

**Committee on the Rights of the Child
Day of General Discussion
Friday, 22 September 2000**

State Violence Against Children

Recommendations and suggestions of OMCT

RECOMMENDATIONS AND SUGGESTIONS OF OMCT

Reminder of previous recommendations by OMCT

June 1993, Vienna Conference

OMCT proposed a series of measures to enhance the rights of the child:

- (a) At the legislative level: changes have to be made to national and international legal instruments, notably with the aim of fixing a minimum age of criminal responsibility and sexual consent and the lifting of the age limit prohibiting participation in armed conflict.
- (b) At the level of specific international instruments to protect the rights of the child: a campaign should be initiated to annul the excessive derogations reserved by certain signatories during the ratification of the convention regarding the protection of the rights of the child. This campaign should promote the ratification by all the State parties to this Convention of all the specific children's rights currently addressed in general terms. A special mechanism should be created, with the capacity to receive denunciations and information from NGOs relative to serious attacks on the rights of children.
- (c) At the non-governmental level: an urgent alert centre should be established with the objective of receiving and transmitting information regarding abuses of children's rights which are capable of being acted upon. This centre would permit local organisations the capacity to reveal, at the international level, the critical situation in which they find themselves daily.

A campaign of awareness raising should be initiated among the network of organisations working for the rights of the child with a view to sensitising public opinion to the situation of children. In the course of this campaign, the NGOs should equally lobby international development institutions so that they take account of the impact of their development or structural adjustments programmes on the fundamental rights of the child.

53rd session of the Commission on Human Rights (1997)

- To request that all United Nations Special Rapporteurs consider as explicit in their mandate the consideration of the situation of children and their rights.
- To request that the United Nations treaty bodies and appropriate working groups ensure that the situation of children with regards to their mandate is given special consideration in their deliberations.

55th session of the Commission on Human Rights (1999)

The OMCT drew the attention of the Commission to a serious omission in the UN mechanisms available to children victims of abuses: children's capacity to maintain their rights by making international claims. (...) The Convention on the Rights of the Child offers no individual complaint mechanisms nor the possibility to denounce human rights violations.

For many years, OMCT has advocated for the establishment of a mechanism which could potentially cover many children who, with the current mechanisms, may be legally unable to access to the UN Committees. What we are advocating is a Special Rapporteur on the question on violence against children.

Recommendations for the Day of General Discussion of the Committee on the Rights of the Child on "State Violence Against Children"

A) Recommendations to Institutional Mechanisms

- Adoption of a Protocol to the Convention on the Rights of the Child based on the model of the Optional Protocol to the International Covenant on Civil and Political Rights.

A special mechanism should be created, with the capacity to receive denunciations and information from NGOs relative to serious attacks on the rights of children.

- Creation of a Special Rapporteur on violence against children.

The Special Rapporteur should, among others:

- examine the conditions of detention of minors in light of article 37, 39 and 40 of the Convention on the Rights of the Child, and other relevant international standards, such as the United Nations Standards Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty;
- receive all communications concerning the torture, or other grave violations committed against children by State agents or with his or her acquiescence. Equally, focus on State violence resulting from negligence on the part of State agents; the absence of political will to put in place the pertinent mechanisms to avoid this violence;¹
- review all the cases of death penalty for acts committed before the accused had reached the age of 18, with particular attention to the States which have not ratified the Convention on the Rights of the Child (United States of America and Somalia);
- specifically study the question of child soldiers in armed conflict zones;
- co-operate with other thematic and geographic mechanisms.
- Urge States, whenever possible, to withdraw reservations and interpretations undermining the enjoyment of the rights enshrined in the Convention on the Rights of the Child. Furthermore, if need be, that they abstain from formulating such reservations and interpretations, the content and scope of which are likely to compromise the application of the Convention on the Rights of the Child.
- To request that all United Nations Special Rapporteurs consider, as explicit in their mandate, the consideration of the situation of children and their rights.
- To request that the United Nations treaty bodies and appropriate working groups ensure that the situation of children with regards to their mandate is given special consideration in their deliberations.
- Establishment of a fund destined to rehabilitate children victims of violence, notably children victims of conflict (child soldiers, children victims of landmines) and co-operation with the United Nations Fund for Victims of Torture in the case of children victims of torture.

¹ See Eric Sottas, "A Non-Governmental Organization Perspective of the United Nations' Approach to Children and Torture" in *Childhood abused*, edited by Geraldine van Buren, Ashgate publishers, London, 1998. (Annex 1)

B) Recommendations to the Committee on the Rights of the Child

OMCT recalls its conclusions presented in its recent reports to the Committee on the Rights of the Child.²

The Committee on the Rights of the Child should:

- Follow up the implementation of its recommendations with the assistance of the Office of the High Commissioner for Human Rights.
- Formulate a general commentary on its working definition of torture and other cruel, inhuman or degrading treatment or punishment.

C) Recommendations to State parties

- Implement the recommendations formulated by the Committee on the Rights of the Child with particular emphasis on violence perpetrated by the State.

More precisely with regards to:

DISCRIMINATION

- When the national legislation contains no definition on gender-discrimination, a definition of discrimination in the Constitution, and other legislation which reflects the definition contained in article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, should be adopted.
- Set up gender-sensitive training that should be extended to all public sectors, including law-enforcement officials as well as a public awareness raising campaigns for gender-equality.
- Adopt, in addition to ratifying the 1951 Refugee Convention as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, guidelines with respect to asylum of those fleeing gender-related persecution.

TORTURE AND ILL-TREATMENT

- Adopt a definition of torture and ensure that torture is a criminal offence under domestic law.
- Provide for appropriate and deterrent sanctions in connection with the act of torture or acts which could constitute ill-treatment committed by public agents (the age of the child should be considered as an aggravating circumstance); establish provisions giving minor victims of torture and/or ill-treatment the possibility to file a complaint, access to lawyers or medical assistance.

ARREST, DETENTION AND IMPRISONMENT

- Take measures to proscribe, in a clear and definitive manner, the possibility to impose the death penalty, as well as life imprisonment against all persons under the age of 18.

² Algeria, Bangladesh, Benin, Chile, Colombia, Ethiopia, Federal Republic of Yugoslavia, Ghana, Guatemala, Hungary, Indonesia, Madagascar, Mexico, Nepal, Nigeria, Pakistan, Paraguay, Philippines, Senegal, Sri Lanka, Togo, Tunisia, Uganda, United Kingdom of Great Britain and Northern Ireland, Venezuela, Yemen.

- Ensure that protective measures are guaranteed in all situations of custody. States should abolish "protective custody" and should provide NGOs with funds to establish shelters for victims. States should work towards the abolition of laws and regulations that provide powers of detention, arrest, investigation and interrogation creating situations where violence occurs.
- Make sure that each child suspected, accused of or having committed an infraction of the law has full access to procedural rights including the right to a lawyer during police custody. The assistance of a lawyer has to be free whenever necessary.
- With regards to article 37 and those following, create an alternative mechanism to the detention of juvenile offenders.
- Ensure that police custody of children is reduced to a minimum while prohibiting incommunicado detention for whatever motives, and guarantee that all children in police custody are given a medical evaluation at the beginning and the end of their incarceration.
- Guarantee that the children's deprivation of liberty is a measure of last resort as brief as possible, without any prejudice to their rights including the right to contest the legality of this loss of liberty before a court or any other competent, independent and impartial authorities.

ADMINISTRATION OF JUSTICE

- Revise provisions relating to the limit of the age of penal responsibility of children in view of harmonising this with those principles set up by the Convention on the Rights of the Child.
- Set out provisions regarding judicial remedies, right to reparation and compensation and rehabilitation measures to children victims of acts of torture, ill-treatment, violence or abuse.
- Take appropriate measures to protect children who have been deprived of their family, namely stray or vagrant children and orphans or foundlings and abrogate provisions which penalise vagrancy and begging.
- Make sure that an appropriate training is given to policemen, magistrates, other government officials responsible for the administration of justice and generally to professionals dealing with children's matters or with implementations of the Convention.
- Adopt precise measures with the view to guaranteeing the right to presumed innocence of children, in accordance with article 40 paragraph 2 (b) i of the Convention on the Rights of the Child, and duly inform the law enforcement officers responsible for its application and their obligations with regards to the respect of this right.
- Ensure that the deprivation of freedom of minors is subjected to the provisions enshrined in article 37 and 40 of the Convention on the Rights of the Child, taking into account the United Nations Standards Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty.

D) General Recommendations

- In the spirit of the 1996 Machel study on *The Impact of Armed Conflict on Children*, carry out a study on violence against children, including torture.

- Launch an international campaign led by UNICEF aimed at illustrating critical situation, sensitising public opinion and influencing the economic policies of States and institutions in a manner which protects children from violence, including torture, and which promotes their rights.