

Created in 1986, the World Organisation Against Torture (OMCT) is an international coalition of over 260 NGOs in 85 countries, the SOS-Torture network, fighting against torture, summary executions, forced disappearances, and all other forms of cruel, inhuman or degrading treatment.

In answer to the increasing number of cases on gender-specific forms of violence coming from the members of the SOS-Torture Network and other sources, OMCT decided in 1996 to establish the Violence against Women Programme, which addresses and analyses the gender-related causes and consequences of torture and other forms of violence against women. In every region of the world, women and girls suffer from violence as a result of their gender. Although the distinct social, cultural and political contexts give rise to different forms of violence, its prevalence and patterns are remarkably consistent, spanning national and socio-economic borders as well as cultural identities. Gender has a considerable effect on the form of the violence, the circumstances in which the violence occurs, the consequences of the violence, and the availability and accessibility of remedies.

For the past years, the Violence against Women Programme has been working according to a three-fold strategy. This strategy has involved the issuance of urgent appeals concerning gender-based violence, the submission of alternative country reports on violence against women to the UN Committee on the Elimination of Discrimination against Women and mainstreaming a gender perspective into the work of the UN treaty monitoring bodies through the submission of alternative country reports specifically on violence against women.

**VIOLENCE AGAINST WOMEN: 10 REPORTS/YEAR 2003  
FOR THE PROTECTION AND PROMOTION  
OF THE HUMAN RIGHTS OF WOMEN**

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# Violence Against Women

*for the protection and promotion  
of the human rights of women*

**10 REPORTS / YEAR 2003**



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Lucinda O'Hanlon

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## Introduction

This fourth annual compilation of ten alternative country reports on violence against women submitted to the so-called “mainstream” UN human rights treaty monitoring bodies<sup>1</sup> by OMCT’s Violence Against Women Programme represents an essential activity to integrate a gender perspective into the work of the five treaty bodies. The reports have been written in collaboration with national NGOs, including members of the OMCT SOS-torture network. The choice of countries has been made in accordance with the agenda of the treaty bodies as well as the situation of the country and the availability of reliable information. The main findings of the different reports were presented during the various briefing sessions with members of the treaty bodies.

The goal of mainstreaming a gender perspective is achieving women’s full equality with men and this includes ensuring that all United Nations activities, including those of the United Nations treaty monitoring bodies integrate a gender perspective and the human rights of women. Although the principle of equal rights of women is enshrined by the Charter of the United Nations, the Universal Declaration of Human Rights and the subsequent international human rights treaties and declarations, the human rights of women have historically been neglected by the “mainstream” United Nations system. International human rights law, although at first sight gender-neutral, generally responded to human rights violations in the public sphere, whereas many of the human rights violations against women take place in the private sphere. The adoption of the UN Convention on the Elimination of All Forms of Discrimination against Women in 1979 was in this sense extremely important in recognizing inequality and discrimination against women in the private domain and the importance of women’s participation in political and public life. However, at the same time, it has reinforced the traditional tendency to neglect women’s human rights within the broader context of the UN system.

This neglect was articulated in the Vienna Declaration and Programme of Action adopted in 1993, which affirms that the human rights of women and of the girl child are an inalienable, integral, and indivisible part of universal human rights and calls for action to integrate the equal status and human rights of women into the mainstream of the United Nations activity system-wide.<sup>2</sup> The theme of integrating a gender perspective and the

human rights of women into the work of all human rights bodies of the United Nations system and their role in the achievement of gender equality was reiterated at the Fourth World Conference on Women, held in Beijing in September 1995, in its Platform for Action<sup>3</sup> as well as in the outcome document of the General Assembly's twenty-third special session, entitled "Women 2000: gender equality, development and peace for the twenty-first century. Also, in 2001, the UN Economic and Social Council emphasised the importance of gender mainstreaming within all UN programs and decided to "intensify its efforts to ensure that gender mainstreaming is an integral part of all activities in its work and that of its subsidiary bodies."<sup>4</sup>

In 1999, OMCT published a study of the progress that had been made by the "mainstream" UN human rights treaty monitoring bodies in integrating a gender perspective into their work. The results of this study demonstrated that while some progress had been made, gender was not being fully mainstreamed in their work. The study also revealed that the treaty bodies committees had been proceeding at different paces with respect to gender mainstreaming, in particular, the Committee against Torture was progressing more slowly.

In answer to wide-spread gender-based violence against women, a manifestation of world-wide patterns of inequality between men and women, as well as the inadequate state of gender mainstreaming into the work of the five "mainstream" treaty bodies, OMCT has for the past four years engaged in a mainstreaming strategy by submitting 40 alternative country reports on violence against women to the "mainstream" treaty bodies, with a special emphasis on the Committee against Torture. While the Committee against Torture had begun to integrate a gender-perspective into its work, its consideration of the situation of women, or gender issues during the dialogue with State parties fell into the following broad categories: rape and sexual offence by State officials, segregation of male and female prisoners and the situation of pregnant women. However, women experience violence in all areas of their lives. Besides violence at the hands of State agents (violence in detention, in the context of armed conflict, as internally displaced persons or refugees), women are subjected to violence at the hands of their family members and intimate partners (i.e domestic violence, marital rape, harmful traditional practices, crimes committed against women in the name of "honour," sex-selective abortions),

and at the hands of members of the community (i.e. rape, exploitation of prostitution and trafficking in women and girls).

The question whether violence by private individuals can constitute a form of torture as defined in article 1 or ill-treatment as prohibited in article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, lies at the heart of a gender-inclusive and gender-sensitive interpretation of the Convention against Torture. According to article 1 of the Convention against Torture, torture means not only acts by a public official, but also at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, of severe pain and suffering intentionally inflicted on a person for certain purposes or for any reason based on discrimination. Although it is evident that not all violence against women can meet the criteria of torture within the meaning of article 1 of the Convention against Torture, the simple fact that the perpetrator is not a State official should not automatically result in excluding this violence from the scope of the Convention against Torture. It should also be noticed that international human rights law has recognised State responsibility for private acts when a State fails to exercise due diligence in preventing, investigating, prosecuting, punishing and repairing human rights violations. The “due diligence” standard has now been generally accepted as a measure for evaluating State responsibility for violations of human rights by private actors.

In terms of gender-inclusion and gender-sensitivity, in 2001, the Committee against Torture made in 2001 a major step forward by expressing for the first time concern about trafficking in women and domestic violence in its concluding observations and recommendations. Again in 2003, the Committee expressed also for the first time its concern about female genital mutilation and reparatory marriages (See the Concluding Observations of the CAT concerning Cameroon in this publication). As early as 1986, the first U.N. Special Rapporteur on Torture, Professor Kooijmans, recognized in the context of his discussion of the notion of the “qualified perpetrator” that: “the authorities’ passive attitude regarding customs broadly accepted in a number of countries (i.e. sexual mutilation and other tribal traditional practices) might be considered as “consent or acquiescence” particularly when these practices are not prosecuted as criminal offences under domestic law, probably because the State itself is abandoning its function of protecting its citizens from any kind of



torture.”<sup>5</sup> However, the Committee against Torture only addressed genital mutilation in 2003.

With regard to reparatory marriages, in several countries around the world, a rapist is not punished when he marries the victim. The exemption from punishment of the rapist when he marries the victim allows the rapist’s criminal responsibility to be extinguished, thus treating rape as a crime distinguished from other crimes against a person, and it undermines the woman’s free and full consent to marriage since she is often put under pressure in order to save her family’s “honour”.

The ten country reports in this compilation confirm that violence against women is clearly a universal problem. Although the distinct social, cultural and political contexts give rise to different forms of violence, its prevalence and patterns are remarkably consistent, spanning national and socio-economic borders as well as cultural identities. Women in Turkey, Bangladesh and Brazil women are subjected to violence committed in the name of honour or passion. Women in Cameroon, Mali and Eritrea undergo genital mutilation in the name of tradition. Immigrant women victims of domestic violence in the United Kingdom, although not more likely to be the victim of domestic violence than the majority population, find themselves in a particularly grave situation as they risk losing their residency permits if they leave their violent husbands. Women and girls in Estonia and Russia are particularly vulnerable to becoming trafficking victims. In Cameroon, Brazil, Turkey, and Eritrea, a rapist is not punished when he marries the victim. Women in Colombia are targeted for being relatives or otherwise associated with the “other” side in the ongoing armed conflict and as human rights defenders. Women in Chechnya are subjected to violence particularly during “clean-up” operations and at checkpoints. Women human rights defenders have also been killed, disappeared, tortured, and threatened as a result of their work in Chechnya.

Violence against women can continue to flourish as too many governments do not accept responsibility to end gender-based violence and allow it to occur with impunity. Many states have failed to pass legislation specifically prohibiting and punishing violence against women and to train State officials so that they understand the complexities of issues surrounding this type of abuse. In many countries, laws, policies and cultural practices discriminate against women, deny women and men equal rights, and ren-

der women vulnerable to violence. Unequal gender roles and societal structures strengthen unequal power relations which adversely influence women's enjoyment of economic, social and cultural rights and may lead as well to different forms of violence against women including domestic violence and trafficking. On the other hand, women who are subjected to violence are not able to enjoy fully economic, social and cultural rights, such as the right to freely choose or accept gainful employment, the right to adequate housing or their right to enjoy the highest attainable standard of physical and mental health.

Overall, governments continue to fail to protect women from violence whether at the hands of private individuals or state officials. OMCT would like to underline that States have a duty under international law to act with due diligence to prevent, investigate, prosecute and punish all forms of violence against women, irrespective of whether this violence is committed by public or private individuals. This obligation has not been adequately implemented at the national level.

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- 1 The "mainstream" human rights treaty monitoring bodies of the United Nations are those treaty monitoring bodies that do not have women as their specified mandate. Thus, they are the Human Rights Committee; Committee Against Torture; Committee on Economic, Social and Cultural Rights; Committee on the Rights of the Child; Committee on the Elimination of Racial Discrimination; and, most recently, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families.
  - 2 U.N. Doc. A/CONF.157/23, Part II.
  - 3 U.N. Doc. A/CONF.177/20, Annex II.
  - 4 ECOSOC Resolution 2001/41.
  - 5 U.N. Doc. E/CN.4/1986/15, para 38.