considers that relationship through two studies in Sweden that help understand the situation in developed countries in general.

The literature on Sweden and other developed countries (for example in studies based on the British Crime Survey)<sup>2</sup> indicates the existence of a clear correlation whereby the most economically vulnerable groups are also those most often exposed to violent crime, whereas the relationship is not so clear in relation to theft crime (Mawby & Walklate, 1994; Currie, 1997; Levitt, 1999; Westfelt, 2001).

In their study "The inequality of victimisation. Exposure to crime among rich and poor 1984-2001", Estrada and Nilsson examine the question of whether increased differences in living conditions are reflected in increased inequality in the area of victimisation in Sweden. The study shows that exposure to violent and theft crimes have followed different trends for poorly-resourced and well-resourced groups respectively. The proportion experiencing victimisation, first and foremost in the form of violence and threats, but also to some extent in the form of residential burglaries, is significantly greater among the poor than among the rich. Furthermore, the difference between these two groups has become greater. Inequality in violent victimisation is not a static situation – it can be more or less pronounced at different times – and increasing inequality in violence parallels the growing inequality in welfare situations. Research in other developed countries reaches similar conclusions.

Other studies show that poor areas experience more violence. Trickett et al. (1995) and Hope (1996) shown that the substantial increases in crime witnessed during the 1980s in parallel with increased income inequalities, were largely restricted to certain residential neighbourhoods. Theft offences between 1982 and 1988 were mainly concentrated in the ten percent of neighbourhoods that already experienced the highest levels of crime. Young & Matthews (2003) argue that this trend towards an increased level of exposure to crime in poorer areas continued during the 1990s despite a general decline in crime levels.

Finally, a Canadian study shows that violence affects mostly socially and economically marginalised minors, often street children in developed as well as developing countries.<sup>3</sup>

#### 3.2 Methodology

The first study summarised in this chapter<sup>4</sup> is broad in nature, examining victimisation, inequality and welfare during the economic recession of the 1990s in Sweden. The second<sup>5</sup>, more focussed, looks at the elements connected with violence against single mothers during the same period.

The two studies do not adopt a human rights perspective as such or refer to human rights obligations, national or international. Nevertheless, the authors identify a number of clearly human rights factors as directly linked with violence and victimisation, such as poor financial resources, ill-health, limited education, unemployment and lack of social relations.

Further, their studies are based on an approach to human welfare which could be described as a capabilities approach that

views individual resources and circumstances as determining the opportunities available to a given individual. Individuals' levels of living and welfare situations are in fact defined as these individuals' levels of access to and control over resources that enable them, in the context of existing conditions, consciously to exercise control over their lives. One of the important principles underlying this definition is that it views the

1 This chapter was prepared by the editor in consultation with the authors. The three studies referred to in this chapter are reproduced in the CD-ROM enclosed with this publication.

2 The references mentioned here are cited in Felipe Estrada and Anders Nilsson *The inequality of victimisation. Exposure to crime among rich and poor 1984-2001*, Arbetsrapport/Institutet för Framtidsstudier; 2005:8 Institute for Futures Studies Box 591, SE-101 31 Stockholm, Sweden pages 3 and 4.

3 Hagan, J. & McCarthy B. 1997. *Mean Streets. Youth crime and homelessness*. Cambridge: Cambridge University Press.

4 Nilsson, A & Estrada, F. (2003) Victimisation, Inequality and Welfare during an Economic Recession; A study of Self Reported Victimisation in Sweden 1988-1999. *British Journal of Criminology*, 43:4, 655-672 Hereinafter referred to as *Victimisation and Economic Recession*.

5 Estrada, F. & Nilsson, A (2004). "Exposure to threatening and violent behaviour among single mothers – the significance of lifestyle, neighbourhood and welfare situation", *British Journal of Criminology*, 44:2:168-187. Hereinafter referred to as *Violence and Single Mothers*.

individual as an active being, capable of making her own decisions if she is given the resources to do so. A sound financial situation constitutes a central welfare-related resource, but both Scandinavian and international welfare research has emphasised the importance of studying individuals' levels of living and welfare situation along a number of different dimensions.<sup>6</sup>

The authors also point out that certain welfare oriented factors - access to financial resources, for example - are open to political intervention, unlike other elements which have been associated with violence, such as age, place of birth and lifestyle. Thus, policy measures to raise the level of welfare resources available to potential victims, which, in human rights terms, would be consonant with international economic, social and cultural rights obligations, and would, "besides producing the self-evident welfare dividends involved when the opportunities available to a large group of individuals are extended, also have the potential to decrease levels of violent victimisation."<sup>7</sup>

### 3.3 Economic recession, welfare problems and victimisation<sup>8</sup>

Sweden, at the beginning of the 1990s, entered an economic recession with unemployment rising from 1.7 percent to 8.3 percent. This rise in unemployment, coupled with restrictions in the welfare system, led to a worsening of living conditions, a growth in the number of persons experiencing financial difficulties, and a general increase of 50 percent in psychological ill-health (worry, apprehension, anxiety). Inequality between different social groups increased, with weaker groups being harder hit than others, in particular young people, single mothers and persons born outside Sweden.

The authors examine the levels of victimisation and fear of violence experienced by a number of different social groups in Sweden in the period 1998-1999. They consider both the scale of the problems, and the trends over time among groups of different financial and welfare levels. The study is based on the annual Swedish Survey of Living Conditions. The surveys are based on personal interviews with representative samples from the Swedish population between 16 and 84 years of age. Levels of welfare as the individual resources and living conditions that enable citizens to exercise control over and make effective, conscious decisions in relation to their lives. That goes beyond measuring a society's welfare purely on aggregate measures such as GNP or reported crime levels.

#### > *Reported crime and incidents of violence and victimisation*

During the 1990s, in Sweden as elsewhere in Western Europe, the post-war trend of a substantial and almost continuous increase in reported crimes (in particular theft) came to an end, with the exception of reported crimes of assault. The study looks at survey responses on the incidents of violence (causing injury or needing medical attention), threats of violence and fear of violence. It finds that if, from the point of view of the Swedish population as a whole, "the victim surveys provide no clear evidence that the economic recession of the 1990s led to an increase in violent victimisation or fear of violence"<sup>9</sup>, the situation of marginalised groups may nonetheless have worsened.

#### > *Vulnerable groups and violence*

The economic recession hit particularly three groups; single parents (primarily mothers), young people (aged 16 to 24) and people born outside of Sweden. The study compares the experience with regard to crime of these three groups with the rest of the population (Figures 3.1 – 3.3).

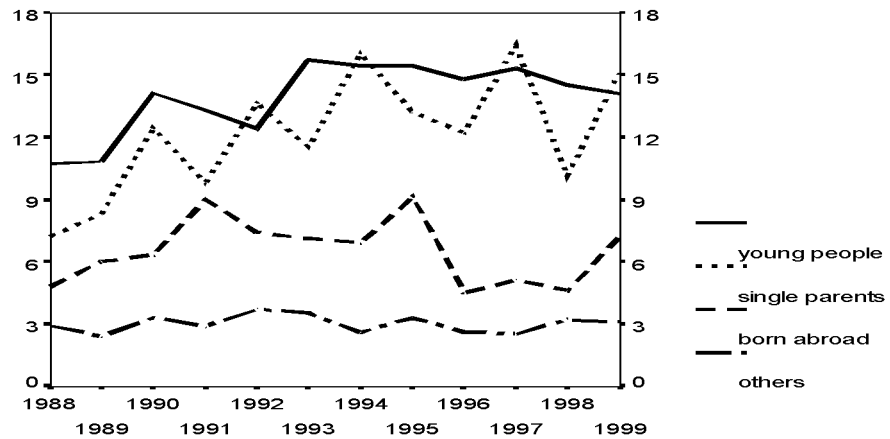
6 Violence and Single Mothers, page 4.

7 Violence and Single Mothers, page 25.

8 This section summarises Victimisation and Economic Recession.

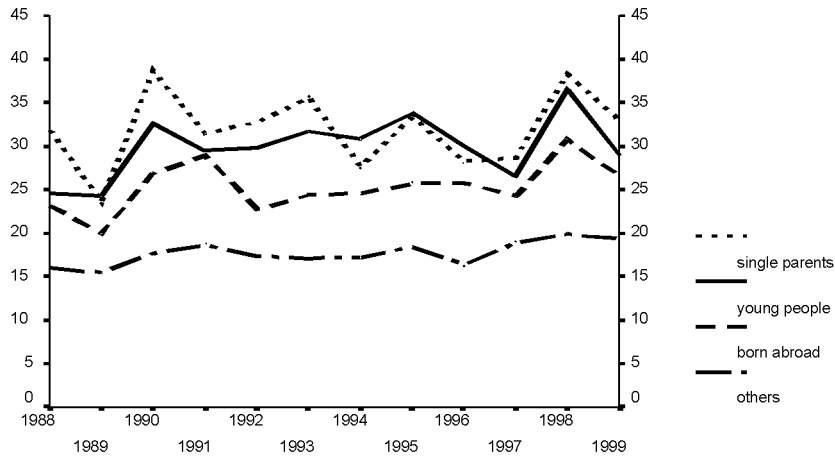
9 *Ibid*, pages 9-10.

**Figure 3.1 Exposure to threatening or violent behaviour\* (percent of persons aged 16-84)**



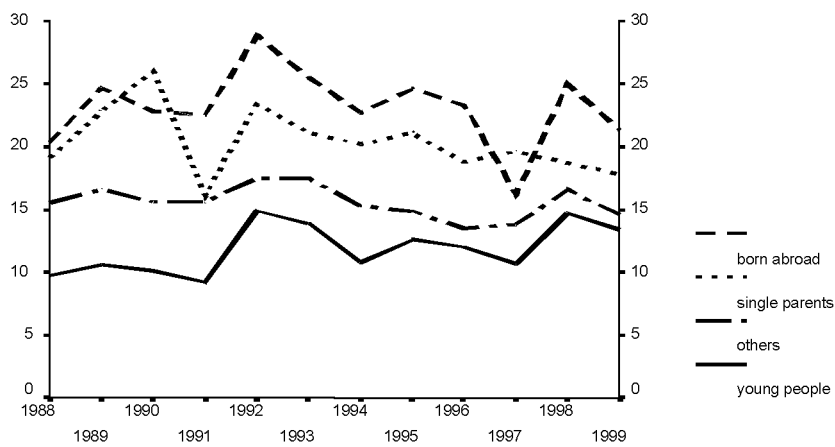
Source: ULF 1988-1998 \* outside the practice of one's occupation

**Figure 3.2 Exposure to theft or criminal damage (percent of persons aged 16-84)**



Source: ULF 1988-1998

**Figure 3.3 Fear of violent crime (percent of persons aged 16-84)**



Source: ULF 1988-1998

With regard to reports of violent or threatening behaviour, young people and single parents were particularly hard hit, reporting at the end of the period incidents four times as high as the rest of the population. While the incidents in the rest of the population remained stable, those of single parents for example rose considerably. The experiences of theft in the three groups was substantially higher than the remainder of the population with the levels particularly high for young people and single parents, where close to one third come from households having experienced theft in the preceding 12 months. As for fear of violent crime preventing people from going out, the relationships between the groups differ with 23 percent of those born abroad and 11.8 percent of youths reporting that fear. The authors conclude that “the recession resulted in disproportionately negative trends in exposure to crime for certain vulnerable groups, particularly in relation to threatening and violent behaviour.”<sup>10</sup>

> **Financial problems and victimisation**

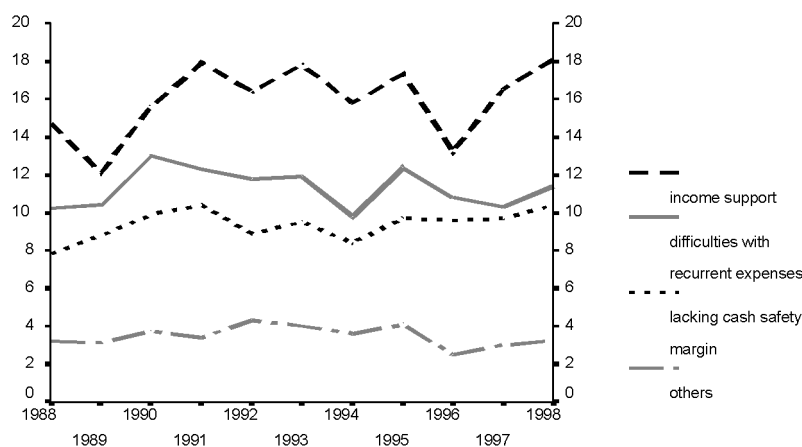
The authors analyse next the relation of financial problems and income level to victimisation. Financial problems are measured by difficulties in meeting recurrent household expenses, ability to

access funds to cover unexpected expenses and the receipt of income support payments. In this context, it is important to note that the experience of financial difficulties varies greatly between different groups of the population, with single parents experiencing such difficulties much more than the rest of the population.

Figures 3.4 – 3.6 show the experience of the groups with financial difficulties relative to the rest of the population as regards to crime. For the population not having had financial difficulties, 3.5 percent experienced violent crime over the twelve month period. The figure for those receiving income support, the most serious type of financial problem, was 16 percent, for those having had difficulties covering household expenses it was 11 percent and 10 percent for those lacking a cash safety margin.

Regarding victims of theft, those experiencing the most serious financial difficulties report the highest rate, around one-third, while the figure is one-fifth for those not having experienced financial problems. As is shown in Figure 3.6, those experiencing financial difficulties also experience fear of violence more than the other sector of the population.

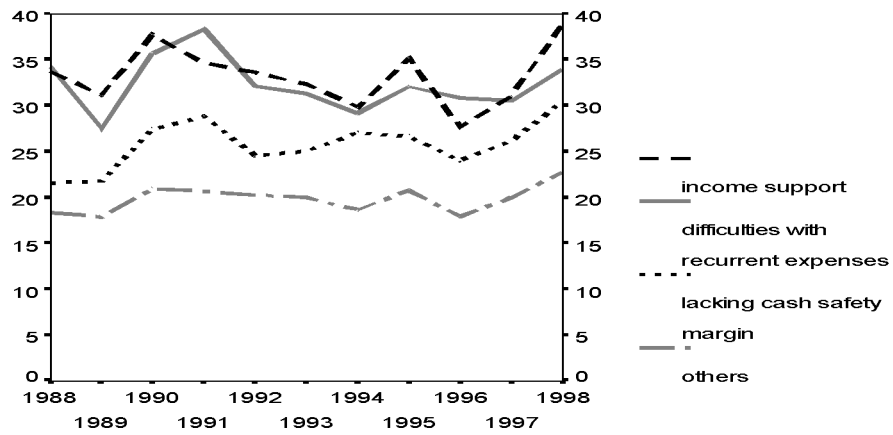
**Figure 3.4 Exposure to threatening or violent behaviour\* (percent of persons aged 16 to 84)**



Source: ULF 1988-1998

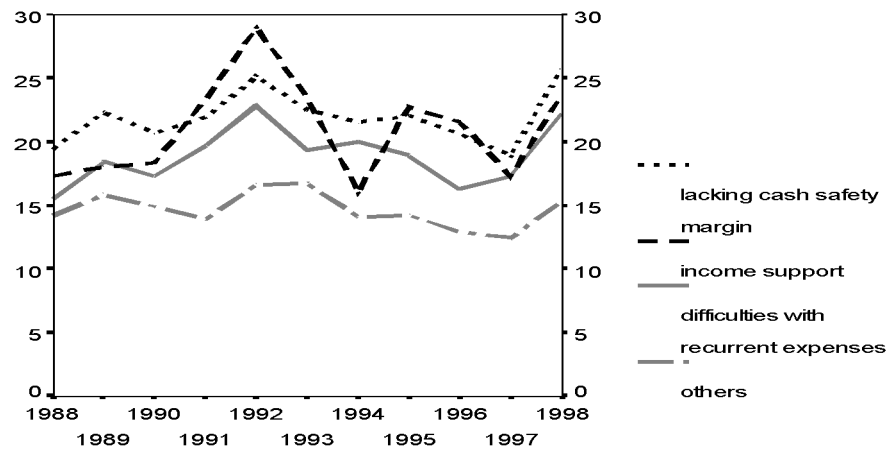
\* outside the practice of one’s occupation

**Figure 3.5 Exposure to theft or criminal damage (percent of persons aged 16 to 84)**



Source: ULF 1988-1998

**Figure 3.6 Fear of violent crime (percent of persons aged 16 to 84)**



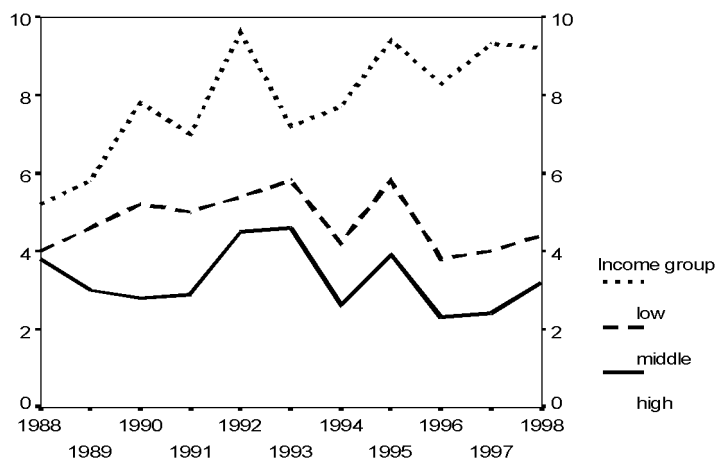
Source: ULF 1988-1998

**> Income and criminal victimisation**

Examining the criminal victimisation experiences of the population by income group (top 20 percent, bottom 20 percent and the middle 60 percent), reveals that the low income group has a

level of victimisation by violent crime three times as high as the highest income group. The differences are considerably smaller for experiences of theft and fear of violent crime (Figures 3.7 - 3.9).

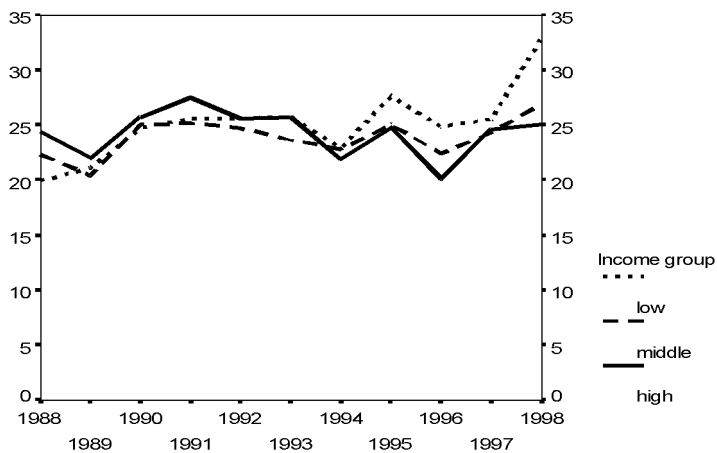
**Figure 3.7 Exposure to threatening or violent behaviour\* (percent of persons aged 16 to 84)**



Source: ULF 1988-1998

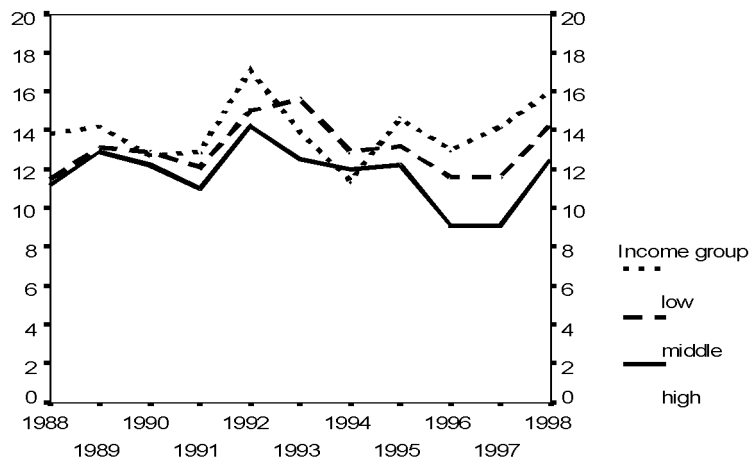
\* outside the practice of one's occupation

**Figure 3.8 Exposure to theft or criminal damage (percent of persons aged 16 to 84)**



Source: ULF 1988-1998

**Figure 3.9 Fear of violent crime (percent of persons aged 16 to 84)**



Source: ULF 1988-1998



### > *Victimisation, financial difficulties and group membership*

The question of whether there is a link between financial difficulties and victimisation or whether the victimisation of the poor is the result of their being in a group particularly subject to financial difficulties (single parents, young or born abroad) was the next step in the study. It examined the different demographic groups to see if financial difficulties influence victimisation. Within the single parent group (mostly mothers), there is a substantial difference in the levels of victimisation and fear of violence between single parents experiencing financial difficulties and those without such problems. Further, for those receiving income support, approximately 25 percent were exposed to threatening or violent behaviour compared to only 7 percent of the others. Thus, in the area of threatening or violent behaviour, single parents without financial or income difficulties have experiences more similar to the rest of the population than those with such problems.

### > *Conclusions*

Swedish society in the 1990s experienced considerable economic stress: groups that already occupied a relatively weak position were hardest hit both by the increases in levels of unemployment and by the cutbacks within the welfare system. The authors examine the question of the effects of the economic crisis on criminal victimisation and fear of crime. In spite of the fact that the aggregate crime level was more or less stable throughout the 1990s, different groups differed with regard to both levels and trends in exposure to crime during that period.

There has been a tendency toward a worsening of the situation of more marginal groups, and their distance from the rest of the population has increased. Two of the groups identified as being among the "losers" of the 1990s - single mothers and people on low incomes - present a higher level of victimisation at the end of the decade than they did at the beginning. At the same time, the groups that were least exposed to crime at the beginning of the 1990s present stable trends throughout the period. In relation to fear of violent crime, those on high incomes present a significant reduction in levels of fear. Taken together these findings reflect the same trend towards increasing inequality that had been witnessed in other areas of welfare.

One of the most important conclusions is that by widening the field of the analysis to include the living conditions (financial and income factors) affecting the lives of crime victims attention is directed to conditions "that are more open to political interventions."

## ■ 3.4 Single mothers and violence<sup>11</sup>

This study addresses the following questions:

- How do single mothers differ from the population at large as regards the proportion victimised and the types of violence experienced?
- What differences exist in relation to exposure to violence within the group of single mothers?
- What role is played in these differences by a person's lifestyle, residential area and welfare situation?

### > *Violence against single mothers compared with the rest of the population*

The study compares the proportion of single mothers reporting exposure to different forms of threatening behaviour and violence with the corresponding proportion among women and men within the remainder of the population. It distinguishes between three dimensions of violence: seriousness, frequency, and the place where it occurs.

The results show that single mothers do constitute a high risk group. The differences in relation to other women tend to be greater the more serious the form of violence, with the proportion of single mothers reporting exposure to violence requiring medical treatment five times more than other women. Single mothers are also more subject to repeat violations than the rest of the population. Violence taking place in the home plays an important role in producing the differences between the groups examined. It is seven times more common for single mothers to experience violence of this kind than for other women. Violence in the home relates to a large extent to incidents where the perpetrator is a man with whom the woman has been involved in a close relationship.

Single mothers also present higher levels of exposure to other forms of violence. The exceptions to this general rule are violence in the workplace, which is the most common form of violence experienced by other women, and violence on public transport. The authors conclude that the difference in levels of violence between single women and others cannot simply be the result of differences in the reporting behaviour of the different groups.

11 This section summarises Violence and Single Mothers.

### > *Differences within the group of single mothers*

The study then looked within the group of single mothers to seek the factors which might explain the difference between those experiencing violence and single mothers not experiencing violence. Issues such as demographic background (women born outside Sweden), participation in public entertainment (which might increase exposure to violence) and type of residential neighbourhood were analysed.

Particular attention is given to the impact of various elements of welfare on the victimisation of single mothers, the financial situation (difficulties in paying current expenses and/or receiving income support), health, level of education, employment, and social relations and support (having a close friend to talk with). Together these factors indicated the level of opportunities available to an individual and of his or her social exclusion. The study showed that exposure to threatening and violent behaviour is associated with other welfare-related factors. Thus, of those who report ill-health, a limited education, unemployment, financial difficulties or not having a close friend, between one-fifth and one quarter report having been exposed to threats or violence during the previous twelve months. Among the other respondents, levels of victimisation lie at between ten and fifteen per cent. The greatest differences were found in relation to violence in the home and repeat victimisation, where risk levels are two to three times as high among those reporting one of the welfare related problems.

The study looked at the individual welfare components. The welfare resources most closely linked to exposure to threats or violence are financial difficulties (income support) and unemployment. It is interesting that the differences in relation to these welfare components have no effect on single mothers' exposure to work-related violence.

When the focus is shifted to look at the number of problems accumulated at the individual level, the correlation between welfare related resources and victimisation becomes even clearer. With the exception of violence at the workplace, the proportion reporting victimisation increases across all types of violence with each incremental increase in the cumulative number of problems. The one-third of respondents who lack welfare related problems of any of the kinds examined here are significantly less exposed to violence than those reporting problems in one or more areas. One in ten of those with no welfare-related problems have been exposed to threatening or violent behaviour and three per cent report having been victimised on more than one occasion. Among those with welfare-related problems in four or more areas, four out of ten have experience of threats or violence over the course of the previous twelve months and almost one-third have been victimised on more than one occasion.

### > *The role of the perpetrator and the concept of marital dependency*

However, the authors point out that in order to understand women's exposure to violence it is important to focus attention on the perpetrator, which also constitutes the most common approach when examining this question. The literature often refers to social and psychological problems as a contributory causal factor. Perspectives that focus on the prevailing power structure and gender order are also central in this context. Although recognising the role of patriarchal social structures is essential to an understanding of men's violence against women, it is nonetheless important to look at the question of the more immediate situations in which such violence occurs.

The concept of marital dependency has been employed in relation to cohabiting women with children as a means of describing the relationship between the opportunities available to them and domestic violence; their lack of resources makes it more difficult for them to leave a partner who threatens and/or assaults them. This mechanism is relevant to the situation of single mothers too. For those with young children, who lack social support, have a poor financial situation, and so forth, it is easy to see that this dependency (via maintenance payments, for example) is maintained, along with regular contacts, and with them possible conflict situations. This could constitute one explanation for the high levels of victimisation experienced by those with young children and deficient resources.

### > *Conclusions*

This study confirms previous research that has shown single mothers to constitute a highly vulnerable group, especially with regard to violence in the home and repeat victimisation. Single mothers comprise two distinct groups; those with no welfare-related problems are more similar to the remainder of the population than they are to single mothers who experience a number of such problems. The large proportion of those presenting the highest levels of resource deficiency and who have also experienced threats and violence over the course of the previous year indicates that these women occupy a highly marginalised social position where violent victimisation is not an isolated problem.

All of the welfare problems examined in the study – ill-health, limited education, unemployment, poor financial resources and a lack of social relations – involve substantial increases in the risk for exposure to violence. This becomes even clearer when we focus on the cumulative number of welfare related problems; the more the areas in which an individual lacks resources, the greater the level of victimisation.

The study clearly shows that there are social situations which involve a particularly high risk for victimisation and that the limitations placed on individuals' ability to affect their own lives that result from resource deficiencies as a central mechanism behind the link between welfare related problems and exposure to violence. Limited resources, greater social isolation and thus reduced access to informal and formal support networks make it more difficult to deal with or escape a situation of vulnerability.

From the human rights point of view, one important conclusion emerges from this study, namely that differences in levels of exposure to violence, both within the group of single mothers and between this group and other women, are related to levels of welfare resource. Measures aimed at improving the situation of single mothers, besides producing the self-evident welfare dividends, also have the potential to decrease levels of violent victimisation.



PART II  
Country Profiles and Case Studies



## Chapter 4

### Argentina: country profile and case study<sup>1</sup>

#### 4.1 Political, economic and social overview

Argentina, one of the richest countries in Latin America with a population of about 38 million, is a federal state formed by 23 provinces and the Autonomous City of Buenos Aires, seat of the National Government. The period 1930 to 1983 was one of institutional instability during which Argentina experienced six *coups d'état*. The most recent, in March 1976, installed a military government which made extensive use of state terrorism systematically employing imprisonment, torture, murder and forced disappearances. In December 1983, Argentina returned to democratic government with the election of Mr. Raul Alfonsín as president. After this, the country was confronted with dealing with the human rights violations during the military dictatorship and the attempts to provide those responsible with immunity.

Argentina is a party to the major international human rights treaties, both regional and universal.<sup>2</sup>

#### > Economy

After the return to democracy, an important process of structural adjustment measures, aimed at reducing state inefficiency and improving the socio-economic economic situation, at first resulted in a decrease in inflation and an increase in growth rates. In 1991 a Convertibility Law was enacted which established strict convertibility between the local currency (the Austral) and the United States dollar.

The stabilising impact of this law, together with a positive international financial context and the support of the multilateral institutions of credit, facilitated further economic reforms.<sup>3</sup> These included the privatisation of almost all the public services and state owned enterprises (telephone, gas, electricity, water, transport, the iron and steel industry), the opening of the domestic market to the free flow of financial capital, a strong reduction of import tariffs, removal of most non-tariff barriers and the conclusion of commercial agreements with neighbouring countries (Mercosur).<sup>4</sup> Argentina's existing foreign debt was renegotiated in 1992 although at the same time government borrowing increased the country's total debt further.<sup>5</sup>

Over a period of a few years, Argentine labour legislation was modified, reducing job security, lowering hiring and dismissal costs, lessening the employer's responsibility towards job accidents and during bankruptcy. Fiscal policy was modified which

reduced the traditional financing sources of social programmes.

The country went into recession in 1995 as a result of the Mexican financial crisis and, in 1998, entered a period of significant decline;<sup>6</sup> GDP fell by 20 percent between 1999 and 2002 and per capita annual income, as calculated by the UNDP, dropped from US\$8,950 to US\$3,197 between 1997 and March 2002 affecting all regions of the country. Incomes in the capital city of Buenos Aires, which was mostly formed by the middle-class, saw the average fall from US\$909 a month in December 2001 to US\$363 in March 2002<sup>7</sup>. The situation was also difficult in other provinces, where pay scales are lower, unemployment higher, and there are frequently three to six month delays in the payment of salaries and pensions. However, since late 2002 Argentina has been recovering little by little from the crisis; the GDP grew by over 8.7 percent in 2003<sup>8</sup>.

In December 2001, the Argentine State defaulted on its foreign debt, and the Government imposed strict limitations on withdrawing cash from bank accounts (the *corralito*) followed, in January 2002, by the freezing of almost all dollar-denominated bank accounts and their conversion to pesos at an artificial rate of 1.4 pesos to the dollar. The subsequent floating of the peso in February 2002 increased depositors' sense of expropriation.<sup>9</sup>

These measures and the deterioration of the socio-economic situation provoked widespread demonstrations, protests and the looting of stores, which led to a severe political crisis with the country having five presidents in just 15 days. The National Executive Power declared a state of siege in the whole country, a

1 Prepared by the editor on the basis of the report by the Centro de Estudios Legales y Sociales (CELS) entitled *Description of the practices through which institutional and non-institutional violence is exercised in Argentina: analysis of the factors that enable or promote the victimization of vulnerable sectors of the population* (hereinafter referred to as CELS), in consultation with. The CELS report is reproduced in English and Spanish on the CD-ROM included with this publication.

2 CELS Part I, section 3.

3 CELS, Part I. An analysis of the process can be obtained from: Lo Vuolo, R.; Barbeito, A.; Pautassi, L. y Rodríguez, C.; "La pobreza de la política contra la pobreza", CIEPP/Miño y Davila editors, Buenos Aires, 1999.

4 CELS, Part I, section 2.

5 Agencia de Noticias de la República Argentina TELAM. [http://www.telam.com.ar/central\\_especial12.htm](http://www.telam.com.ar/central_especial12.htm).

6 CELS Part I, section 2 and La Nación, "La economía creció 8.7%; la reactivación cumplió un año", 22 January, 2004.

7 According to the Monthly Calculator of Economic Activity (EMAE).

8 La Nación, "La economía creció 8.7%; la reactivación cumplió un año", 22 January, 2004.

9 CELS, Part I, section 2, (page 12).

measure that was massively rejected by the population; the state repression that followed caused around thirty deaths and 4,500 arrests.<sup>10</sup>

Unemployment in Argentina after the 1995 Mexican financial crisis was 18 percent, rose to 20 percent at the end of 2001 and reached a record of 21.5 percent of the active population in May 2002. The structure of the labour force changed throughout the decade of the 1990s. This involved a significant increase in the number of women in the labour force which grew by 41 percent (men grew by 22 percent); women's employment increased by 30 percent while women's unemployment increased by 200 percent. Argentina's social structure "which used to include a large middle class and an ascending social mobility, was critically transformed".<sup>11</sup>

The character of employment changed with a shift away from formal jobs which benefited from a certain stability, pension contributions and unionisation, towards informal employment without those advantages and the appearance of subsistence level informal non-wage earning jobs which had been almost non-existent in the past. An example of this latter form of work is the *cartoneros* ("cardboarders") who collect and recycle rubbish.

### > *Income distribution and poverty*

During the second half 1990s, the evolution of income inequality was the worst in Latin America<sup>12</sup>. In 1974 the income of the richest 10 percent of the population was about 12 times that of the poorest 10 percent. In 1989, during the hyperinflation process it topped 23.1 times and grew to 30.4 times in May 2002. Between 1974 and present times, the richest 10 percent improved its portion by 35 percent, the poorest lost 37 percent, the lower middle class lost 24 percent, and the upper middle class lost 12.8 percent. In October 2002 the poorest 10 percent in Argentina received just 1.4 percent of the total income while the richest 10 percent received 37.4 percent. "This gap explains, at least in part, the social disintegration of Argentina nowadays."<sup>13</sup>

Argentina experienced a progressive and dramatic increase in poverty levels during the 1990s, rising from below 5 percent to 57.5 percent, with homelessness - barely known before 1990 - rising to 27.7 percent<sup>14</sup>. In 2002, over half of the population was living in poverty, an increase of almost 50 percent compared to October 2001<sup>15</sup>; in May 2003, 54.7 percent (slightly less than 20 million people) were below the poverty line (insufficient resources for alimentary and non-alimentary essential needs) with 26.3 percent (roughly 9.5 million people) below the indigence line (not enough resources to satisfy minimum food needs). These figures show that the economic policies imple-

mented "took the social emergency to levels incompatible with a real democracy".<sup>16</sup>

The poverty increase had a different impact on the different sectors of the population. The situation of children was the most serious: in October 2002, 75 percent of children under 18 were below the poverty line, while 42.7 percent survived in an indigent situation, that is, they belonged to families that cannot support their basic nutrition.<sup>17</sup> It was estimated that every year, roughly 13,000 children under one year old died, most of them due to avoidable causes<sup>18</sup>. Almost 11,649 babies died in 2000.<sup>19</sup>

### > *Health, education and housing*

During the last months of 2001 and the beginning of 2002 Argentina experienced a situation of health emergency as a consequence of the lack of medicines and basic supplies in public hospitals.<sup>20</sup> Further, an educational crisis was added to the alimentary and health crises. Even if the literacy rate was 96.2 percent, in 2000, only one third of students who finished high school had attained the basic and essential knowledge for that level. This is related to the fact that, due to the crisis, schools became places providing assistance rather than places of learning. Also, the education budget tended to go down or to remain stable while the school population grew.

Of the 15 to 24 year old age group, 1,272,000 (19.1 percent)

10 CELS, Part I, 2 pages 17-18; and CELS, "La protesta social en Argentina durante diciembre 2001", document available at: [www.cels.org.ar](http://www.cels.org.ar) and CELS, [El Estado frente a la protesta social 1996-2002](#).

11 CELS, Part I, section 2 page 13-14.

12 World Labour Institute, *The Argentine Labour Market in 2004*, Buenos Aires 2004.

13 CELS, Part I, section 2 page 14.

14 National Institute of Statistics and Census, *Census and Homes Permanent Poll (HPP)*, 2001; *Labor Ministry, Labor Indicators Poll*; *Economy Ministry, Argentinean Economic Indicators*; *CEPAL, Statistical Yearbook of Latin America and the Caribbean*.

15 INDEC, *Permanent Home Survey (PPH)*, May 2003.

16 CELS, section 2 page 14.

17 CELS, Part I, section 2.

18 CELS, Part I. Puga, Teodoro; "Los derechos del niño", document presented at the XXXII Argentine Congress of Pediatrics, Salta, 27-30 September 2000. Available at: [www.sap.org.ar](http://www.sap.org.ar).

19 UNICEF – Argentine Office / Health Ministry of the Nation / INDEC; "Evolución de la mortalidad infantil durante la década de los noventa en la Argentina"; in *Instantáneas*, September 2002, First Year, Number 2; Buenos Aires City. Available at: [www.unicef.org/argentina](http://www.unicef.org/argentina).

20 CELS, section 2 page 15; Tobar, Federico; "Economía de la Reforma de los Seguros de Salud en Argentina", Fundación ISALUD, Buenos Aires, July 2001. Available at: [www.isalud.org](http://www.isalud.org).



lived in a state of complete inactivity: not working, studying or looking for a job, and the tendency grew by 38.4 percent in four years.<sup>21</sup>

Concerning housing, a significant deficit developed due to a lack of available and affordable housing, the significant loss of incomes of a large part of the population and the precarious housing situation of many. This, in turn, has brought the issue of forced evictions and the growth of shanty towns to the fore.

Housing policies implemented in the urban ambit suffered substantial changes during the decade of the 90's. Legislation passed in 1994 and 1995<sup>22</sup> resulted in the 'mercantilisation' of public housing and the loss of its social character. That legislation gave priority to the recovery of the funds invested by the State over the accessibility to housing of the popular sectors and incorporated mechanisms which favoured the eviction of families in case of payment impossibility.<sup>23</sup>

Towards the end of 2001, all building of 'new social housing'<sup>24</sup> was paralysed and social housing was no longer accessible to those in lower income levels. A survey conducted in 2001 showed the precarious nature of a large number of home occupations in the country<sup>25</sup>. The housing deficit affected in a different way the different sectors of the population: 84 percent of the deficit situations were concentrated in the low and middle income strata<sup>26</sup>. In the City of Buenos Aires, the housing deficit affected 400,000 people<sup>27</sup>, of who 150,000 occupied buildings that belonged to the State or individuals and are not tenants or cessionaries<sup>28</sup>. 44 percent of those affected were unemployed and only 11 percent had a temporary job.

In urban areas the search for housing takes place through informal occupation of precarious properties and, in general, spontaneously. Usually, a group of families who, without any kind of previous organisation, have discovered the existence of an available place, decide to occupy the land or building and to move all their belongings there. The result is overcrowding (over two people per room) and extremely precarious sanitary conditions, because the places they occupy had been abandoned for a long time.

### > *Shanty towns*<sup>29</sup>

During the decade of the 90's, the number of people living in shanty towns in the Autonomous City of Buenos Aires doubled from 52,608 people in 1991, to 108,056 in 2001<sup>30</sup>, approximately 4 percent of the population of the City. Further, the number of these towns increased by at least eight, giving a total in 2001 of 22 in the City. In 2001 the oldest and biggest shanty town, known as 1-11-14, had 6,003 homes, the next largest, known as

21-24, had 4,267 homes; then shanty town n°20 (3,979); n°15 (2,627) and shanty town n°31 of Retiro (2,190).

Almost all the shanty towns in the City of Buenos Aires are located on degraded, polluted and unhealthy lands, and their population lives in conditions of extreme poverty and overpopulation (the average number of inhabitants per house is 4 or more people, while in private houses or flats the average does not reach 2.5). In many cases there is no access to basic public services such as running water, electricity or gas.<sup>31</sup> An example of the difficult living conditions in shanty towns are described in section 4.3 below.

This increase in the number of shanty towns and the number of people living in them took place as a result of the degradation in economic conditions described above. In the shanty towns 61 percent of the population was unemployed while 39 percent of those who work earned less than 300 pesos per month.<sup>32</sup> In the City of Buenos Aires, purchasing power dropped by 20 percent between 1995 and 2002, and in 2004 700,000 people in the City lived under the poverty line (25.2 percent of the total population) of whom 300,000 (10.8 percent of the total population)<sup>33</sup> were

21 CELS, section 2 page 15. Source: Clarín, "Un estudio de la UNESCO confirma que empeora la calidad educativa", 1 July 2003.

22 CELS, Part I, section 2.

23 CELS, Part I, section 2. See <http://www.vivenda.gov.ar/>. CELS, "Los trabajadores y organizaciones territoriales" Part I, section 2, page 17.

24 CELS, Part I, section 2. See <http://www.vivenda.gov.ar/>.

25 CELS, "La ausencia de una política social de vivienda", at: *Derechos Humanos en Argentina. Informe 2002-2003*, Chapter XII, Siglo Veintiuno Editores, Argentina, Buenos Aires, 2003; INDEC, Permanent Home Survey, May 2003.

26 Rodríguez, Carla and others; "La tierra es nuestra. Hacia una política de Tierra, Vivienda y Hábitat. Análisis y propuestas de los trabajadores y organizaciones territoriales"; Federación Tierra, Vivienda y Hábitat and Instituto de Estudios y Formación de la Central de Trabajadores Argentinos (CTA); no date, p. 14.

27 Página/12 newspaper, 1 September 2001.

28 Statements of Jorge Srur, President of the Housing Commission of the Legislature of the City of Buenos Aires.

29 CELS, Part V, section 2 (pages 2 – 5).

30 General Direction of Statistic and Censuses of the Government of the Autonomous City of Buenos Aires; "Sistema Estadístico de la Ciudad (SEC), Enero/Febrero 2002." See: [http://www.buenosaires.gov.ar/areas/hacienda/sis\\_estadistico/sec2002/ene-febr2002.pdf](http://www.buenosaires.gov.ar/areas/hacienda/sis_estadistico/sec2002/ene-febr2002.pdf).

31 CELS, Part V, section 2, pages 2 -5; General Direction of Statistics and Censuses of the Government of the Autonomous City of Buenos Aires; *Encuesta Anual de Hogares de la Ciudad de Buenos Aires. Aspectos Demográficos 2002*, N°1, Year 2004.

[http://www.buenosaires.gov.ar/areas/hacienda/sis\\_estadistico/nuevoinforme/EZH-demograficos.pdf](http://www.buenosaires.gov.ar/areas/hacienda/sis_estadistico/nuevoinforme/EZH-demograficos.pdf).

32 CELS, Part V, section 2, page 4. See:

<http://www.indec.mecon.ar/nuevaweb/cuadros/74/cba1.xls>.

also under the indigence line.<sup>34</sup>

A large number of the inhabitants of the shanty towns of the City survive thanks to the activity of *cartoneo*, which consists in the collection of solid urban wastes (cardboard, paper, glass, plates, metal containers, etc.) in streets, for their subsequent recuperation or recycling, or in order to sell them to entities in charge of recycling. In 2002, it was estimated that in the Metropolitan Region of Buenos Aires alone, there were between 70,000 and 100,000 informal collectors<sup>35</sup>.

During the decade of the 90's, the number who survived as *cartoneros* gradually increased but it was only after the 2001 crisis and due to the public divulgation of the many cases of death from child malnutrition, that the existence of the *cartoneros* was officially acknowledged. As a result, a number of initiatives were taken, including by the *cartoneros* themselves, who established cooperatives in order to avoid payments to mediators. A special train service, the "white trains", between the City of Buenos Aires and its outskirts was opened in 2002 so that the *cartoneros* could transport their carts with goods (by the middle of 2004 there were 15 such services)<sup>36</sup> and in 2002 the City of Buenos Aires established two programmes to assist the *cartoneros*: one regarding the separation of rubbish and one aimed at protecting the *cartoneros* from diseases to which they were particularly exposed.<sup>37</sup>

### > Rural housing and land

In the rural area the question of housing and land relates in general to indigenous communities and peasant groups who have traditionally inhabited the property for decades or even centuries<sup>38</sup>. The weakness of public policies to regularise the possession of lands occupied by indigenous communities<sup>39</sup>, and also, the difficulties for peasants to get the possession of properties they have inhabited for a long time, make them vulnerable to forced evictions.

### > Social protests

The deep socio-economic transformation which took place during the 90s encouraged a growing number of people to claim their rights. This came together with the emergence of new actors, new topics, new forms of protest and new arguments progressively incorporated into public consideration<sup>40</sup>. The most outstanding example is the growing number of road blockades or *piquetes*, a new way of protesting that arose as an answer to the growth of unemployment and to the dismantling of social security since 1990. It was used as a form of pressure to get jobs,

subsidies and an increase of social expenditure on food, health and education. Thus, the typical demonstrations of big trade union organisations linked to the traditional job relations, were replaced by new forms of protest created by the most deprived sectors, victims of unemployment and recession<sup>41</sup>. These demonstrations met with a strong reaction from different governments and resulted in the death and injury of demonstrators.

## 4.2 Violence<sup>42</sup>

### > Evictions

Evictions of people from their homes and land in urban and rural areas and of street sellers from parks and streets have been an important aspect of violence in Argentina. Often accompanied by the use of force, many times excessive, evictions not only involve direct violence to individuals but also often result in the denial of the right to adequate housing and productive work opportunities. The deterioration of the economic and social situation, including housing, is seen as an important factor leading to forced evictions.

33 CELS, Part V, section 2, page 3; Clarín, "En diez años se duplicó la población de las villas porteñas", 8 December 2003.

34 CELS, Part V, section 2, "Aportes para el Desarrollo Humano Argentina 2002. Segunda parte: Desigualdad y Pobreza", prepared by the UNDP, 2002, [www.desarrollohumano.org.ar/ge?Idioma=1](http://www.desarrollohumano.org.ar/ge?Idioma=1).

35 *Ibid.*

36 Río Negro, "El tren blanco de los *cartoneros*", 13 June 2004.

37 CELS, Part V, section 2, page 5.

38 "Los Campesinos" in CELS *Derechos Humanos en Argentina. Informe Annual 2000*; Chapter VII; Eudeba; Buenos Aires, 2000. "Los campesinos y el derecho a la tierra" and "Una perspectiva sobre los pueblos indígenas en Argentina" in CELS *Derechos Humanos en Argentina. Informe 2002*; Chapters X and XI; Siglo XXI – Catálogos; Buenos Aires 2002. "La tierra en el reclamo de los pueblos indígenas y sectores campesinos" in CELS; *Derechos Humanos en Argentina. Informe 2002-2003*; Chapter XIII; *op. cit.* "Informe Alternativo sobre el estado de cumplimiento del Convenio 169 de la OIT en Argentina"; ENDEPA – MEDH, July 2003, available at [www.endepa.org.ar](http://www.endepa.org.ar) and "Informe Alternativo ante el Comité para la Eliminación de la Discriminación Racial"; Centro de Estudios Legales y Sociales/CELS and Comité de Acción Jurídica (CAJ); February 2001, available at: [www.cels.org.ar](http://www.cels.org.ar).

39 González, M. del Carmen; "Argentina. Situaciones problemáticas de tenencia de la Tierra"; Economy Ministry; Agriculture, Farming, Fishing and Food Secretary, Office of Agricultural Development, Buenos Aires, April 2000, quoted in: "Los campesinos y el derecho a la tierra", *op. cit.* p. 358.

40 CELS, *Derechos Humanos. Argentina 2001*; Siglo XXI/Catálogos, Buenos Aires, 2001.

41 CELS, Part I, section 2, page 16 and Annex I, table 8; and Economy Ministry of the Argentine Republic; "Argentina. Indicadores Económicos", February 2004. Documents available at: [www.cei.gov.ar](http://www.cei.gov.ar).

42 Information on violence in Argentina is also contained in chapter 1, section 1.9 above.

Forced evictions take place in a context of legal insecurity (irregular occupants, possessors, indigenous communities who do not have ownership deeds). The lack of economic resources is another element present in these cases because it hinders the regularisation of the deeds, the payment of rents and access to an effective legal defence.

Forced evictions in urban areas frequently involve the transfer of valuable land from the poorest sectors to middle or high income groups. The eviction operations usually take place in parts of the cities with the worst living conditions. The higher classes hardly know forced evictions and are always safe from mass transfers.

In the rural areas forced evictions take place against families - in general indigenous communities and peasant groups - that have traditionally inhabited the affected properties. These groups share the characteristic of having precarious living conditions. With the advance of the farming frontier, lands which were not used before, and were usually destined to family and local consumption, started to be considered as good possibilities to expand production for export. In the southern provinces, this process was mainly related to the extension of the surface devoted to sheep for textile production and to the petroleum industry, while in the central and northern areas it is associated mainly with soy plantation and the wood industry<sup>43</sup>.

One of the factors which enable forced evictions to take place is the number of legal obstacles which make it impossible for small peasants and indigenous communities to regularise the ownership of their lands.<sup>44</sup>

### > *Forced evictions of street sellers*

The worsening of the socio-economic crisis explains the increase in the number of people who turned to selling in the street as an alternative solution to a job in the formal market.<sup>45</sup> Street selling has developed, in general, in an ambulant manner, with small blankets on the sidewalk or in parks, offering all imaginable products for sale.

The police play an active role in the eviction of ambulant sales people, although there are cases in which the police have demanded the payment of a bribe in exchange for protection. Evictions, which at times result in injuries and the imprisonment of the sellers, are explained by the need to free public space<sup>46</sup> and to prevent illegal activities (such as illegal systems of commercialisation, brand falsification, smuggling, tax evasion, etc.).

The lack of resources of the victims, does not explain, by itself, the exercise of violence against them. However, it does perpetuate it. For instance, victims of forced evictions in rural areas do

not have the registry deeds, despite having lived in the lot for the number of years that, pursuant to the Civil Code, would grant them the right to such a deed.<sup>47</sup> For this, they have to resort to a court and the costs and expenses involved present an insurmountable obstacle to access to the property deeds.<sup>48</sup> Apart from the costs involved in court procedure, the victims of forced evictions in rural areas have to face the travelling expenses from the far away places they inhabit to the urban centres where the courts are located.

A complaint by an accuser<sup>49</sup> or injured private party<sup>50</sup> in court cases in which acts of violence with police participation are being investigated, is usually indispensable for their clarification. Among the judicial practices in which tolerance to violence becomes evident, is the unquestioned acceptance of the police version of the incidents. When this happens, the participation of other actors in the judicial process is indispensable for the presentation of evidence of police responsibility in a violence incident and to substantiate, for example, that what was presented as an unavoidable death in an armed confrontation was, in fact, an extrajudicial execution.

Social housing policies do not solve this situation either, since they establish a minimum amount of family income as a requirement for access to housing that leaves out of the system the sectors most affected by the housing deficit.<sup>51</sup>

### > *Torture and ill-treatment*

CELS in its report analyses in detail and with numerous examples the occurrence of torture and ill-treatment<sup>52</sup>. Although Argentina has several legislative enactments aimed at preventing torture and ill-treatment and has ratified the relevant international conventions, CELS reports that "unlawful coercion and torture are

43 "El derecho a la alimentación en Argentina. Informe y recomendaciones de la Misión Investigadora Internacional a Argentina"; For the Right to Feed Oneself (FIAN) and Servicio de las Iglesias Evangelicas en Alemania Para el Desarrollo (EED); April 2003.

44 "La tierra es nuestra. Hacia una política de Tierra, Vivienda y Habitat. Analisis y propuestas de los trabajadores y organizaciones territoriales", *op. cit.*, p. 21.

45 Clarín newspaper, 9 June 2003 "Liberar las calles de la venta clandestina".

46 *Ibid.*

47 CELS, Part II, section 2.1.3.2.

48 CELS, Part IV, section 6.1.

49 The Code of Criminal Procedure of the Nation sections 82 and 83.

50 The Code of Criminal Procedure of the province of Buenos Aires (law 11,922 sections 77 and 77).

51 CELS, Part IV; section 6.1.

52 CELS, Part II, section .4

systematically practiced throughout Argentina.” For example, between January 2000 and June 2002, 2271 judicial cases were started before the Ordinary National Justice of the city of Buenos Aires and the federal justice of all the country, for unlawful coercion and 23 for the crime of torture<sup>53</sup>, and between 18 March 2000 and 3 September 2003 another source<sup>54</sup> recorded 1974 cases of torture and ill-treatment. The reported cases of torture and ill-treatment by federal public officials showed an increase of 139 percent between 2000 and 2002, the period during which there was a 20 percent fall in Argentina’s GDP and poverty rose to 50 percent of the population.

Torture and ill-treatment are inflicted in order to obtain confessions or to obtain information about persons suspected of criminal activity from third parties.<sup>55</sup> They are also used in penitentiary institutions in order to force the detained person to commit a crime, either outside or inside the institution. In general, those crimes consist in the murder of another inmate or of a judicial officer, because of fear that they know about and might denounce the involvement of the penitentiary staff in violent acts or corruption.<sup>56</sup> Another purpose is to intimidate witnesses and victims of crimes perpetrated by members of the security services.<sup>57</sup> Torture is also used in prisons to keep prisoners calm and quiet in overcrowded institutions and as a mean to show them “who’s the boss” (for example, through what are known as “reception committees”).

Ill-treatment and torture is also used as an instrument of social control, in particular, against young persons in poorer areas as is reflected in the numerous cases described in the CELS report.<sup>58</sup> This also occurs against demonstrators in social protests (not all the victims are from groups that are vulnerable due to their socio-economic situation: in one case the victim was a middle class young man who took part in a demonstration headed by this social sector). The objective is to create fear in order to discourage the demand for their rights and participation in protest movements which question the existing situation. Torture is perpetrated by police and security forces ordered and/or tolerated by the judiciary and the local political power.<sup>59</sup>

It is instructive to consider the characteristics of the prison population, in particular, since most ill-treatment and torture takes place during detention. In one survey, only 39 percent of the prison population had been convicted of a criminal offence while 59 percent were being held in pre-trial detentions.<sup>60</sup> 23 percent had not finished primary school, 46 percent had completed primary school and only 4 percent had finished the secondary school. Only 1 percent of the detainees had university or third level education. Members of the largest group (46 percent) were unemployed at the time of their arrest while 38 percent were employed part-time.

While it could be said from these figures that persons in difficult socio-economic situations have an increased tendency to engage in unlawful behaviour, they can also be seen as reflecting the selectivity of the penal system. “The figures show that young men, with little or no education, unemployed or with part-time jobs are those who are more vulnerable to the action of the penal system, and not necessarily those who commit more crimes or are the biggest risks for life in society.”<sup>61</sup>

### > *Shootings by the police and extrajudicial executions*

Violence in Argentina also takes the form of the killing of civilians by police in what are reported to be armed confrontations, extrajudicial executions, killings by death squads, the killing of demonstrators and the killing of persons in detention.<sup>62</sup> The number of deaths resulting from police confrontations is large in comparison with the figures from similar areas in other countries.

The number of deaths in confrontations in the City of Buenos Aires is very far from those verified in countries where public security agencies have developed clear policies on the control of the use of force, such as Great Britain and Australia. Between 1995 and 1997, Australia suffered the death of only 12 civilians as result of police officers’ shots, whereas the figure for police officers dead on duty increased to 9 during the same period. In the Australian state of New South Wales - whose population doubles the City of Buenos Aires- and where Sydney lies (the most populated city of the country), there were 4 civilians and 3 police officers who died within the same period.<sup>63</sup>

53 CELS, page 88 and annex I, Table 9 citing the General Procurator of the Nation.

54 Resolution n° 13 of the General Defender before the Court of Criminal Cassation of the Province of Buenos Aires, dated on 17 March 2000. <http://www.defensapublica.org.ar>.

55 CELS, Part II, section 2.4.2.1, page 88.

56 CELS, Part II, section 2.4.2.2, page 95.

57 CELS, Part II, section 2.4.2.3.

58 CELS, Part II, section 2.4.2.4.

59 CELS, Part II, section 2.4.2.4 (p. 113)

60 CELS, “*Indicadores de uso generalizado de la prisión preventiva*”, <http://www.cels.org.ar/estadisticas/index.html>.

61 CELS, Part II, section 3.1.

62 CELS, Part II, section 2.5.3.

63 CELS, Part II, section 2.5.2 page 135 citing Ales, Cecilia; Donza, Eduardo and Palmieri, Gustavo; “*Violencia y enfrentamientos policiales. Civiles y policías muertos en enfrentamientos en los que participaron miembros de la Policía Federal Argentina 1996-2001*”; Centro de Estudios Legales y Sociales/CELS; work document; Buenos Aires, April 2002, [www.cels.org.ar](http://www.cels.org.ar).

As for Argentina, 293 civilians and 88 police officers died only in 1996 and 1997 – a total of 381 people - in confrontations where officers from both the Federal Police and the Police of the Province of Buenos Aires took part and which occurred within the City of Buenos Aires and its outskirts.<sup>64</sup>

These confrontations took place based on “a warlike logic” aiming at “the physical disposal of ‘enemies’ and show police disregard for the life of both the alleged offenders and third parties present at the spot that may be injured or killed. In police logic terms, the latter are considered ‘side effects’. This “violence is neither used indiscriminately nor reaches all social strata in the same way: the analysis of the cases shows that the use of lethal force is focused on certain sectors the social imaginary identifies with crime.”<sup>65</sup>

Characterising the civilian victims of these confrontations is not an easy task, but based on a CELS analysis<sup>66</sup> the profile of persons who died in confrontations with the police is that of a young man or adolescent<sup>67</sup> who, according to other studies, are socially and economically marginalised. A study carried out by the National Department of Criminal Policy on the youngsters in conflict with the law reveals that a substantial part of them had not finished primary school; many lived in precarious dwellings like shanties, usurped houses, hotels and even on the streets, and only 1 out of 4 lives with both parents.<sup>68</sup>

The low complexity of the crimes, the goods they presumably intended to steal (bicycles, cars, daily income of small stores from the neighbourhood, etc.) together with the analysed victims’ characteristics, clearly show that the use of lethal force by security institutions is centred on the most poverty-stricken sectors of society, and specially on adolescents and young people.

The use of firearms – and the resulting death or injury - generally occurs during the pursuit of the suspects who, many times, do not represent any imminent danger to the life or physical integrity of the police officer or third parties. Therefore, victims are the result of an abusive use of lethal force rather than officers’ negligence, and the deaths are believed to be a natural consequence of police action. It is precisely the victims’ social characteristics – the fact of being a young man and living in a poor neighbourhood - that, according to the perpetrators’ criteria, authorises the police to carry out this kind of practice. In the light of this reality, there arises a simple and evident conclusion: the abundance of these kinds of cases – as well as their systematic occurrence in different parts of the country - would not be possible without the tolerance and approval of a large part of the judicial branch, executive authorities, people directly responsible for security and, to a large extent, public opinion.

### > *Summary executions*

Summary or extrajudicial executions are often presented as the result of armed confrontations. These executions can result from the perpetrator going to seek the victim at a place where young people gather - a park or particular corner - or through a chance encounter. Threats and intimidation to witnesses, relatives and friends are ways frequently used by the police to hinder investigations.<sup>69</sup>

Killings, often of young people, are carried out by death squads act to rid neighbourhoods of persons who cause disturbances. Deaths of young people can also result from sexual abuse and torture. The victims share many of the characteristics of the victims of executions described above and getting at the truth involved confronting many of the same obstacles.<sup>70</sup>

### > *Killing of demonstrators*

Over recent years, the use of violence against demonstrators has resulted in the death and injury of many people. In these cases, the deaths occur as a consequence of the use of lead bullets fired by security forces against the demonstrators – who often include children and old people. The killing of demonstrators may happen at random, when police shoot indiscriminately at a crowd, or may occur after a deliberate pursuit of the victims with the intention of killing them. In this case, security forces take advantage of the violent situation to eliminate social militants who were previously identified and located or to ‘settle things down’ with some people present at the demonstration.

The victims’ characteristics are related to the context where executions are carried out, that is to say, the road blockages and the mobilisations of groups of unemployed people. Unemployment being so widespread, it is difficult to describe this group: it is made up of both young and adult people, men and women, inhabitants from urban areas and small towns of the inner part of the country. However, their members share a series of basic features: they have been left aside by the labour market and have slim chances of getting into it again; they undergo extreme

64 *Ibid.*

65 CELS, Part II, section 2.5.2, page 135.

66 The newspapers analyzed are *Clarín*, *Crónica*, *La Nación* and *Página/12*.

67 CELS, Part II, section 2.5.2, page 136.

68 National Department of Criminal Policy (office under the National Ministry of Justice, Security and Human Rights): “*Estudio sobre menores en conflicto con la ley penal, año 2000*”, Buenos Aires, no date. <http://www.polcrim.jus.gov.ar/OtrasInvestig.htm>

69 CELS, Part II, section 2.5.3.1, pages 138-140.

70 CELS, Part II, sections 2.5.3.2 and 3, pages 142-148.

poverty and are forced to make their situation public for their claims to be heard.

On the other hand, there has not been such violence in the numerous social demonstrations carried out, for example by middle class bank account holders protesting against restrictions on the access to their accounts. Beginning in December 2001, they continued every Monday, Wednesday and Friday for more than a year. Practically no one was injured,<sup>71</sup> nor were there any violent reactions by the police.<sup>72</sup>

### > *Killing of persons in detention*

Deaths in prisons and police stations occur with a worrisome frequency but no preventive policies have been implemented.<sup>73</sup>

The most frequent causes of these deaths are burns, sharp wounds and asphyxia. Deaths occur within the victim's cell, punishment cells or common spaces in the context of a presumed fight between inmates, escape attempts and/or insurrection. In some cases, the extrajudicial execution of a detainee is directly committed by penitentiary officers. In others, penitentiary officers create the necessary conditions so that a murder can be committed by detainee to whom this task was previously assigned. Most of the deaths within prisons are related to the concealment of penitentiary corruption. This seems to be indicated by the analysis of the concentration of deaths depending on the detention unit. The victims, as described above, come from a population with limited education, coming from a poor urban neighbourhood and often having been unemployed.<sup>74</sup>

Threats and intimidation are directed towards victims of abuses (torture, ill-treatment, false imprisonment, etc), their relatives and witnesses to the events as well as against police officers to keep them from reporting abuses. In many of the cases relating to the violation of basic human rights, the victims or the victim's family, do not report the event or do not appear as parties to the legal proceedings in which the police action is investigated. This may be due to lack of economic means, distrust in justice, lack of knowledge or fear of the consequences.<sup>75</sup> In cases where the violation is reported, it usually encounters the indifference of officers of the judiciary, who on many occasions are reluctant to investigate cases in which officers of the security forces are involved. In this context, the harassment of witnesses, victims and relatives of victims of institutional violence is very frequent.

The methods used to carry out the threats vary according to the social sector to which those threatened belong. In the most deprived neighbourhoods, police officers often intimidate victims openly and during the day, many times even in their own houses. These threats have the biggest effects, and the state of complete

defencelessness of the victims practically means such events will not be reported to the judicial authorities. Threats to people belonging to the middle class are made anonymously, usually by phone.<sup>76</sup>

Threats to persons in custody are very frequent and violent, are made face to face, the penitentiary officer taking advantage of the complete lack of protection of the detainees or prisoners. Frequently, the threats also extend to their relatives, in general people of scarce resources, who do not report it judicially.

In 2002 a delegation of the Inter-American Commission of Human Rights expressed its concern "... about threats to human rights defenders, even against lawyers, social leaders, activists and witnesses".<sup>77</sup>

### > *House searches*<sup>78</sup>

House searches constitute another form of intimidation and social control. The searches of the homes of activists after public demonstrations are frequent. In some cases, false evidence is placed in the home to link the activists with criminal activity and in other cases the violence of the search is enough to intimidate activists. The regions in which these practices have occurred most frequently are those where the *piquetero* movement started. All the cases analysed by CELS have a common characteristic: the fear and confusion felt by the dwellers of the houses searched and the precariousness of the neighbourhoods where these incidents take place.

### > *Searching and enclosure of shanty towns*<sup>79</sup>

Shanty town dwellers have been stigmatised in popular opinion as criminals, and shanty towns as a centre of criminal activity. This view is used to justify unlawful mass searches.

71 An exception to this was a woman who was hit by a glass that had been thrown from a building. She only needed some stitches. Source: *La Nación*, April 29th, 2002.

72 CELS, Part II, section 2.5.3.4, pages 148 – 154.

73 CELS, Part II, section 2.5.3.5, pages 155 – 159 and Annex I, tables 20 and 21 and Part IV, section 6.

74 CELS, Part II, section 2.5.3.5 page 157 and Annex I, tables 22 and 23.

75 CELS, Part II, section 2.2.1.

76 CELS, Part II, section 2.2.1.

77 CELS, Part II, section 2.2.1, pages 46 – 64; Press release N33/02, "Comisión Interamericana de Derechos Humanos culmina visita a la República Argentina", 6 August 2002.

78 CELS, Part II, section 2.3.2; CELS; *El Estado frente a la protesta social 1996-2002*, op.cit.

79 CELS, Part II, section 2.3.2.4.

A special body was formed to carry out some of these searches. This is done by a display of hundreds of officers of the security institutions who break into a shanty town searching the different houses looking for weapons, drugs, fugitives, objects in general whether related to a particular crime or not. The effectiveness of these operations is measured in relation to their repercussion in the mass media, to the amount of drug confiscated and to the number of people taken to the police stations.

Other operations are much more routine, taking place without the presence of the press or witnesses. They are carried out by a group of local policemen who break into the houses of the shanty town without a warrant. These abuses are seldom denounced since the victims think their situation would only get worse if they decided to press charges.

In both these search forms, the situation, after the operation has finished, is desolate: frequently the houses searched are completely or partially destroyed. When searching the most precarious houses in the town, those made with cardboard, tin and other discarded materials, police searching generally implies the removal of beams, leaving the house almost disassembled.

Continuing the policies implemented in the last decades, security plans include control of the exits and entries of shanty towns. That means that anyone can be searched at any moment based on the false diagnosis that shanty towns are "criminal hide-outs"<sup>80</sup>.

Housing precariousness, overcrowding, lack of services, unhealthy living conditions, lack of adequate food and access to health services are not the only problems in shanty towns. A typical characteristic is the situation of illegality with respect to the lands where they are located; they also portray the characteristics of an enclave. In ways similar to closed urbanisations, such as private neighbourhoods and country clubs, shanty towns are spaces of the city that break with the planning of the rest of the urban space.<sup>81</sup>

An example of this in Greater Buenos Aires is the district of San Isidro which concentrates the largest number of closed urbanisations of the province and the most inhabited shanty town, La Cava. It is right next to a private neighbourhood, from which it is separated by a six-meter-high electrified wall. Seen from an aerial point of view, it appears as an area of islands of the poor alternating with islands of the rich, rather than as an integrated urban plan.

### > **Factors favouring violence**<sup>82</sup>

CELS provides a detailed analysis of the institutional and non-

institutional factors which allow victimisation of the vulnerable. The purpose is to describe "some of the circumstances which turn people, whose economic, social and cultural rights are systematically violated, into privileged receivers of institutional violence and non institutional violence tolerated by the State."

A series of factors has been identified which when added to the poverty of these groups results in their becoming the targets of physical violence. The situation of violence is the result of the complex interaction of these factors, rather than of one of them independently. The impact of these factors upon middle and high social sectors is substantially lower.

Discrimination of immigrants from neighbouring countries, internal migrants, shanty town dwellers, and young people is a key factor and CELS describes the mechanisms which permit this discrimination. Other factors which enable violence to be exercised against vulnerable groups are official tolerance of violence, the impunity from which the perpetrators benefit; the socio-economic situation of the victims; the weakness of preventive policies; and certain mechanisms including legislation, administrative and judicial practices and statements by public officials and others accusing the vulnerable groups of being responsible for crime and other social problems.

## ■ 4.3 Case study: the Village<sup>83</sup>

### > **Economic and social context**<sup>84</sup>

Like all the other shanty towns, the Village is located in an area which is degraded, polluted and unhealthy and the inhabitants live in extreme poverty. An important part of those living in the Village survive thanks to their work as a *cartoneo*. The Village is considered the smallest shanty town in the Buenos Aires area, but has certain specific characteristics.

It is located between the building known as Wing II of the College of Exact and Natural Science (FCEyN) of the University of Buenos Aires and the bank of the Río de la Plata. It is a large

80 "Spatial Analysis of Police Confrontations in a Large Argentinean Urban Setting" presented in the Conference Mapping and Analysis for public security, organised by the National Institute of Justice of the United States.

81 Alicia Ziccardi, in *Políticas de vivienda y movimientos urbanos. El caso de Buenos Aires (1963-1973)*, CEUR, Buenos Aires, 1977.

82 CELS, Part IV, pages 179-237.

83 Further information on the Village, including a map and pictures, is available in the CELS report contained in the CD-ROM.

84 CELS, Part V, section 2.

area, relatively away from the university buildings (the closest buildings are about 300 meters away). It is coastal land, with brushes and low bushes.

The main access to the Village is located exactly behind Wing II: it is a badly marked track, made of earth and grass, and since it is the most direct one, it was the one used by the inhabitants. However, in some periods this access is obstructed by debris and stones which made the entry of people with the carts they use to *cartonear* difficult, so that on some occasions they have to make a detour which goes along the bank of the river. This long distance creates difficulties not just for moving their carts, but also for the provision of running water and access for ambulances or medical services in case of emergencies.

The Village has no access to basic public services such as running water, electricity or gas, and there is no public transport and rubbish collection is irregular. For some time there was access to running water 300 meters away, but in 2003 it was cut off and in 2004, the inhabitants had to walk about 1,000 meters to get to running water.<sup>85</sup>

### > **Population**

In 1995, a homosexual couple of street dwellers went to the coast of the Río de la Plata to wash their clothes. There they met a transvestite who lived in a precarious hut, hidden behind the brush. She invited them to build a hut for themselves there and told them the precautions which they should take: every day they had to go out by different places in order not to be identified as fixed inhabitants, the hut should not be seen from the University City nor from any other inhabited spot of the city, in conclusion they were to be unnoticed at all times.

Months later, the existence of this place became popular among homosexuals living in the street. The older inhabitants of the Village remember this period nostalgically, constantly referring to the shared moments, to the fun and the feeling of having been able to live as “we wanted”; leaving behind the social rejection they had experienced in other contexts.

At that time, the inhabitants of the Village were frequent victims of social discrimination. Their double condition of homosexuals and homeless made many people despise them: “filthy, disgusting gays” were frequent insults.

Between 1995 and the eviction in 1998, the population of the Village grew to over a hundred people, mostly homosexual, although little by little some heterosexual couples and families joined them. The newcomers to the village evaluated the Village in different ways, basically according to their previous residential

situation. To those who had been living in the street and sleeping in subway stations or under bridges and who suffered constant police persecution, arriving in this small setting was very positive. Although the place had no electricity or water, and there were some risks when entering or leaving, the place was associated by those interviewed with protection, safeguard and union. For other people, their arrival in the Village meant an important decrease in their living conditions. The reasons why they came to live there are multiple even though, in general, they are related to the loss of job and house, maybe due to eviction or to the expiry of a contract in a hotel. In these cases, the Village is perceived as a temporary, very traumatic solution. In many cases, the meagre income of the *cartonero* and the lack of job opportunities, prolonged the stay, until the situation became progressively accepted as permanent. This initial expectation of temporality is common in settlement inhabitants.

Adaptation to life in the Village could be difficult. Although all the inhabitants were born to poor homes, the social descent from the working class to a marginal situation is usually accompanied by a progressive loss of family ties. For the people who had grown up in houses, adapting to the need to search for running water and light with candles was difficult. One of the interviewees recounted that she spent months without telling her family where she was living. In order to avoid questions about her residence, she avoided getting in touch with them, even losing contact with her eldest son, whom she had left under the care of her parents. According to this interviewee “I spent 9 months without telling them where I was, I did not have the guts to tell my mother where I was living. They would have hit me like they haven’t done since I was 11”. Finally, when they discovered that “their child was living under a bridge” her parents told her that until she lived in a proper house like theirs, they would not visit her home, not even if she had problems or was very ill.<sup>86</sup>

Even though at the beginning there were some internal conflicts, for example, between homosexual and heterosexual inhabitants, the first inhabitants of the Village remember those times in an idyllic way, evoking feelings of unity and solidarity among the inhabitants. One of the gestures through which this solidarity was expressed was the giving of material to build the huts: the newly arrived received help from the inhabitants to start putting up their homes. Moreover, at times they were accommodated for a few days as guests, until their homes were ready. Sharing this isolation and semi-clandestinity produced strong social and affective links among the inhabitants.

85 CELS, Part V, section 2, and Annex IV.

86 CELS, Part V.



Another of the characteristics of the population of this setting was its instability. Even if some people lived in the lot constantly, a considerable proportion of the inhabitants went there only during the week in order to be closer to the collection sites and to have a place to classify the cardboard before selling it. At weekends they went back to their homes, located in the Buenos Aires outskirts. In addition, there were people who go to the Village at weekends because of the river and the fishing possibilities. This situation acquired relevance in the negotiations with the Government of the City and was used as an excuse to deny all the inhabitants the access to public loans for the acquisition of houses, on the grounds that some had houses.

### > *Contact between the Village and the authorities*<sup>87</sup>

During the period 1995 to the eviction in 1998, the Village was not officially recognised and those living there were in contact with the state only through the police, the authorities of the University City (who sought to evict them) and Federal Court n°7 which handled the request for eviction. Additionally, some inhabitants received medical treatment in public hospitals, in particular the HIV positive.

Historically, relations with the police and security institutions were tense, and their interventions repeatedly violated the rights of the inhabitants: "at the time they said that for the mere reason of living there we had no rights to make demands". Institutional violence included arbitrary and systematic detentions, threats, unlawful coercion and rapes, forced evictions from the lot and recurrent home and person searching. These abuses were never acknowledged by the state nor were the responsible people punished.

Although the inhabitants of the Village and the police officers often knew each other, hostility and lack of trust was the major feature of their relationship: "With the police you never know if they are with you or against you". They characterised police actions as arbitrary, emphasising that interventions of the police could be foreseen neither in their frequency nor in their magnitude.

Because they lacked contact with other state institutions, Villagers had to negotiate with the police, for example regarding the entry of ambulances to the Village. Normally, ambulances and public transport refused to enter this area, fearing both for their goods and for their own lives. Therefore, if there was a medical emergency, the neighbours had to request the police to accompany the entry of the ambulance, which they did not always agree to do and so in many cases terminally ill HIV people, women about to give birth and ill elderly people had to be

taken by their neighbours to the University City to meet the ambulance.

### > *Arbitrary arrests by the police*<sup>88</sup>

Arbitrary detentions were the police practice most suffered by the inhabitants of the Village, although the homosexual inhabitants mentioned having been detained more frequently than the rest while performing their *cartonero* tasks in the University City or in the neighbourhoods of Belgrano and Núñez. On these occasions, apart from being delayed for hours in the cell of the police station, they lost all the cardboard and the elements collected that night and were insulted by the police: "the police grabbed your carts and threw everything you were carrying; I used to tell them, I feel proud that you take me for being a beggar, but you won't ever take me for thief [...] They called me nigger beggar, disgusting, eating those stuff from the rubbish, aren't you ashamed, many humiliations". Other times, the detentions were carried out – mainly to transvestites - only because they were dressed as women. Some of the transvestites of the Village worked as prostitutes in the streets, which is why they were much more harassed by the police.

One of the principle reasons for the arrest of people living in the village was the need for the police to demonstrate their effectiveness to public opinion. People living in communities close to the Village demanded more intervention from the local police, and the higher police authorities sought high arrest statistics<sup>89</sup>. Thus, a judicial investigation revealed:

...the existence of a series of telephone orders and daily agenda received by the police offices through which they are urged to 'ostentatiously increase the number of detainees'<sup>90</sup>. The existence of this kind of orders shows a way of work which, while granting each officer a great deal of arbitrariness in the use of detentions to check for identity, it is supported on a conception of the way of exercising police functions with institutional character and support.<sup>91</sup>

87 CELS, Part V, section 3.

88 *Ibid.*

89 CELS, Part V, section 3. About the value of statistics: Chillier, Gastón; "La denuncia de un ex policía. Análisis de las causas y consecuencias de las prácticas de la Policía Federal"; document elaborated within the framework of the Institutional Violence and Public Safety Programme of the Centro de Estudios Legales y Sociales/CELS; 1997. [www.cels.org.ar](http://www.cels.org.ar).

90 CELS, Part V, section 3. Extract of the Telephonic Order n°1 "R" of Circunscription VI, quoted in *Clarín*, "Polémica entre un juez y un fiscal por documentos policiales", 3 June 1999.

91 *Ibid.*

The people living in the Village, especially during the period up to 1998, described police arrests in the following terms:

“Back then, we had a very bad time. The [police station] 51° started to fill books and ... everybody inside, 24hs. It was horrible, they did what they wanted”.

“I knew that once or twice a week, when they had nothing to fill the books of the station with, they went to that place and took everybody; they didn’t even let you get dressed, if you were sleeping they made you go as you were”

“Before the eviction, the relationship with the police of the [police station] 51 was horrible, you were in the yard of your house, they came, and... On Fridays it was a mathematical thing to wait for them because they came looking for you: ‘Girls girls we need 5 more, get ready, who’s coming?’ The police car was waiting for you. They took you, made a file, wrote anything, they needed people, they came and took you”.<sup>92</sup>

The fact that some inhabitants of the Village practised prostitution led the police to believe that they were entitled to demand the payment of a percentage of their earnings, in exchange for not being constantly detained. Alternatively, the prostitutes were forced to grant sexual favours in exchange for their freedom. Many testimonies evidence an informal regulation of prostitution by the police. This regulation, according to some interviewees, includes sexual abuses to transvestites by officers, and drug exchange.

The frequency of the detentions seemed to decrease after a change in the legislation of the City in 1996, but also as the population of the settlements grew and started to gain more visibility.

### > *Illegal searches*<sup>93</sup>

In the Village there also were searches of huts and precarious houses that caused fear and confusion in the inhabitants. They perceived the searches as a police persecution destined to harass them and before which they found themselves helpless. One of the inhabitants described these events, mainly registered in the period previous to the eviction in the following way. “They came in, broke everything, everything you had and abused. They came at the time they felt like, kicked your door, came in. I don’t know what they were looking for”.

At times, massive searches were started after a robbery of students or facilities of the University City. In many of these cases, without any evidence, the university authorities pointed out *villeros* as naturally responsible for these crimes. At other times, the searches took place spontaneously, without any explanation

of the reasons. Even though the first type of situation caused in the interviewees feelings of indignation for the social prejudice which automatically associated them with crime, in the second case what predominated in the victims was frustration and confusion, in the face of an unexplained and unpredictable abuse.

However, the consequences of the searches for the victims were the same, and range from the material loss caused by the policemen in their houses, to violent abuses such as beatings and sexual abuse. In addition, “if there was a friend of you who came to visit, they hit him and made him leave”.

Searching of inhabitants as they were entering or leaving the Village were also very frequent, and was carried out without any explanation: “They are so many horrible things... they saw you around there and told you ‘lie on the ground’, they searched you and beat you, if you are a woman or gay they did not respect you, they groped you”. Violation of rights was general, and the situation of women and, above all, homosexual men was especially serious. In these cases, to the habitual practices they added a sexual attack, which on some occasions involved rape and serious abuse.<sup>94</sup>

These abuses were committed by officers of police station 51° and by officers of the Mounted Police, which patrols parks. “There was a group of the mounted who came very often. When they were clean and sober, they treated you well, and if they were crazy... the only ones who could help us were those from Prefecture, it was their jurisdiction. The mounted came to break your balls, bothered children with the animals, and they had to go with them or otherwise they said they’d put some drugs on you in order to later call the police”.<sup>95</sup>

On the other hand, the relations between the people of the Village and the officers of the Argentine Naval Prefecture were positive.<sup>96</sup>

92 *Ibid.*

93 CELS, Part V, section 3 and Part IV, section 2.3.

94 CELS, Part V, section 3

95 *Ibid.*

96 *Ibid.*

### > *The eviction of 1998*<sup>97</sup>

The eviction took place in June 1998 following an order by a federal judge in a court case brought by the University of Buenos Aires. For the people who lived in the Village the possibility of an eviction had been a constant danger, which, until then, had never materialised. When it finally happened, it took everybody by surprise, since they were in the middle of a negotiation with the Federal Court and the City of Buenos Aires with a meeting scheduled to take place in the following days. The inhabitants of the Village had held two meetings with the Direction of Human Rights of the City, whose representatives had tried to stop the action. However, in the middle of this process of negotiation with the government, the eviction was made effective.

The procedure was carried out on a holiday, very early in the morning. The inhabitants attributed this to the fact that on a holiday the lot is deserted: the absence of students and university professors was convenient since some groups could have demonstrated their opposition to a forced eviction. Students from the University had even camped in the Village so that the eviction would not take place, but they "carried out the eviction on a long weekend, when there was nobody, a rainy day at about 6 in the morning".

The eviction was violent. The inhabitants lost their material goods, identity documents, their huts: "they burnt everything". Another inhabitant recounted "They did not leave one house standing, they burnt everything, killed the animals".

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#### The Village seen from outside

Prior to the eviction, the inhabitants were interviewed by social workers. One of the later is remembered as having said:

"'This is how you live?' ... 'Why don't you mow the lawn... these filthy people? We have to take them all out; we have to take them all'. They told us it was not a suitable place to have children, that they would take our children away from us, and put them in substitute homes until finding them a house with all the conditions. They told us we were bad parents because that was not the place for children, that we didn't think about them, that we only thought about living in a place without paying taxes, because we were immoral, that they would always be taking us to jail, and that is no news for us".<sup>98</sup>

**Some people who were absent on the day of the eviction related:**

"On Monday afternoon a friend came with all my stuff he could save: some clothes, the oven, the gas container, the TV, hardest to get for me... But the furniture was also there... some of it was in good condition, there were two cots, two little umbrellas for

the kids, which a couple had given to me... there I lost the ID of my boy. And they didn't want to give him my stuff; they wanted to take it to a warehouse where they were taking everybody's, some stuff they took, and the people never got it back, because they didn't give us a paper, a receipt, nothing; a lot of stuff was lost there. If there was nobody at home, they took it there".<sup>99</sup>

Some of the evicted people protested and received temporary assistance; after living under a bridge and protesting for a month, they received "a house in Estados Unidos and Piedras (in the neighbourhood of San Telmo). There they took us with all the honours, because all the press media was present. There were 8 rooms for 20 people". However, after the lending period finished, they had to give up the house, and started returning to the previous place to put up new precarious huts.

Another group of people had been relocated to hotels financed by the City Government but after some months the Government stopped paying for the rooms and these people decided to return to the Village.

### > *After the eviction*<sup>100</sup>

For a year after the eviction the area was guarded by mounted police and the old inhabitants could not return. However, when the hotel rents provided by the Government expired, some of the inhabitants of the Village returned, little by little. In addition, numerous families, some from the nearby shanty town N°31, began to move into the area, thus changing the characteristics of those living in the Village. This also meant a significant increase of the population, estimated at over 200 people.

After resettlement; in September 2003 about 60 families were living in the Village, in extremely precarious and poor conditions, with no electric light, running water, infrastructure or basic drainage. The people lived in precarious huts, with plate and cardboard buildings. Most of the houses had between one and two rooms, and were overcrowded with up to 13 family members.<sup>101</sup>

Regarding living standards, 71 percent of households were below the poverty line (compared to 14.3 percent in Buenos) and

97 CELS, Part V, section 4.

98 CELS, Part V, section 3.

99 *Ibid.*

100 CELS, Part V, section 5.

101 CELS, Part V, section 3, and Office of the Ombudsman of the City of Buenos Aires " *Censo Asentamiento Ciudad Universitaria* ", January 2004.

31 percent of households were under the indigence line (8.9 percent for all the City of Buenos Aires). Most of the inhabitants (73.3 percent) earned their living as *cartoneros*. 90 percent of the heads of household received their income in an unstable way; there was one stable worker for every eleven who were unstable. Households with lower incomes had the highest percentage of school dropouts of children under 18 years old. The arrival of complete families implied the presence of many children in the setting. Over half the children under 14 years old (51.1 percent) did not receive periodic health checks.

The importance of access to running water was underlined in another report:

...the biggest and most urgent problem of the place was of a sanitary kind: before the lack of a close connection of running water, their inhabitants used the water of the river for consumption, cooking, personal hygiene and clothes washing, with the health risk implied, specially for the children.<sup>102</sup>

The water of the Río de la Plata is highly polluted, explaining why there were diseases in the setting, such as diarrhoea and fungus, caused by the use of the river as a water source.

The original inhabitants of the Village, prior to the eviction, described a change in the situation in the Village. They reported a growth of internal violence, not generated by the police, but by the inhabitants themselves. Some reported feeling highly scared of their neighbours. In the last years, there have been several cases of robbery, looting, violent threats and hut burning, in which the police are not suspected.

The new population presented no significant differences with the previous one in its socio-economic and housing situation: of the total recent population of the setting, 48.8 percent lived in emergency huts or in the street before going to the Village.

### Violence in the Village

The blame for violence was often placed with the new inhabitants coming from shanty town n° 31. An old inhabitant of the Village describes the situation:

"nowadays each takes care of himself. Before, there didn't use to be robberies, there are now, before you could leave the door open and nothing happened. Today you have to lock everything with a padlock, put a watch dog inside. You come back and they have taken everything anyway. In this aspect, what it used to be and what it is today, the people were more united, took more care of the place. The people have changed. The people are not the same. Before they found out that you stole and I can assure you that on the next day you weren't here any longer. The same

people made you leave. Nowadays they don't. That's the reason for what happens nowadays... so many denounces... they kill each other. Before, for example, nobody sold alcohol, it wasn't forbidden, but nobody did. Nowadays, they kill themselves, they are drunk all day".<sup>103</sup>

### > Relations with the University<sup>104</sup>

The University authorities and a large part of the academic community see the Village after its repopulation as a source of insecurity and a place from where authors of crimes committed on the campus came. The response in 2004 was to try to isolate the Village by building a fence reinforced with a ditch filled with water and by the systematic police control of the people 'strange to the academic community' who are found on the campus (this is unavoidable since the only access to the Village is through the University City).

The University also established a permanent police presence to provide security on the campus. This initiative was controversial among students and teachers as access by the police to universities is traditionally prohibited. However, this did not contribute to solving the security problems of the inhabitants of the Village, since the policemen limit their task to guaranteeing security within the University. Additionally, according to the inhabitants, the contacts they have with the police officers hired by the University usually include coercion, persecutions and threats. The University police are also accused of demanding bribes in order to allow people from the Village to work, for example as "car carers".

On 2 July 2003, there was a robbery in the canteen of the FCEyN and the police authorities carried out a search in the Village with the intention of finding the objects stolen. The Security Chief of the University led a group of policemen – not all of them wearing their uniforms - in an extensive search of the homes in the Village.

The homes of the inhabitants of the Village were entered without a judicial warrant; their furniture, personal objects and food were damaged and two people were beaten.

102 The Defence Office of the People of the City of Buenos Aires, Intervention n°4546/03, June 2003.

103 CELS, *supra*, Part V, section, pages 15-16.

104 CELS, *supra*, Part V, section 6.1, pages 17-19.

### The search

When asked by the people to stop the violence “they answered that they needed to make somebody responsible for the robbery and they decided to take one of those they had attacked to the new offices of the Superintendent. There, the beating continued. The aggression was so brutal that they had to keep him there for a day until he was at least able to move”.

An inhabitant of the setting remembers the robbery and the violent police operation in the following way: “When the canteen was robbed they sent the police, the person responsible for the canteen was here, they searched the houses, in the wrong way, because they are cops: they entered without a warrant, broke things, doors locked with padlocks, where there was nobody, they kicked them open”.<sup>105</sup>

Some inhabitants of the Village signed a letter denouncing the abuses committed by police officers of police station 51<sup>o</sup> which – supported by some students of the Exact Sciences College - they sent to human rights institutions and official bodies.<sup>106</sup>

The inhabitants of the Village have a cordial relationship with some groups of professors and students of the University who provide support. For example, a group of students of the college of Mathematics started giving support lessons to the children that go to school in the Village itself since it was not possible to use University premises. However, for most of the students and teachers, the Village is associated with insecurity.<sup>107</sup>

### > *Contacts with official and private organisations*<sup>108</sup>

In 2003 the inhabitants began to contact official organisations and authorities. Slowly the existence of the Village began to be recognised and some assistance began to be provided. By mid-2003 the neighbours of the setting decided to go to the Office of the Ombudsman of the City of Buenos Aires<sup>109</sup> to express their most urgent problems. The Ombudsman notified the responsible authorities about the sanitary and social situation and organised meetings with representatives of the settlement and the persons responsible for different health programmes. The initiatives taken to reconnect the running water failed. Even though they had achieved a consensus about the connection both with the supplier company and the local government but the absence of the University of Buenos Aires – whose pipe had to be used for water derivation – prevented the project from being carried out. No help was provided by the Ombudsman with regard to the internal security of the Village.

The Catholic Church and the volunteers of *Cáritas Argentina* have been in contact with this population for a long time. In particular, in the periods of less involvement of the state, the church was the place to which the people of the Village resorted for help: medication, food, etc. The relationship with the first homosexual and transvestite inhabitants was good, although somewhat distant, and the homosexual inhabitants never mentioned having felt any kind of discrimination. The inhabitants of the Village positively value the help given by the church, in particular because it continued for almost ten years.

In 2003 some of the inhabitants of the Village communicated to human rights organisations their concern about the possibility of a forced eviction in connection with a plan by the “Commission Pro Monument to the Victims of State Terrorism” to locate a park and a monument by the Río de la Plata, in an area bordering the Village. The Commission is working with the authorities in order to find a definitive housing solution.

The Government has apparently decided to find a solution by consensus and not force, one reason being the high value of these coastal lands and the interest of the Government of the City to exploit them economically for tourism and leisure activities. “We have to see how to recover and set this forgotten area of the city in value” states the director. The discussions of the available options and the various interests which have to be reconciled demonstrate the difficulty of resolving the situation.

### > *The challenge of cooperation*<sup>110</sup>

As the Village grew up after the eviction, the need for cooperation between the inhabitants became important and with the help of the Centre of Social Investigation and Popular Legal Counselling it was decided to try to form a housing cooperative. This was only achieved after many frustrated attempts because of the difficulty of obtaining consensus among the inhabitants in negotiating with the State and other actors. These difficulties resulted from the fragmentation of the population in groups: single homosexual vs. families; old vs. new inhabitants.

105 CELS, Part V, section 6.2.

106 CELS, *supra*, Part V, section 6.2, pages 20 – 21.

107 CELS, Part V, section 7.1.

108 CELS, Part V, sections 6.3 to 7.3.

109 Section 37 of the Constitution of the Autonomous City of Buenos.

110 CELS, Part V, section 8.

### > *Summary and conclusions*<sup>111</sup>

The overall situation of the inhabitants of the Village has improved somewhat over the last years, compared to the time prior to the eviction. The most positive changes were the transformation of the relationship between the inhabitants and the security forces and the establishment of links with the local political authorities.

These changes were the result of the interaction of diverse factors, among which the following are outstanding: the official acknowledgement of the existence of the Village, the capacity of the inhabitants to organise for the attainment of their common objective, and the articulation of alliances with other social actors which helped to strengthen their negotiating capacity.

The fact that the settlement acquired an official status forced the local authorities to undertake a series of interventions. Since then – and also thanks to the help of other actors, such as the Ombudsman of the City and human rights organisations-, the Centre of Management and Participation (CGP)<sup>112</sup> of the area has started carrying out some assistance. Even if these interventions are limited, specific and not continuous (such as rubbish collection and the provision of running water); they have opened a channel of communication with the public authorities and allowed the access of the inhabitants of the Village to social plans of food and health.

These actions are, however, palliative and they have not led to a definitive solution to the serious sanitary problems. On the contrary, the reforms which could mean an improvement in the infrastructures necessary to provide the basic public services are deliberately avoided since this would permit the permanence of the Village on University land. However, no housing solution that would bring about the end of the Village in the short term is proposed. As a consequence, the intervention of the Government of the City of Buenos Aires has meant improvements in some aspects of the daily life of the inhabitants, but has not changed their general situation of precariousness nor improved their housing perspectives.

The fact that the inhabitants have managed to form a housing Cooperative to collectively negotiate a housing solution, has also contributed to the relative improvement of the situation. This new actor can be seen as an improvement in itself, from the point of view of building an internal consensus for the demand of their rights. This shows an increase in the capacities and resources of those living in the Village to negotiate, put pressure on the authorities and also improved the subjective perception the general population has of them.

In addition, since it was formed, the Cooperative has assumed additional responsibilities, becoming a reference point of the community both inside and outside the Village. Although it has not changed essentially, the attitude of the authorities of the University City and of the police officers who work there is, at the moment, more cautious.

The alliances that the inhabitants of the Village have built with diverse social organisations are also beneficial, not only because their support limits the abuses of some actors, but also because the contact with the organisations seems to have increased the level of knowledge of the inhabitants of the Village regarding the rights which protect them and their capacity to formulate demands to the authorities.

In these last years, there appeared new problems for the inhabitants of the Village. The main one is the increase of internal violence and the violent resolution of the neighbourhood conflicts.

The segregation and isolation of the inhabitants of the Village is at the centre of the strategy of control, in particular by the University. In addition, they face serious problems with the police and do not receive the support and protection due to them from the judicial system. People living in the Village do not report abuses to the courts, but rather use more informal means through social institutions, to deal with their problems.

The treatment of the population of the Village by the people living in the middle and upper class communities surrounding the University has improved, but is still not what it should be because the population of the Village is viewed as a threat to their security.

111 CELS, Part V, section 9.

112 [http://www.buenosaires.gov.ar/areas/descentralizacion/cgp?menu\\_id=1949](http://www.buenosaires.gov.ar/areas/descentralizacion/cgp?menu_id=1949).

## Chapter 5

### Egypt: Country profile and case studies<sup>1</sup>

#### 5.1 Political, economic and social overview

##### > *Constitutional, political situation<sup>2</sup>*

The Constitution of the Arab Republic of Egypt, adopted in 1971 and amended in 1980, established a democratic system and outlined the role of the public authorities. The political structure is based on a multi-party system representing various stands across the political spectrum. The National Democratic Party currently holds the majority of seats in the People's Assembly.

However, the constitutional, legal and political structure is heavily distorted by the emergency legislation in force almost continuously since 1958. Human Rights Watch has stated regarding emergency legislation that

The law gives the authorities extensive powers to suspend basic liberties including: arresting suspects at will and detaining them without trial for prolonged periods; referring civilians to military or exceptional state security courts whose procedures fall far short of international standards for fair trial; prohibiting strikes, demonstrations and public meetings, and censoring or closing down newspapers in the name of national security.<sup>3</sup>

Human Rights Watch has also stated that the emergency law creates an atmosphere of repression and impunity in which torture flourishes.<sup>4</sup>

The negative impact of the imposition of the state of emergency in Egypt has been recognised by United Nations human rights organs. For example, the Human Rights Committee has stated that it "is disturbed by the fact that the state of emergency proclaimed by Egypt in 1981 is still in effect, meaning that the State party has been in a semi-permanent state of emergency ever since."<sup>5</sup> Similar expressions of concern have been made by the Committee against Torture,<sup>6</sup> and the Committee on Economic, Social and Cultural Rights.<sup>7</sup>

In February 2003 the emergency legislation was extended for three years in what Human Rights Watch (HRW) said was an attempt to quash a growing campaign for the abolition of the law. The legislation was introduced in the People's Assembly without prior notice and passed the same day.<sup>8</sup>

The justification given for exceptional legislation and other practices which violate human rights is often the "fight against terrorism". Prime Minister Atif Ubayd reportedly cited the "war on terrorism" and new security laws passed in the United States

and elsewhere since September 11, 2001, to justify the emergency law extension. Earlier, in September 2001, Prime Minister Ubayd, referring to critical reports on torture and unfair trials reportedly lashed out at human rights groups for "calling on us to give these terrorists their 'human rights.'"<sup>9</sup>

The Committee Against Torture has expressed its concern about the fact that infringements of human rights are justified in Egypt for the repression of terrorism and recalls "that no exceptional circumstances whatsoever can be invoked as a justification for torture."<sup>10</sup>

The reality of political pluralism has been challenged. One party rule was in place from the 1952 Revolution to 1977 when the possibility of establishing political parties was recognised. However, it seems that there is a great difference between theory and practice. "Despite the fact that the number of political parties has gradually increased until it reached 17 parties until 2002, the majority of such parties do not enjoy any party authority either through representation in the Parliament or influencing the public policy making."<sup>11</sup> A number of restrictions are placed on the policies which political parties can promote and the formation of parties is subject to prior authorisation which, in

1 Prepared by the editor on the basis of the report by the Land Center for Human Rights (Cairo, Egypt) entitled "The Conditions of Human Rights in Egypt During the last Ten Years" (2004) (hereinafter referred to as LCHR), in consultation with the Land Center and on the basis of other relevant documents. The Land Center's report is reproduced in the CD-ROM included with this publication.

2 UNDP, Egypt Country Profile, p. 2.

3 Human Rights Watch (hereinafter HRW), *Egypt's Emergency without End*, February 25, 2003.

4 HRW, *U.S./Egypt: Bush-Mubarak Summit Should Spotlight Torture, Rights Abuses*, Human Rights News, April 9, 2004.

5 CCPR, Concluding Observations, Egypt, CCPR/CO/76/EGY, November 28, 2002 (6).

6 CAT, Concluding Observations, Egypt, CAT/C/XXIX/Misc.4, November 20, 2002 (5).

7 CESCR, Concluding Observations of, Egypt, E/C.12/1/Add.44, May 23, 2000 (10).

8 HRW, In the Name of Counter-Terrorism: Human Rights Abuses Worldwide, A Human Rights Watch Briefing Paper for the 59th Session of the United Nations Commission on Human Rights, March 25, 2003p.12, and HRW, U.N.: Counterterrorism Body Neglects Human Rights, Human Rights News, August 10, 2004, p.12, and HRW, *Egypt's Emergency without End*, February 25, 2003. See also LCHR, p. 56.

9 HRW, U.N.: Counterterrorism Body Neglects Human Rights, Human Rights News, August 10, 2004, p. 12.

10 CAT, Concluding Observations of the Committee Against Torture, Egypt, CAT/C/CR/29/4, December 23, 2002, (4).

11 LCHR, p. 11-13.

practice, has rendered the setting up of parties difficult. The Human Rights Committee has expressed its concern about the way the authorisation for the establishment of political parties is organised.<sup>12</sup>

The fairness of elections has also been criticised.<sup>13</sup> Human Rights Watch pointed to several factors impacting on the fairness of elections: restrictions on freedom of association and assembly, including the ability to form political parties, to hold public rallies and organise marches as part of an electoral campaign, arrests and prosecution before military and state security courts of political opponents and potential opposition candidates, in particular members of the Muslim Brotherhood, restrictions on freedom of expression including banning of books and newspapers and the instituting of criminal charges against journalists, and harassment of human rights activists and others preparing to monitor the elections.<sup>14</sup>

Poor social support for political parties is reflected in the low rates of membership and their apathy to form real bases of proponents in society with clear programmes of change. "In a nutshell, the experience of party plurality over the past 25 years was almost artificial and rootless. It is manifested in the lack of confidence in the electoral process and in the parties and state institutions to improve conditions. Accordingly, there prevailed a lack of interest in public life in general and political life in particular. Many factors have contributed to this situation: the atmosphere in which such an experience was launched; the inability of parties to provide an alternative in the form of a coherent development programme for the country; and the failure of the ruling party to provide solutions for the crisis. All this helped create a state of political vacuum that has penetrated the Egyptian street, and provided a fertile environment for the diffusion of extremist ideas promoting violence as a solution to the crisis. This was manifested in the phenomenon of political Islam over the 1990s and the resulting violence and counter-violence between such groups and the government that resulting in enormous losses of life and property. Moreover, the absence of political institutions capable of channelling the energies and aspirations of youth led to a state of alienation from society and gave rise to various patterns of aggressive and violent behaviour, whether towards others or as suicide, which has increased recently."<sup>15</sup>

### Islamic groups and Communists<sup>16</sup>

The political system is also weakened by the fact that the two main political streams are not represented as legal parties: the political Islamic group regards Islamic religion as the basic principle in the political life. These groups vary widely, some resort to peaceful means in the political process and usually avoid con-

frontations with the government e.g. the Banned Muslim Brotherhood. Other groups resort to armed violence as the only means to pressure the government and call for replacing the existing system by an Islamic one, according to their views.

The Muslim Brotherhood is considered one of the major political powers in Egyptian society due to its huge membership, structural organisation and political inclinations. Failing to get recognised by the state as a declared party, it resorted to strengthening its roots in civil society whether political parties or syndicates in addition to many civil "charity" associations.

Over the 1980s and early 1990s, Militant Islamic political groups committed excessive violent actions on top of which was the assassination of President Sادات in 1981. The first half of the 1990s witnessed an acceleration of armed violence on the political and social level. However, the following years witnessed a retreat in political violence i.e. the one directed to political figures with the continuation of the incidents of communal violence, yet with a lesser degree than in the early 1990s. This was due to the firm security campaigns by the security agencies against the armed Islamic political groups. Such campaigns weakened the activities of these groups and after the Luxor incident in 1997, Egypt did not witness any other attack by the armed political terrorism.

### Business<sup>17</sup>

The Land Center has expressed concern about the importance of the role of business in political life:

"It is obvious ... that capital dominates the political process in Egypt. It gets highly manifested in the electoral campaigns the costs of which have recently soared to millions of Egyptian pounds - such is only an example. The image would be much clearer with the addition of the cases of financial and political corruption and the growing influence of the capitalists. Such influence is reflected in the violation of the rights of the poor who lack fortune and consequently political influence."

12 CCPR, Concluding Observations, Egypt, CCPR/CO/76/EGY, November 28, 2002.

13 LCHR, page 14.

14 HRW, *Elections in Egypt*, October 2001.

15 LCHR, p. 16.

16 LCHR, p. 25-30.

17 LCHR, p. 19-20.



The Center also reports on the degree to which government policy follows the recommendations of the business community, in contrast to the requests of the labour movement, for example.

### Non-governmental organisations<sup>18</sup>

Non-governmental organisations are the most important and widespread civil society institutions and significantly developed over the last three decades of the 20<sup>th</sup> century. The number of human rights NGOs rose from only one in 1983 to 32 in 2002. These are mostly concerned with the protection of political, civil, economic and cultural rights against the violations of the state, which have significantly increased recently putting the NGOs in constant confrontation with state agencies. This begins with the state's opposition to the establishment of these organisations: most of the requests were rejected and the organisers had to appeal to the judiciary to obtain official recognition.

In 2002, a new law regulating the activities of NGOs was adopted which while containing one provision welcomed by the organisations, nevertheless retained most of the stringent regulations imposed on their activities in past legislation. These included obliging NGOs to seek prior approval from the relevant government authorities for some of their key activities, such as seeking funding from abroad, becoming affiliated to organisations outside Egypt, and holding elections for board members.<sup>19</sup>

The law provides criminal penalties for unauthorised NGO activities that, in effect, criminalise many forms of informal or grass-roots organising. Persons carrying out the activities of an NGO prior to its formal registration are liable to a three-month prison term.

A number of NGOs have already been arbitrarily denied legal status by the Ministry of Social Affairs.<sup>20</sup> In a September 2003, one reason for the denial of registration was that among its goals was "to change Egyptian legislation in accordance with human rights conventions." since the Ministry said that civil associations had no legal right to be "concerned with legislation."<sup>21</sup> "In June 2003, a women's rights advocacy group was turned down because "security agencies do not approve the registration of the aforementioned foundation."<sup>22</sup>

The Human Rights Committee has expressed its concern regarding those restrictions<sup>23</sup>. For its part, Amnesty International has noted that:

NGOs continued to operate under the shadow of a restrictive law, passed in June 2002, which regulates their activities. From June, the Ministry for Social Affairs began announcing its decisions on applica-

tions put forward by existing and newly established NGOs for registration under the new law. Certain organisations were granted registration while others were reportedly denied it without adequate explanation."<sup>24</sup>

Many (NGOs) are forced to choose between closing their doors and risking imprisonment for operating without legal recognition as an NGO.<sup>25</sup> However, Human Rights Watch has recently noted some improvements.<sup>26</sup>

## > Economic situation

Since Egypt signed an agreement with the International Monetary Fund in May 1991, many measures have been taken to implement a package of economic policies aimed at a transformation to a capitalist market economy. The primary objectives of the programmes are reducing the deficit in the Balance Sheet and achieving a temporary stability in the exchange rate of the Egyptian pound. This meant "the absolute and proportional reduction of the share of the working class and the peasants of the total income".<sup>27</sup> The Land Center sees in the privatisation of public sector companies and land reform the source of a great deal of the state and non-state violence in the following years.

Privatisation of the public sector began in 1991. The purchasers of companies were granted all the rights and freedoms exercised by private sector companies with no restrictions with regard to production or sales in domestic and foreign markets (with the exception of public services). In addition, they were granted full freedom over the labour force<sup>28</sup>. Legislation reduced the protection of workers, their participation in management and restricted

18 LCHR, p. 21-22.

19 HRW, *World Report 2003*; Egypt p.2 and 5 – 6.

20 HRW, *Threat Against the El Nadim Center for Victims of Violence*, Human Rights News, July 13, 2004.

21 HRW, *Egypt: Torture Victims Clinic Threatened With Closure*, Human Rights News, July 14, 2003.

22 HRW, *Threat Against the El Nadim Center for Victims of Violence*, Human Rights News, July 13, 2004.

23 CCPR, Concluding Observations of, Egypt, CCPR/CO/76/EGY, November 28, 2002.

24 Amnesty International, *Report 2003*, Egypt, p. 2.

25 HRW, *Egypt: Torture Victims Clinic Threatened With Closure*, Human Rights News, July 14, 2003.

26 HRW, *Egypt: Emergency Court Acquits Political Dissident*, Human Rights News, March 11, 2004.

27 LCHR, page 38.

28 LCHR, pages 40-41 and 84-85.

trade union rights. It also resulted in the early retirement of 450,000 workers by the end of 2000. This caused a significant increase in the number of workers in the non-official sector. These workers were subjected to many violations of their rights: no maximum or minimum working hours, no minimum wages, no guarantees against unjustified firing, no work contracts; and the majority have no social or medical insurance.

In the countryside, economic reform passed through two major phases.<sup>29</sup> The first phase from 1987 to 1989 included the liberation of prices, the abolition of the obligatory collection of 10 basic crops and the start of opening markets for private investment. The main results of this phase were: raising the prices of fertilisers by 75 percent, liberating the crops fully, allowing the private sector to export citrus fruits and separating the Agricultural Bank from the sale of farm production equipment.

The second phase extended from 1990 to 1994. It aimed at increasing the price of cotton to 66 percent of the world price, liberating it in 1994, and abolishing subsidies for production equipment. It also aimed at restricting and abolishing subsidised credit for peasants. One result was that from 1986 to 1989 the price of wheat rose by over 100 percent.

The major development, however, in the economic reform of the countryside was the ending of controls on the rent farmers paid for their land. The old law on agricultural rents had defined the rent as 7 times the tax imposed, and had banned the eviction of peasants from agricultural land. After the liberation of the market of farm equipment and crops, it was imperative to repeal the old laws hampering the market of agricultural lands which was blocking land concentration, since the latter is the only means to attract investment in agriculture. The cost of renting land was raised (from 7 to 22 times the tax imposed on land) for 1992 – 1997 and in 1997 fully liberated to be governed by the market forces.

The result was that the small peasant, landlord and tenant, was totally threatened. The price of production equipment increased repeatedly and substantially while crop prices were left to a world market with sharp fluctuations and competition from more efficient countries. Credit from banks became almost impossible to obtain. The last straw was a new rent law, according to which, thousands of tenant peasants and small landlords were evicted. Such eviction was conducted in a ruthless manner by the Central Security forces. Many peasants were injured and killed in the police's attempt to uproot them from their lands (see also the two case studies in sections 5.6 and 5.7 below).

## > Economic growth

Egypt's rapid growth from 1976-1986 ended because of the collapse of oil prices, and the country was caught in an economic slowdown that affected the entire region. After a period of inward-oriented policies and heavy borrowing, Egypt reversed course in the early 1990s, with prudent stabilisation efforts and structural reforms. The fiscal balance, foreign reserves, and external debt have also improved compared to the late 1980s. The country's increase in domestic production as measured by the GDP growth rate accelerated from 1.9 percent per year in 1991/92 to 5.1 percent in 1994/1995 – 1999/2000.<sup>30</sup>

The International Monetary Fund indicates that the actual growth rate of GDP decreased to 3.3 percent in 2001 until it reached 2 percent in 2002.<sup>31</sup> The floating of the Egyptian pound in January 2003 has helped the external sector and the economic growth rate has increased to 4 percent.<sup>32</sup>

The economic crunch resulting from more than a decade of reform can be measured through the drop in growth, indicated above, but also through unemployment, inflation, loss of investment, and foreign and national debt, which, increased significantly in 2001/2002.<sup>33</sup>

## > Unemployment and poverty

In addition to the unemployment resulting from privatisation, the law which freed the rent for agricultural land added hundreds of thousands of peasants the unemployment queues.<sup>34</sup> The Central Bank of Egypt put the unemployment rate in Egypt at 7.9 percent and 85 percent in the fiscal year 1999/2000.<sup>35</sup> The Land Center, for its part, estimates the number of unemployed individuals at 5 million and describes the situation as follows:

the labourers of the poor class are more prone to getting unemployed due to their lack of means of nepotism and favouritism that would provide job opportunities for them ...unemployment and poverty are one of the major reasons behind the low social status of citizens, leading to the spread of public

29 LCHR, pages 41 – 42 *Egypt's Agriculture during Reform*, Lyman Fletcher, Aiwa state, p. 55.

30 World Bank, *The World Bank in Egypt*, Country Brief, September, 2004.

31 LCHR, p. 42.

32 World Bank, *The World Bank in Egypt*, Country Brief, September, 2004.

33 LCHR, pages 42-45.

34 LCHR, p. 50.

35 LCHR, p. 4, Central Bank of Egypt, *Statistical monthly report*, October 2002.

depression...unemployment is, undoubtedly, one of the most critical problems which are facing Egypt now. It is dangerous not only because of the waste of human power and the consequent economic losses, but also due to the grave social implications of resulting from being unemployed particularly among youth. Unemployment is a suitable environment to the growth of crime, extremism, and terrorism – trends from which Egypt has suffered over the last decade.<sup>36</sup>

The Committee on Economic, Social and Cultural Rights expressed its concern at “the apparent inability of the Government to address the acute problem of unemployment in Egypt as well as the uncertainty of workers’ rights as guaranteed under article 8 of the Covenant.”<sup>37</sup>

In 1999/2000, the poverty rate reached 38.3 percent in its broad sense, and 24.2 percent in the narrower sense. 60 percent of the poor were based in rural areas and 40 percent in urban areas. The intensity of poverty increased in Upper Egypt where it ranges from 50 percent to 75 percent of the inhabitants as compared to less than 40 percent of the population of Lower Egypt, except for Al Behira governorate (38.3 percent in the narrower sense, and 52.3 percent in the broader sense). Moreover, it reaches 48.6 percent in Qalubia governorate and 41 percent in Munufia governorate.<sup>38</sup>

The World Bank estimated that that 23 percent of the population lived below the national poverty line in 2004,<sup>39</sup> and that non-income indicators such as health and education, also posed a significant challenge. Despite a 2001 net primary enrolment rate of 88 percent, adult illiteracy is still high at almost 35 percent. Even with almost universal access to health care, the number of children dying before age five is 39 per 1,000 live births, still higher than in comparable countries.<sup>40</sup>

## ■ 5.2 Human rights

### > *Right to land*<sup>41</sup>

Land reform legislation and its implementation has had a negative impact on farmers and their families. Rural inhabitants are usually ignored although they comprise tens of millions of poor and marginalised persons, whose numbers are increased by natural catastrophes, deforestation and extension of commercial agriculture. Rapidly, much of the rural land is left in poverty, resources decline and farmers are deprived of land ownership. It is not acceptable that the food producers (agrarian labourers)

are the poorest categories in the community and suffer more from food insecurity. Referring to several international conferences, in particular the 1979 FAO Conference for Land Reform and Rural Development, the Land Center concludes that “the experiment of agricultural reformation in Egypt contradicts with all UN conferences related to safe possession of land and the right to have access to land”.

The implementation of the land reform law led to the eviction of

a big number of farmers from the arable lands and violated the right of farmers to a safe possession of land. Implementing of that law turned arable lands into consumption goods whose owner may rent for one year, one agricultural season or one third or half a year with a high rental value. Accordingly, farmers lost the feeling of a safe possession of land and lost access to bank loans as well as access to a better land management. Farmers stopped caring for the land and think only of getting the utmost out of it.<sup>42</sup>

Implementation of the law was accompanied by violence by state institutions against the tenants which has continued. Throughout 1997, about 100 people were murdered, 1000 injured and more than 1000 arrested. In 1998-99, violent activities led to 87 being killed, 545 injured and 798 arrested. From 1992 to 1998, farmers and some social forces organised protests that incited the security forces to the random arrests and torture of farmers. Some of those farmers filed lawsuits in addition to appealing the unconstitutionality of the agrarian reform law before the Supreme Constitutional Court in order to protect their rights. Unfortunately, no judgements have been given concerning these cases although they were presented five years ago. This emphasises the close relation between civil, social and economic human rights.

The implementation of the law brought about violent disputes between rich people and poor farmers in the villages. In some rural areas, large-scale owners colluded with police forces to violate farmers’ rights (hiring armed vagrants to frighten, beat and

36 LCHR, pages 43, 50 and 51.

37 CESCR, Concluding Observations, Egypt, E/C.12/1/Add.44, May 23, 2000 (18).

38 Center for Studies and Research of the Developing Countries, *Report on the Comprehensive Development in Egypt, 1999/2000*, Egypt, Cairo, 2001.

39 UNDP, *Egypt Country Profile*, p. 3.

40 World Bank, *The World Bank in Egypt, Country Brief*, September, 2004.

41 LCHR, p. 59-68.

42 LCHR, p. 59-60.

oblige farmers to leave their land without any compensation). It seems that land reform was used to benefit large-scale owners without any concern for tenants' rights.

The Land Center lists more violations of human rights connected with the land reform, including the fact that most small-scale tenants lost their land and were forced to work as daily agrarian labourers, with no legal guarantees, social insurance or vocational safety, etc. Further, farmers were evicted from their homes which were attached to the land.

### > **Right to housing**<sup>43</sup>

The economic reform has had a negative impact on the right to housing as it became harder to own or rent a house both for the poor and for middle income people. The poor in rural areas and suburbs around big cities mostly lack the elements of proper housing, especially a proper location and infrastructure. Priority should have been given to for inexpensive housing for the poor, to ensure basic services (sanitary drainage, pure water, schools etc) and to ensure a fair distribution of the housing budget between Cairo and the rest of the provinces.

OMCT and the Egyptian Centre for Housing Rights have pointed out that the demolition of the simple houses of the poor leaves them prey to homelessness, disease and deepening impoverishment. In addition, the state-sponsored and state assisted house demolition or forced eviction involve the violation of existing laws and judicial ruling; absence of prior notification, threats and use of force in order to compel the victims to sign false statements, lack of suitable alternatives or adequate compensation, use of force by state agents.<sup>44</sup>

The Committee on Economic, Social and Cultural Rights recognised this in its review in 2000 of the report of Egypt. The Committee stated its concern "about the massive housing problems faced by the Egyptian population, as acknowledged by the delegation of Egypt, and which have been exacerbated by the deregulation of rents and an acute shortage of low-cost housing. Furthermore, forced evictions without alternative housing or compensation being provided have been occurring in poor communities like the potters' village and the "Ayn Hilwan" area in Cairo."<sup>45</sup>

### > **Right to education**<sup>46</sup>

Public expenditure on schools is low compared to other countries of the region. In order to end overcrowding, 19,947 schools should have been built in the period from 1992 to 2002 but only 8,264 schools were actually built. Moreover, budgets are badly

managed as 48 percent of total workers in the Ministry of Education are on the managerial staff and that severely affects the expenditures."

The quality of education of schools in poor suburbs, villages and in the south is low. Many graduates lack the required qualifications and the ability to cope with the labour market and they are the main source of violent religious groups; they form leadership for those groups which belong to the lowest sectors of the middle class. The Land Center states that there is thus a generation of graduates who "believe in a group of values that call for the illusion of owning the truth and underestimates science for the sake of legends."

Physical punishment prevails in schools although the Ministry of Education declared severe penalties for teachers who use physical punishment. However, the atmosphere of violence prevailing in poor areas allows for more and more ill-treatment in schools.

Egypt has constitutional and legislative provisions guaranteeing the right to education without discrimination.<sup>47</sup> However, the educational status of boys is superior to that of girls: 60 percent of adult females and 36 percent of adult males are illiterate.<sup>48</sup> This inequality is more pronounced in rural areas, with one-third of ten year old girls not being enrolled in school in rural Upper Egypt. Many parents refrain from sending their daughters to school as they do not believe that the economic returns will be greater than the investment in a girl's education. Another reason cited is the lack of single-sex schools that discourage traditional parents from sending their daughters to school.<sup>49</sup>

43 LCHR, page 94-105.

44 OMCT and the Egyptian Centre for Housing Rights, *The Policy of Forced Eviction and House Demolition in Egypt: A Form of Cruel, Inhuman or Degrading Treatment or Punishment*, Report presented to the CAT, November 2002, p. 4-5.

45 CESCR, Concluding Observations, Egypt, E/C.12/1/Add.44 para. 22, May 23, 2000.

46 LCHR, p. 68-79.

47 OMCT, *Violence against Women In Egypt*, 2001, p. 15.

48 UNDP, *Egypt Country Profile*, p. 4.

49 OMCT, *Violence against Women In Egypt*, 2001, p. 15.

### > *Right to health*<sup>50</sup>

There is a significant inequality of access to health care: infant mortality rate in urban northern provinces was 44 per 1,000 births in 1996, but 119 in rural southern provinces. The same applies to other indicators such as the age expected on birth and the proportion of malnutrition diseases. The proportion of beds for citizens for example is 3.6:1000 in urban provinces, whereas it is 1.4:1000 in southern ones. Doctors are 1.3:1000 in urban areas and 0.74:1000 in the countryside.

Ever since the seventies, the State has gradually and increasingly ignored the right of people to enjoy physical and mental health, leaving the field open for the private sector, which cares mainly about making profits from patients regardless the right of the poor to medical services. Low governmental expenditure, together with the increasing population, has led to poor quality of the medical services in governmental units in spite of their large number. This has led to undermining citizens' health and increasing rates in diseases such as renal failure, epidemic liver and digestive system disorders, especially among the poor.<sup>51</sup>

The Land Center recommends that the State reconsider many matters relating to the protection of the right to health care, bearing in mind the social and human aspects and the necessity of human development for high development rates. The State should also fix a maximum for the price of the services provided by the private sector, and the price of drugs and other medical equipment. It is also necessary to develop a true data base and an information management policy in order to determine the size and type of health problem, to apply a strict and effective inspection system for all activities related to the right to health, and to spread health awareness.

### > *Human rights, economic reform and the state of emergency*

The manner in which economic reforms were implemented seriously violated the economic, social and cultural rights of many Egyptians, especially the poor. The limits on the exercise of civil and political rights imposed by the state of emergency exacerbate the crisis.

The Committee on Economic, Social and Cultural Rights concurs:

The Committee is of the view that the state of emergency that has been in place in Egypt since 1981 limits the scope of implementation of constitutional guarantees for economic, social and cultural rights; that some aspects of structural adjustment programmes and economic liberalisation policies intro-

duced by the Government of Egypt, in concert with international financial institutions, have impeded the implementation of the Covenant's provisions, particularly with regard to the most vulnerable groups of Egyptian society; and that the persistence of traditional practices and attitudes, deeply entrenched in Egyptian society, with regard to women and children hamper the ability of the Government to protect and promote their economic, social and cultural rights."<sup>52</sup>

## ■ 5.3 State sponsored violence<sup>53</sup>

State sponsored or official violence takes the form of torture, impunity, ill-treatment, killings and executions, repeated or almost continuous detentions, forced disappearances, violence during public demonstrations, and violence against children, women and various social groups.

### > *Torture and ill-treatment*

There is unanimity among international and national observers that torture is growing in Egypt:<sup>54</sup> "while torture in Egypt has typically been used against political dissidents, in recent years it has become epidemic, affecting large numbers of ordinary citizens who find themselves in police custody as suspects or in connection with criminal investigations."<sup>55</sup> International human rights monitoring bodies have also mentioned the seriousness of the situation: the UN Committee against Torture in 2003 noted "the many consistent reports received concerning the persistence of the phenomenon of torture and ill-treatment of detainees by law enforcement officials."<sup>56</sup> The Human Rights Committee, for its part, stated "while noting the creation of institutional machinery and the introduction of measures to punish any violations of human rights by employees of the State, the Committee notes with concern the persistence of torture and cruel, inhuman or degrading treatment at the hands of law-

50 LCHR, p.106 – 120 and p. 263.

51 LCHR, p. 5.

52 CESCR, Concluding Observations, Egypt, E/C.12/1/Add.44, para. 10, May 23, 2000.

53 For more information on violence in Egypt, see above Chapter 1, Appendix C.

54 LCHR, pages 121-153.

55 HRW, UK: *Promises on Torture Don't Work*, Human Rights News, October 6, 2004, p. 1.

56 CAT, Concluding Observations, Egypt, CAT/C/CR/29/4, December 23, 2002 (5b).

enforcement personnel, in particular the security services, whose recourse to such practices appears to display a systematic pattern."<sup>57</sup>

The Land Center points out that torture in detention spreads in the wake of social tensions as a kind of collective punishment.<sup>58</sup> This happened on several occasions e.g. while implementing the law of evicting peasants. In its 1998 report, Amnesty International recorded that hundreds of people opposing the new agricultural law were detained, among whom were prisoners of conscience. The Center also reports that torture is committed against detained suspects in the so-called "policy of detaining hostages". Security men, without any right, arrest the father or other relatives of the suspect as hostages in order to compel him to confess or to give him self up to the police.

Women are tortured directly for being charged with certain charges, or they get tortured as a means to compel men (husband, father or brother) to make confessions, or they are detained as hostages to oblige the defendant men to give themselves up to the police. In all cases, sexual abuse is the basic means of torturing women, with the consequent psychological pain affecting women and the whole families due to such degrading practices. What aggravates such pain is that a large number of women get detained or tortured in the presence of their children, and in some cases, mothers see their children subjected to torture.<sup>59 60</sup>

Under the emergency law policemen have absolute authority to arrest people and torture them on the pretext of maintaining public law and order. The law is particularly applicable to political activists and opponents to the ruling system. They are tortured by the most horrible means in attempt to terrify them and to make them divert their political beliefs.

Ill treatment on the part of public officials has become a common feature of the daily life of the Egyptian society. The Egyptian citizen, who is definitely poor, lacks money to bribe public officials. Accordingly, he would undergo all forms of degrading treatment until he meets his need. Such an atmosphere begot several forms of ill treatment among individuals in work, in the means of transportation, queues before bakeries, etc. as such, the relationship between the citizen and the state, due to its being old and common, is getting to be customary. What is rather exceptional is that a citizen gets his rights in society and to be treated as a human being.<sup>61</sup>

The Center reports on the ill-treatment of prisoners which

includes libel and humiliation, poor health care, deprivation of education, and preventing visits and contact with the outside world.

### > *Impunity*

The Land Center reports that torturers in Egypt benefit from impunity as they "usually escape punishment and commit their crimes invoking their authority and influence."<sup>62</sup> For Human Rights Watch, the authorities do "not investigate the vast majority of allegations of torture, however, and new cases continued to be reported"<sup>63</sup> In the vast majority of cases of alleged torture, no one was brought to justice because the authorities failed to conduct prompt, impartial and thorough investigations. However, some trials of alleged torturers did take place, but only in criminal, not political cases, and generally only after the most serious incidents, usually where the victims had died.<sup>64</sup> However, in a positive development, the authorities reportedly referred a number of police personnel accused of torturing and causing the death of suspects in their custody to trial in four separate cases in 2002.<sup>65</sup> But in general the authorities do not investigate the great majority of allegations of torture and in the few cases where officers have been prosecuted for torture or ill-treatment, charges were often inappropriately lenient and penalties inadequate.<sup>66</sup>

Poor people who are tortured do not file complaints since they fear reprisals by the policemen who are the perpetrators and even if they wish to file a complaint, they lack the financial resources to do so.<sup>67</sup> In this regard, the Human Rights Committee stated in 2002 that "it is equally concerned at the general lack of

57 CCPR, Concluding Observations, Egypt, CCPR/CO/76/EGY, November 28, 2002 (13).

58 LCHR, page 125-126, citing *1998 Report by Amnesty International*, Egypt part.

59 LCHR reports 1997, *Torture in the Egyptian Countryside and Pre-trial Detention of Peasants in the Countryside*.

60 LCHR, p. 136 and 142.

61 LCHR, p. 154-160. Also LCHR report on the violation of the right of peasants to live in dignity and safety, 2002.

62 LCHR, p. 139.

63 HRW, World Report 2003, p. 4.

64 Amnesty International, Report 2003: Egypt, p. 3.

65 HRW, World Report 2003, p. 4.

66 CAT, Concluding Observations, Egypt, CAT/C/CR/29/4, December 23, 2002 (5b); HRW, UK: Promises on Torture Don't Work, Human Rights News, October 6, 2004, p.1; LCHR, pages 130 and 139.

67 LCHR, page 130.

68 CCPR, Concluding Observations, Egypt, CCPR/CO/76/EGY, November 28, 2002 (13).

investigations into such practices, punishment of those responsible, and reparation for the victims. It is also concerned at the absence of any independent body to investigate such complaints.<sup>68</sup> And, according to Human Rights Watch “this lack of effective public accountability and transparency has led to a culture of impunity.”<sup>69</sup> In the words of the Land Center, “...in addition to the legislative deficiency, there is a political environment that gives the police a free hand in violating the rights of citizens”.<sup>70</sup>

### > Killings<sup>71</sup>

The dramatic increase in recent years in the violation of the right to life is due to the flaring up of public protests all over the country and the accompanying clashes with the security forces. The latter repress such protests violently - thus, State violence against citizens and the violation of the right to life is part and parcel of the political, economic and social environment.

In the mid-1990s, a phenomenon of capital punishment after summary trials developed as a result of the increase in violence between the state and the militant Islamic groups. Many of the members of such groups were referred to military courts – where the requirements for impartial trials are not applicable.

Judgements from such courts are not open to appeal. However, rulings made by such courts must be ratified by the President. It is noteworthy that the president has ratified most of such execution sentences passed by such courts – if not all of them. Many human rights organisations scathingly criticised the military courts as they pose a blatant violation of several human rights, such as the right to be tried before a normal judge and that there should be several judicial levels so that decisions can be challenged in a higher court. Military courts have also been criticised for being made up of military personnel – usually lacking proper training to qualify them as men of law and justice.

The Human Rights Committee has noted “with concern the very large number of offences which, under Egyptian law, are punishable by the death penalty, and the incompatibility of certain of those offences with article 6, paragraph 2, of the Covenant.”<sup>72</sup>

...while the use of the death penalty is decreasing worldwide, it has increased in Egypt over the past decade.(...) Crimes punishable by death in Egypt include offences under the so-called “anti-terrorism” legislation, as well as premeditated murder, rape and drug related offences. Over the past decade death sentences have been pronounced for all these offences. There is very little official data available on death sentences and executions in Egypt. Between 1996 and 2001, Amnesty International recorded 382 death

sentences. However, the organisation believes the actual number to be much higher than those it recorded.<sup>73</sup>

### > Arbitrary detention

Detention is employed by the executive authority against political opponents, intellectuals with ideologies contrary to the regime, fundamentalist or terrorist groups, and criminal offenders. Over the last decade, the use of detention as a penalty increased dramatically.<sup>74</sup>

Human Rights Watch has reported that “the Egyptian government has arrested hundreds of Egyptian anti-war activists, demonstrators, journalists, onlookers, and passers-by following anti-war demonstrations that began on March 20, 2003. While most of these were released within twenty-four hours, dozens have been held for long periods.”<sup>75</sup>

Under emergency legislation, the Prime Minister or the Minister of Interior has wide detention powers and the use of these powers has resulted in the increase of the number of detainees for various reasons. The security forces depend on the Emergency Law in combating the various forms of ordinary crime, despite the fact that there are the normal laws for that purpose.

The Land Center reports that recurrent detention is a practice by which persons are kept in detention even though their release has been ordered; this includes those detained by an administrative decree despite the fact that they were granted release rulings, because new detention decrees are issued on a date precedent to the date of release. Others, who are detained after being charged in major cases but have been granted release orders, are kept in detention by virtue of successive administrative decisions.<sup>76</sup> The Human Rights Committee has also noted “the persistent occurrence of cases of arbitrary detention.”<sup>77</sup>

69 HRW, UK: *Promises on Torture Don't Work*, Human Rights News, October 6, 2004, p. 1.

70 LCHR, p. 140.

71 LCHR, p.154-171.

72 CCPR, Concluding Observations, Egypt, CCPR/CO/76/EGY, November 28, 2002 (12).

73 Amnesty International, *Egypt: Continuing executions while use of death penalty decreases worldwide*, 28/10/04.

74 EOHR report, *Detention: a Crime against Freedom and Personal Safety*, 2001.

75 HRW, *Stop Detention and Torture of Egyptian Anti-War Demonstrators*, Campaigns, April 24, 2003.

76 LCHR, pages 172-181.

77 CCPR, Concluding Observations of the Committee on Civil and Political Rights, Egypt, CCPR/CO/76/EGY, November 28, 2002.

### > **Forced disappearance**

The Land Center reports that the phenomenon of forced disappearance, though new to the Egyptian society, is related to two factors: first, the violence between the militant Islamic groups and the state, second, the state of emergency.<sup>78</sup>

The Working Group on Enforced or Involuntary Disappearances has stated that “many of the 20 reported cases of disappearance occurred between 1988 and 1994, and include alleged sympathisers of Islamic militant groups, students, a trader, a doctor and three citizens of the Libyan Arab Jamahiriya. Reportedly, the disappearances took place in the context of a renewal of the state of emergency which allegedly gave full rein to the security forces, without supervision or accountability.”<sup>79</sup>

### > **Violence against demonstrators**

... during the nineties, the Egyptian society witnessed various demonstrations for many reasons. The size of these demonstrations varied between several hundreds and thousands. The issues of Palestine and Iraq were responsible for the burst of most demonstrations. It is notable that these issues worked only as a catalyst for demonstrations that burst mainly against economic and social policies of the state. It is notable also that security forces are normally twice more than the demonstrators are and take the form of a circle or many circles around the demonstration using violence in different degrees.<sup>80</sup>

Human Rights Watch documented “excessive use of force by security forces to disperse demonstrators protesting the US-led war against Iraq in March 2003, violating their right to freedom of assembly.”<sup>81</sup> Human Rights Watch reported approximately 800 arrests, at least 61 of which were held for further investigation and charged with destroying public property, inciting unrest, and failing to disperse when. Many were held at sites not recognised as legal places of detention, including the headquarters of the State Security Investigations (SSI). Almost all of those charged were ordered released on March 30, but still faced possible criminal prosecution.<sup>82</sup>

OMCT, for its part, has also documented violent repression of anti-war demonstrators in Cairo. On April 12th, 2003, the journalists’ syndicate held a peaceful assembly demonstrating against the war in Iraq and Israeli action against Palestinians. Security forces reportedly arrested a number of identified individuals. In one case the person suffered beatings and psychological torture including threats to his family and OMCT has received unconfirmed reports that some of these individuals have been interrogated, ill-treated, and tortured, including beatings, electric

shocks, suspension and threats toward the individuals and their families.<sup>83</sup>

### > **Violence against children<sup>84</sup>**

The Land Center provides information on state sponsored violence inflicted on children. This includes violence by the police and in prisons, violence in care institutions, and violence against disabled children.

One group at risk is displaced or homeless children. The number of arrests of children for being homeless has sharply increased since 2000. There were more than 11,000 arrests of children on these charges in 2001 alone, accounting for one quarter of all arrests of children that year. In many cases they are victims of abuse even before their arrest, having suffered violence in the home or had been subjected to exploitation and hazardous labour conditions.<sup>85</sup>

Human Rights Watch reported that “Egyptian police routinely arrest and detain children they consider “vulnerable to delinquency” or “vulnerable to danger.” These children have not committed any criminal offence, and in many cases the very basis for their arrest - that they are begging, homeless, truants, or mentally ill - shows that they are in need of protection and assistance rather than punishment.”<sup>86</sup> For its part, OMCT has expressed its concern about the fact that according to article 96 of the Children’s Code, a child can be exposed to delinquency if he lives in the streets or in other places not adequate for living and/or if he collects cigarettes or any other garbage.<sup>87</sup>

For Human Rights Watch, “once in custody, the abuses continue. Police in Cairo routinely detain children in overcrowded and dirty adult police lockups, where they face abuse by adult criminal

78 LCHR, p. 184.

79 Working group on Enforced or Involuntary Disappearances, Civil and political rights, including the question of disappearances and summary execution, E/CN.4/2003/70\*, paras 94-97, January 21, 2003.

80 LCHR, p. 227.

81 HRW, *Egypt: Investigate Attack on Anti-War Protesters*, November 7, 2003.

82 HRW, *Egypt: Security Forces Abuse of Anti-War Demonstrators*, November 2003.

83 OMCT, *Egypt: further arrests and allegations of torture of demonstrators*, Urgent Campaigns, Urgent Appeal, April 17, 2003.

84 LHCR, pages 187-194.

85 LCHR p. 187.

86 HRW, *Charged with being children: Egyptian Police Abuse of Children in Need of Protection*, February 2003.

87 OMCT, *Rights of the Child in Egypt*, June 2001, p. 10.



detainees and are not provided with food, bedding, or medical care.”<sup>88</sup> The Land Center reported that detained children, in place of care, are subjected to police beatings and sexual abuse and violence; detained in unsanitary and dangerous conditions for days or weeks.<sup>89</sup>

The Committee against Torture noted the many reports of abuse of under-age detainees, especially sexual harassment of girls, committed by law enforcement officials; the lack of monitoring machinery to investigate such abuse and prosecute those responsible; and the detention of minors in contact with adult detainees.<sup>90</sup>

Human Rights Watch further reported that the police deliver such children to their families or deposit them in the social care institutions where they can face violence. Children are transferred to the al Azbekiya juvenile lockup, as required by Egyptian law, where they face overcrowding, inadequate food and bedding, and denial of medical care, and may be detained with children significantly older or younger who may have committed serious crimes.<sup>91</sup>

The Land Center states that the children fear the juveniles’ institution and the governmental social care institutions. They have bitter experiences with it and in most cases; it was the reason behind their escape to the streets. Children are transferred to social care institutions without any judicial action to end the causes behind their presence in the streets, to which they return soon. Then, the vicious circle of arrest and release starts which does not end until such children are destroyed.<sup>92</sup>

The Committee on the Rights of the Child, in 2001, expressed its concern at the incidence of ill-treatment of children in schools despite its prohibition, and within the family. It was further concerned that domestic violence was a problem in Egypt and that this had harmful consequences on children. It also stated that, in light of its previous concluding observations and taking note of efforts by the State to combat poverty and its negative effects on children, the Committee remained concerned at the large disparities in the enjoyment of economic and social rights, particularly health and education, by children living in rural areas and regions lagging behind in socio-economic development.<sup>93</sup>

### > **Violence against women**<sup>94</sup>

Women in Egypt are discriminate against by legislation and excluded from positions of authority or promotions in their work. The rights of women can also be violated by various state agencies in work, prisons, police stations, social care institutions and educational establishments. “In a nutshell, the violence directed against women is not to be separated from the current of vio-

lence prevailing in the society at large. Violence directed to women whether sexual, psychological or physical is due to the low status of women in society.”<sup>95</sup>

Women are especially vulnerable to violence during operations of arrest and during detention. Women are subjected to psychological and moral fear during search and arrest when the investigation forces break into houses paying no heed to the feelings of the inhabitants. They are also subject to various forms of torture during detention including the sexual abuse of the detained women.<sup>96</sup> In addition, women are detained in places allocated for the detention of men.<sup>97</sup>

Further, women have to take responsibility for providing for their families when husbands are arrested and in addition, the men are detained in prisons far from their homes so that women get exhausted, and after crossing long distances, the time of visit is too short. Further, women are compelled to take off their veils in order to visit their male relatives.<sup>98</sup>

## ■ 5.4 Violence by non-state actors<sup>99</sup>

The Land Center for Human Rights describes a wide range of unofficial or social violence attributed to non-state actors. This includes murders<sup>100</sup>, torture, violence amongst farmers, violence against older people, armed robbery, violence against children (at home, at work, in schools) and against women (at home, work, in public).<sup>101</sup>

88 HRW, *Charged with being children: Egyptian Police Abuse of Children in Need of Protection*, February 2003.

89 LCHR p.187.

90 CAT, Concluding Observations, Egypt, CAT/C/CR/29/4, December 23, 2002.

91 HRW, *Charged with being children: Egyptian Police Abuse of Children in Need of Protection*, February 2003.

92 LCHR, p. 192 and 187.

93 CRC, Concluding Observations, Egypt, CRC/C/15/Add.145, February 21, 2001.

94 LCHR, p. 195-199.

95 LCHR, p. 195-199.

96 The Human Rights Center for the Assistance of the Prisoners, *The Situation of Women inside Egyptian Prisons*, Cairo, 2001.

97 Special Rapporteur on Violence against Women, *Integration of the human rights of women and the gender perspective, violence against women*, E/CN.4/2003/75/Add1, paras: 716-730, February 27, 2003 (731).

98 LCHR, p. 198.

99 LCHR, pages 206-259.

100 *Ibid*; and Centre for Studies and Researches of the Third World, *Ibid*, p. 12-13.

101 LCHR, p. 206-259.

### > *Torture*

The Center reports cases where individuals torture their weak employees or family members (the wife, the children, or younger brothers):

... this crime does not occur out of nothing. It is the natural result of backwardness in economic, social, and cultural position in the Egyptian society. These positions affected negatively the family ties and tolerance among family members spreading domestic violence generally and torture particularly. The most important reason of this phenomenon is the punishment for adultery or suspicion of it. The second reason is the desire to get rid of one of the family members, such as the stepson.<sup>102</sup>

### > *Violence among farmers*<sup>103</sup>

The circumstances that control the life of small farmers in the countryside are all similar in poverty, absence of decent life and meagre sources of livelihood, in addition to depriving farmers of existing ones. These circumstances encourage conflict among farmers over the rare sources of livelihood available to them, leading in turn to violent actions that end with death in some cases. Reasons of violence among farmers are endless, but land, as the main pivot of livelihood, is the main pivot of most conflicts. Access to water (irrigation) is also a cause of conflict between farmers.

### > *Violence against children*

The Center states that:

...there is a relation between violence on one side and poverty, violation of economic, social, and cultural rights, low opportunities of development, and the growing inequality on the other side. Thus, the phenomenon of violence against children cannot be understood and handled correctly without knowing the various complicated factors included in it. Economic and social factors come on the head of these factors, in addition to the cultural heritage that form the values prevailing in society.<sup>104</sup>

Regarding child labour, the Committee on Economic, Social and Cultural Rights reported that "each year over one million children between the ages of seven and twelve are hired by Egypt's agricultural cooperatives to take part in cotton pest management. Employed under the authority of Egypt's agriculture ministry, most are well below Egypt's minimum age of twelve for seasonal agricultural work. They work eleven hours a day, including a one to two hour break, seven days a week-far in excess of limits set by the Egyptian Child Law."<sup>105</sup>

The Committee expressed its deep concern over reports that children under 12 years of age work more than six hours daily in the agricultural sector, which deprives them of their right to education. In addition, reports also claim that children between 8 and 15 years of age work in cotton gins in the Nile Delta under unfavourable conditions without lunch or rest breaks, and have no protection under Egyptian law particularly with regard to work-related injuries and diseases.

...regulations governing working hours and exposure to hazardous conditions for children are not respected nor effectively enforced. In particular, that there is no effective inspection and supervision in the private sector, family enterprises, agricultural activities and domestic labour, precisely where child labour in Egypt is concentrated, in many cases involving hazardous conditions<sup>106</sup>.

Further, children working in agriculture also face routine beatings by their foremen<sup>107</sup>, and Human Rights Watch reports they are exposed to heat and pesticides.<sup>108</sup>

Although it is well known that violence is spreading in schools especially at the primary level, few statistics are available. Violence in the schools is intentionally neglected in order to preserve the reputation of the teacher. The Center reports that "teachers tend to be violent for many reasons, such as low salaries and increasing prices together with the increase in consumption patterns that lead to a psychological pressure on teachers and other poor classes."<sup>109</sup>

Regarding violence in the family, the Center reports that parents may harm their child by beating or assigning him to works that do not match his physical and mental abilities as a child. This treatment gives the child a feeling of injustice and envy towards the society and breeds the desire to revenge.<sup>110</sup> Children may also suffer sexual violation and rape by brothers or sisters.<sup>111</sup>

102 LCHR, p. 210-211.

103 LCHR, p. 212 – 217.

104 LCHR, p. 232 – 248.

105 CESCR, Concluding Observations of the Committee on Economic, Social and Cultural Rights, Egypt, E/C.12/1/Add.44, May 23, 2000 (21).

106 CRC, Concluding Observations of the Committee on the Rights of the Child, Egypt, CRC/C/15/Add.145, February 21, 2001 (49).

107 "Children working in agriculture suffer many kinds of violations starting from depriving them of the right to play to beating and even killing them during transportation to work places." LCHR, p. 244.

108 HRW, *Underage and unprotected: Child Labor in Egypt's Cotton Fields*, January 2001.

109 LCHR, p. 246-247.

110 Es-Saba', *Violence, sex, and women's health*, the conference of the Egyptian society to solve domestic and social conflicts, April 1979.

111 LCHR, p. 247.

### > *Violence against women*<sup>112</sup>

The Land Center has analysed and provided detailed information on the following forms of violence against women; family violence, sexual assaults, female genital mutilation, honour crimes, early marriage, violence against women in the public road and violence against women at work. The Center states that “in a nutshell, the violence directed against women is not to be separated from the current of violence prevailing in the society at large. Violence directed to women whether sexual, psychological or physical is due to the low status of women in society.”

One study asserts that violence committed against women is for social, economic and cultural reasons. Economic reasons (the desire to obtain possessions by force, disputes over expenses, inability to pay for living expenses, and unemployment) are the most important factors at 45.6 percent, followed by social factors (second marriage, marriage without the family acceptance, disobeying, leaving without permission, the desire to be divorced, revenge by wives, wives’ leaving house, girls’ refusal to marry a specific persons, refusal of the divorced woman to return to the husband, and forcing wives into prostitution) representing 35.1 percent. Cultural factors (suspicion, doubt, believing in mythology, insulting parents) are the cause of violence in 19 percent of the cases. The study emphasises that most of the felons and victims are illiterate. The study asserts that women in the rural areas face violence more than women in urban areas. Cairo is the province (especially in the poor areas), where violence is most widespread.<sup>113</sup>

Female genital mutilation is the most dangerous form of violence against women.<sup>114</sup> This damages physical and psychological health of the child. It has been officially outlawed, but is still widespread. The Human Rights Committee took note in 2002 of the action and awareness campaigns against female genital mutilation, but also noted that the practice still continued and called on Egypt to eradicate the practice of female genital mutilation.<sup>115</sup>

Another form of societal violence against women is early or forced marriage, whereby young girls are obliged to be responsible for marriage tasks although they are not qualified physically or psychologically to bear such burdens. Many studies mention that this phenomenon is more widespread in the poor rural areas especially in Upper Egypt, where poverty, illiteracy and traditions combine to impact negatively on women’s conditions.<sup>116</sup>

### > *Violence by extremist Islamic groups*

One important manifestation of violence has been that of the

Islamic militants. In order to understand the confrontations between the State and militant Islamic groups during the 1990s, due consideration should be given to the social roots of the phenomenon.

The phenomenon of fundamentalist terrorism emerged in Egypt within a critical economic and social context. There occurred the change in the social situation, maintained by new liberalism and transformation towards capitalism and private sector policies. This resulted in grave social changes, the most prominent of which was the crisis of the middle class. The latter developed under the capitalist policies of the state over the 1960s and early 1970s, but was gradually eroded to poverty and marginalisation. The situation as such provided an environment suitable for the emergence of Islamic extremism as an alternative for those youths who found themselves with no future.<sup>117</sup>

Even if the security agencies managed to suppress fundamentalist extremism, they failed to address the economic crisis and the consequent social tensions. This gave rise to recurrent public protests in which trivial events created huge social turmoil, leading to violent clashes between the security forces and the citizens.<sup>118</sup>

In a nutshell, there are social and economic dimensions for the growth of the phenomenon of religious extremism in Egypt and Public protests. The main reason behind the bad socio-economic situation of the country is the policies of the state. These methods resulted in the poverty of many factions of the society. Meanwhile, the state confronted such phenomenon by severe repression implying numerous massacres on both sides.<sup>119</sup>

112 LCHR, p. 199 and 248-259.

113 LCHR, page 251, citing Laila Abdel Wahab, *Family violence*.

114 LCHR, p. 254-255.

115 CCPR, Concluding Observations, Egypt, CCPR/CO/76/EGY, November 28, 2002.

116 LCHR, p. 257.

117 LCHR, p. 170.

118 LCHR, p. 171.

119 LCHR, p. 170.

## 5.5 Violence and economic and social development: conclusion

(The) spreading of violence in the Egyptian society is a normal result of the deep changes in economic, social, cultural, and political circumstances in the past decade. It has become an original characteristic of the Egyptian society. That appears in the fact that violent crimes, such as murder, rape, and forced robbery are prevailing most among the poorest social classes or among those classes that are mostly subject to violation of their economic, and social rights, such as workers, the unemployed, and governmental employees ... people tend to be violent when they are desperate and have no hope of having their rights and urgent needs<sup>120</sup>

Thus, economic reasons are the most effective variables that lead to violence, low living standards and the feeling of suffering, and push people, especially youths, to violent reactions. The main problems that lead to violence are unemployment and unequal distribution of wealth as most criminals are unemployed youths between 18 and 30 years old.<sup>121</sup>

Regarding torture, it is noteworthy that the majority of the victims of torture belong to the poor social classes. However, despite the fact that most of the crimes of torture are committed against the poor, torture is also practised against the middle classes e.g. merchants, lawyers, professionals or intellectuals. Torture, particularly when it leads to death, is a major reason behind the outbreak of collective protests and actions of violence against police stations and governmental agencies.<sup>122</sup>

The Land Center made the following general recommendations aimed at eliminating the human rights violations and the official and social violence:

The way out of this crisis is a bird with two wings and they are: participation and development, democracy and improving the standard of living and a bird can't fly with only one wing.

The democracy issue and improving livelihood chances and life for citizens can't be achieved without creating practical frameworks for change through a connected building process that stand on effective dialogue, accepting multiplicity and diversity, the circulation, freedom of opinion, cancelling the laws that restrict freedom, cancel working in emergency law, and guaranteeing the right in gathering, organising, demonstrating, striking and forming bonds and associations, and guaranteeing the citizen's rights in suitable working chances, secure land

tenure and suitable housing, and guaranteeing their right to health care, education, healthy food and clean water, and guaranteeing other services that provide the Egyptians with their rights in a suitable and decent life."<sup>123</sup>

## 5.6 Impact of agrarian reform: the case of Kouta Karoun village<sup>124</sup>

### > *The village profile*

The village lies in the west of el Fayoum province. In the sixties, water became available to the village and many farmers, especially from the surrounding provinces such as Beni Suief, moved towards the village and began to reclaim the wasteland. The arable land in the village is about 1,000 fedens<sup>125</sup> owned by a limited number of owners. This land was owned by an institution of land reform that distributed the land among a number of farmers in exchange for an annual fee. In the seventies, a number of investors began to reclaim vast areas of land of 100-200 fedens, which they cultivated with oranges, mangos and olives until the implementation of law 96/1992, which gave those new landlords and the Ministry of Agriculture the opportunity to steal the land and grow corn, wheat and peanuts.

Before the law was implemented, families depended on cultivation for a living but the new law obliged a huge number of families to leave the village and search for any source of income in Cairo or new cities. Those migrants worked in different profession for 15 LE a day. The farmers that are still living in the village have no choice but to work in others' lands for 10 LE a day.

The village was provided with electricity in 1985 and clean water in 1995, but only 20 percent of the families enjoy this service while the other inhabitants depend on unhealthy underground water. In 2001, a telephone exchange was established in the village, but only 10 percent of the families enjoy this service. The

120 LCHR, p. 206-7.

121 Dr. Laila Abdel-Gawwad, Mr. Mohammad Saad Mohammad, *Youth's views of reality and the future of social violence in Egypt – economic, social, and criminal dimensions of violence in Egyptian society*, Fourth annual conference, National Centre for Social and Criminal Researches, April 2003, second volume; LCHR, p. 207.

122 LCHR, p.135-136.

123 LCHR, page 267.

124 Based on a report of the Land Center for Human Rights entitled *Losing the arable land and violence in the Egyptian country side*; August, 2004 (herein after LCHR Case studies).

125 1 feddan = 4200 m<sup>2</sup>.

village has no sewerage system although a project was begun two years ago but has not been finished yet.

There are two primary schools: Kouta Karoun school with 650 students and 25 teachers and Kouta el Balad with 475 students and 15 teachers. Class size of these schools varies between 55-60 students. There is one preparatory school in Abaza village which is 2 km from the village and costs 0.5 LE a day for coming and going to the village, which prevents poor families from sending their children to school. Most secondary schools are in Abshoy village 37 km away that costs 20 LE a day for coming and going. Villagers with an education are estimated at 30 per cent. There is no youth centre or club in the village.

There is no health unit or private clinic in the village. The only health unit is 4 km away. For 15 years, a doctor was present in this government institution from 8 am to 2 pm, and farmers paid F1.05 LE for a visit. Subsequently, the unit was transformed into a private clinic in which the farmers pay 5 LE for examination.

### > **Conflict over land ownership**

In 1966, the institution of land reform put its hands on 75 fedens and 6 kirats<sup>126</sup> in Abshoy village from the heirs of Mohamed Amin Wally. This plot was distributed to farmers "one feden and nineteen kirates a farmer". From that year, the 52 farmers in the village cultivated their land as landlords and members of agrarian cooperatives.

According to the first article of law 3/1986, after 15 years of working this type of land, a farmer has the right to buy it. Some farmers presented their request to buy their plots, but the institution paid no attention, giving no legal reason or reasonable justification.

In 1997, the farmers were surprised to learn that Mohamed Amin Walley, the heir of Mohamed Amin, had completed the necessary procedures for evicting them. He made use of his relationships with the police officers to oblige farmers to leave the land using all the available forms of violence, although there was no final judgement in the lawsuits presented by the farmers which were still under the court deliberation.

From the beginning of the year 1997, the security forces violated the rights of personal safety and life of more than 50 farmers. The policemen of Abshoy police station with 18 soldiers and 10 guards attacked the farmers' houses in the village of Kouta Karoun and arrested 28 farmers to make them leave their land. The security forces organised campaigns of collective detention against tenants, wives and children. On 6<sup>th</sup> November 1997, the police force hanged, tortured and beat farmers. The farmers'

wives suffered from sexual harassment. In the end, the tenants had no choice but to surrender.

Kouta Karoun village is an example that reveals the violations committed during the law's implementation. The village is the home of the family of the Minister of Agriculture, Dr. Joseph Wally, who played an essential role in evicting the farmers.

At the end of the transitional period in October 1997, the families in Abshoy village (a part of Kouta Karoun village), el Fayoum province, were shocked by the attack on farmers of the security forces that supported the family of Joseph Wally. When the families objected to the attack, they faced insulting and beating in addition to demolition of their houses and destruction of their crops. Some 47 farmers objected to the unjustified attack and were detained and tortured to confess that their plots were rented from Mohamed Wally, who was the uncle of the Minister of Agriculture Dr. Joseph Wally.

After fifteen days of detention and torture, the farmers met Mohamed Wally in his villa, where his nephew told his uncle that he had to get rid of those farmers and recover their possessions. That annoyed the farmers and pushed them to refuse leaving the land, which led to continuing the torture. Then, the officer released them asking them to meet Mr. Mohamed. However, the farmers didn't go for that meeting which caused the police force to arrest more than 17 women of farmers' family in addition to using tractors to destroy. As a result of this detention, one of the farmers died when he arrived home because of the severe torture he had undergone. That caused families to present many complaints.

According to the report of LCHR issued in August 1998, on 25<sup>th</sup> October 1997 the security forces arrested 19 farmers to oblige them to leave the land responding for the complaint presented by the inheritors of Mohamed Amin against tenants. The Center issued a press release monitoring the violent incidents when farmers went to their plots for harvesting and they were arrested by the security forces on 17<sup>th</sup> April 1998.

### > **The consequences of land eviction**

Law 96/1992 is considered as the worst example of the policy called economic reform adopted by the Government since the beginning of the nineties. These policies impact negatively the social, economic and psychological conditions of the poor, and the Government makes use of many violent procedures against

126 1 kirat = 175m2

the poor to implement them. These policies also spoil rural relationships by increasing the disputes between farmers, as implementation of the law enriches some groups that own vast areas while impoverishing those who are evicted. The policies also lead to unemployment, in addition to preventing farmers from participating in public political life.

After the tenants lost their lands, they became agrarian labourers with no lands, houses or cattle which mean they lost their livelihood. The unemployed tenants left the village to search for any work opportunity in the cities while the wives were left at home to wait for the return of their husbands. The land is threatened with deterioration after having been cultivated with different crops. On the other hand, the tenants still hope to get their land back once more, especially after the retirement of the Minister. Some of the farmers said that they have a new dream to re-cultivate the green land, to live again in adequate living conditions and to enjoy safety and suitable work opportunities.

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### The story of Aly Zidan Aly

**Age:** 57 years old

**Profession:** farmer - agricultural labourer

**Daily wage:** 8-10 LE a day but it is not permanent work: the labourer finds only 18 days work a month except in the harvesting period, making an estimate of 60 days a year

**Land possession:** he was owner of two fedens

**Number of family member:** nine

- Wife: 50 years old - illiterate - not working
- Zidan: 23 years old - agricultural vocational certificate - labourer
- Ibrahim: 22 years old - illiterate - labourer
- Shahat: 20 years old - industrial vocational certificate – labourer
- Farag: 19 years old - illiterate - applied for military service
- Sayeda: 17 years old - illiterate - not working
- Abdel Moula: 14 years old - prep school
- Aisha: 10 years old - primary school

#### Educational expenses:

Abdel Moula: he is in Abaza prep school, 2 km from the village. The tuition is 33.5 LE. The father pays 5 LE for notebooks, 5 LE for pens, 90 LE for the uniform in addition to 0.50 LE daily for transport.

Aisha: she is in Kouta primary school, 150 m far from the home. The father pays 24.5 LE for tuition, 5 LE for notebooks, 3 LE for pens and 70 LE for the uniform bought by her brothers working in Cairo as daily labourers.

#### Description of their house:

The house consists of four rooms measuring 2.5mx2m and a hall of 2mx4m in addition to a bathroom built outside the house. The house is built of clay while the roof is made of reeds. They own a small black and white TV, clothes washer and a small radio set.

#### In case of sickness:

The family is treated by popular medicines. If these traditional ways fail, they go to the health unit or the public Abshoy hospital which is 57 km away and pay 1 LE for transport to get there. When Uncle Aly was sick, he went to the unit paying the 1.05 pounds. The physician (a relation of Wally's family) gave him some aspirins and advised him to buy some expensive medicine but Uncle Aly couldn't buy it.

#### Political parties:

There are no parties, but an Islamic group existed until it was arrested in the mid-seventies. Uncle Aly mentions that the landlords make use of their relationship with the family of the Minister of Agriculture, Dr. Joseph Wally, to abuse them. He highlights that they practise no political activity because they are weak; the rich and officials give the opposition no opportunity to work. He asserts that he didn't vote at the last elections of the people's assembly because when he went to vote, the supporters of Wally ordered him to leave while they offered to give another farmer ten pounds for voting for Wally. Uncle Aly says that the member of the assembly of the village is Ismaeel Sherief Joseph Wally, who only visits the village during election days. He adds that he doesn't hear about elections of local councils and he doesn't know if there are members of the councils in the village or not.

#### Impact of law implementation:

Uncle Aly had no idea about the law. He obtained his plot from semi-reclaimed land. He spent his life cultivating his land that provided him with a good life. One day, he heard screaming outside the house, and was shocked when his son entered the house telling them that the police would take the land. Then he shouted, "there is law protecting our right, sit down my son to have your lunch". After that they heard crying and shouting that and a neighbour told him that Wally's sons accompanied policemen to evict all farmers from the land. So he walked towards his land when he met a policeman who arrested him and imprisoned him in Abshoy police station. Here the officer told Uncle Aly and other farmers that they were detained so that they would deliver their land to their original owners. They replied that they were the landlords, which caused the officer to insult them and ordered the soldiers to beat and torture them for 15 days. After that they were released to meet Mr. Mahmoud Wally, the minister's uncle, to undersign the documents for leaving their lands but they refused, which result in their detention once more. Uncle Aly doesn't know what he has to do apart from presenting complaints and filing lawsuits. But this nightmare isn't solved yet.

#### The current source of income of Uncle Aly:

After these terrible incidents, he is fighting to find permanent work for his sons and himself. But he usually fails to work on other people's land because it is owned by his enemies who refuse to hire him. They are obliged to leave the village searching for any work opportunities. Uncle Aly survives through the incomes of his three sons that work outside the village: both Zidan and Ibrahim work for 8-15 pounds a day for 20-22 days a month and the third son travelled to Libya for six months without sending any remittance.

#### **The relation between Uncle Aly and the agrarian cooperative:**

It was good when he used to take seeds, pesticides and fertilisers in addition to receiving some loans up to 75 pounds. But this relation has stopped as the cooperative refused to deal with Uncle Aly. As he knew that he had shares in the cooperative, he and a group of farmers went to the agricultural administration which promised them to solve their problem and asserted their right to these shares. However, they received letters from the ministry informing them that they had no right to these shares, which made them file a lawsuit. When we asked Uncle Aly about the Development and Agrarian Credit Bank (DACB), he mentioned that he has no relation with the bank at all.

## ■ 5.7 Impact of agrarian reform: the case of el Bieda village<sup>127</sup>

### > *Village profile*

El Bieda village lies in Monshaa Nasr, el Hussania district, el Sharkeya province. It is a small Izba (smaller than a village) whose inhabitants aren't more than five thousand. The village is characterised by clean streets surrounded by vast green areas. In addition to insufficient services of health care, education, transportation, and telephone, there is no school, clinic or pharmacy in the village. In spite of the deterioration of these services, the village used to live in security regarding possession of land and houses, work opportunities and humane living conditions.

The farmers of el Bieda village received 157 fedens in 1969 to be reclaimed. From that date, cultivating the land became the sole source of income for those farmers and they were issued cards of agrarian possession from the agrarian cooperative. After that, farmers were surprised by a decree of land release through the public institution of land reform for the sake of the public association for reclamation and agricultural development in 1976. In 1978, the land was delivered to the public institution for projects of construction and agricultural development. Then, presidential

decree no. 141 of 1981 lifted the protection imposed against the claimants of the land and with the collusion of some employees; the land was delivered on papers to the landlords.

The implementation of the land law and the threats to farmers that they would lose their land changed the happiness in which the village lived. This was especially true after the tractors of the Government and those claiming possession of the land attacked the village to evict farmers from about 57 fedens. Moreover, persons hired by the landlords, with the assistance of some policemen, attacked farmers' houses and destroyed their materials.

The strange thing was that the cooperatives issued possession cards for the landlords although these cards couldn't be issued for anyone but the land user, i.e. the farmers. The landlords made use of these cards and forged receipts for loans from the Bank in el Zakazik district. Although they had not received the money, the farmers were obliged to pay off these loans with interest order to avoid imprisonment or the seizure of their crops and cattle.

### > *Law and violence inside the village*

After the inheritors of the claimants obtained a judicial sentence for the eviction of the farmers from an area estimated at 57 fedens, they implemented these sentences using the worst forms of violence and insult through the police forces, which delivered the land to the landlords. Some farmers against whom no judicial sentences were issued had to give up their land under supervision of the police. The group of farmers that refused to deliver their land were arrested by the police, insulted and beaten. Their women were raped in order to force them to leave the land. Some landlords stole or destroyed the crops, or prevented the farmers from harvesting without giving farmers any compensation.

In October 2002, the central security forces attacked the village destroying crops in 157 fedens about which farmers and the heirs of Mohamed el Saady el Tahaweey had judicial disputes for more than twenty years. The security forces violated the law and evicted the farmers from the rented land using various forms of violence including insulting, beating and the detention of more than one hundred farmers. The tractors of the landlord destroyed the rice and cotton crops cultivated in the rented land which

127 Based on a report of the Land Center for Human Rights entitled "Losing the arable land and violence in the Egyptian country side Two case studies" (August 2004)

caused farmers' losses.

After the landlords took possession of the 57 fedens forcedly, they filed minutes against farmers and their children accusing them of stealing the crops and machines in order to terrify other farmers so that they would leave the plots before judicial sentences were issued. All the accused farmers proved their innocence in these charges with the help of LCHR's lawyers. Some claimants to land made use of their relations with policemen to receive the land before issuance of the judicial sentences.

Some farmers and women and children had been imprisoned for fifteen days on the charge of attacking the police, although they were only defending their land. The prosecutors of el Hussania district ordered their release, but police refused to release them and instead tortured and beat them. The families reported that the policemen assisted the landlord because of his relative that worked as a head of the security department in one of the provinces in Upper Egypt. This scene of attacking organised by the police forces was repeated on the 1st of October resulted in destroying the crops, wasting the land, killing cattle and destroying houses in addition to detention of more than 100 farmers with no concern for the law or farmers' humanity.

### > *The consequences of land eviction*

After the farmers were evicted from the land by force, their profession became landless farmers, which was a real catastrophe for them, as the land was the source of security. Without land they had no home especially as most of those farmers are old and couldn't work in other professions. Therefore, their children work as daily labourers to pay for the living expenses of their families. The family that comprises one son as a daily labourer obtains 1,000 LE a year. This results in poverty and removing their kids from school because of inability to afford the tuition fees.

Sons who were close to marriage were obliged to postpone this. As for girls, they become heavy burden on who accept the first proposal of marriage, which spreads the phenomenon of early marriage and not sending girls to school.

The living conditions in el Bieda village worsen because of decreasing expenditures for food, clothing, education and health which in turn increases cases of quarrelling between neighbours and robbery. Moreover, violence committed against women rises in the form of beating wives, in addition to the latter insulting their husbands because of deficiency of financial resources.

### > *The story of Uncle Wahdan*

Uncle Wahdan is 68 years old. His family is composed of his wife, six kids and their wives and his grandsons. They live in one house inherited from the family ancestors for which they pay no rental. Before the law, the family owned two rented fedens and 14 kirats. They used to grow their food: in winter 1/4 of the area for barsem for feeding their animals and 2 fedens for wheat; in summer the whole area for corn. Uncle Wahdan loaned four cows and two buffalos from the DACB in addition to their home-bred female. Before the implementation of the law, the family's income was about 19280 LE/year earned through selling vegetables, cows, buffalos and goats in addition to the produce they eat, such as wheat, corn, cheese, fats, etc.

The family of Uncle Wahdan had heard about the land law since 1992 through following the discussions of the people's assembly on TV but they paid no attention. In 1995, the inhabitants of the village began to talk about the law revealing their disbelief of its implementation. In October 1997, Uncle Wahdan was taken by surprise when the landlords evicted tenants from the land or raised the rent. The landlords tortured the tenants till they were evicted forcedly. The landlord wasn't patient enough to let Uncle Wahdan harvest his crops. When Uncle Wahdan insisted on harvesting the crops, the police detained him for five days, threatening him with imprisonment. Moreover, one of Uncle Wahdan's sons was also arrested, which obliged Uncle Wahdan to leave the land. He presented many complaints before the officials but nothing was changed.

### > *After eviction*

The living conditions of the family became completely different: the sons had to search for work opportunities in other people's land, the opportunity of loaning animals from the bank was lost, and the family was obliged to sell their cattle to pay off their debt to the bank. The expenses of the agricultural process increased substantially. The family depends mainly on the pension of the father estimated at 79 LE/month in addition to 2400 LE/year from the wage of his son working in quarries in Helwan.

The family suffers from economic problems represented in insufficiency of income for satisfying their basic needs; moreover, Uncle Wahdan has three daughters of marriageable age, but he cannot afford to pay for a wedding. The youth in the village leave for Cairo to search for work, which also results in delaying marriage. In addition, the wife of Uncle Wahdan is sick and treatment is expensive, especially as the village lacks hospitals or clinics.



Like other farmers in the village, Uncle Wahdan's sole hope is finding work opportunities for his sons or receiving alternative land in application of the Government's promises.

### > *The story of Uncle Ayob*

Uncle Ayob's family consists of his wife and five kids and their wives and children. They live in a one-floor house of six rooms. It is the only one built with concrete and red bricks but the one pipe supplies them with polluted underground water.

The family owned two fedens rented secretly from the landlord since 1961. The sons cultivated the land for a livelihood in addition to working for daily wages sometimes. Uncle Ayob made use of loans from DACB for cultivating the land and seeds, fertilisers, pesticides and machines provided by the agrarian cooperative. Uncle Ayob heard about the law in 1992 through the radio and neighbours. In 1997, the landlord persisted in evicting Uncle Ayob from the land, refusing the options offered by Uncle Ayob such as raising the rent in accordance with the new law. On the other hand, Uncle Ayob refused to leave the land until he was imprisoned and tortured many times. When he was released, he found his cotton crop was destroyed under the cattle legs so he found no solution but to leave the land to live with his family in hard living conditions.

After eviction, the family members began to search for other work Uncle Ayob cultivated other people's land in return for receiving half the crop. But this work wasn't sufficient for satisfying the family's basic needs, so he worked on other land for daily wages but this work was hard.

These conditions pushed the sons to be financially independent after having previously contributed to the living expenses of the whole family. It meant that the sixty year old father became responsible for satisfying the needs of his wife, daughter and son in spite of his old age and deteriorated health condition. The living conditions of the family worsened in spite of increasing working hours which meant reducing food expenditure. Medical treatment was not available from the village hospital. Uncle Ayob like other farmers couldn't even have pure drinking water because the canal was filled in, the land has become a garbage area where rubbish is burnt daily, threatening children with fatal diseases because of pollution and insects.

To solve the problems of farmers in these villages, we have to guarantee their return to their lands, promote their safe land possession, solve their developmental problems and protect their rights to public services and a humane and adequate life.

## 5.8 Conclusion: agrarian reform and its impact on human rights

The period from mid-1997 to mid-1998 witnessed the implementation of the agrarian law reform, accompanied by beating, insulting, unreasonable detention, torture, burning crops and eviction from the houses attached to arable land.

Moreover, state institutions encouraged the appearance of other forms of violence, such as disputes between rich landlords against poor farmers. In some areas, the landlords connived with the police force to oblige tenants to leave their plots without any compensation. This led to mistrust of State institutions by farmers and proved that the new agricultural policies were implemented for the sake of large-scale landlords with no concern for the tenants' benefits.

The security forces imposed conditions adjustment by force against tenants that refused leaving the land. Therefore, the officials obliged some tenants to undersign papers with delivering the land. The security forces organised collective campaigns against villages that refused delivering the land "collective detention and arresting women and old people to oblige their families to deliver the land".<sup>128</sup>

LCHR asserts there are more violations committed against tenants in other areas that the Center couldn't monitor or document that required more collective efforts.

128 LCHR Case studies, p. 17.



## Chapter 6

### Nepal: country profile and case study<sup>1</sup>

#### 6.1 Political, economic and social overview

##### > *Geography and population*<sup>2</sup>

Nepal is a land-locked country sandwiched between two neighbouring giants, China in the north and India in the east, south and west. It covers an area of 147,181 sq km and is a land of enormous geographical diversity, divided east-west into three distinct ecological zones: the plains in the south, hills and mountains in the middle and the Himalayas in the north. Thousands of rivers and streams that flow north-south bisect the landscape into hundreds of small hills and hillocks isolating the residents from each other and from the rapidly evolving world of information and development because of the lack of linking infrastructure (transport and communication). These three regions also display an immense diversity of human settlement patterns, population, land distribution, productive resources and levels of economic development.

Home to nearly 24 million people, the country is a mosaic of over 61 ethnic groups who have their own distinct languages, cultures and life styles. It is a Hindu state with a rigid caste system that compartmentalises the people into a 4-tier hierarchy. This caste framework finds a close nexus historically with the system of governance, in which the upper caste, the *bahun* and *chhettri* castes in particular, have always held the positions of power and privilege; by virtue of being in lower tiers, other groups are routinely discriminated against and deprived of accessing decisive state structures and institutions.

Nepalese culture builds on its unique geographical, socio-economic and political histories and structures. Its geographical distinctiveness has given rise to diverse cultural structures and practices in different ecological zones. The *terai*, hills and mountains thus are mutually exclusive in terms of cultural practices. Cultural distinctiveness is also conspicuous along ethnic lines and feudal and subsistence-based socio-economic structures also have implications for cultural practices and manifestations.

##### > *Political and legal context*

Nepal is now 235 years old; about 220 of these years (94 per cent) have been characterised by autocracy and government repression. The remaining years have seen intermittent democracy, first from 1959 to 1960, but which was ended after 18 months

by King Mahendra, the father of the current monarch. In 1990, democracy was again introduced and parliamentary elections held as a result of a peaceful mass movement known as the People's Movement for Democracy. However, in October 2002 King Gyanendra took over executive powers and dissolved parliament,<sup>3</sup> and on 1<sup>st</sup> February 2005 the King dismissed the Government, assumed direct powers and declared a state of emergency. In 1996, Maoists launched the People's War, aimed at establishing a regime styled after that of Mao Tsetung in China in 1945. The war has been a major source of political unrest. Many thousands have been killed, injured or displaced, and much infrastructure has been destroyed (see the section on the impact of the war, below). Except in the cities and Kathmandu Valley, the presence of the State is almost non-existent.

##### > *Human rights*<sup>4</sup>

The 1990 Constitution of the Kingdom of Nepal seeks—to protect most of the human rights recognised by international law. Part 3 lists fundamental rights, most of what is understood as civil and political rights, and some social and cultural rights. The fundamental rights are enforceable in the courts. Article 88 (2) of the Constitution gives the Supreme Court “extraordinary powers to issue necessary and appropriate orders to enforce such rights or settle the dispute” arising from the violation or infringement of these rights. Part 4 provides for directive principles and policies vis-à-vis what can be termed as economic rights. As principles, they are not enforceable in any court, but are “fundamental to the activities and governance of the State...” (article 24 (2), which is obliged “to promote conditions of welfare on the basis of the principles of an open society, by establishing a just system in all aspects of national life...” (article 25 (1), and by pursuing “a policy of raising the standard of living of the general public...” (article 26(1).

1 Prepared by the editor on the basis of the report by Rural Reconstruction Nepal (RRN), entitled “*Nepal a Country Profile*” 2004, (hereinafter RRN, 2004), in consultation with RRN and on the basis of other relevant documents. The report is reproduced in the CD-ROM included with this publication.

2 RRN, 2004 p. 1.

3 RRN, 2004, pages 5 – 6; Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2004, Executive Summary: Human Rights Situation in 2003*, p. 3.

4 See RRN, 2004, pages 14-19.

More than anything else, the 1990 Constitution helped institutionalise the human rights movement in the country by providing an open environment for civil society organisations to operate, which prior to that had been prohibited. Human rights monitoring had been one of the key NGO contributions to the country - thanks to the 1990 Constitution - thereby obligating the State to reform its performance. But, since the royal take over of absolute power in 2005, the NGO community faces a series of harassments and threats. Recently a royal ordinance has been issued to bring about changes in the existing regulation governing the neutral functions of NGOs. Civil society experts see it as a move to curb and control the independence of NGOs, particularly of those which are critical of the current Government and have an expressed commitment to human rights and the rule of law.<sup>5</sup>

Following the 1990 Constitution, a number of laws were enacted aimed at improving respect for human rights, including the 1992 Social Welfare Act, the 1992 Child Act and the 1992 Labour Act.

To give effect to the constitutional provision protecting and promoting human rights, a few institutions have been developed. One such institution is the National Human Rights Commission (NHRC) established in 2000 in accordance with the Human Rights Commission Act 1997 and what is known internationally as the Paris Principles. The Commission is vested with responsibility to protect and promote human rights. It is mandated to investigate into complaints, monitor and report on the human rights situation, inspect prison conditions and other institutions under His Majesty's Government (HMG) with a view to assessing their compliance with human rights standards, submit to the government opinions or recommendations, promote research on human rights, disseminate information on human rights, laws/mechanisms protecting human rights through interactions, seminars, media and publications, and contribute to the reports the State is to submit to UN and other bodies.

The mandate of the commission does not cover three areas: (a) issues under military jurisdiction, (b) issues being dealt with under prevailing criminal laws and procedures as notified by the Attorney General of the country, and (c) issues claimed by the Principal Secretary of HMG as having an adverse effect on the security of the kingdom and in relations or treaties entered into between HMG and foreign governments or other international institutions.

The only statutory body responsible for human rights is thus not without obstructions. It also has no mandate to adjudicate in cases of allegations. Yet the role of the Commission is crucial to "bring the culprit to book, if not to justice" thereby creating "moral pressure on the government and other concerned institutions to respond accordingly" (Kattel, 1999). However, as soon as

King Gyanendra assumed absolute power in 2005, the NHRC Chairman was quoted as inviting all "to fulfil the essence of the royal proclamation" that shattered democratic norms and instituted an absolute monarchical regime.<sup>6</sup> In May 2005, the King issued an ordinance to amend the Human Rights Commission Act, 1997 to appoint new members when their term expired.<sup>7</sup> Ever since, the Commission is said by some observers to be a "spook agency" of the current regime.<sup>8</sup>

Nepal is a State Party to almost all major international human rights instruments ranging from the Slavery Convention (1926) to Convention on the Rights of the Child (1989). It has also ratified key ILO Conventions abolishing forced labour, guaranteeing equal pay for equal work, granting rights to association and collective bargaining, eliminating the worst forms of child labour, and setting standards for entry into employment. Protecting and promoting all human rights is thus obligatory upon the Nepali government.

Nepal has a three-tier court system: District Courts (75), Appellate Courts (16) and a Supreme Court (1). All 75 districts of Nepal have a District Court, appellate (appeal) courts are spread across Nepal and the Supreme Court is in Kathmandu, the capital city. The District Courts are the first instance courts which hear and decide cases both of civil and criminal nature. The Appellate Courts hear complaints against the District Courts. The Supreme Court is the final avenue for legal adjudication for all cases except those falling under the jurisdiction of the Military Court.

The courts are independent entities with fairly comprehensive scope. However, they are not free of allegations of undue influence, corruption and inefficiency. Judges and other legal professionals are high-caste, come from better-off socio-economic situations, and are predominantly male. This asymmetry is said to have affected the delivery of justice as those better-off are alleged not to be sensitive to the plight of the disadvantaged, and high-caste people tend to reinforce the patriarchal values and norms of Hindu ideology. Seen from a human rights perspective, "most of Nepal's judges are reluctant" about "applying the principles of international human rights laws at the national level for the protection and promotion of human rights" partly because of their "unfamiliarity with" the principles and partly because of their "conservative outlook".

5 Nepal Times 'NGOs next...', at [www.nepalitimes.com/issue160/headline.htm](http://www.nepalitimes.com/issue160/headline.htm)

6 Asian Centre for Human Rights (hereinafter ACHR), 'The Ugly Case: NHRC of Nepal', *Review/85/2005*, Review, available at [www.achrweb.org](http://www.achrweb.org).

7 According to the Human Rights Commission Act, 1997, appointment of human rights commissioners should be done by a committee consisting of Prime Minister, Leader of the Main Opposition and Chief Justice. The ordinance was issued to change this key provision.

8 ACHR, *op. cit.*

This scenario has taken an uglier turn since 2005 with the Supreme Court led by Chief Justice Hari Prasad Sharma refusing to accept writs of *habeas corpus* vis-à-vis political detention. Instead of a neutral arbitrator, he served as the King's political emissary in international forums, openly supporting the royal *coup* against democracy and holding political parties responsible for corruption, parochialism and bad governance.<sup>9</sup> Never before in Nepal's history was the independence of the judiciary shattered so badly. The Bar Association took to the streets against the Supreme Court's submission to the palace, to uphold the law and question the constitutionality of the king's move. The lawyers are fighting exemplarily to protect the independence of the judiciary whereas the palace is trying to curb it.

### > **Agriculture**

Agriculture is the mainspring of the economy. It provides livelihoods for a striking majority of the nation's population, and employment for four fifths of the total labour force, "possibly the highest ratio in the world". Agriculture operates in a semi-feudal framework. Arable land is scarce, fragmented and unevenly distributed. Only 20 percent of the total land area is cultivable, and of the total cultivable land, 69 percent of the landholdings are less than one hectare in size. The bottom 40 percent of agricultural households owns only 9 percent of total agricultural land, while the top six percent occupies more than 33 percent; 24.4 percent of households do not own any land at all, which means over 5.5 million people are landless. Average household size of Nepal, according to the 2001 census, is 5.45.

The landless (*sukumbasis*) and land-poor are left at the mercy of big farmers and landlords, often forced to sell their labour for a negligible wage. The surplus so appropriated is diverted to other sectors which do not necessarily support agricultural growth. Appropriating a surplus from a majority in the rural areas to a minority residing in urban centres is widening the gap between the rich and the poor. Today, some nine million people are estimated to be below the poverty line with earnings less than one US\$ a day.

The *kamaiyas* are the Tharu people in the western *terai* of Nepal who resisted malaria and nurtured the arable land there for over 600 years. These people were tricked into bondage after malaria was eradicated in 1950, which paved the way for migration from the hills. The newcomers soon held control over the arable land, pushing the real masters, the *kamaiyas* into the margins, and, gradually, into bondage. Losing their land, their only means of subsistence, the *Tharus* were forced to work for nominal wages. To meet socio-cultural obligations (marriages, rites, festivals), they started borrowing money from the masters pledging their

labour as surety. As social obligations grew, so did the amount of loan which would accrue a large amount of interest imposed by the lenders. A point came where despite all family members working long hours - as many as 18 hours a day - the loan became so huge that it could not be settled. Instead, it chained them as bonded labourers of the masters. It is estimated that around 100,000 *kamaiyas* are landless (see also the case study in section 6.5).

### > **Economic liberalisation, unemployment and poverty<sup>10</sup>**

Nepal is one of the 50 Least Developed Countries, with an annual per capita income of US\$230, is ranked as 143<sup>rd</sup> (out of 175 countries) in the Human Development Index of the UNDP, and falls under the category of 'low human development' countries in the human development aggregates.

The road to economic liberalisation began with the reinstatement of democracy in 1990. To globalise the national economy, trade investment, foreign exchange, financial and industrial sectors were deregulated, delicensed and privatised. However, the experience of privatisation has not been encouraging. "Out of 17 enterprises privatised, 4 have already closed down while others are struggling to survive. For instance, Nepal Bank Limited (NLB), the oldest bank of the country, which was privatised in 1997, is in a very critical situation" Privatisation has hit the education and health sectors hard by decreasing the quality and quantity of public health and education provision. There is no evidence that privatisation has led to improved services in any sectors.

Manufacturing and industry face a similar fate, particularly after the start of the Maoist People's War in 1996 (see below). Growth in industrial production in the fiscal year 2001/02 decreased to 5.9 percent from the 10.8 percent production level of the first half of 1990s.

Trade accounts for a relatively small percentage of GDP. In 2002, exports accounted for 11.3 percent of GDP, while the agricultural sector accounted for 40 per cent, and the trade deficit stood at 14.1 percent of GDP.

9 Chief Justice' statement was published under 'dalharuka sarkarle nasake pachhi shahi ghoshana' (royal proclamation after the failure of multiparty governments) in the Kantipur Daily of 7 April 2005.

10 RRN, 2004, p. 1-8.

Foreign aid has formed an integral part of the economy ever since the door to foreign aid was opened in 1952. Nepal's dependence on foreign aid is on the rise compared to other countries in South Asia, and has contributed to an alarming amount of foreign debt accumulation. More than half the annual government revenue goes to foreign debt servicing today with each citizen owing more than US\$100 to foreign creditors. In 2003, NRs.222 billion (approximately US\$3 billion) stood as outstanding loan.<sup>11</sup>

The growth of the national economy has been deteriorating, from 5 percent per annum during the 1990s, to -0.6 percent in 2003. In agriculture, the mainstay of the national economy, providing employment to 81 percent of the total population and contributing over 80 percent to the export sector, performance has not exceeded over 3.3 percent annual growth, against the planned target of 4 percent.<sup>12</sup> The on-going Maoist insurgency has added badly to this slackness in production.

Roughly 5 percent of the labour force is unemployed and almost 47 percent of agricultural workers are under-employed. In other words, roughly half of the total labour force does not have full employment and 38 percent of the population is living below the poverty line,<sup>13</sup> implying that some nine million people are earning less than one US\$ a day.<sup>14</sup> In its 2000 poverty Report, UNDP explains poverty as a lack of access to resources:

The poor have low-productivity land, partly as a result of lack of credit and modern inputs, in turn a result of inadequate infrastructure and weak institutions. Lacking usable roads, farmers cannot obtain modern inputs or get their crops to market. Whatever services the government provides appear to be captured by better-off households because the poor are not well organised to defend their interests ... Poverty is greater in rural areas, especially in higher-altitude and less accessible regions and among lower castes and ethnic minorities.<sup>15</sup>

The Committee on Economic, Social and Cultural Rights stated in 2001, "The Committee is deeply concerned about the extent of poverty in Nepal, in particular in rural areas where poverty and discrimination against women are most pronounced."<sup>16</sup>

### > *Impact of the war*<sup>17</sup>

On 13 February 1996, a faction of the Communist Party of Nepal (Maoist) declared an armed insurgency (the People's War) against the "unjust war", imposed by the existing socio-economic structure, with the aim of establishing a New Democratic State. Feeding on the frustrated experience of the masses, Maoists characterised the state as an instrument of corruption,

exploitation and injustice and thereby garnered the support of socio-economically and culturally marginalised people, especially the youth.

The war started from a few western districts, the most feudal and backward of Nepal: Rolpa, Rukum, Jajarkot and Salyan, which are still treated today as private estates of the descendants of pre-1800 kings who ruled the then *Karnali* province with utmost barbarism. The root causes of the People's War are thus:

...uneven development within the country; endemic corruption; the politics of the Palace, both internally and externally, and their relationship with the army; ethnic and caste inequalities; intense politicisation; human rights abuse; social exclusion and deprivation, and inadequate infrastructure development.<sup>18</sup>

After nine years in full swing, the war has spread nation-wide, with 73 out of 75 districts directly affected, making it one of the "highest intensity internal conflicts in the world". The State has seemingly withdrawn from rural areas, which make up nearly 90 percent of the country. Law and order have reached an all-time low, and social security systems, which were functional in societies and communities over a long time, providing social and community-level safety measures for the people concerned, have completely broken down.

By 20 August 2005, 12,753 people had been killed, at the rate of four lives a day, 8,209 by the State and 4,544 by the Maoists. Many thousands have been reported injured. Both the State and the Maoists have seemingly invented new methods in their killing spree. The State has started forming and mobilising vigilantes against so-called terrorists, who loot, torture, terrorise and kill people at the instigation of the State.<sup>19</sup> The Maoists have started using landmines against civilians.

In 2002, 17,564 people were reported to have been displaced throughout the country (INSEC 2003), through fear of being

11 <http://www.nepalnews.com.np/contents/englishmonthly/businessage/2003/nov/cover.htm>

12 RRN, 2004, page 7.

13 Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2004, Executive Summary: Human Rights Situation in 2003*, p.12.

14 RRN, 2004, p. 7.

15 United Nations Development Programme (UNDP), *Poverty Report 2000*, p. 1.

16 CESC, Concluding Observations, Nepal, E/C.12/1/Add.66, September 24, 2001.

17 RRN, 2004, pages 8-12.

18 RRN, 2004, pages 9-10.

19 Kattel, Mukunda, 2005, 'Post 1st February Trends in Human Rights Violations in Nepal', SAAPE Newsletter, Volume 2, January-June 2005.

caught in the crossfire; fear of food blockades, torture and killings by both the Maoists and security forces; and fear of forceful enlistment of youths in the Maoist army. Other mass-scale displacements have reportedly occurred in 2004 and 2005. However, the absence of a recording or tracking system has put these IDPs in a “largely overlooked and neglected” state, one which gives rise to “grave concerns about [their] humanitarian and human rights situation.”<sup>20</sup> Whereas the crisis is deepening every day, the Government has treated it with indifference and gross underestimation, estimating IDPs at below 10’000. The problems faced by the displaced are many: poor protection; discrimination; inadequate food, shelter, health care or education for children; gender based violence, prostitution, bonded labour resulting from high debts, increasing child labour and loss of voting and electoral rights. The displaced are believed to have fled to big cities like Kathmandu, Nepalgunj and Biratnagar and to India.

In addition to the abduction of students and teachers, schools have now been ‘turned into war zones for forced recruitment of children, digging bunkers and trenches in school grounds or turned into barracks.’<sup>21</sup> The Maoists also use children directly in the war “as human shields, as porters to carry dead Maoist fighters, as housekeepers and cooks and in some extreme cases, as sex slaves” (Thapa with Sijapati, 2003:161-162). One study estimates that 156 children have lost their lives so far, at least 2000 have lost one or both parents and more than 4000 have been displaced (FDM, 2004:46). Women, through rape and being made to “pay” for their husband’s activities in the conflict, are also badly affected.

The insurgency has weighed heavily on the economy.<sup>22</sup> Tourism, one of the main sources of income, has suffered badly. The destruction of infrastructure, including airports, bridges, power plants and telecommunication centres has posed a serious obstacle to communication, transport and development. Rural areas are running short of food and medical. The displacement of able-bodied men and women has had a serious impact on agricultural growth. All this dangerously points to an impending crisis that may result in famine and hunger, which have time and again haunted the western hills known for a long time to be food insecure.

The war also weighs heavily on public finances: military expenditure rose 7-fold between 1991 and 2003. Over 14 percent of the total budget (4 percent of GDP) was allocated for security in 2002/2003, higher than for social services and at the expense of social and development activities. Moreover, money allocated for these and other purposes was diverted to finance rising military demands.

... the People’s War has been a major source of direct violence in Nepal for nearly a decade now. It is in the locus of national, regional and internal concerns when it comes to developmental, social security and peace discourses. Just to look at the background suggests two primary factors responsible for the upsurge of the War: deprivation and inequality. It started from one of the least developed parts of the country which were from time immemorial under a strong influence of feudal practices and which unfortunately underwent state repression even after the change of polity in the 1990s. The participation of unemployed youths and poor farmers in the War shows the correlation between resource deprivation—the violation of economic and social rights—and violence.<sup>23</sup>

## 6.2 The human rights situation<sup>24</sup>

The unprecedented advancement made in legal promotion of human rights in the 1990s was not matched with practical actions for protection. “The State acted rapidly when it came to signing international instruments<sup>25</sup>, but back home denies the required action to implement its commitments. Then if civil society pressure becomes irresistible, the State gives in: Human Rights Commission Act and Torture Compensation Act were enacted this way. State defiance of human rights encouraged the perpetuation of household and societal level violations as well, contrary to the popular expectation that anti-human rights socio-cultural values would be discouraged by the rule of law.” The People’s War stems in large part from the inactions and wrong actions towards human rights of the Government.

“Regional comparisons demonstrate that the situation is much worse in the poorer regions of the country, namely the mid-western and far-western mountains and hills.” Despite the little information available, statistics show that low caste groups, some

20 UN Information Service, ‘Internally Displaced in Nepal Overlooked and Neglected, UN Expert Says After Mission’, Press Release HR/4830, <http://www.un.org/news/Press/docs/2005/hr4830.doc.htm>.

21 *Samacharpatra* ‘Terrorising Schools’, editorial, April 19 2005, <http://www.nepalitimes.com/issue244/fromthenepalipress.htm>.

22 RRN, 2004, pages 11-12.

23 RRN, 2004, page 12.

24 RRN, 2004, p. 19.

25 Nepal is a State Party to these treaties: [International Covenant on Economic, Social and Cultural Rights](#) (1991), [International Covenant on Civil and Political Rights](#) (1991), [International Convention on the Elimination of All Forms of Racial Discrimination](#) (1971), [Convention on the Elimination of Discrimination against Women](#) (1991), [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (1991), [Convention on the Rights of the Child](#) (1990).

ethnic groups and women all have disproportionately little access to socio-economic resources.<sup>26</sup>

### > *Caste discrimination*

In 1854, the Civil Code, put high-caste Hindus at the top of the social structure, followed by non-Hindu hill populations and the *Bhotes* and placed the Hindu untouchables on the lowest rung of the social order.<sup>27</sup> Officially, the caste system was abolished in 1963 and the 1990 Constitution prohibits any discrimination on grounds of religion, race, sex, caste, tribe or ideological conviction.<sup>28</sup> The Constitution also provides that "no person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law."<sup>29</sup>

However, the practice of untouchability continues to stigmatise some 3 million *Dalits* even today. The caste system persists due to the failure of the State to implement stringent measures to protect and promote the rights of *Dalits* and to hold the perpetrators - the high caste people - accountable for their actions.<sup>30</sup> Effective legal avenues for the prosecution of perpetrators and redress for victims are lacking and the institutions set up to address caste-based discrimination are "ineffective and subject to political influence."<sup>31</sup>

The caste system leads to the denial of human rights in the following areas of life:

- *denial* (of entry into the house of upper castes as well as public places such as temple and shops; of services such as the sale of milk products; of access to common resources such as drinking water; of kinship such as inter-caste marriage; of participation such as festivals and public events);
- *forced labour* (no wages for work);
- *atrocities* (beatings, burning houses);
- *social boycott* (in case of inter-caste marriages or denial of traditional services such as disposing of dead bodies from high-caste houses);
- *discrimination* (in getting occupation, bank loans in some cases, participating in socio-cultural life).<sup>32</sup>

It restricts the types of work people are allowed to undertake, with the most demeaning and menial work being the role of the lowest caste groups. The feudal nature of the caste system leaves lower caste people economically dependent on higher castes. Refusal to do the allotted work leads to reprisals including cases of economic and social boycotts of the whole community.

This is clearly reflected in poverty and illiteracy figures. "In 2001, 80 percent of *Dalits* lived below the poverty line, compared to a total population figure of 42 percent. *Dalits* owned only 1 percent of cultivable land and 70 percent were malnourished ... The 1991 census ... revealed that the four groups with the lowest literacy levels were all *Dalit* groups ... the highest literacy level is 98.5 percent and the lowest one is 11.1. Similarly, *Dalit* women have a literacy rate of 9 percent against 42 percent for women generally."<sup>33</sup>

Low-caste groups are also denied the right to participation in socio-political decision making structures and processes. The Brahmins and Chhetris, which occupy the first and second position from the top in the caste ladder, constitute 29 percent of the total population but control 77 percent of the bureaucracy, and senior positions in army and police; 67 percent of state and constitutional bodies; and 63 percent of current legislature.<sup>34</sup>

The *Dalits* who constitute around 13 percent of the total population do not have a single position of policymaking status in the bureaucracy, army or police. Similarly the ethnic groups who constitute 31 percent of the total population have a negligible level of participation in state and constitutional policymaking bodies. The only group that enjoys state privileges besides Brahmin and Chhetris is Newar, constituting 5 percent of the total population.<sup>35</sup>

With the outbreak of the civil war, the situation of the low castes worsened.. "The government increasingly sees *Dalit* activism and *Dalits* themselves as tied to the insurgency, and *Dalits* have come under attack from government security forces because they are suspected of supporting the rebels."<sup>36</sup>

26 RRN, 2004, p. 27-28.

27 Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2004, Executive Summary: Human Rights Situation in 2003*, p. 7.

28 RRN, 2004, p.3; OMCT, *Nepal: Violence against Dalits because of an inter-caste marriage*, Economic, Social and Cultural Rights, Urgent Appeal, February 16, 2004.

29 Constitution of the Kingdom of Nepal, 2047 (1990), Article 11(4).

30 RRN, 2004, pages 2-3.

31 RRN, 2004, p.33-34; Human Rights Watch, *Discrimination against Dalits in Nepal*, February 9, 2004.

32 RRN, 2004, pages 3-4.

33 RRN, 2004, p. 4.

34 RRN, 2004, p. 2.

35 The Newars, around 5 percent of the total population have been excluded from this report.

36 Human Rights Watch, *Discrimination against Dalits in Nepal*, February 9, 2004; RRN, 2004, p. 33.



In 2001, the Committee on the Elimination of Racial Discrimination emphasised that guarantees of non-discrimination laid down in constitutional or legislative provisions, without mechanisms to monitor their application, do not on their own ensure the enjoyment of non-discrimination.<sup>37</sup> In 2004 it remained deeply concerned:

at the persistence of de facto caste-based discrimination and the culture of impunity that apparently permeates the higher strata of a hierarchical social system ... the existence of segregated residential areas for *Dalits*, social exclusion of inter-caste couples, restriction to certain types of employment, and denial of access to public spaces, places of worship and public sources of food and water, as well as allegations that public funds were used for the construction of separate water taps for *Dalits*.

...The Committee remains concerned over the under-representation of disadvantaged groups in government, legislative bodies and the judiciary ... the lack of information on prosecutions launched and penalties imposed in cases of offences which relate to racial discrimination, and the role of the National Human Rights Commission and the National *Dalit* Commission in dealing with such cases ... the need for determined enforcement of the criminal justice system, and reminds the State party that the absence of complaints and legal action by victims of racial discrimination may be the result of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute.<sup>38</sup>

The Committee also noted, however, the establishment of a number of institutions to combat discrimination, including the National *Dalit* Commission, the National Committee for the Upliftment of the Depressed, the Oppressed and *Dalits* Community, the Academy to Uplift Nationalities and Indigenous Peoples, and the National Foundation for the Development of Indigenous Nationalities.

### > Gender discrimination

Discrimination on the basis of gender is frequent and cuts across all classes and ages. Nepal became a signatory to the Committee on the Elimination of Discrimination against Women (CEDAW) in 1991 but has not done much towards eliminating such discrimination. "Discrimination against women starts from home and right after the birth; it is varied and far-reaching. Parents are reluctant to invest in a girl's education because her major role is viewed as nurturing children and remaining in the traditional sector of society ... In 1996, primary school enrolment for girls ranged from 52 percent of that of boys down to 32 percent"<sup>39</sup>.

The Committee on the Rights of the Child was worried by the high rate of school drop-outs, especially among rural girls.<sup>40</sup> The overall literacy rate in 2001 was 53.7 percent but the rate for women was only 42.5.<sup>41</sup> CEDAW "is concerned at the very low literacy rate amongst women, especially in rural and remote areas, and the persistence of both a quantitative and qualitative gender gap at all levels of education ... the Basic Primary Education Programme covers only a small number of girls and women, and that illiterate women are systematically barred from vocational training because of the minimum educational requirements for entry into vocational centres."<sup>42</sup> As a result, only 1 percent of working women held the status of 'employer' and less than 1 percent of candidates in local elections were women.<sup>43</sup>

There is clearly a link between violence faced by women and the gap between literacy of women and men. "Of the nine districts where abuses of women are more than 70 percent, the gap in levels of literacy between men and women was more than 10 percent in all of them. (...) Of the 11 districts where abuses of women are less than 20 percent of the total, only 3 have a literacy difference of more than 10 percent. (...) There is some evidence that there are more abuses of women in districts where the disparities between the genders are higher."<sup>44</sup>

Females in Nepal face legal discrimination. In 2003, Nepal had over 100 laws that discriminated against women."<sup>45</sup> Even if CEDAW has welcomed Nepal's effort to improve the legal situation of women in 1999, it showed later in the same concluding observations that it is not sufficient.<sup>46</sup>

... legal inequalities between women and men in the field of inheritance, the regime of shared assets in marriage, divorce, child custody in case of divorce and remarriage, and the conferring of nationality to children on equal terms. It expresses its concern also about the de facto

37 CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination*, Nepal, CERD/C/304/Add.108, May 5, 2001, para. 10.

38 CERD, *Concluding Observations*, Nepal, CERD/C/64/CO/5, March 12, 2004 (5).

39 RRN, 2004, p.4-5.

40 CRC, *Concluding Observations of the*, Nepal, CRC/C/15/Add.57, June 6, 1996 (17).

41 RRN, 2004, p. 5.

42 CEDAW, *Concluding Observations of*, Nepal, A/54/38, paras.117-160, July 1, 1999 (140).

43 RRN, 2004, p. 5.

44 RRN, 2004, p. 32-33.

45 Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2004, Executive Summary: Human Rights Situation in 2003*, p. 15.

46 CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women*, Nepal, A/54/38, paras.117-160, July 1, 1999.

inequality that exists between men and women in the Nepalese society, despite legislative guarantees of equality. It further notes with concern the low representation of women in public service, the high female illiteracy rate and the unequal wages for equal work.<sup>47</sup>

Despite the fact that there were no women ministers in the cabinet the CEDAW noted "with satisfaction that as a result of the 1997 Self-Governance Act, approximately 40,000 women are now involved in local government."<sup>48</sup>

Cultural discrimination also has an important negative impact on women, through the prevailing son preference, the persistence of early marriages and the different marriage age of girls and boys.<sup>49</sup> Most of all, the practice of polygamy, prostitution and *Deuki* (a tradition of dedicating girls to a god or goddess, who become "temple prostitutes", which persists, despite the prohibition of the practice by the Children's Act) are concerns. "The Committee is deeply concerned at the high number of women and girls being trafficked for prostitution. The Committee also regrets the continuation of polygamy and the practices of dowry, *Deuki* and prostitution among the Bedi caste, particularly in rural areas."<sup>50</sup>

The conflict has affected women in several ways. Besides being directly victimised as Maoist members and combatants<sup>51</sup>, they often have to pay the price for their family members' participation in the war. "During the last eight years, as many as 48 women have been raped by security personnel, 600 have been killed and around 70 disappeared. The displacement of youths and able-bodied men has added additional burden on women to take up agricultural works, which would otherwise be the domain of male chores."<sup>52</sup> Because of the conflict, more women are becoming widows and, as many taboos apply to widows, they are condemned to live at the margins of the society.

### > Education

Many children do not have the chance to attend school. "Enrolment in secondary school is only 20 percent, and the mean number of years of education is 2.9"<sup>53</sup> Besides that, the internal conflict complicates the problem in two ways. "By the end of 2003, around 3,000 teachers were estimated to have left teaching in highly conflict affected districts affecting as many as 100,000 students; around 700 schools across the country were reported to have been closed."<sup>54</sup> Further, thousands of teachers could not draw their salary and development activities had to be stalled in many cases because the money allocated for these headings was diverted to finance rising military demands.<sup>55</sup>

On the other hand, "The Maoists abducted students and teachers and forced them to attend their public programmes thus disturbing schooling, more in the remote districts." Moreover teachers are facing Maoists violence "The Maoists continued to threaten and attack teachers in 2003."<sup>56</sup>

### > Literacy

Roughly 54 percent of people can read and write. "The literacy in rural areas is 37 percent compared to the 67 percent in urban areas – a statistic that also reflects the skewed distribution of education facilities."<sup>57</sup> The Committee on the Economic, Social and Cultural Rights has urged "the Government to take effective measures, including incentives, to ensure that parents comply with the obligation of compulsory education."<sup>58</sup> The CESC also notes that "the State party has initiated free primary education but is concerned that the policy of compulsory education has yet to be implemented."<sup>59</sup>

### > Health

In its concluding observation in 2001, the CESC expressed its concern about the poor living conditions of Nepalese: "29 percent of the population has no access to safe water, 90 percent has no access to health services and 84 percent has no access to sanitation."<sup>60</sup> The population per doctor is 18,439, 54 percent of households have no access to toilet facilities and 33 percent do not have access to safe drinking water."<sup>61</sup> Rural areas are running short of medical supplies because of restrictions imposed

47 CESC, Concluding Observations of the Committee on Economic, Social and Cultural Rights, Nepal, E/C.12/1/Add.66, September 24, 2001.

48 CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Nepal, A/54/38, paras.117-160, July 1, 1999.

49 (CRC 7/06/96).

50 CESC, Concluding Observations, Nepal, E/C.12/1/Add.66, September 24, 2001.

51 RRN, 2004, p. 33.

52 RRN, 2004, p. 11.

53 RRN, 2004, p. 27.

54 RRN, 2004, p. 10.

55 See: RRN, 2004, p.11-12.

56 Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2004, Executive Summary: Human Rights Situation in 2003*, p. 13.

57 Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2004, Executive Summary: Human Rights Situation in 2003*, p. 13.

58 CEDAW, Concluding Observations, Nepal, A/54/38, paras.117-160, July 1, 1999.

59 CESC, Concluding Observations, Nepal, E/C.12/1/Add.66, September 24, 2001.

60 CESC, Concluding Observations of the Committee on Economic, Social and Cultural Rights, Nepal, E/C.12/1/Add.66, September 24, 2001 (27).

61 RRN, 2004, p. 27.

both by Maoists and government.<sup>62</sup> According to the World Health Organization, life expectancy at birth in 2002 was equal to 60.1 years (males: 59.9; females: 60.2), healthy life expectancy (years) was 51.8 (males: 52.5; females: 51.1) and child mortality (death before the age of 5) was 8.1 percent for females and 8.7 percent for males.<sup>63</sup>

UNDP has highlighted that “The government (...) is raising real social expenditures per person, but overall social spending remains low. More fundamental, the total budget is unusually low, with a revenue-to-GDP ratio of only 11 percent. Until tax revenue is raised, economic and social policies will compete for scarce government resources.”<sup>64</sup>

### > *The role of the State*<sup>65</sup>

The State plays a vital role in the continuing abuse of human rights. Despite the outlawing of caste-based discrimination, the *kamaiya* system and certain forms of discrimination against women, perpetrators of such abuses rarely face justice. In many cases, the perpetrators are state actors themselves, and the culture of impunity for such crimes pervades society.

In 2000, Amnesty International (AI) stated that “... although many changes occurred throughout society following the introduction of multi-party democracy in 1990, the civil service and police force have so far not been the subject of major reforms. They wield substantial power, often without being subjected to close scrutiny by the legislative or judicial authorities. There is a complete lack of accountability in relation to alleged unlawful killings, including extrajudicial executions and indeed in relation to many other forms of human rights violation.”

These comments all refer to violence perpetrated by state actors, and the impunity they enjoy. However, in many of the cases of abuse reported by AI, Asian Human Rights Committee (AHRC) and INSEC, the perpetrators, whether state or non-state actors, do not face trial or any punishment. State inaction in relation to abuses committed by others is a key factor in the continued abuse of the human rights of deprived sectors of the population. ALRC condemns the government approach to reducing caste-based discrimination, which is limited to education programmes and poverty alleviation programmes. ALRC reports that experience shows that education without enforcement fails, and that the approach undermines the principle of the rule of law.

This state inaction is also visible in terms of the provision of basic services to deprived communities, and demonstrates the lack of motivation on the part of the state to address the rights to food, freedom from hunger, development, education and health for vast swathes of the population.

## 6.3 Violence

### > *Right to life and security*

The CEDAW has noted in 1999<sup>66</sup> that Nepal, in conformity with ratified human rights instruments, has abolished the death penalty. But this improvement doesn’t change the situation in the country regarding the right to life. “The year 2003 will go into Nepali history books as one of blatant violation of the most important rights of every human being – the Right to Life.”<sup>67</sup>

Extrajudicial killings are frequent and carried out by both sides, State and Maoists. INSEC states that 6,804 people have died because of State action and 3,583 because of Maoist action during the period from 13th February 1996 until 9th October 2004.<sup>68</sup> Most victims are civilians from the country’s most vulnerable communities: the rural poor, *Dalits* and indigenous communities.<sup>69</sup> Civilians “find themselves caught between the demands of the Maoists for food and shelter, and the retaliation they will face from the government forces if they harbour Maoists.”<sup>70</sup> The impact of the Maoist People’s War on the rights to life is described in section 6.1.

### > *Deaths in detention*

From the start of democracy in 1990 until 1996, no cases of detention-deaths were reported. The following year, 25 detention deaths were recorded, the highest number so far.

Ever since, detention deaths have been a regular pattern of Nepalese criminology. It is crystal clear that detention deaths have emerged as a State response to the Maoist insurgency. Until the end of 2002, 66 detention deaths have been recorded. It is likely that a dozen more will be added to this number by the time the number of detention deaths of 2003 will come to public.”<sup>71</sup>

62 RRN, 2004, p. 11.

63 World Health Organisation (WHO), *Selected indicators*.

64 United Nations Development Programme (UNDP), *Poverty Report 2000*, p. 2.

65 RRN, 2004, page 35.

66 CEDAW, Concluding Observations Nepal, A/54/38, paras.117-160, July 1, 1999 (118).

67 Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2004, Executive Summary: Human Rights Situation in 2003*, p. 3-9.

68 Informal Sector Service Centre (INSEC), *Human Rights Violation Data*.

69 Human Rights Watch, *Nepal: Government Forces, Maoist Rebels target Civilians*, October 7, 2004.

70 Human Rights Watch, *Nepal: Development and Human Rights are Intertwined*, May 4, 2004.

71 RRN, 2004, p. 22.

However, no police officer suspected of being responsible for a death in custody in the context of the war has been brought to justice. A new trend of 'suicide' death has emerged in the pattern of detention deaths. At least two Maoist suspects have reportedly committed 'suicide', but there has been no independent verification of this.

### > *Disappearance*

The Government's policy of breaking the backbone of the rebellion has led to many "disappearances". Nepal now has the unfortunate distinction of being among the world's prime locations for forced disappearances. Most of those who disappear are never heard of again.<sup>72</sup> It was a major tool of the pre-1990 regime to silence perceived dissidents, and the democratic government has also adopted the policy of silencing the opposition rather than accommodating their views, particularly after the start of the war in 1996.<sup>73</sup>

Although the exact actual number of the disappeared is contentious (250 cases in 2003 according to Amnesty International, 368 in the view of INSEC<sup>74</sup>), what is beyond doubt is the distracting pattern of disappearance the State has adopted to deal with the opponents. "Today, anyone suspected to be a Maoist becomes an easy victim of military disappearance."<sup>75</sup> "The Maoists rarely commit enforced disappearances; instead they usually declare their abductees to be "class enemies," and then execute them in the name of their People's War.<sup>76</sup> The Communist Party of Nepal (CPN) also abducts people unwilling to give donations and those engaged in politics other than their own.<sup>77</sup> There has also been an increase in the so-called 'encounter' killings. Observers fear that many of the said encounters could be fake and could have taken place after the suspects were taken into custody, but it is difficult to verify such cases independently.

### > *Illegal detention*

Arbitrary arrests are common. Many protesters have been arrested in connection with anti-government demonstrations. INSEC stated that there is an "increase in illegal detentions and arrests, holding of captives incommunicado, and even making them "disappear". Such acts violate the right of citizens to receive a fair trial, enshrined in article 14 of the Constitution."<sup>78 79</sup>

### > *Torture*

Torture, it goes without saying, is a longstanding phenomenon in a country characterised by a long history of despotism.

Expectations were high that with the introduction of multi-party democracy, no one would be subjected to torture and cruel treatment. But all hopes were dashed as soon as a democratically elected government came to power. "Despite the prohibition of torture in the 1990 Constitution, and later in the Torture Compensation Act, it is still in widespread acceptance to extract information from the suspects and make them confess the crime, sometimes even non-committed."<sup>80</sup> The victims of torture include criminal suspects, political opponents, journalists,<sup>81</sup> Maoist sympathisers, and people taken into custody in relation to disputes over land or other private matters. The police are mainly responsible for torture<sup>82</sup> but in recent years military personnel have also been involved.

According to a 2001 survey by the Centre for Victims of Torture (CVICT), 70 percent of detainees had been tortured in custody. Arrests, detentions and torture in custody increased after the declaration of the state of emergency in November 2001.<sup>83</sup> Whereas the number of torture victims is alarmingly on the rise, the efforts to get torture claims investigated, and victims compensated, have been slow. Between 1996 and 2003, only 117 cases of torture allegations have been filed in various courts nationwide. Compensation claims are below 1 percent of the cases of torture. Of the 117 cases filed, 26 have been cleared by the courts with 13 for the victims and 13 against them.<sup>84</sup>

72 Human Rights Watch, *Nepal: Government Forces, Maoist Rebels target Civilians*, October 7, 2004.

73 RRN, 2004, p. 22.

74 Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2004, Executive Summary: Human Rights Situation in 2003*, p. 10.

75 RRN, 2004, p. 22.

76 Nepal: Government Forces, Maoist Rebels Target Civilians, 7 Oct 2004.

77 Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2004, Executive Summary: Human Rights Situation in 2003*, p. 10.

78 Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2004, Executive Summary: Human Rights Situation in 2003*, p. 9.

79 OMCT, *Nepal: Arbitrary arrest, detention and ill-treatment of Mr. Man Bahadur Budhamagar, extra-judicial killing of his two brothers and rape of his sister-in-law*, Urgent Campaigns, Urgent Appeal, September 24, 2004.

80 RRN, 2004, p. 23.

81 United Nation Press Release, *UN rights experts deeply concerned over reports of secret detention in Nepal*, November 12, 2003.

82 OMCT, *Nepal: Arbitrary arrest and torture of Mr. Ganesh Chhetri*, Urgent Campaigns, Urgent Appeal, September 22, 2004; OMCT, *Nepal: Arbitrary arrest, detention and ill-treatment of Mr. Man Bahadur Budhamagar, extra-judicial killing of his two brothers and rape of his sister-in-law*, Urgent Campaigns, Urgent Appeal, September 24, 2004.

83 Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2004, Executive Summary: Human Rights Situation in 2003*, p. 17.

84 RRN, 2004, p. 25.

### > *Violence against children*

Children are subject to all kind of violence, from child labour,<sup>85</sup> family violence, child marriage to trafficking of children. The Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights have both expressed concern about child labour in Nepal.<sup>86</sup>

The recruitment and use of children between 15 and 18 has been reported, although the Maoists deny it. "Many children were reportedly abducted by the CPN, including 518 children in January 2003. Most were released after a few days after having taken part in political indoctrination courses."<sup>87</sup> Besides being direct victims of the killing, looting and terror—that children have been compelled to watch—have developed a psyche of violence, hatred, and fear in their fledgling minds."<sup>88</sup>

## 6.4 Poverty and violence<sup>89</sup>

### A note on data

This section makes an attempt to examine the relationship between, specifically development indicators, and levels of violence experienced at the district level in Nepal. The correlation has been based on the cases reported in the Human Rights Yearbook 2003, covering events in 2002. This information provides a snapshot, rather than a detailed analysis of the situation. It is likely that different districts have been differently affected by violence during 2003 and 2004, as the civil war has entered new phases and Maoist tactics have developed.

It should also be noted that assessments of levels of violence can only be based on reported cases, and it is likely that many cases go unreported, particularly in remote or conflict-affected districts. A gap in the information is in relation to the socio-economic status of victims of abuses. Whilst it is possible to identify the caste/ethnicity of victims from their names when available, no information about their employment or economic status is available. In addition, little information is available about the broader circumstances surrounding abuses, particularly those relating to arbitrary arrests and disappearances, or civilians caught in the crossfire of the conflict.

The development indicators are also limited in their range. Although they provide a broad overview of which rights e.g. to food, shelter and education are not available to what percentage of the population,

no statistics are available with which to examine access to services for different communities within districts. Similarly, no data is available about which groups or communities are suffering violence, except in relation to specific caste or gender based discrimination. Data is not available to enable an analysis of violence experienced by different socio-economic groups.<sup>90</sup>

In order to try to ascertain the impact of socio-economic factors on the incidence of violence, development indicators have been correlated against levels of violence for each district. The development indicators were taken from ICIMOD & CBS 2003b, while the information on levels of violence was collated from INSEC 2003, based on 2002 data (see annexes B and C).

Overall, the districts that were least developed by all indicators are all in the mid or far west. The mid and far west have the largest number of least developed districts, but there is also a block of contiguous districts in the central Terai which are least developed. Generally, the least developed districts are also those which have experienced the highest levels of violence. In particular, there are 13 districts in the mid and far west which fall into the bottom 20 for almost all indicators.

### > *Relationship between socio-economic factors and violence*

Of the top 20 districts (i.e. those with the best overall development indicators) 12 also fall into the top 20 for the lowest levels of overall violence. This is also the case for the top 20 according to the poverty indicator. Conversely, of the 20 districts with the worst overall development indicator, 13 also experience the highest levels of violence. For the poverty indicator, of the worst 20, 12 fall into the worst twenty for violence.

Of the 20 districts experiencing the least state violence, 5 fall into the worst 20 for non-state violence, and a further 3 record very high levels of non-state violence. Of the 20 experiencing the least Maoist violence, 4 fall into the worst 20 for non-state violence and a further 4 record very high levels of non-state violence.

85 RRN, 2004, p. 30.

86 CRC, Concluding Observations, Nepal, CRC/C/15/Add.57, June 6, 1996; CESC, Concluding, Nepal, E/C.12/1/Add.66, September 24, 2001.

87 Human Rights Watch, *Nepal: Child Soldier Use 2003*, January 16, 2004.

88 RRN, 2004, p. 10-11.

89 RRN, 2004, pages 31-35.

90 RRN, 2004, page 31.

Of the 20 districts experiencing the most state violence, all except two experienced low levels of non-state violence. Similarly for the 20 experiencing high levels of Maoist violence, only 5 experienced high levels of non-state violence. These relations seem to imply that conflict-related violence displaces community violence to some extent. However, these statistics should be considered with caution because of the practical difficulties of reporting abuses.

Of the 20 districts experiencing the highest levels of state violence, six also experienced high levels of Maoist violence. Of the districts experiencing high levels of Maoist violence, 14 also experienced high levels of state violence.

Of the 15 districts that experienced the highest levels of violence (total number of victims more than 150 per hundred thousand population or a total number of events greater than per hundred

thousand) in 2002, 11 fall into the category of least developed districts. Six have been classified as “highly conflict-affected” districts by the Government of Nepal.

Of the 20 districts that experienced lower levels of violence (total number of victims fewer than 30 per hundred thousand and total number of events fewer than 20 per hundred thousand) in 2002, 10 fall into the category of most developed districts.

### > Gender<sup>91</sup>

Women are major victims of community violence, but less so of conflict-related violence. This is not surprising, given women’s relatively lower involvement in activities outside the home and community, which means they are likely to have less contact with state or political forces.

**Table 6.1** Gender violence index

Region	% total abuses committed by State	% victims of state abuse are women	% total abuses committed by Maoists	% victims of Maoist abuse are women	% total abuses committed by non-state	% victims of non-state abuse are women
Eastern	54.2	8	21.3	6	24.4	52
Central	54.8	7	25.4	n/a	19.8	34
Western	77.8	n/a	14.5	5	7.7	51
Mid Western	62.5	n/a	34.5	n/a	3	52
Far Western	36.5	n/a	59.4	n/a	4	42

See Appendix B for the detail by district

For the gender index, of the top 20 districts, i.e. those with highest indicator of women’s empowerment, 13 are also in the top twenty for the lowest levels of violence against women. However, there is no correlation between the gender indicator and violence against women for the 20 districts with the lowest gender indicator, perhaps because the gender indicator is low because of overall poverty rather than specifically gendered poverty.

Of the nine districts where abuses of women are more than 70 percent, the gap in levels of literacy between men and women was more than 10 percent in all of them.

Out of 75 districts, the literacy difference between men and women is greater than 10 percent in 49. Of the 11 districts where

abuses of women are less than 20 percent of the total, only 3 have a literacy difference of more than 10 percent.

Violence against women constitutes more than 50 percent of non-state violence in 28 out of 71 districts for which information was available, and there is some evidence that there are more abuses of women in districts where the disparities between the genders are higher.

Despite the fact that women are less likely to be direct victims of conflict-related violence, the conflict has affected them in several ways. The conflict has increased the number of widows and

91 RRN, 2004, pages 32-33.

female-headed households Widows are doubly victimised. They have to endure socio-cultural discrimination, being barred from participating in certain socio-cultural functions and wearing colourful dresses, and they are cursed as ill-fated. In addition, they have to carry on the socio-economic burden left by the death of the male members or their displacement. Conversely, some women are directly involved in the conflict, with large numbers reportedly joining the Maoist forces. Eye witness accounts of the Maoist attack in Beni in March 2004 report that around 50 percent of the Maoist combatants were women. The eye witnesses also reported their shock at seeing women in positions of power and authority.

### > *Caste and ethnicity*<sup>92</sup>

Little information is available about the levels of violence experienced by different caste and ethnic groups. However, ICIMOD & CBS (2003b) rank districts according to the percentage of the population belonging to educationally disadvantaged ethnic and caste groups. These are defined as groups whose literacy rates were below 30 percent of the general population of the district. Of the ten districts with the highest proportion of the population from these groups, seven are among the twenty districts with the worst development indicator and 4 experience high levels of violence.

Despite the fact that untouchability and caste-based discrimination are outlawed by the constitution, no enforcement mechanism exists. The ALRC report (2003) notes the lack of effective legal avenues for the prosecution of perpetrators and redress for victims, and the lack of legislation for the protection of *Dalits*, who make up 20 percent of the population. The institutions set up to address caste-based discrimination are ineffective and subject to political influence.

*Dalits* are also increasingly identified with the Maoist insurgency, and therefore increasingly targeted by the security forces. In this sense, the socio-economic status of this group is a direct contributing factor to the levels of abuses of civil and political rights which they experience. In addition, the involvement of the security forces in attacks on *Dalits*, empowers the general public to do likewise, thus ensuring the culture of impunity spreads downwards from the state authority.

At the same time, the denial of economic, social and cultural rights to different ethnic groups fuels the conflict. The madhesis of the Terai are denied opportunities to work in public posts and actively excluded from the police and army, because they are not considered to be Nepalis. This reinforces the sense of alienation from the state and increases the likelihood that the army and

police – recruited from non-local ethnic groups – will be viewed more as the security wing of an occupying power than as protectors of the population. Thus, the Maoists find ready recruits because the population is already alienated from the state and the divisive state policies (ethnic, political, economic) fuel the conflict. This in turn enables the police and army to justify their targeting of members of these ethnic groups as Maoists.

### > *Analysis of appeals*<sup>93</sup>

Very little data is available about the socio-economic status of victims of human rights abuses. Therefore it is very difficult to draw any conclusions about the link between socio-economic conditions and abuses of civil and political rights. However, an analysis of Urgent Appeals issued by human rights organisations sheds some light on the issue, and although only a small sample has been examined, it is possible to identify a trend: in urban areas the state targets the politically active class, which is predominantly Brahmin, thus the high-caste group disproportionately suffers arbitrary arrests, disappearances and torture. However, across the country as a whole, *janajatis* (ethnic communities) are the victims of state abuses in disproportionate numbers.

## 6.5 Case study: the Kamaiya system of bonded labour<sup>94</sup>

“It was the first time I went to a place where human rights were so blatantly violated. Although I have seen much poverty all over the world, I thought this was different. Of course, I didn’t like seeing how the Brazilian Indians were treated, or some of the blacks in the United States. Or even the poor in my own country, Denmark. But this was something else. Here in Nepal, it was not anonymous organisations, big companies or the state, but small landowners - almost poor people themselves - who kept the bonded labourers. Some years ago, when I first heard that the Kamaiyas are kept like slaves, because of relatively small debt, I found it hard to believe. Simply because they inherit the debt from their fathers, they could be sold at annual fairs, the landlords could use women as they liked and have the children as servants”.<sup>95</sup>

92 RRN, 2004, pages 33-34.

93 RRN, 2004, pages 34-35.

94 This section is based on the case study by Rural Reconstruction Nepal, *The Kamaiya System of Bonded Labour in Nepal*, pages 1-24 which is available in full in the enclosed CD-ROM.

95 Statement made by a Danish journalist after visiting *Kamaiya* villages of western Nepal. See, Rural Reconstruction Nepal, *The Kamaiya System of Bonded Labour in Nepal*, pages 4-5.

### > *Definition of Kamaiya bonded labour*

The *Kamaiya* system is deeply rooted in the feudal history of land tenure. It is a form of bonded labour found in five far western districts of Nepal along the Indian border. *Kamaiya* can be classified into two categories; *Kamaiya* with *Saunki* (debt) and *Kamaiya* without *Saunki*. The *Kamaiyas* with *Saunki* are more vulnerable than *Kamaiyas* without *Saunki*. This is because they can be bought and sold for the *Saunki* by their masters whereas in some cases *Kamaiyas* without *Saunki* may have at least the freedom of choosing their masters in the festival known as *Maghi*.

However, researchers argue that that both types of *Kamaiyas* are forced to work as bonded labour by the socio-economic conditions of their society and family. This is because no matter whether they have *Saunki* or not, once they come into contractual agreement with their landlords they fall into a vicious circle of bonded labour system because they are forced to borrow money from the land owner because the labour wages provide only a bare subsistence. Above all, once the *Kamaiyas* fall into the trap of *Saunki*, it is passed on to the eldest sons and subsequent generations and all the members of the family are required to work to pay off the debt.

When *Kamaiyas* and their landlords do not maintain good relationships, *Kamaiyas* seek a new landlord. But they cannot leave landlords until their loans (*Saunki*) are paid. There is a common practice of selling and buying of *Saunki* borrowed by *Kamaiya*. This is how the money owed by the *Kamaiya* to one landlord is transferred to another. Thus, *Kamaiyas* may be freed from the old one but again they are bonded to the new landlord. In this way, *Kamaiyas* are sold off in an indirect form from one landlord to another. Throughout their life most *Kamaiyas* continue to borrow and landlords continue to lend in hopes that sufficient numbers of children will grow and pay the debt. Hence the strategic interests of both parties perpetuate the *Kamaiya* system. The dynamics of *Saunki* and its perpetuation could be explained in the following example:

Raj Dev Chaudhary's grandfather took a loan of Rs. 3,000 from his neighbour Shiva Raj Pant and worked all his life to pay back the loan: But he failed. After his demise, the debt burden shifted to his eldest son, Raj Dev's father. He too was unable to pay back the loan and after his death the responsibility transferred automatically to Raj Dev. Since as long as he remembers, Raj Dev and his wife has been working arduously in the field of Shiva Raj Pant. Now his six children, a daughter-in-law and two grandchildren have joined the bandwagon. They are in 24-hour and round-the-year duty to fulfil all the labour requirements of the Pant's household. Yet, the four generation old loan, instead of being paid off gradually, has accumulated to the

amount of Rs. 3,696. In case of Raj Dev's death, the burden of repayment will be automatically transferred to his eldest son.<sup>96</sup>

The total number of *Kamaiyas* is about 100'000. Backward Society Education (BASE), a local NGO, estimates the number to be 116,309.

### > *Division of labour under the Kamaiya system*<sup>97</sup>

There is a marked division of labour within the *Kamaiya* system, determined by a combination of traditional social relationships, production demands and the reproduction systems in western Nepal. Women are given different positions according to their work responsibilities. Women involved in household work and other farm works are called *Kamlahri*. Women who are fully involved in agricultural and household work with male partners are called *Bukrahi* and the women who are totally involved in such work without a male partner are called. Whatever the position and names, all types of female *Kamaiyas* have to be ready for any kind of work their landlords/masters ask them to do.

*Kamaiya* children are required to work as animal herders and domestic servants. Female children generally work as domestic servants while male children look after the livestock as animal herders. Working for the master amounts to apprenticeship-training for children to ensure that they become effective *Kamaiyas* as they grow older. There are about 13,000 children working under the *Kamaiya* system in the five districts (Sharma and Thakurathi 1998). Many are not paid either due to debt incurred by the parents, or because their work is appended to the adult family labours, or they simply work in exchange of food and clothing. The division of labour among the *Kamaiyas* depends upon the age and sex of the *Kamaiyas*. The following table presents the nature of work and division of labour within the *Kamaiya* system.

The responsibility of *Chhegrahawa* and *Chhegrinya* is to take care of goats in landlords' farms. The role of *Bardiwa* and *Bardinya* is to take care of oxen and *Bhaiswar/Bhaisarniya* and *Gaiwars* is to take care of buffalos and cows respectively. Those who are in the age group of 15-55 are considered fully economically active and called *Kamaiya* in case of male and *Bukrahi* or *Kamlahri* in case of female *Kamaiyas*. The eldest son or daughter

96 Rai, Hemlata, *Centuries of Labour*, the Friday Supplement, the Rising Nepal, 2 June 2000.

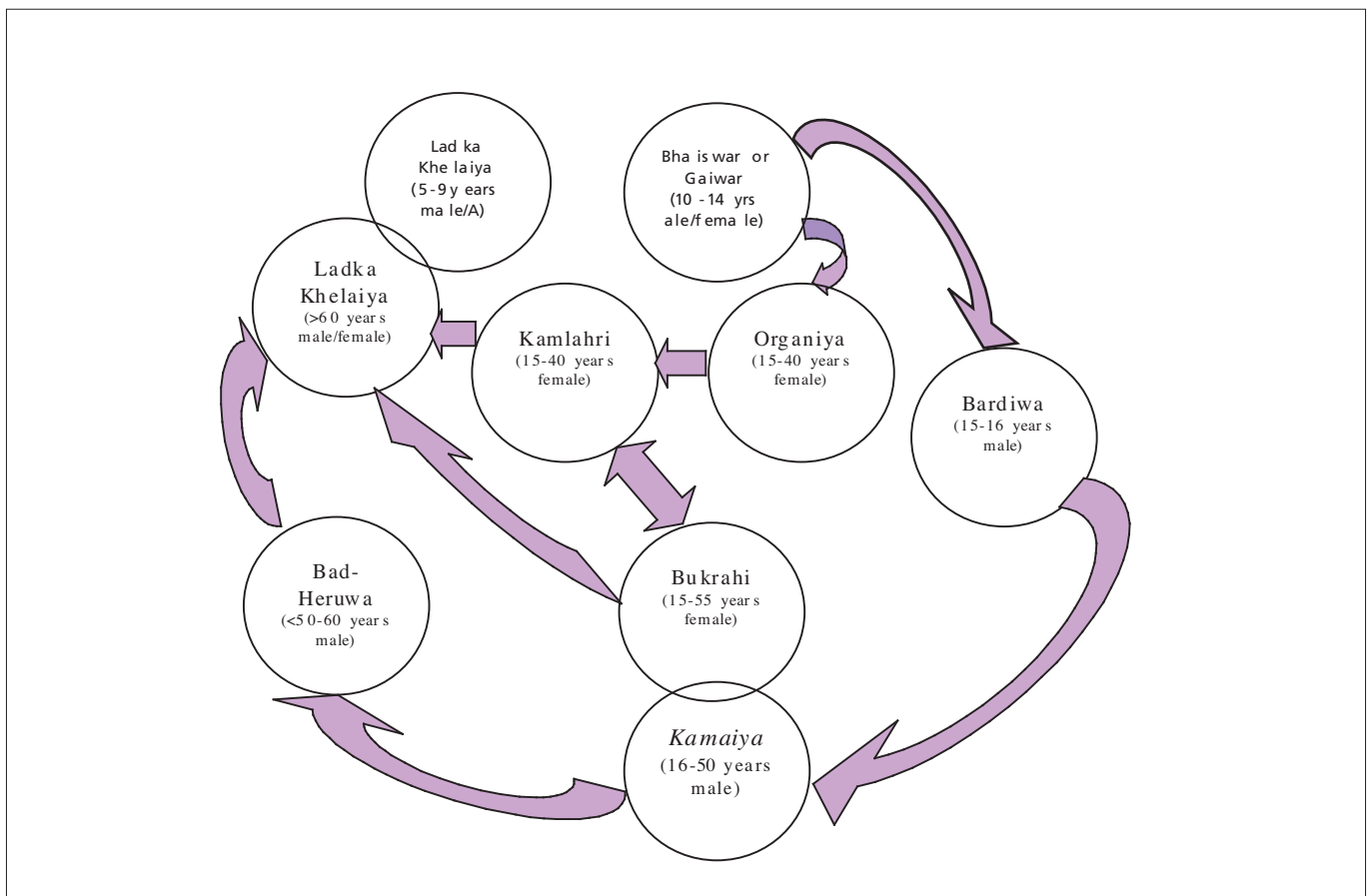
97 Chaudhari, S., "Kamaiya Pratha Ra Kamaiya Haru Lai Herda" (Kamaiya System: An Observation), *The Bikash (Development)*, 1996, Vol.4, Issue 8, pp. 38-42.



(more than 16 years old) is called *Ghardhuriya/-Ghardhurinya*. All the activities within the household of *Kamaiyas* are taken care of under the leadership of *Ghardhuriya/Ghardhurinya*. The responsibilities of the *Kamaiyas* who are more than 55 years old are the

same as the role of children between 10-15 years old. Figure 6.1 illustrates the division of labour and life cycle of *Kamaiyas* in Bardiya in 2001.

**Figure 6.1** Division of labour by gender and life cycle under the Kamaiya System



"... As a daughter of Kamaiya parents, I have entered into Kamaiya system at the age of 6-7 years. I have worked as *Ladkakhilaiya* for three years. Around at the age of 10-11, I started to work as *Organiya* in same master's house. And I got married at the age of 17-18 with a Kamaiya and became *Bukrahi*. ... I was beaten several times by the landlord while I was *Ladkakhilaiya* and *Organiya*... I was sexually harassed by them several times. Even after I got married and started to work as *Bukrahi*, several time landlords sent my husband to the field for "irrigating farm land" and came to me to sexually exploit at night. I had always fought back and did not accept such attitude of landlords. But there were many like me, who became victims of such behaviour of landlords. This is not only the case of women, I have also noticed that wives and daughters of landlords also abused and sexually exploited Kamaiyas... We spent most important time of our life under threat and terror. Since we did not have our own home and land, we were forced to accept it, we had no where to go and nobody turn to...since we were not allowed to take *Masyoura* I used to eat at landlords place. The kind of food they used to give was very same they cooked for their dog...the kind of work, I was asked to do was including cleaning dirty clothes (menstruation, maternity and stool and urine of the children and very old members of their family)... We have never received minimum wage and there was no fixed working hour. This has forced us to come out of landlord house and fight back against the system. These days, we have built a small hut at the bank of an irrigation canal and enjoying relative freedom and our independence."<sup>98</sup>

Stories of tricks against *Kamaiyas* abound. They range from the fabrication of *Kamaiya* debt accounts by landlords, seizure by landlords of their small pieces of land, accusation of non-payment of debts and various kinds of physical torture against them. Discriminations against *Kamaiyas* are not only limited to the rural elites. The State has also systematically excluded them from whatever state benefits were generally available. Until 1990, none of the state led land reform policies and programmes considered *Kamaiyas* as a potential target group, evident by the fact that they were never beneficiaries of the Land Tenancy Rights, Landless People Resettlement Programmes and the like.

Widespread poverty, social exclusion and resultant powerlessness force *Kamaiya* to continue to exist in isolation and subject to a myriad of forms of vulnerability. Once households lose their parental properties such as land, and start borrowing money or food grain from the landlords to meet their daily needs, the existing social system pushes *Kamaiya* into the deprivation trap. The system then perpetuates itself and continues from one generation to another.<sup>99</sup>

### > *Movement against the system from within*<sup>100</sup>

Movements against the *Kamaiya* system started after political change in 1950. A series of sporadic resistances and uprisings in the region before 1990 were mostly small, localised and isolated from the broader movements for socio-economic and political transformation. These almost always met with violence by the authorities and landlords and almost always failed: other movements for socio-economic and political transformation in Nepal overshadowed them and they mobilised no external support

Action from within intensified only after the restoration of multi-party democracy in 1990. In April 1990, a 15 member committee decided to bring together all landless *Kamaiya* committee members' families and resettle them on land in Kanara Forest. They raised flags of all political parties who played a key role in the restoration of multi-party democracy.

Once they had occupied the land, they started to organise peaceful marches and various demonstrations both within and outside the *Kanara Phanta*. These activities threatened the local landowners and ruling elite who tried several times to drive these people out. During the monsoon in 1991, the Government announced that it would drive the people out by force. The *Samiti* leaders met the Prime Minister and the chairperson of the Landless Peoples' Problem Solving Committee on 3<sup>rd</sup> November 1992, but to no avail. On 10 November 1992 at 8.30 am the joint team of Armed Police, Forest Guards, Royal Hunting Security Guards and employees of the forest department ordered the settlements to be destroyed. As a result, *Kamaiya* settlements both inside and outside *Kanara* were destroyed by bulldozers, elephants, army and police (INSEC, 1992:16).

During the forceful eviction many women *Kamaiyas* were beaten badly and raped by the forest guards and policemen. Mrs Gongi Tharu describes how her husband was beaten to death "by the police with the gun while he was taking care of the crops cultivated by *Kamaiyas* under their collective farming". The role of women *Kamaiyas* was reported to be significant in this movement.

On 17<sup>th</sup> November 1992 a relay of fasting started to pressurise the Government into solving this problem and taking action

98 Rural Reconstruction Nepal, *The Kamaiya System of Bonded Labour in Nepal*, page 5, citing Karki 2001:74.

99 Rural Reconstruction Nepal, *The Kamaiya System of Bonded Labour in Nepal*, page 12.

100 Rural Reconstruction Nepal, *The Kamaiya System of Bonded Labour in Nepal*, pages 12-16.

against those responsible for the eviction. But these peaceful demonstrations were dismissed by the government. This campaign was supported by all communist parties of Bardiya but the leaders of the Nepali Congress (the then ruling party) openly stood against the *Kamaiya* movement, because most of the larger landlords were members of Nepali Congress. After this, the Government reached an agreement that the entire farm produce of the area should belong to *Kamaiyas* and that the Government should provide medical services to all those injured during the *Kanara* Movement. The *Committee (Aayog)* also assured them that all landless *Kamaiyas* would get temporary land entitlements and that the process of allocating land to the *Kamaiyas* would start within two months (Karki 2001:101). In 1993, the new UML Government started to provide land titles to these *Kamaiyas* involved in the *Kanara* Movement. Whereas only 350 landless people received land during three and half years of the Nepali Congress, within nine month the UML government made 6,985 entitlements. Once the UML government left office, the Nepali Congress Government confiscated the land titles from some of these *Kamaiyas*.<sup>101</sup>

### > **Movement from above and within the system**

The roles of external agencies in the struggle against the *Kamaiya* system were important after the political change in 1990. In Several external agencies started to intervene defining the *Kamaiya* system as a violation of human rights and non-compliance of the government commitment to the UN conventions and covenants. These agencies, closely associated with open national governance system, influence national policies, mobilising financial resources both at the national and international level (for example bilateral and multi-lateral donors) and government departments.

The Rural Reconstruction Nepal report describes the role of United Nations Agencies, bilateral donors, the Nepal Government, political parties, international NGOs, national NGOs, trade unions and other organisations. The report also describes in some detail the work of six national NGOs active in the struggle for *Kamaiya* rights.<sup>102</sup>

On 1 May, 2000 the *Kamaiya* movement took a new turn. Nineteen families of *Kamaiyas* working for the former forest minister in the Nepali Congress Government, Mr. Shiva Raj Panta, came out of his house and claimed the minimum wage for agricultural workers<sup>103</sup> to be effective from the date of last *Maghi* festival. They also argued that the *Kamaiya* system was against article 20(1) of the 1990 constitution and several UN conventions and covenants to which Nepal is party. When Mr. Panta refused to comply, the families (135 persons) filed a case against

him. Their major demands were to cancel the *Saunki*, provide housing, food and other social security measures and abolish the *Kamaiya* system in the longer run.

Once they knew that the courts were not going to take action on their case even after appeal, the *Kamaiyas* with the support of *Kamaiya* Concern Group (KCG) started a sit-in campaign in front of the Kailali CDO's office. A series of parallel events was held for the abolition of the *Kamaiya* system throughout the region. In other words, issues raised by nineteen *Kamaiya* families from a small village of Kailali called Geta spread among several hundred other *Kamaiyas*. From then on came a series of rallies and campaigns.

As a result of concerted efforts of *Kamaiya* activists and local and international NGOs, on 17<sup>th</sup> July 2000 the Government declared *Saunki*, the major binding element, illegal and committed itself to framing a new law eliminating the bonded labour system. The Government also declared that the act of working and making one work as a bonded labourer on the basis of any written or verbal bond or against the existing law would be punishable.

As soon as the decision was made public, dozens of *Kamaiyas* who were taking part in the sit-in campaign sang, danced and marched through the streets of the capital city before boarding buses bound for home.<sup>104</sup> The decision was also lauded by all major political parties, NGOs involved in working against the system, including the *Kamaiya* Concern Group (KCG) - a loose network of NGOs - and several parliamentary committees. At the grassroots level *Kamaiyas* themselves organised a series of victory rallies in all district headquarters.

Since the decision made to abolish the *Kamaiya* system was at the middle of the planting season, both *Kamaiyas* and landlords experienced dilemmas. In order to ease the tension between *Kamaiyas* and landlords, the Government appealed to the *Kamaiyas* "to co-operate with their ex-landlords and go back to the work in the fields"<sup>105</sup>.. Both *Kamaiyas* and landlords rejected the suggestions. *Kamaiya* activists in their victory rally in Kanchanpur challenged the Government's appeal and stated that they should be paid compensation for their forced labour

101 Rural Reconstruction Nepal, The *Kamaiya* System of Bonded Labour in Nepal, page 16, citing SPACE (1996:28).

102 Rural Reconstruction Nepal, The *Kamaiya* System of Bonded Labour in Nepal, pages 17-23.

103 The minimum wage for agricultural workers was fixed out of pressure created by NGOs, and has been catalytic to encourage *Kamaiyas* to leave their masters and claim their wages as independent agricultural workers.

104 *Kathmandu Post*, 19th July 2000.

105 *Kathmandu Post*, 26th July 2000.

from the landlords. Their response was that they would forget the past but its lesson would be carried on as a reference for the future.

The Landowners' Rights Protection Forum (*Kishan Hak Hita Manch*), formed in reaction to the decision to abolish the *Kamaiya* system, organised a mass meeting at in which some 8,000 landlords of the regions came together and criticised the government decision to abolish the *Kamaiya* system and cancel the debt.<sup>106</sup> The Forum also filed a writ petition in the Supreme Court, stating that "the government decision to ban the *Kamaiya* system was against the contemporary laws related to the security of our property. In a memorandum asking for withdrawal of the decision made in haste, they also appealed to the Prime Minister "to ban NGOs, who are trying to intensify class struggle between landowners and *Kamaiyas*..."<sup>107</sup> The landlords started to threaten *Kamaiyas*, some of them were expelled from their *Bukura* and others were locked inside their masters' houses for several days. Some of NGO activists, such as members of BASE, INSEC, RRN, and GRINSO were asked to leave the village by the landlords. The movement by *Kishan Hak Hita Manch* was a 'social movement' to defend the status quo.

### > *The need for alternative rural livelihoods*<sup>108</sup>

Although widely hailed as one of the most progressive decisions of the Governments of the 1990s, it was made without proper arrangements for housing, food security and other arrangements required for rehabilitation. The biggest challenge to the Government and the NGOs involved in the campaign was to create an environment in which alternative rural livelihoods could be ensured. Four years after the 'liberation', the challenge is still intact.

To identify and rehabilitate freed *Kamaiyas*, the Government constituted a high-level Coordination and Monitoring Committee under and District Coordination Committees were formed in all five districts. The Government also declared that it would immediately construct temporary camps for the liberated *Kamaiyas* and start the supply of short-term relief materials like tarpaulin, blankets and medicine.

The Government identified 18,400 *Kamaiya* households in total. Those having nothing would get immediate relief assistance ranging from makeshift shelters to food to basic clothing. But, it took some time for the Government to move ahead after the 'liberation'.

The *Kamaiyas* waited helplessly but patiently for 6 months from July 2000. Seeing nothing coming to their aid until the end of 2000, they launched a new movement under the banner of the

*Kamaiya* Liberation Struggle Mobilisation Committee and *Kamaiya* Action Committee. Since then, both Committees have agitated to get their rehabilitation completed.

In 2002, the Government bowed to the series of pressures to come to the aid of *Kamaiyas*. It then started to distribute land to 13,450 households. But by the time the land was to be distributed, some went missing; the Government could not locate 1,430 of them. The rest were given a piece of land measuring 0.1343 in hectare on average (GEFONT 2004:76). The Government apparently prepared another list to accommodate those who were missed previously in response to the pressure from the *Kamaiya* themselves and NGOs and trade unions working with them, but no action has been taken so far.

Given the Government's failure to rehabilitate the liberated, *Kamaiyas*, the movement took a different turn from February 2001. At least 7,000 *Kamaiyas* forcibly occupied public land including the land owned by the Cotton Development Committee (CDC) in Bardiya. More than 300 riot police cordoned off the area forcing the *Kamaiyas* to leave. Soon after the riot police set fire to their huts and CDC tractors destroyed the crops they had planted to make sure that the *Kamaiyas* would not dare to occupy the land again.<sup>109</sup> From then on, the search for land by the *Kamaiyas* and their confrontation with riot police became an everyday phenomenon.

In July 2004 the *Kamaiyas* captured the land belonging to Tikapur airport in one of the westernmost districts in Nepal. A total of 4,522 *Kamaiyas* from 868 households distributed the land amongst themselves at the rate of ? *kattha* a family. At the time of writing (end of December 2004) the airport, which remains mostly unused, is filled with makeshift camps. The *Kamaiyas* are formed into 60 groups, and the group leader is responsible for looking for employment opportunities for its group members. The bitter reality is that the *Kamaiyas* are in a life and death battle with a fear of government comeback to demolish their huts.

The Government also enacted the *Kamaiya* Labour (Prohibition) Act, 2002:

- persons working as *Kamaiyas* will be freed; no one shall maintain *Kamaiya* labour henceforth; any agreement (written or verbal) governing *Kamaiya* labour and *Kamaiya* loan is illegal;

106 *The Kantipur*, 28 July 2000.

107 *The Gorkhapatra*, 13th August 2000.

108 Rural Reconstruction Nepal, *The Kamaiya System of Bonded Labour in Nepal*, pages 24-26.

109 *Kathmandu Post*, 4 February 2001.

- any property obtained by the creditor as a mortgage to credit a *Kamaiya* loan must be returned back to the concerned person within three months following the commencement of the Act;
- the defaulters will be fined.

The Act is undoubtedly a progressive step, but it is soft when it comes to penalties, which are limited to certain fines.

In sum, between July 2000 - when *Kamaiyas* were emancipated from slavery - and December 2004, the state of *Kamaiyas* is such that they have had legal freedom from slavery but are still chained by the structural slavery of want. In the absence of rehabilitation programmes for liberated bonded labourers, they are driven by poverty, helplessness and despair into serfdom once again. Anti-Slavery International warned that "rehabilitation of the freed bonded labourer is even more important than the release...if such a labourer was to lose his employment...and lose source of livelihood and the 'remedy' would be worse than the 'disease'."<sup>110</sup>

### > *Post-freedom assessment by Kamaiyas*<sup>111</sup>

In in-depth interviews undertaken November 2004 with ten *Kamaiyas* all the respondents welcomed freedom as a matter of generational achievement. Said one: "We got a big victory. Before the liberation, our labour was under the control of others [masters], now we control it and the labour-outcome goes for us and our children."

The assessment of all ten respondents was expressed by one of them as "We are free but our condition is going from bad to worse in lack of rehabilitation. If the problems are not solved we may have to return to the masters as *Kamaiyas*." Eight respondents were critical of the role of external agencies vis-à-vis their freedom. While they are thankful for externally mobilised support in educating and organising them in the build-up to the freedom movement, they are remorseful for the post-freedom role of external agencies. Some complain that after freedom the *Kamaiyas* were left alone. Others see that the external agencies made them follow their organisational programmes rather than supporting what *Kamaiyas* wanted done, thus making them dependent. One goes a step further in criticising external NGOs: "They are not transparent and fair. They are now the *Kamaiyas* amongst themselves."

Other comments are: "Following the freedom in 2000, we have increased awareness about the value of educating children. We now learned that it was not the god who made us and our children *Kamaiyas*. It was the trick of the exploiters." "Complete

freedom is the state when we have freedom from poverty, when our children have free education, when we have drinking water services available and access to productive land for employment".

## 6.6 Summary and conclusion<sup>112</sup>

The *Kamaiya* system stands as an extreme example of the abuse of ESCRs that have been perpetuated by landlords forcefully occupying large tracts of land while keeping genuine farmers devoid of land entitlements, the only source of livelihood for the striking majority of Nepalis. The landlord, who is a key player in the high level of state politics, has a close nexus with all organs of the state. State power condones the abuses of ESCRs, and institutionalises the social inequalities, thus enabling the landlord to use his power to keep the farmers and their families dependent on him, keeping their freedom of mobility, freedom of choice and socio-cultural expression under his control. As this study has shown, there have been a series of frictions and conflicts between *Kamaiyas* and their masters, and some of them even turned violent. The study also demonstrates the levels of violence experienced on a daily basis by those whose ESC rights are not respected. With the intensification of the Maoist Insurgency, which draws on discriminatory issues like *Kamaiya* and others, the anti-*Kamaiya* movement reached a new height in July 2000 forcing the Government to declare the system illegal. Although this *Kamaiya* movement did not have overt backing from the Maoists, it was obviously not untouched by the fast spreading Maoist influence in the country. There are reports that a significant number of *Kamaiyas* have joined the Maoist movement - not implausible given the Maoist goal of bringing an end to all kinds of unequal and feudal structures and institutions,

The *Kamaiya* movement before the 1990s can be seen as amorphous, poorly organised, and spontaneous collective behaviour and action (Karki 2001:123). According to Bulmer (1995:60) these are the basic characteristics of social movements in the beginning. The strategies used by the *Kamaiyas* in the pre-1990 era were essentially 'primitive'. When they shouted slogans against exploitation and oppression by their masters, they also very often shouted for the long life of the King and Queen, holding the traditional view that if the King and Queen knew, they

110 Rural Reconstruction Nepal, The *Kamaiya* System of Bonded Labour in Nepal, page 26, citing <http://www.antislavery.org/arch/submission1997%D08india.htm>.

111 Rural Reconstruction Nepal, The *Kamaiya* System of Bonded Labour in Nepal, pages 26-27.

112 Rural Reconstruction Nepal, The *Kamaiya* System of Bonded Labour in Nepal, pages 27-28.

would not tolerate the situation. Most of these movements met a tragic end suppressed by government forces with the support of local ruling elites and feudals.

One of the factors stimulating a concerted *Kamaiya* movement in the 1990s was the restoration of multi-party democracy and the open political environment that existed in the country after 1990. *Kamaiyas* managed to get external support from NGOs, and some party politicians. As a result, the government was forced to ban the whole system although the heinous tentacles of the system are yet to be eliminated. It appears that the movement and campaigns against the *Kamaiya* system were built on the assumption that once the *Kamaiya* system was abolished justice would be established and all forms of inequalities would be removed. This assumption diverted the attention away from the adverse role the structurally unequal socio-economic relationships had played over centuries.

If a movement fails to address structural issues of the problem, bans and formulation of laws, the historical problem like the *Kamaiya* system will continue to survive and structural conditions may reproduce chronic inequalities. The ban on the *Kamaiya* system did not address other associated issues such as alternative livelihoods through a proper rehabilitation package,

which the *Kamaiyas* have been demanding for the last many years.

Unless the *Kamaiya* movement in the days ahead is linked to broader movements for bringing changes in the existing unequal agrarian relations, whatever achievements have been gained may relapse into irrelevance, as some *Kamaiyas* have already started to worry, and violence would continue for want of freedom from hunger on the one hand, and in a bid to maintain feudal privileges on the other.

The Government has to have a long term planning" to ensure all this happens. Theirs are simple demands. If fulfilled, they will have a real freedom from the yoke of feudal remnants. But the Government of the day and those in future have to act with a strong political commitment. If they ready themselves for giving up the benefit they would gain from maintaining slavery, the slavery sustained under the *Kamaiya* system would end once and for all.

## References

- Acharya, M. 2003. "Towards Conflict Transformation in Nepal: Recent Trends in Government Maoist Dialogue." In Shrestha, AP and Hari Uprety (eds.) *Conflict Resolution and Governance in Nepal*. NEFAS: Kathmandu
- AHRC (Asian Human Rights Commission). 2004. Urgent Appeals for 2003 and 2004, [www.ahrchk.net/ua](http://www.ahrchk.net/ua)
- AI (Amnesty International). 2000. *Human Rights and Security*. Available at <http://web.amnesty.org/library/eng-npl/reports>
- AI (Amnesty International). 2001. Nepal: *Make Torture a Crime*. At <http://web.amnesty.org/library/eng-npl/reports>
- AI (Amnesty International). 2002. Nepal, a Spiralling Human Rights Crisis. Available at <http://web.amnesty.org/library/eng-npl/reports>
- AI (Amnesty International). 2003. *Nepal Widespread "disappearances" in the context*. At <http://web.amnesty.org/library/Index/ENGASA310452003?open&of=ENG-NPL>
- ALRC (Asian Legal Resource Centre). 2003. *Alternative Report on CERD in Nepal*. Available at <http://www.alrc.net/index.php>
- BASE (1995) *Kamaiya Report, 2051* Dang: Backward Society Education (BASE)
- Bhattarai, BR. 2003. "Political Economy of the People's War." In Karki, A and D Seddon (eds.) *The People's War in Nepal: Left Perspectives*. Adroit Publishers: Delhi
- Bista, DB (1991, Reprint 1996) *Fatalism and Development: Nepal's Struggle for Modernization*. Patna: Orient Longman
- BLLF (Bonded Labour Liberation Front) (1989) *In to that Heaven of Freedom? Report of South Asian Seminar on Child Servitude*. New Delhi: BLLF
- Brass, T (1999) *Towards a Comparative Political Economy of Unfree Labour: Case Studies and Debates*. Frank Cass: London
- CBS (Centre Bureau of Statistics). 2001. *Statistical Pocket Book*. CBS/HMGN: Kathmandu
- CBS. 2002. *Statistical Pocket Book*. CBS/HMGN: Kathmandu
- Central Bureau of Statistics 2003. *Statistical Yearbook of Nepal 2003*, CBS, Kathmandu
- Chaudhari, S 1996. "Kamaiya Pratha Ra Kamaiya Haru Lai Herda" (Kamaiya System: An Observation), *The Bikash (Development)* Vol.4, Issue 8, pp 38 - 42.
- CSRC (Community Self Reliance Centre). 2003. *Land Rights in Nepal: Present Realities and Strategies for Future*. CSRC: Kathmandu
- CVICT (Centre for Victims of Torture). 2001. *Nepal's Penal System: An Agenda for Change*. CVICT: Kathmandu
- Dahal, D.R. 1999. Impact of Globalisation in Nepal: Trade Union Perspectives, in Dahal, M.K. (Ed.) *Impact of Globalisation in Nepal*, Kathmandu: Nepal Foundation for Advance Studies.
- Enabling State Programme (ESP). 2001. *Pro-Poor Governance Assessment Nepal*. ESP: Kathmandu
- FDN (Foundation for Development Management). 2004. *Cost of War: Economic and Socio-cultural Impacts of the People's War*. (Unpublished report available at RRN Library)
- FWLD (Forum for Women, Law and Development). 2000. *Discriminatory Laws in Nepal and their Impact on Women*. FWLD, Kathmandu
- GEFONT (General Federation of Nepalese Trade Unions) (undated report) *Analysis of the Effectiveness of Interventions for the Release and Rehabilitation of Bonded Labour in Nepal* Kathmandu: GEFONT (Unpublished)
- Gurung, H. 2003. *Social Demography of Nepal – Census 2001*, Himal Books, Lalitpur
- HMG Nepal 1996. Children and Women of Nepal, Situation Analysis, 1996 - Unicef Beijing Plus Five Country Report, HMG, Nepal downloaded from: [http://www.azeecon-lwf.com/lwf/burning\\_issues/women.html](http://www.azeecon-lwf.com/lwf/burning_issues/women.html)
- I B Schou 1999. "Everything Looked So Nice", *Face to Face Newsmagazine* Vol. 21, No. 17
- ICIMOC (International Centre for Integrated Mountain Development) and Central Bureau of Statistics (CBS). 2003a. *Mapping Nepal Census Indicators 2001 and Trends*. ICIMOD: Kathmandu
- ILO 1995. Child Labour in Nepal Vol. II An overview and a Proposed Plan of Action Prepared for the National Workshop as Policy and Programming on Child Labour held by the IPEC/ILO in Collaboration with the MOL/HMG, Kathmandu 22 - 25 August, 1995.
- Informal Sector Research and Study Centre. 2002. *District Demographic Profile of Nepal*. Informal Sector Research and Study Centre, Kathmandu
- INSEC (Informal Sector Service Centre). 1992. *Bonded Labour in Nepal: Under Kamaiya System*, Kathmandu: INSEC.
- INSEC. 1996. *Plight of the Kamaiyas: A Report of the Kamaiya Conference*, INSEC: Kathmandu
- INSEC.1998. *A Revisit to the Kamaiya System of Nepal*, Kathmandu: Informal Sector Service Centre-INSEC.
- INSEC. 2002. *Nepal Human Rights Yearbook 2002*. INSEC: Kathmandu
- INSEC. 2003. *Human Rights Yearbook 2003*. INSEC: Kathmandu
- International Centre for Integrated Mountain Development (ICIMOD) and Central Bureau of Statistics (CBS). 2003b. *Districts*

- of Nepal Indicators of Development – update 2003*. ICIMOD: Kathmandu
- Karki, A and D Seddon. 2003. *The People's War in Nepal: Left Perspectives*. Adroit Publishers: New Delhi
- Karki, A. 2001. *The Politics of Poverty and Movement from Below in Nepal*. PhD Thesis, University of East Anglia, School of Development of Studies, UK
- Karki, AK. 2002. "Movements from Below: Land Rights Movement in Nepal." *Inter-Asia Cultural Studies* (Vol 3, No 2, August)
- Kattel, Mukunda. (1999). "An Act without Action: A Nepalese Experience." *FOCUS Asia-Pacific*, December 1999, Vol. 18. HURIGHTS OSAKA: Japan
- Kothari, S. 2001. (unpublished) *A Million Mutinies Now: Lesser-Known Environmental Movements* circulated through email in 2001.
- Level Land Reform Commission- 2051(2051BS), A Report Submitted to the HMG/Nepal by High level Land Reform Commission.
- Limqueco, Peter. 1997. *No Revolution without Democracy, No Democracy without Revolution. Hlmal*. Kathmandu September/October 1997
- Ministry of Labour and Social Welfare (1984) (unpublished) *A Study on Bonded Labour*, A Report of HMG/N Study on Bonded Labour, Singhadabar, Kathmandu. (This Report is available at the author's library).
- Murshed, SM and Gates, S. 2003. *Spatial-Horizontal Inequality and the Maoist Insurgency in Nepal*.
- NESAC (Nepal South Asia Centre). 1998. *Nepal Human Development Report 1998*. NESAC: Kathmandu
- NPC (Nepal Planning Commission). 2003. *The Tenth Plan (Poverty Reduction Strategy Paper)*. NPC/HMGN: Kathmandu
- Paudel, MM and Niraula, BB. 1998. (unpublished) *Gender and Child Issues Under Kamaiya System in Mid and Far-Western Tarai of Nepal*, A study Report Prepared for Action Aid Nepal, Kathmandu.
- Prachanda. 2003. "Inside the Revolution in Nepal." In Karki, A and D Seddon (eds.) *The People's War in Nepal: Left Perspectives*. Adroit Publishers: Delhi
- Pradhan, S. 2000. *Foreign Aid No Answer to Nepalese Poverty*. Asia Times Online, May 9, 2000 (<http://www.atimes.com/ind-pak/BE09Df02.html>)
- Rankin, KN. 1999. The Predicament of Labour: *Kamaiya Practices and the Ideology of "Freedom"*, in Skar, Harald O. et al (Eds), *Nepal: Tharu and Tarai Neighbours, Bibliotheca Himalayaca*, Series: III Vol. 16, Kathmandu: EMR Publication.
- Regmi, M.C. 1972, reprint 1999. *A Study of Nepali Economic History 1768-1846*, Delhi: Adroit Publishers.
- Robertson, and Mishra, S. 1997. *Forced To Plough: Bonded Labour in Nepal's Agricultural Economy*, Kathmandu; Antislavery International and Informal Sector Service Centre.
- SAAPE (South Asia Alliance for Poverty Eradication). 2003. *Poverty in South Asia 2003*. SAAPE: Kathmandu
- Sharma, S and Thakurathi, M. 1998. *A Revisit to the Kamaiya System of Nepal*, Kathmandu: INSEC.
- SPACE. 1996. (Unpublished) *Participatory Action Research with the Tharus in Bardiya*, A Research Report, Kathmandu: SPACE.
- Subedi, T. 1999. Bonded Labour in Nepal: A Sociological Study of *Kamaiya System in Khairichandanpur VDC of Bardiya District*, Master Degree Thesis, Central Department of Sociology/Anthropology, Tribhuvan University, Kathmandu, Nepal.
- Sukumbasi Samasya Samadhan Aayog (SSSA). 1995a. *Sukumbasi Samasya Samadhan Aayog Ko Samchhipta Simbhabalokan Abam Karya Pragati Bibaran (A Brief Review of Landless Peoples' Problems Solving Commission and its Work Progress)*, Kathmandu: SSSA. (This report is available at author's library in Kathmandu).
- Supreme Court. 2058/2059 BS. *Annual Report of the Supreme Court*. Kathmandu
- The Global IDP Project. 2003. *Nepal: A hidden IDP crisis*. Available at [http://www.db.idpproject.org/Sites/IdpprojectDb/idpSurvey.nsf/\\$\\$SearchTemplateDefault?CreateDocument](http://www.db.idpproject.org/Sites/IdpprojectDb/idpSurvey.nsf/$$SearchTemplateDefault?CreateDocument)
- United Nations. 1994. *A Compilation of International Human Rights Instruments, Volume I (First Part) Universal Instruments*. New York and Geneva: United Nations
- UNDP (United Nations Development Programme). 2003. *Human Development Report 2003*. Oxford University Press: New York



**Appendix A: Map of Nepal showing the Kamaiya habitation**





**Appendix B: Development indicators and human rights abuses by district**  
(based on 2002 information)

	Population	Literacy	Women's Literacy	HDI	Pop. per doctor	Abuses by state			Abuses by Maoists			Abuses by others		
						Total events	Victims (no.)	Percent women +	Total events	Victims (no.)	Percent women +	Total events	Victims (no.)	Percent women +
<b>Eastern Region</b>														
Jhapa	688,109	66.93	58.65	0.421	30,145	62	75	8	7	11	27	84 / 12	113	58
Ilam	282,806	66.23	58.23	0.38	47,134	21	22	5	14	17	6	17 / 6	24	54
Panchthar	202,056	55.31	45.51	0.328	40,411	22	27	7	15	38	5	18 / 9	24	46
Taplejung	134,698	52.21	42.34	0.328	33,675	34	40	3	51	53	2	12 / 9	12	2
Morang	843,220	56.74	46.21	0.421	14,054	32	66	11	32	45	4	45 / 5	68	66
Sunsari	625,633	60.38	50	0.382	69,515	66	83	11	6	7		20 / 3	52	42
Dhankuta	166,479	63.98	54.13	0.401	27,747	12	13	0	4	6	0	1 / 0.6	1	0
Tehrathum	113,111	59.02	47.85	0.339	28,278	31	60	7	9	10	0	18	21	38
Bhojpur	203,018	54.52	44.15	0.351	40,604	11	17	24	15	17	6	5	5	60
Sankhuwasabha	159,203	55.31	45.51	0.365	39,801	101	180	8	25	42	0	11	11	45
Saptari	570,282	42.8	35.18	0.374	28,514	49	62	6	4	4		14	21	52
Siraha	572,399	40.31	26.8	0.35	6,332	46	76	5	9	22	0	12	16	38
Udayapur	287,689	53.31	42.16	0.355	57,538	46	100	9	28	48	15	45	58	55
Khotang	231,385	49.87	38.44	0.318	46,277	29	66	17	16	27	11	6	10	30
Okhaldhunga	156,702	49.12	36.12	0.34	78,351	24	79		14	22	9	1	1	100
Solukhumbu	107,686	45.81	35.41	0.354	26,922	14	27		12	22	14	5	10	40
<b>Central Region</b>														
Dhanusa	671,364	48.37	36.07	0.329	19,746	83	120	8	17	20	5	69	76	67
Mahottari	553,481	34.36	22.3	0.322	79,069	50	75	11	4	7	43	56	95	
Sarlahi	635,701	36.17	25.13	0.295	79,463	68	73	8	32	51	8	17	19	53
Sindhuli	279,829	50.13	38.11	0.295	55,452	73	240	7	41	104	8	30	43	60
Ramechhap	212,408	39.05	26.37	0.315	70,803	89	101	5	48	258		32	36	47
Dolakha	204,229	50.64	36.32	0.34	58,637	39	68	21	36	90	3	5	6	50
Rautahat	545,132	32.5	20.3	0.308	21,805	51	126	1	23	37	5	21	25	48
Bara	559,135	42.35	17.5	0.309	93,189	23	40	15	15	24	0	24	38	34
Parsa	497,219	42.4	14.5	0.355	12,127	15	20	0	1	4	0	35	35	43
Chitwan	472,048	70.76	62.84	0.37	14,752	128	400		29	42	5	19	22	68
Makwanpur	392,604	63.18	53.71	0.309	35,691	12	14	14	16	25		27	28	46
Lalitpur	337,785	70.77	60.26	0.523	21,112	34	145		28	37		17	36	14
Kabhre	385,672	63.75	52.53	0.38	96,418	47	157	6	21	51	8	22	23	43
Bhaktapur	225,461	59.15	49.8	0.393	10,248	36	122	4	14	17		58	265	10
Kathmandu	1,081,845	77	66.44	0.603	3,948	69	101	9	33	100	12	12	14	3
Dhading	338,658	43.48	33.81	0.258	67,732	59	216	6	25	42	2	14	19	37
Sindhupalchowk	305,857	40.19	29.12	0.277	58,744	53	107	8	46	76	3	6	6	33
Nuwakot	288,478	51.15	40.41	0.312	48,080	21	42	14	18	25	0	2	2	0
Rasuwa	44,731	33.96	24.53	0.246	22,386	9	17	6	3	3	0	1	1	0
<b>Western Region</b>														
Tanahun	315,237	61.68	52.68	0.384	21,016	38	92	14	25	37	11	15	17	41
Gorkha	288,134	53.85	45.18	0.308	48,022	31	56	18	21	40	5	2	2	0
Lamjung*	177,149	56.61	46.04	0.375	44,287	40	122	10	14	15	0	1	1	0
Syangja	317,320	66.32	57.31	0.378	45,331	46	64	12	10	10	0	2	2	0
Kaski	380,527	71.9	61.52	0.45	7,180	18	68	4	14	16	25	21	30	60
Manang	9,587	59.91	52.11	0.306	4,994	4	5	0				4	4	0
Nawalparasi	562,870	52.99	40.68	0.3	70,359	32	69	6	15	20	15	54	67	73
Rupandehi	708,419	65.95	55.71	0.361	18,643	16	26	4	4	5	0	29	30	40
Palpa	268,558	65.96	57.55	0.337	44,597	9	44	18	5	5	0	10	10	40

	Population	Literacy	Women's Literacy	HDI	Pop. per doctor	Abuses by state			Abuses by Maoists			Abuses by others		
						Total events	Victims (no.)	Percent women +	Total events	Victims (no.)	Percent women +	Total events	Victims (no.)	Percent women +
Kapilvastu	481,976	41.46	29.27	0.286	68,854	35	1,013		18	34	3	14	18	20
Arghakhanchi	208,391	55.9	46.72	0.331	41,678	26	111		19	82	1	5	6	33
Gulmi	296,654	57.78	47.78	0.326	49,442	53	81	9	44	62	2	7	7	29
Baglung	269,937	61.4	52.02	0.337	29,882	51	81	12	25	35	3	4	4	25
Parvat	157,862	56.82	47.52	0.357	52,609	177	237	7	18	18	5	13	13	69
Myagdi	114,447	55.74	45.6	0.309	38,149	26	56	17	19	0				
Mustang	14,981	51.75	40.7	0.316	38,149	2	4	0						
<b>Mid Western</b>														
Dang*	462,380	57.7	46.72	0.299	46,238	83	393	5	53	196	1	17	24	29
Pyuthan	212,484	35	33.71	0.323	14,166	24	36	17	13	23	0	3	3	67
Rolpa*	210,004	37.25	22.88	0.264	105,002	123	285	18	45	164	3	1	1	100
Salyan*	213,500	48.15	35.98	0.25	15,161	66	198		45	124	4	7	7	71
Rukum*	188,438	39.75	28.6	0.27	62,813	71	496		107	199	11	16	20	25
Banke	585,840	57.36	48.9	0.309	12,446	207	452		44	90		29	32	69
Bardiya*	382,639	45.41	35.64	0.304	63,775	142	313		71	108	7	8	8	50
Surkhet*	288,521	62.48	51.49	0.357	26,987	184	339	5	97	167	7	14	17	70
Jajarkot	134,868	39.36	28.36	0.21	44,956	24	36	11	100	116	3	4	4	100
Dailekh	225,201	47.44	31.82	0.246	56,300	95	176	4	138	182	7	8	9	11
Dolpa	29,545	34.66	19.61	0.218	22,071	14	43	23	11	12	17	2	2	50
Jumla*	89,427	32.41	16.7	0.218	23,075	63	178	5	32	204		4	5	80
Kalikot	105,580	37.51	16.98	0.177	5,755	25	72	7	33	43	9	4	4	75
Mugu	43,937	27.79	9.19	0.147	31,465	13	33	21	12	18	0			
Humla	40,595	26.62	11.52	0.244	13,532	34	97		71	92	9	12	13	54
<b>Far Western</b>														
Kailali	616,697	52.06	47.71	0.299	28,032	65	123		74	123		4	4	50
Achham*	231,285	33.36	15.8	0.235	77,095	39	124		17	156		2	2	0
Doti*	207,066	42.56	25.18	0.249	34,511	9	124		19	227		12	12	75
Bajura	108,781	33.73	17.07	0.201	50,313	21	86		38	74				
Bajhang	167,026	35.26	15.08	0.201	41,757	30	54		45	300		34	34	47
Kanchanpur	377,899	59.65	46.91	0.332	20,994	35	170		29	38	3	9	10	40
Dadeldhura	126,162	51.62	35.06	0.265	42,054	53	85	8	61	374		17	18	28
Baitadi	234,418	51.55	33.43	0.256	46,884	24	40	10	26	78		13	13	23
Darchula	121,996	49.39	32.38	0.286	40,665	35	44	0	11	11	0	2	2	50

\* Identified at "most conflict-affected" districts by the Government of Nepal.

+ Percentage of victims that are women

### Appendix C: Correlation of development indicators and levels of human rights abuses, by district

<i>District</i>	<i>Rank by Overall Development Index</i>	<i>Rank by Poverty and Deprivation Index</i>	<i>Rank by Women's Empowerment Index</i>	<i>Rank by total no. of victims per 100,000 population</i>	<i>Rank by state violence (victims per 100,000 population)</i>	<i>Rank by Maoist violence (victims per 100,000 population)</i>	<i>Rank by non-state violence (per 100,000)</i>	<i>Rank by percent women affected by non-state violence</i>
<b>Eastern Region</b>								
Jhapa	3	1	16	19	11	7	63	52
Ilam	12	6	19	12	5	17	53	49
Panchthar	23	17	23	27	16	44	59	37
Taplejung	33	27	28	44	34	53	54	9
Morang	11	5	24	10	7	16	50	56
Sunsari	14	10	27	14	14	5	52	33
Dhankuta	7	2	12	3	6	12	3	1
Tehrathum	17	13	25	46	49	27	66	27
Bhojpur	31	15	36	7	8	24	18	53
Sankhuwasabha	18	7	22	59	67	49	46	36
Saptari	47	37	62	4	10	2	26	47
Siraha	58	49	65	9	15	13	20	26
Udayapur	43	41	39	42	38	43	67	51
Khotang	38	30	29	29	32	35	32	21
Okhaldhunga	39	32	37	41	47	41	5	70
Solukhumbu	29	28	20	35	28	46	55	31
<b>Central region</b>								
Dhanusa	46	46	59	23	23	9	58	58
Mahottari	65	61	71	22	17	6	65	72
Sarlahi	61	57	64	13	12	23	24	48
Sindhuli	49	56	35	58	65	52	62	54
Ramechhap	51	53	50	67	45	69	64	39
Dolakha	41	47	41	45	37	59	22	43
Rautahat	68	68	72	25	27	20	33	41
Bara	55	42	67	6	4	15	45	24
Parsa	52	43	63	2	3	4	47	34
Chitwan	2	3	8	51	63	28	34	59
Makwanpur	26	26	35	5	1	18	48	38
Lalitpur	5	21	9	40	43	33	57	13
Kabhre	15	18	21	38	42	39	43	35
Bhaktapur	4	12	13	65	52	22	71	11
Kathmandu	1	9	2	8	9	30	10	10
Dhading	44	51	30	47	54	37	40	25
Sindhupalchowk	48	60	43	39	39	48	14	23
Nuwakot	36	29	38	15	18	26	7	5
Rasuwa	53	62	44	32	41	19	16	2
<b>Western region</b>								
Tanahun	16	23	7	30	33	36	36	32
Gorkha	32	34	18	24	24	40	8	6
Lamjung	22	35	14	43	57	25	2	3
Syangja	9	22	1	16	26	10	4	4

<i>District</i>	<i>Rank by Overall Development Index</i>	<i>Rank by Poverty and Deprivation Index</i>	<i>Rank by Women's Empowerment Index</i>	<i>Rank by total no. of victims per 100,000 population</i>	<i>Rank by state violence (victims per 100,000 population)</i>	<i>Rank by Maoist violence (victims per 100,000 population)</i>	<i>Rank by non-state violence (per 100,000)</i>	<i>Rank by percent women affected by non-state violence</i>
Kaski	6	4	3	21	22	14	49	55
Manang	10	25	5	48	48	na	70	7
Nawalparasi	37	36	33	18	13	11	60	64
Rupandehi	13	11	31	1	2	3	31	28
Palpa	8	14	4	11	19	8	27	29
Kapilvastu	54	48	58	70	73	21	28	14
Arghakhanchi	42	50	26	49	50	54	21	22
Gulmi	27	38	15	34	31	47	17	20
Baglung	24	45	10	28	35	38	12	16
Parvat	20	39	11	63	71	34	51	60
Myagdi	25	44	6	33	46	1	na	na
Mustang	19	33	17	17	30	na	na	na
<b>Mid Western</b>								
Dang	21	8	32	57	64	58	35	19
Pyuthan	50	54	48	20	20	32	11	57
Rolpa	64	65	54	69	69	64	1	69
Salyan	45	40	46	61	66	61	25	63
Rukum	60	55	53	73	75	67	56	17
Banke	30	16	47	50	59	42	37	61
Bardiya	34	20	40	52	62	50	15	44
Surkhet	28	24	34	66	68	60	42	62
Jajarkot	59	58	51	54	29	66	23	68
Dailekh	63	64	55	62	60	65	30	12
Dolpa	67	69	56	68	70	55	44	45
Jumla	69	67	70	74	72	72	39	67
Kalikot	70	71	69	53	56	56	29	65
Mugu	75	75	75	55	58	57	na	na
Humla	74	73	73	75	74	71	69	50
<b>Far Western</b>								
Kailali	40	31	42	26	25	45	6	46
Achham	72	74	68	56	51	62	9	8
Doti	66	66	61	64	53	68	41	66
Bajura	71	72	66	60	61	63	na	na
Bajhang	73	70	74	71	36	70	68	40
Kanchanpur	35	19	49	37	44	31	19	30
Dadeldhura	56	52	57	72	55	73	61	18
Baitadi	62	63	60	36	21	51	38	15
Darchula	57	59	52	31	40	29	13	42

In the table above, ranking of districts is based on the development indicators developed by ICIMOD and CBS – see ICIMOD & CBS 2003b. Twenty-nine indicators were used to develop composite indices of development. The indicators capture various dimensions of socio-economic conditions. All 29 indicators were used to develop the overall index; eight indicators (measuring child deprivation, gender discrimination, concentration of disadvantaged groups, marginal farm households and food production) were used to develop the poverty and deprivation index; four indicators (examining aspects of women's participation in

economic activity and education) were used to develop the gender index. In the table, districts are ranked according to their relative development, with 1 implying the highest level of development, and 75 the lowest amongst the districts.

The levels of violence recorded in each district are based on the events reported in INSEC 2003. The districts are ranked according to relative levels of violence, with 1 implying the lowest level of violence and 75 the highest, or worst violence situation.





## Chapter 7

### South Africa: country profile<sup>1</sup>

#### 7.1 Political and legal overview

##### > *The country and the people*

South Africa is a vast country of 1,223,201 sq. km with approximately 45 million inhabitants. The bulk of the population (48.3 percent) is concentrated in four metropolitan and five other major urban areas around the traditional mining centres and four principal ports. Population density is also high in the areas of generally infertile land, 13 percent of the total, formerly reserved for the black communities, constituting 87 percent of the total population.

Between 1990 and 2001, the annual growth rate of the whole population was 1.7 percent, but 3.2 percent in urban areas, implying that people continue to migrate into cities in search of opportunities. Ethnically, the country consists of 79.0 percent black people, 9.6 percent white people, 8.9 percent coloured people, and 2.5 percent Indian people.<sup>2</sup> Eleven official languages illustrate the diverse cultural backgrounds.<sup>3</sup> Approximately 68 percent of people are Christians. This figure includes most white and coloured people, about 60 percent of black people, and 40 percent of Indian people. Muslim people comprise 2 percent of the population, Hindus 1.5 percent (or 60 percent of Indians), and indigenous beliefs and animist comprise 28.5 percent of the population.<sup>4</sup>

##### > *Apartheid and democratic transition*

Various forms of statutory racial segregation were introduced during the first half of the twentieth century culminating in the introduction of apartheid soon after the National Party (NP) came to power in 1948. Afrikaner minority rule became synonymous with the disenfranchisement of the black majority, the uprooting of hundreds of thousands of families, the banning of democratic engagement, and the systematic violation of human rights. It included detention without trial, brutal repression and efforts by the state security establishment to eliminate government opponents.

The policies of apartheid, which resulted in the exclusion of South Africa from almost all international activities, compounded the distortions of the economy and society arising from centuries of colonial exploitation. These policies were applied with increasing rigour over a 50-year period and have left profound inequities based on race, ethnicity and gender. Natural and financial resources were directed to the white minority that main-

tained its position by withholding access to basic services and opportunities to the majority through a legalised form of discrimination. The results of this deprivation of the majority, in the midst of affluence, affect the whole of society. The system also resulted in profound inefficiencies in the public sector, reflected not only in the mal-distribution and under-utilisation of available resources but also in the neglect of basic functions of development management.

In the early 1990s, faced with increased international opposition, a devalued currency, and decreased international investments, the NP government initiated incremental systemic changes through negotiations and compromises with the ANC. On April 27, 1994, South Africa held its first non-racial democratic election. Nearly 20 million people voted and the ANC received 63 percent of the votes. The National Assembly elected Nelson Mandela as president of a coalition government with the NP, which received 20 percent of the votes. Following the election, the remaining apartheid legislation was repealed and the economic and social restructuring the country was initiated. In order to address the widespread allegations of human rights violations and other atrocities under the former system, the Government created the Truth and Reconciliation Commission in 1996 to heal the nation and prevent such crimes from happening in future. In June 1999, the second national democratic legislative elections took place in which the ANC received 66 percent of the votes and the resulting National Assembly elected Thabo Mbeki as the

1 Prepared by the editor based on a report prepared for the Human Rights Institute of South Africa (HURISA) by Cedric Loots and in consultation with HURISA. The full report is contained in the CD-ROM included with this publication.

2 Government of South Africa. *Statistics South Africa: Population Estimates*. <http://www.statssa.gov.za/SpecialProjects/Census2001/Census/dialog/includes/StatsCouncil.htm>. Accessed: October 20, 2003. See also Southern African Regional Poverty Network. *Annual Profile – South Africa*. *Africa Economic Research*. Economics Division – Africa Research. January 2003.

[http://www.sarprn.org.za/documents/d0000243/P234\\_South\\_Africa.pdf](http://www.sarprn.org.za/documents/d0000243/P234_South_Africa.pdf). Accessed on November 1, 2003; CIA, *World Factbook* 2003. Updated 1 August 2003. Central Intelligence Agency. Office of Public Affairs: Washington, D.C., 2003. <http://www.cia.gov/cia/publications/factbook/geos/sf.html>. Accessed on November 17, 2003.

3 South Africa's 11 official languages are Afrikaans, English, Ndebele, Pedi, Sotho, Swazi, Tsonga, Tswana, Venda, Xhosa, and Zulu.

4 Southern African Regional Poverty Network. *Annual Profile – South Africa*. *Africa Economic Research*. Economics Division – Africa Research. January 2003. [http://www.sarprn.org.za/documents/d0000243/P234\\_South\\_Africa.pdf](http://www.sarprn.org.za/documents/d0000243/P234_South_Africa.pdf). Accessed on November 1, 2003.

President of South Africa.

In December 1996, the new Constitution of the Republic of South Africa 1996 (Act 108 of 1996) was approved and was implemented in stages between 1997 and 2000. The Preamble of the Constitution states the following as its goals:

- Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
- Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;
- Improve the quality of life of all citizens and free the potential of each person; and,
- Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

The current government structure in South Africa is a multi-party parliamentary democracy with national, provincial, and local levels of government. There are also three separate branches of government, the legislative, executive, and judicial and this separation of powers allows for oversight and a checks and balances system.

The Constitution of the Republic of South Africa 1996 outlines the role of government. At the national level, constitutional power is divided between Parliament and the President. Parliament, consisting of the National Assembly and the National Council of Provinces, adopts laws in accordance with the Constitution. In democratic elections, citizens select the 350 to 400 members of the National Assembly through proportional representation. The National Assembly then elects the President, who serves a five-year term and is both head of state and head of government. The President selects a Deputy President, signs legislation, and chooses the Cabinet.

The National Council of Provinces consists of 90 seats with 54 permanent members and 36 special delegates. The purpose of this body is to ensure national representation of the Provincial Legislatures. Provincial members aim to protect the cultural, linguistic, and ethnic interests of the citizens residing in their province.

Provincial legislatures, elected by proportional representation in each of the nine provinces consist of 30 to 80 members. Each province has an Executive Council with a Premier who is elected by the legislature as well as numerous members. The provinces have both concurrent and exclusive powers over various areas

within their jurisdiction. Local governments and municipalities also assist in delivering services to citizens.

Traditional leadership in South Africa is recognised under Chapter 12 of the Constitution, which assigns a Directorate to advise and support the National House of Traditional Leaders. Comprised of traditional leaders found in six of South Africa's nine provinces, the National House provides advice to the national government about its role and about customary law.

### > *Human rights*

All laws, decisions, and acts must uphold the human rights principles found in the Bill of Rights, which encompasses chapter two of the Constitution. The Constitution also makes provisions to ensure that the government enacts in legislation all the international agreements it signs, providing the agreements are consistent with the Constitution or an Act of Parliament. As of October 10, 2003, South Africa has ratified the following treaties:

- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- The International Covenant on Civil and Political Rights (CCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The Convention on the Rights of the Child (CRC)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- The African Charter on Human and Peoples' Rights <sup>5</sup>
- The Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict
- South Africa has also signed the International Covenant on Economic, Social and Cultural Rights (CESCR), but this treaty has not yet been ratified.

South Africa has numerous mechanisms in place to promote sys-

5 Human Rights Internet. *For the Record 2002*. CD-ROM. South Africa. <file:///D:/fortherecord2002/vol2/southafricarr.htm>.

temic transparency and accountability. The Independent Electoral Commission (IEC) oversees elections at all three levels of government. South Africa's Public Service Commission (PSC) enhances government accountability by supporting the legislature and by independently monitoring the Public Service. The PSC promotes constitutional values and principles, monitors human resources practices and service delivery, promotes professional ethics, investigates grievances of officers and reports to Parliament and provincial legislatures.

The South African Constitution empowers six independent and impartial institutions with the responsibility to strengthen constitutional democracy within the country: the Human Rights Commission; the Commission for Gender Equality; the Public Protector; the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; the Auditor-General; and the Electoral Commission. Accountable to the National Assembly, these bodies must report on their activities and performance at least once a year.

The Constitution authorises the South African Human Rights Commission to carry out a number of actions including the following: promoting equality; investigating allegations of human rights violations and abuses; conducting research; raising awareness about human rights; educating and training its employees and citizens about human rights issues; issuing subpoenas and hearing testimony under oath; and, monitoring the implementation of socio-economic rights, particularly equality, among governmental departments.

The Commission for Gender Equality has a similar function as it strives to promote, protect, develop, and achieve gender equality within society. Some of the many tasks of this Commission include: policy monitoring and evaluating; complaint investigating; researching; educating and training; and promoting equity in governmental hiring practices.

The Office of Public Protector investigates and reports abuses of the conduct in state affairs; citizens may bring complaints against government organisations to this Office. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities strives to "promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities."<sup>6</sup> To protect these rights, the Commission also engages in monitoring, investigating, researching, educating, lobbying, advising, and reporting. The Auditor-General reports and audits the accounts, financial statements and financial management at all levels of government as well as any other institution required of it by legislation.

### > *Truth and Reconciliation Commission*

In 1996 the South African Government established the Truth and Reconciliation Commission (TRC) in response to the apartheid-era human rights abuses committed between 1960 and 1993. The TRC's goal was to return civil and human rights to victims, restore the moral order, record the truth, grant amnesty and indemnity to those who qualified, create a culture of human rights and rule of law, and prevent similar atrocities in the future. Led by Archbishop Desmond Tutu, the TRC held hearings across the country and received over 20,000 statements from victims as well as more than 7,000 applications from people seeking amnesty.<sup>7</sup> The TRC was established to address the injustices of the past and work towards a more transparent, just and equal system of governance. It granted amnesty to people who admitted to committing politically motivated crimes and suggested compensation for victims of apartheid abuses. When it dissolved on March 31, 2002, the TRC concluded that apartheid was a crime against humanity. More significantly, it declared that responsibility for human rights abuses lay with the apartheid-era governments as well as with numerous political movements operating during this time, including the ANC<sup>8</sup>.

### > *Civil society and the media*

The Human Rights Institute of South Africa (HURISA) underlines the importance of a strong civil society and of media freedom to transparency and accountability in a democratic system. In the apartheid years, it was difficult for progressive civil society organisations to challenge or work alongside the state given the undemocratic nature of the system, but now there are more than 50,000 non-governmental organisations and community-based organisations in South Africa.<sup>9</sup> Many of these organisations not only work towards enhancing and improving democracy, but also strive to promote equality and enhance development within the country.

6 Constitution of the Republic of South Africa, 1996. *Chapter 9: State Institutions Supporting Constitutional Democracy*.

7 *Truth Talk: The Official Newsletter of the Truth and Reconciliation Commission*. Volume 4, Number 1, July 1998.

8 Burger, Delien, ed. "Chapter 15: Justice and Correctional Services." *South Africa Yearbook 2002/03*. Government Communications (GCIS). STE Publishers: Yeoville, Johannesburg, 2003. <http://www.gcis.gov.za/docs/publications/yearbook.htm>. Accessed on October 30, 2003. p. 401.

9 *The Status of Human Rights Organisations in Sub-Saharan Africa: South Africa*. University of Minnesota Human Rights Library. <http://www1.umn.edu/humanrts/africa/safrica.htm>. Accessed on November 17, 2003. p. 1.

Accessibility to the media and objective reporting enhances the ability of citizens to become better informed about issues affecting their lives. Since 1994, the media have operated under the constitutional guarantee of freedom which enables it to report objectively on the political, social, and economic situation of the country. The Promotion of Access to Information Act of 2001, addresses the constitutional right of access to information by encouraging an open, transparent process among organs of state. This Act encourages people to increase their understanding of rights and, more importantly, to exercise these rights in the public sphere.<sup>10</sup> Further, the Media Institute of Southern Africa (MISA) is an example of a non-governmental organisation that promotes diversity and independence in media in Southern Africa.<sup>11</sup>

Nevertheless, HURISA reports, accessibility to media remains problematic, due to distance, rural locations, and an illiteracy rate of approximately 15 percent.<sup>12</sup>

Differences between the Government and the media in the past have related to the latter wanting journalists to testify at trials or reveal their sources, HURISA reports. Other problems have included the confiscation of video tapes from news agencies and intimidation by government officials towards broadcasters.<sup>13</sup> Relative to other southern African countries, however, South Africa's media officials appear to experience less interference from state officials.

### > *The rule of law*

The Constitution of South Africa provides for an independent, impartial judiciary subject only to the Constitution and the law. Court decisions become the law of the land and no person or state organ can obstruct judicial proceedings. The judicial branch of government consists of the Constitutional Court, the Supreme Court of Appeals, the High Courts, the Magistrate Courts, and any other court recognised by an Act of Parliament. The Constitutional Court rules on cases concerned with constitutional matters. Consisting of eleven judges, the Constitutional Court interprets, defends, and enforces the Constitution and overturns any law or executive act it deems unconstitutional.

The Supreme Court of Appeal is the highest court. It hears appeals from the High Court and interprets and decides all other legal matters not related to the Constitution. The High Court decides on constitutional matters, except for those that can only be heard by the Constitutional Court, as well as any other case not assigned to another court by an Act of Parliament. The significance of these three courts – the Constitutional Court, the Supreme Court of Appeal, and the High Courts - cannot be over-

stated. Not only do these courts protect citizens' general constitutional rights, they also uphold the values enshrined in the Bill of Rights: civil, political, social, economic, and environmental rights.

Magistrates' and other courts can also decide on matters determined by Acts of Parliament except for those related to both constitutional cases and Presidential conduct. Magistrates' courts and High Courts are generally the courts of original jurisdiction in criminal cases.

The Bill of Rights provides for due process, particularly the right to a fair, public trial within a reasonable amount of time after being charged. It also prohibits detention without trial. Every person has the right to be informed of the reasons for detention, to be advised of the right to remain silent, to be charged within 48 hours of arrest, to consult with legal counsel, to communicate with relatives, medical practitioners, and religious counsellors, and to be detained in conditions consistent with human dignity.

Nevertheless, many factors affect the accessibility of these rights for arrested, detained and accused persons. For example, high crime levels create delays within the legal system. Providing lawyers to those who cannot afford them is costly for the state. Moreover, many detained people simply lack knowledge of their rights such as the right to legal representation. Although legal aid is available in some criminal and civil cases, limited resources affect accessibility to this service.<sup>14</sup> These problems, among others, remain ongoing challenges for the effective implementation of the rule of law.

10 Burger, Delien, ed. "Chapter 15: Justice and Correctional Services." *South Africa Yearbook 2002/03*. Government Communications (GCIS). STE Publishers: Yeoville, Johannesburg, 2003. <http://www.gcis.gov.za/docs/publications/yearbook.htm>. Accessed on October 30, 2003. p. 388.

11 Ngugi, Tee. *So This is Democracy? State of the media in Southern Africa – 2001*. Media Institute of Southern Africa. Compiled by Zoé Titus. Ed. by Graham Hopwood. Solitaire Press: Windhoek, Namibia, 2002, p. 9.

12 United Nations Education, Social, and Cultural Organisation (UNESCO). Institute for Statistics, *Literacy and Non-Formal Education Sector*. Estimates and Projections of Adult Literacy for Population Aged 15 years and above, by country and by gender, 1970-2015. July 2002 assessment. [http://www.uis.unesco.org/en/stats/statistics/UIS\\_Literacy\\_Country2002.xls](http://www.uis.unesco.org/en/stats/statistics/UIS_Literacy_Country2002.xls). Accessed November 5, 2003.

13 *So This is Democracy? State of the media in Southern Africa – 2001*. Media Institute of Southern Africa. Windhoek, Namibia: Solitaire Press, 2002, p. 103-104.

14 Burger, Delien, ed. "Chapter 15: Justice and Correctional Services." *South Africa Yearbook 2002/03*. Government Communications (GCIS). STE Publishers: Yeoville, Johannesburg, 2003. <http://www.gcis.gov.za/docs/publications/yearbook.htm>. Accessed on October 30, 2003. p. 397-97.

Law enforcement and domestic security in South Africa is carried out by the South African Police Service (SAPS). Since 1994, the SAPS has undergone extensive changes and restructuring in response to the systemic transitions taking place in the country. Today, however, the police force continues to lack the resources and training necessary to function effectively. Numerous violations and abuses by police officers are reported every year. Illiteracy rates in the SAPS are extremely high. Accusations of serious police abuse both within society and within prisons are frequent.

Several independent state agencies now oversee police accountability in South Africa. These include the Independent Complaints Directorate (ICD), the national and provincial Secretariats for Safety and Security, and the parliamentary Portfolio Committee for Safety and Security.<sup>15</sup> The ICD's importance lies in investigating deaths in police custody and deaths that result from police action. In 2000, for example, there were 387 deaths reported from police action in the first eight months of the year. Of these deaths, 137 occurred in police custody. According to the ICD, government cooperation in its functioning remains poor.<sup>16</sup>

Given the relative infancy of South Africa's democracy, the progress until now has shown promise for the future despite the malevolent practices that have occurred within the country. Thus, the existence of formal institutions, structures, and legal systems within a country does not lead to the automatic attainment of democracy, good governance and the rule of law. In spite of its relatively successful political and legal transition over the past ten years, South Africa faces ongoing socio-economic challenges that continue to impede its development.

## 7.2 Economic and social overview

### > *Economic policy*

The Government elected in 1994 was faced with the twin challenges of establishing an effective democratic system and responding to the enormous economic and social developmental issues within the country. Much progress was made during this period; institutional segregation was eliminated, universal suffrage recognised, property rights extended, access to education and employment increased and constitutional rights enshrined. The Constitution guarantees socio-economic rights to all citizens in accessing employment, housing, health, food, water, land, social security, education, freedom of culture, religion and language, and children's rights. It also instructs the state to take legislative and other measures to ensure the progressive realisation of these rights within its available resources.

Economically, many of South Africa's sectors rank today among the best in the world. It is the financial centre of the African continent, has the largest economy in southern Africa and an extensive supply of natural resources. Internationally, South Africa has formed multilateral economic ties with the World Trade Organisation (WTO), the United Nations Conference on Trade and Development (UNCTAD), the Cairns Group, and the World Economic Forum. South Africa is also a member of the African Union and the South African Development Community. Its foreign economic policy is based on the principle that economic recovery in South Africa is inextricably linked with recovery on the continent.<sup>17</sup> South Africa has also been at the forefront of the New Partnership for Africa's Development (NEPAD), an African-driven organisation that seeks trade and partnerships with other countries in the world based on the principles of respect, dignity, and accountability.

### > *Income distribution, poverty and employment*

Nevertheless, it is clear that numerous social and economic problems, many of which originated during the apartheid era, persist today: although civil and political rights extend to all citizens, socio-economic rights do not.<sup>18</sup> South Africa's poverty and inequality are profound and its unemployment rates extremely high. Income inequality in South Africa is among the highest in the world with the richest 10 percent of people receiving 47 percent of income, and the poorest 20 percent receiving only 3 percent of income. In Gauteng, the richest, most urban province, people earn six times more than people in the Northern Province,

15 Open Society Justice Initiative. *South Africa: Enhancing Police Accountability*. [http://www.justiceinitiative.org/projects/ncjr/police/sa\\_police](http://www.justiceinitiative.org/projects/ncjr/police/sa_police). Accessed on October 28, 2003.

16 U.S. Department of State. *South Africa – Country Reports on Human Rights Practices 2002*. Bureau of Democracy, Human Rights, and Labor. March 31, 2003. <http://www.state.gov/g/drl/rls/hrrpt/2002/18227.htm>. Accessed on October 20, 2003.

17 Membership in the South African Development Community consists of the following countries: Angola, Botswana, Democratic Republic of the Congo (DRC), Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. Source: Burger, Delien, ed. "Chapter 12: Economy." *South Africa Yearbook 2002/03*. Government Communications (GCIS). STE Publishers: Yeoville, Johannesburg, 2003. <http://www.gov.za/yearbook/2002/economy.htm>. Accessed on October 30, 2003.

18 Burger, Delien, ed. "Chapter 15: Justice and Correctional Services." *South Africa Yearbook 2002/03*. Government Communications (GCIS). STE Publishers: Yeoville, Johannesburg, 2003. <http://www.gov.za/yearbook/2002/economy.htm>. Accessed on October 30, 2003. p. 386.

the poorest and most rural province.<sup>19</sup> More than 72 percent of the rural population and 40 percent of the population generally earn less than US\$2.50 a day.<sup>20</sup> The Congress of South African Trade Unions (COSATU) stated in July 2001:

In socio-economic terms the legacy of apartheid remains entrenched and, with the massive loss of jobs in the past decade, even appears to be worsening. Wealth is still concentrated in a white minority...The number of people living in poverty is staggering. Almost half of the population lives in poverty, including many of the employed – the “working poor.” Unemployment and underemployment are on the rise as more jobs are shed and people rely on survivalist activities to make ends meet. The complex nature of the transition emerged in deeply contradictory government policies.<sup>21</sup>

Ten years after the ending of apartheid, enormous wealth disparities are still visible despite the country’s progress in numerous economic areas. COSATU points out that “while Africans make up 76 percent of the population, their share of income amounts to only 29 percent of the total. Whites, at less than 13 percent of the population, take away 58.5 percent. According to the National Report on Social Development 1995-2000, 61 percent of Africans are considered poor compared to just one percent of whites. The percentage of people living below US\$1 a day between 1990 and 1999 was 11 percent.

Unemployment remains an enormous challenge for the Government. Unemployment in 1999 was 23.3 percent and 22.5 percent in 2002 and the unemployment rate for Africans is 42.5 percent compared to 4.6 percent for whites. Applying a wider definition of unemployment to include people actively looking for work raises these figures to 36.3 percent in 1999 and 37.3 percent in 2002. The South Africa Survey 2002/03 cites that among the 11 million people between the ages of 16 and 30 in South Africa, approximately 52 percent are unemployed. About 50 percent of these unemployed people are considered on the periphery of the job market with limited opportunities for attaining formal sector employment. Moreover, government data demonstrates a strong correlation between education levels and unemployment rates. This creates a culture of pessimism among young people who often turn to other methods of survival, such as crime, drugs, and prostitution. Unemployment, with its inherent links to poverty, crime, and HIV/AIDS, continually threatens to erode investor confidence in the country.

Reportedly, 1.1 million jobs were created between 1996 and 1999, but these positions were primarily informal and low-paying. In contrast, more than 400,000 jobs in the formal sector were eliminated. In manufacturing, for example, many jobs have been eliminated as a result of factors such as privatisation and mechanisation.

To address the social and economic problems in the country after the historic elections in 1994, the ANC Government implemented a system of reform designed to expand the economy, reduce poverty, and create jobs. Known as the Reconstruction and Development Programme (RDP), it endeavoured to meet the basic needs of citizens, democratise the state and society, build the economy, and develop human resources. The RDP focused on achieving higher socio-economic standards in housing; electricity; land reform; social security and social welfare; water; health care; job creation through public works; and education and training.

Persistent fiscal problems, currency devaluation and low investor confidence, however, led to the adoption in 1996 of a five-year plan known as the Growth, Employment and Redistribution (GEAR) programme. Macroeconomic in scope, GEAR was designed to work alongside the RDP to reduce government spending and inflation rates and increase private investment, growth, job opportunities and redistribution. Economic variables, such as gross domestic product, inflation and budget deficit, show volatile results in South Africa following the implementation of both the RDP and GEAR. Governmental explanations for this point to a weakened international economy, a decline in the primary sector, and a slowdown in the manufacturing sector.

Opponents to GEAR’s policies, such as COSATU, claim that the programme has not achieved its original goal of creating employment, redistributing income, and enhancing social and economic prospects for the disadvantaged populations. COSATU also argues that GEAR’s strict targets and fiscal spending cut-backs directly conflict with the need to reduce poverty and enhance equality.

19 Family Health International. *Socio-economic Overview: South Africa*. <http://www.fhi.org/en/HIVAIDS/Publications/manualsguidebooks/corrhope/corrroc.htm>. Accessed on November 3, 2003.

20 Family Health International. *Socio-economic Overview: South Africa*. <http://www.fhi.org/en/HIVAIDS/Publications/manualsguidebooks/corrhope/corrroc.htm>. Accessed on November 3, 2003.

21 Knight, Richard. “South Africa: Economic Policy and Development.” July 2001. <http://richardknight.homestead.com/files/sisaconomy.htm>. Accessed on October 18, 2003.

### > **Privatisation**

The Government, in its more recent attempts to reduce spending and restructure, has privatised numerous state-owned enterprises including, most detrimentally, those related to the provision of basic, essential services. International organisations such as the World Bank and the International Monetary Fund have even linked their funding to the signing of privatisation agreements in areas such as water, education, and health care. Unfortunately, the devastating, often irreversible effects of privatisations on the implementation of socio-economic rights are realised too late.

### > **Education**

According to South Africa's Government Communications (GCIS), the Government's total non-interest expenditure on health, education, welfare, housing, and other social services over the past ten years increased from 52.9 percent to 58.3 percent.<sup>22</sup> In the area of education, government statistics report that overall enrolment in schools increased from 150,000 in 1999 to 280,000 in 2002. Gross primary school enrolment remained steady between 1995 and 2001 at 95.5 percent. Gross secondary enrolment in 2001 was 85 percent, an increase of 15 percent since 1992.

The male adult literacy rate was 82 percent in 1990 and 86 percent in 2000, compared to 80 percent and 84 percent for females. Government statistics cite literacy rates within the general population of 83 percent in 1996 and 89 percent in 2001. Within the 15 to 24 year age bracket, government data demonstrate that literacy rates increased from 83 percent in 1996 to 96 percent in 2001, and matriculation pass rates increased from 54 percent to 69 percent during the same period.

### > **Health and social grants**

Public expenditure on health as a percentage of GDP was 3.2 percent between 1990 and 1998. After 1994, the Government implemented a free health care policy for women and children under the age of six. As a result, immunisation rates increased from 63 percent in 1994 to 72 percent in 2002, resulting in the elimination of deaths from measles and a decrease in deaths from polio. Infant mortality, however, increased from 40 per 1,000 births in 1991 to 45 in 1998.

Life expectancy figures vary greatly depending on the source. According to the Southern African Regional Poverty Network, life expectancy at birth in 2002 was estimated at 45.2 years for men and 45.7 years for women. United Nations Development Programme data states that life expectancy in 1995 was 65 years

and 52 years in 2000. Medical Research Council life expectancy data was 57 years in 1995 and 55 years in 2000.<sup>23</sup> World Bank information cites life expectancy in 2002 to be 46 years.

At the end of 2001, approximately 20.1 percent of adults between the ages of 15 and 49 were living with HIV/AIDS. These numbers translate into 5,000,000 adults and children. Of this, 2,700,000 are women and 250,000 are children between the ages of 0 and 14. In this same age bracket, 660,000 children have been orphaned due to AIDS. Among women aged 15-24, the HIV prevalence rate is 25.6 percent. AIDS-related deaths in 2001 were approximately 360,000.

The publication *ANC Today* states that the number of people who received governmental social grants increased from 2.6 million people in 1994 to 6.8 million in 2003. During this same period, spending on social grants increased from R10 billion to R34.8 billion.

### > **Water, sanitation and electricity**

Government statistics cite that the proportion of people with access to clean water increased from 60 percent in 1996 to 85 percent in 2001, an increase of nine million people. In 1994, only 970,000 households in rural areas could access water; by 2003, an additional 1.6 million households received water access. In 1994, four million households in urban areas could access water; this had increased by 1.7 million by 2003. In the area of sanitation, 49 percent of homes in 1994 had access to sanitation which increased to 63 percent in 2003. Water and sanitation expenditures between 1995 and 2003 was R5 billion. Access to electricity between 1995 and 2000 increased from 63.5 percent to 71.7 percent. These statistics, however, do not paint an accurate picture of just how accessible or inaccessible this water really is. Water and service quality, infrastructure, payment methods, service cut-offs, and the distance that people must travel to the water source are just some of the many obstacles to accessibility not visible in these statistics.

22 Burger, Delien, ed. *Pocket Guide to South Africa 2003*. First edition. Government Communications (GCIS). STE Publishers: Yeoville, Johannesburg, 2003. <http://www.gcis.gov.za/docs/publications/pocketguide.htm>. Accessed on November 5, 2003, p. 11.

23 Southern African Regional Poverty Network. *Annual Profile – South Africa. Africa Economic Research*. Economics Division – Africa Research. January 2003. [http://www.sarpn.org.za/documents/d0000243/P234\\_South\\_Africa.pdf](http://www.sarpn.org.za/documents/d0000243/P234_South_Africa.pdf). Accessed on November 1, 2003.

### > **Housing**

The Government approved approximately two million housing subsidies between 1994 and 2001 with women receiving nearly half of these subsidies. Between 1994 and 2003, over six million people received housing as a result of the subsidies.

### > **Land**

Land redistribution is an important aspect of the Government's goal to alleviate poverty. The government cites that since 1994, the land redistribution programme transferred 1.8 million hectares to nearly 140,000 households. Of these transfers, 80 percent occurred between 1997 and 2002. By December 2002, government compensation to people forcibly removed from their homes totalled R1.2 billion. Nevertheless, these statistics do not account for problems occurring during the provision of compensation, such as instances where legalities have obstructed the payment of compensation after forced removals.

### > **Culture**

A report by the Swedish Foundation for Human Rights states that cultural rights in South Africa "are the least developed of the rights contained in the constitution." Before the end of apartheid in 1994, only an exclusive minority participated in arts and culture leaving most South Africans unable to access these opportunities. Today, in a country as culturally diverse as South Africa, it is imperative to both recognise and preserve cultural rights. With 11 official languages and a variety of religions, traditions, and racial backgrounds, South Africa is indeed a plural society. After 1994, the Department of Arts and Culture created an education programme to train people in cultural industries such as arts, crafts, film, music, and events. The purpose of training and education programmes is to promote the involvement of more people and to diversify arts and culture.

To achieve these goals, the Department works with numerous other bodies such as the Department of Home Affairs, the Film and Publication Board, the National Arts Council, and the National Cultural History Museum. Legislation such as The National Heritage Council Act, 1999 (Act 11 of 1999) creates frameworks for coordinating archives, museums, heritage resources, geographical names, and libraries, advising on policy, fundraising, and promoting projects internationally.

Numerous arts and cultural organisations have also been created to enhance and promote cultural rights such as the National Heritage Council, the South African Heritage Resources Agency, and the National Arts Council. Legacy projects to preserve sym-

bolic representations of South Africa's past also exist such as the Women's Monument, the Anglo-Boer/South African War of 1899, the Battle of Blood River/Ncome Project, the Nelson Mandela Museum, the Constitution Hill Project, Khoisan Project, and the Freedom Park Project.

The Government has also established arts and culture education and training, cultural tourism, cultural industries growth strategy, arts festivals, theatre, music, dance, visual arts, photography, architecture, rock art, crafts, design, literature, film, museums and monuments, archives and heraldry.

## ■ 7.3 Violence in South Africa

One of the most devastating legacies of apartheid has been the formation of a 'culture of violence' within South African society. A past filled with political violence and state-sponsored violence has resulted in a contemporary, democratic society that is characterised by high and unacceptable levels of violent crime. Because crime and politics have been closely linked in South the past, the use of violence for political and personal aims has become endemic in South African society. Other aspects of violence in South Africa, including the impact of poverty and economic difficulties on violence are dealt with above in Chapter 1, section 9 and Appendix C, and in Chapter 2.

In response to high levels of crime in general, vigilante justice and mob justice have been on the increase. Furthermore, high levels of crime have also contributed to severe problems in the criminal justice system. The slow decrease of the crime rate, and more arrests made by the police, has resulted in an increase in the backlog of criminal court cases, which in turn has resulted in the constant growth of prison overcrowding. In a nutshell, violent crime has become the biggest public concern in contemporary South Africa.

### > **Violent crime**

South Africa has some of the highest rates of violent crime in the world<sup>24</sup> Between April 2003 and March 2004, the police recorded about 872,866 violent crimes.<sup>25</sup>

24 M Sibusiso, *Prevention is better than cure: Addressing violent crime in South Africa*, Institute for Security Studies (ISS), Published in SA Crime Quarterly, No.2, November 2002, p.1 or Visit <http://www.iss.org.za/pubs/CrimeQ/No.2/2Masuku.html>.

25 Visit [http://www.saps.gov.za/statistics/reports/crimestats/2004/pdf/crimes/rsa\\_totals03\\_04\\_new.pdf](http://www.saps.gov.za/statistics/reports/crimestats/2004/pdf/crimes/rsa_totals03_04_new.pdf).



For most South Africans, particularly the poor, this is not a recent phenomenon. Extreme levels of inequality and decades of political conflict have produced a society prone to violent crime. Evidence indicates that crime rates in black townships have been high for years, but that racial segregation largely shielded whites from its effects. The wearing down and then collapse of apartheid boundaries allowed violent crime to move out of the townships and into the suburbs, where it is more likely to be recorded.<sup>26</sup>

Violent crime as categorised in the official South African Police Service (SAPS) statistics include various offences that differ from each other in terms of type and seriousness. For the purposes of this chapter, individual crime types have been divided into two categories<sup>27</sup>:

*Interpersonal violent crime:* murder, attempted murder, serious assaults (or assault with the intent to cause grievous bodily harm or assault GBH), common assaults and rape.

*Violent property crime:* these include all categories of robbery, i.e. robbery with aggravating circumstances (armed robbery, car hijacking etc.) and common robbery.

Of all the violent crime types recorded by the SAPS, murder is the only one that shows a constant declining trend. Over the period 1994/1995 to 2003/2004, the national murder rate decreased by 23.7 percent. In contrast to the declining number of murders, all other interpersonal violent crime has slowly been rising over the same period. Nationally, attempted murder has increased by 12.2 percent, serious assaults by 20.6 percent, common assaults by 40.3 percent and rape by 17.8 percent.

Violent property crime has also slowly been rising over the period 1994/1995 to 2003/2004.<sup>28</sup> Nationally, recorded robbery with aggravating circumstances increased by 57.6 percent over this period, while recorded common robbery increased by a staggering 192.6 percent.<sup>29</sup>

It is widely acknowledged that crimes such as assault and rape are generally under-reported by the public, and sometimes under-recorded by the police. Various South African victim surveys have shown that over 50 percent of these crime types go unreported. As a result, there is a strong possibility that many of the increases reflected in the SAPS crime statistics are not in actual fact an increase in the occurrence of these crimes, but are most probably the result of higher reporting rates.<sup>30</sup> Nevertheless, levels of violent crime in South Africa remain extremely high, especially compared to other countries. For example, in 1999, a third of all crimes recorded by the police in South Africa were violent in nature. In the United States, which is

considered to be a relatively violent society, 15 percent of recorded crimes were violent in that year, while about 6 percent of recorded crimes in the United Kingdom were violent in nature.<sup>31</sup>

At least 90 percent of violent criminals in South Africa get away with their transgressions. The low conviction rates encourage violent crime.<sup>32</sup> Only 5.7 percent of violent crimes reported to the police had resulted in convictions, while a further 4.4 percent were still being tried two years later. The rate of acquittals was at 5.4 percent, while the number of cases withdrawn was 9.8 percent of those reported.

Police statistics and victim surveys also suggest a link between social deprivation, race and risk of victimisation. Victim surveys conducted from 1997 to 2000 show that the poor, the majority of whom are black and coloured and living in townships, are more at risk of being victims of interpersonal violent crimes as well as violent property crimes like robbery. By comparison, wealthy people living in the suburbs are most at risk of property crimes, in particular vehicle theft and burglary.<sup>33</sup>

### > Police

Although the South African government has introduced significant reforms in the police, inappropriate and excessive use of force by some police officials remain a serious human rights issue.<sup>34</sup> According to reports of the Independent Complaints

26 A Louw & M Shaw, *Stolen Opportunities: the impact of crime on South Africa's poor*, Institute for Security Studies (ISS) Monograph Series, No.14, July 1997. pp. 5-9.

27 M Sibusiso, *op. cit.*

28 At the time of writing the final draft of this report, the SAPS published their 2004/2005 national statistics on various crimes. According to these statistics, over the period 2003/2004 to 2004/2005, all recorded interpersonal violent crime, except for rape, have shown a decrease. Recorded violent property crime has also shown a decrease over the same period.

Visit

[http://www.saps.gov.za/statistics/reports/crimestats/2005/\\_pdf/area/rsa\\_total.pdf](http://www.saps.gov.za/statistics/reports/crimestats/2005/_pdf/area/rsa_total.pdf).

29 Visit

<http://www.saps.gov.za/statistics/reports/crimestats/2004/categories.htm>. and click on the relevant category.

30 T Leggett, *Improved Crime Reporting: Is South Africa's crime wave a statistical illusion?* South African Crime Quarterly 1 (1), July 2002, pp. 7-9.

31 M Sekhonyane & A Louw, *Violent Justice: Vigilantism and the State's Response*, Institute for Security Studies (ISS) Monograph Series, No.72, April 2002, p. 11.

32 South African Law Commission, *Research Paper 18: Conviction Rates and Other Outcomes of Crimes Reported in eight South African Police Areas*, 2003.

33 M Schonteich & A Louw, *Crime in South Africa: A country and city profile*, Institute for Security Studies (ISS) Paper 49, April 2001.

34 Human Rights Watch, *World Report on South Africa 2005*. [http://hrw.org/english/docs/2005/01/13/safric9886\\_txt.htm](http://hrw.org/english/docs/2005/01/13/safric9886_txt.htm).

Directorate (ICD),<sup>35</sup> between April 1997 and March 2002, a total of 4,644 cases involving police use of force or brutality were recorded. Of these cases, 2,351 were deaths as a result of police action (excluding deaths in custody), while the remaining 2,293 cases were recorded complaints of non-fatal assaults. The category breakdown for the recorded non-fatal assaults was as follows: 221 were torture, 1,610 were assault with the intent to cause grievous bodily harm (or assault GBH) and attempted murder and 462 were common assault. ICD figures for serious assaults by the police consistently outnumber figures for less serious assaults by a factor of 4 to 1. Although in practice common assaults by police far outnumber more serious assaults, the ICD statistics indicate that victims of less serious assaults are highly unlikely to report these to the ICD.<sup>36</sup>

According to the ICD's 2002/03 annual report, of the 311 deaths as a result of police action, 294 were caused by shootings. The report does not, however, indicate how many of these shootings were illegal and how many were legitimate.<sup>37</sup> In general, according to various ICD reports, shootings usually account for more than 80 percent of all deaths by police action.

The high number of deaths, particularly in police custody, is worrying.<sup>38</sup> According to ICD records, between April 2001 and March 2004, there were 765 deaths in police custody.<sup>39</sup> The ICD reports listed sub-categories under deaths in police custody, which included natural causes, suicide, injuries in custody, injuries prior to custody and possible negligence. On average, 50 percent of deaths in police custody were as a result of natural causes, implying that "the deceased either became ill or was already ill when they were taken to police custody". A study on custody-related deaths found that some deaths could have been avoided if the police had acted, by for example, providing immediate medical attention.<sup>40</sup> According to the South African Police Service (SAPS) website, several deaths in custody, as well as deaths as a result of police action, have been found to have occurred as a result of negligence and wrongful action by members of the Service.<sup>41</sup>

All in all, while there have been significant improvements in the conduct of police officials in the new democratic South Africa, the propensity to violence of some members of the police did not simply disappear. The problem of police brutality has continued, although at a lower level than in the past.<sup>42</sup> Two video recordings - one in 1999 showing members of the Johannesburg Flying Squad assaulting hijacking suspects, another in 2000 showing members of the North East Rand Dog Unit using their dogs to repeatedly savage three Mozambican men - clearly illustrated this problem, and many other examples exist.

Factors that have contributed to the continuation of police bru-

tality include the increase in violent crime, along with a decline in the effectiveness of the criminal justice system. This has contributed to a perception that relying on the mechanisms of the justice system is likely to be ineffective and, as a result, that 'self-help' measures are called for. Thus, the apparent growth of vigilantism in South African society in general, has been paralleled by a growth of 'police vigilantism'. Although police motivation has changed from 'fighting communism' to 'fighting crime', the style of policing has not necessarily changed much. In cases of abuse, black people, and particularly marginalised black groups, most notably foreigners, have continued to be the primary victims.<sup>43</sup> According to the United States Department of State, incidents of police harassment and attacks against foreigners in South Africa have continued to be a major concern. This happened especially during coordinated police raids of areas where foreign (African) nationals resided. According to hearings held on xenophobia, by the South African Human Rights Commission, foreigners are often mistreated and discriminated against by police. The situation is worsened by corruption within the Department of Home Affairs and the South African Police Service.<sup>44</sup>

35 The ICD is a government department that was established in April 1997 to investigate complaints of brutality, criminality and misconduct against members of the South African Police Service (SAPS) and Municipal Police Services (MPS). It operates independently from the SAPS in the effective and efficient investigation of alleged misconduct and criminality by SAPS members. <http://www.icd.gov.za/about/brochure.htm>.

36 See D Bruce, *Gripes or Grievances? What the Independent Complaints Directorate statistics tell us (or not)*, Centre for the Study of Violence and Reconciliation, Published in SA Crime Quarterly No. 4, June 2003, p. 3-5 or visit <http://www.iss.org.za/pubs/CrimeQ/No.4/5ICD.html>.

37 T Masuku, *Numbers that count: National monitoring of police conduct*, Centre for the Study of Violence and Reconciliation, Published in SA Crime Quarterly No. 8, June 2004, p 6.

38 Human Rights Watch, *World Report on South Africa 2005*, *op. cit.*

39 ICD Annual Reports 2001/02, 2002/03 and 2003/04. <http://www.icd.gov.za/reports>

40 BD Bhana, *Custody related deaths in Durban, South Africa (1998 - 2000)*, *American Journal of Forensic Medicine and Pathology*, 24 (2), June 2003.

41 Visit [http://www.saps.gov.za/crime\\_prevention/death\\_in\\_custody/background.htm](http://www.saps.gov.za/crime_prevention/death_in_custody/background.htm).

42 D. Bruce, *New Wine from an Old Cask? The South African Police Service and the Process of Transformation*, Centre for the Study of Violence and Reconciliation, Paper presented at John Jay College of Criminal Justice, New York, 9 May 2002, pp. 13-15.

43 D Bruce, *New Wine from an Old Cask? The South African Police Service and the Process of Transformation*, *op. cit.*

44 United States Department of State, *South Africa Country Report on Human Rights Practices 2004*, p. 4 and 15. Released by the Bureau of Democracy, Human Rights and Labor, 28 February 2005 or visit <http://www.state.gov/g/drl/rls/hrrpt/2004/41627.htm>.

### > Prisons

Most prisons do not meet international standards, and prison conditions do not always meet the country's minimum legal requirements.<sup>45</sup> Overcrowding remains a serious human rights issue and threatens the health and living conditions of prisoners and obstructs rehabilitation efforts.<sup>46</sup> As of January 31, 2005, 187,446 prisoners were being held in facilities that should accommodate only 113,825. This means that on average prisons have an occupation rate of 164 percent.<sup>47</sup> As a result, prisoners are often required to sleep in shifts, because of a lack of space.<sup>48</sup>

It is not surprising that both inmates and officials become frustrated and consequently channel their frustration via aggressive or violent behaviour. According to the Department of Correctional services, between 1 April 1999 and 31 March 2003, the total number of assaults in South prisons was 11,736. Of these, 2,369 cases of assault were 'warden on prisoner', while 9,367 cases were 'prisoner on prisoner'. According to the Office of the Inspecting Judge<sup>49</sup>, statistics on assault are not always reliable as some inmates fear reprisals if they report an assault on them by a fellow prisoner or a warden.<sup>50</sup> According to the Office of the Inspecting Judge, between 1 April 2003 and 31 March 2005, 5,527 complaints have been received from prisoners regarding 'member/warden on inmate assault'.<sup>51</sup> During the same period, 5,552 complaints have been received from prisoners regarding 'inmate on inmate assault'. These figures show that the prevalence of violence in prisons is still at an unacceptable level.

Abuse and assault of prisoners are both physical and sexual. According to press reports, some detainees awaiting trial contracted HIV/AIDS through rape. Regarding sentenced prisoners, there are instances where juveniles are held with adults. In these situations, youths are vulnerable to sexual exploitation, including rape. The natural death cases in South Africa's prisons have increased by 500 percent since 1995 and continue to grow. Keeping in mind that 90 percent of natural deaths in South African prisons are AIDS-related, sexual assault and rape literally means a death sentence.<sup>52</sup>

The Jali Commission of Inquiry was appointed on 8 August 2001 to investigate allegations of corruption, crime, mismanagement, violence and intimidation in the Department of Correctional Services. The Commission revealed and exposed the following transgressions by staff members<sup>53</sup>:

- Gross negligence
- Accepting bribes
- Receiving money for delivering goods (such as: drugs, firearms, alcohol as well as the selling of juveniles to older hardened criminals for sex)

- Assault
- Sodomising juveniles
- Murder of a whistle-blower
- Assistance with escapes
- Unlawful release of prisoners

### > Vigilantism

There is great public concern in South Africa regarding the capacity of the criminal justice system to deal with the high level of crime, and instances of vigilante justice reflects this concern.<sup>54</sup> The vigilante problem is hard to quantify, but the largest and most recent survey conducted in 1999 in the Eastern Cape found that one in 20 people said they had personally been involved in vigilante activity and every fifth person said they would consider becoming involved.<sup>55</sup>

The problem with vigilantism is that it not only leads to an increase in the overall crime level, but it also influences how the Government responds to crime in general, and most importantly, it undermines the rule of law. The two most notorious vigilante groups in South Africa are without a doubt People Against

45 *Ibid.*

46 Human Rights Watch, World Report on South Africa 2005, *op. cit.*

47 South African Department of Correctional Services website, Statistics. Visit <file:///C:/Documents%20and%20Settings/Users3/Local%20Settings/Temporary%20Internet%20Files/Content.IE5/8LANCDQR/Basic%2520Info%2520Jan%25202005%5B1%5D.ppt#276,2,Slide 2>.

48 United States Department of State, *op. cit.*, p. 5.

49 The Office of the Inspecting Judge, formally known as the Judicial Inspectorate of Prisons, is an independent statutory body established to monitor the conditions in prisons and the treatment of prisoners. It appoints Independent Prison Visitors to visit prisoners and, should there be complaints, try to have them resolved.

50 T Leggett, A Louw, M Schonteich & M Sekhonyane, *Criminal Justice in Review 2001/2002*, ISS (Institute for Security Studies) Monograph Series, No. 88, November 2003, p. 57.

51 Judicial Inspectorate of Prisons, Annual Report 2003/04, p.13 and Annual Report 2004/05, p. 6 or Visit <http://judicialinsp.pwv.gov.za/Annualreports/2004a.pdf>. and <http://judicialinsp.pwv.gov.za/Annualreports/annualreport2005.asp>.

52 United States Department of State, *op. cit.*, p. 4.

53 M Sekhonyane, *Showing its teeth: The Jali Commission on prison corruption*, Institute for Security Studies, Published in SA Crime Quarterly No.2, November 2002, p. 2 or Visit <http://www.iss.org.za/pubs/CrimeQ/No.2/6Sekonyane.html>. Also visit <http://www.dcs.gov.za/Annualreport/DCS%20Annual%20Report%202003.pdf>.

54 United States Department of State, *op. cit.*, p. 6.

55 M Schonteich, *Justice versus Retribution: Attitudes to punishment in the Eastern Cape*, ISS Monograph Series, No. 45, February 2000.

Gangsterism and Drugs (or PAGAD) in the Western Cape and Mapogo-a-Mathamaga (commonly referred to as 'Mapogo') in the Limpopo province. The activities of both these groups have seen an increase in gang related violence in the case of PAGAD, and many instances of assault in the case of Mapogo.<sup>56</sup>

Numerous court cases involve members of PAGAD. There are hundreds of cases under investigation against suspected members of PAGAD and scores of trials pending based on charges that include murder, attempted murder, possession of explosives and unlicensed firearms, armed robbery and conspiracy to commit murder.<sup>57</sup>

On the other hand, Mapogo allegedly has more than 90 branches and 50,000 members throughout the country, including offices in at least nine cities. Mapogo is known for targeting persons they suspected of property crimes against their members, torturing suspected criminals as well as beating persons with clubs and whips.<sup>58</sup>

The key concern about vigilante groups is that they often use violent means to illicit confessions and mete out punishment. This approach to policing and justice is in total opposition to the functioning of the formal criminal justice system and threatens the rule of law – the foundation of any democracy. Instead of reducing crime, vigilante activities add to the workload of the police and courts. For example, vigilantes have assaulted alleged criminals, dropped them off at police stations and then refused to testify in court as a witness to the alleged crime.<sup>59</sup>

### > Violence against women and children

Violence against women and children is widely recognised as a serious concern.<sup>60</sup> South Africa has one of the highest per capita rates of reported rape in the world.<sup>61</sup> Between April 2003 and March 2004, 52,733 rapes and attempted rapes were reported to the police. This is equal to a rape ratio of 113.7 per 100,000 of the population.<sup>62</sup> A study conducted in 1999 found that the incidence of rape for women aged between 18 and 49 years was 1,300 per 100,000 women.<sup>63</sup>

Studies that seek to identify the actual level of violence and abuse have documented levels of between 19 percent and 40 percent.<sup>64</sup> These figures correlate with estimates of coercive sex.<sup>65</sup> In general, studies have found violence in relationships to be so widespread that men and women often accept coercive and even violent sex as 'normal'. As an example of this, research in urban Gauteng found that more than a quarter of women (27 percent) and nearly a third of men (31 percent) agreed that forcing someone you know to have sex with you is never seen as sexual violence.<sup>66</sup>

In general, South African research on violence against women emphasises that:<sup>67</sup>

- Domestic violence is a common phenomenon.
- The range of abuses that women experience is wide, and includes physical, sexual, psychological and economic abuse, as well as stalking, forced isolation in the home and other controlling behaviours.
- Most cases of domestic violence and rape are not reported to the police: only 1 out of 35 rapes are reported.<sup>68</sup>
- Even when domestic violence and rape are detected by the criminal justice system, the perpetrator frequently goes unpunished: only 5 percent of rape cases reported to the police between April 2003 and March 2004 resulted in a conviction.<sup>69</sup>

South African research on violence against women has estimated the following:<sup>70</sup>

- One in two women have a chance of being raped in their lifetime.
- Less than two percent of reported rapes are false.
- One in four women are in abusive relationships.
- A woman is killed every 6 days by her intimate male partner.
- 85 percent of rapes are gang rapes: A woman is more likely to be raped by 3 to 30 men than a single rapist.

56 M Sekhonyane & A Louw, *Violent Justice: Vigilantism and the State's Response*, *op. cit.*

57 United States Department of State, *op. cit.*, p. 3.

58 *Ibid.*

59 M Sekhonyane & A Louw, *Violent Justice: Vigilantism and the State's Response*, *op. cit.*

60 Human Rights Watch, World Report on South Africa 2005.

61 Commission on Gender Equality: 2004.

62 Visit <http://www.saps.gov.za/statistics/reports/crimestats/2004/categories.htm> and click on the category: rape.

63 R. Jewkes et al., 'He must give me money, he mustn't beat me': Violence against women in three South African provinces. Pretoria: CERSA (Women's Health) Medical Research Council, 1999.

64 *Ibid.*

65 Department of Social Development's Progress Report, March 2002, pp. 18-22.

66 CIEAfrica and Southern Metropolitan Local Council, Gauteng, 2000.

67 S. Bollen, L. Artz, L. Vetten & A. Louw, *Violence against women in metropolitan South Africa: A study on impact and service delivery*, ISS Monograph Series, No.41, September 1999, pp. 5-6.

68 United States Department of State, *op. cit.*, p. 11.

69 *Ibid.*

70 Visit [www.powa.co.za/Display.asp?ID=2](http://www.powa.co.za/Display.asp?ID=2).

Violence against children, including domestic violence and sexual abuse, remains widespread. Between February 2002 and June 2003, the police reported 21,494 cases of rape of children, not including attempted rape. According to various observers, these figures represented a small percentage of the actual incidents of child rape, because most cases involved family members and were not reported. Between 1994/1995 and 2002/2003, reported cases of child abuse<sup>71</sup> have increased by 56.3 percent. In 2002/2003, 4,798 cases of child abuse were reported to the police.<sup>72</sup> Of great concern is the low conviction rate for rape and child abuse.<sup>73</sup>

South African research on violence against children has estimated the following:<sup>74</sup>

- A child is abused every 8 minutes.
- A child is raped every 24 minutes.
- A child is assaulted every 14 minutes.
- One in four girls and one in five boys under the age of 16 years have been sexually abused.
- 50 percent of 26,000 Johannesburg high school students interviewed believed that forced sex is not sexual violence.
- In one township all girls (mean age of 16.4 years) participating in the research had had sexual intercourse. 33 percent said their first experience was rape or forced sex. 66 percent said they had experienced sex against their will.
- The rape graph increases sharply from 3 to 25 year old girls and peaks at girls aged 8 to 11 years.

According to a Human Rights Watch study conducted in South Africa in 2001, sexual violence is rampant in schools. Sexual abuse and harassment of girls by both teachers and other students is. Girls who encountered sexual violence at school were raped in toilets, in empty classrooms and hallways, and in hostels and dormitories. Girls were also fondled, subjected to aggressive sexual advances and verbally degraded at school. Some researchers attribute the increase in sexual violence against girls to a belief gaining credibility in some communities that sexual intercourse with a young virgin can "cleanse" HIV-positive men or men with AIDS of the disease. Justice officials in Kwazulu-Natal province, for example, are concerned that the myth may be promoting an increase in child rape cases. Furthermore, because young women and girls are commonly believed to be less likely to be infected with HIV/AIDS, they run an increased risk of sexual harassment on their way to and from school. Girls have been abducted and sexually assaulted on route to school.<sup>75</sup>

### > *Gang violence*

South African gangs usually form in communities that are characterised by limited economic activity, inadequate infrastructure, poor education and high rates of illiteracy and unemployment.<sup>76</sup> Although gang violence and criminal activity do occur on a national level, it is most common in the Western Cape. In this province, gangs have become much more developed and sophisticated in their methods of attack, business operations and organised structures, compared to anywhere else in the country.<sup>77</sup> Official estimates put the number of gangs on the Cape Flats<sup>78</sup> at approximately 130, with a combined membership of about 100,000.<sup>79</sup> A major concern is the high level of crime that gangs bring into the Cape Flats area. It is estimated that gangs cause up to 70 percent of all crime on the Cape Flats. This includes high levels of violent crime. Gangs are responsible for high levels of burglaries, car hijackings and muggings – crimes that regularly result in violence and murder.<sup>80</sup>

Gangs are also connected with drug dealing and prostitution, and children are the main victims. Gangs target schools for selling drugs and are also known to coerce or kidnap young girls for use in the sex trade. According to a study conducted by the Institute for Security Studies, "street gangs are no longer characterised by youngsters who hang around the streets of local communities to 'defend' the community from rival gangsters. They have developed into organised criminal empires."<sup>81</sup>

71 Refers to physical abuse only.

72 South Africa Survey 2003/2004, p. 407.

73 United States Department of State, *op. cit.*, p.13.

74 Visit [www.powa.co.za/Display.asp?ID=2](http://www.powa.co.za/Display.asp?ID=2).

75 Human Rights Watch, *Scared at school: Sexual violence against girls in South African schools*, 2001 or visit <http://www.hrw.org/reports/2001/safrica/>.

76 A Dissel, Youth, Street Gangs and Violence in South Africa in *Youth, Street Culture and Urban Violence in Africa*, proceedings of the international symposium held in Abidjan, Ivory Coast, pp. 405-411, 5-7 May 1997.

77 I Kinnes, *From urban street gangs to criminal empires: The changing face of gangs in the Western Cape*, ISS Monograph Series, No. 48, June 2000, p. 7.

78 The Cape Flats is a large, flat area of housing projects built in Cape Town, during the Apartheid era, to house the Coloured community. This is an extremely poverty-stricken region with high unemployment and likewise, high levels of gang activity.

79 Well-known gangs such as the Americans, the Hard Livings, the Sexy Boys, the Junky Funky Kids and the Mongrels have become powerful and large on the Cape flats. Most areas of the Cape flats have cells of these larger gangs. The Americans gang, which is the largest, is believed to have as many as 5,000 members.

80 A Standing, *The threat of gangs and anti-gangs policy: Policy discussion paper*, Occasional Paper 116, August 2005 or visit <http://www.iss.co.za/pubs/papers/116/Paper116.htm>.

81 I Kinnes, *op. cit.*, p. 2.

Violence between gangs and vigilantes has been brutal over the years. Vigilantes are known to target gang leaders for execution. While this strategy seemingly assists the vigilantes in achieving their short-term objectives, it also sets the scene for younger and more ruthless gang leaders to inherit the leadership. This usually results in a higher incidence of violence within the community as the creation of a new leadership hierarchy sets the scene for new ascendancy battles.<sup>82</sup>

### > *Other types of violence*

Violent taxi associations called 'mother bodies' are behind most of the violence that has come to be associated with the industry.<sup>83</sup> According to the Commission on Taxi Violence, the taxi industry is managed in a mafia style.<sup>84</sup> A culture of lawlessness, where hit men reign supreme and a licensing body is filled with corruption, is of great concern. According to the Commission, the prevalence of hit squads is singled out as the main cause of violence in the taxi industry.<sup>85</sup>

The incidence of violent crime on farms and smallholdings is a cause for great concern. Farm attacks seem to be a phenomenon unique to South Africa. Although violent crimes do occur on commercial farms elsewhere in the world, violent crimes during farm attacks have been singled out for special attention in South Africa because of the sensitivity and the scale of the issue.<sup>86</sup> There is widespread concern among white farmers that they are

targeted for racial and political reasons. However, according to police and academic studies of farm attacks, the perpetrators apparently are common criminals motivated by financial gain. In the majority of cases the perpetrators were not farm workers.<sup>87</sup>

Between 1997/1998 and 2002/2003, there were 5,020 farm attacks in South Africa. During this period, 771 people (farmers, farm workers and members of their families) were murdered, whites being the primary targets (60 percent), followed by Africans (33 percent).<sup>88</sup>

Regarding the human rights situation on farms, little progress has been made in the post-apartheid era. According to the Commission of Inquiry into Farm Attacks, "in recent years reports of farmers brutality towards their workers, shocking employment and living conditions on farms, child labour and the ongoing murders of farmers have dominated South African media, giving a clear message that all is not well in the farming and agricultural sector." The Commission's report showed that a pattern of human rights abuses on farms exists. The Commission did not, however, claim that these problems were universal.<sup>89</sup>

Muti killing refers to the killing, especially of children, to get hold of body parts for the purposes of traditional African healing. Although no official statistics are available on muti killings, the SAPS estimates that there are between 150 and 300 such killings each year in South Africa.<sup>90</sup>

82 *Ibid*, p. 9.

83 J Dugard, From Low Intensity War to Mafia War: Taxi violence in South Africa (1987 - 2000), *Violence in Transition* Series, Vol. 4, May 2001 or visit <http://www.csvr.org.za/papers/papvtp4.htm>.

84 The Commission on Taxi Violence investigated taxi violence in the Western Cape. The report was published on 6 September 2005.

85 Visit <http://allafrica.com/stories/200509060795.html>.

86 D Mistry, *Ploughing in resources: The investigation of farm attacks*, Published in SA Crime Quarterly, No. 6, December 2003, p. 7 or visit <http://www.iss.org.za/pubs/CrimeQ/No.6/Mistry.pdf>.

87 Summary of the Report of the Committee of Inquiry into Farm Attacks, 31 July 2003. Released by the SAPS on 26 September 2003 or visit <http://www.iss.co.za/CJM/farmrep/farmsummary.pdf>.

88 South Africa Survey 2003/2004, p. 404-406.

89 Visit <http://www.afrol.com/articles/10486>.

90 United States Department of State, *op. cit.*, p. 3.

## Chapter 8

### Uzbekistan: country profile and case studies<sup>1</sup>

#### 8.1 Political, economic and social overview<sup>2</sup>

##### > Geography and population

The Republic of Uzbekistan occupies an extensive area of 447,400 sq. km in the heart of Central Asia, for the most part between the rivers Amudarya and Syrdarya. In the north and north-west it is bordered by Kazakhstan, in the north-east by Kyrgyzstan, in the south-east by Tajikistan, in the south by Afghanistan and in the south-west by Turkmenistan. Its geographical features are typical of a region of steppe, desert and semi-desert, while in the east Uzbekistan abuts upon the spurs of the Pamir-Alai mountain range. The country finds itself in a strategic geopolitical situation as it shares common borders with the civil war affected countries of Afghanistan and Tajikistan which presents special security and human rights challenges, in particular in the post 11 September 2001 "war against terrorism".<sup>3</sup>

Uzbekistan has a population of 25 million; 80 percent of the population is Uzbek, with the remaining made up of Tajiks (4.5 percent), Kazakhs (3.8 percent), Russians (3.8 percent), Tartars (2.5 percent), Karakalpaks (1.9 percent), Kirghises (1.5 percent), Ukrainians (1.2 percent) and Koreans (0.9 percent). 37 percent of the population is urban with 63 percent living in rural areas. Some 88 percent of the population is Muslim (mostly Sunni), 9 percent is Russian Orthodox and other faiths account for the remaining 3 percent.<sup>4</sup>

##### > Constitution

In 1924 the Uzbek Soviet Socialist Republic was established as part of the Soviet Union. During the Soviet era, despite assistance provided by the central authorities for the development of industry, science, culture and education, Uzbekistan remained an appendage of the Soviet Union, supplying farm products and raw materials. The constantly rising state targets for cotton output led to the complete exhaustion of the fertile Uzbek soils. The single communist ideology, under which heterodox views were not allowed, delayed for many years the development of Uzbek culture, traditions and language.

In the context of the disintegration of the Soviet Union, on 31 August 1991 Uzbekistan was declared an independent State. Uzbekistan's current administrative and geographical divisions consist in 12 *viloyats* and the Republic of Karakalpakstan.

The President is head of State and head of the executive, and is elected for a term of seven years on the basis of universal, equal and direct suffrage by secret ballot. The powers of the President under the Constitution are extensive. He acts as guarantor of human rights and respect for the Constitution, represents Uzbekistan in international relations, concludes international agreements and treaties and ensures that they are complied with, forms the administration and leads it, signs laws, serves as Supreme Commander-in-Chief, etc.

Executive authority is exercised by the Cabinet of Ministers, which is formed by the President and approved by the Oliy Majlis (parliament). The Cabinet of Ministers consists of the Prime Minister, his deputies, ministers and chairs of State committees. The head of the Government of Karakalpakstan is an ex officio member of the Cabinet of Ministers.

The highest State representative body is the Oliy Majlis, which exercises legislative power (Constitution, art. 76) in two chambers, the Senate and the Legislative Chamber. The latter consists of 120 deputies, elected from geographical constituencies in multiparty elections. The Senate is the chamber in which the various parts of the country are represented. The Legislative Chamber and Senate of the Oliy Majlis are vested with authority for a term of five years.

The judicial system in Uzbekistan consists of the Constitutional Court, the Supreme Court, the Higher Economic Court, the Supreme Courts of Karakalpakstan for civil and criminal matters,

- 1 Prepared by the editor on the basis of the General Evaluation Report, 2004 from the Legal Aid Society (Uzbekistan) (hereinafter LAS Report) and other documents including OMCT and LAS, *Uzbekistan : Violence, Repression and Denial of Economic, Social and Cultural Rights*, Geneva, May 2002, (herein after OMCT and LAS), "State Violence in Uzbekistan, An Alternative Report to the United Nations Human Rights Committee", OMCT, Tashkent Women's Resource Centre, Legal Aid Society and Initiative Youth Group "Orzu", Tashkent and Geneva, February 2005, (hereinafter OMCT et al., 2005). Particularly pertinent was the information and analysis in the Common Country Assessments by the United Nations Development Group, [www.undg.org](http://www.undg.org). These documents are contained in the CD-ROM included with this publication.
- 2 Human Rights Core Document, Uzbekistan, HRI/CORE/1/Add. 129 (hereinafter HRI/CORE) page 4-12.
- 3 United Nations Development Group, *Common Country Assessment Uzbekistan 2003*, (hereinafter UNDG, 2003) pages 9 and 41-42.
- 4 OMCT and LAS, *Uzbekistan : Violence, Repression and Denial of Economic, Social and Cultural Rights*, Geneva, May 2002 (hereinafter OMCT and LAS 2002), page 4 citing UNDP Uzbekistan Country Information, 2002.

and the Economic Court of Karakalpakstan, which are elected for a term of five years, as well as *viloyat* courts. In addition there are the Tashkent city civil and criminal courts, inter-district, district and city civil and criminal courts, military courts and economic courts appointed for the same term (Constitution, art. 107). The President nominates the judges of the Supreme Court for 5 years, but they are not guaranteed to stay for the whole period.<sup>5</sup>

### > **Political transition**

Political reforms and the transition from the single party communist regime towards democracy and the rule of law have been major challenges since independence.

In 2000, the President was re-elected with 91.9 percent of the votes and the OSCE expressed its reservations about the electoral process. Moreover, in the 1999 parliamentary elections, the political parties offered no genuine alternative to the electorate.<sup>6</sup> In 2000, the OSCE Office for Democratic Institutions stated:

...during the pre-election phase, individuals, groups, political parties and non-governmental organisations that oppose the government could not freely associate, present their views and take part in the political and electoral process". Moreover, "The executive power, in particular through its local branches, unduly interfered with the election process. The Khokims (governors and mayors), having both legislative and executive powers, and Khokimats (executive apparatus) at regional, district and city levels were heavily involved in and exercised overwhelming influence on the electoral process, including a key role in the nomination of candidates and the conduct of the elections.<sup>7</sup>

### > **Corruption**

Corruption is a factor significantly affecting the enjoyment of human rights, as both international and local bodies have pointed out:

Historically, Uzbekistan's political elite has relied on strong relationships of patronage, clan and family and despite Soviet attempts to impose a new national identity, regional alliances (clan identity) remained and remain to this day a significant factor in social relations. Political control or access to economic resources is strongly dependent on regional alliances, which often prevail over all-Uzbek ethnic identity. A network of regional and political interests intersects with industrial and commercial interests to reinforce the stability of the state. Preserving the balance

among regional and political alliances is crucial to maintain political and social stability.... Modern Uzbekistan inherited a complex bureaucratic system from the Soviet Union that aimed to replace local networks of family and clan contacts. In Central Asia, the state was de facto a system of social networks based upon political status, around which the economy revolved and functioned and in which the formal and informal economies complemented each other. Corruption also served to 'regulate' the usage of central subsidies for local purposes rather than for central ones. The roots of corruption run deep in the social fabric of the region. The government views corruption and organised crime as serious threats to national security as they hinder the economic and democratic transformation of the society."<sup>8</sup>

Corruption in Uzbekistan is a serious problem, as in many other CIS countries. Uzbekistan scored 2.9 in Transparency International's 2002 Corruption Perceptions Index, ranked 61 out of 102 countries. This was a slight improvement over the 2001 score of 2.7, which placed it 71 out of 91 countries. With these scores, Uzbekistan was placed higher in the ranking table than Kazakhstan and Russia, but far below most countries in Eastern Europe.<sup>9</sup>

Politically, Uzbekistan has not refused from the old soviet system of management, and in the contrary made it even more rigid and corrupted then in comparison to the soviet times. Indeed modest demands of communistic bosses substituted by the new horrible alliances of authority and business. Participation of public officials in some business and control over them make it untouchable to law enforcement, fiscal or other control agency. At the same time, such businesses enjoy unbelievable preferences and enrich the government officials having only self interests in the government rather than to serve to public interests.<sup>10</sup>

5 Legal Aid Society (Uzbekistan), General Evaluation Report, (hereinafter LAS Report), page 11.

6 LAS Report, page 7.

7 OSCE, *Final report of the OSCE/ODIHR Limited Election Assessment Mission on parliamentary elections in the Republic of Uzbekistan*, Office for Democratic Institutions and Human Rights, Warsaw, 28 April 2000.

8 UNDG, 2003, page 38 and 42.

9 European Bank for Reconstruction and Development, *Country Strategy Uzbekistan*, (hereinafter EBRD), page 19.

10 LAS Report, page 4.



### > *Economic transition*

In explaining developments in Uzbekistan, the United Nations Development Group Common Country Assessment stated that:

when the centrally planned economy of the Soviet Union collapsed in 1991, a world system dissolved and became irrelevant. The transition to a market economy has been characterised in all ex-Soviet countries by dramatic declines in income and employment, the reappearance of long-forgotten diseases, growing poverty and inequalities, as well as great uncertainties. The persistence and deepening of poverty since the collapse of the Soviet Union have contributed to a profound shift in perceptions about economic and social reality. The stability and security that people had enjoyed was gone, causing unprecedented levels of social and economic stress. The transition has been compared by many to the period that followed the two World Wars or the Great Depression of the 1930s.<sup>11</sup>

In 1991, the consumption based Gini coefficient (the standard measure of inequality) was 0.26, considerably lower than the UK's (at 0.35) and the US's (at 0.43). The system guaranteed basic human security, through economic and social entitlements such as full, lifetime employment; cash incomes were low but stable and secure; and female labour participation among women was high. The State also provided women with significant benefits such as maternity leave for up to three years, pension entitlements and early retirement for those who had five or more children.<sup>12</sup>

Since gaining independence in 1991, Uzbekistan has pursued a course of extensive economic reform towards a market-oriented economy. The Government's commitment to a gradual transition to a free market economy is reflected in the Constitution, whose article 53 guarantees "freedom of economic activity, entrepreneurship and labour with due regard for the priority of consumers' rights, as well as equality and protection of all forms of legal ownership".<sup>13</sup>

Although these achievements are remarkable, particularly compared to those of many other transition economies, the country's growth is nevertheless increasingly jeopardised by rising income inequality, an increase in poverty, and underemployment. Indeed, the economic reforms have been carried out in a manner that serves the financial and economic interests of the authorities, which retain a widespread control over the whole economy. In general, the authorities have been unable to cope with the economic and social deterioration. It appears that the macroeconomic policies pursued so far may have come at a price ... the poor may be paying most of this price and missing out on the benefits of economic growth.<sup>14</sup>

10 -15 years ago, three distinguishable social classes formed the bulk of the Uzbek socio-economic strata (the poor, the middle class and the rich) with the middle class comprising 80 to 85 percent of the population. Recent interviews reveal that today the socio-economic strata includes some new categories of the "very rich" and the "destitute" and that the former middle class, including doctors, teachers, scientists and employees of enterprises are thrown into poverty.<sup>15</sup>

### > *Poverty*

By 2002, an estimated 27.5 percent of the population lived below the poverty line. Approximately one third of all poor households could be classified as extremely poor, exposing them to the risk of chronic malnutrition. There were significant regional differences in the nutritional and educational status of women and children from poor and rural households.<sup>16</sup> The decline in the level of government services such as childcare, health and education after the independence renders the experience of poverty far worse than during the Soviet period.<sup>17</sup>

Households with unemployed heads are more likely to be poor. However, but employment does not guarantee protection from poverty, as wages are often unpaid, delayed or paid in kind. Those who work in the largely unregulated informal sector are particularly vulnerable to poverty. They tend to have less stable employment, less access to benefits and lower paid jobs. Pregnant women and those with small children, the disables and those in remote areas are especially insecure. Approximately 35 percent of the population is likely to be poor and 58 percent to be extremely poor in rural areas and this is where 63 percent of the population of Uzbekistan lives. The poor are disproportionately found in the agricultural sector.<sup>18</sup>

### > *Inequality*<sup>19</sup>

Inequality is rising and follows regional, ethnic and groups lines. The 2001 UNDP Human Development Report shows that the poorest 20 percent of the population only own 7.4 percent of the

11 UNDG, 2003, page 11.

12 UNDG, 2003, page 9.

13 OMCT and LAS, 2002, page 5.

14 UNDG, 2003, pages 14 - 15.

15 OMCT and LAS, 2002, page 6.

16 UNDG, 2003, page 17.

17 OMCT and LAS, 2002, page 6.

18 UNDG, 2003, pages 17-18.

19 OMCT and LAS, 2002, page 7.

national income, while the richest 20 percent own 40.9 percent. Central Asians who represent about 79 percent of the population are 92 percent of those living in poverty, while the Slavs make up 16 percent of the population and only 4 percent of the poor.

Poverty is also much higher in the predominantly rural regions of the Ferghana Valley and the Karakalpakstan and Surkhandarya regions than in the city of Tashkent. In 1998, 47 percent of the rural population in the Ferghana valley and 70 percent of the rural Karakalpakstan were considered poor, compared to 10 percent of urban Tashkent. Similarly, the average per capita income in Tashkent city is 4.2 times the level of the rural region of Surkhandarya. Consumption of meat and dairy produce is also higher in Tashkent city than in the region of Surkhandarya.

In 1996, the average monthly wage of an agricultural worker was only 54.2 percent of the average national wage, and only 41 percent and 29 percent of wages in the industrial and construction/communication sectors respectively.

Finally, the regional distribution of social assistance also indicates the areas of greatest need. For instance, the largest number of families receiving social assistance in 1997 was in the rural Karakalpakstan and Surkhandarya regions, where 49 percent of families received some assistance compared to 28 percent of families in the region of Bukhara and 31 percent in Tashkent.

### > *The danger of making poverty permanent*

The danger for Uzbekistan is that the temporary poor of today may become the permanent poor of tomorrow, making it more difficult to bring them out of poverty.<sup>20</sup>

Uzbekistan's poor tend to have relatively high levels of education and own assets such as land or the house in which they live. However, these assets, largely accumulated during the Soviet period, will eventually disappear if the low-income status of the poor persists, whilst past educational achievements may become progressively irrelevant to the needs of a new society.

The national authorities, international development practitioners and the economists have so far paid little attention to the social implications of the transition and have instead prioritised economic and institutional development, thus exacerbating existing political, institutional, and economic problems. However, economic growth can reduce poverty only when accompanied by social development and governance reforms. Therefore policies which will be beneficial for Uzbekistan include those that promote labour intensive growth and employment, especially in the agricultural and private sectors, paying particular attention to regional, gender based and ethnic inequalities. Judicious invest-

ments in and protection of human capital can minimise the social costs of transition and increase access to quality health, education services and social protection, thereby making them more affordable.<sup>21</sup>

## ■ 8.2 The human rights framework

### > *Constitutional, legal and institutional aspects*

The 1992 Constitution of Uzbekistan provides that "all citizens of the Republic of Uzbekistan shall have equal rights and freedoms, and shall be equal before the law, without discrimination by sex, race, nationality, language, religion, social origin, convictions, individual and social status" (article 18); and that "the state shall safeguard the rights and freedoms of citizens proclaimed by the Constitution and laws" (article 43). In addition, international treaties take priority over national legislation, which has been welcomed by the Human Rights Committee. Uzbekistan is a member of the United Nations and has ratified the six principal United Nations human rights instruments; the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol to that Covenant, the International Convention on the Elimination of All forms of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of the Child and the Convention Against Torture. However, a number of domestic legal provisions limit the enjoyment of human rights, including provisions relating to states of emergency, anti-terror legislation, amnesty laws and pardons, and statutes of limitation regarding torture and violations of the right to life.<sup>22</sup>

### > *The judiciary*

The independence of the judiciary, although guaranteed in theory in the Constitution<sup>23</sup>, is considered a serious problem. The judiciary still does not operate independently from the executive branch. Judges have limited terms of office, receive low salaries and are usually overloaded, thus increasing the risk of lack of independence and corruption.<sup>24</sup>

20 UNDP and Centre for Economic Research (2003) "Linking Macro-economic Policy to Poverty Reduction in Uzbekistan".

21 UNDG, 2003, pages 7 and 19.

22 OMCT et al., 2005, pages 10-12.

23 HRI/CORE, para. 36.

24 EBRD, page 1.

Failure to respect human rights in criminal investigations and during trials is of concern to United Nations Human Rights bodies and non-governmental organisations alike:

The combination of a lack of respect for the principle of presumption of innocence despite being guaranteed by the Constitution (art. 25) and the CPC (art. 23), the discretionary powers of the investigators and procurators with respect to access to detainees by legal counsel and relatives, as well as the lack of independence of the judiciary and allegedly rampant corruption in the judiciary and law enforcement agencies, are believed to be conducive to the use of illegal methods of investigation.<sup>25</sup>

By law, individuals have access to a lawyer at the time of arrest but this right is often not granted in practice, and the important safeguard of immediate access after arrest to independent counsel, a doctor or medical examiner and family members is inadequately protected.<sup>26</sup>

Other serious failures of the judicial system include the absence or low quality of the legal representation provided by the state for poor defendants; state-provided counsel showing little interest in the case and reportedly often act in the interests of the state; and judges giving no weight to denial of an access to attorney by the prosecution in pre-trial investigation.<sup>27</sup>

Legal assistance to indigent defendants is both professionally and financially unattractive to lawyers. As a result, lawyers assigned to indigent defendants are usually young lawyers who have just graduated from law school or low qualified lawyers having no professional success in carrier. In fact, these people accept to undertake the defense just to gain professional experience...but the quality of service is very poor. In many cases indigent people were left without legal assistance.<sup>28</sup>

LAS also reports that investigators have close links to certain attorneys who are ready to represent detainees "just for the purpose of formal compliance ...without the will to do the real job.

This state of affairs influences the access of citizens to justice, diminishing their confidence in the institutions and limits the provision of effective legal aid to the poor. In domestic violence, for example, there is a general lack of responsiveness regarding crimes against women and although laws exist, they are rarely implemented or invoked by the citizens for their own benefit.<sup>29</sup>

### > **Local governing councils: Mahallas and human rights**

The *Mahallas*, or local governing councils, are the traditional mechanisms for local self-rule but are not considered part of

government. Since independence, *Mahallas* have been given increasing responsibilities by the Government for the channelling of social assistance. The network of *Mahallas* is central to the government's vision of decentralisation of power and community development. It encourages participation by communities in addressing social issues at local levels.<sup>30</sup>

*Mahallas* are organised around social events and Islamic rituals and are managed by elders. *Mahalla* meetings provide advice, resolution of problems among neighbours and other issues of community life. There are now approximately 12,000 *Mahallas* in Uzbekistan, each containing between 150 and 1,500 households.<sup>31</sup> Few *Mahallas* are headed by women.<sup>32</sup>

*Impact on human rights of the Mahallas* are organised so as to make everyone living in the neighbourhood dependent on them. The *Mahallas* are stronger in rural areas than in the cities. In rural areas, the archaic nature of society, where simple survival requires mutual help, makes the individual dependent on the decisions of the majority. In the cities and big towns, economic independence and the ability to live independently reduces the importance and power of the *Mahallas*.<sup>33</sup>

There are now concerns that *Mahallas* are operating in non-transparent and undemocratic ways, for example, in showing favouritism towards ethnic Uzbek households. They have also taken an active roll in the campaign against Muslims, by carrying out surveillance functions and cooperating with law enforcement agencies. In addition, *Mahallas* actively participate in fulfilling the Government's policy relating to the family, even when these policies fail to protect victims of domestic violence, which may last for months or years before the *Mahalla* committee will refer the case to the police or allow the victim to divorce. *Mahallas* were also involved, together with the law enforcement agencies, in the forced resettlement campaign, carried out in the year 2000 through 2001, when about 4,000 people of

25 Report of the Special Rapporteur on Torture, E/CN.4/2003/68/Add.2, para. 66.

26 Human Rights Committee, Concluding Observations on Uzbekistan (2005), CCPR/CO/83/UZB, para. 22, and Committee Against Torture, Concluding Observations, Uzbekistan, CAT/C/CR/28/7 para.5.

27 OMCT et al., 2005page 38-41.

28 LAS Report, page 41.

29 UNDG, 2003, page 39.

30 UNDG, 2003, page 38.

31 LAS Report, page 61 citing HRW "From house to house" abuses by *Mahalla* committees.

32 UNDG, 2003, page 38.

33 LAS Report, page 62.

Surkhandariya province, were forcibly resettled to the deserted areas about 250 kilometers away.<sup>34</sup>

*Mahallas* play an important role at the local level in all matters of family law and protection of children, including juvenile with a disquieting lack of information on their role in the implementation of the general principles of the Convention on the Rights of the Child. The Committee on the Rights of the Child thus asked the Government to educate *Mahalla* committees on the principles and provisions of the Convention, to ensure that those principles and provisions are reflected in the decision-making procedures of these committees; and to include in its next report information on the activities of these committees, not only in areas relating to family law and juvenile justice, but also in the distribution of financial assistance.<sup>35</sup>

The Committee on the Elimination of Discrimination against Women recommended that the Government organise training on gender issues for all public officials, in particular law enforcement officials and the judiciary, as well as for members of khokims' offices at all levels and the local *Mahallas*, to educate them about all forms of violence against women and girls.<sup>36</sup>

### > *National human rights institutions*

Uzbekistan has established institutions aimed at promoting human rights including the National Human Rights Centre, the Ombudsman, the Institute for Monitoring Current Legislation and the Commission for the Observance of Citizen's Rights. However, the effectiveness of these institutions has been criticised. The inactivity and pro-government policy of the human rights commissioner renders the activity of the Ombudsman declarative and insignificant for adequate human rights protection. The National Human Rights Centre is also more of a declarative institution, supporting state interests rather than those of individuals.

...none of these institutions is entirely independent of the executive branch of government and that their investigative powers do not seem to allow them to take adequate steps to resolve complaints brought before them.<sup>37</sup>

The majority of positive developments in the sphere of human rights cannot be accredited to the activity of the Centre or the Ombudsman but to the activity of international non-governmental and governmental organisations as well as to governments of developed democracies.<sup>38</sup>

### > *NGOs and human rights defenders*

The situation of human rights non-governmental organisations and other human rights defenders is of concern.<sup>39</sup> Relations between the State and NGOs are confrontational, because NGOs consider that officials would like to take NGOs under control and officials consider that independent NGOs activities promote "Western orders".<sup>40</sup>

Total police and security control over public and private matters justified by the fight with terrorism and terrorism financing has resulted in excessive intrusion of governmental agencies into private life of citizens. The voice of concern raised by independent groups and NGOs is being considered as anti-patriotic (let alone anti-constitutional) or opportunistic behavior. This situation clearly evidences absence of effective dialogue between the State Party and national Human Rights NGOs. Being anxious and irritated by the "revolution of rose" in Georgia and "orange revolution" in Ukraine where decisive role was played by local and international NGOs, the Uzbek government tightened its grip on civil society in 2004 by extending to international nongovernmental organisations (NGOs) many of the repressive tactics it has used against local NGOs... Uzbek Criminal Code criminalises certain behavior of citizens as it relates to the right to assembly. These articles are so broadly phrased that they serve as the repellent provisions to restrict and obscure any meeting not authorised by state and local agencies. Other articles were amended to oppress existing social society institutions such as local NGOs. New editions of articles for treason and espionage have been tailored as to restrict free movement of information on human rights abuses to foreign organisations.<sup>41</sup>

The Government has taken a series of restrictive measures in order to keep tight control over the activity of foreign and local NGOs and to human right defenders acting through NGOs. In 2004, a decree was issued that ordered the transfer of all NGO funds received from international grants to the Uzbekistan National Bank or Asaka Bank, ostensibly in order to crack down

34 LAS Report, page 63, citing HRW "From house to house".

35 CRC/C/15/Add. 167, paras. 24-25.

36 A/56/38, para. 169.

37 OMCT et al., 2005 page 16, quoting the Human Rights Committee's Concluding Observations on Uzbekistan CCPR/CO/71/UZB, 26 April 2001, para. 28.

38 OMCT et al., 2005 pages 16 – 18 and UNDG, 2003, page 40 and HRI/CORE.

39 CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, para. 22

40 OMCT et al., page 52.

41 OMCT et al., page 22.

on money laundering. In effect, this decree implies freezing of NGO funds, as they now have to obtain permission from government committees in order to access their funds and that permission is not forthcoming. Normally the funds have simply been returned to the donors unused. Other decrees in 2004 required the licensing of educational programmes, including those of NGOs; required women's NGOs to apply for re-registration under the patronage of the Women's Committee of the Republic of Uzbekistan, thus expanding the influence of the Government; and required all NGO publications to obtain a license from the Government.<sup>42</sup>

In 2004, the Government introduced burdensome new registration and reporting procedures for international NGOs to obtain "consent" from the Ministry of Justice (MOJ) on the content, agenda, timing and place of any activity, and to invite MOJ officials to attend. The Government denied the re-registration application of the local representative office of the Open Society Institute, which provided vital support for civil society groups, and suspended the activities of the local affiliate of the media-support organisation Internews for six-months for alleged minor administrative violations.<sup>43</sup>

The MOJ prohibited the forum of NGOs dedicated to celebrate International Women's Day (March 8) in 2004 under the pretext that the organiser was an NGO registered as a city NGO; otherwise the Ministry of Justice would limit the number of the participants of NGOs meetings. The obligation that NGO submit a request to the executive authorities for conducting an event was reintroduced. Grass-root NGOs must also receive permission from the local administration for collecting target groups and holding workshops or other activities at Universities, *Mahallas* and colleges and should present their programme and materials to the executive authorities. The Ministry considers that the activity of grass-root NGOs should be geographically limited: town NGOs should work only in town, not in districts or at the national level. Only national NGOs which have branches in the provinces can work at the national level. Most grass-root NGOs have no opportunity to organise branches in provinces due to a lack of funds.<sup>44</sup>

A number of steps by the Government in favour of human rights have been reported: lifting of censorship, lifting restrictions on internet access, the registration of several human rights organisations, and long prison sentences given to several law enforcement officials found guilty of torturing prisoners,<sup>45</sup> an invitation to the UN Special Rapporteur on Torture, the registration of the Independent Human Rights Organisation of Uzbekistan, the opening of an office of Freedom house and the hosting of the Fourth Central Asia Media Conference in cooperation with the OSCE.<sup>46</sup>

In spite of these steps, human rights violations continue to take place and the situation with regard to the rule of law and human rights remains difficult, including for human rights NGOs and human rights defenders.<sup>47</sup>

There is a need to give increased attention to economic, social and cultural rights and the fight against discrimination against women. In Uzbekistan, attention to human rights has focused largely on the International Covenant on Civil and Political Rights. Other rights, primarily those enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), have received inadequate attention by the Government, as well as by human rights and development organisations. "Therefore, every effort must be made to consider all 'rights', define strategic choices and overcome a series of policy and doctrinal issues to ensure that human rights are respected and protected by the Government of Uzbekistan."<sup>48</sup>

### 8.3 Transition and economic, social and cultural rights

#### > Education

The Constitution and laws of Uzbekistan provide for the right to education and free primary education. The transition to the market economy involved a new curricula, new teaching methods, professional qualifications and employable skills. In 1997, the Parliament of Uzbekistan adopted a new Law on Education and approved a new strategic National Programme on Personnel Training.<sup>49</sup>

The gross primary school enrolment ratio since independence, has displayed a slight increase during the 1990s, rising from 82 percent for males and 81 percent for females in 1990 to 86 percent for males and 85 percent for females in 1999. However, the

42 OMCT et al., 2005, pages 22-23.

43 OMCT et al., 2005, pages 5-52.

44 OMCT et al., 2005, pages 21-24, and 52-51.

45 UNDG, 2003, page 40.

46 European Bank for Reconstruction and Development, *Uzbekistan Strategy*, Annex 1.

47 OMCT et al., 2005, pages 21-24.

48 UNDG, 2003, page 41.

49 OMCT and LAS, 2002, pages 21-23.

transition period has seen difficulties, with a decrease of public expenditure in education 9.2 percent of GNP in 1987 to 7.7 percent in 1997. Public expenditure on educational structure has also diminished as a proportion of GDP for procurement of equipment, technical supply and maintenance from 0.32 percent to 0.25 percent.<sup>50</sup>

Although the law stipulates that primary education shall be free of charge, informal costs are frequent as parents have generally to pay fees to repair the school premises and for school material. Moreover, financial constraints and an overall decrease in family income constitute, today, the main factors preventing children from attending educational institutions, including primary ones. Indeed, the number of children who drop out of school and start working in order to provide an additional source of income for their families has considerably risen. Official statistics on this do not exist but the phenomenon can be clearly observed all over the country. Finally many children do not attend school during the cotton harvest period.<sup>51</sup>

Another matter of concern is access to pre-school education. Due to the increase of the pre-school fees, which are now the equivalent of 50 percent of the minimum salary, along with the overall decline in family income, the number of children attending pre-school education dropped from 30 percent in 1992 to 16 percent in 1998. Practically speaking, more than three million children are not attending pre-schools. There is therefore a considerable gap between the educational level of first grade children who have attended pre-schools and those who have not. This situation tends to affect rural children particularly. Indeed, due to the difficult financial conditions of the rural families, only one in ten children in the rural areas has a chance of attending a pre-school institution.<sup>52</sup>

The public education system faces several constraints that have a direct impact on the quality of education received by children, especially at the primary level: low wages, lack of qualified personnel, poor infrastructure and insufficient schoolbooks and basic material are but some. This situation is particularly felt in rural areas of the country.<sup>53</sup> For instance, in 2001, the monthly average salary of a teacher amounted to 13700 Soms (approximately US\$20). As the majority of teachers have a pedagogical specialisation, the low level of wages they receive tends to steer them towards more attractive and better-paid employment. As a result, there is today a lack of highly skilled staff in public education institutions. The low wages also often imply that the teachers supplement their salary by accepting bribes from students in exchange for good marks and diplomas. Thus students practically do not have to study in order to learn and basically do not receive any real education at school. This phenomenon appears to be common and widespread in Uzbekistan.<sup>54</sup>

Despite the constitutional guarantee on non-discrimination, discrimination against Muslims is more and more frequent in schools because of their religious attire. Most of those expelled were girls. Thus, the mother of a primary school student reported that her daughter and a niece, aged eight and nine, attended school each day wearing white headscarves, with their faces uncovered. When the teacher asked them to remove their scarves when on campus, they refused to do so. Four or five days after the teacher issued a warning, the director of the primary school expelled the girls, but did not give their parents an official expulsion order.<sup>55</sup> Teachers have also been victims of threats of losing their job because of the observance of that custom. In this regard, the UN Special Rapporteur on the Right to Education, on June 14th 2000, addressed a letter to the Government of Uzbekistan concerning alleged expulsions of schoolgirls owing to their wearing of headscarves. Following the Government's silence, the letter was re-sent on November 20th 2000.<sup>56</sup>

The Committee on the Rights of the Child in 2001 expressed its concern at the low level of pre-school enrolment; the declining enrolment, and the high drop-out, repetition and absenteeism rates in primary and secondary schools; the disparities according to gender and region; the deterioration in infrastructure; the deterioration in the quality of education, especially of teaching and the curricula. It recommended that greater efforts be made to allocate the required human and financial resources to improve infrastructure; expand the provision of learning materials and supplies; and promote the participation of parents and communities in school governance, especially of ethnic minorities to improve enrolment rates and monitor the quality of education.<sup>57</sup>

The Committee on the Elimination of Discrimination against Women expressed in 2001 its concern about the decline in the number of women students and recommended raising awareness and providing incentives to encourage young women to enter male-dominated fields of study.<sup>58</sup>

50 *Ibid.*

51 OMCT and LAS, 2002, pages 21-23.

52 *Ibid.*

53 *Ibid.*

54 *Ibid.*

55 OMCT et al., 2005, page 66.

56 OMCT and LAS, 2002, page 21.

57 CRC/C/15/Add.167, paras. 57-58.

58 A/56/38, paras. 180-181.

The United Nations Development Group in the 2003 Common Country Assessment of Uzbekistan came to similar conclusions:

As indicated by recent assessments there are signs of stress in the education system: high coverage in the education system is falling at all levels, and there are disparities in attendance between regions and income groups. Gender disparities at higher levels of education are still significant factors, which could impact negatively on reductions in birth rate, child mortality and expansion in education for the next generation, with possible future consequences for economic growth in the future. While other FSU countries undergoing transition have experienced declines in enrolments in the 1990s, the sharp and apparently more prolonged decline in higher education enrolment that Uzbekistan has suffered is unusual. The potential erosion of Uzbekistan's high human capital stock could undermine its successful transition to a market economy and integration into the global economy. Since higher education is strongly correlated with improved living standards, investments in human capital to eliminate existing disparities are a prerequisite for ensuring that segments of the population will not be left behind preventing inequality from growing in the future.

Inadequate allocations of resources for education, and the insufficient capacities of educational workers to manage the effects of transition, have contributed to the decline in quality of education. Declining incomes combined with the emergence of direct and indirect costs associated with sending children to school have made it more difficult for the poor to keep their children in school. Insufficient job opportunities for graduates from the education system could also be an important contributor to declining enrolments, as the perceived benefits from the education system are reduced. Furthermore, the decentralisation of financing has also contributed to inequities in quality of education between rich and poor communities and families.<sup>59</sup>

### > **Health**<sup>60</sup>

The Constitution of Uzbekistan provides for the right to receive "skilled medical care" and the national health care system has been implemented through a number of laws on such issues as prevention of HIV and state sanitary inspections. article 13 of the Law on health care specifically states that citizens of the Republic of Uzbekistan have an inalienable right to health.

Since independence in 1991, the health care system has moved more and more from central planning and government financing to a mixed public and private system. The implementation of economic reforms has involved cutbacks in public expenditures

on health, the proportion of the GDP spent on health care having declined from 4.6 percent in 1990 to 3.4 percent in 1998.

There are two types of hospitals: those where patients pay for services and those that are free of charge. However, patients in what are supposed to be free hospitals face unofficial charges for doctors and nurses of such an amount that they are often prevented from receiving adequate treatment. This is closely related to the low level of salaries of medical personnel in the public sector. In general, medical institutions lack appropriate medical equipment and medical tools, medicines and sanitary equipment. Patients are also asked to buy supplies (even the most elementary items such as bandages and analgesic) needed for the treatment either in drugstores outside the hospital or from doctors inside the very same hospital. Patients have been denied a surgical operation because they were not able to pay the surgical fee - set by the surgeon himself - and because they were not able to provide for the necessary medicine such as bandages and spirit.

The quality of medical treatment is often poor, due to the lack of qualified medical personnel, to insufficient funding of public health care institutions, and to the low wages of medical workers. The wages of medical workers can go from 7000 to 20'000 Soums per month (US\$10 to 28), which does not cover the food expenses for one person and for one month. Overall, doctors work around 10 to 12 hours per day and as they receive a salary that does not ensure them the minimum to live, they extort money from the patients and speculate with medical products.

In parallel with the public health system, private institutions have emerged, differing in terms of the costs and quality of the service from the public ones. The majority of the population, with a low level of income, has no access to these private centres. This situation creates dramatic disadvantages for people with lower income levels and thus poverty has increasingly become a serious impediment to appropriate medical treatment, particularly for extended hospital stays.

### > **Women**

The Committee on the Elimination of Discrimination Against Women noted a decline in the maternal mortality rate in Uzbekistan. However, the Committee expressed its concern over the status of women's health, especially with reproductive health and the high birth rate. Other health problems include abortion

59 UNDG, 2003, pages 23-24.

60 OMCT, LAS, 2002, pages 19-20.

as the primary means of birth control, the increased use of tobacco by women, the environmental degradation in the country and its negative impact on health, especially that of women and children; the high rates of suicide among women, the cases of polygamy, and the situation of rural women, including their access to health-care services, education and income-generating activities. The Committee made a number of specific recommendations to the Uzbek Government to deal with the described problems.<sup>61</sup>

The Committee on the Rights of the Child expressed similar concerns regarding the health of children including the high incidence of infectious diseases, such as tuberculosis (despite high rates of immunisation); the fact that accidents and injuries are a main cause of mortality and morbidity among children and that children in rural and disadvantaged regions, such as Karakalpakstan and Khorezm, suffer the most.

Teenage pregnancies are increasing, accompanied by an increase in the number of abortions among girls under 18, as are rates of STDs, particularly syphilis, gonorrhoea and HIV/AIDs, and substance abuse and tobacco use. Problems of poor access to safe water and food security, exposure to toxic chemicals, and other hazards arising from the Aral Sea disaster, have left about 500,000 people in a precarious state.<sup>62</sup>

Given that Uzbekistan is currently undergoing an economic and health reform, it has to carefully balance the health needs of its people, especially those with low levels of education and status in society, who cannot afford the health services that are increasingly being monetised. Several geographic areas have been additionally effected by environmental practices and children, women in reproductive ages and particularly adolescents and youth living in environmentally-degraded geographic areas, should remain the focus of government and international organisations' attention if the MDGs are to be achieved by the target date.

The human cost of the transition from centrally planned to market oriented economy has been high as two prior decades of health status development were compromised in the years between 1990 and 1994. Although improvements since then have resulted in the overall health status reaching that of 1990, the current levels of both communicable and non-communicable diseases, including malnutrition and the significant rise in HIV/AIDS and tuberculosis, are major challenges for the country. This double burden of disease has been a further constraint to human development during Uzbekistan's transition period.

The limited availability of funds and opportunities for accelerating the pace of health reform implementation, for improving the knowledge and skills of health professionals

at all levels and for the unbalanced distribution of budget expenditures on health care have all affected improvements. Furthermore, there are worrying signs that the combined impact of low social spending and low household income is beginning to take its toll. Those families, which are not able to contribute towards health care costs and balanced nutrition, face the risk of reduced access to and a lower quality of vital services.<sup>63</sup>

### > *Housing*<sup>64</sup>

After the break-up of the Soviet Union, the State withdrew from providing housing for its citizens. Since the beginning of the 1990's, almost all state-owned apartments have been privatised, meaning that the provision of housing to urban inhabitants is done through various bank loans and housing cooperative societies.<sup>65</sup> Affordable housing has thus become a serious problem. Low-income housing exists but in insufficient quantity to meet the demand. This shortage is not being addressed properly by the state and the local authorities, whose main priority seems to be the construction of office buildings and commercial facilities. Some applicants for housing have been waiting for housing since 1992.

Due to the housing shortage, two or three families often share the same apartment, resulting, frequently, in situations where domestic disputes among family members, involving violence, occur. In addition, the shortage results in an increasing number of people living in slums or in the streets. Lack of drinking water, electricity, sewage and heating are common in the slums where the inhabitants suffer from diseases such as intestinal infections, skin diseases and tuberculosis. It is not uncommon to find their dead bodies among the garbage in the streets. In the worst cases, people who cannot afford to live in a slum are found in the street and find refuge in cellars, garages, deserted houses or ruins in the wintertime. The lack of official data on homeless people or people living in slums, along with the absence of shelter centres highlights the authorities' unwillingness to address this issue.

61 A/56/38, paras. 185-190.

62 CRC/C/15/Add.167, paras. 7 and 49-54.

63 UNDG, 2003, page 31.

64 OMCT LAS, 2002, page 11.

65 World Bank *Consultations with the Poor*, World Development Report 2000/1 on Poverty and Development.



### > *Work*<sup>66</sup>

The Constitution recognises everyone's right to work, including the right to choose their occupation, to fair conditions of labour and to protection against unemployment. The minimum wage, raised in April 2002, represents approximately US\$5 per month or one fifth of the average Uzbek salary. No worker is reportedly being paid less than the minimum wage. However, the minimum wage should be approximately 35 times higher to guarantee an adequate standard of living to the workers and their families.

According to the official numbers provided by the Ministry of Macroeconomics and Statistics, the unemployment rate in Uzbekistan in June 2001 attained 4.8 percent of the work force. According to the UNDP numbers, only 0.5 percent of the work force was unemployed in 1999. As these figures do not take into account the workers who are unemployed but not registered with the state employment office, they do not reflect the real situation of unemployment. Indeed, as the unemployment office has proven ineffective in providing help to jobseekers, most of the people who look for a job do not even care to register. The Human Rights Society of Uzbekistan estimates that the unemployment rate reaches 38 percent.

The unemployment rate in rural areas is twice as high as in urban areas. This is mostly due to the more favourable economic and social conditions within cities and to the population growth rate, in the rural areas double that of towns. Moreover, in certain areas of the country, such as Karakalpakstan and Novoi, the level of unemployment is respectively 4 and 7 times higher than the national average unemployment rate.

Overall, the State's policy to address this situation has so far proven ineffective and the rate of creation of new workplaces has not kept pace with swelling unemployment. For instance, there is no system to develop employable skills and to train workers, especially those coming from the agricultural sector, with a view to meeting the changing labour market demands.

Due to the high level of unemployment throughout the country, the number of workers engaged in the informal sector represents a significant share of the population, rising from 21.9 percent in 1994 to 38.1 percent in 1999. Most young people work in the informal sector even if they have professional qualifications. Work in the informal sector is generally characterised by the most precarious conditions, with no access to social security, no health insurance and wages just enough to satisfy basic needs.

...unemployment coexists with both underemployment and forms of hidden employment. This coexistence makes the calculation and definition of unemployment particular-

ly difficult. Underemployment, low wages and wage arrears are thus the real problem and often in the past have gone unaccounted for. Low-paid and insecure jobs are also common in the informal sector, as reflected in the *mardicor* (cities' markets) where workers from rural areas are hired for daily work, primarily in the construction sector. In this regards, the CCA stated that those who work in the largely unregulated informal sector are particularly vulnerable to poverty. They tend to have less stable employment, less access to benefits and lower paid jobs. Pregnant women and/or those with small children are especially unprotected and insecure, as are the disabled and those communities living in remote rural areas with little or difficult access to markets.

Anecdotal evidence suggests that the decline in gainful employment opportunities for women, especially in rural areas, is increasingly being accompanied by a rise of 'traditional' unregistered marriage and divorce and an increase in early marriage (under 17 years of age). These factors make women vulnerable to abuse and restrict their opportunities. Youth unemployment is estimated at 13 percent, suggesting that the economy may be failing to generate sufficient jobs for a rapidly increasing labour force or a potential mis-match between the education attainments and the requirements of the labour market.<sup>67</sup>

### > *Women, economic, social and cultural rights and violence*<sup>68</sup>

Security of the person is also being infringed by the prevalence of gender based violence. As with most transitional states building a new sense of nationalism, women in Uzbekistan have been held up as a symbol of cultural identity, creating tensions between the modern, liberal ideal of women's empowerment, and the more traditional, patriarchal model. The most worrying trends include domestic violence, harassment and assault in the streets. Women and children are among the primary victims of economic inequality, their lack of marketable skills and legal literacy preventing them from escaping abusive situations. The predominance of men in politics and their comparatively freer access to employment and higher education means that men play a predominant role in the development of a market economy. It is men, however, who are the primary victims of political and civil forms of violence.<sup>69</sup>

66 OMCT and LAS, 2002, page 13-15.

67 UNDG, 2003, page 16-17.

68 OMCT and LAS, 2002, page 7-8; OMCT et al., 2005, pages 55-60.

69 UNDG, 2003, page 45.

The Constitution guarantees equality before the law without distinction of sex, race, nationality, language, religion, social origin, convictions or individual and social status, explicitly recognises that men and women are equal under the law and stipulates that women and men shall have equal rights.

However, the current situation in Uzbekistan in terms of existing legislation, attitudes, traditional practices and beliefs tends to place women in an inferior position, a situation that has widespread and serious implications regarding their socio-economic position and their participation in the decision-making. Indeed, the low proportion of women in decision-making posts and posts of responsibility is alarming; while making up more than half of the population, they represent only 4.4 percent of the staff at the ministerial level.

The collapse of the Soviet system resulted in a severe decrease in the number of women represented in various influential and authoritative positions in society, and there was a decline in the representation of women in parliament from 36 percent in 1985 to 7 percent in 2003.<sup>156</sup> Although this decline represents the end of the Soviet quota system, in 2002 the representation of women in state power authorities was 13.7 percent, still an unequal gender distribution.<sup>70</sup>

The lack of opportunity to make decisions in the political, economic, social and cultural spheres has serious consequences for the advancement of women and the full realisation of their economic, social and cultural rights.

While female literacy is high, traditional practices such as early marriage as well as the current belief that the place of women should be at home and with the family tends to have a negative impact on women's ability to receive training. Moreover, many families do not have the resources to guarantee the education of all their children. Women, due to traditional images, are often the first to suffer from such a situation. Consequently, especially in rural areas, women's lack of skills, qualifications and technical training often prevent them from earning money, making them highly dependent on their husband and their families, as well as more vulnerable to poverty. Moreover, this situation often forces women who have to work to find a job in the informal sector, in low-paid jobs with no social protection.

The current Uzbek legislation on land issues seriously restricts women's access to land, having therefore a direct impact on their socio-economic empowerment and ability to carry out economic activities independently.

The Constitution and laws of Uzbekistan provide non-discrimination in regard to employment. However, in practice discrimina-

tion against women with regard to access to work does occur. Employers generally give preference to male workers who are considered as being more mobile and available than women: women are sooner and more easily fired than men, and the current labour legislation that grants benefits to women has the perverted effect of discouraging employers from hiring them. A woman without children is preferred over a woman with young children and pregnant women are rarely hired, although this is against the law. Men are promoted more quickly than women with the result that their salaries and status are higher compared to women with the same experience and qualifications.<sup>71</sup>

Consequently, unemployment of women is at least one and a half times that of men. Due to their lack of training and skills as well as to de facto discrimination in the formal sector, many women are ending up working in the informal sector in small wholesale and retail trade, rendering services such as cleaning, washing, baking, etc. Lack of social protection and social benefits, precariousness of working conditions, low salaries and vulnerability to abuses of all sorts characterise the daily life of women working in this sector.

The transition to a market economy has affected women's socio-economic status by the shrinking economy and downsizing or closure of state-enterprises. Overall, poverty in Uzbekistan is undergoing a process of feminisation. Women are today suffering from economic and social deprivation as a result of unemployment, insufficient income-generating opportunities and limited access to productive resources such as land. Such a situation tends to maintain women in a subordinate role and in a lower socio-economic and political status, increasing their dependence on their husband and family, rendering them more vulnerable to poverty, violence perpetrated within the family and the community and to trafficking.

Although domestic violence touches all levels of society, it is more severe for women living in poor economic circumstances, because they cannot afford to move away from the family. In 90 percent of the registered cases of domestic violence, women were either unemployed or both spouses had a very low income. The contrast between urban and rural confirms the link between the economic situation of women and violence, as the former have more opportunities to education and independent income and are more respected within the family. If they are ill-treated, their economic independence makes divorce affordable for them.

70 UNDG, 2003, page 39.

71 Committee on the Elimination of Discrimination Against Women, A/56/38, para. 182.

Early marriage and polygamy are widespread - in one area 12 percent of marriages concluded in 2002 were early marriages, 15 percent - polygamous, and most of the rest were contracted under parental pressure. In addition, it was reported that domestic violence is especially extensive in the cases of early marriages, since many of the young brides don't understand and, furthermore, they are not ready to resist and to protect themselves from the ill-treatment.

While forcing women into marriage or preventing marriage is forbidden by the Criminal Code, the theft of brides has revived: inability to pay bride-money and finance a generous wedding leads young men of insufficient wealth or who are unemployed to use this tradition method. Those guilty of bride theft are not brought to justice for two reasons: the bride's family does not want publicity and people believe that bride theft is committed with the family approval and is part of a traditional custom. Law-enforcement agencies have usually the same vision on this issue. The theft of brides is often accompanied by rape.

Rape is believed to be widespread, but due to cultural norms and values which place great importance on women's sexual purity, the crime is under-reported. Public condemnation of rape victims is common, particularly in rural areas. Criminal proceedings for rape can only be initiated after a written complaint is filed by the victim and a case may be dropped if the victim withdraws the charges herself. In practice, rapists escape criminal prosecution when all sides agree to arrange a marriage between the perpetrator and the victim. Further, articles on rape in the Criminal Code neither explicitly address marital rape nor do they exclude it. However, the police reportedly often fail to take action in cases of marital rape and the victim very often does not file a complaint or withdraws her allegation out of fear.

Uzbekistan is a country of origin, transit and destination of human trafficking and women trafficking. Human beings are exported for labour, military and sexual exploitation. Sometimes people are sold into Kazakhstan where they become slaves. Victims of human trafficking are sent to European countries and the United States as well as the countries of Asia. The majority of victims are brought out of the country for sexual exploitation by intermediaries. Another category of victims is composed of women who contacted bride or employment websites through internet. Shuttle transportations of women for sexual exploitation is in particular through Kazakhstan and Kyrgyzstan.

The scale of organised prostitution is of great concern. It is reported that recruiters work in schools, universities, and night-clubs and on the streets. However, trafficking of women is not officially acknowledged in Uzbekistan. The victims of trafficking are afraid and ashamed to turn to the law-enforcement agencies,

because if they were prostitutes, even in the cases of coercion, they could be subjected to punishment according to the Uzbek Administrative Code.

Torture remains routine, and that both male and female detainees are regularly threatened with rape. The police make such threats in particular against female detainees in the presence of their male relatives to force the men to sign self-incriminating statements.

The Committee on the Elimination of Discrimination Against Women expressed its concern in 2001 at the significant resurgence of patriarchal attitudes and behaviour, the low representation of women in decision-making bodies because of a number of factors, including traditional sex roles, and the prevalence of all forms of violence against women, including domestic violence. It also expressed concern at the high rates of suicide among women and at the cases of polygamy and made recommendations regarding trafficking of women and girls.<sup>72</sup> The Special Rapporteur on violence against women also expressed concern about the lack of rules dealing with domestic violence and marital rape.<sup>73</sup>

### > **Children**<sup>74</sup>

More than half population of the Republic of Uzbekistan is below the age of 18 years old and approximately 35 percent are between the age of 0 and 14. The law obliges parents to support their children until the age of 18. A strong cohesion of families exists and several generations live together under the same roof or in communities. Children are considered an important aspect of family life and are deemed of great importance for the security and survival of the family in the future; in this respect especially boys are favoured.

The Constitution guarantees to children respect of their rights without discrimination and anti-discriminatory dispositions are contained in several laws. Nevertheless, the Family Code provides for the minimum age for marriage at 18 years for men and for women at 17 years old. This age can be lowered by maximum one year by a decision of the *hokimiyat*.

Refugee children, disabled, street children, children in prison (and those that have been released) do not enjoy the same

72 A/56/38, paras 165-187.

73 E/CN.4/2003/75/Add.1, paras. 1225-1232; E/CN.4/2003/75/Add.2, paras. 231.

74 OMCT et al., 2005, page 65-75.

access to educational and health facilities as others. An exceptionally high number of children are disabled, and the support they receive is insufficient and available only until the age of 16. It is thus not surprising that disabled children are often seen begging on the streets. There are also cases where disabled children successfully pass their admission exams but are not admitted to schools for some unknown reasons.

Although school enrolment is generally high, poor families, mostly from rural areas, have been restricted access to the educational system. In addition, girls have a lower rate of participation in higher education than boys notably because of early marriages, but also because of attire for Muslim girls.

It is alleged that torture of children has taken place in youth detention facilities, by the staff as well as by other children. However, these claims are difficult to verify, since visits to prisons by NGOs and other non-governmental groups is impossible. In the interrogation process, authorities have regularly threatened to inflict harm on family members and children in order to obtain a confession. Reportedly, torture or even beatings to death, has occurred under the eyes of children of the suspect, constituting clear psychological violence. Some children are also ill-treated by state agents only because their parent is a human rights defender.

Although legal counsel is granted to juveniles, in practice lawyers are reluctant to defend children because the State will only pay 600 sumi (approximately one US dollar) for the defence. In addition, lawyers are often informed at the last-minute about the details of the case. There are doubts as to whether the right to a psychologist or pedagogue is ever applied. Incidences of bribery, falsification of charges, harassment of the offender's family and torture during arrest and interrogation are also common.

In 2001, the Committee on the Rights of the Child noted its concern about "numerous and continuing reports of ill-treatment of persons under 18 by the militia, including psychological intimidation, corporal punishment, including for purposes of extorting confessions [and] deplore[d] the insufficient efforts to investigate allegations of torture, as well as the failure to prosecute alleged perpetrators."<sup>75</sup> In addition, the Committee expressed its concern about insufficient information in the area of juvenile justice, and was particularly concerned about ill-treatment and unlawful investigative methods and deprivation of liberty. Almost four years later, the situation had not improved.

The Human Rights Committee has also expressed its concern about cases of children being detained, arrested and held in custody without being able to exercise their right to a lawyer, and

subjected to ill-treatment and unlawful investigative methods; and about the lack of information on this subject. It recommended that Uzbekistan include more information on the situation of children held in custody and that it enact a new criminal procedure law to deal specifically with juveniles.<sup>76</sup>

According to anecdotal reports from NGOs, the number of the children who are trafficked into prostitution abroad is growing. Traffickers most often target girls aged between the ages of 11 to 16, but boys are also trafficked. There were reliable reports that young women travel to the Persian Gulf, Malaysia, South Korea, Thailand, Turkey and Western Europe for the purpose of prostitution. Many young prostitutes come from poor rural areas and deteriorated families. There are cases when parents, for profits or just in despair, sell their young daughters into sexual slavery. In large cities such as Tashkent and Samarkand, newspaper advertisements for marriage and work opportunities abroad as dancers or waitresses in private nightclubs or restaurants are often connected to traffickers. Street children have also been engaged in prostitution practices. The State provides only modest relief to street children in terms of programmes for shelter and food and they have consequently been compelled to find other means to support themselves. According to an unofficial estimate there are about 1,500 street children in Uzbekistan. One of the major obstacles in the fight against trafficking for sex trade has been internal corruption, in the form of bribes taken by customs and border guards.

Sale of children is a new shocking phenomenon in Uzbekistan. In Samarkand province women from the rural regions sell their children in markets. Thus, a market salesgirl testified to have seen two eighteen-year old women with babies in their hands appeared in the market. They approached salesmen proposing to buy their babies for about US\$5 per baby. The women refer to their misery to justify themselves. On receiving the money for the babies, they immediately disappear.

The New Labour Code of Uzbekistan (1996), sets the minimum age for work at 16 although it provides for some exceptions: children from 14 can work provided that there is a written agreement of their parents or guardians, that the work is not harmful for their health and safety, and that the work does not prevent the children from going to school. The Labour Ministry inspection service is responsible for enforcing compliance with these. However, these controls are not effective. In fact, many children

75 OMCT et al., 2005, page 67.

76 CCPR/CO/71/UZB, para. 21.

start working from the age of 10. In rural areas, every year during the cotton harvest, many children are employed as cotton pickers without being able to attend school at the same time; and these children are also exposed to hazardous and hard working conditions. The former UK ambassador to Uzbekistan expressed his concern about this: "The widespread use by the state of forced child labour in the cotton harvest also should be highlighted further. This is one area [where] I would like to see the UN take a much more active role."<sup>77</sup>

Children are also often employed in markets and shops to sell alcohol, cigarettes and other goods. Their remuneration generally barely covers meals and day-to-day needs. In the worst cases children are employed in illegal activities such as prostitution and robberies. In general children end up working at a young age because of the deteriorating socio-economic conditions of their families. In this poverty-driven situation, an additional source of income is, most of the time, of vital importance and it is therefore not uncommon that parents themselves force their children to drop out of school and go to work.

The negative effect of the economic crisis and the subsequent deterioration of the family unit have resulted in an increasing number of street children in Tashkent and other Uzbek cities.<sup>78</sup> Most work as street vendors. During the summer, these children sleep in gardens, parks or on garage roofs, while during the winter they find shelter in cellars and basements where there is central heating system. The Government addresses this situation by mostly resorting to repressive measures, resulting, very often, in the detention of children. Indeed, when street children come into contact with law enforcement officials it is not because they are liable to be charged with crimes, but exclusively because they live or work in the streets. Cases of ill-treatment and torture are reported in this regard. Ill-treatment also occurs between the children themselves. When not being detained, given the fact that foster care and other forms of family-based alternative care are not sufficiently developed, children are placed in institutions such as the so-called "infants' homes", which because of lack of resources, provide children with very low quality housing and care.<sup>79</sup>

Latent violence by parents towards their children is a common problem. Partly due to the closed *Makhalla* system, no action has been taken by the Government to prevent these occurrences. Children rarely report being abused despite article 67 of the Family Code that allows a child from 14 years old to file a suit against their parents or guardians. Many children are unaware of their rights and the possibilities of protection. Sexually abused girls are often sent to detention centres in order to cover up the family abuser. Neither information about appropriate contacts in case of abuse nor "hot lines" exist. State agencies dealing with

children prefer not to interfere in family matters and seldom run to deprivation of parental rights as permitted under articles 83-94 of the Family Code.

Among its recommendations, the Committee on the Rights of the Child called for the allocation of resources "to the maximum extent possible" for child rights. It also expressed concern at the prevailing disparities in the enjoyment of rights of children: refugee, asylum-seeking and internally displaced children, children belonging to minorities, disabled children and those living in institutions, and in regions of the country lagging behind in socio-economic development; and highlighted that the Convention's guarantee of non-discrimination may be jeopardised, for example by social security laws which effectively deprive non-citizens of rights to social security benefits and impose fees which may inhibit access to health and education services. It also mentioned the harmful consequences for children of domestic violence, the low level of pre-school enrolment; the declining enrolment and high drop-out, repetition and absenteeism rates in primary and secondary schools; the deterioration in infrastructure; and the deterioration in the quality of education, especially of teaching and the curricula.<sup>80</sup>

### > *Internal migrants*

The deteriorating economic situation in rural areas has led to a gradually increasing level of urbanisation over the last decade. Migrations of considerable proportions can also be observed from cities whose industries have been affected by the demise of the Soviet-style economy, resulting in massive downsizing and unemployment. Consequently, many peoples are forced to move to the main urban centres, especially Tashkent, to find temporary jobs and survive (see section 8.5 for more detail on this problem).

Citizens of Uzbekistan must obtain a residence permit (*propiska*) from local authorities in order to resettle in a new city. Without this permit, which can be either temporary or permanent, a person is barred from housing or employment and is also subject to imprisonment for violation of the passport regime. Thus, this system has the effect of turning an Uzbek citizen into a *de facto* illegal. The passport regime - determined by the Presidential Decrees and the Cabinet of Ministers' Resolution - imposes serious hurdles and numerous conditions which make it almost

77 OMCT et al., 2005, page 74.

78 CRC/C/15/Add. 167 para. 63.

79 OMCT and LAS, 2002, pages 23-24.

80 CRC/C/15/Add.167, paras. 26, 47 and 57.

impossible to get a *propiska* in Tashkent, where most of the internal migrant workers are heading. Those who do not obtain one have to bribe public officials, which costs up to US\$2000. Consequently, the majority of internal migrant workers in Tashkent remain in illegality. This situation often unleashes a cycle of violations of rights of various natures. In Tashkent, migrants without *propiska* are often victims of blackmail and extortion by local officials and police authorities, who receive bribes just to turn a blind eye to the migrant's illegal status. Furthermore, employers are aware of the worker's illegal and so take advantage of this to underpay them - or not pay them at all. The workers, conscious of their illegal condition, are not in the position to file complaints. In this respect, there are many black market labour exchanges in Tashkent where, every morning, several thousand people, known as *Mardikors*, go to find a job. These internal migrant workers are ready to perform any job for a very low amount of money. As competition among the job seekers is very high, the price given for the work tends to be extremely low.<sup>81</sup>

The Committee on the Rights of the Child expressed its concern in 2001 that the system of residence registration may restrict the rights of children belonging to vulnerable groups to access social services. In particular, the Committee is concerned that because these rules are issued in various forms (decrees, regulations, instructions, etc.), they may not be sufficiently clear and may be open to abuse by officials reluctant to see migrants settle in their jurisdiction.<sup>82</sup>

## 8.4 Violence in Uzbekistan

### > *Torture and deaths in detention*<sup>83</sup>

Uzbekistan does not keep any official records on torture cases, therefore reports are usually based on statements made by victims or personal investigations of human rights defenders and international human right organisations. Torture is reported during all stages of criminal procedure starting from first moments of detention, police interrogations, prison etc.

Between 2003 and 2005, four new deaths in custody, apparently due to torture, have been documented. Torture allegations have been raised by defendants and witnesses in some trials. In all of these cases, the presiding judges ignored the allegations and proceeded to convict the defendants. Human rights defenders, political opponents and independent religious activists are the most common victims of torture. Repressive strategies have been used to silence persons who are engaged in denouncing human rights violations perpetrated by the authorities.

Police officers and security agents use torture and other illegal means to coerce statements and confessions from detainees and courts continue to accept as evidence confessions extracted under torture. The Supreme Court issued an instruction to judges to exclude such testimony but judges do not implement this. Judges also routinely base convictions solely on confessions made by defendants during the investigation.

The most frequently occurring gross violations during arrest and detention are the use of violence and violation of the right to legal defence. Violence is especially widespread during the arrest because the detainee showed resistance.

The consequences of torture most frequently reported by medical personnel are bruises (including on the abdomen and kidneys), grazes, forms of bleeding, traumas of thorax, head concussion and others. It was noted that law enforcement officials usually try to inflict damage in such a manner so as to leave no trace. Many detainees try to document the bodily injuries and some of them manage to do that, but these measures do not lead to anything further.

The Special Rapporteur on Torture visited Uzbekistan in 2002 and stated that he "believes, on the basis of the numerous testimonies (including on a number of deaths in custody) he received during the mission, not least from those whose evident fear led them to request anonymity and who thus had nothing to gain personally from making their allegations, that torture or similar ill-treatment is systematic". Even though only a small number of torture cases could be proved with absolute certainty, the numerous testimonies gathered were so consistent as to torture techniques and circumstances occurred that the "pervasive and persistent nature of torture throughout the investigative process cannot be denied". Torture and other forms of ill-treatment appear to be used indiscriminately against persons charged with serious crimes as well as petty criminals.<sup>84</sup> However, almost none of Special Rapporteur's on Torture's 22 recommendations have been fully implemented and a government action plan against torture has had little impact on the reality of the criminal justice system.<sup>85</sup>

81 OMCT and LAS, 2002, pages 17-18.

82 CRC/C/15/Add. 167, para. 28.

83 OMCT et al., 2005, page 29-34.

84 E/CN.4/2003/68/Add.2, para. 68.

85 OMCT et al., 2005, page 20.

In 2001 and 2005, the Human Rights Committee stated that insufficient information has been provided about conditions in detention centres and penal institutions in Uzbekistan, apart from comments on conditions in the Jasluk prison. The Committee is concerned about numerous allegations of torture, ill-treatment and deaths in prisons and of the return of marked and bruised corpses to the families; the low number of officials who have been charged, prosecuted, and convicted for such acts; the high number of convictions based on confessions made in pre-trial detention; and the small number of independent inquiries conducted in police stations and other places of detention to guarantee that no torture or ill-treatment takes place. It recommended that the State should take measures to improve conditions in detention centres and penal institutions so that they are compatible with articles 7 and 10 of the Covenant, and ensure that all persons deprived of their liberty are treated with humanity and respect for their dignity, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.<sup>86</sup>

The Committee against Torture expressed concern in 2002 at the numerous, ongoing and consistent allegations of particularly brutal acts of torture and other cruel, inhuman or degrading treatment or punishment, committed by law enforcement personnel; the lack of adequate access for persons immediately after they are apprehended to independent counsel, to medical examiner and to family members (an important safeguard against torture); and the de facto refusal of judges to take account of evidence of torture and ill-treatment provided by the accused, so that there are neither investigations nor prosecutions.<sup>87</sup> The Committee on the Rights of the Child in 2001 expressed similar concerns.<sup>88</sup>

### > *Freedom of religion and violence*

In the words of the OMCT and Uzbek human rights organisations in 2002:

Approximately 88 percent of the population of Uzbekistan is Muslim. During the Soviet era the Muslim Board of Central Asia and Kazakhstan controlled Islamic worship and study, regulating the registration of mosques, appointing imams to lead local congregations and dictating the content of sermons and Islamic practice. The agency survived Uzbekistan's transition to independence in 1991, becoming the Muslim Board of Uzbekistan and retaining its responsibility for the regulation and restriction of the population's religious beliefs and practices. Independence gave rise to a revival of popular interest in Islam and imams began to preach without deference to the Muslim Board, communities founded mosques that were not regis-

tered with the board and a variety of Islamic literature not approved by the board became available.

...

During the second half of the nineties, the Uzbek government tried to regain strict state control over religious activity and the murders of several police officers and government officials in 1997 provided the pretext for the government to crackdown heavily on religious Muslims, portraying them as a threat to the country's stability. In May 1998, the Law on Freedom of Conscience and Religious Organisations, together with amendments to Uzbekistan's criminal and administrative codes, banned all religious activity and organisations not registered with the state, including private religious education and the distribution of literature deemed extremist and set out criminal penalties for leaders who failed to register their groups.

...

Since 1997, the measures taken by the authorities have led to the closing down of hundreds of mosques, while more than 7000 Muslims, militants and believers have allegedly been imprisoned. In pursuing its systematic religious persecution against independent Muslims and believers, the government has engaged in severe and repeated abuses that include unlawful arrests, detention without trial, incommunicado detentions, extra-judicial executions, torture, unfair trials and incarceration of non-violent believers.

...

This wave of repression carried out by the authorities against non-violent Muslims believers tends to reinforce the population's adherence to a more radical form of Islam. Moreover, both issues –the state's repression and the increased appeal exercised by a more radical form of Islam on the population- have to be seen against the background of the ongoing economic crisis, its effects and the authorities' failure to properly address the problem of poverty. Indeed, destitution and extreme poverty can lead the population to welcoming the support of the "Wahhabists", who have reportedly provided people with food supplies, financial resources and schoolbooks.<sup>89</sup>

86 CCPR/CO/71/UZB, 26 April 2001, Principle subjects of concern and recommendations, para. 9; CCPR/CO/83/UZB, paras 10-11.

87 CAT/C/CR/28/7, paras. 5, a), b), and f).

88 CRC/C/15/Add. 167, para. 39.

89 OMCT and LAS 2002, page 26.

In 2005 OMCT and three Uzbek human rights organisations informed the Human Rights Committee that:

...for years, Uzbek government has imprisoned on "fundamentalism" charges individuals whose peaceful Islamic beliefs, practices, and affiliations fell outside of strict government controls. An accumulated total of about 7,000 people are believed to have been imprisoned since the government's campaign against independent Islam began in the mid-1990s. The government justifies this campaign by referring to the "war on terror," failing to distinguish between those who advocate violence and those who peacefully express their religious beliefs. By November 1, 2004, there were documented 241 convictions; the true numbers are believed to be much higher. In 2004 Uzbekistan was shaken by two episodes of violence—bombings, and shootings in Tashkent and Bukhara in late March and early April, and bombings of the U.S. and Israeli embassies and the General Prosecutor's office in Tashkent on July 30. Uzbek government used the March-April attacks to give new validation to the "war on terror" campaign. Uzbekistan is a key ally of the United States in the global campaign against terrorism, but undermines that campaign by using it to justify gross human rights abuses. Unfair trials of terror suspects in Uzbekistan that result from gross abuses further undermine counterterrorism efforts by producing unreliable convictions which damage rather than promote the rule of law.<sup>90</sup>

Finally, the Human Rights Committee noted in 2005:

...de facto limitations on the right to freedom of religion or belief, including the fact that proselytising constitutes a criminal offence under the Criminal Code. The Committee is also concerned about the use of criminal law to penalise the apparently peaceful exercise of religious freedom and the fact that a large number of individuals have been charged, detained and sentenced and while a majority of them had subsequently been released, several hundreds remain in prison.<sup>91</sup>

### > **Violence, forced eviction and mass displacement**<sup>92</sup>

The Ferghana valley is one of the regions where State repression is occurring on a large scale. The militarisation of the region is taking place under the banner of fighting international terrorism and notably the Islamic Movement of Uzbekistan (IMU) and the *Hisb ut-Tahrir*.

The social situation in the region is characterised by a high level of unemployment, demographic explosion, and a monopolistic economic approach through which all the profits extracted from the cotton culture remains in the

hands of the authorities, thus undermining the livelihood of local producers. A deep economic crisis is currently affecting the Uzbek part of the Ferghana valley, bearing a great potential for social unrest. For instance, according to the Institute for Regional Studies in Bishkek, 35 percent of all people under 25 were unemployed in 1995.

...

One can therefore observe, in the Ferghana valley, a vicious circle of brutalisation where poverty fuels support to movements that the authorities consider as "fundamentalists", thus applying against them strong methods of repression. In turn, this repression is carried out at the detriment of measures addressing the rampant poverty and democratic principles, thus reinforcing the attraction of the Islamic movements calling for an alternative political and social order.<sup>93</sup>

The forced displacement of populations and mass deportations is also taking place in other areas of the country. The circumstances and way in which these actions have been conducted show that they have been carried out as a form of collective punishment of entire villages for alleged participation in or support to the Islamic Movement of Uzbekistan (IMU), since fighting between IMU members and the army has taken place on the border with Tajikistan for the control of that territory. Again, these developments have to be seen against the socio-economic background of the region, as the following examples show:

On August 5th 2000, approximately 1300 Uzbek citizens of Tajik ethnicity, inhabitants of five villages in the mountainous districts of the Surkhandaria region, were forcibly deported from their villages by the military and resettled in the steppes of the Sherabad region, about 250 miles away. State authorities explained that the action was taken in order to improve the living conditions of the people concerned. Nonetheless, villagers were taken by surprise in the morning, forced to embark on military helicopters, had to leave their homes without their belongings, while their villages were subsequently destroyed ... in 2001, around 4000 people residents of ten villages near the Tajik border have been displaced under similar conditions, probably on suspicion of some inhabitants' alleged sympathies for the Islamic Movement of Uzbekistan (IMU). The displaced persons have been relocated in locations where they have

90 OMCT et al., 2005 page 11.

91 Concluding Observations, 2005 Uzbekistan Human Rights Committee CCPR/CO/83/UZB, para. 22. The Committee on the Rights of the Child, for its part, expressed concern that "restrictions on the freedom to manifest one's religion, particularly Islam, do not comply with the requirements" of the Convention on the Rights of the Child. CRC/C/15/Add. 167 para. 35.

92 OMCT and LAS, 2002, pages 26-28.

93 *Ibid.*



no contacts with the outside world and where it is very difficult for Uzbek human rights organisation to monitor their whereabouts and well-being. So far these persons have been obviously prevented from returning to their place of origin, while Human Rights Watch reports that their homes have been razed to create a *cordon sanitaire* along the border.<sup>94</sup>

The United Nations Development Group's Common Country Assessment also recognised the abuses connected with the forced removal of people and noted that the relocation caused undue insecurity and hardship. The displaced communities have very few possibilities of making a living: for example, they cannot move freely within the country, as they are not able to afford a residence permit which severely limits their opportunities for seeking employment.<sup>95</sup>

### > **Poverty, violence and religious fundamentalism**

Information collected on Uzbekistan shows a clear interrelationship between poverty, inequality, violence and religious fundamentalism. The United Nations Development Group stated in 2003 that the country's approach to "security" is complicated by an increasingly difficult economic situation, and that:

when social disparities become more pronounced, opportunities potentially exist for extremist groups to capitalize on the perception of growing inequality, as resentment about perceived social injustice blinds some to the shortcomings of alternatives. For example, Namangan province is often cited for its high number of sympathisers for radical Islamic movements, but support in this region may be rather the result of disappointment over socio-economic disenfranchisement than true passion for radical Islam. Thus, there is a potential threat posed by growing numbers of young unemployed men to stability and security, which if not counteracted may directly impinge upon human development.<sup>96</sup>

The Common Country Assessment recognised that the Uzbekistan constitution guarantees freedom of religion, but that

...since 1997, there has been a well-documented series of arrests, some of which appear to be targeted rather loosely. The Government of Uzbekistan regards militant Islamic fundamentalism as the main threat to state security and consequently, three particular groups have been singled out: the Islamic Movement of Uzbekistan, independent Muslims, who meet outside the state-controlled system of Mosques, and the *Hisb-ut-Tahrir*. It has already been noted that sympathy for radical Islamic movements in Uzbekistan is often fuelled by discontent with the disappointments of the post-Soviet era rather than by deeply

felt attachment to radical Islamic ideology. Sympathy for militants seems to be linked to the lack of possibilities to express discontent within the current institutional framework. The heavy-handed response of the Government has "also served to radicalise some young men and women who otherwise might practice their religion in a politically neutral manner."<sup>97</sup>

On the question of security, regional stability and human rights following the terrorist attacks, the CCA referred to the UN Secretary-General who has stressed that:

...the need to protect national security and the fight against terror cannot justify human rights violations. Disillusionment with the reform process, rising inequalities, citizens' alienation from the state and human rights violations can give rise to an unstable social, economic and political environment and create a threat to security.<sup>98</sup>

## ■ 8.5 Migrant workers: case study

### > **Objectives and methodology**

This section is based on a study by the Legal Aid Society (LAS) on the situation of migrant workers in the city of Tashkent in 2004.<sup>99</sup> The purpose was to identify the problems related to the urban migrant workers (known as *mardikors*), the causes behind the increasing number of urban migrant workers, and the roots of violence from both state and non-state actors and the main risks for *mardikors*.

The study was based on random interviews in different parts of the city with low qualified and low paid people coming from the rural areas or small and middle sized towns and who had no papers to work permanently in the city. It investigated households, breadwinners, incomes, and women and family issues; police attitudes and practices

94 OMCT and LAS, 2002, pages 27-28.

95 UNDG, 2003, pages 41-42.

96 UNDG, 2003, pages 43-44.

97 UNDG, 2003, page 45.

98 UNDG, 2003 page 45.

99 The full text of the Case Study is contained in the CD-ROM included with this publication.

During the process of interviewing people, LAS identified some new sides to the problem and introduced necessary changes to the research. One such “surprise” was the division of the so called “labour exchanges” (places where *mardikors* gather) between different groups, and how that self-governed regulatory systems works.

### > **Background to the problem**

The rural situation in Uzbekistan is feudal in nature. The cotton harvest is surrendered for a miserable price to the State, which has a monopoly on export, resale and anything else with respect to the cotton. The State, which is heavily dependent on cotton, confiscates, and often does not pay a penny, for the cotton harvested. The level of income is the lowest in the world at much less than a dollar per day. The State does nothing to increase employment or for agricultural development. Freedom of entrepreneurial activity is minimised under irresponsible fiscal policies and corruption, and few chances are given to independent small businesses. A well known proverb in Uzbekistan says “it is cheaper to do nothing”.

Infrastructure for the 60 percent of the population living in rural areas is underdeveloped. There is almost no access to adequate education and health services. Qualified medical personnel, teachers and engineers are scarce.

Although private farming is not a real option, many families extract a minimum for survival by having a cow or garden in the backyard.

In this situation many people from rural areas find that the only option to survive is migration to other states or big cities, where there is some demand for low qualified and low paid work. *Mardikors* are not only people from the rural areas but also from more or less developed cities: highly qualified teachers, engineers and medical personnel have to leave their underpaid job and look for other options.

In conclusion, while life in the city presents risks for the security of the *mardikors*, at the same time, it gives more opportunities to work and in most cases to send up to US\$30 back to their families.

### > **The problems of mardikors**

The problem of internal migration was institutionalised in the Soviet era. At that time, big cities were supposed to demonstrate developed socialism and prosperity: beautiful architecture and modern symbols of the big cities could be damaged by extensive inflows of people from the rural areas and cause problems for

full and guaranteed employment, so widely lauded in Soviet propaganda. This same understanding prevails in modern Uzbekistan with lower living standards and unbearable attitudes of the police.

It is practically impossible for people to settle legally in cities. A person registered in a permanent place of residence is allowed access to medical, security, education, real estate ownership rights, on the territory where he/she were born. Legislation limits the rights of an individual to be employed on a territory where he or she is not officially registered. Thus an individual moving to Tashkent city is supposed to receive *propiska* or registration in the capital.

The mayor’s office is the body responsible for granting the rights to settle in Tashkent city. However, an officer reported that they have an oral order to grant this status only on direct orders from the interested state agency or in other exceptional circumstances (usually believed to be corrupt practices). LAS reports numerous cases where bribes were paid, but in which no permit was obtained.

All interviewed *mardikors* pay some remuneration to the police regularly which is supposed to guarantee full immunity for well-being in that area. Nevertheless, hundreds of *mardikors* get arrested daily on the streets, being outside of their native districts or having no money to settle the problem. They are gathered on the special camp organised in each district of the city.

Wrong practices of the police are not rare. However, LAS did learn of good police officers who understand the problems and helped *mardikors*, but they were rare.

About 95 percent of all *mardikors* interviewed never applied for proper registration documents, as they were perfectly aware of the rates requested or other high requirements. Usually they explained their passive attitude because no employer would be ready to accept the extra expenses associated with hiring the staff subject to extra taxes.

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### The story of Otabek Mukhitdinov

Life in the capital is so complicated with frequent police raids that it’s almost possible to be in the capital alone without good connections in the police or good friends who know you and may introduce you to the sheriff of the district you live. Any important official visit or national holiday starts with the deportation of “unreliable” people without registration in the capital. I compare myself with a criminal who is not allowed to visit public places or freely walk on the streets. Our presence is invisible

since we go to work secretly and very early in the morning and then directly back home, often by taxi. We cannot afford to walk on the streets because the capital is full of police stopping you on every corner to check documents and get some money from you. The police easily detect us by our appearance, colour of our skin burned under the sun and our poor clothing. About 12 friends live in the small apartment, and should they need to buy something they do not risk going out of the apartment. I am highly sceptical with respect to the future in the capital and am thinking of moving to Russia.

Markets are one of the most popular places for *mardikors* to work. Often they are employed in the wholesale department, loading or securing the goods and at the same time, some of them assist people with their shopping and deliver their fruits and vegetables to their cars. However, not every one is allowed to work there, since you have to bribe the police regularly as well as those representing the majority of the workers who protect the market from an overflow of migrants. The same is true of work in illegal building and reconstruction services. There are also many other less popular places for gatherings of illegal migrants such as “labour exchanges” in the suburbs where prices for *mardikor* services are significantly lower.

#### LAS meets a police officer in a market

When the police officer noticed one of us asking questions and writing something down, he asked us to show the comments and explain what we were doing. We wanted to know what was wrong. He could not explain what law we violated by interviewing the *mardikors*, but was very nervous since the idea of our recording was not really ideal from his point of view. In less than a minute all the *mardikors* left the presence of our interviewer since they were absolutely sure that later, after we had left, the same guy in uniform could be quite dangerous for them. Nevertheless, our dispute did not end there: the policemen insisted and at the same time was glad to finish the dispute with people who so bravely defended their rights. In reply to our question: “What law did we break by talking with those people?” he stupidly said: “the law is myself and I am here to dictate what to do”. That poor guy was the ordinary private, with no distinctive signs on the uniform. It was really a pity to observe such a limited understanding, comprehension, professionalism, so dangerously emanating from people like that.

The illegal situation of the immigrant workers means that they do not benefit from social security. Many examples show that

migrant workers do not receive health care, compensation in the event of accidental death or old age pensions and that they work in unsafe and unhealthy conditions.<sup>100</sup> Examples also abound of people working for private individuals or police officials on construction sites and not receiving any pay for their work.<sup>101</sup> The situation could be described as one where slavery and human rights violations happen daily and are the norm.

The fact that *mardikors* have little or no chance to obtain papers for permanent living and employment in the capital strains their relationships with police and causes tensions in the whole of society. Every second person interviewed explained that those who decided to join criminal groups were in a so called “no exit” situation. They felt that it was not only the individual who is responsible, but also society as whole and each person in particular.

Often, *mardikors* stated with some anger and fear that their only option was to return to their places of their origin. To survive there the only alternative was to join the radical studies of Islam; many of their friends were risking their lives and distributing literature and leaflets for US\$20-50 a month.<sup>102</sup> However, the absolute majority of those interviewed were not ready to break the law and earn money by robbery or other crimes.

To survive in Tashkent, *mardikors* have some “safe” places to gather and then go back to the job and to the city by taxi which is very expensive for them but to take public transportation means to be noted by the police and questioned and fined. Therefore their presence is very invisible, they work at the places where they are needed and then hide where they sleep.

100 One example is that of a *mardikor* who died in an accident while working on the summer villa of Uzbek businessmen. The businessmen did not call for police or ambulance, but invited the relatives of the victim. He gave them a bag of flour, rice and some meat for the funeral and let them go. The relatives did not complain or investigate what happened. The attitude of the relatives is also significant - they were threatened by the fact that the guy was working illegally, was not paying taxes, was not registered; the police would not solve the problem but initiate investigation and punish anyone else but those responsible.

101 Almost every *mardikor* interviewed complained that usually people hiring them did not pay them as much as was agreed. Sometimes they didn't pay them at all. No legal remedies are possible since they do not have valid papers and labour contracts.

102 One *mardikos* told the story of two of his elder brothers, who were jailed for participating in a radical fundamental group. They were distributing literature and had about US\$50 a month. That was only the work for them; they had never before associated with those radical people but had no other source of income. After they were jailed the brother was called to the police several times, each time suspected of participating with radical studies groups. Then he decided to leave for Tashkent, and to live and work there.

### > *Women mardikors*

Historically *mardikors* were men working in hard low paid positions and doing the most unfavourable physical work, but now the number of women working in the city as *mardikors* is great and there are no visible signs why the situation should improve. About 40 women working in the city were interviewed, with very illustrative stories about their experiences. Most of those women are alone or have handicapped husbands incapable of hard physical work<sup>103</sup>. In addition, the state pension for the handicapped amounts to a maximum of US\$15-20 a month, whereas unofficial but very true living minimum is about US\$150 for a person.

Women *mardikors* have a better chance of finding a permanent job than men. Usually rich and middle class households hire them for decent money for housework or babysitting. As one woman aged 30 told us: "I am a lucky women, because I found a good job with good people, I live in a room in their big house, I am well paid and have no other problem but to work and be friendly with the family. I am sure that everybody in my situation could dream about such a chance".

### > *Prospects for change*

This research disclosed the deepest roots for intra-society tensions and misunderstanding prevailing between people of the same nationality and origin. The main conclusion was that Uzbek society was in deep crisis. People were unable to formulate their claims and coordinate a dialogue with the authorities, who paid very little attention to them.

There appears to be no understanding of the problem or of the ways it might be solved. No-one interviewed had any knowledge of his/her rights or what characterised immoral legislation. It seemed that people are not ready to understand that laws can be immoral and inhuman and that the practice of registration is not something people have to live with like their parents in the Soviet era.

People are not aware of other practices in the other countries of the world. All they complained about was unjust requirements for registration, but not the practice itself. They were not ready to demand changes from the State, but each of them was looking for solutions in the existing legislation. Usually people are too poor and frustrated to lose the very minimum they have, and the same applies to people working to survive rather to enjoy to life and hope for the better. As one *mardikor* remarked, he does not have enough courage to protest and demand change: the level of poverty is so high, that many have lost their self-respect, making them become stupid, limited and apprehensive. Loss of self

respect prevents them speaking and acting freely. He added that with a paradigm shift in Uzbek ideology, the necessary changes would be possible, resulting in a more developed and civil society. "Nowadays we are silent, we are stupid, we are not protesting, but passively leave our places to the cities or new countries without dignity to actively protest for the empty stomach".

The research was educational for the people interviewed and the interviewers: LAS provided information on itself and the fact that, although resources were limited, people could always rely on our support or advice.

## ■ 8.6 Domestic violence: case study<sup>104</sup>

### > *Objective and methodology*

This study focused on the problem of domestic violence because the problem is not officially recognised by the Government. Domestic violence is divided into direct and indirect violence; is the latter occurring when a third party connives or fails to create conditions where domestic violence is strongly punished or to eliminate factors contributing to the development of such violence. The study concentrates mainly on indirect violence, as eliminating this will allow fighting direct violence more effectively.

Violence is not only physical or sexual abuse, but also emotional such as verbal humiliation. This definition of domestic violence allows us to look at this problem from different angles. Furthermore, domestic violence not only involves partners but also family members.

103 Albina from Tashkent did not have permanent place of work, she would get offers of housework. Her husband left her without a word a year ago for other women, and does not support her or the children. Her brother who assists them is also not a rich man. Therefore she left her children with her mother and went to the city. Albina says that life in the city is horrible and that she always wants to come back to her children, but in her village there is little or no possibility of earning money.

104 This Case Study is based on a fuller Case Study of Domestic Violence prepared by the Legal Aid Society Uzbekistan and contained in the CD-ROM included with this publication.

The aim is not to explore why violence occurs in the family, but to examine how poverty can affect domestic violence. Despite social class or wealth every woman could be exposed to violence but we explore how social class, wealth and infrastructure can affect dealing with and fighting domestic violence.

The most problematic part of the research was collecting data and interviewing victims. The mentality of many people in this part of the world is to obscure the problems in the family, since traditionally family issues are not in the public domain. At the same time, official data is silent on cases of domestic violence and getting relevant figures was next to impossible. Interviews were rather random and their aim was to get as much information as possible and then systematise it into comprehensible and logical conclusions. An important part of the research concerns the attitude of the police with respect to the domestic violence.

### > **Background to the problem**

One of the factors causing domestic violence is the low level of education and cultural background of the person committing violence against women and also the low education and culture of the victims of such violence. This factor is believed to be the most complex to deal with as it involves many other factors that will be analyzed here. Knowledge by women of their rights and well-developed infrastructure and legal conditions to support these rights in practice can significantly contribute to the decrease of domestic violence. Unfortunately none of these exists in Uzbekistan.

Uzbekistan is basically an agricultural country. From the early times agricultural villages had no or poor access to education and other public services. Women suffered from deep despair living with a family that continuously abused them and it may be asked what prevented them from divorce and why they remained silent without protesting against the behaviour of their husbands and sometimes the whole family abusing and harassing them.

A whole complex of factors affects the issue of divorce, among them traditions and poverty. Traditionally, divorce was disgraceful; moreover in Islam only men had a right to divorce their wives. In the Soviet era women were given more rights in terms of divorce but old traditions persist. A woman leaving her husband would be blamed for everything and no consideration given to the fact that she had to suffer abuses and harassments. Women have no access to property, thus they have to come back to the family of their parents. A woman coming back would bring shame on the whole family and this could further create problems for the arrangement of marriages of any brothers and sisters.

A woman from a poor family has no or very low access to education and a profession so that even if she finds a job, it is too low paid to support herself and her children alone. Women from poor families are more marginalised than those of more wealthy families. In most cases, the parents' family can barely support itself and another woman with her children can be a heavy burden. Therefore, most women suffering from abuses and harassments live in despair and have no place to go.

One of the most controversial traditions of Uzbek family relationships is the practice of the youngest son bringing his bride to live in the house of his parents. This causes many problems, and instead of a two-sided relationship and love, the couple must coordinate their lives with the beliefs and understanding of the parents. The exceptional national respect of youth for older people means that the opinion of the elders must be followed. Interviews tell of the many difficulties for the husband who becomes the centre of quarrels between the new bride and his mother. Sometimes such situations end in violence and brutality. The most widespread problem is the husband's total and wordless obedience to his mother's position to the detriment of bride. There are many examples of domestic violence in which the whole family takes part in humiliation and harassment over the women. In 80 percent of the violent marriages mentioned the interviewees believe that living independently and alone from parents could make it much easier for both sides.

There is a combination of old patriarchal traditions with a much more modern western lifestyle. Society is divided into rural and urban populations, often with exceptions when people from the both camps may confess principles different for the majority of that particular area.

In spite of secular laws prohibiting discrimination on the grounds of gender, old and archaic traditions prevail, where the role of women is often limited to domestic issues, bringing up children and a minor professional career. Uzbek legislation does not allow any discrimination and accordingly, *de jure* women may enjoy the same rights and freedoms as those practised by men. Moreover, labour legislation guarantees preferential rights for women in cases of termination of labour contracts in cases of redundancy or vacations or necessary leaves for baby-minding etc. However, in practice such rules have the reverse effect on the position of women, since an employer envisaging future difficulties with extra guarantees for women prefers to hire. Tough family traditions and household duties also make women less attractive as employees, and jeopardises their performance in the work place hindering their career, self-realisation and independence. The most widespread problem for any woman who is educated and young is to find a proper job. Normally employers have no desire to hire young lady of marriage age. Often in interviews

employers are interested in the plans of women for pregnancy. Although this is the most irrelevant question for any possible position, however this is very normal situation.<sup>105</sup>

At the same time, there is daily glorification and admiration of women and her ability to reproduce and bring up children. Women are often deemed secondary human beings and isolated from important state affairs not only because of strong patriarchal traditions but also because the State gives less and less rights and opportunities to women.

### > *Cases of violence*<sup>106</sup>

The victims of violence interviewed included different kinds of women: younger and older, those who were married in love or so called arranged marriages. In all cases there were different stories, people and perceptions. Some were victims of severe cruelty and some were more lucky and beaten rarely. But the main conclusion is that the women are ready to accept male cruel education methods for better and happy future for themselves and their children.

Poor education and archaic traditions have contributed a lot to understanding that man is powerful and unlimited in his right to form family relationships with no respect to women and her needs. In the majority of interviews, women expressed understanding and respect for the decisions of men. Thus one young woman stated that men must be responsible and must be the breadwinner, must be firm with children in order to give them a proper education and good morals, and be loving but at the same time demanding and if necessary cruel to their wife. Another woman expressed the view that beatings and a severe education for women who was suspected of unfaithfulness is good and normal for maintaining high standards for the family. She argued that cruelty may resolve problems in the family and that couples know best how to manage their relationship. She was shocked asked by the interviewer: "Why don't you beat your husband when he is unfaithful to you or you suspect him of other wrongdoings?" The lady could not understand how a wife could beat her husband and why the duty and care for the family and decision-making could belong to women.

These stories demonstrate a mentality which despite suffering and humiliations does not exclude male supremacy with the features of cruelty. It would appear that the main difference with cases of violence in western countries is that women do not accept violence whereas Uzbek society justifies reasonable violence.

Not all women remain passive when confronted with a violent person next to them. One woman who was systematically beat-

en by her husband and finally raped by one of his friends, applied to the police, seeking protection. In this case the police quickly initiated the criminal investigation and within a month submitted the case to the court, and both husband and his friend were sentenced to jail. After she applied to the police, the husband and his friend asked her to withdraw the application, but she refused to do so.

### > *Suicide*

Suicide is often the result of the violence, hopelessness and unbearable pain suffered by many women. The economic conditions which are often at the root of the situation are the increased poverty in rural areas without social security and other support and with women seen as responsible for housing, food, etc. Many victims of violence complain that low income and miserable life makes their husband angry and nervous with frequent brutal fights and beatings.

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#### The story of Kholida

Kholida who is 37 years old came to Tashkent as a *mardikor* tells her story: "My husband is a driver in Kashkadariya oblast of Uzbekistan. His work is with different employers with an unstable income for planning the budget. Usually he is without work, angry with the whole world and himself. Every second he finds the only guilty person is me. He pushes me, yells at me and beats me. I know that the reason is his misfortune and no work. He is angry about everything even me being his wife. Often he beats the children when they ask for food, sweets, toys etc. When we no food but bread and tea, he believes that there must be something even though there is nothing to eat. I was about to commit suicide, especially in when my children are sick and I have nothing to buy them, no medicine no fruits, nothing. Indeed, suicide was the next step to take. I did not know what to do, I did not know how to change the life".

This is the story of women who was about to commit suicide, but there are hundreds of others who really did do it.

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105 Natalia presently occupies a high position in a large multinational company. At the time she joined the company many years ago, the management asked her to sign a paper prohibiting her to give birth in the next three years. She did not want to sign that paper but the situation on the labour market left her no choice but to agree to this humiliating condition for any women.

106 Many additional cases of violence are contained in the full LAS Case Study on Domestic Violence included in the CD-ROM.

Suicide or attempted suicide is the worst outcome of domestic violence. Women commit suicide and this is taken as a form of protest against violence as there are no others. The tradition of suicide in Uzbekistan is very much different from that in other parts of the world. Shockingly, Uzbek women, women in some Tajik provinces and in parts of India, choose to end their lives by burning themselves publicly or when they are alone. There are no words to describe the horror of young women running in pain, burnt and falling down on earth in deadly suffering. There is no power to analyze the situation and what has forced them to do that.

Obviously such a terrible option comes to the idea of protest and declares martyr life. Surely a woman who does not want to leave this life quietly wants to say something she could not say alive. She could not say when the society could do something and save her life. Or there are so many such stories around that society became blind to them, became indifferent and men continuing to imitate mistakes of the past. Why Uzbek people have no brave to talk about it, to investigate and try to find answers.<sup>107</sup>

### > *The role of the police*

The corrupt and passive police are afraid to “distort” criminal indexes and reporting of progress by numerous family related issues. One interviewee was raped by her husband and beaten a few times. The wife asked the police for the help but they tried to convince her that quarrelling is normal everywhere and that they could not waste time by mitigating between couples. The story ends with dangerous cranial injury

The police often humiliate the victims of domestic violence and women have little trust in the police. For many women, the image of policemen is associated with well known instances of violence in the police jails and investigating offices. Not all women are ready to call for the police, because they are well aware of the poor conditions in the jails, tuberculosis and torture. Many victims are not prepared to have the father of their children imprisoned and thus lose even the most miserable assistance the husband provides. They believe that jail and police are not the solution but make their life and relationships with the relatives of their husband even more difficult.

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### **The story of Svetlana**

Svetlana said that she had to recount five times the sexual humiliations and rape by her husband to different investigators of Yunus Abad district police department, as if they wanted to verify whether the story was true. She re-lived the horror every time. She described the unbearable feeling when retelling it to

different and unknown people, who were not in a hurry to help her, but listened sceptically and indifferently. After those five interviews Svetlana decided to stop visiting the police and forget the story. She finally lost confidence in the police and it confirmed her impression of injustice and indifference.

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In some cases the police make a real contribution to the resolution of problems between couples, but that this is not always the case. It depends on the person and his/her personal understanding of the problem. Many police people do not understand that rape and violence in family as a crime and they do not have the necessary training.

### > *Summary and conclusions*

While this research did not focus on age, social-economic or educational distinction of the persons interviewed, the victims were very much under the influence of their socio-economical situation. Often poor people justified or explained their passiveness with generally understandable economical issues. They argued that poverty, unemployment, low social security etc. did not contribute to their willingness to live independently or call to police. They are dually threatened, from inside by the family and outside by the economic and social situation. In addition, other common factors such as the tradition of Uzbek families when the youngest son brings the bride to live with his parents contribute to the problem.

The research identified the following characteristics as inherent in enabling men to be violent:

- Men don't believe in life without violence, and apply “educational” forms of violence;
- They are very much under the influence of patriarchal traditions in which the role of the man is superior;
- They often practise aggression in sexual relationships;
- They do not understand how serious are their offences;
- They are ready to attribute their sins to others, sincerely believing they are right.

The study revealed that, on the contrary, the victims have the opposite features. They do understand and accept their mistakes; they are not sure of themselves and finally are ready to accept any aggression as payment for their bad behaviour.

<sup>107</sup> LAS Domestic Violence Case Study, pages 18-19.

The problem of domestic violence is complex and affected by many different factors, such as financial position, low culture or education and problems arising from childhood and many others. Often, the poor economic situation of the woman makes her a hostage of the violent family – but also became hostage to the socio-economic situation because single and divorced women often with children have little chances of surviving. In fact, single mother prefer to suffer pain rather than risk the life of her children and be alone face to face with poverty, low social security and unemployment.

This research showed that all women despite social class, economic welfare, colour of skin or origin are vulnerable to domestic violence; however, how they resist or stop being violated depends on the whole complexity of issues where social and economic welfare plays a crucial role. Social security, an effective economic system and wide opportunities for women leave far less scope for domestic violence to be systematic and treated as a normal phenomenon in the society.

The Government's recent economic reforms, corruption at all levels, the poor social security system and low development of infrastructure all add to the problem of domestic violence. Pretexting temporary economic problems, the State has abandoned the arena of social welfare. Today there is not a single agency directly addressing the problems of violent families. The authorities have failed to state their position and develop a programme. The State passes the topic over in silence and ignores any active measures.

Partly this ignorance is dictated by lack of free speech: the poor human rights record of Uzbekistan prevents discussion of this problem and people do not know what to do and how important the problem of domestic violence is. The mass media, supposedly responsible for regulating and educating people, is not free to do so but is free to glorify the power, the State and to illustrate success and happy stories only.

The Government, together with the civil society, should create an environment that allows rehabilitation of women suffering from violence and to support women suffering from violence, for instance special shelters for violated women where they can spend at least one night. Such institutions can provide support

and advice. One obstacle is that the residents of a particular territory are not allowed to rent an apartment or take a room in the hotel in the same area.

The notion of a shelter is related to broader issues of financial and economic independence. The majority of women in Uzbekistan are either unemployed or financially dependent on income received by the husband. The low level of state support for single mothers and the reduced economic opportunities for women do not provide an alternative. Changing the position of women will require deep social and economic reforms. When women are free and financially independent many problems will be resolved on their own.

The State should also create the necessary legal framework reforms on the relationships in the family and introduce the necessary changes. Brutality in other families makes women believe it is normal. Women suffer in silence before violent and strong men and legislation does not provide any remedy but criminal punishment. Criminal prosecution is not always adequate to every situation. The perception with respect to domestic violence of the police requires urgent intervention since the absence of special skills, and training makes the police efforts miserable and poor.

The problem of indirect domestic violence – third party connivance or even tolerating it – is not recognised as such by the Government and almost no measures have been taken to improve this situation. The structures that have been created by the authorities have in the most cases worsened the situation as those structures force women to be patient. In addition, governmental agencies carry out awareness raising campaigns that are mainly related to improving old habits and traditions that partially and indirectly contribute to domestic violence. Government steps should concentrate on creating and developing the economic and legal basis for a solution to the problem.

Civil society has an important role to play in the creation of crisis centres, education of women about their rights and providing opportunities to learn new professions that are more in demand.



PART III  
Human Rights Mechanisms and  
International Organisations



## Chapter 9

# Special Procedures of the United Nations Commission on Human Rights<sup>1</sup>

### 9.1 Introduction

This chapter assesses to what extent the special procedures of the UN Commission on Human Rights have integrated socio-economic factors and denial of economic, social and cultural rights (ESCR) as causes of violence. The analysis is based on an examination of the reports of 11 special mandate holders (referred to here as experts) from 1999 to 2005, including their country visits during this period, and their communications to governments in 2005.<sup>2</sup>

Many experts have highlighted the existence of a link between poverty and violence. Those with mandates mainly focused on economic, social and cultural rights (ESCR) - like the Special Rapporteur (SR) on adequate housing and the SR on the right to health - reported cases of violence in connection with both the failure to respect the rights under their mandates and with poverty. Some of the experts with mandates which are not specifically focused on ESCR - such as the SR on extrajudicial executions and the SR on torture - emphasised socio-economic factors when reporting on human rights violations. Experts who focus on the human rights of a specific group – such as the SR on indigenous peoples and the SR on violence against women - have systematically observed the interplay between denial of ESCR and enjoyment of civil and political rights.

The approaches of a given SR also change as the mandated person changes. For instance, the former SR on torture, Sir Nigel Rodley, has recognised that “the question of poverty is all too relevant to issues falling within his mandate”,<sup>3</sup> and has emphasised the socio-economic dimension of violence in many of his country visits. His successor, Theo van Boven, while acknowledging the link between poverty and violence, focused on the political causes of torture knowing that other parties already take care of the social and economic aspects.<sup>4</sup>

Although all the experts have highlighted the poverty-violence link in some situations, few have done so systematically. It is principally the SRs on adequate housing, on the right to health, on indigenous people and the former SR on torture, who conceptually connect poverty to violence and systematically attach violations of civil and political rights to socio-economic factors. Other experts established the poverty-violence link only in specific situations.

Several experts were limited in the attention they paid to the socio-economic dimension of violence for practical reasons of time or lack of information.

### 9.2 Observations by the experts on the poverty/violence link

The following quotations reveal that the experts recognise the link between poverty and violence, and often present the poor as the principal victims of violence.

[E]xtreme poverty often brings people into conflict with the forces of law and order and with the justice system”, and “[V]ery often, an extremely poor person’s only interlocutor will be a police officer (begging, theft, etc.). Few police officers have been trained to deal with extreme poverty in a non-repressive way.<sup>5</sup>

...the overwhelming majority of those subjected to torture and ill-treatment are ordinary common criminals... often members of the lowest level of an underclass that is disconnected from all opportunity of leading decent lives as productive economic citizens.<sup>6</sup>

the victims of arbitrary detention and those unable to extricate themselves from that kind of situation come from the most vulnerable population group.<sup>7</sup>

it is urgent to challenge the misconception that the poor, especially those living in slums and other marginal areas, are responsible for social violence and environmental degradation. Indeed, they are the primary victims of such

- 1 Prepared by the editor on the basis of a research paper by Mohamed Lotfy.
- 2 The experts functioning under the special procedures are: Special Rapporteur on adequate housing; Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the sale of children, child prostitution and child pornography; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on violence against women; Special Rapporteur on the right to food; Special Rapporteur on torture; Working group on arbitrary detention; Special Representative of the Secretary General on human rights defenders; and the Independent expert on the question of human rights and extreme poverty.
- 3 U.N. Doc. A/55/290, para.34. Interim report to the General Assembly of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, 11 August 2000.
- 4 Interview by OMCT with Theo van Boven, the then SR on torture, 30th March 2004.
- 5 U.N. Doc. E/CN.4/2000/52, para.107. Report to the Commission on Human Rights of the Independent expert on the Question of human rights and extreme poverty, 25 February 2000.
- 6 U.N. Doc. A/55/290, para.35. Interim report to the General Assembly of the Special Rapporteur on torture, 11 August 2000.
- 7 U.N. Doc. E/CN.4/2003/8/Add.3, page 2. Report to the Commission on Human Rights of the Working group on arbitrary detention on its visit to Mexico, 17 December 2002.

phenomena.<sup>8</sup>

[S]tates' international obligations to respect, protect and fulfil the right to health can have an important bearing on violence prevention efforts. The obligation to protect, for example, includes an obligation to take measures to protect vulnerable or marginalised groups, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence.<sup>9</sup>

[D]efenders seeking to protect the political, civil, economic, social or cultural rights of marginalized groups and persons face stronger resistance to their work, are more vulnerable and, therefore, more threatened.<sup>10</sup>

...in many countries, indigenous peoples are the victims of extrajudicial executions, arbitrary detention, torture, forced evictions and many forms of discrimination, in particular in the administration of justice. In too many places, they also lack access to basic social rights, such as the right to health, food, culturally appropriate education and adequate housing.<sup>11</sup>

Violence against women generally derives from the perceived inferiority of women and the unequal status granted by laws and societal norms.<sup>12</sup>

[T]o die of hunger is equivalent to being murdered, while chronic and serious under nourishment and persistent hunger are a violation of the fundamental right to life.<sup>13</sup>

[I]n order to find sustainable solutions to addressing the plight of street children, it is important that their situation is not considered as primarily a law enforcement or criminal justice issue. Policies and action are required to identify and address the underlying causes of this problem, which include a wide range of social and economic issues, in particular the marginalization and lack of opportunities available to the most disadvantaged segments of society.<sup>14</sup>

[I]n the contexts of poverty and social exclusion, organised crime takes advantage of the needy situation of poor families by offering what seems to be a quick way to make money.<sup>15</sup>

...addressing the root causes of sexual exploitation is essential to fighting this problem. He recommends that the Government strengthen social programmes aimed at the reduction of poverty and social inequalities and assess their impact with indicators related to children's rights".<sup>16</sup>

This last recommendation is one of the few recommendations requesting state action on economic and social conditions in order to prevent violence. Experts' recommendations concern primarily changes in the legislative framework in place and the needed institutional reforms, and those regard to economic or social policies are the exceptions.

### 9.3 Joint communications by experts to governments

Urgent appeals and letters to governments are among the tools used by the special procedures when alleged violations under their mandates are imminent or have occurred, and where urgent intervention is needed to remedy the situation. Given that the violation of a specific human right often involves violations of other rights, experts often employ joint communications when they address governments.

Most of the urgent appeals sent by the SR on torture are jointly issued with the working group (WG) on arbitrary detention, the SR on extrajudicial executions, and/or the SR on freedom of opinion. Similarly, most urgent appeals issued by the SR on human rights defenders are jointly sent with the SR on freedom of opinion. To avoid overlapping with the mandate of the SR on torture, the SR on the right to health takes up cases of torture only when an additional factor that concerns his mandate is reported. This applies frequently in cases where a detainee victim of torture is also denied access to medical treatment. For example, a victim of torture in Ethiopia has been denied medical treatment, in particular for his diabetes and for his injuries resulting from ill-treatment.<sup>17</sup>

The SR on torture and the SR on adequate housing sent a joint appeal to Sudan on a case of forced eviction of 22 internally displaced persons (IDPs) from a refugee camp to their insecure villages. Because of resistance from their part, the IDPs had been

8 U.N. Doc. E/CN.4/2001/51, para.64. Report to the Commission on Human Rights of the Special Rapporteur on adequate housing, 25 January 2001.

9 *Idem*, para. 85.

10 U.N. Doc. E/CN.4/2002/106, para.115. Report to the Commission on Human Rights of the Special Representative of the Secretary General on Human Rights Defenders, 27 February 2002.

11 U.N. Doc. E/CN.4/2005/88/Add.1, para.4. Report to the Commission on Human Rights of the Special Rapporteur on indigenous peoples, analysis of country situations and other activities of the Special Rapporteur, 16 February 2005.

12 U.N. Doc. E/CN.4/2000/68/Add.5. para.2. Report to the Commission on Human Rights of the Special Rapporteur on violence against women, 24 February 2000.

13 U.N. Doc. E/CN.4/2001/53, page.2. Report to the Commission on Human Rights of the Special Rapporteur on food, 7 February 2001.

14 U.N. Doc. E/CN.4/2001/9, para.67. Report to the Commission on Human Rights of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 11 January 2001.

15 *Idem*, para. 30.

16 *Idem*, para. 123.

17 U.N. Doc. E/CN.4/2005/51/Add.1, paras. 3, 26, 33, 38, 48, 63, 70, 80. Report to the Commission on Human Rights of the Special Rapporteur on the right to health, summary of cases transmitted to Governments and replies received, 2 February 2005.

detained, tortured and forced to return. Unfortunately, joint appeals with the SR on torture on this kind of case are not systematic; for example, the SR on torture was not involved in the joint communication to Israel with regard to the massive demolition of houses in Rafah that left homeless more than 2000 Palestinians in a period of one week.<sup>18</sup>

Communications sent jointly by the SR on violence against women with the SR on torture and/or with the SR on extrajudicial executions mainly concern rape and killing of women who live in poor rural areas or belong to marginalised groups, minorities, indigenous people or internally displaced persons

Joint communications by the SR on sale of children are mainly issued with the SR on violence against women. For example, they have issued a joint appeal expressing concern over socio-economic discrimination of the Badi women and girls of the untouchable cast in Nepal. This situation forces them to work in prostitution and become vulnerable to HIV/AIDS.<sup>19</sup>

With regard to the SR on indigenous people, joint communications are mostly issued with the Special Representative on human rights defenders, the SR on torture, SR on freedom of opinion and the SR on extrajudicial executions.<sup>20</sup> These communications often concern leaders of indigenous people who are victims of death threats, kidnapping, arbitrary detention, physical attacks, torture, and killing.

## 9.4 Special procedures for civil and political rights

### > *Special Rapporteur on torture*

Even though the mandate on torture stayed fundamentally the same from 1985 to 2004, the emphasis on the socio-economic dimension has varied depending on each of the three successive experts. They have all addressed torture, inhumane and degrading treatment or punishment as primarily the result of an atmosphere of political tension and conflict. Nevertheless, the first SR on torture, Mr. Peter Kooijmans, referred to the link between poverty and torture, finding that most torture victims were poor people and young people suspected of theft, rape and similar offences".<sup>21</sup> His successor, Sir Nigel Rodley, was the only expert to point out systematically the precarious conditions of victims of torture, while his successor, Mr. Theo van Boven, paid less attention to this aspect (although he has reported on the impact of torture on victims including at the economic and social levels).<sup>22</sup>

Sir Nigel points out that the overwhelming majority of the vic-

tims of torture and ill-treatment are ordinary common criminals from the lowest strata of society. They are the ones who cannot afford good lawyers, or who may have access only to less-than-diligent lawyers provided by the State, or who may not have access to any lawyer at all. Their families do not have the connections to be taken seriously by the police, prosecutors or judges, nor do they have the means of paying for life-saving health or providing food when the institutions do not provide it. These people often have no idea of what their rights are, even the right not to be tortured, or how those rights may be secured".<sup>23</sup> In Brazil, for instance, a person arrested for allegedly having stolen a soft drink died in custody after being tortured; a street vendor arrested allegedly for theft was beaten in custody; a shoe shiner was beaten up by a military policeman because he did not have the necessary papers for carrying on his trade with him; a street vendor beaten with a rubber hose by two police officers on suspicion of selling mineral water illegally.<sup>24</sup> In Venezuela, the security forces frequently include the use of torture as a method of obtaining information or as punishment, especially when dealing with low-income sectors of the population.<sup>25</sup>

Economic liberalisation and instability has been linked with the public sense of insecurity that creates favourable conditions for condoning state abuses. In the Russian Federation, a crime wave of huge proportions has led to a sense of personal insecurity and a demand for more effective law and order measures, with the accent being as much, if not more, on order rather than law.<sup>26</sup> In

18 U.N. Doc. E/CN.4/2005/48/Add.1, para.23. Report to the Commission on Human Rights of the Special Rapporteur on the right to adequate housing, summary of information transmitted to Governments and replies received, 17 January 2005.

19 U.N. Doc. E/CN.4/2005/78/Add.3, paras. 5 and 163. Report to the Commission on Human Rights of the Special Rapporteur on the sale of children, communications sent to Governments and replies received, 8 March 2005.

20 U.N. Doc. E/CN.4/2005/88/Add.1, page.31. Report to the Commission on Human Rights of the Special Rapporteur on indigenous peoples, analysis of country situations and other activities of the Special Rapporteur, 16 February 2005.

21 U.N. Doc. E/CN.4/1993/26, para.32. Report to the Commission on Human Rights, 15 December 1992.

22 U.N. Doc. A/59/324, paras.43-60. Interim report to the General Assembly, 1 September 2004.

23 U.N. Doc. A/55/290, para.35. Interim report to the General Assembly, 11 August 2000.

24 U.N. Doc. E/CN.4/2001/66/Add.2, para.9 and annex. Report to the Commission on Human Rights, visit by the Special Rapporteur to Brazil, 30 March 2001.

25 U.N. Doc. E/CN.4/1997/7/Add.3, para.5. Report to the Commission on Human Rights, visit to Venezuela, 13 December 1996.

Mexico, partly as a result of the establishment of the North American Free Trade Association, a hitherto tightly protected economy had to adjust to external competition, which has led to increases in unemployment. This has provided fertile ground for political movements to gain support and insurrectionary activities to reappear.<sup>27</sup> In Venezuela, the climate of insecurity and fear of crime, aggravated by the structural adjustments, has also been identified as leading to “a pronounced lack of sympathy for those deprived of liberty and a corresponding, albeit counterproductive, demand for repression”.<sup>28</sup>

Poor investment in public services also contributes to the use of violence: Law enforcement officials acknowledged that because of a lack of means to carry out proper investigations, violence was resorted to as the “easiest” and “simplest” way to achieve “results”. This, coupled with a lack of proper training, is among the main root causes of torture, especially in relation to common criminal suspects.<sup>29</sup>

Although fully aware that the question of poverty is all too relevant to the issue of torture, Sir Nigel made no specific recommendations, admitting that he had neither the competence nor the expertise to offer solutions to these “bleak realities”:

...as long as national societies and, indeed, the international community fail to address the problems of the poor, the marginalised and the vulnerable, they are indirectly and, as far as exposure to the risk of torture is concerned, directly contributing to the vicious circle of brutalization that is a blot on and a threat to our aspirations for a life of dignity and respect for all.<sup>30</sup>

### > *Special Rapporteur on extrajudicial executions*

Although the mandate of the SR on extrajudicial executions aims at paying special attention to vulnerable groups, it makes no reference to the socio-economic situation which makes them easy targets.<sup>31</sup> The experts have nevertheless been sensitive to some of the socio-economic factors involved.

The SR, Ms. Asma Jahangir, has on several occasions presented background information that emphasises how poverty, inequality in the distribution of wealth and regional disparities fuel violence<sup>32</sup> as in Nepal, one of the poorest countries in the world. Grievances resulting from social injustice, lack of opportunities and repression of the landless and poor have persisted and grown, thereby fuelling the social discontent upon which the CPN (Maoist) builds its support. Indeed, the regions considered to be traditional Maoist strongholds - Rukum, Rolpa and Jajarkot - rank among the least developed in Nepal.<sup>33</sup>

In many countries, such as Honduras, Guatemala, Costa Rica and Nicaragua, street children are killed with impunity and this is sometimes seen as a form of social cleansing. The report on Honduras is extremely thorough in making the link between the precarious living conditions of street children, their stigmatisation by the media, their disempowerment and vulnerability to killings, and the impunity of the perpetrators.<sup>34</sup> State functionaries add to the problem by abusing marginalised children on the justification of ending violence in society.<sup>35</sup> The underlying causes include the marginalisation and lack of opportunities available to the most disadvantaged segments of society.<sup>36</sup>

[T]here must be a general realization that street children, or for that matter poverty in all its manifestations, are not “a necessary evil”. Poverty has a cure, which requires patience, sincerity and sound planning. Above all it requires the political will and courage to eradicate poverty through an effective programme built on justice for all. In particular, an appropriate level of resources has to be spent, and economic justice for children calls for new thinking in the way budgets are planned... [T]here is now a need to reprioritise resource allocations so that children are placed at the centre of all budget planning. Children have needs and rights beyond those of education and health. The Government should give its urgent and undivided attention to the protection and promotion of the civil and political, as well as economic, social and cultural rights of all children.<sup>37</sup>

26 U.N. Doc. E/CN.4/1995/34/Add. para.8. Report to the Commission on Human Rights, visit to the Russian Federation, 16 November 1994.

27 U.N. Doc. E/CN.4/1998/38/Add.2, para.74. Report to the Commission on Human Rights, visit to Mexico, 14 January 1998.

28 *Idem*, para. 83.

29 U.N. Doc. A/55/290, para.36. Interim report to the General Assembly, 11 August 2000.

30 U.N. Doc. A/55/290, para.37. Interim report to the General Assembly, 11 August 2000.

31 Commission on human rights resolution 1996/74, 23 April 1996.

32 See: U.N. Doc. E/CN.4/2000/3/Add.3, para.10. Report to the Commission on Human Rights, visit to Mexico, 25 November 1999. See also: U.N. Doc. E/CN.4/2003/3/Add.2, para.21 & 22. Report to the Commission on Human Rights, visit to Honduras, 14 June 2002.

33 U.N. Doc. E/CN.4/2001/9/Add.2, para.14. Report to the Commission on Human Rights, visit to Nepal, 9 August 2000.

34 U.N. Doc. E/CN.4/2003/3/Add.2, paras.29-38. Report to the Commission on Human Rights, visit to Honduras, 14 June 2002.

35 U.N. Doc. E/CN.4/2002/74, paras. 88 and 146. Report to the Commission on Human Rights of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 9 January 2002.

36 U.N. Doc. E/CN.4/2001/9, para.67. Report to the Commission on Human Rights of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 11 January 2001.

37 U.N. Doc. E/CN.4/2003/3/Add.2, paras.29-40 and 87. Report to the Commission on Human Rights, visit to Honduras, 14 June 2002/*idem*, para. 40.

Ms. Jahangir has also shed light on killings of women committed in the name of honour and in the context of armed conflict. She has not explored, however, whether a link exists between these types of killing and socio-economic dependency.

In addition to children and women, Ms. Jahangir has consistently raised concern about extrajudicial executions of indigenous people and their leaders. Violence and killings perpetrated against them are frequently related to conflict over land, including disputes in connection with development projects using ancestral lands. This has particularly been the case in Latin America. In Bolivia, for example, a demonstration by indigenous people urged the Government to abandon a project of gas selling and to approve a programme that would benefit local inhabitants. The police opened fire onto the crowd and killed at least 50 people.<sup>38</sup> (The issue of indigenous people is developed in section 9.6 below).

Violence against indigenous people often overlaps with violence against farmers and inhabitants of rural areas. This group is singled out frequently in cases of internal conflict, where farmers are accused of having links with rebel groups (Colombia, Aceh, Myanmar, Nepal, for instance). In 2003, the expert highlighted a new trend of "excessive use of force, under the guise of dealing with terrorists, against farmers and others who brought up social or economic issues".<sup>39</sup> Repression by the Mexican State against farmers and populations living in rural areas, who are also indigenous people, has been related to the emergence of armed opposition groups in the States of Chiapas and Guerrero. They are rather concerned with greater local autonomy and economic empowerment of the indigenous population. For instance in 1994, a group of local farmers in the town of Tepetitl founded OCSS, an organisation to protect the interests of the rural population which was threatened by the decreasing price of agricultural products. It represents several thousand peasants in the Costa Grande region of Guerrero. Among the key demands was that the Government provide assistance in improving the infrastructure, such as roads and water supply and that the police and army put an end to the violence and intimidation allegedly directed against the rural population. The authorities have accused OCSS of maintaining close links with the armed opposition groups.<sup>40</sup>

Ms. Jahangir has also reported excessive use of force by state agents against civilians, as in Brazil in the poor areas (*favelas*). The rate of homicide is high, and the Special Rapporteur was appalled, after talking with relatives and representatives of those who died, by the overall situation of the population living in the *favelas* where innocent citizens are trapped in a cycle of violence fostered by heavily armed drug gangs or indiscriminate repressive police operations, with little resorts, if any, to seek protec-

tion. This acute situation results in record numbers of deaths at the hands of the police. There are also a number of reports where police have simply used violence and killed young people living in *favelas* without any provocation".<sup>41</sup>

In contrast to the recommendations with regard to street children in Honduras, where the need for allocation of resources had been emphasised, to address the socio-economic situation in the case of Brazil, Ms. Jahangir recommended exclusively administrative, institutional and legislative measures that aim at preventing police violence.<sup>42</sup>

### > Working group on arbitrary detention

The mandate of the Working group on arbitrary detention (WGAD) is to investigate cases of deprivation of liberty imposed arbitrarily.<sup>43</sup> The WGAD has adopted criteria to determine whether a deprivation of liberty is arbitrary:<sup>44</sup>

- Category I: detention which manifestly cannot be justified on any legal basis;
- Category II: detention which results from a sentence for the exercise of fundamental rights proclaimed in the Universal Declaration of Human Rights (UDHR) or the International Covenant on Civil and Political Rights (ICCPR);
- Category III: detention when sentenced with total or partial non-observance of the international norms relating to the right to a fair trial.

Most cases considered by the WGAD relate to arrest and detention without a warrant or otherwise not respecting the procedural safeguards of national law; the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Cases

38 U.N. Doc. E/CN.4/2004/7, para.43. Report to the Commission on Human Rights, 22 December 2003.

39 U.N. Doc. E/CN.4/2003/3, para.32. Report to the Commission on Human Rights, 13 January 2003.

40 U.N. Doc. E/CN.4/2000/3/Add.3, paras.18 and 21. Report to the Commission on Human Rights, visit to Mexico, 25 November 1999.

41 U.N. Doc. E/CN.4/2004/7/Add.3, para.35. Report to the Commission on Human Rights, visit to Brazil, 28 January 2004.

42 Idem, para.65.

43 The WGAD was established by resolution 1991/42 of the Commission on human rights. Its mandate was subsequently extended and clarified by resolution 1997/50.

44 Fact Sheet No. 26, The Working Group on Arbitrary Detention. See: [www.ohchr.org](http://www.ohchr.org)

generally relate to prolonged incommunicado detention, secret detention or secret trials, detention for conscientious objection to military service or for exercising freedom of speech, assembly, or opinion. They also concern due process of law, continued detention after serving sentence, pre-trial detention, and administrative detention. The WGAD sometimes considers the conditions of detention also, even though this is beyond its mandate.

The WGAD only rarely refers to links between socio-economic factors and violence. Nevertheless, the WGAD has referred in a number of cases to the socio-economic profile of the victims, particularly in the case of imprisonment related to insolvency. It has called for governments to reduce as far as possible detention caused by situations of extreme poverty, and has recommended:

- that enactments providing for imprisonment for contractual debt, which is prohibited by article 11 of the International Covenant on Civil and Political Rights be repealed (but interestingly, article 11 of the ICCPR is not covered by the 3 categories defined by the WGAD);
- that measures be taken to ensure that judges take into account the level of income of persons who are released on bail;
- that fines not be disproportionate to the income of the convicted person.<sup>45</sup>

In Latvia the WGAD encountered people in police cells who had been fined for administrative offences but because they had not paid the fines, were serving sentences of up to 15 days. They were generally not well-off and were serving the alternative sentence because they were insolvent.<sup>46</sup> In Iran, the Working Group met a low-income family whose bail had been set at over one billion *rials*. There the law provides that imprisonment for debt can last for up to five years. The Group noted that some people, despite having completed their sentence, were kept in prison, in some cases for several years, because they were unable to pay the fine and/or damages and interest (*dijah*) demanded by the civil party.<sup>47</sup> In Bahrain, where imprisonment for debt is particularly common, detainees remain in pre-trial detention because of inability to post bail.<sup>48</sup>

The WGAD has been requested to incorporate a gender perspective in its reports.<sup>49</sup> Few cases relate to women, as detention rarely relates to gender. For example in the year 2000 there was no single case where gender was the primary or secondary reason for deprivation of liberty.<sup>50</sup> Nevertheless, the WGAD has noted that women prisoners are penalised because female criminality is often domestic in nature: women are frequently imprisoned for violating legal norms or social rules that regulate their sexuality or relationships with men on a discriminatory basis.<sup>51</sup>

Furthermore, the WGAD has paid attention to other vulnerable groups: in some countries the disabled, drug addicts and people suffering from AIDS are detained without it having been established that their detention is justified on medical or public health grounds, and often such administrative detention is not subject to judicial supervision.<sup>52</sup>

Detention of foreigners, whether illegal migrants or asylum seekers, is also a problem. The Working Group notes the particular problems that these vulnerable groups are faced with in Australia, as well as the collective depression syndrome widespread among all detained asylum-seekers. The WGAD mentioned the denial to those vulnerable groups of the right to challenge the legality of their detention,<sup>53</sup> which is one of the most effective means of preventing and combating arbitrary detention.<sup>54</sup>

The WGAD considers that it is beyond its mandate to comment on the conditions of detention, but it does address the case, as one of the fundamental principles of due process of law is equality between the prosecution and the defence. Detainees who have to endure detention conditions that affect their health, safety or well-being participate in the proceedings in less favourable conditions than the prosecution".<sup>55</sup> Thus, the WGAD has considered the implication for the health of detainees in the case of solitary confinement, prior existing conditions (poor

45 U.N. Doc. E/CN.4/2002/77, para. 60. Report to the Commission on Human Rights, 19 December 2001.

46 U.N. Doc. E/CN.4/2005/6/Add.2, para. 64. Report to the Commission on Human Rights, visit to Latvia, 1 September 2004.

47 U.N. Doc. E/CN.4/2004/3/Add.2, para. 58. Report to the Commission on Human Rights, visit to Iran, 27 June 2003.

48 U.N. Doc. E/CN.4/2002/77/Add.2, para. 92-93. Report to the Commission on Human Rights, visit to Bahrain, 5 March 2002.

49 See resolution 2000/46 of the Commission on Human Rights.

50 U.N. Doc. E/CN.4/2003/8, para.27. Report to the Commission on Human Rights, 16 December 2002; U.N. Doc. E/CN.4/2001/14, para. 76. Report to the Commission on Human Rights, 20 December 2000.

51 U.N. Doc. E/CN.4/2004/3/Add.2, para. 58. Report to the Commission on Human Rights, 27 June 2003.

52 *Idem*, para.74.

53 U.N. Doc. E/CN.4/2003/8/Add.2, para. 19. Report to the Commission on Human Rights on its visit to Australia, 24 October 2002.

54 U.N. Doc. E/CN.4/2004/3, para. 64. Report to the Commission on Human Rights, 15 December 2003.

55 U.N. Doc. E/CN.4/2005/6, paras. 68, 69. Report to the Commission on Human Rights, 1 December 2004. See also U.N. Doc. A/59/324, para.46. Interim report to the General Assembly of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, 1 September 2004.



health, age), extremely harsh prison conditions and the withholding of essential medication (eg. for an insulin-dependent diabetic with a heart condition). In addition, the urgent appeals of the Group often take into account the critical state of health of persons in detention and request the government to take all necessary measures to have them released.

## 9.5 Special procedures for economic, social and cultural rights

### > *Independent Expert on extreme poverty*

The mandate of the Independent Expert (IE) on extreme poverty includes not only the evaluation of the relationship between the protection of human rights and extreme poverty,<sup>56</sup> but also of the connection between the mandate and the outcome of the Durban Conference and the World Summit on Sustainable Development.<sup>57</sup> The mandate also gives special attention to women.

Whereas the actual IE, Mr. Arjun Sengupta, has focused mainly on the concept of poverty and extreme poverty, his predecessor, Ms. Anne-Marie Lizin, highlighted the poverty/violence link. She points out how extreme poverty causes many people to fall foul of the law. Very often, an extremely poor person's only interlocutor is a police officer, through begging or theft. Few police officers are trained to deal with extreme poverty in a non-repressive way. The extremely poor constitute the vast majority of the prison population. After having served their term in prison, the poorest remain there because they are unable to pay their fines. Judicial procedure should therefore be adjusted to take account of this situation and court officials given special training.<sup>58</sup> The IE has underlined the need for ensuring that legal aid is available free of charge to all those living in extreme poverty,<sup>59</sup> and the importance of alternatives to judicial measures such as mediation. The role of social workers and reception centres run by trained staff was recommended in this regard.

The IE has raised concern over vulnerable groups, including women. Extreme poverty is linked to the exploitation, both sexual and physical of young girls (genital mutilation, prostitution, forced labour, slavery rings).<sup>60</sup> In the case of illegal, forced or criminal migration, migrants have to live in secret, in conditions of extreme poverty and sometimes of exploitation, violence and duress, without access to social welfare services (health, education, minimum wage or working conditions) for themselves or their children, without access to the courts and without protection of other rights.<sup>61</sup>

To mitigate the effects of extreme poverty on violence, Ms. Lizin has pleaded in favour of a minimum guaranteed income to be allocated in all countries and stressed the importance of international assistance and cooperation for development. She has called on states to prioritise job creation to what she considers the poorest segments of the population.<sup>62</sup> Moreover, Ms. Lizin has referred to the growing awareness by the Bretton Woods institutions about the need to consider the social dimension when implementing economic reforms, but she has adopted an approach that favours dialogue with the international financial institutions (IFIs)<sup>63</sup> and therefore does not mention the violence that has occurred in connection with development projects funded by the World Bank.<sup>64</sup>

Other recommendations include decentralisation and community-based government as an administrative measure in favour of the poorest; and coverage of the whole population by civil registration, as the failure to register a birth opens the door to all kinds of abuse and violence, such as being sold or married off or falling victim to traffickers.<sup>65</sup>

The expert does not issue urgent appeals. However, the use of communications to governments by the IE on extreme poverty could well contribute to highlighting situations of violence against the extremely poor.

### > *Special Rapporteur on adequate housing*

In 2000, the Commission on Human Rights established the mandate of SR on adequate housing as a component of the right to an adequate standard of living, and of the right to non-discrimination. Interestingly, the Commission has requested the mandate

56 Resolution 1998/25 of the Commission on Human Rights.

57 Resolution 2002/30 of the Commission on Human Rights.

58 U.N. Doc. E/CN.4/1999/48, para.140. Report to the Commission on Human Rights, 29 January 1999.

59 *Idem*, para.141.

60 U.N. Doc. E/CN.4/2004/43, para.74. Report to the Commission on Human Rights, 29 February 2004; U.N. Doc. E/CN.4/1999/48, para.111. Report to the Commission on Human Rights, 29 January 1999.

61 U.N. Doc. E/CN.4/2002/55, page 2. Report to the Commission on Human Rights, 15 March 2002.

62 U.N. Doc. E/CN.4/1999/48, para. 137. Report to the Commission on Human Rights, 29 January 1999.

63 U.N. Doc. E/CN.4/2004/43, para. 47. Report to the Commission on Human Rights, 29 February 2004.

64 See: U.N. Doc. E/CN.4/2000/52, page 10-11. Report to the Commission on Human Rights, 25 February 2000.

65 *Idem*, para. 42.

holder to report on the status of the realisation of the rights that are relevant to the mandate. It has also requested the SR to apply a gender perspective.<sup>66</sup>

The SR, Mr. Miloon Kothari, has defined the right to adequate housing as “the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity”.<sup>67</sup> He has followed a holistic approach, exploring linkages with related rights such as the right to food, water, health, work, property; and including security of tenure, security of the home, and security of the person against inhuman and degrading treatment.<sup>68</sup>

In his report on forced evictions, Mr. Kothari has first presented the international legal basis for protection against forced eviction, including the views adopted by the Committee on Economic, Social and Cultural Rights (CESCR) in its General comment No.7. There the Committee recognised that forced evictions are violations of the right to adequate housing.<sup>69</sup> In order to ensure that human rights are not violated in connection with forced eviction, several procedures for protection and due process have been identified. Among the safeguards are: the consultation with those affected, their notification of the date and reasons of eviction prior execution, identification of the executioners, and the provision of legal remedies and legal aid.<sup>70</sup> Nevertheless, the SR notes that evictions are usually organised in such a way that excessive use of force by state agents can be expected.

Mr. Kothari has identified several causes of forced eviction:<sup>71</sup>

- development projects, such as dam projects, where resistance by the displaced has often been violently repressed ;
- privatisation of land or utilities – the latter led to a tremendous increase in the price of water in Bolivia, where citizens’ protests were met with an armed military response that left at least six residents dead;
- conflict and post conflict situations;
- forced eviction as a form of punishment: here the SR has referred to the UN Committee Against Torture which asserted that the demolition of Palestinian housing may amount to cruel, inhuman or degrading treatment or punishment. Mr. Kothari has linked the realisation of ESCR to conflict resolution by saying that fulfilment of the right to adequate housing and other rights should constitute a “framework for any political initiatives and negotiations towards a resolution of the conflict in Israel and the occupied Palestinian territories and the preservation of regional peace and security”.<sup>72</sup>

A vicious cycle in this context is noted: people subjected to forced evictions because of their precarious economic status and living conditions, e.g., living in slums, are impoverished even further. “The practice of forced eviction epitomises polarization between rich and poor”.<sup>73</sup>

Mr. Kothari notes that while the underlying reasons for homelessness are many and complex, poverty is a common denominator in the experience of the homeless, whether in urban or rural areas, or in developed or developing countries.<sup>74</sup> He has called for not criminalizing homelessness and to check state violence against homeless.<sup>75</sup> The Special Rapporteur received numerous testimonies from homeless people in urban areas of Brazil who had been victims of police abuse and extreme social exclusion.<sup>76</sup>

Women are particularly affected by the lack of adequate housing.<sup>77</sup> Lack of adequate housing can make them more vulnerable to various forms of violence and, conversely, violence against women can lead to the violation of women’s rights to adequate housing. In addition, poor habitability and lack of basic services were identified as factors that contribute to domestic violence. Because alternative housing and financial support are unavailable, women victims of domestic violence are obliged to remain in abusive situations otherwise they face homelessness and its dangers. The burden of living with a constant threat of eviction and associated violence manifests itself in both physical and psychological ways, and can be comparable to forms of cruel and inhuman degrading treatment.<sup>78</sup>

66 Commission on Human Rights resolution 2000/9. See paragraph 7.

67 U.N. Doc. E/CN.4/2001/51. para. 8. Report to the Commission on Human Rights, 25 January 2001.

68 U.N. Doc. E/CN.4/2005/48, para. 4. Report to the Commission on Human Rights, 3 March 2005. See: U.N. Doc. E/CN.4/2004/48, para.4. Report to the Commission on Human Rights, 8 March 2004. See also: U.N. Doc. E/CN.4/2005/48/Add.2, para. 3. Report to the Commission on Human Rights, mission to Kenya, 17 December 2004.

69 U.N. Doc. E/CN.4/2004/48, paras. 16. Report to the Commission on Human Rights, 8 March 2004.

70 *Idem*, para.17.

71 U.N. Doc. E/CN.4/2004/48, paras. 16-34, 60 and 83(a). Report to the Commission on Human Rights, 8 March 2004.

72 U.N. Doc. E/CN.4/2003/5/Add.1, para. 83(a). Report to the Commission on Human Rights, visit to the OPT, 12 June 2002.

73 U.N. Doc. E/CN.4/2004/48, paras. 39 and 40. Report to the Commission on Human Rights, 8 March 2004.

74 U.N. Doc. E/CN.4/2005/48, para. 23. Report to the Commission on Human Rights, 3 March 2005.

75 *Idem*, para. 70 (b)(c).

76 U.N. Doc. E/CN.4/2005/48/Add.3, paras. 11-17, 25-29. Report to the Commission on Human Rights, mission to Brazil, 18 February 2004.

77 U.N. Doc. E/CN.4/2005/43, para. 42-. Report to the Commission on Human Rights, women and adequate housing, 25 February 2005.

78 *Idem*, para. 50.

The SR considers therefore that the concept of housing should go beyond the private home to include different forms of accommodation used by women on temporary and permanent bases, including shelters, detention centres, refugee camps, and factory dormitories. Within all these forms of housing, the elements of the right to adequate housing must equally apply, including ensuring security from harassment and violence.<sup>79</sup> Strategies to address the inter linkage between violence against women and the right of women to adequate housing include the application of laws on housing rights, encouraging law reform and raising awareness of judges, lawyers and police on the gender issue and the right to adequate housing for women.<sup>80</sup>

Children form another group identified by the SR as being particularly vulnerable to both eviction and homelessness. Domestic violence was said to be a source of the homelessness of street children in Bucharest, where it is estimated that there are about 1,500 street children, approximately half living permanently on the streets because of extreme poverty, domestic violence and family disorganisation.<sup>81</sup>

### > *Special Rapporteur on the right to health*

The mandate of the SR on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health requires the SR to gather and exchange information on the subject and formulate recommendations. It further asks the SR to apply a gender perspective and to pay special attention to the needs of children. The SR was also invited to take into account the relevant provisions in the Durban Declaration of the World Conference Against Racism, General comment 14 of the UN Committee on Economic, Social and Cultural rights (CESCR) - where the Committee has given its interpretation of the right to health as provided by article 12 of the International Covenant on Economic, Social and Cultural Rights - and General recommendation 24 of the Committee on the Elimination of Discrimination against Women.<sup>82</sup>

For the SR, Paul Hunt, having the right to health means also "freedom"; this includes the right to control one's health, which implies the right to be free from non-consensual medical treatment and experimentation.<sup>83</sup> The SR has emphasised the importance of the principles of non-discrimination and equal treatment. In addition, he considered the right to health as interdependent with other rights such as the prohibition against torture.<sup>84</sup>

Prevention of violence from the perspective of the right to health has been conceptually addressed: Mr. Hunt has considered the realisation of the right to health against the background of

poverty, discrimination, gender based violence, and international commerce and intellectual propriety rights.

Mr. Hunt considers poverty as a central element in the interplay between the right to health and violence. Poverty is thus a median element between them in that it is part of two vicious circles. First, there is the vicious circle of poverty and ill health: sick people are more likely to become poor and the poor are more vulnerable to disease and disability. Secondly, the vicious circle between poverty and violence: the direct effect of violence on health consists of the physical, psychological and emotional harm suffered by the victims. The indirect effect is the cost of injuries, legal services, policing and incarceration, as well as lost earnings and decreased productivity, which place an additional strain on scarce resources and may hinder the development of health systems.<sup>85</sup>

The SR has stressed the particular vulnerability of women to violence,<sup>86</sup> through rape, incest and other forms of sexual violence which represent serious breaches of sexual and reproductive freedoms.<sup>87</sup> He urges states to take action to redress gender-based violence and ensure that women are empowered to take decisions regarding their sexual and reproductive health. Mr. Hunt has also underlined the need for sensitive and compassionate services available for the survivors of gender based violence.<sup>88</sup> Furthermore, the SR has noted that women's vulnerability to HIV/AIDS is connected to violence. Discrimination based on gender hinders women's ability to protect themselves from HIV infection and to respond to its consequences. This is compounded by other human rights issues including sexual violence; harmful traditional or customary practices affecting the health of women and children (such as early and forced marriage).<sup>89</sup>

79 *Idem*, para. 45.

80 *Idem*, para. 48

81 U.N. Doc. E/CN.4/2003/5/Add.2, para.46. Report to the Commission on Human Rights, mission to Romania, 3 February 2003.

82 Commission on Human Rights resolution 2002/31.

83 U.N. Doc. E/CN.4/2003/58, paras.10-21. Report to the Commission on Human Rights, 13 February 2003.

84 *Idem*, para. 31.

85 U.N. Doc. E/CN.4/2003/58, paras. 45 and 84. Report to the Commission on Human Rights, 13 February 2003.

86 U.N. Doc. E/CN.4/2005/51/Add.3, para.18. Report to the Commission on Human Rights, mission to Peru, 4 February 2005.

87 U.N. Doc. E/CN.4/2004/49, paras.24,25. Report to the Commission on Human Rights, 16 February 2004 *Idem*,

88 *Idem*, para. 39.

89 *Idem*,. para. 34.

Mentally disabled persons suffer from abuses in health care facilities including rape and sexual abuse by other patients or staff; forced sterilisation; being chained to soiled beds for long periods of time, being held inside cages; violence and torture; the administration of treatment without informed consent; use without anaesthesia or muscle relaxant) of electro-convulsive therapy; inadequate sanitation; and a lack of food. Independent monitoring of mental health facilities is often absent, which raises the question of impunity and the right of patients to complain and to access legal aid. The SR called on states to devote a much more significant part of their health budgets to mental health, and to monitor mental health care services. This issue has been addressed in both visits to Romania and Peru.<sup>90</sup> The former SR on torture, Mr. Theo van Boven, has also expressed concerns over the issue of ill-treatment and torture in psychiatric institutions.<sup>91</sup>

The SR has also reported that in some countries, health workers have been victims of discrimination, arbitrary detention, arbitrary killings and torture, on account of their profession. He has noted the particular vulnerability of health professionals who work with patients who are victims of torture. On the other hand some have participated in human rights abuses including torture.<sup>92</sup>

To avoid overlapping with the mandate of the SR on torture, Mr. Hunt only addresses cases of the health conditions of detainees when an additional factor that concerns his mandate is reported, such as a detainee victim of torture being denied access to medical treatment.<sup>93</sup>

### > *Special Rapporteur on the right to food*

This mandate consists of collecting and communicating information on the realisation of the right to food and eradication of hunger and identifying emerging related issues to the right to food (including drinking water). It also includes the promotion and effective implementation of the right to food in cooperation with governments, the UN and NGOs. The Commission on Human Rights has also encouraged the SR to mainstream a gender perspective in the activities relating to his mandate.<sup>94</sup>

The SR, Mr. Jean Ziegler, has defined the right to food as “the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear”.<sup>95</sup>

Mr. Ziegler has reminded the international community that 36 million people die from hunger every year. In the perspective of Mr. Ziegler, dying from hunger is not natural but rather results

from factors which depend on man, including the policies promoted at the international level.

To die of hunger is equivalent to being murdered, while chronic and serious undernourishment and persistent hunger are a violation of the fundamental right to life”.<sup>96</sup>

The SR underlines explicitly the link between hunger and violence as in Brazil and Ethiopia.<sup>97</sup> Economic and social reasons are the major obstacles to the realisation of the right to food. The reports presented by Mr. Ziegler show that he has adopted a comprehensive approach that considers relationships between all human rights. Inequalities and a given social structure within a country are believed to impede the realisation of the right to food, as well as world trade as sanctioned by the WTO, the agricultural policies of developed countries, external-debt, the structural adjustment policies of the IMF, access to land and credit, discrimination against women, war and corruption.<sup>98</sup>

The negative impact of the Bretton Woods institutions has been noted, such as in the construction of a dam in Indonesia and a coal-mining project in India which led to population displacement and demolition of houses of indigenous people; and deaths from starvation in India and Zambia following structural adjustment. The SR has emphasised how subsidies to agriculture in developed countries and structural adjustment policies in the developing countries has made the latter shift from food exporters to food importers in the last 30 years.<sup>99</sup> It is estimated

90 U.N. Doc. E/CN.4/2005/51/Add.4, paras. 59-68. Report to the Commission on Human Rights, mission to Romania, 21 February 2005. See also: U.N. Doc. E/CN.4/2005/51/Add.3, paras. 65-71. Report to the Commission on Human Rights, mission to Peru, 4 February 2005.

91 U.N. Doc. A/58/120, paras. 36-53. Interim report to the General Assembly of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, 3 July 2003.

92 *Idem*, para. 97.

93 This is in accordance with paragraph 6 of Commission resolution 2002/31, as the SR was requested to avoid “overlapping” with other special procedures of the Commission on Human Rights.

94 Commission on Human Rights resolutions 2000/10 and 2001/25.

95 U.N. Doc. E/CN.4/2001/53, para. 14. Report to the Commission on Human Rights, 7 February 2001.

96 U.N. Doc. E/CN.4/2001/53, p. 2. Report to the Commission on Human Rights, 7 February 2001.

97 U.N. Doc. E/CN.4/2003/54/Add.1, p. 2. Report to the Commission on Human Rights, mission to Brazil, 3 January 2003; U.N. Doc. E/CN.4/2005/47/Add.1, para.50. Report to the Commission on Human Rights, mission to Ethiopia, 8 February 2005.

98 U.N. Doc. E/CN.4/2001/53, p. 3. Report to the Commission on Human Rights, 7 February 2001 and UN Press Release, “Anyone dying from hunger was dying from murder”, Special Rapporteur Tells Third Committee, As Discussion on Human Rights Continues, 11 November 2002.

99 U.N. Doc. E/CN.4/2004/10, para. 15 and 23. Report to the Commission on Human Rights to the Commission, 9 February 2004.

that up to 15 million Mexican farmers and their families (many from indigenous communities) may be displaced from their livelihoods as a result of the North American Free Trade Agreement.<sup>100</sup>

The absence of democracy as well as conflict situations also involves the spiral of hunger and violence. The SR reports that in the Democratic People's Republic of Korea people have been publicly executed for "economic crimes", such as stealing crops or cows for food.<sup>101</sup> The food crisis has also pushed many North Koreans to cross the border into China. It is alleged that these people, after being repatriated by the Chinese authorities, are often subjected to severe punishment by the Government of North Korea, usually condemning whole families to years in labour camps.<sup>102</sup>

In 2002, the situation of famine was considered as a potential threat to peace, but according to Mr. Zeigler, preventing the arrival of food assistance was not. "[H]owever, the Security Council can determine that there is a threat to the peace and can decide what action should be taken. This is what happened in Somalia and in the Republic of Bosnia and Herzegovina in 1992".<sup>103</sup> The SR has also pointed out that in Niger the scale of food insecurity, which is a threat to social cohesion and stability, may provide the basis for increasing Islamic fundamentalism.<sup>104</sup>

Women are considered to be disproportionately affected by food insecurity, largely as a result of gender inequality and their lack of social, economic and political power. Maternal malnutrition also affects the nutritional status of children.<sup>105</sup> The SR has stressed that the fact that in many countries, tradition dictates that women eat last and least should be understood as a form of violence against women.<sup>106</sup>

Indigenous people are also vulnerable, as the issue of the right to food overlaps with that of access to land and control over their resources which allows them to maintain their traditional economic and subsistence activities such as hunting, gathering or fishing that enable them to feed. The displacement, dispossession, or the destruction of traditional access to subsistence resources negatively affects indigenous people's access to food.<sup>107</sup> As is the case for women, limited access to justice for indigenous people has been identified as a critical element for the enforcement of their right to food.<sup>108</sup>

The issue of the right to food has been addressed in tandem with the right to water. Poor water quality can create health problems and affect agriculture as in Bangladesh where water contains a high proportion of arsenic.<sup>109</sup> In the Occupied Palestinian Territories security measures by Israel affect both access to food and water.<sup>110</sup>

## ■ 9.6 Special procedures for specific groups

This section covers special procedures concerning human rights defenders, indigenous people, violence against women, and the sale of children, child prostitution and child pornography. Since each mandate holder takes care of a specific group, they are likely to adopt the indivisibility approach that looks into the relationships between all human rights.

### > *Special Representative of the Secretary General on human rights defenders*

The mandate calls upon the Special Representative of the Secretary General on Human Rights Defenders (SRSG) to gather information on the situation of human rights defenders and to conduct a dialogue with governments and other interested actors. It also calls on the SRSG to formulate recommendations to improve the protection of human rights defenders.<sup>111</sup>

The SRSG, Ms. Hina Jilani, has mentioned the International Covenant on Economic, Social and Cultural Rights as being a more precise legal background than the Universal Declaration of Human Rights for her mandate.<sup>112</sup> Ms. Jilani takes into account conditions in social, economic, political and other fields, as well as the legal guarantees in accordance with the Declaration on

100 U.N. Doc. E/CN.4/2005/47, para.52, 52, 60(f). Report to the Commission on Human Rights, 24 January 2005.

101 Idem, para.18.

102 U.N. Doc. A/59/385, para.20. Interim report to the General Assembly, 27 September 2004.

103 U.N. Doc. E/CN.4/2002/58, para.93. Report to the Commission on Human Rights, 10 January 2002.

104 U.N. Doc. E/CN.4/2002/58/Add.1, para.3. Report to the Commission on Human Rights, mission to Niger, 23 January 2002.

105 U.N. Doc. A/58/330, para.13. Interim report to the General Assembly, 28 August 2003.

106 U.N. Doc. E/CN.4/2004/10/Add.1, para.54 (e). Report to the Commission on Human Rights, mission to Bangladesh, 29 October 2003.

107 U.N. Doc. A/60/350, para.23. Interim report to the General Assembly, 12 September 2005.

108 U.N. Doc. E/CN.4/2005/47/Add.2, para.30. Report to the Commission on Human Rights, mission to Mongolia, 8 March 2005.

109 Idem, p.2.

110 U.N. Doc. E/CN.4/2004/10/Add.2, para.38-43. Report to the Commission on Human Rights, mission to the Occupied Palestinian Territories, 31 October 2003.

111 Resolution 2000/61 of the Commission on human rights.

112 U.N. Doc. E/CN.4/2001/94, para.13. Report to the Commission on Human Rights, 26 January 2001.

human rights defenders. She considers defenders as a group or as individuals with specific rights and freedoms, and therefore studies the repressive measures faced by the defenders as groups, as well as the risks they face as individuals. Moreover, Ms. Jilani also recognises that inequalities in economic, social and political empowerment emphasise the importance of the work of human rights defenders.<sup>113</sup>

Defenders include those seeking to protect the political, civil, economic, social or cultural rights of marginalised groups, and include leaders of indigenous and other minority communities, leaders of movements of the poor, and defenders of the rights of women, sexual minorities, displaced persons, migrants and refugees. The SRSB has noticed that certain categories of defender are more likely to be targeted by infringement of their rights during certain periods. For example, journalists are particularly vulnerable during a run-up to an election while trade union leaders are more likely to suffer when the government reviews its labour policies. Defenders are also targeted when involved in the investigation of human rights abuses, following participation in conferences, workshops and meetings abroad, and during peaceful public demonstrations, rallies and strikes.<sup>114</sup> On the other hand, some defenders are acutely vulnerable all the time. Defenders striving for the rights of the socially or politically marginalised, such as minorities, indigenous people and rural populations; women human rights defenders face specific risks either because of the issues on which they are working or because of the environment in which they work.<sup>115</sup> International humanitarian workers, particularly in the context of ongoing and post-conflict situations are increasingly targeted. Environmental and anti-globalization activists seeking redress against violations of social and economic rights continue to be denigrated and exposed to violence".<sup>116</sup>

Trends in the situation of human rights defenders in 2005 reveal that the victims are by hundreds and that the majority of them belong to NGOs, but also include journalists, lawyers and trade unionists and students.<sup>117</sup> Defenders who focus on specific groups or who are active in particular areas seem to be more or less targeted by violence, for instance in work on indigenous and land rights in Brazil, Chile, Colombia, Ecuador, Guatemala, Honduras, India, Indonesia and Mexico.<sup>118</sup> Defenders can be disproportionately targeted because of their activities in calling for political reform during demonstrations, or upholding the rule of law and ending impunity, or in connection with their activities against torture, or in support of minorities, women's rights, peace, disappearances, and the rights of sexual minorities.<sup>119</sup> In Guatemala, Ms. Jilani divided the victims into two categories: first, the defenders involved in efforts to discover the truth about past violations, and secondly groups involved in the promotion of economic, social and cultural rights and the rights of indige-

nous peoples, such as trade unionists, peasant workers, members of indigenous peoples' organizations and environmental activists".<sup>120</sup>

Violations they suffer include a wide range of abuses such as intimidation, harassment, arrest, detention, prosecution and incommunicado detention, but there has also been an increase in the most serious forms of violations against human rights defenders such as killings, death threats, assaults, kidnappings, torture and ill-treatments. In Guatemala, 47 defenders working on labour rights, environmental and land issues were reported killed during 2004.<sup>121</sup> The perpetrators of such violence tend to be the police and security forces. In conflict areas, abuses against human rights defenders are perpetrated by military, paramilitary and rebel groups.<sup>122</sup>

In several of her reports on country visits, Ms. Jilani has observed abuses against defenders of labour rights, social rights and land rights, which overlap with the human right of indigenous people. Those are regularly targeted for their activities. The SRSB has pointed out their particular vulnerability in her mission reports on Colombia and Guatemala. On ethnic minorities, the SRSB has mentioned how indigenous people and Afro-Colombians are most affected by forced displacement and human rights violations given the economic and strategic interests of the regions where they live including the implementation of projects such as mining and exploitation of natural resources. In addition, the SRSB has identified peasant and social organisations in Colombia as being particularly targeted. She has reported that the organisation of a march by peasants in 1998 to denounce social problems such as the lack of roads in rural areas and the need to diversify away from illicit crops resulted a couple of months later to the assassination of the leaders and displacement followed.<sup>123</sup> The SRSB has put under the title of "most

113 *Idem*, para.86 and 89(c).

114 U.N. Doc. E/CN.4/2005/101, para. 28-33. Report to the Commission on Human Rights, 13 December 2004.

115 U.N. Doc. E/CN.4/2003/104, para. 23. Report to the Commission on Human Rights, 3 January 2003.

116 U.N. Doc. E/CN.4/2002/106, para. 115. Report to the Commission on Human Rights, 27 February 2002.

117 U.N. Doc. E/CN.4/2005/101, para.16-§7. Report to the Commission on Human Rights, 13 December 2004.

118 *Idem*, para. 22.

119 *Idem*, para. 21-27.

120 U.N. Doc. E/CN.4/2003/104/Add.2, para. 55. Report to the Commission on Human Rights, mission to Guatemala, 6 December 2002.

121 *Idem*, para. 43-44.

122 *Idem*, para. 64-68.

123 U.N. Doc. E/CN.4/2002/106/Add.2, para. 150. Report to the Commission on Human Rights, mission to Colombia, 24 April 2002.

affected groups of defenders” in Turkey, those who defend the rights of Kurds. Authorities have often failed to distinguish between human rights defenders advocating peacefully for the respect of the recognised social and cultural rights of those who may share a regional or ethnic identity with the armed groups, which may have used such discourse for their own political purpose.<sup>124</sup>

In Colombia, the Special Representative is extremely concerned for the safety of trade unionists and indigenous leaders in the light of the scale of the violent attacks against them”. On trade unionists, she has said that “the very fact that unions oppose economic measures which affect economic and social rights make them a target for parties to the conflict”.<sup>125</sup>In Turkey, human rights defenders advocating labour rights reforms reported greater targeting than those working on other issues”.<sup>126</sup>

The SR underlines that private sector actors, including transnational and national corporations, are increasingly culpable in the violation of the economic, social and cultural rights of populations in many developing countries.<sup>127</sup> The affected populations rarely receive protection from their governments in these situations, which has led to protests against these entities, through peaceful demonstrations, information campaigns, legal proceedings or other activities by human rights defenders. In many cases violence was used against defenders leading to severe and lasting injuries”.<sup>128</sup>

In her recommendations in 2005, the SRSR has urged states to recognise the positive role played by human rights defenders in finding a peaceful solution to political and social conflicts.<sup>129</sup>

### > *Special Rapporteur on indigenous peoples*

The mandate of this SR, Rodolfo Stavenhagen, is to gather and receive information on violations of human rights of indigenous peoples (IP), and recommend measures to prevent and remedy these violations. The mandate also encourages the SR to take into account gender aspects and to pay special attention to the rights of indigenous children.<sup>130</sup> He has systematically taken into account the poor socio-economic conditions of IP in his work.

indigenous peoples the world over are usually among the most marginalised and dispossessed sectors of society, because they suffer discrimination and face prejudices that are often perpetuated within societies”.<sup>131</sup>

Land and access to natural resources are central for the realisation of the human rights of IP. However, violence against IP is mainly linked to this issue of territory. Dispossession of IPs from these essential resources involve damage to the traditional envi-

ronment, involuntary displacements, threats to health, disruption of the right to food and shelter, imposed changes in economic activity and livelihoods, and cultural and psychological traumas. In such cases, the SR has mentioned the failure to apply the international anti-discrimination standards in force, death threats against indigenous leaders, forced disappearances of indigenous activists, deaths of IP through excessive use of force by state agents during situations of social conflict, executions by paramilitary groups or private forces, forced displacements due to the implementation of development projects, social conflict or political and economic insecurity, killings against indigenous children, their forced recruitment by armed groups, and trafficking in their organs.<sup>132</sup>

The SR has coined the phrase “development aggression” to describe the negative economic and social consequences of large development projects, such as the construction of dams or mining activities. Violence often occurs as the result of resistance shown by IP to the implementation of these projects on their land without prior consent, which leads to their forced displacement, forced eviction, resettlement as well as human rights violations against them and their leaders or advocates.<sup>133</sup> In the Philippines the military undertake sweeping operations in indigenous areas in anticipation of future development projects, including dams, mining, logging and commercial plantations, that may be resisted by local indigenous communities. Threats against

124 U.N. Doc. E/CN.4/2005/101/Add.3, para. 104. Report to the Commission on Human Rights, mission to Turkey, 18 January 2005.

125 U.N. Doc. E/CN.4/2002/106/Add.2, para. 286. Report to the Commission on Human Rights, mission to Colombia, 24 April 2002, para. 286.

126 *Idem*, para.286; U.N. Doc. E/CN.4/2005/101/Add.3, para. 105. Report to the Commission on Human Rights, mission to Turkey, 18 January 2005.

127 U.N. Doc. E/CN.4/2003/104, para.32. Report to the Commission on Human Rights, 3 January 2003.

128 *Idem*, para. 33.

129 U.N. Doc. E/CN.4/2003/104/Add.2, para.135 (a). Report to the Commission on Human Rights, mission to Guatemala, 6 December 2002.

130 Resolution 2001/57 of the Commission on Human rights.

131 U.N. Doc. A/59/258, para.10. Report to the General Assembly, 12 August 2004.

132 Para. 11; U.N. Doc. E/CN.4/2003/90/Add.1, para.44, and Add.3, para. 68. Report to the Commission on Human Rights of the SR on indigenous people, communications to governments, 21 January 2003.

133 U.N. Doc. E/CN.4/2003/90/Add.1, paras. 25-28 and 31-58. Report to the Commission on Human Rights of the SR on indigenous people, communications to governments, 21 January 2003. See also general report of 2004. U.N. Doc. E/CN.4/2004/80, para. 53. On criminalization of protests, the SR has said that “[R]ight abuses committed against indigenous people often happen in the context of collective action initiated to press the legitimate social claims of marginalised, socially excluded and discriminated against indigenous communities”.

community leaders have also been mentioned.<sup>134</sup> Companies' security guards participate in the violence by acts such as rape, the establishment of checkpoints and barring of food, essential commodities, and blocking health services as well as religious practices. In Chile where clashes with the police occurred during protests organised by IP to defend their rights over land, the SR has said that this type of conflict happens mostly "in the provinces which have higher concentrations of IP and higher poverty rates".<sup>135</sup> In his conclusion, Mr. Stavenhagen has pointed to the responsibility of international financial institutions where they are the facilitators of such projects. The SR has recommended that conflict between indigenous peoples, Governments and business enterprises should be considered within the framework of democratic governance, dialogue and negotiation, rather than as a problem of national security or law and order which often leads to military or police action.<sup>136</sup>

In situations of armed conflicts, national or international, civil or military, it seems that IP suffer disproportionately, and are specifically targeted by the perpetrators of the violence.<sup>137</sup> The Maya and Miskito of Central America, the Hmong in South-East Asia, the East Timorese, the Embera and Huaorani in South America, the Twa in East Africa have all, at one time or another, been victims of civil or international conflict.<sup>138</sup> Colombia presents a paradigm example as IP are disproportionately affected by forced displacement and particularly vulnerable to kidnapping and murder perpetrated by non-state actors. According to the SR, many small IP living in the Amazonas are in danger of extinction.<sup>139</sup>

Among those who are most likely to be targeted by abuses are the leaders of IP and those who defend their rights. Most of the joint communications sent by the SR on this problem are with the SRS on human rights defenders. For example, in 2004, Mr. Stavenhagen sent communications to the governments of Brazil, Chile, Colombia and Ecuador over cases involving leaders and representatives of IP.<sup>140</sup> They concern mainly death threats, but also killing and kidnapping. There is a "trend towards the use of the justice system to penalise and criminalise social protest activities by movements in defence of their rights".<sup>141</sup>

There is a need for governments to take action to guarantee free and equal access to the administration of justice for IP and to combat discrimination in this field,<sup>142</sup> which is recognised as leading to situations of vulnerability to violence and state repression. In this regard, the SR has expressed special concern over over representation of IP in the incarceration system. For instance, in Australia, while Aboriginals make up only 2.4 percent of the population, over than 20 percent of the imprisoned persons in the country are Aboriginals. In correctional institutions, indigenous children make up 40 percent of all children and the number of indigenous women is 20 times that of non-indigenous

women. In Canada, Aboriginals are incarcerated 8.5 times the rate of non-Aboriginal peoples, their arrest rate is nearly double and the rate of incarceration nearly four times the national average. In Alaska, Natives count for 34 percent of all prisoners although they represent only 17 percent of the population. This over representation is often linked to over policing in areas where indigenous persons live and to the intense focus by enforcement bodies on indigenous activities. This leads to higher levels of arrest, over representation in court, being charged with more offences than non-indigenous, more frequent refusal of bail, less time with lawyers and higher sentences. In addition, legislation imposing mandatory imprisonment for minor offences target offences that are disproportionately committed by indigenous peoples.<sup>143</sup>

### > *Special Rapporteur on violence against women*

The mandate of the SR on violence against women consists of seeking and receiving information on this problem, and making recommendations for its elimination.<sup>144</sup> This is in the framework of the Universal Declaration of Human Rights and all the other international human rights instruments including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

134 U.N. Doc. E/CN.4/2003/90/Add.3, paras. 33-35, 38 and 63. Report to the Commission on Human Rights, mission to Philippines, 5 March 2003.

135 U.N. Doc. E/CN.4/2004/80/Add.3, para.29. Report to the Commission on Human Rights, mission to Chile, 17 November 2003.

136 U.N. Doc. E/CN.4/2003/90, para. 77. Report to the Commission on Human Rights, 21 January 2003.

137 U.N. Doc. E/CN.4/2002/97, page. 4. Report to the Commission on Human Rights, 4 February 2002.

138 Idem, para.108.

139 U.N. Doc. E/CN.4/2005/88/Add.2, para. 57, 83. Report to the Commission on Human Rights, mission to Colombia, 10 November 2004.

140 U.N. Doc. E/CN.4/2005/88/Add.1, page. 31 (Table 2) and paras. 15,19,20,24,26,28, and 40. Report to the Commission on Human Rights, analysis of country situations and other activities of the Special Rapporteur, 16 February 2005.

141 U.N. Doc. E/CN.4/2004/80, para. 42. Report to the Commission on Human Rights, 26 January 2004.

142 See Report to the Assembly General in 2005. U.N. Doc. A/60/358, para. 67.

143 Idem, paras. 25, 27, 28, 29, 30, 34; See also: mission report on Mexico. U.N. Doc. E/CN.4/2004/80/Add.2, para. 43 and 44. See also: mission report to Chile. U.N. Doc. E/CN.4/2004/80/Add.3, para. 31.

144 Resolution 1994/45 of the Commission on human rights.



The two experts, first Ms. Radhika Coomaraswamy and since 2003, Ms. Yakin Ertürk, have both identified a link between the socio-economic marginalisation of women and their increased vulnerability to violence. Both experts have highlighted the lack of socio-economic alternatives for women and their financial dependence on others - whether the family, the husband or other third parties - leaving them with no choice except supporting domestic violence or facing numerous dangers outside their original sphere.

In many countries, women are regarded as property. Once married, a woman ceases to be the property of her family and becomes the property of her husband and his family. A major factor underlying violence against women is their low economic and social status relative to men and their dependence on men to provide the means of survival. If women have independent means they can often walk away from situations of abuse, but in many countries legislation has the effect of perpetuating this dependence.<sup>145</sup>

The SR has emphasised the responsibility of governments in this regard: their refusal to reform laws (ownership and inheritance rights over land in Nigeria and Cameroon), or to address the social and cultural status of women perpetuates problems such as the control of the family over girls and women including her sexual behaviour, which leads to situations of forced marriages, child marriages and honour killings. Female genital mutilation was also understood in this context. As an example, she cites the following figures: there are 30 million women missing in India and 38 million women missing in China while the highest proportion of missing women can be found in Bangladesh and Pakistan where the number of missing women amounts to 10 percent of the total number of women. In India, 96 percent of aborted fetuses are female and in Bangladesh female infant mortality is twice that of male infants.<sup>146</sup>

Women who are economically dependent on their partner or their family are often faced with the dilemma of being abused or being homeless. Lack of shelter facilities forces those who have fled domestic violence to return to their homes and thus to violence. In the United States, more than half of the homeless women are abused wives who fled their conjugal home to the streets where they become exposed to high risks of violence.<sup>147</sup>

Even those women who obtain employment outside the home are frequently exposed to violent situations, because of the low status of activities open to them, given their unfavourable education level. In the textile, clothing, electronic and manufacturing sectors, where such women most easily find employment the control and power of the companies is nearly absolute and female-workers experience sexual abuses, rape and beating.<sup>148</sup>

The example of construction of dams was given as well as that of tourism, the latter encouraging prostitution.<sup>149</sup> Domestic work is also an area where women are subjected to "slave-like treatment at the hands of the members of the family employing them. They encounter humiliation, exploitation and extreme forms of violence, often with no access to justice".<sup>150</sup> In Haiti, domestic workers face the danger of sexual abuse, as rural families often send their teenage daughters to work as domestic help in households.<sup>151</sup>

Women are especially vulnerable during evictions as they face verbal and physical abuse including beating, rape and even killing. In addition, the SR has noticed that the new circumstances subsequent to a forced eviction represent a disruption that prevents women from exercising their traditional responsibilities.<sup>152</sup>

Women are among those groups which find themselves in situations where trafficking flourishes, especially when they belong to minorities, whether ethnic or religious, and thus become even more vulnerable to trafficking. Women's lack of access to resources and poverty, the absence of equal opportunities for education, shelter, food, employment, relief from unpaid domestic and reproductive labour, poor access to structures of formal State power, were said to be the reasons behind trafficking in less developed countries. The economic crisis in East Asia resulted in many women being trafficked to escape from sudden poverty.<sup>153</sup> Women and girls leave Nepal and Bangladesh in large numbers because of a lack of economic opportunities at home and because they suffer from a great deal of social discrimination. Many of these women belong to lower caste groups or ethnic minorities.<sup>154</sup>

145 U.N. Doc. E/CN.4/2000/68/Add.5. Report to the Commission on Human Rights, on economic and social policy and its impact on violence against women, 24 February 2000.

146 Idem, para. 19.

147 U.N. Doc. E/CN.4/2000/68/Add.5. paras.70-71. Report to the Commission on Human Rights, on economic and social policy and its impact on violence against women, 24 February 2000, para.70-71.

148 Idem, paras. 31-35.

149 Idem, paras. 47-51.

150 U.N. Doc. E/CN.4/2004/66, para. 41. Report to the Commission on Human Rights, 26 December 2003.

151 U.N. Doc. E/CN.4/2000/68/Add.3, para. 38. Report to the Commission on Human Rights, mission to Haiti, 27 January 2000.

152 Idem, para. 39 and 55.

153 U.N. Doc. E/CN.4/2000/68, para. 54-60. Report to the Commission on Human Rights, on trafficking in women, women's migration and violence against women, 29 February 2000.

154 U.N. Doc. E/CN.4/2001/73/Add.2, para. 48-50 and 80. Report to the Commission on Human Rights, mission to Bangladesh, Nepal and India on the issue of trafficking of women and girls, 6 February 2001.

Ms. Yakin Ertürk, has observed the particular disadvantage of indigenous women who are mainly destitute and living in rural areas.<sup>155</sup> She has reported on the high rates of murder in Guatemala, where the majority of victims were poor women between 13 and 30 years of age who were abducted, gang raped, tortured, mutilated and killed.<sup>156</sup>

Women from lower castes have been identified as suffering from double or triple discrimination because of their caste, class and gender. They face targeted violence, even rape and death, from state actors and powerful members of dominant castes. They were also found to work in slave-like conditions in bonded labour.<sup>157</sup>

Vulnerability of women living or working in the street has also been identified as they are seen as “undesirables” and may be “cleansed” from the streets, as in Colombia and Cuba,<sup>158</sup> or arrested under anti-vagrancy laws as in the Philippines.

Ms. Coomaraswamy sent a joint letter to the Philippines with the SR on torture in 2002 saying “women in the custody of law enforcement officials are particularly vulnerable to torture, including rape and sexual abuse. Most of the victims are said to be members of socially disadvantaged groups, including suspected prostitutes, street children, drug addicts and other women considered to come from the lowest strata of society”<sup>159</sup> In the United States, drug policy leads to a high level of incarceration of poor African-Americans female dealers while wealthy women are more likely to be sent for rehabilitation instead.<sup>160</sup>

Ms. Ertürk has provided examples of human rights violations against women who are displaced by conflict.<sup>161</sup> In Darfur, they concern killings, rape, abduction and beating. Similar observations had been made in the cases of Colombia. On her visit to Sierra Leone, the Ms. Coomaraswamy has reported that many women had been abducted, forced to be “bush wives” to the combatants, and reduced to sex slavery as well as to perform domestic tasks. Lack of alternative means of support prevents women from fleeing this situation.<sup>162</sup> With respect to girls who are combatants themselves, the SR has highlighted the desperate economic circumstances which often push girls to join rebel movements or be easily recruited.<sup>163</sup> In her recommendations to end gender-based violence, the SR has expressed the necessity of ending impunity for the crimes against women committed during conflict.<sup>164</sup>

The SR has called on international financial institutions to consider the gender dimension when implementing programmes and to ensure that financial policies do not lead to discrimination against women. For governments, she has called for the increase

of economic independence of women to prevent situations of abuse and exploitation.<sup>165</sup>

### > *Special Rapporteur on the sale of children, child prostitution and child pornography*

The mandate holder is required to investigate the exploitation of children around the world and to make recommendations for the protection of the rights of the children concerned.<sup>166</sup> Since 2001, special attention is given to the issue of HIV. Each year, the SR on sale of children chooses a theme on which to focus within the annual report.<sup>167</sup> This is in addition to the SR’s country visits. The following findings are based on the reports presented to the Commission on human rights from 1999 to 2005.

The analyses of different reports shows that the mandate holders, first Ms. Ofelia Calcetas-Santos and now Mr. Juan Miguel Petit, have clearly identified poverty as contributing to a greater or lesser extent to determining infringement of CSEC. In Brazil, the SR has cited a mix of macro and micro causes combined with psychological factors. The macro elements are among others: social programmes do not incorporate families in extreme situations of poverty and social exclusion; gender relations based on

155 U.N. Doc. E/CN.4/2005/72/Add.3, paras. 11-18. Report to the Commission on Human Rights, mission to Guatemala, 10 February 2005.

156 Idem, para. 28.

157 U.N. Doc. E/CN.4/2002/83, para.53. Report to the Commission on Human Rights, 31 January 2002. See also page 18.

158 U.N. Doc. E/CN.4/2002/83/Add.3, para. 46. Report to the Commission on Human Rights, mission to Colombia, 11 March 2002; U.N. Doc. E/CN.4/2000/68/Add.2, para. 50. Report to the Commission on Human Rights, mission to Cuba, 8 February 2000.

159 U.N. Doc. E/CN.4/2002/83/Add.1, para. 94. Report to the Commission on Human Rights, communication to governments, 28 January 2002. See also paras. 95, 98.

160 U.N. Doc. E/CN.4/1999/68/Add.2, paras. 21, 26. Report to the Commission on Human Rights, mission to the United States, 4 January 1999.

161 See U.N. Doc. E/CN.4/2005/72/Add.5. Report to the Commission on Human Rights, visit to Darfur region in Sudan, 23 December 2004.

162 U.N. Doc. E/CN.4/2002/83/Add.2, paras. 85, 86. Report to the Commission on Human Rights, mission to Sierra Leone, 11 February 2002. see also para. 109.

163 Idem, para. 53.

164 U.N. Doc. E/CN.4/2002/83, para. 68. Report to the Commission on Human Rights, 31 January 2002.

165 U.N. Doc. E/CN.4/2000/68/Add.5, paras. 72-75. Report to the Commission on Human Rights, economic and social policy and its impact on violence against women, 24 February 2000.

166 Resolution 1990/68 of the Commission on human rights.

power and abuse of power in favour of men; race and ethnicity as determinants of social exclusion; limited opportunities for income-generation activities for adolescents with poor education. The micro elements are, among others, dysfunctional families; broken family ties; school dropout; and involvement with socially excluded groups.<sup>168</sup>

Both SRs have pointed out that the risk of trafficking depends on the economic and socio-cultural contexts. Those children who are generally more exposed include those belonging to ethnic minorities and indigenous peoples, those living in extreme poverty, street children, migrants, undocumented workers, stateless people and people in refugee camps, homosexuals, lesbians, bisexuals and transgender children.<sup>169</sup> The vulnerability of these groups feeds on lack of employment opportunities, low social status of the girl child, a general lack of education and awareness, inadequate legislation and weak law enforcement machinery.<sup>170</sup> In Brazil, Mr. Petit recognised the highest concentration of trafficking routes was in the north and north-eastern regions which are the poorest regions. This trafficking involves the movement of people from rural areas to the cities, from the less developed to the most industrialised regions and from remote territories to urban areas.<sup>171</sup>

Among the aims of traffickers are child labour; criminal activities like drug dealers; begging when it comes to physically disabled children; armed conflict; participating in dangerous sports like camel jockeys; forced marriage for girls; and trafficking in organs.<sup>172</sup>

Poverty also leads to sexual abuses against children and prostitution.<sup>173</sup> In Fiji and Morocco, unemployment of parents and the need to help their disintegrated family by earning money put children at great risk of being drawn into prostitution. In Guatemala, extremely poor people sell their children to traffickers involved in the inter-country illegal adoption business. In Romania, particular groups at risk were noted as street children, Roma children, victims of sexual abuse and domestic violence, children in institutions or who recently left institutions, and rural children, where poverty is particularly extreme.<sup>174</sup>

Health concerns have been emphasised by Ms. Calcetas-Santos in the case of the Russian Federation, where child prostitution is reported to be closely related to drug addiction. Boy prostitutes are at particular risk of infection from the HIV/AIDS.<sup>175</sup> In addition, extensive levels of alcoholism among adults, and increasingly amongst children, was said to be one of the main reasons for the proliferation of "social orphans", who are often in the streets.<sup>176</sup> The cost of such addictions almost inevitably leads to a life of crime and prostitution.

Domestic violence studies carried out in the US, UK and Canada that concluded that "where physical violence is present between spouses, the child is at greater risk of being a victim... Men who have witnessed their parents' domestic violence are three times more likely to abuse their own wives than children of non-violent parents."<sup>177</sup>

Both SRs emphasise the importance of education. After the family, the school is the primary place for engendering the child's feeling of belonging. Belonging and participation are fundamental experiences for children to learn to respect themselves and others.<sup>178</sup> Moreover, without education poor children "have to earn their money from jobs at the lowest grade, including prostitution".<sup>179</sup>

In his recommendations, Mr. Petit was of the view that in order to fight commercial exploitation of children (CSEC), a combination of targeted measures that are specific to the different contexts is necessary. The emphasis has been put on the establishment of political, legal and institutional frameworks in addition to information campaign, as well as attention to marginalised groups.<sup>180</sup>

167 Example, the focus was on media and education in 1998, on trafficking of children in 1999, on domestic violence in 2000, on the private sector and human rights in 2001, on the prevention of child sexual exploitation in 2004, and on child pornography on the Internet in 2005.

168 U.N. Doc. E/CN.4/2004/9/Add.2, paras. 101. Report to the Commission on Human Rights, mission to Brazil, 02 March 2004. See also paras. 29 and 30.

169 U.N. Doc. E/CN.4/2004/9, para. 118. Report to the Commission on Human Rights, 05 January 2004.

170 U.N. Doc. E/CN.4/1999/71, para. 49. Report to the Commission on Human Rights, 29 January 1999.

171 U.N. Doc. E/CN.4/2004/9/Add.2, para. 24. Report to the Commission on Human Rights, mission to Brazil, 02 March 2004.

172 U.N. Doc. E/CN.4/1999/71, para. 53-86. Report to the Commission on Human Rights, 29 January 1999.

173 U.N. Doc. E/CN.4/2001/78/Add.1, paras. 64&65. Report to the Commission on Human Rights, mission to the Kingdom of Morocco, 07 November 2000; U.N. Doc. E/CN.4/2000/73/Add.3, paras. 23&41. Report to the Commission on Human Rights: mission to the Republic of Fiji, 27 December 1999; U.N. Doc. E/CN.4/2000/73/Add.2, paras. 11&36&39. Report to the Commission on Human Rights: mission to Guatemala, 27 January 2000.

174 U.N. Doc. E/CN.4/2005/78/Add.2, paras. 100-101. Report to the Commission on Human Rights: mission to Romania, 26 January 2005.

175 U.N. Doc. E/CN.4/2001/78/Add.2, para. 45. Report to the Commission on Human Rights, mission to the Russian Federation, 06 February 2001.

176 *Idem*, para. 41.

177 U.N. Doc. E/CN.4/2000/73, paras. 95-96 and 101-103. Report to the Commission on Human Rights, 14 January 2000.

178 *Idem*, para. 107.

179 U.N. Doc. E/CN.4/1998/101, paras. 110&112. Report to the Commission on Human Rights, 13 January 1998.

180 U.N. Doc. E/CN.4/2004/9, paras. 126 and 132.

## 9.7 Summary and conclusions

The special procedures mandates studied above have documented the many situations in which the failure of states to respect, protect or fulfil economic, social and cultural rights is accompanied by violations of civil and political rights and, in particular, leads to violence. All have seen, to different extents, poverty, discrimination, inequality, marginalisation and exclusion as structural causes of human rights violations.

In this context, the experts have identified many particularly vulnerable groups; women, children, minorities, extremely poor, indigenous peoples, migrants, displaced persons, refugees, disabled persons and certain human rights defenders such as trade unionists, indigenous leaders and advocates. The vulnerability of these groups in situations of conflict has been underlined and all the experts have formulated specific recommendations on protecting the rights of vulnerable groups.

Experts concerned with economic, social and cultural rights and specific groups have pointed to the negative effects on these groups of the processes of privatisation, globalisation, structural adjustment, as well as macroeconomic decisions taken at the international level or by international actors. They have also have also supported the justiciability of economic, social and cultural rights.

The recommendations formulated by the experts have been mainly addressed to states and have focussed on legislative, institutional and policy reforms rather than on dealing directly with the economic and social situations of the poor. However, experts from the economic, social and cultural rights field and those who focus on specific groups have addressed recommen-

dations to the international community, international financial institutions and intergovernmental institutions. They have recognised the need to empower vulnerable groups at the economic and political levels and they have also recommended that states act to realise the economic, social and cultural rights of vulnerable groups through increases in budget allocation.

Special procedures which focus on economic, social and cultural rights in addition to two with cross-cutting mandates (indigenous peoples and violence against women) have established a conceptual connection between poverty and violence. Their holistic approach allows them to consider human rights as indivisible and interrelated taking into account the linkages between civil, cultural, economic, political and social rights. The SR on adequate housing, Mr. Kothari, for instance, has clearly expressed this holistic approach in his reports. These experts have shown that a situation where economic, social and cultural rights are denied will not be one where civil and political rights can thrive.

The other special procedures mandate holders should be encouraged to adopt this holistic approach, seeking to identify the economic, social and cultural root causes of the violations within their mandates. This would facilitate remedial action across the whole range of human rights, shifting the focus in certain cases from symptoms to cause, and would help mobilise a greater range of actors in addressing violence in its large sense. Joint communications and joint missions by special procedures mandates dealing with civil and political rights and those focussing on economic, social and cultural rights would help direct attention to the poverty-violence link and emphasise the interdependence, indivisibility, interrelatedness and universality of all human rights - as proclaimed in the Vienna Declaration.

## Chapter 10

### United Nations Treaty Bodies<sup>1</sup>

The purpose of this chapter is to examine how far the United Nations treaty bodies identify poverty, inequality and discrimination as root causes of violence, and what recommendations, if any, are made. The reports of six treaty bodies have been reviewed to highlight the main trends, without pretending to be exhaustive. This is a narrow focus, in the sense that the committees, in the course of their reviews of state party reports and their consideration of complaints, deal extensively with each of those issues separately, as can be seen in some of the country profiles in Part II of this study.

The first three committees reviewed here - the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination - focus on the whole range of human rights, either because they are all included in the treaty itself or because they are covered by the non-discrimination provisions of the relevant treaty. This affords them more scope to examine the causal effect of violations of economic, social and cultural rights on violence as well as the impact of violence on the enjoyment of those and other rights.

The second group of committees - the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Committee Against Torture - focus either on economic, social and cultural rights or on civil and political rights, as set out in the treaty they are implementing. This makes it more difficult for them to consider causes of violations in their mandate which arise from violations and conditions outside that mandate. As this study shows, overcoming this divide is one of the principle challenges today to the effective protection of human rights.

#### 10.1 The Committee on the Rights of the Child

"...children who, because of serious situations of extreme poverty as well as of situations of abandonment or violence within the family, are forced to live in and/or work on the streets and are therefore vulnerable to different forms of exploitation and abuse, including sale, trafficking and abduction."<sup>2</sup>

"...the State party (should) adopt comprehensive strategies which are not limited to penal measures but also address the root causes of violence and crime among adolescents, in gangs and outside gangs, including policies for social inclusion of marginalized adolescents; measures to

improve access to education, employment and recreational and sports facilities; and reintegration programmes for juvenile offenders."<sup>3</sup>

The above quotations illustrate the Committee's understanding and concern over the violations of economic, social and cultural rights which are at the roots of violence inflicted on children. The Committee, in its review of state party reports and other activities, is particularly concerned by violence against children as such, and as an element which prevents the enjoyment by children of the wide range of economic, social and cultural rights guaranteed by the Convention on the Rights of the Child.

Even if the Committee is not always as explicit as in the above quotations regarding the links between, on one hand, poverty and inequalities, and on the other, violence against children, it is still a link which underpins much of the Committee's analysis and recommendations. For example, in 2001 the Committee urged the "United Nations bodies and agencies to adopt a more integrated and multisectoral approach to the prevention of violence against children, including through public health and epidemiological approaches, and taking into consideration poverty and socio-economic marginalization and the impact of multiple forms of discrimination"<sup>4</sup>

#### > *The Convention and its rights*

Convention on the Rights of Children (CRC) guarantees a wide range of human rights that children should be able to enjoy without discrimination of any kind whether based upon "race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".<sup>5</sup> The CRC contains provisions related to civil and political rights and economic, social and cultural rights of children. States parties are bound to undertake measures in favour of children to the maximum extent of available resources (art. 4).

1 Prepared by the editor on the basis of OMCT research.

2 Concluding Observations of the Committee on the Rights of the Child: Honduras. CRC/C/15/Add.105. 24/08/99. para. 33.

3 Concluding Observations of the Committee on the Rights of the Child: El Salvador. CRC/C/15/Add.232. 30/06/04. para. 68.

4 Committee on the Right of the Child, *Day of General Discussion on "Violence against Children, Within the Family and in Schools"*, CRC/C/111, 28 September 2001, para. 710.

5 Article 2 of the Convention on the Rights of the Child.

The Convention contains specific provisions protecting children from violence including torture, ill-treatment, exploitation, or sexual exploitation as well as violence connected with armed conflict. It deals with violence perpetrated by parents or legal guardians and by the State in the framework or the juvenile justice system. The Convention includes the right of the children, victims of violence, to benefit from rehabilitation and reintegration (article 39).

The two main themes that appear in the Committee's Concluding Observations are discrimination and violence. The issue of street children is the clearest illustration in the Committee's work of the connection between the economic, social and cultural conditions of children and their involvement in violence.

### > **Discrimination**

The Committee has dealt with discrimination practised on the basis of gender, ethnicity, and against vulnerable populations such as poor and marginalised people, in developed as well as in developing countries. The Committee, in General comment N°2, identified the most vulnerable groups of children as children in care, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, children with special needs in areas such as culture, language, health and education.<sup>6</sup>

With respect to the United Kingdom, the Committee noticed that "the principle of non-discrimination is not fully implemented for all children in all parts of the State party", and that there is "unequal enjoyment of economic, social, cultural, civil and political rights, in particular for children with disabilities, children from poor families, Irish and Roma travellers' children, asylum-seeker and refugee children, children belonging to minority groups, children in care, detained children and children aged between 16 and 18 years old".<sup>7</sup>

Discrimination between boys and girls has been widely observed in some States parties with traditional societies. For Saudi Arabia, the Committee has been concerned by the discrimination against girls and children born out of wedlock, including in areas relating to civil status and personal status and at "the persistence of stereotypical attitudes about the roles and responsibilities of women and men".<sup>8</sup> Regarding Bangladesh, the Committee remained "deeply concerned about persistent discriminatory attitudes towards girls, which are deeply rooted in traditional stereotypes and limit access to resources and services".<sup>9</sup> In India, traditional social structures discriminate against other categories as well: "there is serious concern regarding the striking disparities in terms of access to education, attendance at

primary and secondary levels and drop-out rates between: different states, rural and urban areas, boys and girls, the affluent and poor, and children belonging to scheduled castes and tribes".<sup>10</sup>

Children belonging to minorities and indigenous populations systematically suffer from discrimination in the fields of access to education and health. In Brazil, the Committee has been concerned by their "low educational opportunities and quality of health services, and malnutrition".<sup>11</sup> In New Zealand, where the Maori, Pacific Island and Asian children are discriminated, the Committee noted "the persistent disparities in enrolment and dropout rates among children of different ethnic groups".<sup>12</sup> The Committee underlined the lack of access to health services for Canadian children in Aboriginal communities and has been "particularly concerned at the disproportionately high prevalence of sudden infant death syndrome and foetal alcohol syndrome disorder among Aboriginal children".<sup>13</sup> Concerning education, the Committee has been concerned by "the high dropout rate of Aboriginal children and the availability of instruction in both official languages only "where numbers warrant"". <sup>14</sup>

The lack of access of minorities to education and/or health has also been noticed for groups speaking Guaraní in Paraguay,<sup>15</sup> Maya and Garifuna children in Belize,<sup>16</sup> Batwa children in Burundi,<sup>17</sup> Mandingo, Krahn and Gbandi children in Liberia,<sup>18</sup> Israeli Arabs, Bedouins and Ethiopians in Israel,<sup>19</sup> and children

6 General Comment n° 2, "The role of independent national human rights institutions in the promotion and protection of rights of the child", HRI/GEN/1/REV.7, para. 15.

7 Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland. CRC/C/15/Add.188. 09/10/2002. para. 22.

8 Concluding Observations of the Committee on the Rights of the Child: Saudi Arabia. CRC/C/15/Add.148. 22/02/2001. para. 23.

9 Concluding Observations of the Committee on the Rights of the Child: Bangladesh. CRC/C/15/Add.221. 27 October 2003. para. 28.

10 Concluding Observations of the Committee on the Rights of the Child: India. CRC/C/15/Add.115. 23/02/2000. para. 56.

11 Concluding Observations of the Committee on the Rights of the Child: Brazil. CRC/C/15/Add.241. 3 November 2004. para. 71.

12 Concluding Observations of the Committee on the Rights of the Child: New Zealand. CRC/C/15/Add.216. 27 October 2003. para. 43.

13 Concluding Observations of the Committee on the Rights of the Child: Canada. CRC/C/15/Add.215. 27/10/2003. para. 34.

14 *Ibid.* para. 44.

15 Concluding Observations of the Committee on the Rights of the Child: Paraguay. CRC/C/15/Add.166. 06/11/2001. para. 27.

16 Concluding Observations of the Committee on the Rights of the Child: Belize. CRC/C/15/Add.99. 10/05/99. para. 16.

17 Concluding Observations of the Committee on the Rights of the Child: Burundi. CRC/C/15/Add.133. 16/10/2000. para. 77.

18 Concluding Observations of the Committee on the Rights of the Child: Liberia. CRC/C/15/Add.236. 01/07/2004. para. 23.

19 Concluding Observations of the Committee on the Rights of the Child: Israel. CRC/C/15/Add.195. 09/10/2002. para. 26.

belonging to indigenous groups in Peru,<sup>20</sup> as well as for children belonging to the Roma minority in Europe, such as in Slovakia, Czech Republic and Slovenia.<sup>21</sup>

Inequalities between social groups and thus discrimination with regard to the implementation of the Convention are regularly examined by the Committee when it comes to children belonging to poor populations. The Committee often considers economic transition or difficulties, poverty and long standing socio-economic disparities as factors impeding the implementation of the Convention.<sup>22</sup> The religious factor and traditional customs are also highlighted.<sup>23</sup>

Moreover, referring to article 4 of the Convention which deals with the allocation of budgetary resources in favour of children to the maximum extent of available resources, the Committee has sometimes been concerned by the impact of economic policies and structural adjustment on children.<sup>24</sup> The standard of living of children is an important issue, as the Committee considered in the case of Pakistan: "children living in poverty, the shortage of adequate housing, clean water, adequate sanitation and sewage and the problem of air pollution, all of which have a serious negative impact on the living conditions of children in the State party, causing injuries, sickness and death".<sup>25</sup> Finally, the Committee noticed that in several states, (Egypt, Lebanon and Sudan) regional disparities also affect the rights of children living in rural areas and underdeveloped regions in states parties.<sup>26</sup>

### > Violence

Children are subject to several forms of violence such as torture, corporal punishment and sexual exploitation. This form of violence usually takes place in schools, within the family, in care institutions and in the juvenile justice system. Hence, the Committee recommends to States parties to raise awareness about the negative effect of this form of discipline and to prohibit it.<sup>27</sup> The Committee has been concerned in Barbados "that the tolerance of corporal punishment in schools will make it extremely difficult to educate parents about alternative forms of discipline." It also pointed out the connection between "the social and legal acceptability of corporal punishment and the high level of child abuse which is of serious concern".<sup>28</sup> In fact, child abuse, including sexual abuse, is systematically observed in the States parties. The practice of female genital mutilation in some African countries might be considered as a form of violence against girls, which affects their health and put their lives in danger.<sup>29</sup>

State violence against children takes several forms such as police brutality, torture and ill-treatment. Police brutality has been

observed in Mali, Mexico and Surinam, among others.<sup>30</sup> In the case of Kenya, the Committee has been concerned about "the incidence of police brutality, particularly against street children, refugee children and those in conflict with the law".<sup>31</sup> Torture and ill-treatment are both perpetrated by state bodies, as in the case of the Israeli police against Palestinian children.<sup>32</sup> In Argentina, the Committee expressed its deep concern about "institutional violence and specific reports of torture and ill-treatment of children held at police stations (commissariats) which, in some cases, have resulted in death".<sup>33</sup>

20 Concluding Observations of the Committee on the Rights of the Child: Peru. CRC/C/15/Add.120. 22/02/2000. para. 25.

21 Concluding Observations of the Committee on the Rights of the Child: Slovakia. CRC/C/15/Add.140. 23/10/2000. paras.19&35&47. Concluding Observations of the Committee on the Rights of the Child: Czech Republic. CRC/C/15/Add.201. 18/03/2003. paras.28&54. Concluding observations of the Committee on the Rights of the Child: Slovenia. CRC/C/15/Add. 230. 26/02/2004. paras. 22&44 & 48.

22 Concluding Observations of the Committee on the Rights of the Child: South Africa. CRC/C/15/Add.122. 23/02/2000. para.9. Concluding Observations of the Committee on the Rights of the Child: Nicaragua. CRC/C/15/Add.108. 24/08/99. para. 15.

23 Concluding Observations of the Committee on the Rights of the Child: Bahrain. CRC/C/15/Add.175. 07/02/2002. para.4. Concluding Observations of the Committee on the Rights of the Child: India. CRC/C/15/Add.115. 23/02/2000. para. 8 & 9.

24 Concluding Observations of the Committee on the Rights of the Child: Ukraine. CRC/C/15/Add.191. 09/10/2002. para.17. Concluding Observations of the Committee on the Rights of the Child: Mali. CRC/C/15/Add.113. 02/11/99. para. 13.

25 Concluding Observations of the Committee on the Rights of the Child: Pakistan. CRC/C/15/Add.217. 27/10/2003. para. 58.

26 Concluding Observations of the Committee on the Rights of the Child: Egypt. CRC/C/15/Add.145. 21/02/2001. para. 31. Concluding Observations of the Committee on the Rights of the Child: Lebanon. CRC/C/15/Add.169. 01/02/2002. para. 46. Concluding Observations of the Committee on the Rights of the Child: Sudan. CRC/C/15/Add.190. 09/10/2002. para. 26(a).

27 Concluding Observations of the Committee on the Rights of the Child: South Africa. CRC/C/15/Add.122. 23/02/2000. para. 28.

Concluding Observations of the Committee on the Rights of the Child: Japan. CRC/C/15/Add.231. 26/02/2004. para. 35.

28 Concluding Observations of the Committee on the Rights of the Child: Barbados. CRC/C/15/Add.103. 24/08/99. para. 22.

29 Concluding Observations of the Committee on the Rights of the Child: Cameroon. CRC/C/15/Add.164. 06/11/2001. para.48. Concluding Observations of the Committee on the Rights of the Child: Guinea. CRC/C/15/Add.100. 10/05/99. para. 26.

30 Concluding Observations of the Committee on the Rights of the Child: Mali. CRC/C/15/Add.113. 02/11/99. para. 21. Concluding Observations of the Committee on the Rights of the Child: Mexico. CRC/C/15/Add.112. 10/11/99. para. 23. Concluding Observations of the Committee on the Rights of the Child: Suriname. CRC/C/15/Add.130. 28/06/2000. para. 33.

31 Concluding Observations of the Committee on the Rights of the Child: Kenya. CRC/C/15/Add.160. 07/11/2001. para. 35

32 Concluding Observations of the Committee on the Rights of the Child: Israel. CRC/C/15/Add.195. 09/10/2002. para. 36 & 37.

33 Concluding Observations of the Committee on the Rights of the Child: Argentina. CRC/C/15/Add.187. 09/10/2002. para. 36.

Children are also directly affected by armed conflict and sometimes find themselves involved as child soldiers, for example in civil war as in Burundi, Sudan or Sierra Leone.<sup>34</sup> In some developed countries such as the United Kingdom, the Committee was concerned about young recruits below the age of 18.<sup>35</sup> Colombia and Israel are two good illustrations of children suffering from armed conflicts. In the case of Israel, the Committee has been “seriously concerned about the impact of terrorism on the rights of children in the State party, as well as the impact of military action on the rights of children in the occupied Palestinian territories”.<sup>36</sup>

### > *Non-state violence*

Finally, private violence includes honour crimes, suicide, economic exploitation and domestic violence affecting children. Honour crimes have been observed in Turkey and Pakistan. In the case of Turkey, the Committee noticed that “immediate family members kill women who are suspected of being unchaste” and that “often both victims and perpetrators are minors”.<sup>37</sup> Cases of suicide are mostly found in developed countries like Japan, Germany and France. In France, suicide represents the second cause of death among children below the age of 16.<sup>38</sup> Domestic violence has been cited several times as having a negative and harmful impact on children.<sup>39</sup> However, the Committee didn’t give examples of these negative effects, except with the case of Ethiopia where it stressed that “domestic violence against women may lead to child abuse in the family”.<sup>40</sup>

On violence against children, within the family and in schools, the Committee put forward the idea of “increasing support and assistance to families, which must play the key role in preventing family violence, particularly in helping to cope with economic and psychological stress and other risk factors”.<sup>41</sup> On the other hand, family deprivation is an important factor leading to the increase of street children (see below). Lastly, child labour and economic exploitation of poor children, constrained to work in difficult conditions to survive, affect particularly children begging in the streets, domestic servants and those working in the plantation sector. These children can be exposed to sexual abuse,<sup>42</sup> and police brutality.<sup>43</sup>

### > *Street children and violence*

The case of street children is the most obvious illustration, noticed by the Committee throughout the world, of the connection between economic conditions of children and their involvement in violence either as victims or perpetrators. The link has been markedly established in the case of Honduras in 1999,

where the Committee was concerned about “the situation of children who, because of serious situations of extreme poverty as well as of situations of abandonment or violence within the family, are forced to live in and/or work on the streets and are therefore vulnerable to different forms of exploitation and abuse, including sale, trafficking and abduction”.<sup>44</sup>

The issue of juvenile gangs illustrates the case of street children as perpetrators of violence, as acknowledged by the Committee on several occasions. Regarding El Salvador in 2004, the Committee detailed what it calls the “root causes” of juvenile violence and recommended that “the State party adopt comprehensive strategies which are not limited to penal measures but also address the root causes of violence and crime among adolescents, in gangs and outside gangs, including policies for social inclusion of marginalized adolescents; measures to improve access to education, employment and recreational and sports facilities; and reintegration programmes for juvenile offenders”.<sup>45</sup>

Deprivation of family and poverty are at the origin of the street children phenomenon. As noticed by the Committee in the case of Viet Nam “family disintegration, including divorce, contributes

34 Concluding Observations of the Committee on the Rights of the Child: Burundi. CRC/C/15/Add.133. 16/10/2000. para.72. Concluding Observations of the Committee on the Rights of the Child: Sudan. CRC/C/15/Add.190. 09/10/2002. para.59. Concluding Observations of the Committee on the Rights of the Child: Sierra Leone. CRC/C/15/Add.116. 24/02/2000. para. 70.

35 Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland. CRC/C/15/Add.188. 09/10/2002. para. 53.

36 Concluding observations of the Committee on the Rights of the Child: Israel. CRC/C/15/Add.195. 09/10/2002. para. 58.

37 Concluding Observations of the Committee on the Rights of the Child: Turkey. CRC/C/15/Add.152. 09/07/2001. para. 31.

38 Concluding Observations of the Committee on the Rights of the Child: France. CRC/C/15/Add.240. 30/06/2004. para. 44.

39 Concluding Observations of the Committee on the Rights of the Child: Russian Federation. CRC/C/15/Add.110. 10/11/99. para. 31.

40 Concluding Observations of the Committee on the Rights of the Child: Ethiopia. CRC/C/15/Add.144. 21/02/2001. para. 46.

41 Committee on the Rights of the Child, *Day of General Discussion on “Violence against Children, Within the Family and in Schools”*, 28 September 2001, para. 694.

42 Concluding Observations of the Committee on the Rights of the Child: Pakistan. CRC/C/15/Add.217. 27/10/2003. para. 69(c).

43 Concluding Observations of the Committee on the Rights of the Child: Romania. CRC/C/15/Add.199. 18/03/2003. para. 60(a).

44 Concluding Observations of the Committee on the Rights of the Child: Honduras. CRC/C/15/Add.105. 24/08/99. para. 33.

45 Concluding Observations of the Committee on the Rights of the Child: El Salvador. CRC/C/15/Add.232. 30/06/04. para. 68.



to the increasing numbers of children in conflict with the law, and of those living on the street and abusing drugs". The Committee was further concerned at "the growing gap between rich and poor families, and that poverty puts children at greater risk of exploitation and abuse".<sup>46</sup> In addition, and as pointed out by the Committee in the cases of Uzbekistan and Moldova, the "economic crisis and the consequent deterioration in the family environment have resulted in an increasing number of street children".<sup>47</sup> Furthermore, regarding Romania, the Committee considered that "poverty is a contributing factor to family breakdowns".<sup>48</sup>

Street children are, then, exposed to different kinds of violence and health problems such as torture, child labour and economic exploitation. As underlined by the Committee in the case of Russia, street children "require special attention because of their increased vulnerability to involvement in juvenile crime, alcohol and substance abuse and sexual exploitation - including through criminal organizations".<sup>49</sup> In Colombia, the Committee has been concerned by "the multiple instances of "social cleansing" of street children" and about "alleged cases of street children tortured and ill-treated by members of the police and/or paramilitary groups".<sup>50</sup> Vulnerable children are even more exposed to these dangers as noticed by the Committee with respect to Canada where Aboriginal children are over-represented in the group of street children and disproportionately end up in sex trade as a mean to survival.<sup>51</sup>

Child labour and economic exploitation are the most frequent consequences of poverty observed by the Committee and which affect disproportionately street children. Child labour and abuses can also be practised abroad as children can fall victims of human trafficking networks. The Committee noticed that children are involved in dangerous work abroad such as camel jockeys in Oman and the United Arab Emirates.<sup>52</sup> Children are trafficked from Bangladesh and Pakistan among others.<sup>53</sup> Children are also be trafficked for sexual exploitation as noticed by the Committee in the cases of Cyprus and Ukraine.<sup>54</sup> In this connection, the Committee regularly recommends the concerned States parties to consider ratifying/implementing the ILO Minimum Age Convention, 1973 (No. 138), the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), and fight the phenomenon of child trafficking.

Further, street children are disproportionately vulnerable to substance abuse, sexually transmitted diseases and HIV/AIDS. These health problems have been observed by the Committee in several States parties in both developed and developing countries. The former are more concerned by drugs and alcohol abuse and less concerned by HIV, which is widespread in some African countries. Regarding Djibouti, the Committee has been concerned about

"the exposure of older children in the State party, particularly those living on the street or working in port areas and along truck routes, to sexual exploitation and to sexually transmitted diseases, including the risk of HIV infection".<sup>55</sup> In addition to the abuses and violence that street children undergo, their economic, social and cultural rights are regularly violated as their access to health services and education and their right to housing are simply ignored. Thus, the Committee usually recommends the concerned States parties to undertake urgent efforts to protect the rights of street children including through the provision of education, health care, nutritional aid, alternative care assistance and clothing; to address the issue of child labour and economic exploitation; and to rehabilitate and reintegrate street children.<sup>56</sup>

46 Concluding Observations of the Committee on the Rights of the Child: Viet Nam. CRC/C/15/Add.200. 18 March 2003. para. 35.

47 Concluding Observations of the Committee on the Rights of the Child: Republic of Moldova. CRC/C/15/Add.192. 31/10/2002. para.47. Concluding Observations of the Committee on the Rights of the Child: Uzbekistan. CRC/C/15/Add.167. 07/11/2001. para. 63.

48 Concluding Observations of the Committee on the Rights of the Child: Romania. CRC/C/15/Add.199. 18/03/2003. para. 36.

49 Concluding Observations of the Committee on the Rights of the Child: Russian Federation. CRC/C/15/Add.110. 10/11/99. para. 58.

50 Concluding Observations of the Committee on the Rights of the Child: Colombia. CRC/C/15/Add.137. 16/10/2000. para. 34 & 38.

51 Concluding Observations of the Committee on the Rights of the Child: Canada. CRC/C/15/Add.215. 27/10/2003. para. 52 & 54.

52 Concluding Observations of the Committee on the Rights of the Child: Oman. CRC/C/15/Add.161. 06/11/2001. para.51. Concluding Observations of the Committee on the Rights of the Child: United Arab Emirates. CRC/C/15/Add.183. 13/06/2002. para. 40.

53 Concluding observations of the Committee on the Rights of the Child: Bangladesh. CRC/C/15/Add.221. 27/10/2003. para.73. Concluding Observations of the Committee on the Rights of the Child: Pakistan. CRC/C/15/Add.217. 27/10/2003. para. 76.

54 Concluding observations of the Committee on the Rights of the Child: Cyprus. CRC/C/15/Add.205. 02/07/2003. para.55. Concluding observations of the Committee on the Rights of the Child: Ukraine. CRC/C/15/Add.191. 09/10/2002. para. 66.

55 Concluding Observations of the Committee on the Rights of the Child: Djibouti. CRC/C/15/Add.131. 28/06/2000. para. 45.

56 Concluding Observations of the Committee on the Rights of the Child: Uzbekistan. CRC/C/15/Add.167. 07/11/2001. para.64. Concluding Observations of the Committee on the Rights of the Child: Burundi. CRC/C/15/Add.133. 16/10/2000. para. 69.

## 10.2 The Committee on the Elimination of Discrimination against Women

Aboriginal women are “over-concentrated in lower-skill and lower-paying occupations, they constitute a high percentage of those women who have not completed secondary education, they constitute a high percentage of women serving prison sentences and they suffer high rates of domestic violence”<sup>57</sup>

The Convention on the Elimination of Discrimination against Women provides, among other rights, for economic, social and cultural rights, specifically the right to work, the right to health, the right to education, as well as an article against trafficking. The Committee on the Elimination of Discrimination against Women regularly includes economic, social and cultural rights in its dialogue with States parties and in many of its Concluding Observations the Committee acknowledges economic transition, financial crisis and/or poverty as factors impeding the implementation of the Convention.

### > Violence against women

Because the Convention does not address violence against women generally, the Committee adopted General recommendation 19 in 1992<sup>58</sup>, reaffirming that violence against women is indeed a form of discrimination and addressing the issue of violence against women with respect to many of the articles of the Convention; it asserts that gender-based violence violates many of women’s human rights.<sup>59</sup> As a result, almost all Concluding Observations include a paragraph on violence against women, frequently with respect to domestic violence, but also concerning traditional practices and sexual harassment. In particular, the Committee has cited violence against women as a factor impeding the implementation of the Convention in India (2000), Jamaica (2001), and Trinidad & Tobago (2002).<sup>60</sup>

### > Trafficking and prostitution

The Committee most often addresses the socio-economic dimensions of violence in connection with trafficking and exploitation of prostitution. It frequently expresses concern that poverty and other economic factors render women vulnerable to becoming victims of trafficking, or push them into prostitution where they are vulnerable to exploitation.<sup>61</sup> A frequent recommendation is that poverty alleviation programmes should be developed, with special emphasis on women. For example, in 2004, the Committee recommended to Nigeria and Belarus the “introduction of measures aimed at improving the economic situation of women so as to eliminate their vulnerability to traffickers”.<sup>62</sup>

### > Poverty and violence

In some cases, the Committee identifies poverty generally or the general financial situation as being factors that contribute to violence against women. For example, on Kyrgyzstan in 1999 the Committee stated: “In light of the linkage of violence with poverty, the Committee recommends the introduction of measures aimed at improving the economic status of women, including retraining for income-generating occupations.”<sup>63</sup> The Committee also expressed concern in 1999 “about the diverse forms of violence against women in China, including custodial violence, sexual abuse, domestic violence, sexual violence and sexual harassment in the workplace,” and went on to note that “economic conditions may contribute to an increase in violence against women.”<sup>64</sup>

In 1999, with respect to the United Kingdom, the Committee raised its concern about the “high number of women in prison, particularly those from ethnic minorities. Many women have been imprisoned for drug-related offences or because of the criminalisation of minor infringements, which in some instances seem indicative of women’s poverty.”<sup>65</sup> The Committee also includes recognition of economic transition or financial crisis as factors impeding the implementation of the Convention. In 2004, it expressed concern about the causes of the high rate of clandestine abortion “which include poverty” in Ethiopia.<sup>66</sup>

The feminisation of poverty is regularly highlighted as a concern by the Committee,<sup>67</sup> although it is not usually linked directly to its concerns about violence against women. However, in relation to Georgia in 1999, the Committee did link women’s poverty to

57 Concluding Observations relating to Canada (2003). A/58/38, para. 361.

58 U.N. Doc. HRI/GEN/1/Rev.7 page 246.

59 The rights violated by the occurrence of gender-based violence include: “(a) the right to life, (b) the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, (c) the right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) the right to liberty and security of person, (e) the right to equal protection under the law; (f) the right to equality in the family; (g) the right to the highest standard of attainable physical and mental health; (h) the right to just and favourable conditions of work.” (HRI/GEN/1/Rev.7 para. 7).

60 India, A/55/38, para. 52; Jamaica, A/56/38, para. 210; Trinidad & Tobago, A/57/38, para. 138.

61 Observations of this type were made with respect to the following countries, in 1999 (A/54/38/Rev.1): Kyrgyzstan, Georgia, China, Colombia; in 2000 (A/55/38), Belarus, DRC, Cuba, Romania, Cameroon, Moldova; in 2001 (A/56/38), Kazakhstan, Vietnam; in 2002 (A/57/38), Fiji, Suriname, Ukraine; in 2003 (A/58/38), Albania, Ecuador.

62 UN, *Report of the Committee on the Elimination of Discrimination against Women*, A/59/38. paras. 302 and 350.

63 A/54/38/Rev.1, para. 123.

64 A/54/38/Rev.1, para. 285

65 A/54/38/Rev.1, para. 312

66 UN, *Report of the Committee on the Elimination of Discrimination against Women*, A/59/38. p. 46.

negative health consequences: “it is concerned that poverty and unemployment of women will also have a long-term negative impact on the health of women and children.”<sup>68</sup> Additionally, concerns about women’s poverty sometimes overlaps with general concerns about the situation of rural women.

The reporting guidelines of the Committee request that reports contain “sufficient data and statistics disaggregated by sex relevant to each article and the general recommendations of the Committee to enable it to assess progress in the implementation of the Convention”<sup>69</sup> and in 2000, the Committee specifically asked the Government of Cameroon “to improve the collection and analysis of statistical data broken down by gender and age with regard to poverty and violence against women.”<sup>70</sup>

### > *Domestic violence*

The Committee sometimes recommends that States parties examine the root causes of domestic violence, while not specifying what these root causes may include.<sup>71</sup> With respect to Fiji, in 2002, the Committee observed that “restrictive divorce laws encourage violence”<sup>72</sup> Also, with respect to Canada, the Committee expressed concern about budget cuts in British Columbia, including cuts for “support programmes for victims of domestic violence.”<sup>73</sup>

### > *Violence in connection with family planning and reproductive health*

In some instances, the Committee highlighted family planning policies that render women vulnerable to violence. In particular, with regard to China in 1999, the Committee expressed concern about “consistent reports of abuse and violence by local family planning officials. These include forced sterilisations and abortions, arbitrary detention and house demolitions, particularly in rural areas and among ethnic minorities”.<sup>74</sup> With regard to forced sterilisation, the Committee highlighted its concern in its conclusions on Peru in 2002 but it is not clear from the Committee’s comments whether marginalised women are more vulnerable to being forced into sterilisation.<sup>75</sup> Laws criminalising abortion also lead to women being imprisoned, as the Committee noted in 1999 with respect to Nepal and Chile.<sup>76</sup>

### > *Violence at work*

Insufficient protection under labour laws and immigration laws leave migrant workers and domestic workers (who are frequently migrants as well) particularly vulnerable to violence. Employers are able to abuse these women and the women have

no means to escape because of their illegal immigration status, their non-inclusion in laws aimed to protect workers and their dismal economic situation. The Committee has raised concern about migrant workers and domestic workers on numerous occasions. For example, in 1999, with respect to (Hong Kong), the Committee highlighted the vulnerability of migrant workers to “abuse and custodial violence” and recommended that the Government monitor and prevent such violence.<sup>77</sup>

Women are also at particular risk of violence in some labour situations. For example, in 2000, with respect to Myanmar, the Committee raised concern about forced labour of women and recognised this practice as a “form of contemporary slavery.”<sup>78</sup> With respect to India, in 2000, the Committee expressed concern about “the practice of debt bondage and the denial of inheritance rights” which lead to the “gross exploitation of women’s labour and their impoverishment.”<sup>79</sup> In some instances, the Committee also comments on the working conditions of women in free-trade zones or export processing zones (EPZs).<sup>80</sup>

### > *Foreign women*

The Committee has highlighted the situation of foreign women, a particularly vulnerable group, often in the context of its examination of the implementation of the Convention in developed

67 Concerns about women’s poverty were raised in the following instances: in 1999 (A/54/38/Rev.1), Liechtenstein, Georgia; in 2000 (A/55/38), Belarus, Lithuania; in 2001 (A/56/38), Nicaragua, Guyana; in 2002 (A/57/38), Fiji, Portugal, Estonia, Trinidad & Tobago, Armenia, Uganda, Barbados, Argentina, Mexico, Peru, in 2003 (A/58/38), El Salvador, Canada, Costa Rica, Brazil, France, Ecuador.

68 A/54/38/Rev.1, para. 105.

69 U.N. Doc. HRI/GEN/2/Rev. 1/Add.2, para. C.4.

70 U.N. Doc. A/54/38/Rev.1, para. 65.

71 This type of recommendation is made in the following Concluding Observations: in 2000 (A/55/38), Belarus, Cuba; in 2001 (A/56/38), Egypt; in 2002 (A/57/38), Uruguay.

72 U.N. Doc. A/57/38, para. 47.

73 U.N. Doc. A/58/38, para. 359.

74 U.N. Doc. A/54/38/Rev.1, para. 299(b).

75 U.N. Doc. A/57/38, para. 484, 485.

76 U.N. Doc. A/54/38, paras. 147, 228.

77 U.N. Doc. A/54/38/Rev.1, para. 327. Concern was also expressed about women migrant workers and/or domestic workers vulnerability to violence or lack of legal protection with respect to the following countries: in 1999 (A/54/38/Rev.1), Colombia, Spain, in 2001 (A/56/38), Singapore, Nicaragua, Andorra, in 2002 (A/57/38), Sri Lanka, Trinidad & Tobago; in 2003 (A/58/38), Switzerland, Canada, Costa Rica, Brazil, Morocco, Ecuador.

78 U.N. Doc. A/55/38, para. 113. Although the Committee did not go into details on this occasion, other UN human rights mechanisms, including the SR VAW, have pointed out the particular vulnerability of women in Myanmar to sexual violence in the context of forced labour.

79 U.N. Doc. A/55/38, para. 82.

80 The Committee expressed concern for women working in these sectors in the following Concluding Observations: in 2001 (A/56/38), Jamaica, Nicaragua, in 2002 (A/57/38), Fiji, Sri Lanka; in 2003 (A/58/38), El Salvador.

countries. These concerns are expressed in a paragraph concerning “immigrant, refugee and minority women,” recognizing the multiple forms of discrimination they suffer from “in society at large and within their communities, particularly with respect to education, employment and violence against women.”<sup>81</sup> In examining the reports of developed countries, the Committee has also highlighted the particular problem of foreign married women who are victims of domestic violence.<sup>82</sup> Foreign married women often have a residency status which is dependent upon remaining in the marriage relationship, a condition which makes them hesitant to leave abusive relationships. Another group of particular concern is women asylum seekers, who are sometimes subjected to human rights violations by State officials (Austria 2000).<sup>83</sup> The Committee frequently recommends combating violence against women in this context and improving these groups’ awareness of social services and legal remedies.

### > *Ethnic minority and indigenous women*

The Committee has acknowledged the vulnerability of ethnic minority women and indigenous women to violence in different contexts.<sup>84</sup> Recognition of violence suffered by ethnic minority women is often grouped with general concern about discrimination and violence against immigrant and refugee women. The Committee focuses on violence suffered by minority Tamil women in Sri Lanka, at the hands of state agents, in the context of the ongoing conflict.<sup>85</sup> In 2003, the Committee observed with regard to Canada that aboriginal women were “over-concentrated in lower-skill and lower-paying occupations, they constitute a high percentage of those women who have not completed secondary education, they constitute a high percentage of women serving prison sentences and they suffer high rates of domestic violence.”<sup>86</sup> The Committee expressed concern also about reports in Brazil in 2003 that “indigenous women are being sexually abused by military units and prospectors (gold miners) on indigenous land.”<sup>87</sup>

In 1999, concerning the United Kingdom, the Committee observed that there was a disproportionate number of ethnic minority women in prison.<sup>88</sup> In some cases, the Committee notes the lack of information on ethnic minority women and requests more information in future reports.<sup>89</sup>

### > *Women from lower castes*

The Committee offers its most complete examination of caste-based discrimination in its Concluding Observations on India, in 2000. From the outset, the Committee acknowledges the system of caste-based discrimination as a factor impeding implementa-

tion of the Convention. It goes on to say: “Discrimination against women who belong to particular castes or ethnic or religious groups is also manifest in extreme forms of physical and sexual violence and harassment.” “The Committee is concerned with the continuing discrimination, including violence, suffered by women of the Dalit community.” In this respect, the Committee recommended enforcement of existing laws prohibiting caste-based discrimination, enactment of legislation, and development of a national plan of action on gender-based violence with a holistic approach.<sup>90</sup> It also mentions caste based discrimination as a harmful traditional practice in its 1999 Concluding Observations on Nepal.<sup>91</sup>

### > *Street children*

The Committee’s most direct examination of this vulnerable group was in its 1999 Concluding Observations on Colombia, where it recommended that “the needs of street children, especially girls, be integrated systematically into all poverty eradication, social development and anti-violence plans and programmes.”<sup>92</sup> This recommendation links up poverty alleviation with anti-violence plans, indicating that the two are related.

### > *Access to justice*

The Committee occasionally expresses concern that women are unaware of their rights or that legal aid programmes are not available to make enforcement of rights possible.<sup>93</sup> With regard

81 This language is used in several Concluding Observations, including: in 2001 (A/56/38), Netherlands; in 2002 (A/57/38), Denmark.

82 This issue was examined in the Concluding Observations of the following countries: in 2000 (A/55/38), Germany; in 2002 (A/57/38), Denmark; in 2003 (A/58/38), Switzerland; Norway, France, Japan.

83 U.N. Doc. A/55/38, para. 229.

84 These instances include: in 2000 (A/55/38), India; in 2001 (A/56/38), Sweden, Netherlands; in 2002 (A/57/38), Sri Lanka, Denmark, in 2003 (A/58/38), Canada, Norway; Japan; New Zealand.

85 U.N. Doc. A/57/38, paras. 286, 287.

86 U.N. Doc. A/58/38, para. 361.

87 U.N. Doc. A/58/38, para. 114.

88 U.N. Doc. A/54/38/Rev.1, para. 312. This disproportionate number was linked to drug laws and criminalisation of poverty, which is discussed above.

89 The Committee expresses this concern and requests additional information in the following cases; in 1999 (A/54/38/Rev.1), Greece; in 2000 (A/55/38), Iraq; in 2001 (A/56/38), Vietnam; in 2003 (A/58/38), Slovenia, Ecuador.

90 U.N. Doc. A/55/38, paras. 52, 68, 74.

91 U.N. Doc. A/54/38/Rev.1, para. 153.

92 U.N. Doc. A/54/38/Rev.1, para. 380.

93 These types of concerns are raised on the following occasions: in 1999 (A/54/38/Rev.1), Greece; in 2002 (A/57/38), Sri Lanka, Denmark, Uganda; in 2003 (A/58/38), Switzerland, Canada, Norway, New Zealand.

to violence against women and access to justice, a specific concern was cited in 2002 in the Concluding Observations on Sri Lanka in relation to sexual and other forms of violence against Tamil women. The Committee expressed “concern that victims in remote areas might be unaware of their rights and of the manner in which to seek redress.”<sup>94</sup>

In its comments on Canada in 2003, the Committee observed that “federal legal aid funds in civil and family law and for legal matters related to poverty issues, in contrast to legal aid for criminal cases, are channelled to the provinces and territories at their discretion. That, in practice, turns out to have a disproportionately restrictive impact on women seeking legal redress as compared with men”. The Committee went on to recommend that the Government ensure that “sufficient legal aid is available to women under all jurisdictions when seeking redress in issues of civil and family law and in those relating to poverty issues”.<sup>95</sup>

### 10.3 The Committee on the Elimination of Racial Discrimination

#### > *Economic, Social and Cultural Rights*

Article 5(e) of the Convention on the Elimination of All Forms of Racial Discrimination specifically guarantees the enjoyment of economic, social and cultural rights free from racial discrimination. Concern is frequently expressed by the Committee at the lack of enjoyment of economic, social and cultural rights and recommendations are made to ensure the enjoyment of such rights. The Committee’s remarks are frequently framed in terms of the economic and social development of a minority population, or to improve the economic and social situation of a certain population – rather than framing these concerns in terms of rights. This is often done in a request for more information on the economic and social situation of a group or in an expression of regret for the lack of information on the socio-economic status of a certain group. In most Concluding Observations, reference is made to specific rights including housing, employment, education and access to health care.

#### > *Violence*

The Committee has most frequently identified racially motivated violence perpetrated by private actors as a concern in its Concluding Observations. In relation to this, the Committee often calls upon governments to enact legislation firmly condemning racially motivated violence, or welcomes situations where governments have already enacted such legislation. This is in

application of article 4(a) of the Convention that specifically obligates States to make “acts of violence or incitement to such acts against any race or groups of persons of another colour or ethnic origin” punishable by law. The Committee also regularly expresses concern about the lack of response of the police to racially motivated violence. There is a potential link here with lack of access to justice, either because of financial restraints or because of lack of confidence in the criminal justice system, which may lead to under-reporting of cases of racially-motivated violence.

The Committee also addresses the problem of police brutality against minorities. The most consistent recommendation of the Committee with respect to police violence and excessive use of force is to increase training and education for law enforcement officials on human rights law and the provisions of the Convention. Ensuring investigation of all allegations of violence by police and prosecution of responsible parties is not a systematic recommendation directed at the police, but appears more often as a recommendation on prosecuting all acts of racial discrimination and not specifically violence. Another recommendation sometimes made concerns efforts to recruit more people from minority groups into police forces.

Where the Committee has examined a country experiencing internal conflict, it has usually commented on the violence taking place. It highlights situations where internal conflict particularly affects certain populations (indigenous and Afro Colombian populations in Colombia<sup>96</sup>, abductions of women and children in Sudan<sup>97</sup>), or more generally where they fear that racial discrimination is an element of the conflict. In addition, in 2004 the Committee recognised the serious economic hardship, the extreme poverty and the severe political and institutional difficulties in Nepal as factors impeding implementation of the Convention.<sup>98</sup>

The Committee is particularly concerned about land disputes where the State is directly involved in dispossessing people of their land or forcibly relocating populations, although in two instances the involvement of private economic actors was mentioned (Chile and Bolivia).<sup>99</sup> A related subject of concern for the Committee is evictions of minority groups from their homes

94 U.N. Doc. A/57/38, para. 286.

95 U.N. Doc. A/57/38, paras. 355, 356.

96 U.N. Doc. A/54/18, paras. 463-481.

97 U.N. Doc. A/56/18, para. 212.

98 U.N. Doc. A/59/18, para. 118.

99 Chile; U.N. Doc. A/54/18, para. 375. Bolivia; U.N. Doc. A/58/18, para. 339.

(Hungary, Roma people).<sup>100</sup> Additionally, land rights are frequently related to indigenous peoples' rights and the Committee expresses concern in various ways on this topic, such as concern about failure to find solutions to ongoing conflict, or concern about roll back in protection of land rights.<sup>101</sup>

### > *Victims*

The Roma are often mentioned as the victims, as well as foreigners (asylum seekers, refugees, migrants, etc.) and other ethnic minorities. With respect to the Roma, the General recommendation<sup>102</sup> has a section on measures for protection against racial violence, but improvement of the socio-economic situation of the Roma is not included among these measures. Instead, the socio-economic factors contributing to the marginalisation of the Roma are addressed in separate paragraphs in the Committee's suggestions and recommendations.<sup>103</sup>

The Committee's specifically recognised the "special vulnerability of children of descent-based communities to exploitative child labour" and called for the elimination of debt bondage and degrading conditions of labour associated with descent-based discrimination. It also recommended taking "strict measures against any incitement to discrimination or violence against the communities", but did not address the general vulnerability of descent-based communities to violence.<sup>104</sup>

Violence against women is dealt with in the General recommendation XXV on gender-related dimensions of racial discrimination and concerns domestic violence and traditional practices, expresses concern about double discrimination against women and recognises sexual violence (such as racially-biased rape) as a potential consequence of double discrimination.<sup>105</sup> Based on this General recommendation, the Committee consistently asks States parties for information disaggregated by gender.

The Committee is also concerned with violence in the context of work and has dealt with foreign workers in Kuwait, calling for measures to protect as well as to improve enjoyment of rights by domestic workers.<sup>106</sup>

### > *Recognising the link between economic, social and cultural rights and violence*

The Committee has established a connection between economic and social marginalisation and vulnerability to violence in several instances. Where the link has been explicitly recognised, the language used has been either factual or causal. Interestingly, despite the fact that they are often concerned about Roma being victims of racially motivated violence, both by the police and by

private individuals, and their acknowledgement that Roma people are frequently denied their economic, social and cultural rights or live in disadvantaged socio-economic situations, the Committee has not made an explicit link in those cases.<sup>107</sup>

The Committee has also made an explicit link between violations of the economic, social or cultural rights of minorities and violence. In Colombia in 1999, it referred to state violence against indigenous people and Afro-Colombians, and noted that "minority communities are subjected disproportionately to violations of international human rights and humanitarian norms," offering a factual profile of the victim. It welcomed the State Party's admission that "Afro-Colombians and indigenous communities continue to be the victims of systemic racial discrimination, which has resulted in their marginalization and vulnerability to violence," seeming to indicate a causal connection. Concern was also expressed at "social cleansing" in urban centres, particularly targeting Afro-Colombian prostitutes and street children with murder, apparently on the basis of their race. The Committee recognised that negative stereotypes of minority communities promoted by the media "reinforce the cycle of violence and marginalization," thereby recognising that the stereotypes, which are a consequence of their marginalisation, are also an element of the violence perpetrated.<sup>108</sup> However, despite acknowledging that marginalised groups are more vulnerable to violence, the Committee has not recommended that the Government improve the socio-economic situation of these groups as a way to combat that vulnerability.

In 2002, concerning Canada, the Committee identified a link: "the direct connection between Aboriginal economic marginalization and the ongoing dispossession of the Aboriginal people from their land." Their economic marginalisation affects their access to justice. However, the recommendations do not seem to address the economically marginalised position of Aboriginal

100 U.N. Doc. A/57/18, para. 384.

101 U.N. Doc. A/54/18. Costa Rica, para. 194; Finland, paras. 76, 80; Peru, para. 158.

102 General recommendation XXVII on discrimination against Roma, U.N. Doc. HRI/GEN/1/Rev.7.

103 For example Slovakia. U.N. Doc. A/59/18, paras. 383-385.

104 General recommendation XXVII on discrimination against Roma, U.N. Doc. HRI/GEN/1/Rev.7, paras. 4, 7.

105 U.N. Doc. HRI/GEN/1/Rev.7 page 217.

106 U.N. Doc. A/54/18, para. 222.

107 See Thematic discussion on the question of discrimination against Roma, U.N. Doc. A/55/18, paras. 442-453 and General recommendation XXVII on discrimination against Roma, U.N. Doc. HRI/GEN/1/Rev.7.

108 U.N. Doc. A/54/18, paras. 463-476.

persons or to ensure more effective access to justice in terms of establishing title over land.<sup>109</sup>

On Spain in 2000, the Committee expressed concern about and about the “underlying socio-economic problems, which provoked” violence against persons of Moroccan nationality. It recommended solving these “as part of a long term strategy to combat racial discrimination and violence, so as to prevent the recurrence of such incidents.” This recommendation recognises the socio-economic problems as root causes of the racial discrimination and racially motivated violence. The same paragraph contains a request for more information on prosecutions and the extent to which convictions were linked to racial discrimination.<sup>110</sup>

The Committee clearly expresses its preoccupation with the potential causal link between “economically, socially, and educationally disadvantaged positions” and the high incarceration rate of minority groups in the United States. Similar concern is expressed with respect to the high rate of persons from minority groups being sentenced to the death penalty.<sup>111</sup>

Concerning Lesotho, in 2000, the Committee called upon the Government to resolve the “underlying socio-economic causes” of violence that erupted between Lesotho nationals and Asian and South African white factory owners.<sup>112</sup> This appears to be the only instance where the Committee examined socio-economic factors leading to the perpetration of violence – as opposed to such factors leading to vulnerability to being a victim of violence.

### > *Recognising an implicit link*

The Concluding Observations on Bangladesh in 2001 welcome information concerning efforts to effectively ensure the enjoyment of rights by “socially and economically disadvantaged groups, in particular the tribal population of the Chittagong Hill Tracts.” In this context, the Committee recommended that the Government take measures to guarantee to all Bangladeshis the right to security of persons, and to protect all Bangladeshis against violence or bodily harm. This link is more implicit because the elements of the link are present in separate paragraphs. The tribal population of the Chittagong Hill Tracts is a socially and economically disadvantaged group (paragraph 66). This group has been experiencing human rights violations perpetrated by security forces and the Government should make efforts to protect them from such violence (paragraph 71). The Committee did not explicitly say that the tribal population of the Chittagong Hill Tracts experienced violence on account of their disadvantaged or marginalised position.<sup>113</sup>

Regarding Peru, in 1999, the Committee reflected allegations that “indigenous communities are being forced to set up self-defence committees under the armed forces and that young people from the most underprivileged sectors of the population are being conscripted by force. Concern is expressed about forced sterilisation of indigenous women and it is noted that indigenous peoples have a life expectancy of 20 years less than the rest of the population.”<sup>114</sup>

The Committee, regarding Chile in 1999, expressed concern about the indigenous Mapuche community with regard to violence in connection with land disputes and the involvement of private companies.<sup>115</sup> With regard to Iraq in 1999, the Committee expressed concern about allegations of forced relocation, denial of equal access to work and education and limits on rights to owning property – against Kurds, Turkmen and Assyrians.<sup>116</sup>

Concerning Australia, in 2000, the Committee expressed concern about indigenous people and their right to land: loss of confidence by indigenous community in the reconciliation process as well as concern about the high rate of incarceration of indigenous people; the Committee recommended that the Government increase efforts to “seek effective measures to address socio-economic marginalization, the discriminatory approach to law enforcement and the lack of sufficient diversionary programmes.” Further, concern was expressed about the mandatory sentencing policy with regard to minor property offences, which appears “to target offences that are committed disproportionately by indigenous Australians, especially juveniles, leading to a racially discriminatory impact on their rate of incarceration.” The Committee expressed its continuing concern about discrimination against indigenous Australians and the “dramatic inequality” in their enjoyment of economic, social and cultural rights.<sup>117</sup>

With regard to Rwanda, in 2000 the Committee expressed its concern about large number of people from Hutu ethnic group in prison, as well as the forced relocations and lack of access to adequate housing; it recommended that the Government “ensure that all relocations are on a non-discriminatory basis

109 U.N. Doc. A/57/18, paras. 331-330.

110 U.N. Doc. A/55/18, para. 165.

111 U.N. Doc. A/56/18, para. 395-396.

112 U.N. Doc. A/55/18, para. 112.

113 U.N. Doc. A/56/18, paras. 66, 71, 72.

114 U.N. Doc. A/54/18, para. 153.

115 U.N. Doc. A/54/18, para. 375.

116 U.N. Doc. A/54/18, para. 348.

117 U.N. Doc. A/55/18, paras. 38, 39, 41.

and that relocated persons enjoy, without discrimination, the rights listed in article 5".<sup>118</sup>

The Committee also expressed concern relating to Slovakia, about Roma discrimination in terms of employment, housing, health and education, and about "persistence of acts of violence by groups, particularly "skinheads," directed towards Roma and other ethnic minorities".<sup>119</sup> The Committee expressed concern about various forms of violence in the United Kingdom: "racist attacks and harassment are continuing and ethnic minorities are feeling increasingly vulnerable", and "incidents of deaths in police custody disproportionately involving members of ethnic or national minority groups".<sup>120</sup>

### > *Access to justice*

The Committee, although expressing concern at the lack of access to justice in its Concluding Observations, does not identify poverty as a specific obstacle to access to justice, although it is implied in the overall reading of some Concluding Observations. Although it is not explicitly stated, it seems that incarceration rates and likelihood of being sentenced to death could be related to lack of access to justice, specifically the inability to afford a good lawyer.<sup>121</sup>

### > *Jurisprudence of the Committee*

A review of the decisions of the Committee on communications submitted under article 14 of the Convention shows that the cases involving violence do not offer a substantive discussion of the socio-economic situation of the victim, although the violence is generally in the context of racial discrimination and the victims may well have been socially and economically marginalised by reason of their membership of a particular race.

## 10.4 The Committee on Economic, Social and Cultural Rights

"(T)he extreme inequalities and the social injustice prevailing in Colombia, as well as drug trafficking, which, *inter alia*, have led to serious and widespread increase in violence in the country. This violence has seriously affected the implementation of the rights protected under the Covenant" and Colombia should "seek appropriate means to reduce the extreme social inequalities and increase its efforts to put an end to the armed conflict by political negotiation, which is the only way effectively to guarantee the economic, social and cultural rights of all citizens".<sup>122</sup>

The above quotation illustrates the two principle themes running through the Concluding Observations of the Committee on Economic, Social and Cultural Rights. The Committee has examined discrimination on the basis of gender, race, religion, geographic area and against vulnerable populations such as refugees and disabled persons. As for violence, the Committee, in its Concluding Observations for the period 1999 to 2004, identified a wide spectrum of forms of violence impeding enjoyments of the Covenant's rights, including: violence against women; violence against children; violence against minority groups and foreigners; violence against workers and at the work place; forced evictions from the place of residence; violence related to drugs and alcohol addiction.

In addition, in recent Concluding Observations, the Committee has identified other factors impeding the implementation of the Covenant such as: armed conflict;<sup>123</sup> large numbers of refugees;<sup>124</sup> security concerns;<sup>125</sup> natural disasters;<sup>126</sup> political

118 U.N. Doc. A/55/18, paras. 145, 149.

119 U.N. Doc. A/55/18, paras. 260-264.

120 U.N. Doc. A/55/18, paras. 358-359.

121 Costa Rica 1999 – facilitate equal access to the courts and administrative bodies for indigenous population, the black minority, refugees and immigrants. Congo 1999 – want info on measures taken to ensure that perpetrators of violence do not enjoy impunity. Portugal 1999 – lack of access for minority groups – invitation for further information on access to justice. Korea 1999 – recommendation that state provide legal aid to victims of racial discrimination. Haiti 1999 – human rights abuses by police and "too little is done to prevent persons perpetrating, with impunity, acts of violence related to racial discrimination (see U.N. Doc. A/54/18). Rwanda 2000 – impunity for members of security forces. UK 2000 – access to legal counsel for asylum seekers (see U.N. Doc. A/55/18). USA 2001 – ensure access to effective legal remedies for victims of racial discrimination (see U.N. Doc. A/56/18). Croatia 2002 – discriminatory application of equal treatment before the law with respect to property claims. Canada 2002 – access to justice for aboriginal people – to establish title over land (see U.N. Doc. A/57/18). Ecuador 2003 – lack of confidence on part of minority groups in the judicial system – inhibits access to justice. Finland 2003 – assumption that police will not act in cases of racial discrimination – lack of confidence (see U.N. Doc. A/58/18).

122 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia. E/C.12/1/Add.74. 30/11/2001. para. 8 & para. 30.

123 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal. E/C.12/1/Add.66. 24/09/2001. para.11. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Algeria. E/C.12/1/Add.71. 30/11/2001. para.8. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guatemala. E/C.12/1/Add.93. 12/12/2003. para. 9.

124 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Jordan. E/C.12/1/Add.46. 01/09/2000. para. 9.

125 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. E/C.12/1/Add.90. 23/05/2003. para. 11.

126 Concluding observations of the Committee on Economic, Social and Cultural Rights: Ecuador. E/C.12/1/Add.100. 07/06/2004. para. 8.



unrest, economic crises and problems of infrastructure;<sup>127</sup> transition to a market-oriented economy;<sup>128</sup> economic and financial difficulties and debts.<sup>129</sup>

### > *Discrimination against women*

Inequalities between men and women are the most frequent concern of the Committee concerning discrimination in the economic and social field. The Committee reminds States parties that they must follow the principle of equal remuneration for work of equal value.<sup>130</sup>

In the developing countries, women are in addition discriminated in education, social security and access to health.<sup>131</sup> Illiteracy of women is a constant subject of concern for the Committee.<sup>132</sup> Women are also discriminated in fields like “inheritance, the regime of shared assets in marriage, divorce, child custody in case of divorce and remarriage, and the conferring of nationality to children on equal terms”.<sup>133</sup> Furthermore and concerning several developing countries, like Yemen, the Committee noticed the existence of “certain customs, traditions and cultural practices” leading to discrimination against women.<sup>134</sup> The same point has been expressed for Bolivia, North-Korea, Guatemala and Ecuador.<sup>135</sup> Moreover, culture has been considered as a factor impeding the implementation of the Covenant. In 2000 and with respect to Morocco, the Committee noted that “the persistence of traditional practices and attitudes, deeply entrenched in Moroccan society, with regard to women and children hamper the ability of the State party to protect and promote their economic, social and cultural rights”.<sup>136</sup> Similar remarks have been made in the cases of Senegal, Jamaica and Benin.<sup>137</sup>

### > *Income and poverty*

Regarding poverty and inequality in income distribution, the Committee is regularly deeply concerned. In 1999, the Committee was alarmed by figures which revealed that 55 percent of the population in Cameroon, were living below the poverty line.<sup>138</sup> In 2001 in Bolivia, 88 percent of all households were living below the poverty line.<sup>139</sup> These figures are usually even worse in rural areas. However, connections between such remarks and violence are rarely made. The example of Colombia cited above is an exception.

Disparity in the living conditions between geographic areas is an important subject of concern for the Committee. Usually disparities are between urban and rural areas or simply between two different regions.<sup>140</sup> Such disparities can be observed in both developed countries and developing countries. Italy is known for

the “substantial economic and social inequalities between the northern and southern parts of the country”.<sup>141</sup> In Germany, between the old and the new Länder “considerable differences continue to exist, particularly in terms of generally lower standards of living, a higher unemployment rate, and lower wages

127 Review of the implementation of CESC: Togo. E/C.12/1/Add.61. 21/05/2001. para. 7.

128 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Georgia. E/C.12/1/Add.83. 19/12/2002. para.6. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ukraine. E/C.12/1/Add.65. 24/09/2001. para. 8.

129 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Venezuela. E/C.12/1/Add.56. 21/05/2001. para.8. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Syrian Arab Republic. E/C.12/1/Add.63. 24/09/2001. para. 11.

130 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Poland. E/C.12/1/Add.82. 19/12/2002. para. 7. Concluding observations of the Committee on Economic, Social and Cultural Rights: Portugal. E/C.12/1/Add.53. 01/12/2000. para. 12. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Panama. E/C.12/1/Add.64. 24/09/2001. para. 11. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Iceland. E/C.12/1/Add.89. 23/05/2003. para. 12.

131 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Congo. E/C.12/1/Add.45. 23/05/2000. para. 17. Review of the implementation of CESC: Togo. E/C.12/1/Add.61. 21/05/2001. para. 12. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal. E/C.12/1/Add.62. 24/09/2001. para. 15.

132 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal. E/C.12/1/Add.66. 24/09/2001. para. 17. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Solomon Islands. E/C.12/1/Add.84. 19/12/2002. para. 16.

133 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal. E/C.12/1/Add.66. 24/09/2001. para. 17.

134 Concluding observations of the Committee on Economic, Social and Cultural Rights: Yemen. E/C.12/1/Add.92. 12/12/2003. para. 9.

135 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Bolivia. E/C.12/1/Add.60. 21/05/2001. para.15. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Democratic People’s Republic of Korea. E/C.12/1/Add.95. 12/12/2003. para.13. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guatemala. E/C.12/1/Add.93. 12/12/2003. para. 12. Concluding observations of the Committee on Economic, Social and Cultural Rights: Ecuador. E/C.12/1/Add.100. 07/06/2004. para. 15.

136 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Morocco. E/C.12/1/Add.55. 01/12/2000. para. 9.

137 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal. E/C.12/1/Add.62. 24/09/2001. para.11. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Jamaica. E/C.12/1/Add.75. 30/11/2001. para.6. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Benin. E/C.12/1/Add.78. 05/06/2002. para. 8.

138 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Cameroon. E/C.12/1/Add.40. 08/12/99. para. 21.

139 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Bolivia. E/C.12/1/Add.60. 21/05/2001. para. 13.

140 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Morocco. E/C.12/1/Add.55. 01/12/2000. para. 26.

141 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Italy. E/C.12/1/Add.43. 23/05/2000. para. 16.

for civil servants in the new Länder".<sup>142</sup> In Brazil, the Committee noted with concern the "persistent and extreme inequalities among the various geographic regions, states and municipalities and the social injustice prevalent in the State party".<sup>143</sup> Despite the observance of these inequalities, the Committee has not expressly considered them as a root cause of violence.

The Committee has occasionally observed a connection between regional disparities due to ethnic or racial discrimination and violence. In 2001, with regard to Togo the Committee affirmed that "the occurrence of societal discrimination on the basis of ethnicity by all ethnic groups is a matter of grave concern to the Committee, in particular the discrimination between southerners and northerners, which is evident in private sector hiring, buying patterns, and the de facto ethnic segregation in urban neighbourhoods. These north-south tensions have regularly been the cause of eruptions of violence of a clearly inter-ethnic character".<sup>144</sup> The Committee has also considered the by discrimination practised by Israel against the Palestinians in the occupied territories and while not expressly linking it to violence has stated "its firm conviction that the implementation of the International Covenant on Economic, Social and Cultural Rights can play a vital role in procuring a lasting peace in Israel and Palestine".<sup>145</sup>

In the Statement on Poverty it adopted in 2001, the Committee affirmed that "sometimes poverty arises when people have no access to existing resources because of who they are, what they believe or where they live. Discrimination may cause poverty, just as poverty may cause discrimination".<sup>146</sup> The Committee's statement defends the idea that anti-poverty policies are more effective to those living in poverty if they are based upon international human rights.<sup>147</sup>

Ethnic minorities, indigenous people as well as foreigners are often discriminated in the economic, social and cultural field as they are marginalised by the society and neglected by the State. Minorities such as Amazighs in Algeria, the Afro-Brazilians in Brazil and Afro-Ecuadorians in Ecuador, non-Arab groups in Syria, Buraku and Okinawa communities in Japan have been cited by the Committee.<sup>148</sup> The situation of the Roma population is one among the most obvious cases of discrimination throughout Europe. The Committee regularly notes with concern the living conditions of the Roma population putting an emphasis on their poverty and their discrimination regarding employment, education, housing and health.<sup>149</sup> These same subjects of concern apply to indigenous people in Mexico, Australia and New Zealand.<sup>150</sup> However, the Committee doesn't establish a connection between discrimination against the Roma population or the other ethnic minorities and violence against them or perpetrated by them. Discrimination and racism against foreigners and

migrant workers are as well matters of concern for the Committee.<sup>151</sup>

### > *Impact of economic policies on vulnerable populations*

The Committee asks States parties not to neglect the effects of economic adjustments and reforms on the living condition of people in precarious situation such as marginalised and disadvantaged groups.<sup>152</sup> Concerning South-Korea, the Committee emphasised the importance of identifying vulnerable populations in order not to make them fall victims of inappropriate laws or policies aiming at overcoming the financial crisis of the country.<sup>153</sup> Among the vulnerable populations we can find disabled

142 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Germany. E/C.12/1/Add.68. 24/09/2001. para. 17.

143 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Brazil. E/C.12/1/Add.87. 23/05/2003. para. 17.

144 Review of the implementation of CESCR: Togo. E/C.12/1/Add.61. 21/05/2001. paras. 13.

145 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. E/C.12/1/Add.69. 31/08/2001. para. 15.

146 Statement of the Committee on ESCR, Poverty and the International Covenant on ESCR, E/C.12/2001/10, 10/5/2001. para. 11.

147 Statement of the Committee on ESCR, Poverty and the International Covenant on ESCR, E/C.12/2001/10, 10/5/2001. para. 11.

148 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Algeria. E/C.12/1/Add.71. 30/11/2001. para. 13. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Brazil. E/C.12/1/Add.87. 23/05/2003. para. 20. Concluding observations of the Committee on Economic, Social and Cultural Rights: Ecuador. E/C.12/1/Add.100. 07/06/2004. para. 13. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Syrian Arab Republic. E/C.12/1/Add.63. 24/09/2001. para. 13. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Japan. E/C.12/1/Add.67. 24/09/2001. para. 13.

149 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Italy. E/C.12/1/Add.43. 23/05/2000. para. 10. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Czech Republic. E/C.12/1/Add.76. 05/06/2002. para. 12. Concluding observations of the Committee on Economic, Social and Cultural Rights: Lithuania. E/C.12/1/Add.96. 07/06/2004. para. 9.

150 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mexico. E/C.12/1/Add.41. 08/12/99. para. 18. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia. E/C.12/1/Add.50. para. 17. 01/09/2000. Concluding Observations of the Committee on Economic, Social and Cultural Rights: New Zealand. E/C.12/1/Add.88. 23/05/2003. para. 18.

151 Concluding observations of the Committee on Economic, Social and Cultural Rights: Denmark. E/C.12/1/Add.34. 14/05/99. para. 15. Concluding observations of the Committee on Economic, Social and Cultural Rights: Kuwait. E/C.12/1/Add.98. 07/06/2004. para.18 & para. 20.

152 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Panama. E/C.12/1/Add.64. 24/09/2001. para. 18. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Germany. E/C.12/1/Add.68. 24/09/2001. para.41.

153 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Republic of Korea. E/C.12/1/Add.59. 21/05/2001. para. 13 & para. 34.

persons, elderly persons as well as children and women.<sup>154</sup> Thus, the Committee recognised all the forms of discrimination against disabled people, caused by exclusion, such as in the fields of “education, employment, housing, transport, cultural life, and access to public places and services”.<sup>155</sup> In countries which experienced war or conflict, internally displaced persons and refugees are often extremely vulnerable.<sup>156</sup> In 2002, the Committee underlined the “deplorable situation of internally displaced persons” in Georgia.<sup>157</sup>

The Committee, in connection with Croatia, stated “One legacy of the war has been a high level of violence, both physical and verbal, in the public and private spheres. This problem of violence, including that directed against women, members of trade unions, and members of certain ethnic groups, has been exacerbated by the weak economy”.<sup>158</sup>

### > Violence against women

Violence against women is a matter of concern to the Committee, either in the form of violence in the home or family or the violence of trafficking. The Committee does not make explicit the link between the socio-economic situation of women and domestic violence and trafficking, nor does it make clear the link between the failure of the states to respect the economic, social and cultural rights and domestic violence and trafficking. The Committee only asks States parties to implement measures or legislation to fight domestic violence and human trafficking without asking for the amelioration of the economic situation of women.<sup>159</sup>

On the other hand, the Committee does recognise that promotion of economic, social and cultural rights can help eliminate violence against women. In the case of Tunisia, the Committee welcomed the promotion and protection of the economic, social and cultural rights of women as they “contributed positively to family life by making polygamy illegal and removed legal recognition of crimes of honour”.<sup>160</sup> Honour crimes against women have been observed in Jordan and Syria.<sup>161</sup> Female genital mutilation (FGM) is another form of physical harm practised against women and the Committee asks States parties to fight this.<sup>162</sup> About domestic violence and FGM, in its general comment on health, the Committee recommended States parties to endeavour in fighting such practices by building health institutions, the promotion of medical research and health education, as well as information campaigns.<sup>163</sup> As for human trafficking, the Committee asks States parties to eradicate this practice but without mentioning economic, social or cultural rights in its Concluding Observations.

### > Violence against children

Violence against children is also addressed in general terms by the Committee. In developed States parties, the dominant form of violence against children observed by the Committee is paedophilia, prostitution of children and child pornography,<sup>164</sup> while in developing States parties violence is related to child labour.<sup>165</sup> The Committee asks the States parties to take effective measures to fight such practices but without underlining the importance of addressing the economic situation which might be the root cause.

With respect to child labour, the Committee regularly recommends States parties to either ratify and implement the ILO

154 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Trinidad and Tobago. E/C.12/1/Add.80. 05/06/2002. para. 15. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal. E/C.12/1/Add.62. 24/09/2001. para.17. General Comment, *Persons with disabilities*, CESCR General comment 5, E/1995/22, 09/12/94. para. 22. Concluding observations of the Committee on Economic, Social and Cultural Rights: Lithuania. E/C.12/1/Add.96. 07/06/2004. para. 12, para. 34.

155 General Comment, *Persons with disabilities*, CESCR General comment 5, E/1995/22, 09/12/94. para. 15.

156 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Syrian Arab Republic. E/C.12/1/Add.63. 24/09/2001. para.15. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. E/C.12/1/Add.90. 23/05/2003. para. 18.

157 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Georgia. E/C.12/1/Add.83. 19/12/2002. para. 12.

158 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Croatia. E/C.12/1/Add.73. 30/11/2001. para. 7.

159 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Japan. E/C.12/1/Add.67. 24/09/2001. para. 43. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Venezuela. E/C.12/1/Add.56. 21/05/2001. para. 26.

160 Concluding observations of the Committee on Economic, Social and Cultural Rights: Tunisia. E/C.12/1/Add.36. 14/05/99. para. 4.

161 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Jordan. E/C.12/1/Add.46. 01/09/2000. para.7. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Syrian Arab Republic. E/C.12/1/Add.63. 24/09/2001. para. 14.

162 Concluding observations of the Committee on Economic, Social and Cultural Rights: Egypt. E/C.12/1/Add.44. 23/05/2000. para.13. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Sudan. E/C.12/1/Add.48. 01/09/2000. para.10.

163 General Comment, *The right to the highest attainable standard of health*, E/C.12/2000/4, 11/08/2000. para. 36.

164 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Belgium. E/C.12/1/Add.54. 01/12/2000. para.13. Concluding observations of the Committee on Economic, Social and Cultural Rights: Portugal. E/C.12/1/Add.53. 01/12/2000. para. 14.

165 Concluding observations of the Committee on Economic, Social and Cultural Rights: Ecuador. E/C.12/1/Add.100. 07/06/2004. para. 22. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Trinidad and Tobago. E/C.12/1/Add.80. 05/06/2002. para. 21.

convention 182 on the Worst Forms of Child Labour or adopt adequate legislation.<sup>166</sup> In Togo, trafficking of children and child labour are connected as children “are sold as young as two years old for future work on plantations or as house servants. Allegedly, these children are extensively exploited, poorly fed, crudely clothed and inadequately cared for”.<sup>167</sup> The committee urged Togo to address “the root causes of these problems” without specifying what they are. The minimum age of work is often addressed by the Committee.<sup>168</sup>

### > *Street children*

Street children are daily confronted with violence, either as victims or perpetrators. The Committee is conscious of this problem as street children can be exploited in insecure jobs like in Georgia where it notes that “the number of children begging in the streets is on the increase and that many of them are drawn by adults into various types of criminal activity”.<sup>169</sup> Poverty and violence are clearly connected in this example. They are even more connected in the case of Colombia as the Committee has been deeply concerned by “the high numbers of street children and children affected by armed conflict...particularly concerned that children are being forced to participate in the armed conflict”.<sup>170</sup> However, the Committee doesn’t suggest specific measures to be adopted by the State party to fight this problem. On occasion, the Committee recommends the States parties to address the “root causes” of the street children phenomenon but without specifying what these are.<sup>171</sup>

### > *Violence against workers*

Several provisions in the Covenant on Economic, Social and Cultural Rights concern workers rights, such as the right to be paid and equally for work of equal value, the right to form trade unions and the right to safe and healthy working conditions. Accordingly, the Committee reports on issues like minimum wage, accidents in the workplace, State repression against trade unions, and slavery and forced labour. The guarantee of a minimum wage set at a level that provides all workers with an adequate standard of living is an issue in developed as well as in developing countries.<sup>172</sup> Adequate conditions of work are also necessary to avoid accidents in the work place. Such accidents have often been a matter of concern for the Committee in developed and transitional countries.<sup>173</sup> Sexual harassment in the workplace is also a subject of concern for the Committee.<sup>174</sup> Another vulnerable group is domestic workers who are often either poor girls or women, and they are likely to be abused and exploited in several countries.<sup>175</sup>

Violence and economic, social and cultural rights are closely connected when states act against trade unions and repress strikes. The Committee noted with concern in Brazil “the killing of landless farmers and the members of trade unions defending them and the impunity enjoyed by those responsible for committing these crimes”.<sup>176</sup> In Colombia, the Committee has been “deeply concerned about the personal security of workers and trade union representatives, both of whom are at high risk of physical violence, including murder. The Committee is appalled to note that more than 1,500 trade union members were killed between 1991 and 2001, often merely because they belonged to a trade union, and that others were threatened or forced to become displaced. The Committee is also concerned that many workers cannot exercise their rights to join a trade union, to participate in collective bargaining and to strike”.<sup>177</sup> Discrimination toward foreign workers in joining trade unions has in addition been noted in several countries.<sup>178</sup>

166 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal. E/C.12/1/Add.66. 24/09/2001. para. 52. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Poland. E/C.12/1/Add. 82. 19/12/2002. para. 45.

167 Review of the implementation of CESCR: Togo. E/C.12/1/Add.61. 21/05/2001. para. 14.

168 Concluding observations of the Committee on Economic, Social and Cultural Rights: Kuwait. E/C.12/1/Add.98. 07/06/2004. para.17. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Trinidad and Tobago. E/C.12/1/Add.80. 05/06/2002. para. 18.

169 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Georgia. E/C.12/1/Add.42. 17/05/2000. para. 16.

170 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia. E/C.12/1/Add.74. 30/11/2001. para. 20.

171 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Argentina. E/C.12/1/Add.38. 08/12/99. para.40. Concluding observations of the Committee on Economic, Social and Cultural Rights: Lithuania. E/C.12/1/Add.96. 07/06/2004. para. 44.

172 Concluding Observations of the Committee on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland - Dependent Territories. E/C.12/1/Add.79. 05/06/2002. para.15. Concluding observations of the Committee on Economic, Social and Cultural Rights: Ecuador. E/C.12/1/Add.100. 07/06/2004. para. 17.

173 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Italy. E/C.12/1/Add.43. 23/05/2000. para. 12.

174 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Croatia. E/C.12/1/Add.73. 30/11/2001. para. 13.

175 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Morocco. E/C.12/1/Add.55. 01/12/2000. para. 21.

176 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Brazil. E/C.12/1/Add.87. 23/05/2003. para. 25.

177 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia. E/C.12/1/Add.74. 30/11/2001. para. 10.

178 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. E/C.12/1/Add.90. 23/05/2003. para.22. Concluding observations of the Committee on Economic, Social and Cultural Rights: Kuwait. E/C.12/1/Add.98. 07/06/2004. para. 18.

Finally, slavery and forced labour are the most extreme forms of exploitation, including violence, against the victims. Such practices have been observed in developing countries. In Sudan, women and children are abducted in conflict areas to use them as slaves and in forced labour.<sup>179</sup> In Greece, trafficked women and children are subjected to forced labour and sexual exploitation.<sup>180</sup> The Committee is aware that the violation of the rights of workers can lead to a variety of forms of violence including killings and exploitation.

### > *Health and violence*

The Committee regularly calls on States parties to provide adequate access to health services and to implement national sexual and reproductive health programmes.<sup>181</sup> The addiction to drugs, alcohol and smoking is seen as another important health hazard. In Lithuania, the Committee has been concerned by the high mortality rate due to alcohol and tobacco abuse.<sup>182</sup> The Committee suspects a link between drug and alcohol addiction and violence as in Iceland, where it stressed that “juvenile violence against children is on the increase and it suggests that a possible link exists between this increase in juvenile violence in general and the increasing use of alcohol and drugs by schoolchildren and juveniles”.<sup>183</sup> In Portugal, paedophilia and child pornography have been associated by the Committee with the increase in drug trafficking and consumption and other criminal activities which endanger the security and health of the population.<sup>184</sup>

Finally, the Committee is concerned by the phenomenon of suicide which appears to occur in developed countries like Japan and France. About the education system in Japan, the Committee has been concerned about “the frequently excessively competitive and stressful nature of all levels of education, which results in school absence, illness, and even suicide by students”.<sup>185</sup> In France, the Committee considered that job insecurity like the risk of losing employment “is said to have contributed to an increased rate of suicide among the population of working age”.<sup>186</sup>

### > *Forced evictions*

In its General comment No.7 (the right to adequate housing), the Committee defined forced eviction as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.<sup>187</sup> Problems of homelessness and forced eviction are widely observed in the developing countries

and are regularly a matter of concern for the Committee. In Egypt, the Committee has been particularly concerned that “in Cairo people who cannot afford housing are living in cemeteries. Unofficial statistics estimate their numbers to be 500,000 - 1 million”.<sup>188</sup>

Forced evictions are also observed in developed and transitional countries against vulnerable populations such as the Roma population in Greece.<sup>189</sup> This kind of violence is usually practised by the State but also by private actors and endorsed by the State. In its General comment on the right to adequate housing, the Committee recognised that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed.<sup>190</sup> In this same General comment, the Committee considered that “instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”.<sup>191</sup>

The Committee recognised that “women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction”.<sup>192</sup> Such evictions are associated with violence as they occur in the framework of armed conflicts, punishment or development projects.

179 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Sudan. E/C.12/1/Add.48. 01/09/2000. para. 33.

180 Concluding observations of the Committee on Economic, Social and Cultural Rights: Greece. E/C.12/1/Add.97. 07/06/2004. para. 18.

181 Concluding observations of the Committee on Economic, Social and Cultural Rights: Yemen. E/C.12/1/Add.92. 12/12/2003. para. 34.

182 Concluding observations of the Committee on Economic, Social and Cultural Rights: Lithuania. E/C.12/1/Add.96. 07/06/2004. para. 27.

183 Concluding observations of the Committee on Economic, Social and Cultural Rights: Iceland. E/C.12/1/Add.32. 12/05/99. para. 14.

184 Concluding observations of the Committee on Economic, Social and Cultural Rights: Portugal. E/C.12/1/Add.53. 01/12/2000. para. 14.

185 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Japan. E/C.12/1/Add.67. 24/09/2001. para. 31.

186 Concluding Observations of the Committee on Economic, Social and Cultural Rights: France. E/C.12/1/Add.72. 30/11/2001. para. 17.

187 General Comment No. 7, *The Right to Adequate Housing (Art.11.1): Forced Evictions*, HRI/GEN/1/Rev.7 page 46, para. 3.

188 Concluding observations of the Committee on Economic, Social and Cultural Rights: Egypt. E/C.12/1/Add.44. 23/05/2000. para. 22.

189 Concluding observations of the Committee on Economic, Social and Cultural Rights: Greece. E/C.12/1/Add.97. 07/06/2004. para. 21.

190 General comment No. 4, *The Right to Adequate Housing*, HRI/GEN/1/Rev.7, page 19, para. 4.

191 *Ibid.* para. 18.

192 General Comment, *The Right to Adequate Housing (Art.11.1): Forced Evictions*, CESCR General comment 7, E/1998/22, annex IV, 20/05/97. para. 10.

Regarding development, the Committee recognised that “various development projects financed by international agencies within the territories of State parties have resulted in forced evictions”. With this respect, the Committee refers to its General comment 2 which says that international agencies should scrupulously avoid involvement in projects which would, among others, “involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation”.<sup>193</sup>

## 10.5 The Human Rights Committee

The International Covenant on Civil and Political Rights focuses on that one category of rights and thus the Human Rights Committee rarely addresses economic, social and cultural rights as a whole. The Committee does, however, occasionally raise concerns about such rights, or socio-economic circumstances, within the context of the rights protected by the Covenant. For example, in 1999, with regard to Canada, the Committee expressed concern about the health problems that arise from homelessness and encouraged the State Party to take the “positive measures required by article 6 [right to life] to address this serious problem.”<sup>194</sup> Similarly, the Committee, in its General comment on the right to life (article 6), recommends that States parties take “all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”<sup>195</sup>

Another example is the Concluding Observation on Israel from 2003, where the Committee recognised house demolitions, when used as a form of collective punishment, as a violation of article 7 (torture, cruel, inhuman or degrading treatment or punishment), amongst other article.<sup>196</sup> With regard to economic, social and cultural measures, the Committee acknowledged that the necessary measures to protect children may be economic, social and cultural. “For example, every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in illicit trafficking of narcotic drugs, or by any other means.”<sup>197</sup>

While economic, social and cultural rights may not, in themselves, be the subject of individual Communications under the Optional Protocol to the Covenant,<sup>198</sup> the Committee has dealt with economic, social and cultural rights under provisions of the Covenant such as that relating to non-discrimination in article 26 and thus has dealt with issues such as pension rights.<sup>199</sup>

### > *Violations of civil and political rights: making the connection*

Recognising a direct connection between violations of civil and political rights and their root causes in violations of economic, social or cultural rights has not been an easy thing for the Committee. However, recently an evolution in thinking may be detected. In 2004, the Committee explicitly linked the socio-economic situation of the Roma and their civil and political rights in Lithuania, by stating its concern about “the social and economic situation of the Roma minority and its impact on the full enjoyment of their rights under the Covenant”.<sup>200</sup> Also in 2004, the same concern has been expressed for Serbia and Montenegro.<sup>201</sup>

### > *Socio-economic dimensions of violence*

Concerning the socio-economic dimensions of violence, the Committee’s concerns are raised in a variety of contexts, both under the abovementioned articles, as well as other articles concerning discrimination or protection of minorities (such as articles 3 (equal rights of men and women), 17 (privacy), 24 (child), 26 (equality before the law) and 27 (minorities)). However, in the past, the Committee has rarely made an explicit link between socio-economic marginalisation and the occurrence of violence.

### > *Women*

The Human Rights Committee addresses the situation of women in a systematic fashion. While it raises issues related to various forms of violence against women such as domestic violence, female genital mutilation and polygamy, it does not always make a link to the socio-economic circumstances which may aggravate this violence. One exception was in 2000, when the Committee expressed concern about the “occurrence of violence against

193 General comment No. 2, International technical assistance measures (Art. 22), HRI/GEN/1/Rev.7, page 12 para. 6 & para.8 (d).

194 U.N.Doc. A/54/40, para. 234.

195 U.N.Doc. HRI/GEN/1/Rev.7, p. 128, para. 5.

196 U.N.Doc. A/58/40, para. 85 (16)

197 General comment No 17: Article 24 (Rights of the Child). U.N.Doc. HRI/GEN/1/Rev.7, p. 144, para. 3.

198 See for example, Plotnikov vs Russian Federation, U.N. Doc. CCPR/C/65/D/784/1997. The complaint was inadmissible under article 2 OP; hyperinflation or the failure to counterbalance hyperinflation do not amount to a violation of the Covenant.

199 See Ibrahim Gueye *et al.* vs France Communication No. 196/1985 U.N. Doc CCPR/C/OP/3 page 89.

200 U.N.Doc. A/59/40, para. 71 (8).

201 U.N.Doc. A/59/40, para. 75 (24).

women and the increasing phenomenon of trafficking in women, which is aggravated by the economic hardship facing women in Kyrgyzstan.”<sup>202</sup> With respect to Russia, in 2003 the Committee grouped violence with socio-economic concerns when it commented on the “high level of poverty among women, the prevalence of domestic violence against women and a marked difference in the wages of men and women for equal work.”<sup>203</sup>

The Committee has also recognised the feminisation of poverty as an area of concern in its work, particularly in Canada in 1999.<sup>204</sup> In its General comment 28 on article 3 (the equality of rights between men and women), the Committee expressed its desire to “have information on the particular impact on women of poverty and deprivation that may pose a threat to their lives,” seemingly invoking article 6 in this regard.<sup>205</sup>

### > *Children*

In its General comment 17 on article 24 (rights of the child), the Committee affirms that the measures to be taken to protect children under the Covenant are “intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant” but the measures “may also be economic, social and cultural”. For example, in the cultural field “every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant”.<sup>206</sup>

With regard to children and violence, the Committee is particularly concerned about the vulnerability of street children, for example, to becoming victims of sexual violence.<sup>207</sup> The Committee has also expressed concern about trafficking in children and sex tourism.<sup>208</sup> In 1999, with regard to Romania, the Committee highlighted the problem of excessive use of force in response to petty criminality by minors.<sup>209</sup>

### > *Rights of workers and forced labour*

The Covenant explicitly recognises the right to form and join trade unions in article 22. Thus, the Committee regularly takes up concerns about restrictions on these rights.<sup>210</sup> In some instances the Committee also expresses concern about working conditions, forced labour, and workers’ vulnerability to violence. For example, in 2001, with respect to the Dominican Republic, the Committee recommended that the State Party “protect Haitians living or working in the Dominican Republic from serious human rights abuses such as forced labour and cruel, inhuman or degrading treatment,” in addition to expressing concern about the “living and working conditions of Haitian workers.”<sup>211</sup>

The Committee also recognised in 2001 that domestic workers in Aruba (Netherlands) “are often particularly vulnerable to exploitation as non-Aruban nationals.”<sup>212</sup> Similarly, in 2003, the Committee included examination of slavery like practices in Mali and the fact that “migrant girls leaving the countryside for the towns to work as domestic servants...are often the victims of rape and ill-treatment and may be forced into prostitution.”<sup>213</sup> In 2004, the Committee observed with concern the forced employment of children in activities harmful to their health in Uganda.<sup>214</sup>

### > *Ethnic minorities and foreigners*

The Committee has commented on the particular situation of ethnic minorities on several occasions. With regard to violence against ethnic minorities, the Committee has raised concern in a variety of different contexts, specifically, police violence, racial harassment and violence, violence in the course of deportations and violence connected to resettlement of ethnic minorities.<sup>215</sup>

With respect to police violence against ethnic minorities, the Committee has highlighted its concerns several times. In 2001, in its examination of Ukraine, the Committee mentioned the problem of police harassment of the Roma minority and aliens<sup>216</sup> and in its examination of Switzerland, it expressed similar concern about “police brutality towards persons being apprehended and detainees, noting that such persons are frequently aliens.”<sup>217</sup> Again in 2001, the Committee raised its concern

202 U.N.Doc. A/55/40, para. 403.

203 U.N.Doc. A/59/40, para. 64 (9).

204 U.N.Doc. A/54/40, para. 242.

205 U.N.Doc. HRI/GEN/1/Rev.7, page 179.

206 U.N.Doc. HRI/GEN/1/Rev.7, page 145.

207 See Concluding Observations in 1999 on Mexico (A/54/40); in 2000 (A/55/40) on Venezuela and Guatemala; in 2003 (A/58/40) on the Philippines.

208 See Concluding Observations in 1999 (A/54/40) on Costa Rica (sex tourism), Cambodia (trafficking); in 2000 (A/55/40) on Kyrgyzstan (trafficking); in 2001 on Guatemala (trafficking) (A/56/40).

209 U.N.Doc. A/54/40, para. 371. Romania “continued incidents involving the use of firearms by the police, especially in cases of petty offences committed by minors.”

210 For example, see Concluding Observations in 2000 on Kuwait (A/55/40) and in 2001 on Venezuela (A/55/40).

211 U.N.Doc. A/56/40, para. 78 (17).

212 U.N.Doc. A/56/40, para. 82 (23).

213 U.N.Doc. A/58/40, para. 81 (18).

214 U.N.Doc. A/59/40, para. 70 (20).

215 The Roma are a particular ethnic minority which warrants separate treatment below.

216 U.N.Doc. A/57/40, para. 74 (13).

217 U.N.Doc. A/57/40, para. 76 (11).

about “racist incidents within the criminal justice system” in the United Kingdom.<sup>218</sup>

In 2003, the Committee made a strong statement on this issue with respect to Portugal, when it noted “reported cases of disproportionate use of force and ill-treatment by the police, occurring particularly at the time of arrest and during police custody and resulting, in some instances, in the death of the victim. Police violence against persons belonging to ethnic minorities appears to be recurrent.” In this regard, it recommended that “the State party end police violence without delay. It should increase its efforts to ensure that education on the prohibition of torture and ill-treatment, as well as sensitisation on issues of racial discrimination, are included in the training of law enforcement personnel. Efforts should also be made to recruit members of minority groups into the police.”<sup>219</sup> Also in 2003, the Committee raised concerns that in Russia there are “reports of racial profiling by law enforcement personnel.”<sup>220</sup>

General racial violence and harassment is also of concern to the Committee.<sup>221</sup> Along the same lines, the Committee has recognised the particular vulnerabilities of these groups. Specifically, in 2001 with regard to Switzerland, the Committee expressed concern that “aliens without working papers run the risk of becoming victims of exploitation and abuse. Another vulnerable category of persons are foreign spouses of foreigners with residence permits, who are subject to deportation in the event of discontinuation of de facto cohabitation and hence may be forced to live in abusive relationships”.<sup>222</sup>

In a particular situation in Uzbekistan, the Committee commented in 2001 extensively on the resettlement of Tajik citizens (who could be considered a minority group). The Committee noted that: “more than 1,300 Tajiks, citizens of Uzbekistan, were resettled from their villages in the mountains to the steppes of the Sherabad region, about 250 miles away. The State party explained that the action was taken in order to improve the living conditions of the people concerned. It did not however, refute that the resettlement was enforced by military forces, that the Tajiks had to leave their homes without their belongings and that their villages were subsequently destroyed.” The Committee recommended that the State party “stop any further action to expel people from their homes in violation of articles 12 and 17, and possibly, in certain situations, article 27 of the Covenant”.<sup>223</sup>

Another particular situation is the circumstances of stateless persons in Estonia. While the Committee did not comment on violence against people from this group during its 2003 examination, it did encourage the State party “to conduct a study on the socio-economic consequences of statelessness in Estonia, including the issue of marginalization and exclusion.”<sup>224</sup>

## > Roma

The Roma are a particular minority group that is subjected to enormous discrimination in all spheres of life. The Committee has raised particular concerns about the Roma on numerous occasions in its Concluding Observations. It usually mentions the socio-economic situation of the Roma or discrimination against them in tandem with concerns about violence against, or harassment of, this group. For example, in 2001, with respect to the Czech Republic, the Committee noted that “steps taken by the State party to improve the socio-economic condition of the Roma do not appear to be adequate to address the situation and de facto discrimination persists”. The Committee went on to detail the ways that discrimination is manifest against Roma in education and employment. The Committee then expressed concern about “violence and harassment by some groups with respect to the Roma minority, and the failure of the police and judicial authorities to investigate, prosecute and punish hate crimes.” Later, the Committee also expressed concern about police harassment of Roma. The Committee recommended that the State party “combat racial violence and incitement, provide proper protection to Roma and other minorities, and ensure adequate investigation and prosecution of cases of racial violence and incitement to racial hatred” and that the State party “take firm measures to eradicate all forms of police harassment of aliens and vulnerable minorities.”<sup>225</sup> Similar concerns were expressed about discrimination and violence against the Roma minority in Hungary (2002)<sup>226</sup> and Slovakia (2003).<sup>227</sup>

As mentioned above, the Committee appeared in 2004 to explicitly establish a link between the socio-economic situation of the Roma and their civil and political rights with respect to Lithuania, Serbia and Montenegro.<sup>228</sup>

218 U.N.Doc. A/57/40, para. 75 (12).

219 U.N.Doc. A/58/40, para. 83 (8).

220 U.N.Doc. A/58/40, para. 64 (24).

221 See Concluding Observations in 2000 on Guyana (A/55/40); in 2001 on Ukraine (A/57/40) and United Kingdom (A/57/40); in 2003 on Russia (A/59/40).

222 U.N.Doc. A/57/40, para. 76 (15).

223 U.N.Doc. A/56/40, para. 79 (16).

224 U.N.Doc. A/58/40, para. 79 (14).

225 U.N.Doc. A/56/40, para. 83 (8, 11, 15).

226 U.N.Doc. A/57/40, para. 80 (7).

227 U.N.Doc. A/58/40, para. 82 (11-12).

228 U.N.Doc. A/59/40, paras. 71 (8) and 75 (24).



### > *Internally displaced people*

In 2004, the Committee expressed its concern about the socio-economic situation of internally displaced persons in Colombia, such as shortcomings in the fields of the education of children and medical care. In tandem with that concern, the Committee expressed its concern about “the difficulties experienced by internally displaced persons in exercising their civic rights, especially the right to vote”.<sup>229</sup> The same concern has been expressed about the internally displaced persons in Serbia Montenegro in 2004.<sup>230</sup>

### > *Anti-vagrancy laws*

In its General comment 8 on article 9 (right to liberty and security of person), the Committee points out in the first paragraph that this article is “applicable to all deprivations of liberty, whether in criminal cases or in other cases, such as, for example, ...vagrancy...”.<sup>231</sup> The Committee also highlights the issue of poverty with respect to women, in its General comment 28 on article 3 (implementation at the national level), where it states its desire to “have information on the particular impact on women of poverty and deprivation that may pose a threat to their lives.”<sup>232</sup>

In its Concluding Observations, the Committee raises concern about anti-vagrancy laws in at least two instances. In 2002, with respect to Moldova, the Committee noted the “apparently frequent administrative detention for significant periods of persons qualified as “vagrants””.<sup>233</sup> In 2003, in its examination of the Philippines, the Committee expressed concern about “a vaguely worded anti-vagrancy law ... used to arrest persons without warrant, especially female prostitutes and street children.”<sup>234</sup>

### > *Access to justice*

The Committee has sometimes highlighted concerns about the lack of legal aid in certain countries<sup>235</sup> and has insisted on the right to legal assistance for persons charged with criminal offences.<sup>236</sup> In its General comment 13 on article 14 (administration of Justice), the Committee specifically asks States parties to provide information on “what arrangements are made if a person does not have sufficient means to pay for legal assistance.”<sup>237</sup> Finally, the Committee has expressed its concern over the practice of imprisoning persons for contractual debts in Uganda, but this observation is based on article 11 of the Covenant.<sup>238</sup>

## 10.6 The Committee against Torture

The Committee against Torture is charged with the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A review of the Committee’s Concluding Observations for the period 1999 – 2004 shows that the Committee rarely mentions socio-economic factors as possible causes of torture or other cruel, inhuman or degrading treatment or punishment.

However, in some of its Concluding Observations it has made reference to economic and social factors which affect the application of the Convention. In its Concluding Observations on Cameroon, the Committee recognised that the economic situation constituted a factor impeding the application of the Convention.<sup>239</sup> 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 Convention.<sup>240</sup> Concerning Australia, the Committee welcomed the measures taken by the State Party to address the historical and economic underpinning of the disadvantage experienced by the indigenous population.<sup>241</sup> It 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”.<sup>242</sup>

In the cases of Canada and Australia, the positive relationship underlined by the Committee between economic and social disadvantages and the implementation of the Convention highlights that poverty and violations of economic, social and cultural rights do have an impact on the protection against torture.

229 U.N.Doc. A/59/40, para. 67 (19).

230 U.N.Doc. A/59/40, para. 75 (18).

231 HRI/GEN/1/Rev.7, page 130.

232 HRI/GEN/1/Rev.7, page 126.

233 U.N.Doc. A/57/40, para. 84 (11).

234 U.N.Doc. A/59/40, para. 63 (14).

235 See Concluding Observations in 2000 on Denmark (A/56/40) and in 2001 on the Czech Republic (A/56/40).

236 See Concluding Observations in 2000 on Guyana (A/55/40).

237 HRI/GEN/1/Rev.1 page 135.

238 U.N.Doc. A/59/40, para. 70 (19).

239 UN Doc. A/56/44: *Concluding observations of the Committee against Torture: Cameroon*, 06/12/2000, para. 64.

240 U.N. Doc. A/56/44: *Concluding observations of the Committee against Torture: Canada*, 22/11/2000, para. 57(f).

241 U.N. Doc. A/56/44: *Concluding observations of the Committee against Torture: Australia*, 21/11/2000, para. 51(e).

242 *Ibid.*, para.53(g).

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.<sup>243</sup>

In addition, the Committee, in its Views in the case of *Hajrizi Dzemajl et al. vs Yugoslavia* found that the violent way in which Roma were evicted from their homes, and their dwellings destroyed and burned constituted acts of cruel, inhuman or degrading treatment in violation of the Convention Against Torture. Although the destruction was carried out by private individuals, because the authorities acquiesced in the destruction, the Committee found that the State Party was responsible for the violations of the Convention.<sup>244</sup>

The Committee's Concluding Observations for the period 1999-2004 can be considered under four headings; violence against foreigners; violence against ethnic minorities; violence against women and children; and violence based upon discrimination.

### > Violence against foreigners

One of the main concerns of the Committee in connection with non-nationals is the implementation of article 3 of the Convention which deals with the issue of the extradition or expulsion of a person to a country where that person might be tortured. This issue is usually observed in some developed countries, when dealing with asylum seekers and illegal immigrants, for example in relation to Luxembourg, Canada, Lithuania and Sweden.<sup>245</sup> It is also observed in some developing countries confronted with political instability such as Colombia, Indonesia and Cambodia.<sup>246</sup>

The housing of foreigners waiting their deportation is often a subject of concern for the Committee.<sup>247</sup> In New Zealand several asylum seekers were detained in prisons not separated from other detainees.<sup>248</sup> In addition, the Committee observed cases where foreigners are subject to unlimited duration of detention and excessive use of force during their expulsion.<sup>249</sup> With regard to the provisions of the article 3, and under article 22 of the Convention, several cases of complaint are addressed every year to the Committee by asylum seekers waiting for deportation to their home country. Most of the complaints were against European countries. The Committee often finds that the States party's decisions of expulsion does not violate the Convention, and rejects the complaints.

### > Violence against ethnic minorities

The Committee is sensitive to the issues of discrimination and violence against minorities, whether violence is caused by the state or in society globally. For example, in 1999 the Committee expressed its concern about the ill-treatment of persons belonging to ethnic minorities by the Bulgarian authorities.<sup>250</sup> In 2004, the Committee was concerned by the alleged failure of the Czech Republic "to prevent and fully and promptly investigate violent attacks by non-state actors against members of ethnic and other minorities".<sup>251</sup>

The Roma population is subject to various forms of violence. Ill-treatment and excessive use of force against this population were observed in most of the Central and Eastern European countries: Slovenia, Slovakia, Czech Republic and Bulgaria. In relation to Slovakia, the Committee expressed its concern about "allegations of instances of police participation in attacks on Roma and other members of the population, as well as allegations on inaction by police and law-enforcement officials who fail to provide adequate protection against racially motivated attacks when such groups have been threatened by "skinheads" or other extremist groups".<sup>252</sup>

As mentioned above, the Committee established a link between the "socio-economic disadvantage" of indigenous Australians and their frequent contacts with justice. Unfortunately, this link between the socio-economic conditions and violence is not systematically mentioned when it comes to disadvantaged populations. In the best case, the Committee mentions the two components of the link in tandem, without making the connection

243 See section 5 of the OMCT Paper Presented 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", OMCT Geneva (November 2001).

244 United Nations, Committee Against Torture, Communication No 161/2000: Yugoslavia, submitted by Hajrizi Dzemajl. Document CAT/C/29/D/161/2000.

245 Concluding observations of the Committee against Torture: Sweden. CAT/C/CR/28/6. 6/6/2002. paras. 6(a).

246 Concluding observations of the Committee against Torture: Cambodia. CAT/C/CR/31/7. 5/2/2004. paras. 6(b).

247 Concluding observations of the Committee against Torture: Greece. A/56/44. 8/5/2001. paras. 87(b).

248 Concluding observations of the Committee against Torture: New Zealand. CAT/C/CR/32/4. 11/6/2004. paras. 5(b).

249 Concluding observations of the Committee against Torture: Belgium. CAT/C/CR/30/6. 27/5/2003.

250 Concluding Observations of the Committee against Torture: Bulgaria. A/54/44. 7/5/1999. paras. 160.

251 Concluding Observations of the Committee against Torture: Croatia. CAT/C/CR/32/3. 11/06/2004. paras. 8(f).

252 Concluding Observations of the Committee against Torture: Slovakia. A/56/44. 11/5/2001. paras. 104(c).

explicit. Thus, with respect to Canada, the Committee welcomed governmental efforts to address the socio-economic disadvantages of the indigenous people. On the other hand, it expressed its concern about “the over-representation of aboriginal people in prison throughout the criminal justice system in the State party”.<sup>253</sup>

Concerns have also been expressed by the Committee in relation to other vulnerable minorities like the Jehovah’s Witnesses in Georgia, the Tibetans in China and the stateless people in Latvia and Estonia.<sup>254</sup>

### > *Violence against women and children*

Women and children are known to be particularly vulnerable to discrimination, abuse or inhumane treatment. The Committee, in relation to Venezuela in 1999, welcomed the adoption of two new laws on women and children that are intended to improve the protection of these “two particularly vulnerable social sectors who frequently fall victim to discrimination, abuse or cruel, inhuman or degrading treatment”.<sup>255</sup>

Women are victims of several types of violence such as domestic violence and female genital mutilation. Concerning state violence against women, the Committee expressed its concern about the allegation from the World Organization against Torture (OMCT) on the issue of sexual abuse of women or threat of such abuse in order to obtain information on their husbands or other family members.<sup>256</sup> The Committee is also concerned by the conditions of detention of women including violence in custody and harsh and improper treatment by the authorities.<sup>257</sup>

With respect to children, in addition to ill-treatment of minors, the Committee is particularly concerned with state-violence against young offenders, including the practice of mixing minors with adults in the same prison. For example, with regard to Luxembourg, the Committee observed that “minors ordered to be placed in disciplinary centres are put in adult prisons”.<sup>258</sup> The same observation has been made for the United States of America in 2000. Such a practice makes minors even more vulnerable and exposes them to inter-prisoner violence.<sup>259</sup>

### > *Violence based upon discrimination*

The Committee has expressed its concern about ill-treatment of civilians and prisoners for several countries. Violence in this framework is based upon different kinds of discrimination. Ill-treatment based upon racial discrimination has been observed in Spain and Guatemala. In Spain for example, the Committee has been particularly concerned by the issue of the “treatment of immigrants, including sexual abuse and rape, allegedly on racist or xenophobic grounds”.<sup>260</sup> The ill-treatment might also be based upon the social origin or the sexual orientation as it has been observed in Brazil.<sup>261</sup> In Ukraine, the Committee was concerned by the ill-treatment of vagrants who were subjected to up to 30 days of administrative detention while it was only up to 15 days for others.<sup>263</sup>

253 Concluding Observations of the Committee against Torture: Canada. A/56/44. 22/11/2000. paras. 58(d).

254 Concluding O of the Committee against Torture: Latvia. CAT/C/CR/31/3. 5/2/2004. paras. 6(i).

255 Concluding Observations of the Committee against Torture: Venezuela. A/54/44. 5/5/1999. paras. 133.

256 Concluding Observations of the Committee against Torture: Russian Federation. CAT/C/CR/28/4. 6/6/2002. paras. 6(e). Concluding Observations of the Committee against Torture: Canada.

257 Concluding Observations of the Committee against Torture: Russian Federation. CAT/C/CR/28/4. 6/6/2002. paras. 6(e). Concluding Observations of the Committee against Torture: Canada. A/56/44. 22/11/2000. paras. 58(b).

258 Concluding Observations of the Committee against Torture: Luxembourg. CAT/C/CR/28/2. 12/6/2002. paras. 5(a).

259 Concluding Observations of the Committee against Torture: United States of America. A/55/44. 15/5/2000. paras. 179(i).

260 Concluding Observations of the Committee against Torture: Spain. CAT/C/CR/29/3. 23/12/2002. paras. 9.

261 Concluding Observations of the Committee against Torture: Brazil. A/56/44. 16/5/2001. paras. 119(b).

262 Concluding Observations of the Committee against Torture: Ukraine. CAT/C/XXVII/Concl.2. 21/11/2001. paras. 4(g).



## Chapter 11

# International Labour Organization<sup>1</sup>

### Preamble to the Constitution of the International Labour Organization

“Whereas universal and lasting peace can be established only if it is based upon social justice;

“And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; .....

“Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;”

The fundamental link between respect for economic and social rights and violence was elegantly set forth in 1919 in the Constitution of the International Labour Organization (ILO) and since then the organisation has pursued its objective of improving the conditions of workers and contributing to peace. The ILO’s work also shows the link between respect for worker’s rights and peace in the community as well as the violence brought about by the violation of trade union rights.

The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.<sup>2</sup>

### 11.1 Freedom of association and trade union rights

Trade union rights are recognised as both economic and social rights and civil and political rights. Freedom of association is a right protected by Universal Declaration of Human Rights (article 23).

The International Covenant on Civil and Political Rights (ICCPR) recognises the right of a person to freedom of association with others, including the right to form and join trade unions for the protection of their interests (article 22). The International Covenant on Economic, Social and Cultural Rights (ICESCR) (article 8) provides for the right of everyone to form trade unions and join the trade union of their choice for the promotion and protection of their economic and social interests. It also recognises the right of trade unions to establish national federations or confed-

erations and the right of the latter to form or join international trade union organisations and the right to strike, provided that this is exercised in conformity with the laws of the particular country.

The exercise, or attempts to exercise, trade union rights are often met with resistance from governments and employers, which can often take a violent forms. It is important to review the state of respect for trade union rights today in order to understand those violent reactions and to help identify the other obstacles placed in the way of the exercise of trade union rights. Removing those obstacles might well contribute to reducing violence both in trade union matters and, by reducing inequalities and poverty, to violence in general.

#### > *The ICFTU survey of trade union rights*<sup>3</sup>

The International Confederation of Free Trade Unions (ICFTU) reviewed the situation of trade union rights in the world during 2003. It reported a continued steady increase in violations of trade union rights and freedoms over the years, in 134 countries. It also noted a gradual shift in the nature of violations. While the 2003 death toll was down to 129, violations frequently took more insidious forms: governments put complicated procedures in place to hamper the formation of unions or the ability to take strike action, while employers fail to apply recognised rights or governments fail to enforce them.

The specific violations included dismissals for organising or taking strike action, intimidation and arrest and imprisonment. However, many violations go unreported and the only recourse for many workers around the world faced with a climate of hostility to trade unionism and in the absence of real protection is a retreat into silence.

The ICFTU explained that one of the principal reasons for the steady increase in violations was that economic globalisation continued to be driven by a neo-liberal agenda, to the detriment of workers’ rights. Many governments wishing to ensure their foothold in the global market see trade unions as an obstacle to

1 Prepared by the editor on the basis of a research paper by Rachel Kelleher.

2 ILO Director-General Juan Somavia, [www.ilo.org](http://www.ilo.org).

3 International Confederation of Free Trade Unions, *Annual Survey of Violations of Trade Union Rights*, 2004.

their economic development. In Uganda, the President publicly admitted that the mass dismissal of striking textile workers was because “their action would scare off investors”. In Ecuador, 70 banana workers were sacked simply for drawing up a draft collective agreement. In Asia more than 300,000 workers were dismissed for their union activity, primarily for going on strike.

The ICFTU stated that export processing zones (EPZ) and the multinational enterprises that operate in them continued to blatantly flout trade union rights, particularly in the garment factories of Asia and Central America. Many of the workers in those factories are young women, who have to endure appalling conditions because of the absence of trade unions to protect them. However, a few small breakthroughs were reported, thanks partly to the intervention of the international trade union movement. Garment workers in Honduras and Sri Lanka won union recognition, while the first and only collective agreement was signed in a Guatemalan EPZ. Nevertheless, the vast majority of the world’s more than 50 million EPZ workers are denied the right to trade union organisation and collective bargaining.

In 2003, the highest death toll was again to be found in Colombia, where 90 people were killed for their trade union activities. Burma continued its total repression of trade union activity and in November sentenced three trade unionists to death. China continued to suppress all signs of independent trade union activity and two persons were sent to prison on charges of subversion. The Zimbabwe Government continued to show its intolerance of the Zimbabwe Congress of Trade Unions, while in the Republic of Korea a record 1,900 trade unionists were arrested, with 201 of those arrests leading to prosecution. In Venezuela the CTV continued its struggle against the Government’s continued attempts to undermine independent trade unionism.

The Middle East remained the most repressive region, but there has been a gradual thawing of the outright intolerance of trade unions that persisted in many countries. While union organisation is still totally banned in Saudi Arabia, Oman now allows workers to form representational committees and the United Arab Emirates drafted a bill for the creation of a national labour federation. In Iraq, freed from the total repression imposed by Saddam Hussein, workers began to organise again, holding the first democratic workplace elections of trade union representatives in 35 years. On the other hand, for Palestinian workers in the occupied territories it became more difficult than ever to carry out any normal trade union activity.

In other regions, Belarus stood out as the most repressive country in Europe; fierce anti-union busting continued in the United States; further restrictions on collective bargaining rights and the

right to strike were introduced in provincial legislation in Canada; and the Australian Government proposed legislation that would considerably curb those rights, particularly in the construction industry.

Migrant workers continue to be vulnerable. They make up the majority of the workforce in the Gulf States, but often have few, if any, trade union rights. A significant proportion of them are women in domestic service.

### > *The ILO, trade union rights, and violence*<sup>4</sup>

The International Labour Organization (ILO) is the UN specialised agency which seeks the promotion of social justice and internationally recognised human and labour rights. It formulates international standards in the form of Conventions and Recommendations that set minimum standards of basic labour rights: freedom of association, the right to organise, collective bargaining, abolition of forced labour, equality of opportunity and treatment, and other standards regulating conditions across the entire spectrum of work-related issues. It also provides technical assistance in many labour-related.

The ILO has adopted numerous conventions protecting trade union rights and the rights and health of workers, including the 1948 Convention on Freedom of Association and Protection of the Right to Organise and the 1949 Convention on the Right to Organise and Collective Bargaining. These contain the legal framework for complaints of alleged violations of freedom of association rights.<sup>5</sup> In addition, trade union rights are enshrined in ILO Conventions on Forced Labour (1930), Equal Remuneration for Work of Equal Value (1951), Abolition of Forced Labour (1957), Discrimination in Employment and Occupation (1958), Minimum Age for Employment (1973) and the Worst Forms of Child Labour Convention (1999).

Ensuring respect for international labour standards and responding to complaints of violations is at the centre of the work of the ILO. The ILO Committee of Experts on the Application of Conventions and Recommendations reviews periodic reports from Governments and submits recommendations relating to the implementation of labour standards. Two main procedures exist: first, the establishment of a Commission of Inquiry by the ILO Governing Body on its own initiative or following a complaint by a member country or a delegate to the International Labour Conference. Second, the ILO Committee on Freedom of

4 <http://www.ilo.org/public/english/about/index.htm>.

5 <http://www.ilo.org/public/english/dialogue/actrav/new/091203.htm>.

Association may be seized with a complaint relating to freedom of association by a government or workers' or employers' organisation. Since its establishment, The Committee has dealt with more than 2,150 cases covering a wide range of aspects of freedom of association: arrest and disappearance of trade unionists, intervention in trade union activities, and legislation not in conformity with freedom of association principles. The Committee's reports describe the cases dealt with and include recommendations.<sup>6</sup>

Two recent Commissions of Inquiry relating to Belarus and Myanmar provide an example of the relation between trade union rights and violence.

### Belarus

On 18 June 2003 14 workers' delegates filed a complaint under article 26 of the ILO Constitution against the Government of the Republic of Belarus for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (no. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (no. 98), both of which were ratified by the Republic of Belarus on 6 November 1956. The complaint included allegations of interference by the Government in the affairs of unions, the adoption of anti-union legislation, threats of physical abuse and the freezing of unions' bank accounts.

The Commission of Inquiry, in its Concluding Observations, noted the importance of protecting and promoting trade union rights despite the difficult socio-economic conditions in existence in Belarus. The Government had insisted on the need to take into account the historical traditions and socio-economic realities of the country, in particular the fact that it was a country in transition, which rendered the socio-economic conditions difficult. The Government stated that it was making great strides in improving the living and working conditions of its citizens.

The Commission stated that the application of fundamental ILO Conventions cannot be made contingent upon its level of economic development or its policy priorities; and that free and independent workers' and employers' organisations are indispensable partners in economic development and the advancement of social justice. It further stressed the importance of ensuring full respect for the basic civil liberties of trade union members and leaders, for without such respect independent trade unions cannot survive.

The Commission considered that many basic civil liberties, in particular, the right to freely express one's opinion and to freely seek

and impart information and ideas through the media, as well as freedom of assembly, had been seriously infringed in Belarus. It stated that if these basic freedoms were not guaranteed and protected by an independent judiciary, then there was little prospect for the full realisation of trade union rights.<sup>7</sup>

### Myanmar

In June 1996, at the 83<sup>rd</sup> Session of the International Labour Conference, 25 workers' delegates filed a complaint with the Director-General of the ILO pursuant to article 26 of the Constitution of the ILO against the Government of Myanmar. The complaint alleged non-compliance with the Forced Labour Convention of 1930 (number 29):

women and children as well as men were randomly rounded up by local police or the military from such public places as train stations and movie theatres or from their homes or places of work; in many cases, village headmen were responsible for filling porter quotas or providing large sums of money to the military instead. Porters were required to carry heavy loads of ammunition, food, and other supplies between army camps, generally back and forth over rugged mountains which were inaccessible to vehicles. They must often construct the camps for the military upon arrival. They were not paid for their work and allowed very little food, water, or rest. In many cases, porters were bound together in groups of 50 to 200 at night. They were denied medical care. Porters were subject to hostile fire as well as to abuse by the soldiers they served. They were routinely beaten by the soldiers and many of the women were raped repeatedly. Unarmed themselves, they were placed at the head of columns to detonate mines and booby traps as well as to spring ambushes. According to credible sources, many of these porters died as a result of mistreatment, lack of adequate food and water, and use as human mine-sweepers. While the majority of portage cases had been linked to actions by the Myanmar army, the ICFTU also mentioned allegations by diplomats, denied by leaders of the ethnic minorities, that insurgents also forced villagers into porter service. The ICFTU referred to specific information on compulsory portage cases that had been gathered by a variety of reputable human rights groups which had conducted fact-finding missions to the Myanmar border regions.<sup>8</sup>

6 The Committee on Freedom of Association released its 336<sup>th</sup> Report in March 2005 in which it made final conclusions in 23 cases and interim conclusions in 7 cases. One serious and urgent case concerned Nepal.

7 <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=ilo-eng&document=16&chapter=15&query=%28commission+of+inquiry%29+%40title+&highlight=&querytype=bool&context=0>, para. 637-639.

8 ICFTU, *Complaint to the ILO*, 1993. [www.icftu.org](http://www.icftu.org).

The Commission of Inquiry set up criticised the Government of Myanmar for continuing to allow the use of forced labour in Myanmar by failing to repeal relevant legislation and failing to stamp out its use in practice. The Commission stated:

Indeed, it is clear that the practice of forced labour is becoming more widespread and that the authorities in Myanmar are directly responsible for its increasing use, and actively involved in its exploitation. Large numbers of forced labourers are now working on railway, road, construction, and other infrastructure projects, many of which are related to the Government's efforts to promote tourism in Myanmar. In addition the military is engaged in the confiscation of land from villagers who are then forced to cultivate it to the benefit of the military appropriators. The current situation is that the Government of Myanmar, far from acting to end the practice of forced labour, is engaged actively in its promotion, so that it is today an endemic abuse affecting hundreds of thousands of workers who are subjected to the most extreme forms of exploitation, which all too frequently leads to loss of life."<sup>9</sup>

## 11.2 The ILO, forced labour and violence

Eliminating forced labour has been one of the principle objectives of the ILO since its establishment and the ILO's work in this area reveals the violence that is inherent in forced labour itself, the violence engendered by forced labour and the economic, social and legal policies needed to bring the practice to an end.

Forced labour is described as follows:

Forced labour cannot be equated simply with low wages or poor working conditions. Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives. Forced labour represents a severe violation of human rights and restriction of human freedom, as defined in the ILO Conventions on the subject and in other related international instruments on slavery, practices similar to slavery, debt bondage or serfdom.<sup>10</sup>

According to the Global Alliance Report, published by the ILO in 2005, forced labour practices are prevalent in both industrialised and developing countries. At least 12.3 million people are estimated to be subjected to forced labour practices on a global basis; 9.8 million being the victims of exploitation on the part of private agents and 2.5 million being the victims of exploitation by the state or rebel military factions.<sup>11</sup>

The Report comments on the direct link between poverty and bonded labour and the common features of the experiences of many of those who are victims of forced labour. These include being coerced into situations of forced labour in order to repay existing debt; and people who sought employment away from their local communities being deceived and/or coerced into forced labour situations. The Report also recognises the association between forced labour and entrenched patterns of discrimination:

It is sometimes argued that poverty is one of the basic causes of coercive labour arrangements, and that only by eradicating overall poverty can forced labour be overcome. Conversely, however, poverty and extreme poverty can also be a direct consequence of forced labour practices. The poorest and most vulnerable members of society can be compelled to work, or induced into debt which they or even their descendants find impossible to repay despite very long hours of arduous work. They thus become locked in a cycle of poverty from which they cannot extricate themselves. In some cases, the persistence of forced labour today can be the result of very longstanding patterns of discrimination against certain ethnic and caste minorities.<sup>12</sup>

The Global Alliance Report gives an overview of bonded labour practices in Asia, Africa and Latin America, illustrating the link between discrimination and forced labour.

### Bonded labour practices in Asia, Africa and Latin America

In Asia, the incidence of bonded labour has been and remains particularly severe among the Scheduled Castes and Scheduled Tribes in India; among indigenous minorities in western Nepal; and among non-Muslims in Pakistan. Throughout Africa, contemporary forced labour and slavery-like practices appear to be a particular problem in those countries which have a recent history of slavery, and where there are reports of continuing patterns of discrimination against persons of slave descent. In Latin America, today as centuries ago, the main victims of forced labour are indigenous peoples. At times these are the indigenous groups living in hitherto isolated regions, where comparatively recent settlement has encouraged a demand for cheap labour, and where

9 <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=ilo-eng&document=10&chapter=15&query=%28commission+of+inquiry%29+%40title+&highlight=&querytype=bool&context=0>, Para. 1.

10 Report of the Director-General, "A Global Alliance Against Forced Labour", International Labour Conference, 93rd Session 2005, para. 13.

11 *Ibid*, para. 37.

12 *Ibid* para. 132.



there is virtually no state presence to provide protection against forced labour. At other times forced labour has been exacted from the indigenous peoples who have long been integrated within the national economy and society, though in a situation of extreme disadvantage vis-à-vis the rest of the population.”<sup>13</sup>

The Report also comments on the experiences of indigenous peoples in remote areas in Latin American States who have been particularly prone to coercion and debt bondage on account of their poor literacy and numeracy and because of their ‘invisible’ status due to an absence of official identity documents, making it difficult for State authorities to stamp out forced labour practices.

#### Case study – Paraguay

A study carried out in Paraguay focused on conditions of employment and work of indigenous people in the Chaco region. The authors interviewed key informants and held meetings with small indigenous groups. Data were also obtained through a review of anthropological studies and of the 2002 Indigenous Census. Overall, indigenous people report poor working conditions and salaries below the minimum wage, with many claiming to be paid much less than their “white” colleagues for the same work. Discrimination is most acute in the large and remote cattle farms of the Chaco region, where farms employ both casual and permanent labour. Interviews suggest that the provisions of the Labour Code are seldom implemented, and it is not unusual for indigenous workers to be remunerated for a few months of work with a pair of trousers, a shirt, and a pair of boots. Women are sometimes not remunerated at all.”<sup>14</sup>

#### Case study – Chaco regions of Paraguay and Bolivia

Discrimination explains the persistence of debt peonage in the large cattle farms of the Chaco. The Labour Code requires that farmers provide workers with a minimum wage as well as with “meat, milk, and other basic food in sufficient quality, quantity and variety to ensure adequate nutrition for the worker and his family” (section 169). In practice, however, the food provided by employers is often insufficient and its price inflated. Workers have no other option but to buy additional food from the ranch’s supply store (almacén). Because wages are so low and the prices in the stores are artificially high, indigenous workers have to buy on credit and continue working on the farms to pay off their debts. Forced labour in the Chaco is also rooted in unequal land distribution and weak institutional capacity, contributing to impunity for the perpetrators. In the absence of any significant labour union to defend workers’ interests, employers have com-

plete discretion over the implementation of labour regulations.”<sup>15</sup>

“In the Bolivian Chaco, the living and working conditions of Guaraní indigenous people are similar to those in Paraguay. Men are typically paid between US\$1 and US\$2 per day; women receive half this amount, and working children nothing at all. An official report of an Inter-Ministerial Commission had already documented servitude and other labour exploitation in the Chaco in 1999, finding extensive evidence of indigenous debt bondage following the payment of advances in cash and in kind. Altogether, there could be several thousand indigenous Guaraní still in forced labour situations today in the large farms of the Chaco, with sometimes entire communities held captive by regional caciques through debt bondage and open violence.”<sup>16</sup>

A survey taken of brick kiln workers and sharecroppers in India found links between bonded labourers, poverty and low socioeconomic status. It also reported a connection in Indian rural areas between bonded domestic labourers and bonded agricultural labourers – the former often being the wives and children of male sharecroppers.<sup>17</sup>

#### Case study – brick kiln workers and sharecroppers

The survey of brick kiln workers in Punjab and sharecroppers in Sindh illustrates some patterns of deception and coercion in the bonded labour relationship. Some 40 per cent of brick kiln workers and 45 per cent of sharecroppers had no understanding of their creditors’ calculations concerning debt, the terms of which were dictated unilaterally by the employer or landlord. Many confirmed that they were not free to seek alternative employment while their debts remained unpaid. Between one-fifth and one third also reported verbal or physical coercion on the part of the landlord or employer. Household illiteracy was a key indicator of both destitution and bondage. In the case of brick kiln workers, low caste status was unambiguously associated with a higher incidence of bondage. For sharecroppers this link was less clear, although a previous survey found that the most vulnerable sharecroppers belonged to low-caste non-Muslim communities.”<sup>18</sup>

13 *Ibid*, para. 133.

14 *Ibid*, para. 182.

15 *Ibid*, para. 183.

16 *Ibid*, para. 184.

17 *Ibid*, para. 156.

18 *Ibid*, para. 150.

The Global Alliance Report points out that victims can also be coerced into forced labour situations through the use of penalties which include economic subjugation, psychological threats, physical violence and death threats:

The ILO's definition of forced labour comprises two basic elements: the work or service is exacted under the menace of a penalty and it is undertaken involuntarily. The work of the ILO supervisory bodies over some 75 years has served to clarify both of these elements. The penalty does not need to be in the form of penal sanctions, but may also take the form of a loss of rights and privileges. Moreover, the menace of a penalty can take multiple different forms. Arguably, its most extreme form involves physical violence or restraint, or even death threats addressed to the victim

or relatives. There can also be subtler forms of menace, sometimes of a psychological nature. Situations examined by the ILO have included threats to denounce victims to the police or immigration authorities when their employment status is illegal, or denunciation to village elders in the case of girls forced to prostitute themselves in distant cities. Other penalties can be of a financial nature, including economic penalties linked to debts, the non-payment of wages, or the loss of wages accompanied by threats of dismissal if workers refuse to do overtime beyond the scope of their contract or of national law. Employers sometimes also require workers to hand over their identity papers, and may use the threat of confiscation of these documents in order to exact forced labour.<sup>19</sup>

■ Table 11.1 Identifying forced labour in practice<sup>20</sup>

<i>Lack of consent to (involuntary nature of) work</i> (the "route into" forced labour)	<i>Menace of a penalty</i> (the means of keeping someone in forced labour)
Birth/descent into "slave" or bonded status	Physical violence against worker or family or close associates
Physical abduction or kidnapping	Sexual violence
Sale of person into the ownership of another	(Threat of) supernatural retaliation
Physical confinement in the work location – in prison or in private detention	Imprisonment or other physical confinement
Psychological compulsion i.e. an order to work, backed up by a credible threat of a penalty for non-compliance	Financial penalties
Induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc.)	Denunciation to authorities (police, immigration etc.) and deportation
Description or false promises about types and terms of work	Dismissal from current employment
Withholding and non-payment of wages	Exclusion from future employment
Retention of identity documents or other valuable personal possessions	Exclusion from community and social life
	Removal of rights or privileges
	Deprivation of food, shelter or other necessities
	Shift to even worse working conditions
	Loss of social status

19 *Ibid*, para. 14.

20 *Ibid*, Box 1.1, page 6.

### 11.3 The ILO and child labour

Child labour can be considered in itself as a form of violence and in 1992, the ILO established the International Programme on the Elimination of Child Labour (IPEC) with the objective of progressively stamping out this practice. Today, its key priority is to prevent and eliminate its worst forms, which are defined in the (Convention on the Worst Forms of Child Labour, 1999 (no. 182):

- all forms of slavery or practices similar to slavery;
- such as the sale and trafficking of children;
- debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The ILO looks at the various factors which lead to the entry by children into domestic labour. It recognises that poverty almost always plays a role in the entry by children into the labour force at a young age. In some circumstances family members may lack the skills to work or may be unable to work due to disabilities. Conversely, skilled family members may be unable to work due to a lack of available jobs. The ILO also recognises the significance of gender discrimination as being a key factor behind the high presence of girls in domestic labour statistics.

In calling for action to prevent and eliminate child domestic labour, the ILO proposes various initiatives which include raising awareness in order to tackle the underlying causes of domestic labour, assisting children to leave domestic service situations and re-build their lives and developing time-bound measures and programmes to combat child labour.

### 11.4 ILO's analysis of economic and social policy and violence

The ILO has also addressed wider issues of economic, social and legal policy which are crucial to the attainment of its overall objectives and which also relate to the causes of violence. Two recent reports are important in that respect: the report of the

World Commission on the Social Dimension of Globalization *A Fair Globalization: Creating Opportunities for All*; and the ILO report entitled *Economic Security for a Better World*.

#### > *The World Commission on the Social Dimension of Globalization*

The World Commission on the Social Dimension of Globalization was established by the International Labour Organization in February 2002 as an independent body with the objective of reporting on the impact of globalisation on economic and social progress within both developing and developed nations. Membership of the Commission was comprised of leading experts from developing and developed nations, including academics, parliamentarians, indigenous and women's activists, corporate and political leaders.

Some of the salient observations made by the Commission<sup>21</sup> are that:

- much change is needed to ensure that more people in the world share in the benefits of globalisation and be given the opportunity to help shape the course of globalisation;<sup>22</sup>
- human rights should be a guiding influence on the governance of globalisation and all women and men should be given "the rights, opportunities and capabilities they need to exercise their own choices for a decent life";<sup>23</sup>
- a more cohesive approach to the governance of globalisation is needed with "policies to better link economic growth with social progress and environmental sustainability";<sup>24</sup>
- there has been growing exclusion and deprivation in certain regions of the world, globalisation has dislocated traditional livelihoods and local communities, and threatens environmental sustainability and cultural diversity.<sup>25</sup>
- deep-seated and persistent imbalances in the current workings of the global economy between the economy, society and the polity: the economy is becoming increasingly global, while social and political institutions remain largely local, national or regional.<sup>26</sup>
- informal local economies are growing, and those people who work in informal economies are excluded from participating directly in markets "on a fair and equal basis";

21 World Commission on the Social Dimension of Globalization, "A Fair Globalization: Creating Opportunities For All", ILO, Geneva 2004.

22 *Ibid*, para. 1.

23 *Ibid*, paras 5 and 6.

24 *Ibid*, para. 7.

25 *Ibid*, para. 9.

26 *Ibid*, para. 12.

- the divide between rich and poor countries has increased, with poverty in countries in sub-Saharan Africa and Latin America having increased during the 1990s;
- “the rules of world trade today often favour the rich and powerful, and can work against the poor and the weak, whether these are countries, companies or communities”;
- unemployment and underemployment persist, despite the growth in the global economy.”<sup>27</sup>

Thus a better “governance of globalization” should give more room for national policy to stimulate enterprise development, employment creation, poverty reduction and gender equality; to reinforce social protection and enhance skills and capabilities; and to support action to overcome informality, inequality and exclusion. It should also help each country and community to define its own path of development and achieve its own social and economic goals. In short, it requires greater coherence between economic and social policies.”<sup>28</sup> The Commission calls for the establishment of a Globalization Policy Forum.<sup>29</sup>

The Commission also called for a stronger ethical framework, to combat the effects where market success and failure have tended to become the ultimate standard of behaviour, and where the ‘the winner takes all’ attitude weakens the fabric of society.<sup>30</sup> It also comments that an ethical framework is already set-out in international law, particularly the Charter of the United Nations, the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, and the United Nations Millennium Declaration. It stated that these treaties and declarations “should be reflected in the rules of the global economy, and international organizations should apply their mandates in accordance with them.”<sup>31</sup> Some of the universally shared values and principles highlighted in public debate include:

- respect for human rights and dignity;
- respect for the diversity of culture, religion, political and social opinion;
- fairness, which is “a standard of justice which many use to judge globalization and the equitable distribution of its benefits;
- solidarity - “the conscious commitment to redress inequalities both within and between countries” - based on recognition that in an interdependent world, poverty or oppression anywhere is a threat to prosperity and stability everywhere;
- globalisation needs to be ecologically sustainable, to ensure respect for the environment and “equity between present and future generations”.<sup>32</sup>

However, the Commission concluded that whilst the international community is prepared to voice its commitment to abiding by universally shared principles, in practice not enough is done to meet those commitments, “Nowhere is the gap between declaration and practice more glaring than in the record of Official Development Assistance (ODA) to the world’s poorest countries.”<sup>33</sup>

### > *The impact of globalisation*

The Commission declared that “it is important to avoid the common error of attributing all observed outcomes, positive or negative, entirely to globalization.”<sup>34</sup> Globalisation has had both positive and negative effects on people from developing and developed nations, (for example, some skilled workers in developed nations have been affected by the relocation of work to countries paying lower wages). According to data analysed by the Commission, the total number of people living in poverty worldwide has decreased but this is largely a result of improvements in China and India. On the other hand, even if aggregate indicators such as the unemployment rate or the level of poverty do not show any deterioration”<sup>35</sup>, there may be real social costs involved not measured by that data. People with capital, professional skills and education (especially those with connections to multinational enterprises) have benefited the most, whilst the poor, the assetless, illiterate and unskilled workers and indigenous peoples have been the most adversely affected (except if they live in countries that have experienced high economic growth).<sup>36</sup> Although in many developing countries gender inequalities have meant that the social cost of globalisation has fallen disproportionately on women,<sup>37</sup> nevertheless, some women have been given the opportunity to undertake wage employment which gives them “greater potential economic independence and often raises their social status even within the most oppressively patriarchal societies.”<sup>38</sup>

### > *The link to violence*

The Report nowhere expressly makes the link between increased poverty and inequality and incidences of violence.

27 *Ibid*, para. 13.

28 *Ibid*, para. 33.

29 *Ibid* para. 619.

30 *Ibid*, para. 37.

31 *Ibid*, para. 40.

32 *Ibid*, para. 41.

33 *Ibid*, para. 44.

34 *Ibid*, para. 205.

35 *Ibid*, para. 203.

36 *Ibid*, para. 210.

37 *Ibid*, para. 214.

38 *Ibid*, para. 217.

However, implementation of its recommendations, while not addressed directly at the elimination or reduction of violence would certainly have a positive impact on a broad range of violence. In summary, the Commission called for:

- *A focus on people.* The cornerstone of a fairer globalisation lies in meeting the demands of all people for: respect for their rights, cultural identity and autonomy; decent work; and the empowerment of the local communities they live in. Gender equality is essential.
- *A democratic and effective state.* The state must have the capability to manage integration into the global economy, and provide social and economic opportunity and security.
- *Sustainable development.* The quest for a fair globalisation must be underpinned by the interdependent and mutually reinforcing pillars of economic development, social development and environmental protection at the local, national, regional and global levels.
- *Productive and equitable markets.* This requires sound institutions to promote opportunity and enterprise in a well-functioning market economy.
- *Fair rules.* The rules of the global economy must offer equitable opportunity and access for all countries and recognise the diversity in national capacities and developmental needs.
- *Globalisation with solidarity.* There is a shared responsibility to assist countries and people excluded from or disadvantaged by globalisation. Globalisation must help to overcome inequality both within and between countries and contribute to the elimination of poverty.
- *Greater accountability to people.* Public and private actors at all levels with power to influence the outcomes of globalisation must be democratically accountable for the policies they pursue and the actions they take. They must deliver on their commitments and use their power with respect for others.
- *Deeper partnerships.* Many actors are engaged in the realisation of global social and economic goals – international organisations, governments and parliaments, business, labour, civil society and many others. Dialogue and partnership among them is an essential democratic instrument to create a better world.
- *An effective United Nations.* A stronger and more efficient multilateral system is the key instrument to create a democratic, legitimate and coherent framework for globalisation.<sup>39</sup>

### > *Economic Security for a Better World*

The ILO established an InFocus Programme on Socio-Economic Security in response to the growing sense of social and econom-

ic insecurity that is linked to globalisation, more flexible labour markets, informalisation, technological changes and social reform policies, and which affects people in developed and developing countries. The programme identifies seven areas where socio-economic security can be threatened (see below), but it does not explicitly connect those insecurities with violence, nor does it count violence among the insecurities on which it focuses. However, the analysis contributes to an understanding of the causes of violence and implementing the recommendations would contribute to the prevention of violence. Based on this work, the organisation published a report in 2004, entitled *Economic Security for a Better World*. The report also drew on the ILO Global Database of national statistical indicators on social and labour policies, coupled with information from its People's Security Surveys covering over 48,000 people in 15 countries. It also contained information from Enterprise Labour Flexibility and Security Surveys covering over 10,000 firms in 11 countries.

One key observation of the report, which is directly related to the efforts to reduce violence through the protection of economic, social and cultural rights, is its finding relating to the changed nature of risk and uncertainty in today's world. The report argues that "old forms of "social security" focus on contingency risks, whereas much of the economic insecurity experienced by people across the world are systemic risks that are not easily covered by "social insurance" or other selective measures. This requires a new approach to providing security. The report thus proposes three premises for action to increase socio-economic security:

- Basic economic security should be a human right, and this should be defined in terms of advancing real freedom. Of the seven forms of labour-related security identified by the InFocus Programme (see below), it argues that primacy should be given to income security and representation security.
- Policies and institutional changes should be assessed by whether or not they satisfy two principles: the Security Difference Principle (to be socially just they should improve the position of the least secure groups in society) and Paternalism Test Principle, that they should not impose controls on some groups that are not imposed on the most free groups in society.
- Globally, there has been a secular increase in the incidence and severity of natural, economic and social disasters, including civil conflicts, that involve mass insecurity.<sup>40</sup>

39 World Commission on the Social Dimension of Globalization, "A Fair Globalization: Creating Opportunities For All", Synopsis, page ix.

40 ILO Socio Economic Security Programme - *Economic Security for a Better World*, Executive Summary, p. xvii.

The report also places the question of insecurity within the context of globalisation which has been associated with a slowing of growth in many countries, with the major exceptions of China and India and with an increase in economic instability and crises.<sup>41</sup>

The report identifies seven areas of security:

- *Income security* - Provision of adequate incomes.
- *Labour market security* - Adequate employment and work opportunities, through high levels of employment ensured by macro-economic policy.
- *Employment security* - Protection against arbitrary dismissal, and employment stability compatible with economic dynamism.
- *Work security (Occupational health and safety)* - Protection against accidents and illness at work, through safety and health regulations, regulated limits on working time, unso- ciable hours, and a reduction in stress at work.
- *Job security* - A niche designated as an occupation or "career", the opportunity to develop a sense of occupation.
- *Skill reproduction security* - Widespread opportunities to gain and retain skills, through innovative means as well as apprenticeships and employment training.
- *Representation security* - Protection of collective voice in the labour market, through independent trade unions and employer associations and other bodies able to represent the interests of workers and working communities.

#### Income security

In dealing with income security, the report identifies payments systems, levels of wages, access to benefits and services, and the assurance of some kind of income support in times of need as key elements. It concludes that poverty is underestimated, particularly in African countries, that income inequality has grown within many countries in personal terms, and that functional income distribution has become more unequal. Further, the report found that standard measures, such as the Gini coefficient, do not adequately capture these trends, because it is the very rich who have become much richer, while the poor have often become poorer. Middle-income groups have retained roughly the same share of national income across the regions of the world.

The report also found that social security systems have become less universal, less solidaristic, less protective and more differentiated, contributing to the growth of inequality and economic insecurity; and that conditionalities for entitlement to state benefits have been tightened. Income insecurity is also reflected

in the fact that the average age of retirement and entitlement to full state pensions has risen by about a year for men and half a year for women and that unemployment insurance benefits are fading, with fewer of the unemployed obtaining entitlement. Such benefits are an inappropriate form of social protection in flexible labour markets.<sup>42</sup>

Income instability is a major form of insecurity, with large numbers of people receiving income irregularly, often after extensive delay and that income transfers between households, long regarded as a form of social protection in developing countries, are actually quite limited, notably in African countries. Income insecurity is also the result of the non-retention by women of their income, which contributes to their impoverishment in many societies. Finally, in developing and transition countries, the vast majority of people were found to be anxious and pessimistic about their future income security, particularly in old age.<sup>43</sup>

#### Labour market security

In dealing with labour market security, the report found that it has been a casualty of the abandonment of a commitment to full employment by governments around the world, and that globally, higher levels of unemployment have been accompanied by new or enlarged forms of "labour slack" (a measure of labour underutilisation that takes account of involuntary part-time working, lay-offs and discourages non-participation in the labour force). Thus, unemployment is seen as a poor measure of labour underutilisation, and global estimates of unemployment should be regarded as unreliable for this and other reasons.

#### Employment security

Employment security has also declined around the world. Contrary to expectations that in the course of development a growing proportion of the labour force would move into regular, protected, full-time wage jobs, in fact economic informalisation has grown almost everywhere. In addition, governments in countries where there have been substantial improvements in employment security in the post-1945 era have introduced legislative and institutional changes designed to weaken employment protection. Further, according to the report, the informalisation of labour relations has continued to characterise the world economy: the more informal a person's labour, the lower the income, on average.

41 *Ibid*, p. xviii.

42 *Ibid*, p. xix.

43 *Ibid*, p. xix.

### Work security

Work security is associated with occupational health and safety, and a low prospect of injuries or illness in the course of work. However, the risks of injuries and accidents remain high, and have grown in many places because of the weakening of institutional safeguards, and weaker worker representation has contributed to this. Stress has become a major form of work insecurity, affecting millions of workers, many of whom are in affluent countries where labour intensity has increased, and where a time squeeze has become a modern hazard for many more occupational groups. Harassment in and around the workplace remains a menacing form of work insecurity in many countries.

### Representation security

Voice representation security has long been associated with trade unions, which have done much to improve working conditions around the world. The presence of unions in workplaces contributes to better wages, more benefits and narrower wage differentials. However, deunionisation has been extensive and is a global phenomenon. Part of this has reflected structural changes in labour markets; part has reflected legislative changes designed to curb unions' powers and lessen their appeal to workers; part has reflected wider social changes; and part has reflected the failure of unions to address the concerns of many groups in society.

### > *What do the people think?*

The People's Security Surveys on attitudes to economic justice and security show that there is popular support for policies to enhance economic security in many regions of the world, including widespread support for redistribution, notably for the principle of limiting upper incomes. In this regard, people living in rural areas, and those who are economically insecure in various ways, are more likely to be egalitarian than those living in cities.

There is extensive support in all groups of society - rich and poor, men and women - for a minimum income below which nobody should fall. In addition, there is widespread support for universalism — the principle that all people, regardless of social or labour status, should be provided with income security — and for policies to provide security for those doing all socially valuable forms of work, not just labour. Although people who are economically insecure themselves are more inclined to support the principle of basic security for all, they may also be more likely to be intolerant and support discriminatory labour practices.

The report makes the point that although there is a distinction

between poverty and economic insecurity, those who are most impoverished are also likely to be the most economically insecure. It also points out that the concept of poverty is both absolute and relative.<sup>44</sup> It calls for further analysis of income instability during the analysis of the concepts of economic insecurity and poverty.<sup>45</sup>

The social impacts of increased income security cannot be ignored: if a mother accepts low-paid employment and the needs of her children are neglected, the livelihood of her family will have diminished, despite the perceived improvement of the family's standard of living.<sup>46</sup> Another social impact lies in the fact that the rate of HIV/AIDS is much higher amongst groups who are impoverished than those who have wealth. This becomes a self-perpetuating problem in that countries with high numbers of HIV/AIDS victims incur high costs associated with caring for orphans, meeting health care needs and lack of productivity, which in turn exacerbates income inequality and poverty.<sup>47</sup>

A key concern raised in the report is the lack of control by women over their own income. The Report quotes Usu Mallya of the Tanzania Gender Networking Programme. In most rural areas, women do a lot of work to earn a living for their families. But all the income generated goes to men. Once it has landed in men's hands, women do not have access or right to it.<sup>48</sup> Lack of control over income is a persistent theme throughout Africa and is a primary cause of income insecurity for women. The report also found that more than 40 percent of women in Bangladesh, over 40 percent of women in Gujarat and over 75 percent of women in Indonesia were unable to retain their incomes.

Other issues which affect economic security are the increasing age of the world's population, particularly in developing nations which have the highest number of people over the age of 60<sup>49</sup>; a lack of access to a viable health care system<sup>50</sup>; and an increasing strain on unemployment benefits schemes.<sup>51</sup>

Progress in these areas of priority concern of the ILO will have a positive impact on economic, social and cultural rights and could clearly contribute to the reduction in violence.

44 *Ibid*, page 56.

45 *Ibid*, page 111.

46 *Ibid*, page 57.

47 *Ibid*, page 58.

48 *Ibid* page 86.

49 *Ibid*, page 70.

50 *Ibid*, page 75.

51 *Ibid*, page 76.





## Chapter 12

### World Bank and International Monetary Fund<sup>1</sup>

The aim of this paper is to see to what extent specialised activities by international financial institutions, such as funding projects or lending money, can affect, positively or negatively, the level of violence in a recipient country. This paper will take the two main international institutions as examples, namely the International Monetary Fund (hereafter IMF) and the World Bank.

#### 12.1 Overview of the IMF and the World Bank

Between the two World Wars, several economic and financial crises destabilised international stability and played a part in the outbreak of Second World War. Consequently, at the end of World War II, efforts were made to try to prevent economic and financial crises, and multilateral forums identified as the best solution to international problems. The United Nations Monetary and Financial Conference was held in July 1944 at Bretton Woods, with the intention of creating three pillars of the post-war world economy: finance, reconstruction and trade. For political reasons, the trade pole did not materialise at that time, but by December 1945, the required number of governments had ratified the treaties creating the International Monetary Fund (hereafter IMF) and the International Bank for Reconstruction and Development (hereafter IBRD); by the summer of 1946 they had begun operations<sup>2</sup>. It soon became clear that the IBRD did not have sufficient resources for the reconstruction of war-torn Europe, and the Marshall Plan of 1948 took over the task. As a consequence, the IBRD changed its focus on aid for development by financing investments for productive purposes and private investment abroad.

##### The purpose of the IMF

(Articles of Agreement, article 1)

- (i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
- (ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.
- (iii) To promote exchange stability, to maintain orderly exchange

arrangements among members, and to avoid competitive exchange depreciation.

(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions that hamper the growth of world trade.

(v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.

(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

##### The purposes of the IBRD

(i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.

(ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.

(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.

(iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more

1 Bahram Ghazi. Ph. D. Graduate Institute of International Studies-University of Geneva. Some parts of this chapter are excerpts of Ghazi, Bahram, *The IMF, the World Bank Group and the Question of Human Rights*, Transnational Publishers, New York, 2005. (<http://www.transnationalpubs.com/showbook.cfm?bookid=10283>).

2 Van Dormael, Armand, 1978, *Bretton Woods: Birth of a Monetary System*, Macmillan, London.

useful and urgent projects, large and small alike, will be dealt with first.

(v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate postwar years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

When the attention of the World Bank focused on developing countries in the fifties, it became clear that the poorest developing countries required preferential terms in order to be able to afford to borrow capital. Led by the United States and President Eisenhower, an initiative was launched to set up an agency to lend to poor developing nations on highly concessional terms. This led to the creation of the International Development Association (IDA), which Articles of Agreement came into force in 1960.

In 1956, The International Finance Corporation (IFC) was created to support the private sector and promote foreign private investment in member countries without the need for a government guarantee.

In September 1985, the Multilateral Investment Guarantee Agency (MIGA) was created as an investment insurance affiliate and became operational in 1988. Its main mission is to encourage foreign direct investment (FDI) flows among member countries, especially toward developing countries.

The International Centre for Settlement of Investment Disputes (ICSID) was created to facilitate the settlement of disputes and contribute to the increase in investment flows worldwide. The ICSID was established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States which came into force on 14 October 1966, to provide conciliation and arbitration at an international level.

These five institutions constitute what is called the World Bank Group. For the rest of this paper, we will mainly focus on the IBRD and the IDA. IBRD and IDA share the same staff, the same headquarters, report to the same president and use the same standards when evaluating projects. The term "World Bank" is the name that has come to be used to designate the entity formed by the IBRD and IDA.

## 12.2 The IMF, the World Bank and violence in recipient countries

Two types of impact that the IMF and the World Bank could have on human rights are

- project and project-related impacts
- macro-economic impacts

### > *Project and project-related impacts*

In 1985, the World Bank approved a loan of US\$156 million to Indonesia for the construction of the Kedung Ombo dam, which was completed in January 1989<sup>3</sup>. Yet between 9 and 12 thousand people remained in the area to be submerged. They alleged that the Government failed to compensate them properly for the loss of their land. The Indonesian Government began an intimidation campaign including physical abuse, threats of prison sentences and death. The Indonesian security agency stormed the villages during the night and forced some people to sign the compensation agreements. Those who refused were accused of being "communists" and "anti-government agitators". Others found, when they renewed their obligatory identity cards, that they were stamped with a Government code used for identifying ex-political detainees. This code banned them from participation in elections, working in the public sector, etc. Corruption allegations were also made against officials, claiming that they did not pay the full amount of the compensation to the people.

Between 1985 and 1988, the World Bank was not monitoring the project and was supposedly unaware of what was going on in the field. In 1987, after being informed of the situation by NGOs, the Bank chose not to investigate. Yet, in June 1988, the World Bank sent a consultant to the site, who recommended action from the Bank, to either ensure the proper resolution of the problem by the Indonesian Government or, at least, to seek an agreement with Indonesia that this situation would not arise in the future. Even though its own resettlement procedures had not been followed, the Bank took no action. Only in February 1989, when the villages of the 1,500 remaining families were submerged, did the Bank send a field mission.

3 See Hutchins, Thomas, Using the International Court of Justice to Check Human Rights Abuses in World Bank Projects, *Columbia Human Rights Law Review*, Vol. 23, n° 2, Summer 1992. For the institutional side, see Cernea, Michael M., Population resettlement and development, *Finance and Development*, September 1994, pp. 46-49.

The problems surrounding the Kedung Ombo dam project triggered a debate in the World Bank, which ended in the elaboration of the first internal operational guidelines on project management<sup>4</sup>. This project is a concrete example how an IFI may be indirectly implicated in violence toward civilians.

### > *Macro-economic impacts*

The application of macro-economic policies pushed by the IMF and the World Bank can, by their effects on the population, contradict the obligations of the recipient state taken under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. A well-known example is the structural adjustment programmes (SAPs) that have been the subject of decades of controversy. SAPs could be defined as “reforms of policies and institutions covering micro-economic (such as taxes and tariffs), macroeconomic (fiscal policy) and institutional interventions ... designed to improve resource allocation, increase economic efficiency, expand growth potential and increase resilience to shocks”<sup>5</sup>. Generally speaking, and even though each SAP is designed specifically according to the country and the current situation, some characteristics are similar between them: reduction of public expenditure, privatisation, cuts in subsidies, market and trade liberalisation<sup>6</sup>. The initial purpose of the SAPs was not to achieve social well-being: multilateral agencies and other donors simply hoped that applying free market principles to a developing economy would improve social welfare through the “trickle-down” process, and consequently reach the poorest sections of the population.

Yet, decades of use of SAPs have shown great shortcomings. First, the measures did not succeed in all countries. Second, SAPs’ side-effects were considerable. Therefore, a number of “social safeguards” were associated to lower the impact of SAPs on the weakest groups of the populations. Nevertheless, SAPs have been denounced as negatively affecting the most vulnerable groups of the population, human rights situations, and the general development process.<sup>7</sup>

In July 1991, the Indian Government, following the IMF’s recommendations, introduced changes in the Federal Budget. Subsequently, the price of rice increased by 50 percent and the revenue of weavers fell. Between August 30 and November 10, 1991, some 73 cases of death due to hunger were counted in the districts of Andhra-Pradesh. According to the studies, these deaths were directly correlated to the Government economic adjustments.<sup>8</sup> UN institutions, such as UNICEF, have also criticised the IFIs for their role in child mortality.<sup>9</sup>

Some specialists have argued that women are more affected by SAP measures than men. The withdrawal of state subsidies must be compensated for by unpaid non-market work, mainly done by women. For example, discharging patients from hospital earlier implies women having to give the additional necessary care without being paid for their efforts. In some cases, in order to maintain the level of food for their husbands and children, women diminish their share of food.<sup>10</sup>

Drastic economic measures, such as the privatisation of public services or cuts in subsidies for products essential for the population, may result in social unrest and turmoil. In turn, to restore order, governments may use coercive means, which lead to methods that are even more authoritarian. This undermines democracy, often in countries where this is still young or in the process of being introduced.

The NGO World Development Movement has issued reports on the linkage between the IMF and the World Bank’s activities and social unrest in countries.<sup>11</sup> Its reports state that, in 2001, at least 23 countries in Asia, Africa, and the Americas experienced protests or civil unrest as a result of their governments’ pursuit of policies backed by the Bretton Woods institutions. Protests and sometimes-violent confrontations occurred in Argentina, Ecuador, Indonesia, Kenya, Malawi, and Papua New Guinea. Some 76 people lost their lives in these episodes. In its third report, it documents protests in 25 countries, charting 111 separate incidents of civil unrest. Many of these incidents ended with

4 They are known as Operational Policies (OPs), Bank Procedures (BPs), Good Practices (GPs) or Operational Directives (ODs). See section 12.4 for a full description of these procedures.

5 *Structural adjustment and poverty: a conceptual, empirical and policy framework*, World Bank, February 1990, p.22. Even if the form and the denomination of the adjustment programmes have changed over the years (Structural Adjustment Lending, Sectoral Adjustment Loans, Structural Adjustment Facility or enhanced Structural Adjustment Facility), we will use the term SAP to designate them all.

6 See, for instance, the reports by the Independent Expert of the Human Rights Commission on the effects of structural adjustment policies on the full enjoyment of human rights (Cheru, Fantu, February 24, 1999, E/CN.4/1999/50).

7 See *Summary of human rights issues related to structural adjustment programmes*, Report of the Secretary-General of the United Nations, E/CN.4/Sub.2/1995/10, para. 10 to 37.

8 Chossudovsky, Michel, *La mondialisation de la pauvreté, la conséquence des réformes du FMI et de la Banque mondiale*, Montréal, Ecosociété, 1998, pp. 115-116.

9 Rich, Bruce, 1994, *Mortgaging the Earth*, London, Earthscan Publications Limited p. 186.

10 Sadasivam, B., August 1997, “The impact of structural adjustment on women: a governance and human right agenda”, *Human Rights Quarterly*, Vol. 19, pp. 630-665.

11 Ellis-Jones, Mark, *States of Unrest II, Resistance to IMF and World Bank policies in poor countries*, World Development Movement, April 2002, [www.wdm.org.uk](http://www.wdm.org.uk).

the deployment of riot police or the army, with 10 documented fatalities, and arrests and injuries running into thousands. Over half of these countries experienced protests directed specifically at the IMF and World Bank. Whatever value one may give to such reports, it is undeniable that a correlation exists between economic adjustments requested by IFIs and violence in a country, consequent to reaction of populations to such changes.

### 12.3 The IMF and the World Bank: a role in decreasing violence?

For a long time, these institutions have considered human rights as a political and internal matter of states. They have argued that their Articles of Agreement strictly prohibit interfering in the political affairs of their members, including human rights issues. It is true that there are no references in the mandate of the two institutions concerning human rights. Moreover, article IV, section 10 of the IBRD Articles of Agreement stipulates:

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighted impartially in order to achieve the purposes in Article I<sup>12</sup>.

This argument is no longer relevant: the IFIs themselves have recognised that “economic considerations” include a broader scope than merely economic or monetary indicators. The World Bank has established in several studies that the performance and the viability of a project depend on factors such as public participation or level of democracy in a country.<sup>13</sup>

#### > *World Bank studies on violence and poverty*

The financial institutions evolve, sometimes, thanks to their leadership. For example, under Black (president from 1949 to 1962), the IBRD developed its lending policy for infrastructure and irrigation projects. Under McNamara (president from 1968 to 1981), it expanded its activities and focused more on human capital, education, health and nutrition. It is under McNamara’s presidency that the work on the topic of poverty began. Conable (president from 1986 to 1991) established a larger environmental department. At then end of the 1990s, there was almost no reference to human rights in the World Bank’s documents, but President Wolfensohn (president 1995-2005) managed to open the debate.

The Bank has hosted meetings on the relation between human

rights and development, joint meetings with the Office of the High Commission for Refugees and even human rights workshops for its staff members.<sup>14</sup> In the World Bank’s own ranks, it has been stated that the “classic” argument according to which human rights belong to the political realm, in which the World Bank cannot interfere, is no longer convincing. Mr. Sfeir-Younis, former World Bank’s Special Representative in Geneva, stated that the Bank should deal with the International Covenant on Civil and Political Rights (ICCPR) because many aspects of these rights are not in the realm of politics and, moreover, the Bank is already dealing with many of them through its work on anti-corruption, access to justice systems, indigenous peoples’ issues and gender equality. He added that the violations of these rights hamper both the democratic process and economic activities, which are essential for sustainable development. He believes that, even if states are primarily responsible for human rights, the Bank should also ensure that they are “respected and implemented because of the effect of their violations on economic development”<sup>15</sup>. He points out that the Bank should not act as if human rights progress were only the consequence of economic growth, because it would give the image of a development agenda based on “grow now and do social justice later”. He also emphasised that it is impossible to view development as distinct from people and their rights and that “economic policies do not have a neutral impact on individual or collective rights, or on social or human relationships”.<sup>16</sup>

12 Similar provisions exist in other World Bank Group institutions, such as the IDA: “The Association and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in this Agreement” (Article V.6). It must be pointed out that the IMF does not have the same provision in its Articles of Agreement. It seems that this provision was initially drafted by the British delegation to the Bretton Woods conference and supposed to be integrated to the IMF treaty in order to counter the Soviet Union. For various reasons, this clause was not inserted in the IMF agreement. Instead, it was incorporated into the IBRD charter in order to assure the Eastern block that the Bank will not try to change their political system. For further details on this last point, one can refer to Bitterman, H.J., Negotiation of the Articles of Agreement of the International Bank for Reconstruction and Development, *The International Lawyer*, Vol. 5, N° 1, 1971, p. 79.

13 See for example, Isham, Jonathan; Kaufmann, Daniel; Pritchett, Lant, *World Bank Economic Review*, vol. 11, May 1997, pp. 219-242.

14 *Human Rights & Sustainable Development: What Role for the Bank?*, May 2, 2002; *Joint Staff learning seminar on human Rights and Development*, June 10-11, 2002; or a seminar entitled “The Gender Dimension of Human Rights, A Development Perspective”, co-sponsored by the Legal Vice-Presidency of the World Bank, the Gender and Law Thematic Group and the World Bank Institute, held at the IFC Headquarters on June 1, 2000.

15 *Human Rights and Sustainable Development: What Role for the Bank?*, May 2, 2002, on World Bank’s Web site.

16 *Human Rights and Sustainable Development: What Role for the Bank?*, May 2, 2002, on World Bank’s Web site.

The World Bank has also undertaken several important studies. For instance, in 1998 a study found “a strong and consistent link between measures of the extent of civil liberties in a country and the performance of World Bank-supported projects”.<sup>17</sup> The Poverty Reduction Group pointed out the strong convergence between poverty reduction, empowerment and human rights, and stressed the “multi-dimensionality of poverty” and the argument that “one cannot talk about economic issues without understanding that they are embedded in social, cultural and political contexts, and that these multiple dimensions are intertwined”.<sup>18</sup> In several other publications, the World Bank has explored the multiple dimensions of poverty.<sup>19</sup> These studies use a “bottom-up” approach by interviewing thousands of poor persons around the world in order to give a basis for the World Bank’s poverty reduction strategies.<sup>20</sup> The studies point out multiple aspects of the “powerlessness” and “ill-being” of the poor. They also clearly establish the linkage between violence and poverty.

“Perhaps one of the most striking revelations ... is the extent to which the police and official justice systems side with the rich, persecute poor people and make poor people more insecure, fearful, and poorer. Particularly, in urban areas, poor people perceive the police not as upholding justice, peace and fairness, but as threats and sources of insecurity”.<sup>21</sup>

Negative perceptions of the police are also reported, such as: the feeling of vulnerability of women to sexual assault; the use of unjustified force; or the fact that crimes reported by the poor are less or not taken seriously investigated. The studies point at widespread evidence of corruption in the police. In some cases, the police is perceived as the “rich people’s stick against common people”.<sup>22</sup>

According to these studies, other factors linked with poverty contribute to enhancing the level of violence in poor people’s communities: unemployment and the lack of protection of workers, corruption and unaccountability of the authorities, domestic violence and abuse due to alcoholism or frustration,<sup>23</sup> social discrimination, and the lack of access to opportunities for a better and more secure life.

Interviews in these studies have expressed the negative perception by the poor of certain economic policies and market changes on them and their community. They mentioned privatisation, factory closures, the opening of domestic markets, currency devaluation, inflation, reductions in social services, as elements contributing to the depletion of their resources and their security.<sup>24</sup>

In November 2004, the World Bank organised a workshop on “The Development Implications of Gender-Based Violence”,<sup>25</sup> covering:

- social protection, micro-finance and gender-based violence;
- education, health and gender-based violence;
- gender-based violence in conflict-affected environments; and
- legal aspects of gender-based violence.

Recommendations to the World Bank were that it should provide institutional strengthening, such as assisting states to meet their reporting obligations under CEDAW; train judges and legal professionals on international legal conventions; support the UN Special Rapporteur on Violence Against Women to develop gender-based violence indexes or to integrate gender-based violence considerations into core programmes rather than creating isolated or add-on projects.<sup>26</sup>

17 Isham, Jonathan; Kaufmann, Daniel; Pritchett, Lant, “Civil Liberties, Democracy, and the Performance of Government Project”, *World Bank Economic Review*, Vol. 11, May 1997, pp. 219-242.

18 *Human Rights and Sustainable Development: What Role for the Bank?*, May 2, 2002, on World Bank’s Web site.

19 Narayan, Deepa, Patel, Raj, Schafft, Kai, Rademacher, Anne, and Koch-Schulte, Sarah, 2000, *Voices of the Poor: Can Anyone Hear Us?* New York, Oxford University Press.

Narayan, Deepa, Chambers, Robert, Shah, Mira Khoul, and Petesch, Patti, 2000, *Voices of the Poor: Crying Out for Change*, New York, Oxford University Press.

Narayan, Deepa and Petesch, Patti, 2002, *Voices of the Poor: From Many Lands*, New York, Oxford University Press.

Narayan, Deepa, 2002, *Empowerment and Poverty Reduction*, Washington, World Bank.

20 “*Voices of the Poor*”, also known as “*Consultation with the Poor*” study was undertaken by the World Bank as a background for the *World Development Report 2000/01: attacking Poverty*.

21 Narayan, Deepa, Chambers, Robert, Shah, Mira Khoul, and Petesch, Patti, 2000, *Voices of the Poor: Crying Out for Change*, New York, Oxford University Press, p. 163.

22 As perceived by peoples of Dangara, Uzbekistan (Narayan, Deepa, Chambers, Robert, Shah, Mira Khoul, and Petesch, Patti, 2000, *Voices of the Poor: Crying Out for Change*, New York, Oxford University Press, p. 165).

23 “It is because of unemployment and poverty that most men in this community beat their wives. We have no money to look after them” (as stated by a young man from Teshie, Ghana in Narayan, Deepa and Petesch, Patti, 2002, *Voices of the Poor: From Many Lands*, New York, Oxford University Press, p. 41).

24 Narayan, Deepa and Petesch, Patti, 2002, *Voices of the Poor: From Many Lands*, New York, Oxford University Press, p. 471.

25 Documents related to this workshop can be found on the World Bank’s web site under gender issues.

26 See *The Development Implications of Gender-Based Violence*, Report on the Outcomes of the Workshop, held on November 9, 2004 at The World Bank Headquarters, Washington, D.C., p. 22.

### > *What the IFIs are doing*

The foregoing shows that the World Bank is aware of the relation between poverty and violence and its consequences on economic and financial issues. But what can it do and what is it doing?

The World Bank has established the concept of “empowerment of the poor”, defined as the “expansion of assets and capabilities of poor people to participate in, negotiate with, influence, control, and hold accountable institutions that affect their lives”<sup>27</sup>. In order to enable empowerment, state reforms are said to be crucial: improvement of basic services, local and national governance, pro-poor market development and access to justice.

Since 1989, the World Bank has been working on the issue of governance. More recently, the IMF joined the general trend of “governance” that swept through all the organisations.<sup>28</sup> Recognised as being essential in its poverty reduction strategy<sup>29</sup>, the issue of governance should be considered in all World Bank projects. The World Bank also states that more than 400 bank-financed projects have legal and judicial reform components. In addition, the World Bank has 30 freestanding projects in five regions focusing on:

- Improving administrative justice and making administrative decisions accountable and affordable to ordinary citizens;
- Promoting judicial independence and accountability;
- Improving legal education;
- Improving poor people’s cultural, physical and financial access to justice; and
- Public out-reach and education<sup>30</sup>.

Other initiatives by the IMF and the World Bank are aimed at diminishing poverty: the Heavily Indebted Poor Countries (HIPC) Initiative; projects on education, health, safety nets, water supply and sanitation; provision of infrastructure, agriculture and rural development; micro-finance, etc.

## 12.4 Conclusions and recommendations

For the moment, the IFIs do not explicitly recognise having human rights obligations. Nevertheless, the World Bank is working on human rights issues such as indigenous peoples’ rights, children’s rights, labour rights, women’s rights, environment, education, health or access to justice or post-conflict reconstruction. The IMF has even launched initiatives on poverty and debt. The debate launched under the presidency of Wolfensohn has not reached a solution for this schizophrenia.

Operational directives provide guidelines to avoid certain past errors and human tragedies such as forced displacement. Interesting enough, the World Bank was the first international organisation to have an independent panel to which individuals or groups affected by their operations could complain. Created in 1993, the World Bank’s Inspection Panel is empowered to investigate problems that are alleged to have arisen as a result of the Bank having ignored its own operating policies and procedures. More recently, another mechanism was established by the MIGA and IFC: the Compliance Advisor/Ombudsman (CAO). The CAO has the triple function of:

- Ombudsman, to advise and assist IFC/MIGA to address complaints by people directly affected by projects in a manner that is fair, objective and constructive.
- Compliance Auditor, to oversee compliance audits of IFC/MIGA, overall environmental and social performance, and specific projects.
- Advisor, to provide independent advice to the President and management on specific projects, as well as broader environmental and social policies, guidelines, procedures and resources.

To a certain extent, the IFIs have the power to promote the respect of human rights, including rights of the most vulnerable parts of the population. Some of IFIs initiatives, such as access to justice and education, or fight against corruption are in that line.

27 Narayan, Deepa, 2002, *Empowerment and Poverty Reduction*, Washington, World Bank, p. xviii.

28 In 1997, the Fund issued a “Guidance Note on Governance” recognizing the importance of good governance for macroeconomic stability and growth (See <http://www.imf.org/external/np/sec/nb/1997/nb9715.html>).

29 In 1999, during the 12th IDA replenishment negotiations, the issue of good governance was stressed by some IDA donors as being a “key to growth and poverty reduction” (*Helping to Improve Governance in IDA Countries*, on IDA’s Web Site).

30 Narayan, Deepa, 2002, *Empowerment and Poverty Reduction*, Washington, World Bank, p. xxiii.

Another level where IFIs could contribute to the decline of violence in countries is to point out issues that lead to poverty and address them. Narayan's studies are helpful in establishing the basis for such a work but much has still to be done concretely by the IFIs to conceive and implement solutions.

An assessment of the direct or indirect impact of an IFI project on the level of violence in a country could be made on three levels: before the realisation of the project (conception and planning according to the procedures), during its realisation (conformity of the activities to the operational directives and procedures; monitoring the evolution and obstacles encountered), and after (the use of the project).

The World Bank has developed a large number of guidelines (OPs, BPs, GPs, ODs) for its operational procedures.<sup>31</sup> Some relate to issues that can affect the level of violence, such as indigenous peoples (OD 4.20) or involuntary resettlement (OP/BP4.12). Nevertheless, other guidelines could be considered by the World Bank that would more specifically embrace human rights and assessment of project impacts on country situations.

As for macro-economic policies, IFIs should consider a wider range of issues while negotiating with recipient countries. For example, foreign direct investment (FDI) is more easily attracted to a country with a stable socio-economical environment than a country with high risks of internal conflicts. Financial analysts take social criteria into account to determine the level of risks of their clients' investments.

Sen has devised a new development paradigm including the relationship between development, freedom and human rights. He defines development as "a process of expanding the real freedoms that people enjoy". As such, concepts such as growth of GNP or of individual incomes are means by which this goal may be achieved, but are not in themselves sufficient to do so. "Development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or over activity of repressive states".<sup>32</sup>

The evolution of the world is toward increasing complexity. This evolution encompasses also an increasing degree of inter-relation of its constituting variables. Therefore, solving problems can only be done by trying to assess the complexity of a situation, and considering as much as possible a variety of factors affecting a situation. Not only the IFIs, but all the institutions and academics working on economics and finance should assess the differences between a theoretical model and the reality of the concrete application of such models. Human rights are part of basic and essential norms of the international system paving the path of the evolution of international society. As such, they should be

the reference point when projects and policies are designed. IFIs, as part of the international community, should encourage a global approach to the eradication of poverty and its consequences, in collaboration with all the members of this community.

The extent to which an IFI (or any international organisation) is bound by international human rights obligations is a question that will not be solved in the near future. Therefore, to persuade an organisation such as the IMF or the World Bank to perform its operation in a way that would reduce the level of violence (according to the understanding of this conference), it is important to demonstrate that violence can be generated as a side effect of their operations and/or projects; that such violence has an incidence on the economy, the finance or the level of foreign investments of the country in which they are performing; and that this undermines their activities. An objective approach such as this permits a discussion on other grounds than ideology or politics. The issue of politicisation of human rights is therefore avoided.

31 Operational Policies (OPs) are short, focused statements that follow from the Bank's Articles of Agreement, the general conditions, and policies approved by the Board. OPs establish the parameters for the conduct of operations: they also describe the circumstances under which exceptions to policy are admissible and state who may authorise exceptions. Bank Procedures (BPs) explain how Bank staff carries out the policies set out in the OPs. They spell out the procedures and documentation required to ensure Bankwide consistency and quality. Good Practices (GPs) contain advice and guidance on policy implementation, for example, the history of the issue, the sectoral context, analytical framework or examples of best practices. Operational Directives (ODs) contain a mixture of policies, procedures, and guidance. The ODs are gradually being replaced by OPs/ BPs and GPs.

32 Sen, Amartya Kumar, *Development as Freedom*, Oxford, Oxford University Press, 1999, p. 3.





## Chapter 13

### World Trade Organization<sup>1</sup>

#### 13.1 Introduction

The increasing liberalisation of international trade is one of the objectives of the international community and features on the agenda and in the mandates of various international organisations. Trade among nations involves the exchange of goods and services of all kinds. However, to make this exchange possible a number of other factors have to be considered and regulated: for instance, standards applicable to the admission and marketing of foodstuffs and other products as well as the conditions for the protection of intellectual property in all countries. To establish the rules of the game, states have signed various trade agreements and established the World Trade Organization to administer them and promote further economic integration among countries.

It is not always clear that increasing trade among nations is beneficial for all partners, nor that trade will lead to growth that will be equitably shared by all sectors of society. This chapter will explore a number of ways in which the systemic effects of trade liberalisation and market reform could lead to the deepening of poverty, destitution, distress and ultimately violence.<sup>2</sup> It will do so by presenting four cases in which suffering, pain and distress are caused in association with the application of international trade rules. It will also explore the ways in which the WTO has addressed, or has failed to address, some of those issues.

#### 13.2 Child labour, bonded labour and international trade

One of the oldest perceived problems of trade liberalisation and globalisation at large is that the labour and social dimensions are often neglected. Labour problems include children and women working in conditions that are exploitative or harmful to their health and well-being. There have been several reports of cases of certain goods being produced by bonded or indentured child labour. For instance, since 1996 there have been numerous reports of the use of widespread bonded child labour in the manufacturing of footballs in India and Pakistan. Similar reports have been made in the carpet manufacturing sector of India. In 2002, non-governmental sources reported on the use of bonded and slave child labour in cocoa plantations in the Ivory Coast. All of these products - footballs, carpets and cocoa powder - were exported to other countries. Children working on those activities were usually subject to long hours of work, in unhealthy working environments and enjoyed no direct benefit from the remunera-

tion for their work. As a result they not only could not go to school but their psychological and physical health was often at risk, with cases of abuse being reported. These reported cases caused outrage and strong pressure in importing countries (mainly developed ones) to enact prohibitions on the import of goods made under those appalling conditions. In some instances, such as the United States with the Child Labour Deterrence Act of 1993 and a ban on products produced by indentured child labour<sup>3</sup>, legislation has been passed to prevent those imports from entering the country.

The causes of child labour are complex and so are the policies used to address it. There are several economic, social and cultural factors at the roots of endemic and exploitative child labour. In certain cases permissive labour regulations and enforcement have allowed damaging practices to proliferate for some time. Only after domestic and international public opinion threatened to result in governmental action did exporting countries start to take action with the assistance of international organisations (i.e. the International Programme for the Elimination of Child Labour (IPEC) of the ILO).

Cases of exploitative child labour together with the widespread neglect of labour rights were used by trade unions to propose a "social clause" to be inserted in international trade agreements, notably the Agreement establishing the WTO. The issue was looming for some time with developing countries strongly opposed to the idea until the 1996 WTO Ministerial Conference in Singapore at which trade ministers decided to leave the matter to the International Labour Organization. The ILO, having

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2 Violence is used here in the sense defined in Chapter 1 above.

3 *Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor*, Executive Order 13126 of June 12, 1999. This order is designed to prevent federal agencies from buying products that have been made with forced or indentured child labour. The procurement regulations issued to implement the Order provide that federal contractors who supply products on a list published by the Department of Labor must certify that they have made a good faith effort to determine whether forced or indentured child labour was used to produce the item listed. By the end of 2002, the Department of Labor was conducting investigations into the use of forced or indentured child labour in the cocoa industry in Ivory Coast and in the production of firecrackers in China. It also regularly updates the list of products that are produced in such manner. See [www.dol.gov/ilab](http://www.dol.gov/ilab) accessed on 25-08-2003.

already established a series of programmes and projects to assist states in the elimination of exploitative child labour (not only labour linked to exports), responded positively by adopting a new Convention on the Elimination of the Worst Forms of Child Labour, as well as the 1998 Declaration on Fundamental Principles and Rights at Work and its follow-up mechanism.

States assisted by the IPEC programme have made meaningful progress towards the elimination of child labour, and there seem to be indications that the incidence of child labour in export-led industries and activities has declined. But the underlying causes of child labour in general subsist. Exploitative child labour, especially when linked to export sectors, still presents a challenge to liberal world trade.

### ■ 13.3 Suicide among farmers in India

Starting in the mid-1990s, several sources reported on an unusual rise in the rate of suicides committed by farmers in India, and in particular in the Indian State of Andhra Pradesh. From 221 suicide cases reported in 1998 the number has climbed to 2,115 in 2004, only in Andhra Pradesh. Reports also identify a pattern in the suicides: almost all are cases of poor farmers who were severely indebted. Indebtedness is thus the immediate cause of suicide, but more broadly the causes are identified as relating to an agrarian crisis in the State that has provoked a crisis of personal debt and misery among farmers. In turn it has been argued that the agrarian crisis was caused "by a zealous programme of liberalisation and privatisation".<sup>4</sup>

Acute indebtedness of farmers was generated by a steep rise in the cost of inputs, volatility in the market and a fall of prices, the lack of proper agricultural advice and extension services, and the lack of access to formal credit. The liberalisation and privatisation programmes undertaken by the national and state governments have left the supply of seeds, fertilisers, pesticides as well as advice and credit to the free market. Starting in the 1990s, farmers had been encouraged to shift from subsistence to commercial farming, which at that time seemed to pay off given the high prices of agricultural commodities. The situation was to change in the late 1990s when further liberalisation and privatisation at the state level, combined with low international prices and the opening up to cheap imports of subsidised agricultural products made commercial farming unsustainable for small farmers.

With the signing of the 1994 WTO Agreement on Agriculture, India along with many other developing countries started to implement far-reaching reforms in their agriculture sector. In

addition to the withdrawal or reduction of subsidies to inputs and encouragement to cash crops for export, other reforms included the lowering of tariffs and elimination of quotas.

Small farmers who had incurred debts to invest in cash crops have seen their investments evaporate due to bad harvests and low prices of produce. The lack of agricultural extension facilities and recurrent droughts in an area of predominantly rain fed agriculture caused bad harvests. Not being able to pay their debts farmers had no option but to keep on commercial farming in the hope of being able to recoup their losses in future cycles, and for that they incurred further debts. At some point, having lost all hope to get out of the spiral of indebtedness and poverty many saw no other option but to take their own lives.

Trade liberalisation undertaken by the Indian Government and the Government of the State of Andhra Pradesh cannot be the only cause of this ultimate form of violence that some farmers chose to take against themselves. It is only through a combination of factors and circumstances that this effect came about. Perhaps if trade liberalisation is accompanied by measures of social protection, safety nets and supporting financial mechanisms, this tragic outcome need not necessarily occur. This case serves to exemplify how trade liberalisation accompanied by cuts and the withdrawal of social protection and economic support to farmers could lead to severe human suffering for individuals and families.

### ■ 13.4. Access to essential medicines

The gradual implementation of the terms of the trade related intellectual property Agreement (TRIPS) has brought up the question of whether or not the new rules on protection of intellectual property and patents help to improve the availability and accessibility of life-saving drugs for the needy. The negotiating phase of this agreement was plagued by controversy and by resistance from developing countries who saw this agreement as being potentially damaging to their interests. It has been particularly attacked as a contributor to the reduced access to life-saving drugs for HIV-affected people and indirectly contributing to their further suffering and pain.

The case concerns the patent protection of anti-retroviral and other medicines used to treat HIV-affected persons. With the implementation of the obligation to provide patent protection in countries such as Brazil, South Africa and India, where local

4 Christian Aid, *The Damage Done: Aid, Death and Dogma*, United Kingdom, 2005 p. 14.

generic production has supplied local and international markets with cheap high-quality drugs, those industries would close leaving the market to corporations owning the patents. Patent protection has a significant impact on prices because it grants to the holder a virtual monopoly over the production, marketing and export of the patented-medicine for a number of years (minimum of 20 years as mandated by the TRIPS agreement).

Patents and other forms of intellectual property protection as well as the legal regime applicable to them are elements of a country's industrial and technological development policy. The purpose of patents is to provide a temporary monopoly to rights holders as a stimulus to inventions and their commercialisation. It normally excludes others from making, using or selling that particular invention, allowing the patent holder to charge a monopoly price at a rate that would otherwise not be possible. The bargain with society is that the system, through the provision of adequate incentives to research and develop new medical inventions, would in the end benefit society at large by making available medical innovations that require enormous investment in their elaboration. The right balance between the interests of society in new medical innovations and the interests of patent holders is context-sensitive and will vary according to the circumstances of each country.

Various sources have provided information on the impact of patent protection on the prices of drugs, although their methodology and results are contested. Despite the controversy, serious and up-to-date reports conclude that patent protection does have an impact on higher prices for drugs.<sup>5</sup> In India, where no patent protection exists yet, prices were several times lower than in OECD countries (some as much as 15 times cheaper). The same effect can be observed by comparing prices in two developing countries: in Pakistan, where patent protection is provided, prices are 3 to 14 times higher than in India.<sup>6</sup> There is evidence from developed countries that prices fall steeply as drugs go off patent, assuming that there are generic competitors. The price fall seems greater as more generic competitors enter in the market. But the number of generic competitors and the speed of their entry into markets will depend on the size of the market - there will be fewer generic competitors in smaller markets, which is typically the case in most developing countries and in relation to certain neglected tropical diseases.<sup>7</sup> This factor, compounded by the lack of indigenous technological, productive and regulatory capacity in these countries, leads to severe limitations to create competitive environments for producers that result in lower prices for consumers. The existence of patent protection in this context is even more contentious.

The TRIPS provisions that have been the subject of most controversy are those referring to the possibility of using compulsory

licenses (article 31 of the TRIPS Agreement). The controversy surrounding the legitimate use of TRIPS flexibilities for the protection of public health purposes led to the adoption by the WTO Ministerial Conference at Doha of a Declaration clarifying the scope of exceptions such as compulsory licences. Two judicial proceedings concerning the use of compulsory licences and use of parallel importation by governments preceded this move, highlighting the terms of the debate. One concerned certain Brazilian legislation containing provisions for the granting of compulsory licensing under certain conditions that the United States considered were at odds with obligations under TRIPS.<sup>8</sup> The second was a case before the Constitutional Court of South Africa concerning provisions in the law on parallel importation of medicines necessary for the treatment of HIV/AIDS affected people.<sup>9</sup> Both cases were settled outside the courts and have not originated jurisprudence, although the terms of the litigations themselves could be instructive.

At the request of several African countries, the WTO Council on Trade-Related Intellectual Property Rights held a special session in June 2001 to discuss the relationship between the TRIPS Agreement and access to medicines. Most WTO Members were in favour of a reading of the TRIPS provisions that supports countries' policies to protect public health, and several countries

5 Velásquez, Germán and Boulet, Pascale, "Essential Drugs in the New International Economic Environment" *Bulletin of the World Health Organization* vol. 77(3), 1999; *Integrating Intellectual Property Rights and Development Policy*, Report of the Commission on Intellectual Property Rights, London, September 2002, available at [www.iprcommission.org](http://www.iprcommission.org), p. 42; see also WHO and WTO, *WTO Agreements and Public Health: A joint Study by the WHO and the WTO Secretariat*, Geneva, (hereinafter WHO/WTO Study), p. 94-95.

6 OXFAM *Fatal Side Effects: Medicine Patents under the Microscope*, Oxford, 2001; see also UNDP, *Human Development Report 1999* New York, 2000.

7 Commission on Intellectual Property report, *Op. Cit. supra* p. 43 ; *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health Report of the Special Rapporteur, Paul Hunt Addendum Mission to the World Trade Organization, Commission on Human Rights Sixtieth session/E/CN.4/2004/49/Add.1* 1 March 2004, para. 44.

8 *Brazil- Measures Affecting Patent Protection- Request for the Establishment of a Panel by the United States* WT/DS199/3 9 January 2001; see also WHO/WTO Study *op. cit.* p. 104-105. In essence, the US challenge to a 1996 Brazilian industrial property law focused on Article 68 that, the US alleged, imposed a "local working" requirement: a patent shall be subject to a compulsory licence if it is not worked in Brazil.

9 For an account of the dispute see WHO/WTO study, *op. cit.*, p.106. This case involved the South African association of pharmaceutical companies suing the Government on the grounds that the Medicines and Related Substances Control Amendment Act of 1997 was against the South African Constitution by giving the Minister of Health too much latitude to prescribe conditions for the parallel importation of drugs under patent in South Africa. Although there were reports of the US administration threatening legal action before the WTO against South Africa, those threats never materialised.

(mostly from Latin America) framed their interventions within an explicit recognition of health and access to essential medicines as human rights.<sup>10</sup>

During the November 2001 Doha Ministerial Conference, WTO members adopted a Ministerial Declaration on the TRIPS Agreement and public health where they stated that “the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all.” They also reaffirmed the right of WTO members to fully use the flexibilities provided in the Agreement, including the need to interpret the provisions of the Agreement in the light of the object and purpose of it as expressed in the provisions concerning its objectives and principles.<sup>11</sup> The Declaration also recognised that there were some remaining problems, including the difficulties that some countries with insufficient or no manufacturing capacity in the pharmaceutical sector face in making effective use of compulsory licensing under the Agreement. The subsequent discussions within the TRIPS Council proved this issue to be very contentious. A final agreement was not achieved by the deadline agreed (end of 2002), because of opposition of certain developed countries, notably the United States. A final consensual decision was possible only shortly before the next WTO Ministerial Conference in Cancún towards the end of 2003. The point at issue was the limitation imposed by article 31(f) of the TRIPS Agreement that requires that any compulsory licence granted to a generic producer shall be “predominantly for the supply of the domestic market of the Member” granting the compulsory license. Countries with limited industrial capacity rely on the importation of drugs and could only grant a compulsory license authorising the importation of those drugs from other countries. But drugs produced in those other countries under compulsory licenses can be exported only in a limited amount according to article 31(f). To solve this problem, WTO Members have adopted a waiver to allow countries to grant compulsory licenses for the production of drugs that are mainly for export subject to a series of strict conditions.<sup>12</sup> The implementation of this decision will require a monitoring and control system whose effectiveness will need periodic evaluation. However, the adoption of a decision on this matter has been the occasion for some actors to re-emphasise the capacity of the WTO to deal with issues of “humanitarian” character as well as trade issues.<sup>13</sup>

HIV is a scourge that affects mostly poor people, the vast majority of whom live in developing countries where poverty is deep and widespread. Most of them do not have the means to access the anti-retroviral drugs needed for their treatment and to prevent infections that would result in death even at the low prices set by generic producers, let alone the prices asked by patent-

holders. Putting higher prices on those medicines in this context would be akin to depriving those people of the means to carry on living healthy lives and survive plunging them and their families into distress and ultimately death.

### 13.5 Trade in conflict diamonds: the Kimberly process

Many armed conflicts of a national or international nature are financed through external sources by the export of precious metals or stones such as diamonds. Warring parties in several African countries have had recourse to financing through the illegal export of diamonds for some time, and human rights defenders and the international community have been calling for measures to terminate a trade that was fuelling the conflicts.

In 2004, the issue was taken to the WTO where it has received appropriate treatment. It is a good example of WTO practice showing how challenges that were not envisaged at the time the Agreements were concluded have been dealt with, and illustrating how flexible the provisions are in that regard.

A group of countries participating in the so-called Kimberly Process took action aimed at curbing the trade in conflict diamonds while supporting legitimate diamond trade. To become operative the scheme needed a waiver from WTO obligations since it implied trade restrictions and prohibitions. The waiver decision adopted by the WTO General Council exempts — from 1<sup>st</sup> January 2003 until 31<sup>st</sup> December 2006 — trade measures taken under the Kimberley Process from GATT provisions on most-favoured-nation treatment (article I:1), the elimination of

10 See interventions by Bolivia, Chile, Dominican Republic, Venezuela, and Sri Lanka, *Special discussion on intellectual property and access to medicines held in the Centre William Rappard during the meeting of the Council from 18 to 22 June 2001*, Council on TRIPS Agreement, WTO, IP/C/M/31, 10 July 2001.

11 *Declaration on the TRIPS Agreement and Public Health*, adopted by the WTO Ministerial Conference, Doha 14 November 2001 WT/MIN(01)/DEC/2.

12 *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health*, Council for Trade-Related Aspects of Intellectual Property Rights, IP/C/W/405 28 August 2003, adopted by the WTO General Council, 30 August, 2003 WT/L/540 (reproduced in WT/GC/M/82 together with a statement of the chairman containing understandings as to the interpretation and implementation of the decision).

13 The WTO Director General in highlighting the “historic agreement for the WTO” represented by the Decision adopted by WTO Members on 30 August 2003, stated: “It proves once and for all that the organization can handle humanitarian as well as trade concerns”. *WTO press release 350*, 30 August 2003.

quantitative restrictions (article XI:1) and non-discriminatory administration of quantitative restrictions (article XIII:1).<sup>14</sup> The decision recognised that the trade in conflict diamonds is a matter of serious international concern, which can be directly linked to the fuelling of armed conflict; the activities of rebel movements aimed at undermining or overthrowing legitimate governments; and the illicit traffic in, and proliferation of, armaments, especially small arms and light weapons. It also recognised “the extraordinary humanitarian nature of this issue and the devastating impact of conflicts fuelled by trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts”.

It acknowledged that the United Nations Security Council and General Assembly had supported the process.

### 13.6 Concluding remarks

Trade between nations affects people, their jobs and consequently their standards of living. Liberalisation of trade generates a reordering of production and consumption along the lines of the comparative advantage theory. Those that are more competitive at producing certain kinds of goods will displace those that are less competitive. There are winners and losers in this process. In most cases, those most negatively affected by changes (the losers) are already poor and disadvantaged. They typically have a lower level of skills and resources that would further hinder them in the process of adjustment and in their ability to grasp new opportunities. This poses serious questions with regard to the realisation of their rights, in particular the right to equally enjoy other rights.

Trade liberalisation has the natural effect of shifting economic advantages and opportunities across nations and human groups from certain regions to others, according to the logic of comparative advantage. One of the singular characteristics of the current phase of globalisation is the speed and depth of this process that hardly leaves any time and resources for the most vulnerable to adapt to the new conditions. Even the most competitive, well-educated workers have difficulty adapting to the speed of globalisation. A sense of vulnerability and economic insecurity in the face of global market forces accompanies workers all over the world.<sup>15</sup> Leaving the well being of people to the waves of economic efficiency alone could be the source of anxiety, distress and suffering for many that already live in strained situations. In some cases, when other conditions and mechanisms of protection are absent as in some cases described above, the situation may lead to great suffering and death.

It is generally assumed that increased trade between nations results in economic growth for all partners. However, there is no automatic economic growth from liberal trade in the absence of a number of other factors that make it possible for a nation to take up opportunities and use their comparative advantage. But even if growth does occur, there is no guarantee that it will benefit all sectors of society equally. Evidence suggests that growth does not necessarily translate into the poor having access to more employment or improving their income, access to medicines or preventing conflict.<sup>16</sup> Among other necessary elements are the protection of the rule of law, access to credit and investments, adequate infrastructure, education and other factors of human capital and, perhaps most importantly, political empowerment of the poor. Only when other conditions and factors are present to allow liberal trade policies to unleash their full beneficial potential does trade translate into growth and poverty reduction. In this context, one may ask why the WTO is only concerned with trade liberalisation without paying attention to the social policies that would make it work for the poor.

From the cases presented above it is clear that there is no direct causal relationship between liberalisation of trade - whether it is done pursuant of WTO rules or not - and the actual occurrence of violence. The appropriateness of using a cause-effect relationship analysis in the social and economic field can even be questioned.

Moreover, the examples are not typical cases in which physical and psychological abuse can be attributed to an identified state or non-state actor. The type of violence people suffer in these examples is different from others not in the extent or depth of suffering caused but with respect to the source of such violence. While in most cases of violence the acts are attributed to an identified author, the form of violence generated by the operation of unbridled markets is more diffused, but is experienced as violence nevertheless.

14 *Waiver concerning Kimberley Process Certification Scheme for Rough Diamonds*, WTO Council for Trade in Goods, G/C/W/432/Rev.1 24 February 2003. Participants in the Kimberley Process, in a declaration of November 5, 2002, had expressed their intent to implement an international scheme of certification for rough diamonds to help break the link between this trade armed. The Kimberley Process provides that each participant should “ensure that no shipment of rough diamonds is imported or exported to a non-Participant”.

15 Bhagwati, Jagdish *In Defense of Globalization*, 2005 p. 12; Stiglitz, Joseph, *Globalization and Its Discontents*, Norton and Co., New York, 2002.

16 Bhagwati *op.cit.*,









## FROM THE PREFACE BY LOUISE ARBOUR

*« It is my pleasure to make some introductory remarks on the challenging question addressed in the present study: how to prevent or reduce violence, including torture, by acting on its root causes, often found in violations of economic, social and cultural rights? The question goes to the very heart of human rights protection. In considering violence and torture in the context of socio-economic inequality and poverty, the study forcefully shows that human rights cannot be addressed separately or in categories of civil and political or economic, social and cultural rights. The empirical research contained in the study provides examples of the type of analysis needed to illustrate the very real way in which the enjoyment of one right depends on the fulfilment of other rights, showing how different forms of rights deprivation combine and reinforce each other, making persons who are socially and economically marginalized particularly vulnerable to violence. » [...] « I hope the present study will encourage further efforts to promote integrated strategies for the promotion and protection of human rights, moving away from rigid categorizations of rights to a comprehensive understanding that can better achieve improvements in the enjoyment of all human rights by all. »*

**Part I** of this study presents an extensive academic analysis of the correlations between socio-economic inequalities and violence in 63 countries based on unique survey data from the International Labour Organisation, an analysis of women's property ownership and domestic violence in South Africa, and an examination of the relationship between socio-economic hardship and violence in the developed economy of Sweden. **Part II** presents in-depth analyses of the situation of human rights, poverty, inequality and violence in Argentina, Egypt, Nepal, South Africa and Uzbekistan together with case studies examining in detail specific situations of violence resulting from violations of economic, social and cultural rights. **Part III** considers how the United Nations special procedures mechanisms, UN treaty bodies, the ILO, the World Bank, the International Monetary Fund and the World Trade Organization approach the issue of poverty, inequality and violence, and how they have or could have an impact on that link.



Fondation des Droits de l'Homme au Travail



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