

Violence Against Women

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

10 REPORTS / YEAR 2002



Carin Benninger-Budel
Joanna Bourke-Martignoni

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. Since 1996, OMCT has had a specific programme for the protection of women from gender-based violence around the world. This programme draws its strength and approach from other OMCT programmes which have proved consistently effective in the fight against torture. Particular emphasis is placed on drawing attention to and preventing serious human rights violations perpetrated against women through alternative reports on country situations to the United Nations treaty monitoring bodies and urgent appeals on violence against women.

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of the human rights of women**

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Introduction

This book is the third annual compilation of alternative country reports submitted to the UN human rights treaty monitoring bodies by OMCT's Violence Against Women Programme. These reports represent an integral part of OMCT's effort to fully integrate a gender perspective into the work of the treaty bodies. In 2002, OMCT submitted ten reports on violence against women to the five "mainstream" treaty monitoring bodies: reports on Togo and Yemen were submitted to the Human Rights Committee; reports on the Czech Republic and Poland were submitted to the Committee on Economic, Social and Cultural Rights; reports on Moldova and Sudan were submitted to the Committee on the Rights of the Child; a report on Croatia was submitted to the Committee on the Elimination of Racial Discrimination; and reports on Spain, Uzbekistan and Venezuela were submitted to the Committee against Torture. OMCT decided to report on these specific countries based on the agendas of the different Committees and the availability and accessibility of information on the status of women from member organizations of the OMCT-SOS Torture Network or other local organizations.

Each report examines violence against women within three settings: in the home, in the community and at the hands of State officials. The reports also analyse legal, political, economic, social and cultural factors that contribute to the problem of violence against women. At the conclusion of each report, OMCT outlines recommended actions to be taken by the different governments. This list of recommendations provides a framework for change useful not only for the treaty monitoring bodies and governments, but also for non-governmental human rights organisations, women's rights organisations, members and non-members of the OMCT-SOS Torture Network. In addition, the concluding observations by the treaty monitoring bodies concerning each country are included.

The 1993 Vienna Declaration and Programme of Action¹ recognised that the UN human rights treaty monitoring bodies lacked a gender perspective and declared the need for such perspective to be fully integrated into the work of the human rights bodies. The Platform of Action adopted at the Fourth World Conference on Women in Beijing in 1995² also emphasised the importance of integrating a gender perspective into the activities of the treaty monitoring bodies. These calls for change observed that despite the

important function that the Convention on the Elimination of All Forms of Discrimination Against Women plays in the promotion and protection of women's human rights, the "mainstream" human rights treaty bodies have often failed to address gender-specific human rights violations.

In 1999, OMCT published a report on violence against women, which revealed the findings of an extensive research project concerning the treaty bodies' progress between 1993 and 1998 in integrating a gender perspective and the human rights of women into their activities. The research demonstrated that although some progress had been achieved by the treaty bodies in this field, each treaty body had been proceeding at a different pace.³ In particular the Committee against Torture had not incorporated issues related to the human rights of women into its work to the same degree as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

For this reason, OMCT has devoted particular attention in the past years to the integration of a gender perspective and the human rights of women into the work of the Committee against Torture; the Committee which analyses and identifies the progress achieved by States parties in complying with their obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. OMCT has submitted 15 alternative country reports on gender-based forms of violence against women to the Committee against Torture over the years 2000, 2001, and 2002. OMCT also submitted a paper in October 2001 entitled "A gender-inclusive and gender-sensitive interpretation of Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."⁴ According to Article 1 of the Convention against Torture, torture includes acts, intentionally inflicted, that cause severe pain or suffering on a person for certain purposes or for any reasons based on discrimination, committed not only by a public official but also at the instigation of or with the consent or acquiescence of a public official or other person acting in the official capacity.

While women are, like men, the victims of State sponsored violence, the ten country reports in this publication show that much violence against women occurs in their private lives. The reports also show that while there are some encouraging signs of progress in the development and imple-

mentation of new legislation and procedures with respect to violence against women, States are overwhelmingly failing to uphold their international and national obligations to exercise due diligence to prevent, investigate, prosecute and punish gender-based violence at the hands of private individuals. It is clear that that not all violence against women qualifies as torture within the meaning of the Convention against Torture. However, the mere fact that the perpetrator is a private individual rather than a State official should not automatically lead to the exclusion of this type of violence from the scope of the Convention against Torture and herewith the work of the Committee against Torture.

OMCT has been greatly encouraged by the fact that on several occasions during the year 2001, the Committee against Torture considered gender-specific forms of torture and ill-treatment, including trafficking in women, domestic violence and rape.⁵ This was a major breakthrough as violence against women by private individuals has traditionally been dismissed as beyond the scope of the Convention against Torture.

In 2002, the Committee against Torture continued to consider gender-specific forms of torture and ill-treatment and called upon several States to provide information disaggregated by gender in their future reports to the Committee.⁶ As OMCT remains gravely concerned about the widespread problem of torture and other forms of violence against women, it urges the Committee against Torture to ensure that gender-specific forms of torture and violence continue to be addressed.

On 13 May 2002, the Committee on Economic, Social and Cultural Rights held a day of general discussion on Article 3 of the Covenant on Economic, Social and Cultural Rights, which ensures the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant. The Committee discussed its intention to provide a framework for addressing obligations under Article 3 in the form of a General Comment. During the past years, the Committee on Economic, Social and Cultural Rights has regularly expressed its concern about violations of the human rights of women, including violence against women. Additionally, it has addressed types of gender-based violence such as female genital mutilation, forced and early marriages, bonded labour, domestic violence, trafficking in women and prostitution.

The adoption of a General Comment concentrating particularly on the

equal enjoyment by men and women of economic, social and cultural rights by the Committee on Economic Social and Cultural Rights would make an important contribution to the existing treaty body jurisprudence addressing women's human rights. In 2000, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination adopted two important General Comments concerning women's enjoyment of the rights guaranteed in the International Covenant on Civil and Political Rights⁷ and the Convention on the Elimination of Racial Discrimination⁸ respectively. Furthermore, the Committee on Economic, Social and Cultural Rights, itself, has adopted several General Recommendations and General Comments, which include gender issues and specific women's human rights concerns.

A comprehensive General Comment that explains the scope of Article 3 of the Covenant on Economic, Social and Cultural Rights and that identifies the factors affecting women's equal enjoyment of these rights under the Covenant will be an valuable reinforcement of the Committee's work and a helpful guide to States parties as to the proper implementation of the rights contained in the Covenant and as to the preparation of their reports to the Committee. Finally, it will also be a vital tool for women and organizations working to promote and protect women's rights as well as an important interpretive instrument for national courts.

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- 1 U.N. Doc. A/CONF.157/23, Part II, para. 42.
 - 2 U.N. Doc. A/CONF.177/20, Annex II, paras. 222 and 231 (b).
 - 3 Carin Benninger-Budel and Anne-Laurence Lacroix, *Violence against Women: A Report*, 1999.
 - 4 Reproduced in Carin Benninger-Budel and Joanna Bourke-Martignoni, *Violence against Women, for the protection and promotion of the human rights of women, 10 reports/year 2001*, 2001.
 - 5 Georgia: U.N. Doc. CAT/C/XXVI/Concl.1/Rev.2 and Greece U.N. Doc. CAT/C/XXVI/Concl.2/Rev.1, Zambia: U.N. Doc. CAT/C/XXVII/Concl.4, Ukraine: CAT/C/XXVII/Concl.2, Indonesia: U.N. Doc CAT/C/XXVII/Concl.3.

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- 6 See for example the Committee against Torture's Conclusions and Recommendations on: Russia (UN Doc. CAT/C/CR/28/4); Saudi Arabia (UN Doc. CAT/ C/CR/28/5); and Uzbekistan (UN Doc. CAT/C/CR/28/7).
- 7 Human Rights Committee, General Comment No 28, *Equality of rights between men and women*. The text is available on the website of the Office of the High Commissioner for Human Rights: www.unhchr.ch and can be obtained under the symbol: CCPR/C/21/Rev.1/Add.10.
- 8 Committee on the Elimination of Racial Discrimination, General Recommendation No 25, Gender related dimensions of racial discrimination. The text is available on the website of the Office of the High Commissioner for Human Rights: www.unhchr.ch and can be obtained under the symbol: CERD/C/56/Misc.21/Rev.3.

Violence against Women in Croatia

A Report to the Committee on the Elimination of Racial Discrimination

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1. Preliminary Observations

The submission of information on violence against women to the Committee on the Elimination of Racial Discrimination forms part of the World Organisation Against Torture's (OMCT) programme on violence against women. One of the aims of the women's programme is to integrate a gender perspective into the work of the five "mainstream" United Nations human rights treaty-monitoring bodies and, to this end, this report will focus on women from ethnic minorities in Croatia and their particular vulnerability to violence.

The need to integrate the human rights of women into the work of the human rights treaty bodies was stressed at the 1993 Vienna World Conference on Human Rights¹ and reiterated in the Beijing Platform for Action adopted in 1995 by the Fourth World Conference on Women.² The Beijing Platform for Action states that women belonging to minority groups and women in situations of armed conflict are especially vulnerable to violence and highlights the fact that women from racial or ethnic minorities often face multiple forms of discrimination.³

The Final Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance notes that victims of racism, racial discrimination and xenophobia "can suffer multiple or aggravated forms of discrimination based on other related grounds such as sex ..." and that "... racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights." The World Conference recognized "the need to integrate a gender perspective into relevant policies, strategies and programmes of action against racism, racial discrimination, xenophobia and related intolerance in order to address multiple forms of discrimination" as well as the need to "develop a more systematic and consistent approach to evaluating and monitoring racial discrimination against women."⁴

At its 56th Session in March 2000, the Committee on the Elimination of Racial Discrimination adopted General Recommendation 25 concerning the gender-related dimensions of racial discrimination.⁵ The General

Recommendation draws attention to the fact that women and men are not always affected equally or in the same way by racial discrimination and notes that "certain forms of racial discrimination may be directed towards women specifically because of their gender." The General Recommendation and the Reporting Guidelines issued by the Committee on the Elimination of Racial Discrimination both call upon States to provide specific information and disaggregated statistical data concerning the gender-related dimensions of racial discrimination.

1.1 Applicable International, Regional and National Law

Croatia succeeded to the Convention on the Elimination of All Forms of Racial Discrimination (CERD) on 12 October 1992.

With regard to other international human rights instruments, Croatia has succeeded to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC). Succession to the International Covenant on Civil and Political Rights (ICCPR) occurred in 1992, while the Optional Protocols to the ICCPR were both acceded to in October 1995. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) was succeeded to by Croatia in 1992 and it also ratified the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women in March 2001.

OMCT welcomes Croatia's ratification of all of the international human rights instruments cited above and is particularly encouraged by the government's ratification of the Optional Protocols to the CEDAW and to the ICCPR, as well as by the fact that it has made declarations under Article 14 of the CERD and under Article 22 of the CAT as all of these mechanisms provide the treaty monitoring bodies with the competence to accept individual communications.

At the regional level, Croatia was admitted to the Council of Europe on 6 November 1996 and it ratified the European Convention on Human Rights as well as Protocols 1, 4, 6, 7 and 11 to the Convention on 5 November 1997. Article 14 of the European Convention on Human

Rights provides that all of the rights contained in the Convention - including the right to be free from torture and inhuman or degrading treatment or punishment in Article 3 - are to be secured without discrimination on "any ground such as sex, race ... national or social origin ...". Croatia is also a party to the European Convention for the Prevention of Torture and, as provided for in the Convention, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited places of detention in Croatia in September 1998.⁶ On 24 March 1992, Croatia was admitted as a participating State to the Organization for Security and Co-operation in Europe (OSCE) and it signed the Helsinki Final Act in July 1992.

The 1995 Dayton Peace Accords, which were signed by each of the parties to the conflict, including Croatia, at the cessation of hostilities in the former Yugoslavia contain several important articles in relation to the promotion and protection of human rights and, in particular, on the rights of returnees. Article VII of the General Framework Agreement for Peace in Bosnia and Herzegovina reads, "Parties agree to and shall comply fully with ... the provisions concerning refugees and displaced persons set forth in Chapter One of the Agreement at Annex 7." Annex 7, Chapter One, Article 1 (2) provides as follows: "The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion." Annex 7 calls upon Parties to the agreement to take all necessary steps to "prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons" including through the "repeal of domestic legislation and administrative practices with discriminatory intent or effect."

The Croatian Constitution provides in its Article 134 that "International agreements concluded and ratified in accordance with the Constitution and made public shall be part of the Republic's internal legal order and shall be above law in terms of legal effects." While OMCT welcomes the fact that international treaties, including the CERD, have a normative force superior to that of domestic legislation, it remains concerned that the judiciary is not systematically trained in international human rights law with the result being that, in practice, there has been very little direct enforcement of the provisions of international human rights treaties.

Article 14 (1) of the fundamental freedoms chapter of the Constitution reaffirms the principle of non-discrimination by providing that "everyone in the Republic of Croatia shall enjoy all rights and freedoms regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status, or other characteristics." Importantly, this Article was amended in 1997 in order to include "everyone in the Republic of Croatia" rather than restricting the provision to Croatian citizens as was previously the case. It is unclear, however, to what extent other rights in the Constitution apply to non-citizens.⁷

Article 15 of the Constitution states that "members of all national minorities shall have equal rights in the Republic of Croatia" and Article 26 provides that "all citizens of the Republic of Croatia and aliens shall be equal before the courts, government bodies and other bodies vested with public authority."

The Constitution contains several guarantees against ill-treatment, for example in Articles 23 and 25. Importantly, however, there is no provision in the Constitution which specifically prohibits torture.

1.2 Race, Gender and Violence

The combined fourth and fifth periodic reports submitted to the Committee on the Elimination of Racial Discrimination by the Croatian government, while being very comprehensive in other respects, do not discuss the connection between racial discrimination, torture and other forms of violence, nor do they address the gender-related dimensions of racial discrimination.⁸

For this reason, and as part of the goal of gender integration described in the introduction to this report, OMCT's women's programme has chosen to focus on the linkage between violence against women in Croatia and racial discrimination. The report begins with a general overview of the situation in relation to violence and racial discrimination in Croatia and then goes on to discuss violence against women and racial discrimination. The report concludes with a series of recommendations for future action.

2. Discrimination against Persons from Ethnic Minorities

The Committee on Economic, Social and Cultural Rights, in its Concluding Observations on the initial report of Croatia in 2001 noted that the recovery from the armed conflict has caused complex socio-economic, political and other difficulties including; a breakdown in the social welfare system, acute levels of unemployment and extensive damage to the nation's physical infrastructure. The Committee further stated that one serious 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."⁹ The Committee expressed its concern over the fact that "private acts of discrimination and ethnically-motivated violence are frequently not adequately addressed by the competent authorities" and that "ethnic Serbs continue to face excessive obstacles to their return."¹⁰

In its most recent consideration of Croatia's report on its implementation of the ICCPR, the Human Rights Committee expressed its concern over the lack of a comprehensive law prohibiting discrimination in private-sector areas such as employment and housing; at the discrimination faced by members of the Serb ethnic minority in Croatia; at the failure to fully secure the rights of members of ethnic, religious and linguistic minorities in national, regional and local representative and executive bodies, as well as their rights in social, cultural and economic fields of public and private life; and at the fact that the Roma community is not accorded recognized minority status, that members of this community are particularly disadvantaged and suffer from discrimination.¹¹ The Committee also stated that while it was aware that efforts had been made in order to simplify procedure and to remove obstacles in the way of displaced persons wishing to return to Croatia, it was concerned at the number of cases that were still outstanding and at the length of time that these persons had to wait in order to have their cases resolved.¹²

In his two reports to the Commission on Human Rights in 2001, the Special Rapporteur on the situation of human rights in the Former Yugoslavia noted several worrying phenomena in relation to racial discrimination in Croatia.¹³ Issues highlighted by the Special Rapporteur included; the unequal application of the rule of law and the politicisation

of local judiciaries as well as an escalation in the seemingly arbitrary arrests of Croatian citizens (both domiciled and returnees) of Serb ethnicity on war crimes charges before national and local courts. The Rapporteur also noted that the return of internally displaced persons (IDPs) and refugees continued to be obstructed, in particular through failures to reconstitute property rights and the lack of cooperation on behalf of local administrative authorities in ensuring the enforcement of court orders in relation to the eviction of illegal occupants.

In his mission report of March 2001, the Special Rapporteur drew attention to a rise in nationalism and right-wing extremism that was evidenced in the mass demonstrations in Split and elsewhere in support of Mirko Norac, a former Croatian army general charged with war crimes committed in the Gospić area, as well as a number of hate-based articles published in *Slobodna Dalmacija*, a government-owned newspaper. Concern was also expressed by the Rapporteur for the safety of prominent human rights lawyer Srdj Jaksic who was shot and wounded on 30 December 2000 at his home in Dubrovnik by unidentified assailants.¹⁴

In the last three years there have been two high profile cases involving women who have engaged in hate speech against ethnic Serbs. The first case involved Biserka Legradic, a war veteran who reportedly urinated on a memorial plaque erected to commemorate the Serbian people killed during the Second World War. The court found Ms. Legradic guilty of having violated the provisions of the Penal Code in relation to the protection of the human rights of citizens and breaching the peace of the deceased but, significantly, the Court did not invoke the Penal Code provision prohibiting racial discrimination. Due to the fact that she had been wounded in the war as a combatant, she was given a suspended sentence for three months.¹⁵

The second case concerned Gordana Dumbovic, leader of a local branch of right-wing political party *Hrvatska stranka prava* and a teacher in the primary school in the small town of Petrinja where she was also deputy mayor. Ms. Dumbovic is alleged to have declared on local radio and elsewhere that returnees from Serbia “are worse than animals” and that the local people of Croatian origin should “keep their arms as they are going to need them.” As Ms. Dumbovic is still working as a teacher, the Ministry of Education sent an inspector to make inquiries (the findings of

which are not yet known) and the district public attorney has commenced proceedings for racism at the local court level based on the provisions of the Penal Code. The case is still pending.¹⁶

3. Gender-related Dimensions of Racial Discrimination in Croatia

Following a brief examination of the status of women and girls in Croatian society, this section will focus on violence against women in Croatia as a gendered form of racial discrimination. Given the paucity of available information concerning the status of women from ethnic minority groups in Croatia, much of the following material is based upon individual cases that have come to the attention of non-governmental organisations working in Croatia.¹⁷

While there is only limited information available on the status of women from ethnic minority groups in Croatia, it is apparent that women¹⁸ and persons from minorities¹⁹ do suffer from various forms of discrimination including violence in the family, in the community and violence perpetrated by State officials and it is, therefore, reasonable to assume that minority women are subjected to multiple forms of discrimination as a result of their gender and their ethnicity.

Some examples of the discrimination suffered by ethnic minority women in Croatia include; police and community violence against Roma women;²⁰ community violence and discrimination against returned Serbian women;²¹ and discriminatory legislative provisions which prevent Muslim women from wearing veils in official identity photographs.²²

Minority women experience violence and other forms of discrimination in a different manner to the way in which this discrimination is experienced by minority men and non-minority women. Women from ethnic or religious minorities in Croatia – in particular, Roma, Serb and Muslim women – as a result of their gender and their ethnicity, face additional or multiple forms of discrimination both from within and outside of their communities. The consequences of this discrimination, including the availability and accessibility of remedies, are also affected by the ethnicity and the gender of the victim.²³

OMCT would like to urge the government to take steps to establish mechanisms for the systematic collection of data in relation to violence and other forms of discrimination against minority women and to consult with non-governmental organisations in the development of legislation and policies to ensure that women from ethnic minorities enjoy the full range of human rights to which they are entitled.²⁴

3.1 General Observations on Violence against Women and Girls in Croatian Society

At present, there is no systematic mechanism for the gathering of data in relation to the amplitude, causes and consequences of violence against women and there appears to be no disaggregated statistical information available concerning the rates of violence against women from different ethnic groups. It is clear, however, that violence and other forms of discrimination against women in Croatia remain serious problems and that comprehensive policies and legislation in order to address the issue of violence against women in the family, in the community and by the State have yet to be developed.

As part of the context within which violence and other forms of discrimination against women occurs in Croatia, it is important to point out that women suffer from severe discrimination and lack of opportunities in the workforce and that they remain under-represented in political and other decision-making structures.²⁵

In its Concluding Observations on Croatia in 2001, the Human Rights Committee noted the lack of a comprehensive law for the prohibition of discrimination on the basis of gender, racial or ethnic identity in private-sector areas such as employment and housing.²⁶ These comments were echoed by the Committee on Economic, Social and Cultural Rights in its Concluding Observations on Croatia in November 2001.²⁷ The Human Rights Committee also stated that while there had been a certain degree of progress in achieving equality for women in political and public life, it remained concerned that the representation of women in Parliament and in senior official positions, including the judiciary, still remains low.²⁸ The Committee on Economic, Social and Cultural Rights noted that women are “generally employed in lower-paying and lower status jobs and are poorly represented in public service and office.”²⁹

Discrimination in these areas increases women's vulnerability to violence as it limits their ability to become economically independent and, as a result, makes it more difficult for them to escape from situations of domestic or other forms of violence, while the lack of female representation in decision-making structures means that the concerns of women are often not reflected in government policies or legislation.³⁰

In terms of violence against women, it should be noted that while important improvements have been made in recent years, including through the adoption of a new Family Law in 1999 which criminalises marital rape and domestic violence, much remains to be done.³¹ Despite the fact that the government has not engaged in the systematic collection of detailed statistical information in relation to rates of violence against women, it would appear from the information available that 11, 644 women were victims of violence in 1997, which amounts to 31.3 per cent of all reported physical injuries resulting from violence and represents an increase of 2 per cent in comparison to 1996. Non-governmental organizations working with women who have been victims of violence have reported an increase in the number of cases of domestic violence in particular. It is known that violence against women, whether this occurs in the family, in the community or at the hands of State officials is vastly under-reported.³²

The major reasons for the failure of many women to report violence are; inadequate responses and lack of gender sensitivity on the part of police, judges and other law enforcement officials; the lack of social awareness concerning the issue of violence against women as a crime; the fact that many women do not have the economic means to flee from violent home situations; and the lack of services available for the provision of protection and assistance to women who are victims of violence.

Clearly the ethnicity of women who have been subjected to violence plays an important role in their willingness and ability to report this violence. As discussed below, there is evidence of a failure by law enforcement officials to exercise due diligence in the investigation, prosecution and punishment of offences being committed against members of minority ethnic groups. Women from ethnic minorities who do report violence to the police therefore risk being harassed or intimidated by the very authorities who are supposed to protect them. Furthermore, as discussed in greater detail below, in Roma communities, domestic violence is often dealt with

within the community itself and there is strong pressure on Roma women not to seek outside legal assistance.

3.1.1 Effects of the Armed Conflict on Women in Croatia

Research on women in situations of armed conflict has shown that women are frequently and systematically targeted for sexual violence and that they are particularly vulnerable to this violence when passing through security check points, living in camps for internally displaced persons or refugees and when being held in detention.³³ The Beijing Platform for Action notes that women and girls are particularly affected by armed conflict due to their status in society and their sex. The Beijing Platform details some of the specific aspects of the impact of armed conflict on women as including; displacement, loss of home and property, loss or involuntary disappearance of close relatives, poverty and family separation and disintegration, and exposure to violence such as murder, torture, involuntary disappearance, sexual slavery, rape, sexual abuse and forced pregnancy.³⁴

During the conflict in Croatia, “violence against women as a strategic act of war was often committed by men known to them, when rape was committed in a highly organized fashion in camps or in a less organized way during ‘cleansing’ of villages and towns.”³⁵ The systematic rape of women from different ethnic groups which took place during the armed conflict in the territory of the former Yugoslavia has been acknowledged as constituting a form of ethnic cleansing or genocide.³⁶

Over half a million people were forced to flee Croatia as a result of the conflict, with women and children forming the majority of those displaced.³⁷ Many women have become heads of households as the result of the deaths or disappearances of male family members during the conflict.³⁸ As women, children and the elderly formed the majority of those displaced during the conflict, it is reasonable to assume that women have been particularly affected by the difficulties encountered by refugees wishing to return to Croatia.³⁹ It has been noted that displaced women of Serbian ethnicity have encountered severe discrimination in relation to obtaining Croatia citizenship and property rights and given that women are often the first family members to return, they are generally more exposed to this discrimination than men.⁴⁰ Due to gender and racial dis-

crimination in the labour market, minority women have also borne the brunt of the soaring levels of post-war unemployment, making it difficult for them to provide for themselves and their families and limiting their ability to become economically independent.⁴¹

Importantly, there is evidence to suggest that the currently high levels of family and community-based violence in Croatia are directly related to the ongoing impact of the armed conflict. Large numbers of former soldiers, the majority of them men, who have returned to Croatia continue to suffer, frequently untreated, from post-traumatic stress disorders that often find their most concrete expression in acts of violence, particularly in the family.⁴² The prevalence of the social attitude that former soldiers are “heroes” who fought for and protected Croatia during the war has meant that many women are reluctant to complain about violence suffered at the hands of husbands, brothers or fathers who fought in the war.⁴³ In addition, the increased availability of weapons following the conflict has reportedly resulted in greater numbers of shootings and threats with firearms or grenades in situations of family and community violence.⁴⁴

3.2 Violence against Women in the Family

Although the Croatian government has only collected limited statistics in relation to domestic violence, non-governmental organisations working in the country have evidence to suggest that this form of violence remains a widespread and underreported problem.⁴⁵ According to material obtained from Zenska Infoteka, as much as 98 per cent of violence against women in Croatia occurs within the family.⁴⁶

In 2001, an amendment to the Penal Code established an offence of family violence which, in addition to providing for the punishment of perpetrators, also establishes a system of supervision and counselling. Article 215.a. of the Code criminalizes “violent behaviour in the family” and provides that “a family member who by the use of violence, abuse or especially insolent behaviour humiliates another family member, will be sentenced to imprisonment from three months to three years.”⁴⁷ Importantly, while it was initially suggested that former husbands or *de facto* partners be included in the definition of “family” in Article 89 of the draft law, during the debate prior to the third reading it was decided not to

include former spouses or domestic partners in the amendments. Due to some intense lobbying from Croatian women's organisations, however, the version of Article 89 that was adopted on third reading does include former partners within its scope, albeit only in cases where these people are still living in the same household together.

Amendments simultaneously made to the Law on Misdemeanours were designed to protect victims by extending detention (for a period of up to 30 days) for perpetrators of domestic violence, even during the defendant's appeal.

Despite the legislative changes mentioned above and the welcome inclusion of marital rape and domestic violence as offences within the new Family Law adopted by Croatia in 1999, the failure to adopt a systematic programme of police training and the lack of effective procedures for the implementation of these new provisions means that, in practice, women remain inadequately protected against violence occurring in the home.⁴⁸ According to women's rights organisations, there is no special police unit for the prevention or investigation of cases of domestic violence, police are generally "insensitive and untrained for interventions in domestic violence situations" and often refuse to intervene in situations of domestic violence as they believe that it is a "private matter".⁴⁹

Of particular concern to the OMCT is the discrimination Roma women face in initiating proceedings for domestic violence. While domestic violence is, as mentioned above, vastly under-reported by women in general, it would appear that systemic police discrimination and violence against Roma communities has made Romani women especially unwilling to approach the Croatian authorities for assistance and redress in cases where they are victims of domestic and other forms of violence.

Certain Roma communities have maintained a tribunal-based court system, traditionally adjudicated by male elders and known as the "*kris*".⁵⁰ The overwhelming majority of cases heard by *krisa* involve domestic or relational disputes including; allegations that a bride is not a virgin; accusations that a Romani wife has been unfaithful; or cases in which a married woman has left the community, causing her husband to sue his wife's family. In some cases, a *kris* may be called – usually by the father of a Romani woman – over allegations of abuse or neglect by the husband. The *kris* is presently a relatively weak institution and it has often shown

great reluctance to become involved in family issues. The most common form of punishment handed down by the *kris* is a monetary fine, however, the court may also hand down a sentence banishing the guilty party from the community for certain periods of time. The *kris* reportedly has a high degree of credibility among groups that practice it and, for these groups, turning to non-Romani justice instead of the *kris* is frowned upon.

OMCT is unaware of whether or not Roma communities in Croatia are currently using indigenous court systems such as the *kris*. While it is obviously important for States, including Croatia, to develop strategies for the recognition and integration of Romani legal systems, OMCT has several concerns in relation to the potential role of Romani institutions in the adjudication of cases of domestic violence.

Firstly, OMCT believes that it is the responsibility of the Croatian government to ensure that all women have equal access to the judicial system and that it is essential for steps to be taken in order to sensitise law enforcement officials to the particular difficulties faced by women, and especially by women from ethnic minorities, in lodging complaints of domestic violence. The establishment of a separate system for the adjudication of cases of domestic violence in Roma communities may lead to a situation in which the Croatian authorities, already reluctant to intervene in cases of family-based violence, believe that they no longer have any role to play in protecting the rights of Romani women to be free from violence, thereby further marginalizing Romani women within the Croatian legal system.

Secondly, there are concerns that the adoption of a system similar to the *kris* in cases of domestic violence may not be capable of adequately taking into account the differential power relationships existing between the victim and the perpetrator of domestic violence. In short, OMCT is concerned that Romani women may be forced to accept an unsatisfactory settlement and/or dissuaded from seeking assistance through the Croatian legal system as the result of the establishment of Roma tribunals such as the *kris*.

To this end, OMCT would recommend the creation of a specialised unit within the police force responsible for responding to cases of violence against Roma. This unit should be staffed by women and men with strong links to the Roma community and it should also promote and develop

expertise in relation to dealing with issues of violence against Romani women.

3.3 Violence against Women in the Community

Violence and other forms of discrimination against women in the community is a problem that manifests itself in many ways. As stated previously, women from minority ethnic groups in Croatia are particularly vulnerable to violence and discrimination and the consequences of this violence are also conditioned by the gender and the ethnicity of the victim. Constitutionally, minorities are afforded legal protections against discrimination, however violence and other forms of discrimination, particularly against members of the Serb and Roma communities, continues to occur in relation to employment, housing, freedom of movement, and in the administration of justice.⁵¹

Over the last year, the European Roma Rights Center has reported an upsurge in the number of racially motivated attacks against Roma living in Croatia.⁵² The majority of these violent incidents have been committed by groups of skin heads and it appears that the authorities have not exercised due diligence in the prevention, investigation, prosecution and punishment of cases involving violence against Roma.

In one of the cases, which took place on 4 May 2001, a group of four skinheads attacked Ms. Mirsada Saric´, a 16 year old Romani girl, as she was selling calendars in front of the Zagreb cathedral. The group surrounded Ms. Saric´ and began pushing her, one of the skinheads slapped her across the face and then another of the group slashed her stomach with a knife. An ambulance was called and Ms. Saric´ was taken to hospital where she was treated for the wound and released later the same day. According to newspaper reports, none of the alleged perpetrators had been apprehended by 9 May 2001.⁵³ OMCT is unaware of any investigations or arrests being made in relation to this case nor has there been any indication that Ms. Saric´ has received compensation for the injuries that she suffered.

The linkage between discrimination on the basis of gender and discrimination based on ethnicity was very apparent in the 1998 attacks in the Croatian press against women's rights activists Rada Boric and Vesna

Kesic. On June 10 1998, the two women participated in a televised press club panel interview concerning the status of women in Croatia in which they discussed, among other things, the fact that according to recent data, “violence has returned from the battlefields back into the home.” Soon after the interview was televised, one of the other panellists, Milan Ivkovic (who, during the panel, was antagonistic and made several sexist and racist comments), wrote an editorial in the national newspaper *Vecernji list* in which he claimed that “more than 80 per cent of the activists from women’s and similar marginal organizations are Serbs” and that “although they also say they advocate on behalf of all women victims of war, they in fact advocate mostly for non-Croatian women.”⁵⁴

The organisations that the women represent decided to bring two legal suits against Ivkovic, both of were, according to the last information received, still pending. The first is a private, civil suit claiming “moral damage” while the second seeks a criminal prosecution on the grounds of discrimination against women and hate speech against the individuals and organisations involved.⁵⁵

3.3.1 Rape and Sexual Violence

According to the alternative report prepared by Croatian women’s rights organisation B.a.B.e. for the Committee on the Elimination of Discrimination Against Women in 1997, the number of recorded cases of rape against women in the community increased by 11.54 per cent in 1997 when compared with the preceding year.⁵⁶ Of the 73 recorded cases of rape in 1996, only 39 perpetrators were prosecuted and, of these, 19 perpetrators were found guilty, of whom 15 were sentenced to prison and 4 were put on probation. As with other forms of violence against women, it is known that rape by non-family members is a crime that is vastly under-reported.

Chapter XIV of the Croatian Penal Code is entitled “criminal acts against sexual freedom and sexual morality.” Article 188 of the Code defines the offence of rape in the following way:

“(1) Who forces another person by acts or by threatening to cause the death or bodily injury to that person or a person close to that person, to sexual intercourse or an equivalent sexual act, will be punished by a prison sentence lasting from one to ten years.”

Increased penalties are provided for gang rapes, rape committed in a “particularly cruel or humiliating way” and rape “causing death, serious bodily injury or pregnancy.”

Information received from local women’s rights organisations suggests that there have been several cases in recent years of elderly Serbian women being singled out for rape and other forms of sexual violence. Two such cases occurred in the Krajina region in 1997 and it is unknown whether there have been any police investigations, arrests or prosecutions in relation to these incidents.⁵⁷

3.3.2 Trafficking in Women and Girls

OMCT is particularly concerned by reports that Croatia is a transit and possible destination country for trafficking in women and girls.⁵⁸ According to the Greek Helsinki Committee, women and girls from the Federal Republic of Yugoslavia and from Bosnia-Herzegovina are being trafficked to western European countries through the territory of Croatia. There is some evidence that Croatia may also be a receiving country for trafficked women and girls, however, given that the authorities do not regard trafficking as a problem and that, as a consequence, there is no legislation or policy in place to prevent trafficking or to punish and prosecute traffickers, it is difficult to obtain information concerning the scale of the problem.⁵⁹

Croatia has yet to enact specific legislation for the prevention and punishment of trafficking and related exploitation. At the moment, the only possible avenues for bringing a case against persons suspected of trafficking women and girls into or through Croatia are Articles 177 and 178 of the Penal Code. Article 177 reads, “Whosoever illegally takes over the border one or more persons out of his/her self-interest shall be punished by a fine or sentenced to one year imprisonment.” Article 178 of the Code contains the offence of “international prostitution” which provides for prison terms ranging from three months to three years for persons found guilty of tempting, recruiting or instigating another person “to provide sexual services for profit in a country other than the one whose resident or citizen that person is.” In cases where coercion has been used to force the person to engage in “international prostitution” or where the victim is a child or a minor, the penalty is increased to between six months and ten years.

There is no information available as to the number of prosecutions, if any, that have been commenced on the basis of these two Articles, however, the U.S. Committee for Refugees reported that in August 2001, 110 Croatian police were allegedly fired for their suspected involvement in human trafficking.⁶⁰ In its concluding observations on Croatia in 2001, the Human Rights Committee expressed its regret that “despite widespread reports of the extent and seriousness of the practice [of trafficking of women] ... the Committee was not provided with information on actual steps taken to prosecute the persons involved.”⁶¹

Currently, when caught in the process of an illegal border crossing, trafficked women and girls are detained in a shelter in Jezevo near Zagreb, fined under the Law of Offences, and then deported to their State of domicile. The Croatian government takes no follow-up action and does not provide any support to victims, and no detailed research related to the dimensions of trafficking is available in Croatia.⁶²

The Report of the United Nations’ Expert Meeting on Gender and Racial Discrimination which was held in Zagreb in November 2000 noted that trafficking in women and girls is one area in which gender and racial discrimination intersect. The meeting agreed that “when attention is paid to which women are most at risk of being trafficked, the link of this risk to their racial and social marginalization becomes clear. Moreover, race and racial discrimination may not only constitute a risk factor for trafficking, it may also determine the treatment that racialized women experience in countries of destination.”⁶³ The Declaration adopted by the World Conference against Racism affirmed the “urgent need to prevent, combat and eliminate all forms of trafficking in persons, in particular women and children” and recognized that “victims of trafficking are particularly exposed to racism, racial discrimination, xenophobia and related intolerance.”⁶⁴

Clearly, there is not enough information available at present in order to gain an appreciation of the numbers of women who are being trafficked into or through Croatia for work in the sex industry, as cheap, unregulated labour or in domestic service. Drawing an analogy from studies that have been conducted in other countries in the region, however, it is clear that trafficked women are particularly vulnerable to violence and other forms of discrimination and that women from ethnic minorities are even more vulnerable to these kinds of human rights violations.⁶⁵

3.4 Violence against Women Perpetrated by the State

There is evidence to suggest that women from ethnic minorities face violence and other forms of discrimination in the administration of justice, particularly in their interactions with law enforcement officials. In addition to the direct violence and discrimination faced by minority women at the hands of law enforcement there have, as noted above, also been reported failures by the judicial system to act with due diligence in the investigation, prosecution and punishment of violence and discrimination committed against minority women by private individuals.

Information received from Boja buducnost (Better Future), a non-governmental human rights organisation which focuses on the rights of Roma women has documented the widespread discrimination against Roma women in the area of employment which has resulted in large numbers of these women being employed in the “grey economy” – reselling different articles in markets and on the streets. This activity brings Roma women into frequent contact with police and there have been numerous reports of police harassing Roma women using racist and sexist language as well as “minor” physical violence such as arm-twisting.⁶⁶

In June 2001, the Croatian daily newspaper *Vecernji list* reported the case of Ms. Hanca Masic, a 31-year-old Romani woman from Zagreb who, while five months pregnant, was allegedly slapped by a police officer which caused her to fall to the ground and strike her head rendering her unconscious. The report further stated that Ms. Masic was then subjected to racist insults by the medical team who first arrived at the scene of the incident in order to treat her. According to the media, the police are conducting an investigation into the incident, however, they stated that based on their information, Ms. Masic allegedly scratched the police officer on the face and then threw herself on the ground.⁶⁷ OMCT is not aware of any follow-up action being taken by the police in relation to this case.

The report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to places of detention in Croatia in 1998 notes that women were being held in the Zagreb and Split County Prisons.⁶⁸ Unfortunately, the Committee’s report does not contain any detailed information about conditions of detention for female prisoners nor does it provide a breakdown of the ethnic composition of the prison population.

OMCT would like to call upon the Croatian government in its next periodic report to provide detailed information concerning the ethnic breakdown of persons in detention and particularly, on conditions of detention for women including details concerning the gender and ethnicity of prison staff.

4. Conclusions and Recommendations

Women from ethnic minorities in Croatia face multiple forms of discrimination related both to their gender and to their ethnicity. While welcoming recent legislative reform, including the adoption of legislation in relation to domestic violence and the criminalisation of acts of racial discrimination, OMCT believes that more could be done in order to promote and protect the human rights of women from ethnic minorities in Croatia.

In order to prevent and punish violence and other forms of discrimination against minority women, OMCT would encourage the government to take urgent legislative and policy measures aimed at decreasing the general level of violence against women and racial discrimination in Croatian society while ensuring that special attention is paid to the specificities of women from ethnic minority groups.

In particular, OMCT would recommend that:

- Police and other law enforcement officials be provided with adequate training and rules of procedure in order to enable them to effectively respond to complaints of domestic and other forms of violence against women.
- This training include information in relation to national, regional and international law and policy on the prevention and eradication of violence and other forms of discrimination and, in particular, on the need to eliminate discrimination on the basis of ethnicity and gender.
- Care be taken in the recruitment of law enforcement personnel and prison staff in order to ensure that these bodies accurately reflect the ethnic and gender composition of the population.

- A specialised unit within the police force responsible for responding to cases of violence against minorities be created. This unit should be staffed by women and men with strong links to minority communities and it should also promote and develop expertise in relation to dealing with issues of violence against minority women.
- All cases of police violence and discrimination are thoroughly investigated and the perpetrators are prosecuted and appropriately punished under criminal and administrative law. Victims of violence and other forms of discrimination at the hands of police should be provided with adequate reparations.
- Policies and programmes on the gender-dimensions of racial discrimination be adopted by the government and applied at all levels and that a broad-based public awareness-raising campaign be developed in relation to violence and discrimination on grounds of race and sex.
- Comprehensive legislation be adopted to address the problem of trafficking and to ensure that women who are victims of trafficking are not prosecuted for offences relating to their irregular immigration status.
- Programmes which aim to provide protection and assistance to trafficked women and girls be developed in close collaboration with local non-governmental organizations.
- A system for the collection of data in relation to the number of women and girls who are trafficked into or through Croatia be developed with the resulting information being used in order to implement effective strategies to deal with the problem.
- Officials in all places of detention be given thorough training in the prevention of violence and discrimination, that they be made aware of the seriousness of these offences and that appropriate sanctions are applied to all officials found to have engaged in violence and other forms of discrimination.
- Women in detention are separated from men at all times in accordance with international standards and that women in detention facilities are supervised by female wardens.

- Independent monitoring mechanisms are established in order to prevent cases of torture and violence against persons in detention and to guarantee that all cases of such violence and discrimination are thoroughly investigated, prosecuted and punished and that the victims receive adequate reparations.
- Non-governmental organizations working with ethnic minority women in Croatia be closely involved in the development of relevant policies and legislation and that these organizations be provided with adequate financial and technical assistance from the government.
- In its next periodic report to the Committee on the Elimination of Racial Discrimination, the government provide further information on the connection between violence and racial discrimination in general and, in particular, on violence against women from different ethnic groups. Information on levels of violent crime, including statistics, should be disaggregated by both ethnicity and by gender in order to provide a clearer picture of the real situation of women in Croatia and to enable the development of effective policies to combat violence and other forms of gender-related racial discrimination.

1 Vienna Declaration and Programme of Action, June 1993, Part II, para. 42.

2 Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), para. 38.

- 3 Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), para. 48.
- 4 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration, UN Doc. A/CONF. 189/12, 25 January 2002, paras. 2, 69 and 70.
- 5 Committee on the Elimination of Racial Discrimination, General Recommendation No. 25, 20 March 2000, UN Doc. CERD/C/56/Misc.21/Rev. 3.
- 6 Committee for the Prevention of Torture, Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 30 September 1998, CPT/Inf (2001) 4, 10 April 2001.
- 7 On this point see concerns expressed by the Human Rights Committee in its Concluding Observations on Croatia, 26 April 2001, UN Doc. CCPR/CO/71/HRV, para. 8.
- 8 Croatia, Fifth periodic report to the Committee on the Elimination of Racial Discrimination, UN Doc. CERD/C/373/Add.1, 21 December 2000.
- 9 Committee on Economic, Social and Cultural Rights, Concluding Observations: Croatia, UN Doc. E/C.12/1/Add.73, 30 November 2001, para. 7.
- 10 *Ibid.*, paras. 9-10.
- 11 Human Rights Committee, Concluding Observations: Croatia, 26 April 2001, UN Doc. CCPR/CO/71/HRV, paras 19, 20 and 22.
- 12 *Ibid.*, para. 15.
- 13 Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia, UN Doc. E/CN.4/2001/47, 29 January 2001 and UN Doc. E/CN.4/2001/47/Add.1, 22 March 2001.
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- 15 B.a.B.e., Shadow Report, Information on file with author, February 2002, information published in Vecernji list, 17 August 2000, p. 5.
- 16 *Ibid.*
- 17 *Ibid.*
- 18 International Helsinki Federation for Human Rights, "Women 2000: An investigation into the status of women's rights in Central and South-Eastern Europe and the newly independent States", 2000.
- 19 Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia, UN Doc. E/CN.4/2001/47/Add.1, 22 March 2001; Committee on Economic, Social and Cultural Rights, Concluding Observations: Croatia, UN Doc. E/C.12/1/Add.73, 30 November 2001; Human Rights Committee, Concluding Observations: Croatia, 26 April 2001, UN Doc. CCPR/CO/71/HRV.

- 20 B.a.B.e., Shadow Report, Information on file with author, February 2002; European Roma Rights Center, "Pregnant Romani woman beaten by police and then insulted by medical team in Croatia," Roma Rights Nr. 4, 2001.
- 21 B.a.B.e., *NGO Report on the Status of Women in the Republic of Croatia*, November 1997.
- 22 *Ibid.*, citing *Vecernji list*, 20 October 2001.
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- 27 Committee on Economic, Social and Cultural Rights, Concluding Observations: Croatia, UN Doc. E/C.12/1/Add.73, 30 November 2001, para. 12.
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- 30 Women's Group Brod, Information about violence against women in the area of Brodsko-Posavska County, on file with the authors, February 2002; Georgette Mulhair and Tracey O'Brien, *Private Pain, Public Action: Violence Against Women in War and Peace*, University of Limerick, 2000, p. 155.
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- 64 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration, UN Doc. A/CONF. 189/12, 25 January 2002, para. 30.
- 65 See for example the sections on Bosnia-Herzegovina and Serbia in International Helsinki Federation for Human Rights, “Women 2000: An investigation into the status of women’s rights in Central and South-Eastern Europe and the newly independent States”, 2000.
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Committee on the Elimination of Racial Discrimination

SIXTIETH SESSION – 4-22 FEBRUARY 2002

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION:**

CROATIA

1. The Committee considered the fourth and fifth periodic reports of Croatia (CERD/C/373/Add.1) at its 1499th and 1500th meetings, on 6 and 7 March 2002, and, at its 1517th meeting, on 19 March 2002, adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by the State party and expresses its appreciation for the dialogue with the high-level delegation and for the answers given orally to the wide range of questions asked by members. While appreciating the extensive supplementary information given to it during the examination of the report, the Committee regrets that the responses to its previous concluding observations (CERD/C/304/Add.55), dated 10 February 1999, were not included in the body of the State party report.
3. The Committee regrets further that the report contains information mainly on the legal framework for the protection of rights of minorities and does not give sufficient information on the implementation of such legislation or on the extent to which minority communities enjoy the protection afforded by the Convention.

B. Factors and difficulties impeding the implementation of the Convention

4. The Committee notes that the State party is going through a difficult period of economic and social challenges in a period of post war reconstruction, which has resulted in obstacles to the full implementation of the Convention.

C. Positive aspects

5. The Committee welcomes the efforts of the State party to introduce legislative reform in accordance with international standards, and to establish institutions, programmes and policies to promote equality. In particular, the Committee welcomes the adoption of the Associations Act, the establishment of the Office for Human Rights, the elaboration of an education project to enhance equality for minorities and promote multiculturalism, the implementation of programmes for education in human rights within the school environment, and the introduction of human rights training for police officers and judges.
6. The Committee notes with appreciation the State party's statement of cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) as well as appropriate United Nations bodies, including the Office of the High Commissioner for Human Rights (OHCHR) and regional organisations.
7. The Committee welcomes the State party's stated commitment to involve non-governmental organisations (NGOs) in the preparation of its next periodic report to the Committee as well as its statement of intent to subscribe to article 14 of the Convention.

D. Concerns and Recommendations

8. The Committee reiterates its concern about the lack of clarity as to the various definitions used in the report and in domestic legislation to describe ethnic and national minorities. The Committee is concerned that the recent withdrawal of the draft Constitutional Law on the

Rights of National Minorities will create further delays in legislative protection for such minorities.

The Committee recommends that the State party include in its next periodic report clarification as to the legal definitions used for describing different minorities. It encourages the State party to finalise the Constitutional Law on the Rights of National Minorities in conformity with international standards and to include information regarding this matter in its next report.

9. It is noted that statistical data provided in the State party report are based on the 1991 census and that the results of the census of 2001 are still pending. The Committee is concerned that the delay in the publication of the results may create distrust among communities and has presented some difficulties for the Committee in undertaking effective analysis of issues affecting minorities.

The Committee strongly encourages the State party to finalise and publish the general population census conducted in 2001 in order to, inter alia, implement provisions of the law affecting political representation as well as to ensure, as necessary, special protection and benefits for ethnic minorities. Moreover, it is recommended that the next periodic report include updated statistical data on the demographic composition of the Croatian population.

10. With respect to article 2 of the Convention, the Committee remains concerned about the limited representation of minorities in the Croatian Parliament. While it is noted that the Act on Election of Representatives to the Croatian State Parliament provides for proportional representation of minorities, the Committee is concerned that not all minority groups are included in this process while others are underrepresented. In particular, it is noted that the Bosnians are not included in the list of minorities who may exercise the right to be represented in Parliament.

It is recommended that the State party take further measures to ensure fair and adequate representation of all groups of minorities in the Croatian Parliament and to include in its forthcoming report information concerning the measures taken in this regard.

11. The Committee expresses concern at the continued practice of segregation of Roma children within the educational system and the reports on discrimination against the Roma regarding access to employment, health, political representation and citizenship rights.

The Committee recommends that the State party pay particular attention to the situation of the Roma and take effective measures to prevent racial segregation against Roma children within the educational system. The Committee further recommends that the State party strengthen its efforts to address the high dropout and poor performance rates of Roma children and guarantee non-discrimination, especially as regards respect for their cultural identity, language and values. The Committee also encourages the State party to reinforce its efforts to train and recruit Roma teachers and to prevent discrimination against the Roma in access to employment, health, political representation and citizenship rights.

12. The Committee reiterates its concern regarding the lack of legal provisions to implement the State party's obligations under article 4 (b) of the Convention, notably the absence of legislative measures prohibiting incitement to racial discrimination and violence. Concern is also expressed about the adequacy of efforts by the State party to investigate and prosecute persons responsible for fomenting ethnic hatred, especially in the localities affected by war. In this connection, the Committee notes that there have been no convictions by the courts for incitement to racial discrimination and violence, despite the significant numbers of such allegations.

The Committee recommends that the State party comply fully with the obligations under article 4 of the Convention and that necessary legislative measures be taken in order to give full effect to the provisions of that article and to declare illegal and prosecute incitement to ethnic hatred and racial violence.

13. While noting the challenges confronted by the State party in meeting the needs of large numbers of refugees, returnees and displaced persons, the Committee is concerned that return is still hindered by legal and administrative impediments and hostile attitudes adopted by some central and local officials. In this regard, concern is further expressed about allegations of inconsistency and lack of transparency in the

National Programme for 'Return'. The Committee is particularly concerned about the insufficient efforts of the State party to prevent discrimination against minorities, especially Croatian Serbs, in addressing issues of restitution of property, tenancy and occupancy rights, reconstruction assistance as well as the inter-related issues of residency and citizenship rights.

The Committee recommends that the State party introduce further measures to ensure fairness, consistency and transparency in the National Programme for Return. Further, the State party is strongly urged to take effective measures to prevent discrimination, especially against Croatian Serbs, particularly as regards the restitution of their property, tenancy and occupancy rights, access to reconstruction assistance and rights to residency and citizenship. It is recommended that the State party provide in its next periodic report information concerning the steps taken to introduce effective legal and administrative regimes to resolve these issues. The Committee calls the attention of the State party to its general recommendation XXII (49) of 16 August 1996 concerning the rights of refugees and displaced persons.

14. With respect to article 5 of the Convention, the Committee restates its concern regarding inconsistency between articles 8 and 16 of the Croatian Law on Citizenship, which appears to establish different criteria in granting citizenship to ethnic Croats as compared to other nationalities in Croatia. Concern is expressed that many former long-term residents of Croatia, particularly persons of Serb origin and other minorities, have been unable to regain residency status despite their pre-conflict attachment to Croatia.

With respect to the acquisition of citizenship, the Committee again strongly urges that the State party undertake measures to ensure that all provisions of the Croatian Law on Citizenship are in conformity with article 5 of the Convention, and that the law is implemented in a non-discriminatory manner. The Committee also recommends that measures be taken to ensure that former long-term residents of Croatia are able to reclaim their status as citizens and/ or residents on a non-discriminatory basis.

15. The Committee is concerned about repeated claims of discriminatory

application of the right to equal treatment before the law, particularly in the area of property claims, where the courts reportedly continue to favour persons of Croat origin. The Committee also notes the large backlog of cases before the courts, which impedes access to justice.

The Committee recommends that the State party reinforce its efforts to ensure non-discrimination in the application of the right to equal treatment before the law, particularly in the area of repossession of property. The Committee further recommends that the State party include detailed information in its next periodic report concerning the measures taken to reduce the backlog of cases before the courts and improve access to justice.

16. While noting the efforts of the State party to introduce training for the police and judges, the Committee is concerned about the sufficiency of efforts to raise public awareness about the Convention, promote tolerance and discourage prejudice against certain minorities.

The Committee recommends that the State party strengthen its efforts to familiarize the public with the Convention, in order to reduce the level of prejudice against certain minorities, and to promote tolerance. In this regard, the State party should reinforce its efforts to provide instruction on international human rights standards in all schools and organize training programmes for persons engaged in the administration of justice, including judges, lawyers and law enforcement officials.

17. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures they have taken to implement the Durban Declaration and Programme of Action at national level.

18. The Committee recommends that the State party ratify the amendments to Article 8, paragraph 6 of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of State Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992 (CERD/C/304/ Add.64, para.18).

19. The Committee recommends that the State party submit its sixth periodic report together with the seventh report due on 8 October 2004, as an updating report responding to the points raised in the present observations.

Violence against Women in Czech Republic

A Report to the Committee on Economic, Social and Cultural Rights

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1. Preliminary Observations

1.1 International Obligations

The Czech Republic ratified the International Covenant on Economic, Social and Cultural Rights on 1 January 1993. The Czech Republic is also a party to other international human rights instruments which protect women from violence, *inter alia*: the Convention on the Elimination of All Forms of Discrimination against Women; which obliges States to pursue a policy of eliminating discrimination and to ensure that public authorities and institutions act in conformity with this obligation,¹ the International Covenant on Civil and Political Rights article 2 of which prohibits discrimination on the basis of sex, article 3 guarantees “the equal right of men and women to the enjoyment of all rights set forth in the Covenant”, article 6(1) protects the right to life, article 7 prohibits torture and other cruel, inhuman or degrading treatment or punishment, article 9(1) protects the right to liberty and security of person, and article 24 promises children protection by the state without any discrimination on the basis of, *inter alia*, sex; the Convention against Torture, which provides protection against violence in a more detailed manner; the Convention on the Rights of the Child which constantly uses both feminine and masculine pronouns in its provisions, and which makes it explicit that the rights apply equally to female and male children; and the Convention on the Elimination of Racial Discrimination.

Furthermore, the Czech Republic is a party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women and to the Optional Protocol to the International Covenant on Civil and Political Rights, both providing for individual complaints procedures. The Czech Republic also accepted the competence of the Committee on the Elimination of Racial Discrimination and of the Committee against Torture to hear individual cases, as specified in article 14 of the Convention on the Elimination of Racial Discrimination and article 22 of the Convention against Torture.

At the regional level, the Czech Republic is a party to the European Convention on Human Rights, the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or

Degrading Treatment or Punishment, as well as to the Framework Convention for the Protection of National Minorities.

According to article 10 of the Constitution of the Czech Republic, ratified and promulgated international accords on human rights and fundamental freedoms, to which the Czech Republic has committed itself, are immediately binding and are superior to law. However, the United Nations Human Rights Committee noted in their Concluding Observations on the Czech Republic in 2001, that while the International Covenant on Civil and Political Rights has a status superior to domestic legislation, not all rights contained in the Covenant have been incorporated in the Czech Charter of Fundamental Rights and Freedoms or in the national Constitution.²

The Czech Republic has integrated a gender perspective into several parts of its initial government report submitted to the Committee on Economic, Social and Cultural Rights (U.N. Doc. E/1990/Add.47). It has not, however, discussed the problem of violence against women and its link with many articles of the Covenant. Violence against women is taken up in the list of issues prepared by the Pre-sessional Working Group of the Committee on Economic, Social and Cultural Rights (U.N. doc. E/C.12/Q/CZE/1) to which the Czech Republic has provided replies (U.N.Doc. HR/CESCR/NONE/2001/10).

1.2 The Link Between Violations of Economic Social and Cultural Rights and Violence against Women

The submission of information specifically relating to violence against women to the Committee on Economic, Social and Cultural Rights forms part of the violence against women programme of the World Organisation Against Torture (OMCT) which focuses on integrating a gender perspective into the work of the five “mainstream” United Nations Human Rights Treaty Bodies.

In 1993, the Vienna Conference on Human Rights expressed the need to integrate the human rights of women into the work of human rights treaty bodies.³ The theme of integration was reiterated in the Platform for Action, adopted at the Fourth World Conference on Women in Beijing, in which governments committed themselves to the promotion of an active

and visible policy of mainstreaming a gender perspective into all policies and programmes.⁴ The Platform also emphasised that the goal of the full realisation of human rights for all requires explicit attention to the systemic nature of discrimination against women in the application of human rights instruments.⁵

Although the International Covenant on Economic, Social and Cultural Rights does not explicitly refer to violence against women, it does provide for the protection of women against violence. The International Covenant on Economic, Social and Cultural Rights establishes in article 2 that the rights recognised therein apply to individuals without discrimination on the basis of, *inter alia*, sex. This provision is reinforced by article 3, which establishes the States Parties' obligation to ensure "(...) the equal right of men and women to the enjoyment of all rights set forth in the Covenant." Article 6 recognises the right to work, which includes the right to everyone to the opportunity to gain a living by work that is freely chosen or accepted. Article 7 ensures the right of everyone to the enjoyment of "just and favourable conditions of work which ensure, in particular... (b) [s]afe and healthy working conditions (...)" Article 10 establishes that both parties to a marriage must freely consent, and ensures protection for working mothers, including paid maternity leave. It also recognises that "[c]hildren and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their moral development should be punishable by law." Article 12 (1) guarantees that "State Parties (...) recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." These articles give rise to questions relating to violence against women, including harmful traditional practices, female genital mutilation, domestic violence, marital rape, forced marriages, polygamy, early marriages, exploitation of female workers, sexual harassment, trafficking in women and forced prostitution.

The United Nations Declaration defines "violence against women" as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.⁶

The lack of attention to the economic, social and cultural rights of women has complicated the advancement of women and renders them vulnerable to violence. Violence against women generally derives from the perceived inferiority of women and the unequal status granted to them by laws and societal values and norms. The integration of a gender perspective within the context of economic, social and cultural rights shows how the exercise and enjoyment of these rights are adversely influenced by unequal gender relations, and the way in which these may lead to different forms of violence against women including; domestic violence, forced prostitution and trafficking as will be discussed in this report. On the other hand, it is clear that when violence against women is widespread, women cannot fully enjoy the economic, social and cultural rights set down in the Covenant, such as their 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.

2. General Observations Concerning the Status of Women in the Czech Republic

2.1 National Legal Framework on Women's Rights

The principle of equal rights of men and women is enshrined in articles 3 and 10 of the Constitution of the Czech republic. Article 3 states that “part of the constitutional order of the constitutional order of the Czech Republic is the Charter of the Fundamental Rights and Freedoms.” As mentioned above, article 10 of the Constitution states that “ratified and promulgated international accords on human rights and fundamental freedoms to which the Czech Republic has committed itself are immediately binding and superior to law.”

Article 1 of the national Charter of Fundamental Rights and Freedoms states that: “All people are free and equal in their dignity and in their rights.”

Article 3 of the Charter of Fundamental Rights and Freedoms states that “fundamental rights and freedoms are guaranteed to everybody irrespec-

tive of sex, race, colour of skin, language, faith, religion, political or conviction, ethnic or social origin, membership in a national or ethnic minority, property, birth, or other status.”

The new Labour Code provides for equal opportunities for both women and men, in particular with regard to the fundamental principle of equal treatment for men and women in access to employment, vocational training and promotions, working conditions and the prohibition of any kind of discrimination in employment relations on the grounds of sex.

Czech legislation does not discriminate against women regarding property rights. According to article 11 of the Charter of Fundamental Rights and Freedoms, everybody has the right to own property.

With regard to women in the family, section 18 of the Family Code governs marital rights and states that: “Men and women have the same rights and duties in matrimony.” (Although, as discussed below, in practice this provision is often not respected.)

2.2 Institutional Mechanisms that deal with Discrimination and Equal Opportunities

There are three national bodies that have been specifically established to monitor and act upon discrimination against women and equal opportunities. In 1998, the Division for Equality between men and women was established in the Ministry of Labour and Social Affairs. In order to assume its co-ordinating role, the Ministry initiated an interdepartmental Committee for Equal Opportunities for Men and Women. In December 1998, the government set up the Council of the Czech republic for Human Rights, which is supposed to act as a coordinating body to advise the government on issues related to the protection and promotion of human rights and fundamental freedoms. One of the eight sections of the Council is dedicated to equal opportunity for men and women. Also in 1998, a Subcommittee for equal opportunities for men, women and the family was set up under the Committee of Social Affairs. However, none of these three institutions has a mandate to deal with individual complaints of discrimination.

2.3 *Women in Government and Parliament*

The Human Rights Committee has expressed its concern at the low rate of participation of women in political life, as well as their inadequate representation at the higher levels of administration.⁷ OMCT is also concerned by the fact that women in the Czech Republic are isolated from political and legislative decision-making structures. The lack of opportunity for women to make decisions in the political, economic, social and cultural fields has serious implications for the advancement of women and for the full enjoyment of their human rights.

The absence of women in executive power structures in the Czech Republic is alarming. Whereas between 1990 and 1998, five women were ministers in the Government of the Czech and Slovak Federal Republic and two women were ministers in the provisional government in 1998, there are currently no women ministers in the Czech government. Only 12 women have been appointed as Deputy Ministers.⁸

The Prime Minister of the Czech Republic seems to be pursuing a policy that lacks progressiveness in the application of the principle of gender mainstreaming. This is somewhat ironic in light of the fact that he was the former leader of the only political party (the Czech Social Democratic Party - CSSD), that has officially tackled women's issues. The CSSD is also the only political party that applies a 25% female quota for all party bodies. Despite the fact that the CSSD has an internal women's organization of Social Democratic Women (SDW), women's involvement in the party's organizational structure is apparently the lowest (25.7%) in comparison with the participation of women in other political parties in the Czech Republic. For example, the Christian Democratic Union – Czechoslovak People's Party has the highest rate of the women present in the party's organizational units with 52.7%.⁹

The Czech Parliament has two Chambers: the Chamber of Deputies and the Senate. The Chamber of Deputies has 13 Committees, one of which is headed by a woman and six political clubs, none of which is headed by a woman. The Senate has nine Committees, two of which are headed by women and four political clubs, one of which is headed by a woman. Women constitute 15 % of the elected candidates in the Chamber of Deputies and 11.1 % in the Senate.

There are seven Senate delegations, none of which is headed by women. The Senate delegations play important role in liaison with European and trans-national structures and involving women in their activities would be advancement on the political scene for the Czech Republic. Out of the 27 members of all delegations, only five are women.

2.4 Women's Right to Work and Equal Remuneration for Work

The socio-economic situation of women is a factor of concern for OMCT. While the transition to a market economy has resulted in an overall rise in poverty and inequality, it has had a disproportionately negative affect on women. The UNDP's 1999 Human Development Report for Central and Eastern Europe and the CIS recognised that gender inequalities have been rising following the process of economic transition, with women's economic and personal security being on the decline.¹⁰

The right to work and the right to equal remuneration for work of equal value are enshrined in respectively article 26 and article 28 of the Czech Charter of Fundamental Rights and Freedoms that is a part of the Constitution of the Czech republic. With regard to equal treatment for women and men, the Czech Republic has made important steps forward in relation to bringing Czech legislation into conformity with international and regional standards with the Act on Civil Proceedings and the Amendment to the Salary and Bonus Act in 2001. Moreover, the Czech government, through the adoption of the New Labour Code on 1 January 2001, ensures equal access to employment and explicitly prohibits discrimination against employees on the basis of gender, marital and family status or obligations towards the family, and also prohibits sexual harassment in the workplace.¹¹ It guarantees the equal treatment of men and women in employment, the equalisation of childcare – introduction of parental leave and the consistent introduction of the principle of “equal pay for equal work”.

Despite the legislation that has recently been adopted and the special governmental bodies that have been established (see paragraph 2.2), to with the problem of inequalities in workplace, discrimination against women remains a problem in the labour market in the Czech Republic. The disadvantaged position of women in the labour market can be explained by the

pattern of structural changes caused by the transition to a market economy, but also by labour market policies. The Czech labour market is visibly segregated according to gender. Women dominate non-manual jobs without management or supervisory status and most of the categories of unskilled work. Women tend to be less well remunerated than men, even in situations where they are performing the same work.¹²

Social perceptions concerning women's role in the family tend to constitute impediments to women's advancement in the workforce. Czech women are still primarily regarded as mothers rather than as individuals and independent actors in the public sphere. Such a perception is a major obstacle to the implementation of the Convention because it reflects fundamental gender biases concerning gender roles and gives rise to indirect discrimination and *de facto* inequality.¹³ Czech employers are unwilling to hire single mothers or divorced women with custody of their children. Women with small children or women regarded as being of childbearing age encounter difficulties in entering the labour market. Also, women close to the retirement age (over 50 years), women with only primary education and Roma women face difficulties associated with unemployment. (*For more information on the Roma in the Czech Republic see OMCT's report submitted to the Committee on Economic, Social and Cultural Rights entitled: "The Roma in the Czech Republic: Discrimination, Violence and Violations of Economic, Social and Cultural Rights."*) Women in the Czech Republic have also been encouraged to leave the labour market through early retirement policies. The unemployment rate for women exceeds that for men by about one-third (5.7% for men and 9.3% for women)¹⁴ and a disproportionately small number of women hold senior positions.

Although the law prohibits discrimination in hiring and employment based on sex, in practice, employers remain free to consider sex, age, or attractiveness when making hiring decisions. Employers openly use factors such as age, sex, and lifestyle in their employment announcements and advertising.

Moreover, disparities persist in remuneration and segregation of women as a result of the employment of women in positions of lower pay or requiring lower qualifications. Differences between female and male wages are alarming. Women's' average earnings represent only 73.2% of

men's despite the fact that women often have a similar or better education and more qualifications than men.¹⁵

OMCT welcomes the fact that the government has approved a draft amendment to the Code of Civil Procedure, which shifts the burden from the plaintiff to the defendant in relation to the prosecution of cases of discrimination in the labour market. However, according to the government of the Czech Republic, no employment disputes with the motive of discrimination based on sex or on wage discrimination based on sex to date been registered by the Supreme Court.¹⁶ It should, however, be mentioned that there are no legal clinics that train students in the procedure for bringing discrimination complaints.¹⁷

The high rate of unemployment among women and their low average wages have both a considerable effect on the prevalence of violence against women, the circumstances in which the violence occurs, the consequences of the violence and on women's access to adequate reparation and redress.

2.5 Women's and Girl's Access to Education

The Czech legislation does not discriminate between men and women with regard to access to education. However, there is deficit in the number of women who receive university education. Although more women apply to university (e.g. in 1997 7,8% more women applied to universities than men) about 10,6 % more men are accepted. Certain quotas reportedly often limit the chances women have to study at university.¹⁸

The Committee on Elimination of Discrimination against Women viewed the Czech Republic's policy of creating "household management" schools, which, although not formally sex segregated are predominantly attended by women, as promoting gender stereotyping. The same applies with regard to the practice of some schools of admitting only boys because of their "different physical abilities".¹⁹

3. Violence against Women in the Family

3.1 Domestic Violence

As mentioned above, Czech society is still living under the influence of deeply-rooted prejudices and attitudes regarding the traditional division of roles between men and women. In many cases, these opinions are reflected in an unequal standing of partners within marriage, when raising children, and during divorce proceedings - including their standing before the state authorities.²⁰

The police do not keep detailed records in relation to the extent and scope of domestic violence.²¹ According to research performed by the STEM agency for the *Bily kruh bezpeci* (White Circle of Safety) organization, 26% of the inhabitants of the Czech Republic have experienced domestic violence directly, and 61% have heard of cases of domestic violence in their surroundings. In 97% of cases of domestic violence, the victims are women; in 3%, they are men. Despite the efforts of several non-governmental organizations such as the Environmental Law Service, White Circle of Safety, and ROSA, the prevailing opinion is that domestic violence is a private issue and that women are almost always seen as responsible for this violence.²²

Victims of domestic violence do not receive special assistance and there is a lack of professionally trained staff such as psychologists, social workers, police, doctors, nurses etc. who are capable of responding to cases of domestic violence.²³ Reportedly, neither the police nor the Public Prosecutor's Office nor the courts have a special department for dealing with cases of domestic violence. These authorities are ill-equipped to respond to domestic violence and frequently behave insensitively towards the victims. They reportedly constantly interrogate the victims, accuse them, traumatize them, and make their situations even more difficult.²⁴

It is believed that domestic violence is a highly underreported crime in the Czech Republic. When the police are contacted by a woman who is a victim of domestic violence, there is generally a lack of understanding and will to deal with the case.²⁵ They usually recommend that a physician's report be prepared regarding the injuries that have been inflicted, and then request that both of the parties "submit an explanation" (the term, and the

procedure are laid out in Art. 12 of Act No. 283/1991 on the Police of the Czech Republic). This is usually the end of the matter. Sometimes the police even blame the victim and persuade her not to file a complaint.²⁶

OMCT notes with concern that there are no legal provisions addressing domestic violence in the Czech Republic. Domestic violence can be dealt with like other offences related to assaults against life and health under Czech legislation, however, these provisions do not take into account the special relationship and the inter-dependence of the victim and the perpetrator of domestic violence, who are generally emotionally and financially involved with each other and thus have special (protection and remedial) needs. Protection orders do not exist in the Czech Republic and there is no legal framework to prohibit the perpetrator of domestic violence from approaching the assaulted woman.

It should also be noticed that proving a “mere beating” is not enough for the violence to be considered a criminal act under Czech law but instead constitutes a misdemeanour (Act No. 200/1990 on Misdemeanours), for which a fine of up to 3,000 CZK (=EUR 89, USD \$75) can be demanded. This fine often remains unpaid and in many cases, the victim herself has to pay it (since if the aggressor and the victim are marriage partners, they have joint property under the provisions of Art. 143 of the Civil Code). Repeated misdemeanour attacks do not result in stricter sanctions being applied to the abuser.

If the damage to the victim's health is more serious (the victim cannot function normally for at least 7 days), the perpetrator enters, according to the law, crime-punishment proceedings. The strongest possible punishment for the crime of harm to health is two years' imprisonment (Art. 221 of Act No. 140/1961, the Criminal Code). If the perpetrator is not a repeat offender, he generally ends up receiving parole.²⁷

Women victims of domestic violence often face pressure from their partners, families or families-in-law to drop criminal charges. Under Art. 163a of Act No. 141/1961 the Criminal Procedure Code, the explicit agreement of the injured party is a condition for initiating and continuing criminal proceedings for most felonies that have the common denominator of being related to domestic violence. The injured party can withdraw this agreement up until the time when the court adjourns for its concluding session.

The housing issue is one of the core problems for every victim of domestic violence. If a woman would like to leave her violent partner with whom she lives it is very difficult to find alternative accommodation. Municipal offices do not have apartments available for the victims of domestic violence; exceptionally, in pressing cases, a place can be arranged for a mother and any dependent children in a shelter.²⁸ According to article 705 paragraph 1 of the Civil Code, if the partners live in a shared apartment, in an apartment house, or a housing cooperative, the woman must, during divorce proceedings, submit a proposal regarding who will be obligated to leave the apartment once a replacement apartment is found. If the former husband refuses to move into the apartment that was arranged, a proposal for the execution of a court order must be submitted according to Art. 251 of Act No 99/1963 of the Criminal Procedure Code. Objections to this proposal may also be submitted. When the court refuses the objections and decides that the apartment being offered to the husband is sufficient, an appeal can still be made against this decision. Only after a decision on appeal is it possible to force the husband to leave the apartment. In practice, the court proceedings can take up to five years. In other words, if a victim of domestic violence wishes to resolve her situation and prevent further violence from being committed against her, she usually has no other choice than to leave the apartment herself and to live with members of her family.²⁹

Although OMCT welcomes the fact that the government, with the help of NGOs, has been endeavouring to improve the availability of shelter possibilities for women who have been raped or abused, it would, on the other hand, also like to emphasise that women abused by their partners should have the possibility to stay in their own apartment with adequate protection provided for by the law.

3.2 The Specific Case of Roma Women

OMCT is particularly concerned about the lack of an adequate response by the authorities to violence perpetrated against Roma people. While in general women reporting domestic violence face an unwillingness to deal with these cases by the authorities, it would appear that systemic police discrimination and violence against Roma communities (*as described in OMCT's report submitted to the Committee on Economic, Social and*

Cultural Rights entitled: “The Roma in the Czech Republic: Discrimination, Violence and Violations of Economic, Social and Cultural Rights) has made Roma women especially unwilling to approach the Czech authorities for assistance and redress in cases where they are victims of domestic and other forms of violence.

The socio-economic marginalisation of Roma women tends to limit their access to justice. Although article 37 of the Czech Charter of Fundamental Rights and Freedoms states that “everybody has the right to legal assistance in proceedings before the courts,” the European Roma Rights Centre notes that “the proportion of Roma defendants convicted without a lawyer is significantly higher than the proportion of other defendants.”³⁰

Another obstacle which prevents Roma women from complaining to the Czech authorities is the importance of family values in the Roma communities and their tendency to preserve the sanctity and the unity of the family. Certain Roma communities have maintained a tribunal-based court system, traditionally adjudicated by male elders and known as the “*kris*.”³¹ The overwhelming majority of cases heard by *krisa* involve domestic or relational disputes including; allegations that a bride is not a virgin; accusations that a Roma wife has been unfaithful; or cases in which a married woman has left the community, causing her husband to sue his wife’s family. In some cases, a *kris* may be called – usually by the father of a Roma woman – over allegations of abuse or neglect by the husband. The *kris* is presently a relatively weak institution and it has often shown great reluctance to become involved in family issues. The most common form of punishment handed down by the *kris* is a monetary fine, however, the court may also hand down a sentence banishing the guilty party from the community for certain periods of time. The *kris* reportedly has a high degree of credibility among groups that practice it and, for these groups, turning to non-Roma justice instead of the *kris* is frowned upon.

OMCT is unaware of whether or not Roma communities in the Czech Republic are currently using indigenous court systems such as the *kris*. While for the reasons mentioned above it is obviously important for the Czech Republic to develop strategies for the recognition and integration of Roma legal systems, OMCT has several concerns in relation to the potential role of Roma institutions in the adjudication of cases of domestic violence.

The establishment of a separate system for the adjudication of cases of domestic violence in Roma communities should not lead to a situation in which the Czech authorities, already reluctant to intervene in cases of family-based violence, believe that they no longer have any role to play in protecting the rights of Roma women to be free from violence, thereby further marginalizing Roma women within the Czech legal system. OMCT would like to emphasise that the Czech government has a responsibility to ensure that all women have equal access to the judicial system and that it is essential for steps to be taken in order to sensitise law enforcement officials to the particular difficulties faced by women, and especially by women from ethnic minorities, in lodging complaints of domestic violence.

Another particular concern to OMCT is that, while it believes that it is very important to preserve cultural values and traditions, they should not be used as an excuse to deny universal standards of human rights and permit discriminatory practices against women in the domestic and community spheres. As mentioned above, the majority of cases heard by *krisa* involve domestic or relational disputes concerning the regulation and curtailment of female sexuality, which may perpetuate violence against women. OMCT notes that all States have the responsibility to eradicate violence against women in the family and that they should take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices based on the idea of the inferiority or the superiority of either of the sexes or on the stereotyped roles for men and women (article 5 of the Convention on the Elimination of All Forms of Discrimination against Women).

3.3 Marital Rape

A study released in 1998 by the Prague Sexological Institute indicated that spouses or partners were responsible for 51 percent of rapes.³² Marital rape is a crime according to sections 241 and 163 of the Czech Criminal Code. However, in reality, the police rarely take such offences seriously because there is still a strong belief in the Czech Republic that women in a couple or marriage cannot be raped as it is traditionally considered their obligation to have sexual intercourse with their partner/husband at any time.³³

4. Violence against Women in the Community

4.1 *Trafficking in Women*

The Czech republic is a country of origin for trafficked persons as well as a country of transit and destination. Since 1990, prostitution has grown rapidly in the country with many women being trafficked by organised criminal groups to the Czech Republic from other Central and Eastern European countries, Africa, Asia and the Middle East. At the same time, the International Organisation for Migration reports that in Austria and the Netherlands, the largest groups of women forced into prostitution come from the Czech Republic. Some Czech women and children are trafficked within the borders of the Czech Republic, from areas of high unemployment to areas bordering Germany and Austria. It is clear that women living in poor areas in the Czech Republic, with low employment opportunities, are at a high risk of being trafficked.

Trafficked women are often lured into leaving their countries on false pretences through offers of jobs as models, maids, waitresses and dancers, and when they arrive in the Czech Republic, the traffickers take generally away their documents and they are forced into prostitution by means of threats and violence. Undocumented and unregistered by the authorities, these women live in constant fear of police arrest, fines, imprisonment and expulsion. Frequently, trafficked women are taken to the German border areas, where they are rotated among the Czech brothels in order to offer “fresh” faces to customers. After becoming a “used face”, a woman is sold into the sex industry in Western European countries.³⁴

In Cheb, a tourist town of 32,000 inhabitants, an estimated 10,000 Germans come on weekends to buy cheap goods and sexual services. Prostitution is highly visible in the streets as well as in night clubs, with up to 15 organised criminal groups collecting profits from trafficking in women. Most of the trafficked women come from Russia, Ukraine, Slovakia, Bulgaria, Romania and Albania. Ninety per cent of the clients are German.³⁵

Under the Czech Criminal Code, trafficking is a distinct crime. All acts connected with the recruitment and trafficking of women abroad are punishable. The fact that the law places an emphasis on the border-

crossing element creates a serious problem since attention is concentrated on the migration aspect of trafficking, rather than on the problem of fraud, violence coercion, kidnapping etc. and women trafficked within the borders of the Czech Republic are not covered. Prostitution is not criminalized, but it can be punished when it causes a “public nuisance”.

Section 246 states that a person who “decoys, recruits, or carries a woman abroad for the purpose of sexual intercourse with someone else shall be sentenced to 1-5 years imprisonment”. According to the same article, if the crime is committed by an organised group or the victim is under 18 years of age, or if the crime was committed for the purposes of using the woman for prostitution, the punishment is 3 to 8 years imprisonment. Moreover, section 235 on blackmailing, section 233 on displacement to another country, section 241 on rape and section 242 and 243 on sexual abuse of the Criminal Code may also be applicable to trafficking in women. Organising prostitution and pimping are illegal in the Czech Republic and punishable by a prison term of up to 8 years. If the victim is under the age of 15, the prison term is 12 years.

In 1995, the Organised Crime Division of the Czech police established a unit on Trafficking in Persons, which cooperates with other states to enforce these laws. The government reportedly investigates and prosecutes cases of trafficking in persons, although the conviction rates are low. During the year 2001, 25 persons were prosecuted for trafficking crimes, compared to 13 in 2000.³⁶

Gathering evidence in trafficking cases is problematic, as organised criminal groups often threaten and bribe the victims. Although a law on witness protection has been adopted, it does not deal specifically with women victims of trafficking and there are reportedly no laws concerning social security of victims of trafficking.³⁷ This is in contradiction with article 9 of the International Covenant on Economic, Social and Cultural Rights. Reporting the trafficking to the police puts women at great risk as there is no structure to protect women either during the criminal proceedings or following them. Instead the government relies on non-governmental organisations, for example LaStrada, to provide support and witness protection, some of these organisations receive funding from the government.

OMCT is concerned about the fact that, although foreign trafficking victims may be offered temporary residence when they agree to testify against the trafficker, foreign victims of trafficking are treated as illegal immigrants and either are detained or expelled from the country within 30 days. Detained trafficked persons are sometimes deported, but more frequently are released and requested to leave the country within 30 days. The victims are not entitled to any material, financial or other support from the government. There have been cases in which the police have deported non-Czech trafficked persons to the border of their country of origin and left them without any financial or other help.³⁸

OMCT is concerned that there seems to be no attempt by the Czech authorities to determine prior to deportation whether a trafficked woman will be at risk of human rights abuses upon return to her country of origin. The same is relevant when trafficked women have given information to the Czech police or testified in criminal proceedings. Before deciding to expel anyone, the Czech Republic should take into account the human rights situation and the effective state protection available against persecution in the state of origin in relation to the risk that the individual concerned might face in this context.³⁹

OMCT would also like to express its concern over the fact that since trafficked women risk detention, forced deportation and further human rights abuses at the hands of their traffickers, pimps, or other people involved, either in the Czech Republic or abroad, women are afraid to file a complaint with the Czech police or to testify in criminal cases. Consequently, trafficked women remain trapped in an abusive situation and the human rights abuses committed against them often go unpunished.

Finally, OMCT is also concerned by the fact that trafficked women upon their return to the Czech Republic, often without any financial resources, clothes, accommodation or identification documents, often afraid to go to their families out of shame, and often with mental and physical problems cannot receive government assistance because of their lack of identity documents. These women and girls are thus not able to cover their basic living costs and once again become particularly vulnerable to violence.

5. Conclusions and Recommendations

Despite the fact that the Constitution, the Charter of Fundamental Rights and Freedoms and other legislation in the Czech Republic guarantee the enjoyment of economic, social and cultural rights of women on an equal footing with men, in reality, gender inequalities regarding these rights have been rising, particularly following the transition to a free market economy. Stereotypical perceptions of women's role in the family have tended to aggravate the generally disadvantaged socio-economic status of women in the Czech Republic. Women have been particularly disadvantaged by *de facto* gender discrimination and economic policies.

Women are still perceived by the government as mothers within the family context instead of as individual and independent actors in the public sphere. Women are vastly under-represented at the decision-making levels in both the political and economic spheres. OCMT also notes with concern the discrepancies between the wages of women and men and the segregation of women into low-paying and low-skilled jobs, when in fact the majority of women are actually better educated than their male counterparts.

OMCT would recommend that the Czech Republic adopt urgent measures to increase the participation of women in decision-making structures in both the public and private sectors, if necessary through the adoption of appropriate positive and temporary special measures. OMCT would also encourage the government to adopt policies, which facilitate women's access to the employment market on an equal footing with men.

OMCT would also recommend that the government implement public education programmes to eliminate traditional stereotypes of the roles of men and women in society and to eradicate practices which discriminate against women.

The socio-economic inequality between men and women in Czech Republic and the feminisation of poverty has created a situation in which women are particularly vulnerable to violence. This violence constitutes a serious obstacle to the achievement of gender equality and to women's enjoyment of economic, social and cultural rights. Although violence against women is a significant problem in the Czech Republic, women seldom report this violence to the authorities due to a lack of trust in the

police, arising from insensitive attitudes, ineffective legislation, and their insufficient awareness of the right to be free from violence. OMCT is particularly concerned by the fact that Roma women have little confidence in the Czech police. Also economic dependence on a partner, lack of housing and lack of adequate protection are all significant factors that discourage women from leaving and/or filing charges against a violent partner.

OMCT is gravely concerned about the fact that the Czech Criminal Code does not contain any special provisions protecting women against domestic violence. When family violence is prosecuted and punished, the punishments imposed do not take account of the specific situation of domestic abuse and frequently also punish the victim by fining the perpetrator who may have a common bank account with the victim. The Czech legislation does not provide for protection orders like prohibiting the perpetrator from approaching the assaulted woman and thus effectively protecting women in cases where they become victims of domestic violence. Moreover, there is no opportunity for the woman to resort, at least for a short period, to a social welfare facility that would protect her from the perpetrator.

OMCT is very concerned that the housing issue is one of the core problems for every victim of domestic violence when trying to decide whether or not to leave her violent partner. It is very difficult for women to find either alternative accommodation or to obtain a legal order requiring the abuser to leave the house. As a consequence, women tend to remain in the same house as their violent partners.

OMCT would recommend that the Czech Republic take effective measures with respect to the enactment of legislation on domestic violence along the lines of the guidelines submitted by the United Nations Special Rapporteur on violence against women to the fifty-second session of the United Nations Commission on Human Rights (U.N. doc. E/CN.4/1996/53, Add.2). This legislation should provide a framework for the protection of a spouse who is subjected to violence or threats of violence. Moreover, it should enact legislation which specifically recognises marital rape, and rape by a partner as criminal offences. OMCT would particularly recommend the training of police officers, prosecutors, and judges on how to deal with violence against women. The government

should also collect data and maintain accurate statistics on the scope and nature of domestic violence in the Czech Republic.

OMCT would also recommend the creation of a specialised unit within the police force responsible for responding to cases of violence against Roma. This unit should be staffed by women and men with strong links to the Roma community and it should also promote and develop expertise in relation to dealing with issues of violence against Roma women.

OMCT would like to express its great concern about the increase in prostitution and the trafficking of women, and girls, which is largely related to poverty, lack of employment opportunities and a lack of effective national measures to suppress the growth of these practices. Women, desperate for work, migrate abroad, without knowing the actual conditions of their labour. Traffickers prey on women's desperation and force them into prostitution or forced labour. Although under the Czech Criminal Code, trafficking is a distinct crime, the fact that the law only applies to cross-border trafficking means that attention is concentrated on the migration aspects of trafficking, rather than on the problem of fraud, violence coercion, kidnapping etc. and women trafficked within the borders of the Czech Republic are not covered. Of further great concern is the fact that the perpetrators of these acts of violence against women reportedly continue to enjoy impunity.

OMCT notes with concern that there are reportedly no laws concerning the provision of protection and assistance to victims of trafficking. Although non-Czech victims of trafficking may be offered temporary residence when they agree to testify against the trafficker, generally foreign victims of trafficking are treated as illegal immigrants and are either detained or expelled from the country within 30 days without any financial assistance or attempts by the Czech authorities to determine prior to deportation whether they will be at risk of human rights abuses upon return to their country of origin.

OMCT would suggest that the Czech Republic develop and implement adequate policies to combat trafficking and forced prostitution which require effective laws, services to victims in the form of social security, residency permits, and witness protection programmes as well as facilitating the access of women to viable employment and training opportunities.

Finally, OMCT would insist upon the need for the Government to fully implement all of the provisions of the Convention for the Elimination of All Forms of Discrimination Against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials.

1 In 1992, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted General Recommendation 19 in which it is stated that “gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.” Uzbekistan is not, however, party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

2 U.N. Doc. CCPR/CO/72/CZE.

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

4 Beijing Platform for Action, para 38.

5 *Ibid*, para 222.

6 Article 1 of the Declaration on the Elimination of Violence against Women.

7 U.N. Doc. CCPR/CO/72/CZE.

8 www.vlada.cz.

9 KSCM – Communist Party of Bohemia and Morava (43.5%), ODS – Civic Democratic Party (25.2%), In: www.hlidacifena.cz, 18/04/02.

- 10 UNDP, Human Development Report for Central and Eastern Europe and the CIS, 1999, p. 7.
- 11 Employment law and New Amendment to Employment Act of 2001 Act §7 (2) prohibits both direct and indirect discrimination based on gender, family or matrimonial status and repeated offences are punishable by fines of up to 1 million Czech crowns.
- 12 Cermakova Marie, Sociology Institute AV CR, "Czech women on the labour market in the 1990's".
- 13 See also the Concluding observations of the Committee on the Elimination of Discrimination against Women: Czech Republic. 14/05/98. A/53/38, paras. 167-207.
- 14 Czech Statistical Yearbook 1999.
- 15 Research conducted by the Sociology Institute of AV CR, Praha, Czech republic, 2001. The Government Report states in paragraph 267 that "according to the latest available data (the first half of 1999) women have hourly wages which are on average 26.3% lower than men," U.N. Doc. E/1990/5/Add.47.
- 16 U.N. Doc. HR/CECR/NONE/2001/10.
- 17 International Helsinki Federation for Human Rights, Women 2000: An Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States, 2000, p. 137.
- 18 <http://www.feminismus.cz/ebooks/platforma/4.html>
- 19 Concluding observation of the Committee on the Elimination of Discrimination Against Women: Czech Republic, 14/05/98. A/53/38, paras. 167-207. (Concluding observations/Comments).
- 20 Marketa Hunkova, Coordinator of the Environmental Law Service's Counselling Centre for Women in Crisis Project.
- 21 This is admitted in the "Replies by the Government of the Czech republic to the list of issues (E/C.12/CZE/1) to be taken up in connection with the consideration of the initial report of the Czech Republic concerning the rights referred to in articles 1-15 of the International Covenant on Economic, Social and Cultural Rights, U.N. Doc HR(CESCR/NONE/2001/10).
- 22 Marketa Hunkova, see note 20.
- 23 International Helsinki Federation for Human Rights, see note 17, p. 148.
- 24 Marketa Hunkova, see note 20.
- 25 International Helsinki Federation for Human Rights, see note 17, p. 148.
- 26 *Ibid.*
- 27 Marketa Hunkova, see note 20.
- 28 *Ibid.*
- 29 *Ibid.*
- 30 European Roma Rights Centre, Roma Rights, No.1, 2001, p. 41.
- 31 European Roma Rights Centre, "Nexus: Domestic Violence, Romani Courts and Recognition," Issue 1, 2000.
- 32 U.S. Department of State, Czech Republic, Country Reports on Human Rights Practices – 2001.

Czech Republic

33 International Helsinki Federation for Human Rights, see note 17, p. 148.

34 United Nations Office for Drug Control and Crime Prevention, The Case of the Czech Republic, www.undcp.org, consulted on 15 April 2002.

35 *Ibid.*

36 U.S. Department of State, Czech Republic, Country Reports on Human Rights Practices – 2001.

37 International Helsinki Federation for Human Rights, see note 17, p. 151.

38 *Ibid.*

39 OMCT believes that by returning woman in an indifferent manner, the Czech Republic is violating the principle of non-refoulement, enshrined in article 3 of the Convention against Torture as well as in other instruments such as the 1951 Convention relating to the Status of Refugees. According to article 3 of the Convention against Torture, no State party shall expel, return ('refeouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

Committee on Economic, Social and Cultural Rights

TWENTY-EIGHTH SESSION – 29 APRIL-17 MAY 2002

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT**

**CONCLUDING OBSERVATIONS OF THE COMMITTEE ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS :
CZECH REPUBLIC**

1. The Committee on Economic, Social and Cultural Rights considered the initial report of the Czech Republic on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.47) at its 3rd, 4th and 5th meetings, held on 30 April and 1 May 2002 (E/C.12/2002/SR.3-5), and adopted, at its 23rd meeting, held on 15 May 2002, the following Concluding Observations.

A. Introduction

2. The Committee welcomes the initial report of the State party, which it found to be comprehensive and generally in conformity with its guidelines for the preparation of reports.
3. The Committee notes with appreciation the extensive written and oral replies given by the State party, as well as the candid and open nature of the constructive dialogue with the delegation. The Committee also welcomes the willingness of the delegation to provide further information in writing to some of the questions that could not be answered during the dialogue.

B. Positive Aspects

4. The Committee welcomes the enactment of a number of laws as well as legislative reforms undertaken in the country towards the promotion of economic, social and cultural rights.
5. The Committee welcomes the establishment of the Council for Human Rights of the Government, which was created in 1998 as well as the Office of the Public Protector of Rights in 1999.
6. The Committee notes with appreciation the cooperation of the non-governmental organizations with the State party in the preparation of this report.

C. Factors and Difficulties impeding the Implementation of the Covenant

7. The Committee notes that the State party encountered difficulties in the implementation of economic, social and cultural rights contained in the Covenant arising from the process of transition to market-oriented economy.

D. Principal subjects of Concern

8. The Committee regrets that the Covenant has not been given full effect in the State party's legal order and that most of the Covenant's rights are not justiciable in domestic legal order, in particular, the right to adequate housing, which the State party considers as merely declaratory non-entitlement right.
9. The Committee regrets the absence of a national plan of action for the protection on human rights in accordance with the Vienna Declaration of 1993. Furthermore, the Committee is concerned about the absence of an independent national human rights institution in accordance with the Paris Principles of 1991.
10. The Committee is concerned that the inadequacy of the social safety nets during the restructuring and privatization process, have negatively

- affected the enjoyment of economic, social and cultural rights, in particular by the most disadvantaged and marginalized groups.
11. The Committee is concerned about the recent decision of the State party to continue to apply, in contravention of its obligations under articles 2(2) and 6 of the Covenant, the lustration laws.
 12. The Committee is deeply concerned about the high level of discrimination against Roma people in the field of employment, housing and education. In spite of the fact that the State party acknowledges this fact, the administrative and legislative measures undertaken by the State party to improve the socio-economic condition of Roma are still insufficient to address the problem. The Committee is also concerned that, despite the affirmative programs in favour of the Roma undertaken by the State party, no specific legislation has yet been enacted to outlaw discrimination against Roma.
 13. The Committee notes with concern that the State party has not ratified a number of ILO Conventions relevant to economic, social and cultural rights.
 14. The Committee is alarmed about the increasing rate of unemployment, particularly among women, the Roma people and other vulnerable groups.
 15. The Committee is concerned that the minimum wage is still not sufficient to provide a decent standard of living for workers and their families.
 16. The Committee notes with concern that there continues to be an inequality in wages between men and women with women still earning approximately 75% of men's salaries.
 17. The Committee notes with concern that the problem of domestic violence against women is not being sufficiently addressed and about the fact that the Penal Code of the Czech Republic does not contain any specific provision protecting women against domestic violence.
 18. The Committee is concerned about the increasing rate of trafficking in women as well as the sexual exploitation of children.
 19. The Committee is deeply concerned about the acute shortage of

housing and the privatization of some public housing stocks which have resulted in a sharp rise in rents, forced evictions and homelessness.

20. The Committee is also concerned about the inadequacy of measures to ensure a decent life for persons with disabilities, including the mentally ill.
21. The Committee is deeply concerned about the high rate of drugs and tobacco use as well as the high level of alcohol consumption, especially among children and the youth.
22. The Committee notes with concern that the incidence of HIV/AIDS is increasing, especially among young people.
23. The Committee is deeply concerned about the over representation of Roma children in so-called "special schools" which are primarily designed for mentally retarded children, resulting in discrimination, substandard education and the stigma of mental disability.
24. The Committee is concerned about a constant decrease in the budget expenditure allocated to education and the consequences thereof on the enjoyment of the right to education.

E. Suggestions and Recommendations

25. The Committee urges the State party to take appropriate steps to give full effect to the Covenant in its legal system, so that the rights covered by it may be directly invoked before the courts.
26. The Committee strongly recommends that the State party adopt a National Plan of Action for Human Rights and within this framework the creation of a National Human Rights Institution, to deal with the protection and promotion of all human rights, including economic, social and cultural rights.
27. The Committee strongly recommends to the State party to integrate the provisions of the Covenant into its privatisation programs and provide for social safety nets in carrying them out.

28. The Committee urges the State party to repeal the lustration laws.
29. The Committee urges the State party, in line with "The Concept of Roma Integration", approved by the Government on January 23, 2002, to take all necessary measures, legislative or otherwise, to eliminate discrimination against groups of minorities, in particular Roma.
30. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Covenant in the domestic legal order, in particular in respect of article 2(2) of the Covenant and that it include in its next periodic report information on action plans or other measures it has taken to implement the Durban Declaration and Programme of Action at the national level.
31. The Committee encourages the State party to provide statistical data in its second periodic report, in particular on the enjoyment of economic, social and cultural rights by women, Roma and people with disabilities.
32. The Committee recommends the State party to ratify, in particular ILO Convention No. 2 on Unemployment, ILO Convention No. 81 on Labour Inspection, ILO Convention No. 117 on Social Policy, ILO Convention No. 118 on Equality of Treatment, ILO Convention No. 138 on Minimum Age ILO, Convention No. 174 on Prevention of Major Industrial Accidents and ILO Convention No. 182 on Worst form of Child Labour.
33. The Committee calls upon the State party to take effective action to reduce the unemployment rate in particular among Roma people, women and other vulnerable groups.
34. The Committee urges the State party to re-examine on periodic basis the level of minimum wages in order to secure a decent standard of living for all workers and their families.
35. The Committee urges the State party to intensify its efforts to address the gender inequality and to take the effective measures, legislative or otherwise to ensure that women enjoy full and equal participation in the labour market, particularly in terms of equal pay for work of equal value.

36. The Committee calls upon the State party to enact specific legislations on domestic violence.
37. The Committee urges the State party to adopt effective measures against the trafficking in women as well as the sexual exploitation of children.
38. The Committee urges the State party to take effective measures to address the problems of: a) the housing shortage by adopting housing programmes, especially for the disadvantaged and marginalized groups, b) forced evictions and homelessness by respecting the Committee's General Comments 4 and 7 and devising a comprehensive plan to combat homelessness.
39. The Committee encourages the State party to adopt a comprehensive National Health Strategy.
40. The Committee recommends that the State party adopt effective measures to ensure more appropriate living conditions for persons with disabilities. The Committee requests the State party to report in its second periodic report on the laws and measures adopted by the State party with regard to people with disabilities, including the mentally ill, in particular on the number hospitalized, the facilities made available to them and the legal safeguards put into effect for the protection of patients.
41. The Committee calls upon the State party to adopt effective measures to reduce tobacco smoking, drug abuse and alcohol consumption, especially among children.
42. The Committee recommends to the State party to comply with the standards of the international guidelines on HIV/AIDS and human rights, adopted at the Second International consultation on HIV/AIDS and Human Rights in September 1996.
43. The Committee recommends that the State party consider increasing the budget allocation for education.
44. The Committee urges the State party to take immediate and effective measures to eliminate discrimination against Roma children by removing them from "special schools" and integrating them into the mainstream of the educational system.

45. The Committee encourages the State party to provide human rights education in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among state officials and the judiciary.
46. The Committee requests the State party to inform the Committee, in its second periodic report on steps taken to implement its concluding observations. The Committee also encourages the State party to continue involving non-governmental organizations and other members of the civil society in the preparation of its second periodic report.
47. Finally, the Committee requests the State party to submit its second periodic report by 30 June, 2007.

Violence against Girls in Moldova

A Report to the Committee on the Rights of the Child

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Concluding observations of the Committee on the Rights of the Child: Moldova

Thirty-first session – 16 September - 4 October 2002

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1. Preliminary Observations

The submission of information specifically relating to violence against girls to the Committee on the Rights of the Child forms part of the Violence Against Women Programme of the World Organization Against Torture (OMCT), which focuses on integrating a gender perspective into the work of the United Nations Human Rights Treaty Bodies.

The Convention on the Rights of the Child is the only “mainstream” human rights instrument in force which uses both feminine and masculine pronouns in its provisions, and which makes it explicit that the rights apply equally to female and male children. Moreover, the Convention stresses in article 2 (1) that: “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s (...) sex (...)”

The Convention on the Rights of the Child includes the protection of girls from physical or mental violence in the home, in the community and from violence perpetrated by State officials in its provisions. It states in article 19 (1) that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” Article 24 (3) argues that “States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.” In addition, article 34 declares that “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.” Norms applicable to violence against girls detained in penal or psychiatric institutions include: article 37 (a) which declares that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment,” and article 37 (c) which provides that “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of her age.” Article 39 provides that “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any form

of cruel inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

The reporting guidelines of the Committee on the Rights of the Child contain an umbrella clause which requests States Parties to provide gender-specific information, statistical data and indicators on various issues covered by the Convention on the Rights of the Child. The particular situation of the girl child is also dealt with more specifically with regard to certain articles. For example, with respect to article 1 of the Convention (definition of the child), the Committee on the Rights of the Child has identified gender-specific issues of particular relevance to the girl child, such as the linking of the age of criminal responsibility to the attainment of puberty and the minimum age for marriage which is particularly problematic in cases where it is set very low. With respect to article 2 (non-discrimination), States Parties are requested to provide information “on the specific measures taken to eliminate discrimination against girls and when appropriate indicate measures adopted as a follow-up to the Fourth World Conference on Women.”¹

1.1 The Applicable Legal Framework

The Republic of Moldova acceded to the Convention on the Rights of the Child (CRC) on 26 January 1993.

Moldova has also ratified or acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Convention against Torture (CAT).

The Optional Protocols to the ICCPR, the CEDAW and the CRC have yet to be ratified by Moldova.

In light of the fact that trafficking in persons is a serious problem in Moldova, OMCT is also concerned that the government has signed but has yet to ratify the Protocol to Prevent, Suppress and Punish Trafficking

in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime.

At the regional level, Moldova is a party to the European Convention on Human Rights, the European Convention for the Prevention of Torture and the Framework Convention for the Protection of National Minorities.

Article 16 of the Constitution of Moldova provides that all citizens are “equal before the law and the public authorities, without any discrimination as to race, nationality, ethnic origin, language, religion, sex, political choice, personal property or social origin” (emphasis added). Importantly, this provision would not appear to be as broad as article 2 (1) of the CRC in that it prohibits direct or *de jure* discrimination but does not explicitly prohibit indirect or *de facto* discrimination.

Article 24 (1) of the Constitution guarantees everybody the right to life and to physical and mental integrity and article 24 (2) states that “no one may be subjected to torture or to cruel, inhuman or degrading punishment or treatment.” Importantly, article 50 of the Constitution concerns the “protection of mothers, children and young people” and provides in its paragraph 4 that “both the exploitation of minors and their misuse in activities endangering their health, moral conduct, life or normal development are forbidden.”

OMCT is concerned that despite the provision in Article 4 (2) of the Constitution of Moldova which stipulates that “wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations”, the domestic status of international human rights treaties, including the CRC, remains somewhat ambiguous. It is unclear whether international human rights treaties can be directly invoked before national courts and the report by the government does not provide comprehensive information concerning the remedies available to children in cases where their rights under the CRC have been violated.

In spite of the commitments entered into by Moldova at the regional and international levels and the adoption of national legislation aimed at the promotion and protection of the human rights, violations of human rights continue. OMCT is particularly concerned by the fact that violence and other forms of discrimination against girls at the hands of both private

individuals and public officials appear to be widespread. Given that the government's initial and first periodic report (CRC/C/28/Add.19) does not provide statistics disaggregated by gender or other specific information concerning the situation of girls in Moldova, and in line with the goals of OMCT's programme on Violence against Women as outlined above, this report will examine the effects of gender on the form that human rights abuses in Moldova take, the circumstances in which these abuses occur, their consequences, and the availability and accessibility of remedies. The report ends with a set of conclusions and recommendations for action.

It should be noted that certain far-reaching amendments to the Penal Code and to the Code of Criminal Procedure of Moldova are currently being debated by the parliament. As OMCT has not been able to obtain a copy of the draft legislation and it is still uncertain as to whether this legislation will be adopted, any references to the Penal Code that appear in this report relate to the Code that was in force at the time of writing.

2. General Observations on the Status of Girls in Moldova

The status of girls and women in Moldova is clearly influenced in large measure by the prevailing human rights situation in the country. In many areas, it is not the absence of an adequate legal framework that has acted as an obstruction to the promotion and protection of human rights in Moldova (although, as outlined below, there is a need for additional legislation on domestic violence and on trafficking), but rather a lack of the necessary political will, resources and training to adequately enforce the law.²

The Council of Europe's Commissioner for Human Rights has documented the deterioration in the socio-economic situation in Moldova over recent years and has noted that this has led to a huge increase in poverty, unemployment and corruption as well as widespread violations of other economic, social and cultural rights including drastic cutbacks in the provision of medical care, welfare protection, education and training. A growing number of violations of civil and political rights have also been observed and there has been an alarming increase in the number of children reportedly involved in prostitution as well as an exacerbation of violent crime including domestic violence.³

In its 2000-2001 impact assessment on the situation of children in the Republic of Moldova, the United Nations Children's Fund (UNICEF) noted that Moldova is a country in crisis and that it is children and other "vulnerable groups" who are bearing the brunt of the resulting poverty, deteriorating educational and health services, high levels of emigration and increasing "violence and general uncertainty".⁴ While the impact assessment does not contain any information specifically concerning the situation of girls in Moldova, it is important to note that the report highlighted a number of human rights violations that may particularly affect women and girls including; trafficking and forced prostitution, domestic violence, a lack of adequate gynaecological or obstetric services and violations of minimum standards in state-run institutions.⁵

OMCT remains concerned by the fact that there are no official records or statistics available concerning rates of violence against children in general and girls in particular. There is clearly an urgent need for research to be undertaken in this area in order to ensure that effective solutions are developed for the prevention and punishment of acts of violence against children as well as for the rehabilitation and reparation of child victims.

2.1 Legal Status of Girls

Under article 16 of the Family Code of Moldova, the minimum age of marriage is set at 18 for men and 16 for girls and the Code further provides that, in exceptional circumstances, the age of marriage can be lowered to 14 for girls and to 16 for boys. In its concluding observations on Moldova's initial report concerning its implementation of the CEDAW in 2000, the Committee on the Elimination of Discrimination Against Women expressed its concern at the gender disparity in the age of marriage which it stated was not in conformity with article 16 (2) of the Convention and called upon the government to take action to bring its legislation into line with the CEDAW.⁶

OMCT is also concerned about the difference in the age of marriage and believes that this distinction constitutes a violation of the general non-discrimination provision contained in article 2 of the CRC. It should be noted that early marriage often leads to early pregnancy as well as to a prolonged reproductive life and that these two factors have been

associated with a range of adverse health outcomes for both the mother and her children.⁷

2.2 Poverty and Homelessness

As mentioned above, the economic impact of the transition period has been keenly felt in Moldova with an estimated 80 per cent of the population being affected by poverty.⁸ The number of homeless children has increased significantly over the past few years and girls reportedly constitute the majority of these homeless children.⁹

2.3 Education and Employment

While the right of access to education without discrimination is guaranteed in Article 35 of the Constitution of Moldova, in practice girls reportedly do not have equal access to education. According to statistics from the Ministry of Education and Science, there was a marked discrepancy in the number of girls who attended pre-school institutions in 1997-1998 (about 66,000) as compared with the number of boys (around 72,000). The same figures indicated that the level of enrolment in primary schools was higher for boys than it was for girls.¹⁰

There has been a marked increase in the level of unemployment in Moldova since the beginning of the transition period in the early 1990s. Women and girls have been particularly affected by the lack of available job opportunities and it has been estimated that 68 per cent of the unemployed are women, despite the fact that these women generally have the same level of training as men. When women and girls do enter paid employment, they are, on average, paid 70 to 80 per cent of the salary that a man would receive for doing the same job.¹¹

2.4 Reproductive Rights and Health Care

The generally poor health status of children and women is reflected in the high rates of maternal, infant and under-five mortality.¹² The maternal mortality figure for women reportedly increased from 25.8 per 100,000 women in 1994 to 48.3 per 100,000 women in 1997 with the leading

causes of maternal deaths being venereal disease and complications related to pregnancy and abortions.¹³

According to research carried out by UNICEF, half of all women of reproductive age in Moldova have poor reproductive health characterised by high rates of abortions, STIs and resulting complications and an inadequate use of barrier contraceptive methods. Women in Moldova currently have the shortest life expectancy of any women in Europe and poor nutrition is reportedly responsible for dietary deficiencies and malnutrition amongst children.¹⁴

Inadequate funding for primary health care services for children and mothers has meant that low-income families have extremely limited access to these services and that the quality of care has declined.¹⁵

3. Violence against Girls in the Family

There is very little information available concerning the prevalence or scope of domestic violence in Moldova. The few studies that have been conducted by international inter-governmental agencies or non-governmental organisations have focused on domestic violence against women and these tend to refer to the situation of children only incidentally if at all.¹⁶ For this reason, the following section draws mainly on the information that has been collected in the context of studies on domestic violence against women and attempts, where possible, to draw attention to the probable impact that this form of violence has on girls.

3.1 Domestic Violence

Despite the fact that domestic violence remains a vastly under-reported crime in Moldova, available information suggests that it is a widespread phenomenon and one that has increased as the economic crisis has deepened.¹⁷ According to a recent UNICEF report, the risk of domestic violence is four times higher in low-income families than in well-off families with approximately 17.2 per cent of families exhibiting mistreatment. Physical assaults were recorded in one-fifth of the cases of abuse, with 8 per cent of children having been expelled from the family home, and 4.5

per cent being refused food.¹⁸ In the 1997 *Reproductive Health Survey*, 22 per cent of the women surveyed reported that a partner or former partner had abused them at some time in their lives with women from every age group having experienced physical violence.¹⁹

While the government is clearly aware of that domestic violence is a serious problem in Moldova, few initiatives have been taken in order to prevent or combat this violence. The Ministry of Labour, Social Protection and Family has stated that:

At present, the frequency of domestic violence, whose victims are women and children, is acquiring alarming proportions. Unfortunately, it is very difficult for the state to control domestic violence since in most of the cases it is reported only when there are severe consequences to the violence, the other cases being considered just family conflicts.²⁰

In her presentation of the report by the government of Moldova to the Committee on the Elimination of Discrimination Against Women in 2000, the government representative stated that “although the law protected women against all forms of violence, including domestic violence, it was difficult for the State to intervene in situations that were considered family conflicts.” In its Concluding Observations on the report, the Committee on the Elimination of Discrimination Against Women expressed its deep concern about the prevalence of domestic violence in Moldova and called upon the government to take urgent measures to address the situation including through the adoption of legislation, the provision of protection and remedies to victims of domestic violence and by ensuring that public officials, particularly law enforcement officers and the judiciary, are fully sensitised to the seriousness of domestic and other forms of violence.²¹

The few services such as shelters, hotlines, legal and medical assistance that are currently available to victims of domestic violence are being provided by local non-governmental organisations that are, in the main, funded by the international community.²²

3.1.1 Legal and Procedural Framework

Moldova does not have any legislation that specifically defines and penalises domestic violence, nor are there any legal provisions that estab-

lish mechanisms to provide victims of domestic violence with protection, assistance and reparation.

Complaints relating to certain kinds of domestic violence, namely physical assault, may be made under the Code on Administrative Offences or under the Criminal Code. Article 47 of the Code on Administrative Offences stipulates that the “intentional infliction of light bodily injury” is punishable by a fine ranging from 180 to 450 lei or by administrative arrest for a period of up to 30 days. Articles 95-101 of the Criminal Code cover various categories of “intentional bodily injury” and are differentiated by the degree of physical injury caused. The penalties for assault range from imprisonment or correctional work for one year for “less serious bodily injury” under article 98 of the Code to imprisonment for three to ten years for “intentional severe bodily injury” under article 95. Importantly, the assault provisions in the Criminal and Administrative Offences Codes do not apply to psychological violence and, while rape or sexual violence within the context of marriage can be punished with one to five years of imprisonment under article 105 of the Criminal Code, very few cases of marital rape are brought before the courts.

It is important to note the crucial role that forensic evidence plays in the Moldavian criminal justice system. In order to successfully bring a complaint of assault under the Criminal Code, the victim must have their injuries evaluated and certified by a forensic doctor as this is the only medical evidence that is acceptable for the purposes of criminal proceedings. The forensic doctor uses the categories of injuries established in articles 95-98 of the Criminal Code, that is: severe bodily harm (life-threatening injury, mental illness or the termination of pregnancy); medium injury (health disorders that last more than 21 days); and light bodily injury (health disorders which last between 6 and 21 days).

3.1.2 Official Attitudes and Practice

In spite of the prevalence of domestic violence in Moldova and the fact that it is theoretically possible for children to commence legal proceedings for domestic violence under the Administrative or Criminal Codes, domestic violence is still routinely regarded as a “private matter” by law enforcement officers and members of the judiciary. The major focus of the legal system is reportedly on reconciling the victim and the perpetrator

rather than on sanctioning the abuser or providing protection and assistance to the victim.²³

Even when cases of domestic violence are prosecuted, the sentences given to perpetrators tend to be at the lower end of the scale with most offenders being ordered to pay a small fine.²⁴ Between 1998 and 2000, the government of Moldova routinely granted amnesty to various classes of prisoner and it has been reported that men sentenced for assault in domestic violence cases have been among those released.²⁵

Prevailing social attitudes to domestic violence as well as the economic dependence of women and girls on male family members have worked to discourage girls and women from reporting this violence. These socio-cultural factors are reinforced by the attitudes of public officials to domestic violence, the lack of support provided to victims wishing to file complaints and the absence of protective mechanisms such as restraining orders or injunctions requiring that the perpetrator vacate the family home, as well as the procedural complexities involved in commencing proceedings.

3.2 *Incest*

Incest is a criminal offence and may be prosecuted under the Penal Code, however, there are no statistics available on its prevalence and it is believed that due to the social taboos surrounding incest as well as the lack of support structures available for child victims it is a vastly under-reported crime.²⁶

There is evidence to suggest girls who have been the victims of incest or other forms of domestic violence are especially vulnerable to trafficking. In its 2001 report on trafficking, Salvati Copiii (Save the Children) Moldova states that it has assisted several girls who were reportedly raped by their fathers, step-fathers or brothers whilst they were aged between 9 and 12 and who were then subsequently trafficked abroad for the purposes of sexual exploitation.²⁷

4. Violence against Girls in the Community

4.1 Rape and Sexual Violence

According to a survey published by the International Helsinki Federation for Human Rights in 2000, there are very few officially registered cases of rape or other forms of sexual violence in Moldova. The survey, however, revealed that 7 per cent of girls aged 16 and 31 per cent of girls and young women aged 16-19 had suffered sexual violence. Of the women who reported having been raped, 38 per cent stated that the rape had occurred before they were 20.²⁸

Article 102 of the Penal Code punishes sexual intercourse involving the use of force with deprivation of liberty from three to seven years. An investigation can only be initiated once the victim has filed an official complaint and provided forensic as well as other types of evidence.

4.2 Trafficking in Women and Girls

Due to its geographical location and current economic climate, Moldova has emerged as a major country of origin, destination and transit for trafficking in women and girls. Concern about the extent of the problem of trafficking to, from and through Moldova has prompted a number of inter-governmental and non-governmental organizations to finance counter-trafficking programmes in the country and the government has also recently begun to take steps to address certain aspects of trafficking. Nevertheless, these measures have not, in the main, been particularly effective in stemming the tide of irregular migration from the country and women and girls remain especially vulnerable to violence at the hands of trafficking networks.

4.2.1 The Scope of the Problem

In its recent examination of the initial report of Moldova under article 40 of the International Covenant on Civil and Political Rights, the UN Human Rights Committee expressed its concern at “widespread reports of extensive trafficking, particularly of women, in violation of article 8 of the Covenant.”²⁹ In June 2000, the Committee on the Elimination of

Discrimination Against Women also voiced its concern about “the increase in trafficking in women and girls for a variety of purposes, including sexual exploitation” and urged the government of Moldova to adopt measures to combat trafficking.³⁰

Reliable statistics concerning the numbers of women and girls who are trafficked from and through Moldova are very difficult to obtain and it is thought that those trafficked women and girls who request assistance from international organizations, NGOs or the authorities represent only a very small fraction of the total number of women and girls who are being trafficked. The International Organization for Migration (IOM) has reportedly assisted more than 840 women and girls to return to the country since mid-2000.³¹ The women and girls assisted by IOM were trafficked from Moldova to Macedonia, Kosovo, Bosnia and Herzegovina, Albania and Italy. Ten per cent of the trafficked persons whom IOM has assisted to return to Moldova are girls with the youngest of these being 13 years of age.³²

In its 2001 report on trafficking in children, Salvati Copiii (Save the Children) Moldova notes that in many cases of child trafficking, the parents of children are promised large earnings by traffickers if they allow their children (most frequently girls aged between 14 and 16) to go abroad to work.³³ Given that the majority of families in Moldova are living below the poverty line, many parents feel that they have no choice other than to agree to let their children be trafficked abroad in the hope that any eventual earnings can be used to support the rest of the family. In many cases, the parents are not aware of the final destination of their children nor are they informed of the real nature of the work they will be forced to do. The Salvati Copiii report states that:

... hundreds of young girls issued with fake IDs in which their age is changed to make them of legal age, are trafficked to Albania via Romania, Yugoslavia, Hungary, and Bulgaria where they are divided into groups and then sold for juvenile prostitution, pedophilia, organs, drug trafficking etc. ... Once the girls become the property of the traffickers, their documents are taken away and they become simple objects of exploitation. They never get money for their work, as they are told that they owe the pimp sums he paid when he bought them ... After talking to victims that are repatriated it

has been determined that they suffer incredibly inhuman treatment, the degree of violence they pass through can hardly be imagined.³⁴

4.2.2 Legal Framework and Government Response

The government has been very slow to develop an effective legislative or policy response to the issue of trafficking in persons and most of the anti-trafficking initiatives that are currently in place were instigated and funded by international organizations and are being carried out by non-governmental organizations.³⁵ There is no clear government policy on trafficking and inter-ministerial initiatives on trafficking prevention have generally not been consistently implemented. The lack of resources devoted to counter-trafficking coupled with widespread corruption and official complicity in the activities of organized criminal groups have made it virtually impossible for the government to fulfill its obligations under international law in relation to the prevention, investigation, prosecution and punishment of trafficking.

The US State Department's annual report on trafficking for the year 2001-2002 ranks Moldova as a "tier 2 country", that is, as a country that does not yet fully comply with the minimum standards for the elimination of trafficking as defined in the US Victims of Trafficking and Violence Protection Act 2000 but is making "significant efforts" to bring itself into compliance with these standards.³⁶ The ranking of Moldova in tier 2 has been the subject of some controversy with several human rights organizations arguing that the country should have been ranked in tier 3 as the provision in the Criminal Code on trafficking does not meet the standards required under the US legislation and there are no government-operated and run programs to assist trafficking victims.³⁷

Up until the middle of last year, Moldova had no legal provisions that specifically criminalized trafficking in persons and any proceedings against traffickers had to be brought under the very limited pandering provision in article 105-2 of the Criminal Code. On 30 July 2001, parliament passed an amendment to the Criminal Code that introduced article 113 (2) entitled "Illegal trafficking in Human Beings."³⁸ Article 113 (2) covers trafficking for the purposes of forced labour, slavery, debt bondage and sexual exploitation and lays out penalties of prison sentences ranging from 5 to 25 years.

While the new article does constitute an improvement, it fails to meet international and regional standards in relation to anti-trafficking legislation and the OSCE has issued a series of recommendations requesting that the parliament consider redrafting the legislation.

Despite the development of a legal basis for the prosecution of trafficking and related offences, very few prosecutions for trafficking have been brought and the prevailing corruption amongst law enforcement officials as well as the complicity of government authorities in trafficking has led to widespread impunity for traffickers. As of September 2001, there were 33 pending prosecutions for trafficking while amnesties were accorded in each of the 15 cases that were prosecuted prior to September 2001 meaning that there have been no convictions for trafficking to date.³⁹

Due to the lack of effective implementation of the anti-trafficking provision in the Criminal Code as well as the absence of any legislation on witness protection, very few trafficked persons have been willing to provide testimony for the purposes of prosecution. In addition, many women and girls are reluctant to testify due to fear of being accused of prostitution which is a criminal offence under article 105-1 of the Criminal Code and punishable by imprisonment from six months to one year.⁴⁰

4.2.3 The Connection between Illegal Migration and Trafficking

The issues of labor migration and trafficking are closely connected and in many cases it is difficult to draw a clear line between the phenomena of illegal migration and trafficking. A recent survey carried out by the International Labor Organisation found that trafficking and migration from Moldova share an important characteristic in that nearly all persons seeking work in Europe need assistance to gain access to illegal avenues of migration. The ILO study noted that both age and sex are determinative in relation to vulnerability to trafficking and that many young women who pay “middlemen” to provide them with assistance to illegally migrate end up being exploited by trafficking operations.⁴¹

The lack of economic opportunities available to young people in Moldova has been shown to be one of the biggest factors pushing children and young adults to migrate.⁴² According to a recent study, the net external

migration of young people aged between 14 and 24 over the last decade has been estimated at 130,000, the third highest rate in the region. At present, almost 90 per cent of young people aged between 18 and 29 have expressed a desire to leave the country at least for a little while.⁴³

Gender also plays a fundamental role in driving decision-making in relation to migration given that, as mentioned above, women and girls are particularly affected by discriminatory social stereotypes, the feminization of poverty and violence.⁴⁴ Those women and girls who have the necessary contacts and resources generally use safe, although still illegal, means of negotiating to leave the country using the services of legitimate “travel agencies.” Women and girls who are not in a position to pay these agencies usually make arrangements with traffickers.⁴⁵

5. Violence against Girls Perpetrated by the State

The general context of policing and the administration of justice in Moldova is reportedly characterised by widespread corruption and other violations of international standards including; arbitrary arrests followed by ill-treatment and, in some cases, torture; abuses of the power of arrest and prolonged periods of administrative detention in order to extort confessions or money; and complicity with organised criminal groups including those involved in trafficking in persons.⁴⁶

There is very little information available concerning the situation of girls in conflict with the law or on girls in institutional settings. OMCT is, however, alarmed by the fact that there is no separate system of juvenile justice in Moldova and that in the absence of funding for diversionary programmes, many adolescents end up serving sentences in adult detention facilities where they are particularly vulnerable to violence and ill treatment. In addition, the increasing numbers of children who have been made homeless as a result of adult emigration or family breakdown linked to the economic crisis in Moldova has led to a dramatic growth in the number of children being placed in state-run institutions. The failure of the government to adopt policies favouring family-based care for these children has meant that most children in government institutions are living in conditions that do not meet minimum international standards.

5.1 Violence against Girls in State-run Institutions

According to statistics from the International Helsinki Federation for Human Rights, the total prison population of Moldova has increased substantially over recent years and as of late 2001, there were 7,380 persons being held in various detention facilities. This figure included 239 women and 106 minors (no gender disaggregated data was available) who were being detained in the Lipcani prison colony.⁴⁷ Adolescents are held in adult detention centres as there are no separate juvenile facilities and alternative sentencing options are generally not applied.⁴⁸

OMCT has been able to obtain certain general information concerning conditions of detention in prison colonies and specialised institutions and it would appear that conditions in these places of detention do not meet minimum international standards with reports of severe over-crowding, lack of adequate food and drinking water, a lack of medical assistance coupled with high rates of tuberculosis and HIV infection, allegations of the exploitation of prison labour and a lack of follow-up by the independent institutions charged with responding to complaints from prisoners.⁴⁹

In 1999, it was estimated that between 3,400 and 4,000 children were living in state-run institutions (orphanages, boarding schools or correctional facilities under the supervision of either the Ministry of Health or the Ministry of Education).⁵⁰ Non-governmental and inter-governmental organisations have been very critical of the government's policy of favouring the institutionalisation of homeless, abandoned or orphaned children as these groups feel that there has been a lack of investment in non-institutional alternatives such as foster homes or other family-oriented care options.⁵¹ In addition, the lack of resources allocated to the staffing and maintenance of state-run institutions for children combined with the increase in the number of children in need of state care has led to a dramatic deterioration in conditions in these institutions with widespread reports of ill treatment.⁵² Girls in state-run institutions in Moldova are especially vulnerable to rape and other forms of sexual violence at the hands of adult staff and older children.⁵³

6. Conclusions and Recommendations

The government of Moldova has made numerous commitments at the national, regional and international levels for the promotion and protection of all human rights and OMCT welcomes the fact that Moldova is a party to most of the major international and regional human rights treaties. OMCT would urge the government to strengthen its commitment to the promotion and protection of human rights by ratifying the Optional Protocols to the ICCPR, the CEDAW and the CRC and by making a declaration under article 22 of the CAT recognising the competence of the Committee against Torture to receive and process individual communications.

While OMCT is aware of the serious economic problems that Moldova is currently facing, it believes that the government has not taken adequate steps to ensure that the economic climate does not have an adverse impact upon the human rights of the population. OMCT is particularly concerned by the situation of girls and women as these groups have reportedly suffered disproportionately as the result of cutbacks in spending on welfare, health and education.

Women and girls in Moldova reportedly suffer from violence and other forms of discrimination largely as a result of entrenched socio-cultural attitudes that work to perpetuate male dominance. For this reason, OMCT would call upon the government to initiate far-reaching educational and training programmes addressed to the general public as well as to relevant public officials at all levels.

OMCT is concerned by the different ages of marriage for girls and men as established in the Family Code of Moldova and it would call upon the government to amend the Code so that the legal age for marriage is raised to 18 years for both women and men.

OMCT remains concerned by the fact that there are no official records or statistics available concerning rates of violence against children in general and girls in particular. There is clearly an urgent need for research to be undertaken in this area in order to ensure that effective solutions are developed for the prevention and punishment of acts of violence against children as well as for the rehabilitation and reparation of child victims.

OMCT is deeply concerned by the fact that violence against girls and women, in particular domestic violence and trafficking, remain prevalent in Moldova. There is an urgent need to adopt effective legislation and policy to prevent and combat all forms of violence against women and girls including through the development of training and awareness-raising campaigns targeting public officials at all levels as well as the general public. Efforts must be made to ensure that all relevant public officials, especially law enforcement agents and members of the judiciary are given adequate training in national, regional and international standards for the promotion and protection of the human rights of women and girls.

OMCT would recommend that the government adopt specific legislation for the purposes of preventing and punishing domestic violence. This legislation should be developed in accordance with the guidelines submitted by the United Nations Special Rapporteur on Violence against Women to the fifty-second session of the United Nations Commission on Human Rights in 1996 (UN doc. E/CN.4/1996/53, Add.2).

Trafficking in girls and women remains a serious problem in Moldova and OMCT would urge the government to make a binding commitment to preventing and combating trafficking by ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime. OMCT would also urge the government to consider using the Recommended Principles and Guidelines on Human Rights and Human Trafficking (UN Doc. E/2002/68/Add.1) as adopted by the Economic and Social Council in July 2002 as the basis for the development of a comprehensive legislative and policy response to the issue. Cross-border cooperation should also be increased in this area either through the conclusion of bilateral agreements with neighbouring countries or under the auspices of regional organisations.

The government should develop appropriate services to support and assist trafficked women and girls and additional support should be provided to non-governmental organisations working with women and girls who have been trafficked.

OMCT is alarmed by the fact that there is no separate system of juvenile justice in Moldova and it is deeply concerned by reports that adolescents are being detained in adult prisons. There is an urgent need for action in

the area of juvenile justice and OMCT would call upon the government to adopt immediate measures to ensure that children in conflict with the law are treated in accordance with the principles and standards contained in article 40 of the CRC and other relevant international instruments.

OMCT is also concerned by the fact that large numbers of children are being held in state-run institutions that do not conform to minimum international standards. The government is urged to consider putting in place a system of alternative care options for homeless, orphaned or abandoned children including through an expansion of the network of foster or family-based care options. In addition, OMCT would call upon the government to immediately undertake an independent review of the prevailing conditions in orphanages, boarding schools and correctional facilities in order to ensure that these comply with minimum standards.

Finally, OMCT would insist upon the need for the Government to fully implement all of the provisions of the Convention for the Elimination of All Forms of Discrimination Against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for girls against violence in the family, in the community and at the hands of State officials.

1 U.N. Doc. CRC/C/58, para. 28.

2 Salvati Copiii (Save the Children Moldova), *Report on migration and trafficking in human beings from Eastern Europe and in particular from the Republic of Moldova*, 2001, <http://sem.ngo.moldnet.md>.

3 Council of Europe, Office of the Commissioner for Human Rights, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Moldova 16 to 20 October 2000, Comm DH (2000) 4, 20 December 2000.

4 UNICEF, *The Situation of Children and Family in the Republic of Moldova: Assessment and Analysis*, UNICEF, Chisinau, 2002.

5 *Ibid.*

6 Committee on the Elimination of Discrimination against Women, Concluding Observations: Republic of Moldova, CEDAW/C/2000/II/Add.6, 27 June 2000, paras. 47-48.

7 WHO Doc. WHO/FRH/WHO/97.8, *Violence Against Women*.

- 8 Council of Europe, Office of the Commissioner for Human Rights, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Moldova 16 to 20 October 2000, Comm DH (2000) 4, 20 December 2000.
- 9 International Helsinki Federation for Human Rights, Women 2000: An Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States, IHF, July 2000, p. 313.
- 10 International Helsinki Federation for Human Rights, Women 2000: An Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States, IHF, July 2000, p. 312.
- 11 Barbara Limanowska, *Trafficking in Human Beings in Southeastern Europe*, UNICEF, June 2002, p. 25.
- 12 UNICEF, *The Situation of Children and Family in the Republic of Moldova: Assessment and Analysis*, UNICEF, Chisinau, 2002.
- 13 International Helsinki Federation for Human Rights, Women 2000: An Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States, IHF, July 2000, p. 316.
- 14 UNICEF, *The Situation of Children and Family in the Republic of Moldova: Assessment and Analysis*, UNICEF, Chisinau, 2002.
- 15 *Ibid.*
- 16 See Minnesota Advocates for Human Rights, *Domestic Violence in Moldova*, December 2000, www.mnadvocates.org. See also UNICEF, *The Situation of Children and Family in the Republic of Moldova: Assessment and Analysis*, UNICEF, Chisinau, 2002.
- 17 UNICEF, *The Situation of Children and Family in the Republic of Moldova: Assessment and Analysis*, UNICEF, Chisinau, 2002.
- 18 *Ibid.*, p. 42.
- 19 US Department of Health and Human Services, Centres for Disease Control and Prevention, *Reproductive Health Survey*, Moldova, 1997.
- 20 Ministry of Labour, Social Protection and Family cited in Council of Europe, Center for Information and Documentation, Human Rights Report (1999), p. 33.
- 21 Committee on the Elimination of Discrimination against Women, Concluding Observations: Republic of Moldova, CEDAW/C/2000/II/Add.6, 27 June 2000, paras. 14 and 36.
- 22 Minnesota Advocates for Human Rights, *Domestic Violence in Moldova*, December 2000, www.mnadvocates.org.
- 23 Minnesota Advocates for Human Rights, *Domestic Violence in Moldova*, December 2000, www.mnadvocates.org.
- 24 *Ibid.*
- 25 *Ibid.*
- 26 International Helsinki Federation for Human Rights, Women 2000: An Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States, IHF, July 2000, p. 318.
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Committee on the Rights of the Child

THIRTY-FIRST SESSION – 16 SEPTEMBER - 4 OCTOBER 2002

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION**

**CONCLUDING OBSERVATIONS BY THE COMMITTEE ON THE RIGHTS OF THE
CHILD: MOLDOVA**

1. The Committee considered the initial report of the Republic of Moldova (CRC/C/28/Add.19) submitted on 5 February 2001 at its 823rd and 824th meetings (see CRC/C/SR.823 and 824), held on 27 September 2002, and adopted, at its 833rd meeting (CRC/C/SR.833) held on 4 October 2002, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report, which follows the Committee's reporting guidelines, and the written replies to its list of issues (CRC/C/RESP/MOL/1). The Committee also notes with appreciation the presence of a high-level delegation, which contributed to a constructive dialogue and a better understanding of the implementation of the Convention in the State party.

B. Positive aspects

3. The Committee notes with appreciation the adoption of Law No. 338-XII on Child Rights of 1994, the Law on Youth of 1999 and the various decisions of the Government of the Republic of Moldova on children's issues. It also notes with appreciation the approval in 2002

of a National Conception on the Protection of the Child and the Family with a view to harmonizing existing legislative framework.

4. The Committee notes the establishment in 1998 of the National Council for Child Rights Protection with the objective of coordinating and ensuring respect for the Convention and the creation of councils for child rights protection in the counties to ensure respect for child rights at the local level.
5. The Committee also welcomes the Preliminary Poverty Reduction Strategy, the governmental decrees for a programme of social protection and the amendment to the law with regard to children with disabilities.

C. Factors and difficulties impeding progress in the implementation of the Convention

6. The Committee acknowledges that the State party is facing many difficulties in the implementation of the Convention owing to its economic and political transition and to economic and social problems. In particular it notes that the high rates of poverty and migration, especially of women, have a great impact on children.
7. While the State party is responsible under the Convention for the implementation of the rights of all children under its jurisdiction, the Committee acknowledges that the difficult political situation with respect to the self-proclaimed Transnistrian Moldovan Republic may impede implementation for children living in this region.

D. Principal subjects of concern and recommendations

1. General measures of implementation

Legislation

8. The Committee recognizes the efforts made by the State party to ensure that its national legislation complies with the Convention, but

remains concerned at the absence of strategies and resources to enforce these laws effectively.

9. The Committee recommends that the State party:
 - (a) Develop a comprehensive approach to children's issues and formulate an integrated long-term strategy;
 - (b) Enforce effectively the National Conception on the Protection of the Child and the Family, and implement the Law on Child Rights (1994) and the Law on Youth (1999), including by allocating the necessary human and financial resources;
 - (c) Establish a mechanism for the implementation of the National Plan of Action;
 - (d) Continue to address the compatibility of national legislation on children with the principles and provisions of the Convention;
 - (e) Continue seeking assistance from the United Nations Children's Fund (UNICEF) in this regard.

Coordination/National Plan of Action

10. While acknowledging the efforts made by the State party to improve coordination by establishing the National Council for Child Rights Protection, its newly established secretariat and councils in the counties, the Committee nevertheless expresses its concern that the coordinating action of this body has limited effects owing to a fragmented approach to the implementation of the Convention at the ministerial level. It also expresses concern at the limited cooperation with non-governmental organizations in this regard. In addition, the Committee is concerned at the absence of mechanisms for the implementation of the National Plan of Action.
11. The Committee recommends that the State party:
 - (a) Strengthen the role of the National Council for Child Rights Protection in order that it may effectively coordinate activities between central and local authorities and cooperate with non-governmental organizations and other sectors of civil society;

- (b) Provide adequate human and financial resources to the National Council, at both national and county levels, to enable it to carry out its tasks in an effective way.

Independent monitoring structures

- 12. The Committee notes the existence of a National Human Rights Centre and the information that an ombudsperson for children is part of the National Council for Child Rights Protection, but it is concerned at the effectiveness of these monitoring bodies given the lack of a clear statutory mandate to deal with complaints of violations of children's rights and the lack of transparent and child-sensitive procedures for addressing such complaints.
- 13. The Committee recommends that the State party appoint, within the National Human Rights Centre or independently, an ombudsperson or commissioner to monitor the implementation of the Convention at the national and local levels, in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex) and taking into full account the Committee's General Comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child.

Resources for children

- 14. The Committee expresses its concern that budgetary allocations for children, in particular in the fields of health and education, are insufficient and that often the resources allocated do not correspond to the needs. It further notes that the decentralization process started in 1999 is held back by limited financial and human resources.
- 15. In light of article 4 of the Convention, the Committee encourages the State party:
 - (a) To enforce effectively the Preliminary Poverty Reduction Strategy;
 - (b) To identify clearly its priorities with respect to child rights issues in order to ensure that funds are allocated "to the maximum

extent of ... available resources". The Committee fully supports the State party seeking international cooperation for the full implementation of the economic, social and cultural rights of children, in particular children belonging to the most vulnerable groups in society;

- (c) To identify the amount and proportion of the budget spent on children at the national and local levels in order to evaluate the impact of expenditures on children.

Data Collection

16. The Committee expresses its concern that data collection is not sufficiently developed and is not disaggregated for all areas covered by the Convention. It further notes that data on children are not used in an adequate manner to assess progress and as a basis for policy-making in the field of children's rights.

17. The Committee recommends that the State party:

- (a) Strengthen its mechanism for collecting and analysing systematically disaggregated data on all persons under 18 for all areas covered by the Convention, with special emphasis on the most vulnerable groups, including children of economically disadvantaged households, children living in rural areas, children in institutions, children with disabilities, children affected by the consequences of the Chernobyl disaster, children living in Transnistria and children in need of special protection, such as street children;
- (b) Use these indicators and data effectively for the formulation and evaluation of policies and programmes for the implementation and monitoring of the Convention;
- (c) Seek technical assistance from UNICEF and the United Nations Population Fund (UNFPA) in this regard.

Dissemination and training

18. The Committee, while acknowledging the efforts that have been made to disseminate the Convention and to train professionals working with

and for children, expresses its concern that these measures have not been effective to the extent desirable.

19. The Committee recommends that the State party:

- (a) Develop more creative methods to promote the Convention, including through audio-visual aids such as picture books and posters, in particular at the local level, and through the media;
- (b) Continue and strengthen its efforts to provide adequate and systematic training and/or sensitization on children's rights for professional groups working with and for children, such as judges, lawyers, law enforcement and health personnel, teachers, school and institution administrators and social workers;
- (c) Seek technical assistance from, among others, UNICEF, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

NGOs/civil society

20. The Committee is concerned at the lack of involvement of non-governmental organizations in the implementation of the Convention and at the limited cooperation between the Government and NGOs, in particular the human rights-based organizations.
21. The Committee recommends that the State party facilitate and support the work of national and international NGOs in the implementation of the Convention and strengthen cooperation with these organizations, in particular the human rights-based organizations.

2. Definition of the child

22. The Committee expresses its concern at the disparity in the age of marriage between girls (16 years) and boys (18 years).
23. The Committee recommends that the State party review its legislation with a view to increasing the minimum age of marriage of girls to that of boys.

3. *General principles*

24. The Committee is concerned that the principles of non-discrimination, the best interests of the child, the right to life, survival and development of the child and respect for the views of the child are not fully reflected either in the State party's legislation and administrative and judicial decisions, or in policies and programmes relevant to children at both national and local levels.
25. The Committee recommends that the State party:
- (a) Appropriately integrate the general principles of the Convention, namely articles 2, 3, 6 and 12, in all relevant legislation concerning children;
 - (b) Apply them in all political, judicial and administrative decisions, as well as in projects, programmes and services which have an impact on children;
 - (c) Apply these principles in planning and policy-making at every level, as well as in actions taken by social, health, welfare and educational institutions, courts of law and administrative authorities.

Non-discrimination

26. The Committee is concerned that the principle of non-discrimination is not fully implemented for children living in institutions, children with disabilities, street children, children with HIV/AIDS, children of Roma origin and other ethnic minorities, especially with regard to their access to adequate health care and educational facilities.
27. The Committee recommends that the State party:
- (a) Monitor the situation of children, in particular those belonging to the above-mentioned vulnerable groups, who are exposed to discrimination;
 - (b) Develop, on the basis of the results of this monitoring, comprehensive strategies containing specific and well-targeted actions aimed at eliminating all forms of discrimination.

28. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention undertaken by the State party to follow up on the Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of the Committee's General Comment No. 1 on article 29, paragraph 1, of the Convention (aims of education).

4. Family environment and alternative care

Children deprived of a family environment

29. The Committee notes the development of the Child Care Reform and the establishment of the Working Group for Alternatives to Institution-alization, but expresses its serious concern at the large number of children who are placed in institutions as a measure of social protection. It further notes with concern that children, in those institutions, are neglected and ill-treated and, because of a lack of resources, are not provided with adequate housing and care and appropriate basic services.
30. In light of article 20 of the Convention, the Committee recommends that the State party:
- (a) Fully implement the Child Care Reform by providing it with the necessary human and financial resources;
 - (b) Take effective measures to develop alternative measures to institutionalization, such as foster care, family-type foster homes and other family-based alternative care, and place children in institutions only as a measure of last resort;
 - (c) As preventive measures, improve social assistance and support to families to help them with their child-rearing responsibilities, including through education, counselling and community-based programmes for parents;
 - (d) Take all necessary measures to improve conditions in institutions (article 3, paragraph 3, of the Convention);

- (e) Take all necessary measures to prevent neglect and ill-treatment of children in institutions and provide support and training for personnel in institutions, including social workers;
- (f) Establish effective mechanisms to receive and address complaints from children in care, to monitor standards of care and, in light of article 25 of the Convention, to establish regular periodic review of placement;
- (g) Provide adequate follow-up and reintegration support and services for children who leave institutional care.

Abuse and neglect

- 31. The Committee notes the establishment of a National Centre for the Prevention of Child Abuse, but is nevertheless concerned about the extent of domestic violence, the absence of a legislative framework, the lack of standardized procedures for the identification, reporting, investigation and prosecution of cases of neglect, ill-treatment and abuse, the lack of a legal prohibition of corporal punishment in schools, institutions and at home, and the limited availability of skilled services for the support of victims.
- 32. In light of article 19 of the Convention, the Committee recommends that the State party:
 - (a) Undertake studies on domestic violence, violence against children, ill-treatment and abuse, including sexual abuse, in order to assess the extent, scope and nature of these practices;
 - (b) Take all necessary steps to introduce the legal prohibition of the use of corporal punishment in schools and other institutions and at home;
 - (c) Adopt and implement effectively adequate multidisciplinary measures and policies, including public campaigns, and contribute to changing attitudes;
 - (d) Investigate effectively cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, within a child-sensitive inquiry and judicial procedure, in

order to ensure better protection of child victims, including the protection of their right to privacy;

- (e) Take measures to provide support services to children in legal proceedings and for the physical and psychological recovery and social reintegration of victims of rape, abuse, neglect, ill-treatment and violence, in accordance with article 39 of the Convention;
- (f) Take into account the Committee's recommendations adopted at its day of general discussion on violence against children within the family and in schools (see CRC/C/111).

5. Basic health and welfare

Health and health services

- 33. While noting efforts to reorganize maternity and childcare services and various programmes to improve children's health, the Committee remains concerned about the relatively high rates of infant and child mortality and, in particular, notes that approximately 80 per cent of under-5 deaths are due to preventable causes and that the State party has the highest rate in the region of accidents and poisoning. It further expresses its concern at the limited access to health-care services, especially for disadvantaged households. It also notes the high incidence of tuberculosis, alcohol consumption and drug abuse, as well as the high incidence of iodine deficiency disorders in schoolchildren.
- 34. The Committee recommends that the State party:
 - (a) Implement the National Health Policy and enforce the Strategy on Promoting Effective Perinatal Care of the World Health Organization (WHO) in order to further reduce perinatal and infant mortality;
 - (b) Define sustainable financing mechanisms for the health-care system, including adequate salaries for child health-care professionals, in order to ensure that all children, in particular children from the most vulnerable groups, have access to free basic health care of good quality;

- (c) In order to prevent childhood injuries, develop adequate legislation to protect children from accidents and injuries, include the prevention of injuries in national policy priorities and objectives and develop injury control programmes;
- (d) Combat alcohol consumption and drug abuse;
- (e) Iodize salt;
- (f) Continue to seek technical assistance from, among others, WHO and UNICEF.

Adolescent health

35. The Committee, while welcoming the national programme to combat HIV/AIDS with the support of international organizations, notes with deep concern the increasing rates of sexually transmitted diseases (STDs) and HIV/AIDS among adolescents and the large number of teenage pregnancies and abortions. It further notes that the health services provided are not tailored to the needs of adolescents, thus reducing their willingness to avail themselves of primary health services.

36. The Committee recommends that the State party:

- (a) Implement in an effective way the national programme for assistance in the planning and protection of reproductive health for 1999-2003 and increase its efforts to promote adolescent health policies;
- (b) Further strengthen the programme of health education in schools;
- (c) Undertake a comprehensive and multidisciplinary study to assess the scope and nature of adolescent health problems, including the negative impact of STDs and HIV/AIDS, and continue to develop adequate policies and programmes;
- (d) Undertake further measures, including the allocation of adequate human and financial resources, to evaluate the effectiveness of training programmes in health education, in particular as regards reproductive health, and to develop youth-sensitive and confidential counselling, care and rehabilitation facilities that are accessible without parental consent when this is in the best interests of the child;
- (e) Seek technical cooperation from, among others, UNFPA, UNICEF, WHO and UNAIDS.

Children with disabilities

37. The Committee expresses its deep concern at the increasing number of children with disabilities and at the insufficient support provided to their families. It further notes that there are few efforts to integrate these children in mainstream education and society, including in cultural and leisure activities. The Committee is also concerned at the terminology used in discussions about children with disabilities, such as “invalid”, which may lead to prejudice, stigmatization and negative psychological effects.
38. In light of article 23 of the Convention, the Committee recommends that the State party:
- (a) Undertake studies to determine the causes of and ways to prevent disabilities in children;
 - (b) Undertake measures to ensure that the situation of children with disabilities is monitored in order to assess their situation and address their needs effectively;
 - (c) Conduct public campaigns to raise awareness of the situation and the rights of children with disabilities;
 - (d) Allocate the necessary resources for programmes and facilities for all children with disabilities, especially the ones living in rural areas, and strengthen community-based programmes to enable them to stay at home with their families;
 - (e) Support the parents of children with disabilities with counselling and, when necessary, financial support;
 - (f) In light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96, annex) and the Committee’s recommendations adopted at its day of general discussion on the rights of children with disabilities (CRC/C/69, paras. 310-339), further encourage their integration into the regular educational system and inclusion into society, including by providing special training to teachers and by making schools and public facilities accessible;
 - (g) Avoid terminology such as “invalid” and use the internationally accepted terminology such as “children with disabilities”.

Standard of living

39. The Committee welcomes the adoption of the Preliminary Poverty Reduction Strategy in April 2002 and other efforts to support families, but remains concerned at the deteriorating living standards affecting in particular families with children, the inadequate social security system and the large number of parents migrating abroad to find work.
40. The Committee recommends that the State party:
- (a) Undertake all necessary measures to support parents and families, including single-parent families, in their child-rearing responsibilities as part of its full implementation of the National Strategy for Children and Families;
 - (b) Fully implement the Preliminary Poverty Reduction Strategy, inter alia with a view to providing an adequate level of food security and social protection for children at risk and to improving and making transparent the payments of allowances to families with children.

6. Education, leisure and cultural activities

Education

41. The Committee notes with concern the declining expenditure on education, which affects in particular pre-school education, especially in rural areas. It further expresses concern for the drop in the quality and accessibility of education with a consequent decrease in enrolment across all levels of compulsory education and increase in of drop-out rates.
42. In light of articles 28 and 29 of the Convention, the Committee recommends that the State party:
- (a) Develop a national strategy on education for all, and a clear plan of action, taking into account the Dakar Framework for Action;
 - (b) Ensure regular attendance at schools and the reduction of drop-out rates;

- (c) Improve the quality of education in order to achieve the goals mentioned in article 29, paragraph 1, in line with the Committee's General Comment No. 1 on the aims of education.

7. *Special protection measures*

Economic exploitation, including child labour

- 43. The Committee welcomes the recent ratification by the State party of ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, but remains concerned at the high incidence of child labour in the State party and that children may be working long hours at young ages, which has a negative effect on their development and school attendance.
- 44. The Committee recommends that the State party:
 - (a) Combat and eradicate as effectively as possible all forms of child labour;
 - (b) Seek assistance from ILO with a view to participating in the International Programme on the Elimination of Child Labour (IPEC).

Sexual exploitation and trafficking

- 45. The Committee notes that some measures have been developed to combat trafficking, but is nevertheless deeply concerned about the serious proportions of trafficking of girls from Moldova. It notes with concern that there is no precise information about the real dimensions of this phenomenon and that very little support in terms of rehabilitation and reintegration is provided to the victims of trafficking.
- 46. In light of articles 32 to 36 of the Convention, the Committee recommends that the State party:
 - (a) Undertake a study on the issue of trafficking in order to assess its scope and causes, and develop and implement effective monitoring and other measures to prevent it;

- (b) Adopt legislative measures against trafficking and take all necessary measures to strengthen the National Committee against Trafficking, and further develop clear strategies and activities, including for prevention, protection and social reintegration;
- (c) Include life-skills education in school curricula;
- (d) Develop and adopt a national plan of action against sexual and commercial exploitation of children, taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;
- (e) Consider ratifying the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the Convention.

Street children

47. While noting the amendment to the Penal Code regarding child beggars, the Committee notes that the negative effects of the current economic crisis and the consequent deterioration in the family environment have resulted in an increasing number of street children in Chisinau and other cities.
48. The Committee recommends that the State party:
- (a) Take effective measures to ensure that street children are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development;
 - (b) Ensure that street children who are victims of physical and sexual abuse and who are substance abusers are provided with recovery and reintegration services as well as with services for reconciliation with their families.
 - (c) Undertake further study on the causes and scope of the phenomenon and establish a comprehensive strategy in cooperation with civil society with the aim of preventing and reducing this phenomenon;

- (d) Seek assistance from, among others, UNICEF.

Children belonging to minorities

49. The Committee is concerned that, despite pilot programmes aimed at improving the situation of the Roma in certain provinces, they still suffer from widespread discrimination which has in some instances curtailed Romani children's right to education, health and social welfare.
50. The Committee recommends that the State party:
- (a) Initiate campaigns at all levels and in all provinces aimed at addressing the negative attitudes towards the Roma in society at large and in particular amongst authorities and professionals providing health, education and other social services;
 - (b) Develop and implement a plan aimed at integrating all Roma children into mainstream education and prohibiting their segregation in special classes, and which would include pre-school programmes for Romani children to learn the primary language of schooling in their community;
 - (c) Develop curriculum resources for all schools which include Romani history and culture in order to promote understanding, tolerance and respect of the Roma community in Moldovan society.

Administration of juvenile justice

51. While welcoming the adoption of the new Penal Code, the Committee expresses its concern that there is no separate system for juvenile justice or special juvenile personnel or trained judges, and that the special provisions for juveniles contained in the law have no implementation mechanism owing to lack of capacity and expertise. Furthermore, the Committee notes that there is no legal provision limiting the period of pre-trial detention, that conditions in juvenile detention centres are very poor and offer little possibility for rehabilitation, and that girls are detained in the same facilities as adult women.

52. The Committee recommends that the State party:

- (a) Establish, as soon as possible, a specific system of juvenile justice;
- (b) Continue reviewing laws and practices regarding the juvenile justice system in order to bring it, as soon as possible, into full compliance with the Convention, in particular articles 37, 40 and 39, as well as with other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);
- (c) Take legislative measures to set limited and short periods for pre-trial detention, in accordance with the provisions and principles of the Convention;
- (d) Use detention, including pre-trial detention, only as a measure of last resort, for as short a time as possible and for no longer than the period prescribed by law, and ensure that children are always separated from adults;
- (e) Use alternative measures to all forms of deprivation of liberty whenever possible and strengthen the role and capacities of the Commission for Minors at the municipal and district levels, while ensuring that they act in full compliance with the Convention;
- (f) Strengthen preventive measures, such as supporting the role of families and communities, in order to help eliminate the social conditions leading to such problems as delinquency, crime and drug addiction;
- (g) Incorporate into its legislation and practices the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, in particular to guarantee them access to effective complaint procedures covering all aspects of their treatment;
- (h) Ensure access to education for girls and boys in detention;

- (i) In light of article 39, take appropriate measures to promote the recovery and social reintegration of children involved in the juvenile justice system;
- (j) Seek assistance from, among others, OHCHR, the United Nations Centre for International Crime Prevention, the International Network on Juvenile Justice, and UNICEF and through the United Nations Coordination Panel on Technical Advice and Assistance on Juvenile Justice.

8. Optional Protocols and acceptance of the amendment to article 43 (2) of the Convention

- 53. The Committee notes that the State party has signed but not yet ratified the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict. The Committee also notes that the State party has not yet accepted the amendment to article 43, paragraph 2, of the Convention enlarging the Committee from 10 to 18 members.
- 54. The Committee recommends that the State party ratify and implement the Optional Protocols to the Convention on the Rights of the Child and encourages the State party to accept the amendment to article 43, paragraph 2, of the Convention.

9. Dissemination of reports

- 55. Finally, the Committee recommends that, in light of article 44, paragraph 6, of the Convention, the initial report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organizations.

10. Periodicity for submission of reports

56. The Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States' responsibilities to children under the Convention is to ensure that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the implementation of the Convention. In this regard, regular and timely reporting by States parties is crucial. The Committee recognizes that some States parties experience difficulties in initiating timely and regular reporting. As an exceptional measure, in order to help the State party catch up with its reporting obligations in full compliance with the Convention the Committee invites the State party to submit its combined second and third periodic reports by 24 February 2005, the date on which the third periodic report is due.

Violence against Women in Poland

A Report to the Committee on Economic, Social and Cultural Rights

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1. Preliminary Observations

The submission of alternative country information on violence against women to the UN Committee on Economic, Social and Cultural Rights forms part of the World Organisation Against Torture's (OMCT) programme on Violence against Women. One of the aims of the programme is to integrate a gender perspective into the work of the five "mainstream" human rights treaty monitoring bodies. OMCT's reports on violence against women examine the effects of gender on the form that human rights violations take, the circumstances in which this abuse occurs, the consequences of these violations and the availability and accessibility of remedies.

Poland ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 18 March 1977.

Poland is also a State Party to all of the other major international instruments for the promotion and protection of human rights, namely: the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC).

In addition, Poland has ratified the Optional Protocol to the ICCPR thereby permitting the Human Rights Committee to receive and consider individual complaints and it has also made declarations under article 22 of CAT and article 14 of CERD each of which allows the relevant treaty body to examine individual petitions. In terms of individual complaint mechanisms that specifically address the human rights of women, OMCT is concerned by the fact that Poland has yet to either sign or ratify the Optional Protocol to the CEDAW.

In light of the fact that trafficking in women appears to be a serious problem in Poland, OMCT is also concerned that the country has yet to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2000).

At the regional level, Poland has ratified the European Convention on Human Rights as well as each of the relevant protocols to the Convention. It has also ratified the European Convention for the Prevention of Torture which permits the European Committee for the Prevention of Torture to visit places of detention in Poland.

Article 32 of the Polish Constitution of 1997 provides that all persons shall be equal before the law and contains a general prohibition on discrimination. Article 33 stipulates that men and women have equal rights in “family, political, social and economic life” while article 33 (2) further states that “men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security ...”. Article 40 of the Constitution prohibits torture and cruel, inhuman or degrading treatment or punishment including corporal punishment.

Articles 87-94 of the Polish Constitution deal with the status of international law within the Polish legal system. Article 87 specifies that the sources of “universally binding law within the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.” Article 89 of the Constitution provides that ratification of international agreements in relation to *inter alia* human rights requires prior consent to be granted by statute. It is, however, unclear whether the ICE-SCR was approved by a law prior to ratification and OMCT has been unable to ascertain whether the provisions of the Covenant may be invoked before domestic courts. In addition, OMCT has received information that suggests that the right of individuals to bring complaints under the Constitution is, in practice, virtually non-existent and that the jurisprudence of the Constitutional Tribunal has further restricted these rights by requiring that in order to be admissible, any complaints must contain evidence that more than one constitutional provision has been violated.¹

OMCT notes with concern that the fourth periodic report by the government of Poland (UN Doc. E/c.12/4/Add.9), while being very comprehensive in a number of respects, does not address the issue of violence against women.² In fact, apart from its analysis of the implementation of articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in relation to the right to work and the right to just and favourable conditions of work, the report rarely refers to discrim-

ination against women. OMCT is particularly concerned by the fact that the report does not provide any information regarding the equality of men and women under article 3 of the Convention, nor does it discuss violence against women in its analyses of articles 10 and 11.

Given that the government report does not refer to violence against women in Poland and in line with the overall objectives of OMCT's programme on Violence against Women, this alternative report will focus on Poland's obligations in relation to the prevention and eradication of violence against women. After an initial introduction to the status of women in Poland, the report will examine violence against women in the family and violence against women in the community. The report ends with a series of conclusions and recommendations for future action.

2. General Observations on the Status of Women

The recent history of Poland has been marked by dramatic political, economic and social change. During the period of Communist government between 1948 and 1990, women enjoyed *de jure*, although not necessarily *de facto* equality with men.³ While the Communist model of formal equality guaranteed women better representation in the public spheres of life including in the areas of political decision-making and in the employment market, it also led to the adoption of certain protectionist policies that barred women from higher paying jobs by restricting the number of hours they could work and limiting their choice of occupation.⁴ In addition, the rise of the Solidarity trade union was largely facilitated by the Catholic Church which lobbied the union to take certain measures that affected the status of women such as the prohibition of abortion.⁵ Despite the fact that women played an important role in popularising the Solidarity movement, as part of its economic plan in 1981, the Union itself reportedly recommended that women should be the first workers retrenched as they could always "stay at home" and be supported by their husbands.⁶

The transition to a market economy during the 1990s has not necessarily resulted in positive changes in relation to the promotion and protection of the human rights of women and it has been suggested that it is women who have borne the main costs of economic and political transformation in Poland.⁷ Increasing unemployment, decreased income and a consequent

growth in poverty have been compounded by a reduction in social benefits and services. All of these socio-economic factors have contributed to a growth in sex discrimination in the employment market and to a resurgence in traditional, conservative attitudes to gender roles.⁸

In its concluding observations on the fourth periodic report of Poland which was considered in 1999, the Human Rights Committee expressed its concern at the “numerous forms of discrimination against women, both in the Polish society and in the national legal system.” The Committee drew particular attention to discrimination against women in relation to their reproductive rights, the lack of gender equality in the employment sector, discrimination between women and men in relation to the age of retirement and pension entitlements and the high level of domestic violence.⁹

2.1 Legal Status of Women

In general, Polish legislation is based on a model of formal equality and does not discriminate against women directly. In practice, however, legislation is often applied in a manner that does effectively discriminate against women, particularly in the areas of employment and family law.

As mentioned above, the Constitution of Poland provides for the *de jure* equality of men and women. Article 32(1) affirms the principle of equality before the law and public authorities and bans discrimination in political, social, or economic life “for any reason whatsoever.” While women who feel that they have been subjected to discrimination may theoretically invoke this and other Constitutional provisions, in reality, courts are reluctant to make rulings based solely on the Constitution and there is reportedly no tradition of using the Constitution for the purposes of making individual rights claims.¹⁰

Women’s rights in marriage and upon its dissolution are governed by the provisions of the Family and Guardianship Code. Following a 1998 agreement with the Vatican, the Code was amended and the legal age of marriage for both men and women was fixed at 18 years (it had previously been 18 for women and 21 for men). In exceptional cases, however, a court may grant permission for a girl to be married at the age of 16 following a hearing with both of the partners and their parents. In 1998,

there were 2,600 cases of girls getting married at 16 or 17 years of age with pregnancy being cited as the most common reason behind the early marriage.¹¹

Article 56 of the Family Code provides that in order to qualify for a divorce, the couple must prove that there has been “a complete and permanent breakdown of marital cohabitation”. According to certain Polish legal experts, in practice, this article is often interpreted restrictively with the emphasis being on reconciliation and the maintenance of the family relationship, a policy which effectively discourages many women from filing for divorce even in cases of domestic violence.¹² Articles 58-60 of the Family and Guardianship Code cover the issue of property settlements in the context of divorce proceedings and maintenance obligations of each of the former spouses. While these provisions are not discriminatory on their face, it is reported that women often experience indirect discrimination in the application of these rules as they generally do not have the resources to seek assistance in gaining an equitable property settlement or in pursuing outstanding maintenance payments and are therefore forced to remain in a relationship of dependence upon their former spouse.¹³

Article 11 (2) of the Polish Labour Code concerns the equal treatment of men and women in the context of employment. According to 11 (3) of the Code, any discrimination in work relations, particularly on the basis of gender, age, disability, race, nationality, beliefs or participation in trade unions is prohibited. Importantly, these provisions only cover pre-existing relations between an employer and an employee and therefore cannot be invoked to redress situations where there is discrimination prior to employment i.e. in the course of interviewing or hiring.¹⁴

2.2 Women’s Socio-economic Status

The status of women in Poland is conditioned by a number of traditional social and cultural beliefs which continue to emphasise the primary role of women as wives and mothers.¹⁵ Married women are regarded as being “more responsible, more respectable and more stable” than single or divorced women, both in the context of employment and in local communities. The non-governmental organisation, La Strada notes that this perception is perpetuated and reinforced in Poland’s law and policy which

limits the control that women have over pregnancy due to the lack of sex education in schools, difficult access to contraception, the illegality of abortion and the fact that there are very few family planning clinics. This situation results in many young women having unplanned pregnancies and consequently being faced with little choice other than to marry and become dependent upon their husbands for financial support.¹⁶

It has been estimated that as few as 34 per cent of Polish women are engaged in remunerated work outside the home.¹⁷ Women who do decide to work may encounter serious difficulties in securing a job and when they do, they often find that they must accept precarious and inadequately remunerated work. As mentioned previously, women suffer from discrimination in the labour market including; lower wages for equivalent work, restricted opportunities for advancement and promotion and increased vulnerability to retrenchment.¹⁸ According to the 1999 statistical bulletin released by the government, men have a significantly higher employment rate than women (54 per cent as compared with 45.9 per cent), and women have a higher unemployment rate (13.5 per cent) than men (11.7 per cent). Despite a generally higher level of education, women earn on average 30 per cent less than men.¹⁹ These figures are reflected in the government report which notes that the rate of decrease in unemployment for the years 1995-1998 was lower amongst women than it was among men and that women still earn less than men for equivalent work.²⁰

Employers are reportedly more willing to give jobs to men based on the belief that men are the traditional ‘breadwinners’ of the family. In addition, female job-seekers are often discriminated against due to the widely-held view that they will fall pregnant and thereby either resign or claim their entitlement to the 16 weeks of mandatory maternity leave provided for in the relevant legislation. For this reason, many employers require female candidates to sign a guarantee of “non-pregnancy” or to take a pregnancy test at the time of their engagement.²¹ Working mothers face even greater difficulties when entering the job market due to increases in the cost of childcare and reduced numbers of nurseries and kindergartens.²²

Women remain under-represented in political life in Poland and this clearly has an impact on the way in which women’s concerns are translated into law and policy. Only 93 of the 460 members of the *Sejm* (lower

chamber of parliament) are women, a total of 20.21 per cent, and women make up 23 per cent of the members of the Senate. The situation is worse at the local government level with women making up between 11 and 20 per cent of members of the various local councils.²³

3. Violence in the Family

3.1 Domestic Violence

In spite of the fact that there is little statistical information concerning the prevalence and scope of domestic violence in Poland, data collected by local NGOs confirm that this form of violence against women is widespread and that it affects women of all ages and socio-economic backgrounds.²⁴

National polls conducted by the Public Opinion Research Center in 1993 and in 1996 found that 18 per cent of Polish women have been battered by their partners at least once and that 9 per cent reported being subjected to repeated violence.²⁵ The same polls noted that the rate of violence amongst divorced women was even higher, with 41 per cent reporting repeated abuse and 21 per cent stating that they had been the victims of sporadic violence.²⁶ Of the women surveyed, 41 per cent of married women and 61 per cent of divorced women reported that they knew other women who were beaten by their partners.²⁷ These findings lead the survey teams to conclude that at least one in six women in Poland is a victim of domestic violence.²⁸ Other more recent estimates suggest that 30 per cent of women in Poland have experienced some form of domestic violence.²⁹

In their 2002 report on domestic violence in Poland, Minnesota Advocates for Human Rights noted that they had received unofficial data on rates of domestic violence from several police officers. All of the officers who provided information stated that the actual prevalence of domestic violence is far greater than the reported cases, with one officer claiming that in more than 60 per cent of cases eventually reported to the police or prosecutors, the victim did not initially call the police or seek police intervention. It can, therefore, be concluded that intervention statistics from the

police only reflect a small percentage of the real number of cases of domestic violence.³⁰

Even when women do report incidents of domestic violence, a large number of complaints are withdrawn before the cases go to trial. A survey conducted amongst 164 police officers and prosecutors in the summer of 2000 asked respondents to provide a list of the most common reasons for which women withdraw complaints of domestic violence. The percentage of respondents who cited each factor was as follows: 67.6 per cent felt that the reluctance to pursue complaints was mainly due to practical reasons (the victim and the perpetrator will have to continue sharing the same home); 60.4 per cent felt that concerns related to the good of children play an important role; 60.4 per cent also responded that the withdrawal of complaints was motivated by intimidation by the perpetrator; 58.5 per cent felt that love for the perpetrator and hope that his behaviour would improve was a factor; 41.5 per cent cited financial considerations and 39.7 per cent listed a lack of trust in the administration of justice.³¹

Clearly, a number of these factors could be addressed through more effective legislation and policy including through the development of quasi-judicial remedies such as protection and eviction orders as well as through the allocation of increased resources for housing and reintegration of women who have been victims of domestic violence. In addition, a systematic training and awareness-raising programme for all law enforcement officials and members of the judiciary in relation to domestic violence, the provision of legal aid for women wishing to pursue complaints, and the adoption of measures to minimise delays in the administration of justice would increase the level of confidence in the judicial system.

While domestic violence occurs in all areas of Poland, women living in isolated or rural communities tend to have greater difficulties in accessing services to support and assist them. In addition, police in these communities are frequently even more reluctant to act on cases of domestic violence than police in urban centres.³²

The fact that women suffer from higher levels of unemployment than men in Poland and that when they are employed they frequently work in precarious and less well remunerated jobs, leads to a situation whereby

women are often economically dependent on their male partners and therefore less able to leave violent relationships.³³

3.1.1 Applicable legal framework

Poland has not enacted comprehensive legislation in relation to domestic violence, however, there are certain provisions of the Penal Code that can be invoked by women who are victims of this form of violence.

Article 207 (1) of the Penal Code provides that:

Whoever physically or psychologically mistreats a member of their family or an intimate relation, or any other permanently or temporarily dependent person, a physically or mentally disabled person, or a juvenile, may be found guilty and sentenced to a minimum of three months and a maximum of five years in jail.

Couples that live together and divorced or separated couples still living together are covered by the article.³⁴ While article 207 provides sanctions for psychological abuse, in practice it is very difficult to prove this abuse and the law is rarely applied in cases of purely psychological harm. Most prosecutors interviewed for the survey by Minnesota Advocates stated that they would not bring cases of psychological or emotional violence to court as they felt that it was impossible to prove that the violence had occurred.³⁵

The sentence provided for in article 207 may be increased from one to ten years if the perpetrator acted with extreme cruelty, and for a minimum of two and a maximum of twelve years if the victim attempts suicide as a result of the abuse. In practice, however, these increased penalties are very rarely applied with some women's rights advocates reporting that prosecutors are reluctant to seek the more severe penalties even in cases where the victim dies as a result of her injuries. One of the judges interviewed for the Minnesota Advocates survey stated that she had only seen "a few" cases prosecuted under the "extreme cruelty" heading in article 207 (2) and that of these, one involved the "very brutal beating and rape of a woman who was also kept locked in a room for weeks without food" while another case concerned a husband who "poured acid on his wife and shaved her head because he suspected that she had a lover."³⁶

Importantly, in the Polish language “mistreats” (used in the definition of the violence covered by article 207 of the Penal Code) implies that the behaviour was repeated rather than an isolated incident. As a result, the provision has been interpreted by police officers and members of the judiciary as requiring either that there has to be more than one assault before a prosecution can be brought or that the violence result in a very serious injury.³⁷

In addition to article 207 which specifically criminalizes domestic violence, articles 156 and 157 of the Penal Code which contain general prohibitions on assault are also relevant to cases of family-based violence. These general assault provisions are primarily based on the degree of severity of the injuries resulting from the violence rather than on the actions of the perpetrator.

Under article 156 of the Penal Code, injuries that have effects which last for more than 7 days that are classified as “severe” are publicly prosecuted with or without the victim’s consent. Injuries falling within this category may include; loss of sight, hearing, speech, the ability to procreate or an incurable or prolonged physical or mental illness. The penalty for assault under article 156 is a prison term ranging from one to ten years.

Article 157 of the Penal Code covers “medium” and “light” injuries. Significantly, this article provides that injuries with effects that last longer than seven days and are determined to be of “medium” severity will be publicly prosecuted without the consent of the victim only in circumstances where the victim and the perpetrator are unrelated and when the crime was premeditated. In cases where the perpetrator and the victim are family members and there was judged to be no premeditation, the perpetrator will only be prosecuted at the request of the victim. If the injuries are “light” i.e. with effects that do not last for longer than seven days, then the victim may pursue a private prosecution, however, there is no State assistance for a prosecution and, in practice, women virtually never initiate such proceedings.

3.1.2 Procedural factors and sentencing

Although, as mentioned above, cases of domestic violence brought under articles 207 and 156 of the Penal Code are theoretically supposed to be

publicly prosecuted, in practice, proceedings are not commenced without an official complaint by the victim. Victims of domestic violence are, as outlined below, expected to present a “well-documented case” including numerous certificates attesting to their injuries, certified witness statements as well as names and contact details for these witnesses and the victims should, themselves, be willing to testify.³⁸

Proceedings in domestic violence cases in Poland are characterised by an absence of protective mechanisms including restraining orders or provisions that would require the alleged perpetrator to leave the family home.³⁹ In addition, lengthy delays in the criminal justice system mean that the pre-trial period in domestic violence cases can last up to six months with the actual trial often commencing two or even three years after the issuing of the indictment. In the interim, women are frequently forced to continue living with their abusers and are subjected to further violence and/or they become discouraged by the emotional and financial cost of pursuing their cases and end up discontinuing them.⁴⁰

Despite the fact that there is no system for the application of quasi-judicial remedies including restraining or protective orders, alleged perpetrators of domestic violence are very rarely arrested. The Warsaw Women’s Rights Center notes that perpetrators of domestic abuse are “practically never arrested, even in exceptional cases, when the life of a victim has been endangered.” The reasons given for this situation are that law enforcement officers are afraid of making a “groundless arrest”, the lack of detention facilities in police stations and the costs involved in transporting arrested persons to distant facilities.⁴¹

The only category of men who may be detained for domestic violence are those who have been found to have been acting under the influence of alcohol. Under Polish law, intoxicated persons may be detained in “sobering-up centres” if they behave in a way which may cause public outrage or if they endanger their own or other people’s health. Importantly, the costs of holding a person overnight in a “sobering up” centre are paid by the perpetrator or, more commonly, his family.⁴² The value of these detention centres as well as the premise that domestic violence is caused by alcohol consumption have been called into question by a number of different human rights organisations.⁴³

The complex and costly evidential requirements that women wishing to file complaints of domestic violence must fulfil also constitute a barrier to women wishing to pursue these complaints.

The major hurdle faced by most women in domestic violence cases is the fact that in order to sustain a public prosecution, they must present numerous medical certificates from specialist forensic doctors who not only list the injuries that the woman has suffered but also provide a statement concerning the doctor's assessment of the particular provision of the Penal Code that should be applied to the case. These certificates are generally issued by doctors working in private clinics and women are often required to pay in excess of 40 zlotys in order to obtain each one.⁴⁴

A further disincentive to women pursuing cases of domestic violence is the fact that judicial sentencing practices rarely reflect the scale provided for in article 207 of the Penal Code with the overwhelming majority (91.4 per cent) of persons convicted for domestic violence serving suspended or probationary sentences.⁴⁵ Statistics collected by the Women's Rights Center in Warsaw show that out of the 12,563 convictions under article 207 of the Penal Code, prison sentences were only served in 814 cases.⁴⁶

Given that there are no behaviour modification or rehabilitation programmes for the perpetrators of domestic violence and in the absence of effective sentencing procedures, it is not surprising that the rate of recidivism for domestic violence is around 72 per cent.⁴⁷

3.1.3 Attitudes of law enforcement and other officials

Police and other law enforcement officials in Poland overwhelmingly take the attitude that domestic violence is a minor offence and that as it is essentially a 'family matter', they should not be required to intervene.⁴⁸ Despite the fact that article 207 of the Penal Code stipulates that domestic violence constitutes an offence that is to be publicly prosecuted, most police refuse to investigate incidences of domestic violence in the absence of compelling evidence of the violence which must, as mentioned previously, be provided by the victim.⁴⁹

Several studies have revealed that the majority of police officers are of the belief that domestic battering is not a criminal offence and up to 60 per

cent of officers interviewed in one survey stated that battered women contribute to the violence of which they are victims “to some extent.”⁵⁰

Prosecutors and members of the judiciary as well as by health care professionals and other officials who have contact with victims of this violence also, in large measure, share the attitudes of police officers. The Minnesota Advocates study found that many officials questioned the motives of women wishing to bring complaints of domestic violence with several stating that when the parties are in the process of divorcing, women may fabricate such stories in order to force the man to pay alimony.⁵¹ The low sentences imposed on men found guilty of domestic violence reflect the perception amongst the judiciary that family-based violence is not as serious as crimes committed outside of the context of intimate relationships.

3.1.4 Assistance and services available to victims

While there has been some improvement in the last decade in the services provided by governmental agencies to women victims of domestic violence, it is non-governmental organisations that continue to provide the bulk of legal, medical and social assistance to women who have been victims of this form of violence. Overall, the services available to victims of domestic violence such as temporary shelter, legal and medical assistance, remain inadequate.

As mentioned previously, the government’s response to domestic violence is based upon the premise that it is alcoholism that is the major cause of violence in the family. The State Agency for Prevention of Alcohol Related Problems oversees the Polish Nationwide Emergency for Family Violence Victims “Blue Line” which is a toll-free nationwide hotline for domestic violence victims. The “Blue Line” operators are counsellors who are trained in the “basic regulations concerning criminal, civil and family law” as well as in providing support and guidance to victims. In practice, however, it has been reported that the “Blue Line” program emphasises a sociological response rather than criminal proceedings in cases of domestic violence. In addition to sponsoring the national hotline, the “Blue Line” also publishes a newsletter about domestic violence.⁵²

The State policy of systematically linking initiatives to prevent and combat family violence with campaigns aimed at preventing and eradicating alcoholism has been widely criticised by non-governmental organisations working in the area of women's human rights. These groups, in line with most international research, argue that the major cause of domestic violence is not substance abuse but rather the historically unequal power relations that exist between men and women in society. On a more practical level, Urszula Nowakowska writes that:

*Solving the problem of domestic violence by creating the network of programs and organizations whose main aim is to combat alcoholism, and financing its activities from the funds of these organizations may enhance the stereotype about the close connection between alcoholism and violence against women. Moreover, it may result in reducing the funds available to other programs designed to prevent and combat domestic violence. Public authorities financing the programs run by those agencies may be unwilling to provide funding to other organizations, including women's organizations which are often seen as being ideologically incorrect.*⁵³

The number of government-supported shelters for battered women is vastly inferior to the level of demand for temporary housing and, in some regions of the country, there are no government-run shelters. Many women's rights activists have criticised the manner in which the government shelters are run with some arguing that they may actually further traumatise the women they are purportedly assisting. At some government shelters staff members reportedly emphasise the need for women to take a conciliatory approach with their husbands in order to minimise the risk of further violence, while at others, staff members have allegedly negotiated with the abusers in order to force the victims to return home.⁵⁴

The existing government-supported shelters also impose strict rules upon the women who stay there and there have been reports that staff in some shelters read the women's mail, prohibit them from taking jobs outside the shelter, require them to deposit their money with the manager, and prohibit them from leaving the shelter without permission.⁵⁵ Of particular concern to OMCT are allegations that male staff members in the government-run shelters often sexually harass or assault the women staying there.⁵⁶

As part of the programme of administrative reform adopted by Poland in 1999, provision was made for the creation of Crisis Intervention Centers and Family Assistance Centers which are to be run by local governments. Few of the planned centers have reportedly been established and according to public opinion polls there is very little awareness amongst the general public of the existence of these Centers or other government-sponsored initiatives for the prevention and elimination of domestic violence.⁵⁷

In its concluding observations on the fourth periodic report of Poland under the ICCPR in 1999, the Human Rights Committee acknowledged the efforts that had been made by the government to implement a programme against domestic violence but expressed its concern at: “(a) the large number of reported cases of such violence; (b) the lack of any protective remedy in the civil courts; and (c) the shortage of provision of hostels and refuges for family members suffering from domestic violence.”⁵⁸

OMCT is concerned by the fact that over the past three years few effective legislative and administrative measures appear to have been taken by Poland to address the concerns expressed by the Human Rights Committee in 1999. It would call upon the government to take further action in order to ensure that it comply with its obligations under international law in relation to the prevention, investigation, prosecution, punishment and reparation of domestic violence.

3.2 Marital Rape

Article 197 of the Polish Penal Code criminalizes rape and states that:

1. Whoever, by force, illegal threat, or deceit, subjects another person to sexual intercourse shall be subject to the penalty of deprivation of liberty for a term of between one and ten years.

Although the article does not address the issue of the relationship between the perpetrator and the victim of rape and could, theoretically, be used to prosecute cases of rape occurring in the context of marriage, in practice, marital rape is not prosecuted in the Polish legal system.

In one survey, 30 per cent of women in rural areas stated that they believed that women are obliged to provide sex on demand.⁵⁹ This attitude is also reflected in comments made by police, prosecutors, judges and forensic doctors who reportedly often share the view that “there is no such thing as marital rape in Poland.”⁶⁰

4. Violence against Women in the Community

4.1 Rape

As with domestic violence, there are few disaggregated statistics available concerning the rate of rape in Poland, although it is clear that the number of reported rapes does not provide a reliable indicator of the prevalence of rape due to the fact that women are unwilling to report this crime as a result of a number of legal, social, cultural and economic factors. According to one source, the actual number of rapes is 10 times higher than that reported.⁶¹

According to statistics from the Polish police headquarters in Warsaw, in 1999, 2,029 cases of rape were reported (1,460 were committed by a single perpetrator, 104 by two perpetrators and 129 rapes by three or more persons). Based on these complaints, the police opened 1,803 investigations with the perpetrators being convicted in 83.7 per cent of the reported cases.⁶² In 2000, there were 2,399 rape cases reported and, according to police statistics, the number of reported rapes increased in the years 2001-2002.⁶³

As mentioned above, rape is criminalized in article 197 of the Polish Penal Code. Under article 197, the victim must file a complaint and request that criminal proceedings be commenced. Importantly, the Code of Criminal Procedure provides that once a motion has been filed, it cannot be withdrawn by the victim. While the existence of a “no return” procedure in relation to the commencement of proceedings was designed to ensure that the perpetrator could not pressure the victim into withdrawing the complaint, in practice, this procedural rule often reportedly dissuades victims from filing a complaint and it is also allegedly used by police in order to discourage women from continuing with proceedings.⁶⁴

There is evidence to suggest that law enforcement officials including police, prosecutors and members of the judiciary are often influenced by prevailing socio-cultural stereotypes in their attitudes to the investigation, prosecution and sanctioning of the crime of rape. The Women's Rights Centre has reported that police and judges often question the victim on her prior sexual history, imply that her behaviour somehow "provoked" the assault, or endeavour to get the victim to admit that her passivity or attempts to conciliate or negotiate with the perpetrator constitute evidence that she did, in fact, consent.⁶⁵

Police regulations in force since 1999 stipulate that all female rape victims must be questioned by a policewoman. In practice, however, due to the fact that there are insufficient numbers of female police officers, women who are victims of rape are rarely interviewed by female police officers.⁶⁶

While there were few services available to provide assistance and support to victims of rape in the past, this situation does appear to be slowly changing. In 2000, the Warsaw police department developed a model code of practice which provided that victims of rape should be systematically given written information concerning their rights as well as the contact details of organisations that can offer support and assistance.

4.2 Trafficking in Women and Girls

Poland is a country of origin, transit and destination for trafficked persons and the bulk of these trafficking victims are women and girls.⁶⁷ Persons are trafficked to and through Poland primarily from Russia, Belarus, Ukraine, Romania and Bulgaria. Poles and some of the persons trafficked through Poland are trafficked on to countries in Western Europe, mainly Germany, the Netherlands, Belgium and Switzerland.⁶⁸ The main non-governmental organisation working with trafficking victims in Poland, La Strada, estimates that up to 60 per cent of women working as prostitutes in Poland are victims of trafficking and that as many as 10,000 women and girls are trafficked out of Poland each year.⁶⁹

According to the UN Office for Drug Control and Crime Prevention, organised criminal groups "import" young women from Bulgaria, Romania and the former Soviet Republics and "export" Polish and other

forced prostitutes to countries in Western Europe. The majority of the women and girls trafficked to and from Poland for the purposes of forced prostitution are aged between 16 and 20. These women and girls are often misled by traffickers who offer them jobs as barmaids, au pairs or brides. Often the women enter Poland legally, however, upon their arrival, the traffickers confiscate their documents and pressure them into prostitution through rape, beating and threats of violence as well as by demanding that they repay the “costs” of their transportation and other expenses.⁷⁰ There have also been some reports of trafficked women who try to flee being killed by their traffickers.⁷¹

Violations of economic, social and cultural rights and entrenched gender discrimination are two of the underlying factors that have helped to create such a fertile climate for trafficking into, through and out of Poland. La Strada reports that the majority of women and girls who are trafficked into and out of Poland come from medium-sized towns in impoverished regions and that many of these women come from minority groups such as the Turkish population in Southern Bulgaria or the Roma/Sinti population in Romania. Most are unemployed, poor and have had little education, many are escaping from abusive family situations. According to La Strada, the defining characteristic of a “potential” trafficking victim is “a strong desire to improve her often difficult and poor living conditions by travelling abroad and earning money.”⁷²

Since 1 September 1998, the Penal Code has criminalized organising trafficking and assisting trafficked migrants.

Article 204 (1) of the Penal Code provides that: “Who with the purpose of obtaining a material benefit, incites a person to prostitution or facilitates prostitution of a person is subject to a sentence of imprisonment for a period of time of up to 3 years.” Article 204 (3) increases the penalty to imprisonment for a period of between 1 and 10 years in cases where the person is a minor and Article 204 (4) provides that “the sentence specified in § 3 is applicable to the perpetrator who entices or abducts a person into prostitution abroad.”

Article 253 of the Penal Code criminalizes trafficking in persons “even with their consent” and provides for a penalty of imprisonment for a period of time not shorter than 3 years. Article 253 (2) of the Code states that “Who, with the purpose of obtaining a material benefit, organises

adoption of children contrary to the provisions of the Act is subject to a sentence of imprisonment for a period of time from 3 months to 5 years.”

The scope of trafficking in Poland is certainly much greater than the numbers of prosecutions and arrests for violations of the articles of the Penal Code related to trafficking would suggest. In 2000, the government prosecuted 198 cases under article 204 and 13 cases under article 253 of the Penal Code. In the first half of 2001, the government prosecuted 345 cases under article 204 and 11 cases under article 253. OMCT has been unable to obtain information concerning the conviction rates or sentences that have resulted from these prosecutions, however, in the past most prosecutions related to trafficking lead to suspended sentences.⁷³

Despite the legal provisions that create sanctions for traffickers, victims are still commonly treated by the authorities as criminals and they are generally deported as quickly as possible in order to avoid the costs involved in keeping the victims in immigration detention centres.⁷⁴ Victims of trafficking are often unwilling to report their abuse to State authorities as they fear being prosecuted for their illegal immigration status and many are also unaware that prostitution is not a criminal offence in Poland. There are no measures in place that would protect women wishing to testify against their traffickers from retaliation and there is equally no legislative provision that would enable women to be granted temporary visas in order to remain in Poland long enough to pursue legal action against their traffickers.⁷⁵

Trafficking is not regarded by the government as a priority issue and there is no specialised unit within the police, border guards or department of immigration that deals with trafficking and the material and financial resources devoted to anti-trafficking work are very scarce.⁷⁶ The government provides small grants to non-governmental organisations such as La Strada in order to facilitate their work in assisting and supporting victims of trafficking.⁷⁷ The services provided by La Strada and other NGOs range from assistance in finding safe accommodation, counselling, medical care and legal aid. In addition, La Strada also provides training on trafficking prevention and victim support to State officials who have contact with trafficked persons including; police, boarder guards, prosecutors, judges, social workers, teachers and journalists.⁷⁸

5. Violence committed by the State

As mentioned in the preliminary observations to this report, torture and cruel, inhuman or degrading treatment or punishment, including corporal punishment, are prohibited under article 40 of the Polish Constitution. Despite this guarantee, there have been reports that certain law enforcement officials engage in human rights violations including the torture and ill treatment of persons being held in police custody and in prisons.⁷⁹ The few investigations that have been initiated in relation to these cases have generally been terminated rapidly with a finding that the police have no case to answer.⁸⁰

In its concluding observations on the third periodic report of Poland under the Convention Against Torture in 2000, the Committee Against Torture expressed its concern at the fact that there are no provisions in the Penal Code that specifically punish the crime of torture. The Committee also stated that “in spite of the efforts of the State party, some drastic acts of aggressive behaviour by police officers continue to occur, which have resulted in death in some instances.”⁸¹

OMCT has been able to obtain very little information concerning violence against women committed by State agents, however, the 2002 human rights report by the International Helsinki Federation contains one case of police violence against a woman and there have been reports that conditions for women in pre-trial detention and in prison do not always meet international standards.⁸² According to statistics for the year 2001, women were being held in 21 detention facilities with only 5 of these being women-only prisons, in the remaining 16 facilities, women and men were held separately.⁸³

Overcrowding in Polish prisons remains a serious problem and one which has reportedly had an adverse impact upon women in detention. According to a recent report, prisons in Poland currently exceed their capacity by 130 per cent and, as a result of this situation, “it is much harder to place women prisoners near their homes due to the small number of women’s prisons.”⁸⁴

6. Reproductive Rights

As mentioned in sections 2.1 and 2.2 of this report, the status of women in Poland has been influenced by the fact that many women do not have effective control over their reproductive lives. The government reportedly provides only very limited family planning services, there is a marked absence of information available to women concerning contraception, sterilisation and abortion are both illegal and the sex education that is provided in schools has been amalgamated into a Catholic “pro-family” curriculum.⁸⁵

The Polish government has adopted a “pronatalist” policy in response to the country’s declining birth rate and this policy is in line with the position of the Catholic Church in relation to birth control issues. Aside from the restrictions on abortion and family planning services, the government has recently introduced pro-family taxation benefits that would give preferential treatment to families with at least two children.⁸⁶

Opinion polls have revealed that 35 per cent of Poles use natural family planning methods, 31.8 per cent use condoms and only 6.3 per cent of women use hormonal contraceptives.⁸⁷ Up until 1998, eight brands of oral contraceptives were completely subsidised by the State, however, in 1998 the subsidies were withdrawn for five of these brands. The Federation for Women and Family Planning made an official complaint to the Polish Ombudsman for Human Rights concerning the revocation of the subsidies and the Ombudsman found that this constituted a discriminatory practice. Nevertheless, the government has not reversed its decision.⁸⁸

While there are no formal restrictions on advertising contraception and birth control methods, the influence of the Catholic Church, which has actively campaigned against the use of contraceptives, and the lack of official government programmes or guidelines concerning the dissemination of information on family planning mean that there is little public information on the issue. Many physicians reportedly do not know about or are personally opposed to family planning and do not inform their patients about birth control methods. As a result, 45 per cent of women have never been encouraged by their gynaecologists to use birth control, a situation that is perpetuated and condoned by the Code of Medical Ethics that only obliges physicians to inform their patients about contraception if they are asked directly.⁸⁹

Abortion is currently only allowed in Poland in three situations: 1. When the pregnancy endangers the life or health of the mother; 2. When a prenatal examination shows that the foetus has irreversible and severe disabilities or an incurable disease that endangers its life; and 3. Where the pregnancy is the result of a criminal act – this must be established by the state prosecutor. Importantly, abortions where pregnancy results from a criminal act are only possible during the first 12 weeks of the pregnancy.⁹⁰

Performing an abortion outside the framework of the Polish Abortion Law is illegal and persons found guilty of conducting an abortion or of assisting a pregnant woman to obtain an abortion may be imprisoned for a period of up to three years. A woman who seeks or undergoes an illegal abortion may also be prosecuted and sentenced to a fine or to imprisonment for up to two years.⁹¹

There are no official statistics available on the number of abortions performed each year in Poland, however, unofficial documents suggest that between 40,000 and 50,000 abortions are performed annually, most of these illegally.⁹² Even in cases where women fulfil all of the legal criteria for obtaining an abortion, there have been reports that hospital staff that disagree with abortion may make it virtually impossible for these women to access abortion services.⁹³

7. Conclusions and Recommendations

While Poland has, in recent years, introduced several initiatives aimed at promoting and protecting the human rights of women, violence and other forms of discrimination against women remains a problem in the country. In general, Polish legislation is based on a model of formal equality and does not discriminate against women directly. In practice, however, legislation is often applied in a manner that does effectively discriminate against women, particularly in the areas of employment and family law.

OMCT welcomes the fact that Poland is a State party to most of the major international and regional instruments for the promotion and protection of human rights. Nevertheless, OMCT is concerned by the fact that the government of Poland has yet to either sign or ratify the Optional Protocol to

the Convention on the Elimination of All Forms of Discrimination Against Women and would call upon the government to take steps to do so as soon as possible.

OMCT is deeply concerned by the prevalence of domestic violence in Poland. In spite of the fact that there is little statistical information concerning the scope of the problem, data collected by local NGOs suggests that as many as one in six women in Poland is a victim of domestic violence and that this violence affects women of all ages and socio-economic backgrounds.

As well as constituting a violation of articles 3, 10 and 11 of the ICESCR, the high rates of domestic violence in Poland are directly linked to failures to adequately guarantee the rights contained in articles 6 and 7 of the Covenant. Women suffer from higher levels of unemployment than men in Poland and when they are employed, they frequently work in precarious and less well remunerated jobs that means that women are often economically dependent on their male partners and are therefore unable to leave violent relationships. In addition, the shortage of adequate housing including emergency shelters for victims of domestic violence has created a situation whereby women who are victims of domestic violence often have little choice than to continue co-habiting with the perpetrators of this violence.

OMCT believes that more effective legislative and policy measures need to be taken in order to address the issue of domestic violence in Poland. The Penal Code should be amended to explicitly criminalize rape in the context of marriage and consideration should be given to the drafting of additional, comprehensive legislation for the prevention and eradication of domestic violence. These measures should be based on the guidelines proposed by the Special Rapporteur on Violence Against Women (U.N. doc. E/CN.4/1996/53, Add.2) and should include the development of quasi-judicial remedies such as restraining and protective orders as well as the allocation of increased resources for the housing and reintegration of women who have been victims of domestic violence. In addition, a systematic training and awareness-raising programme for all law enforcement officials and members of the judiciary in relation to the investigation, prosecution and punishment of domestic violence should be developed. OMCT would also like to emphasise the need to provide legal

aid to women wishing to pursue complaints, and the necessity of adopting measures to minimise delays in the administration of justice.

The government should collect and maintain accurate statistics on the scope and nature of domestic violence and develop a broad-based public awareness campaign concerning this form of violence and the legal and policy measures that are being taken to prevent and combat it.

Trafficking in girls and women remains a serious problem in Poland and OMCT would urge the government to make a binding commitment to preventing and combating trafficking by ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime. OMCT would also urge the government to consider using the Recommended Principles and Guidelines on Human Rights and Human Trafficking (UN Doc. E/2002/68/Add.1) as adopted by the Economic and Social Council in July 2002 as the basis for the development of a comprehensive legislative and policy response to the issue.

In relation to the prevention of trafficking, OMCT would recommend that the government make further efforts to address some of the root causes of this trafficking through, *inter alia*, ensuring that the right of women in Poland to enjoy the full range of economic, social and cultural rights is protected and respected in practice. To this end, effective measures to prevent and eradicate discrimination against women in employment, to facilitate access to affordable housing and to prevent and combat gender-related violence need to be adopted.

The government should develop appropriate services to support and assist trafficked women and girls and additional support should be provided to non-governmental organisations working with women and girls who have been trafficked. OMCT would recommend that the government give serious consideration to the adoption of comprehensive anti-trafficking legislation that enshrines the rights of trafficking victims to appropriate protection and assistance.

Any future anti-trafficking legislation should also ensure that trafficked women are provided with the opportunity to bring complaints against their traffickers and that they are granted visas to enable them to remain in the country for the duration of these proceedings. In addition, measures

should be taken to ensure that women wishing to provide testimony against trafficking operations are given adequate protection against potential reprisals from these groups.

Law enforcement personnel in Poland are, in general, ill-equipped to handle complaints from women and girls alleging that they have been victims of rape and other forms of sexual violence. The discriminatory attitudes of many police and members of the judiciary have led to a lack of confidence in the law enforcement response to acts of violence against women and thus to the subsequent under-reporting of rape and other forms of violence against women in Poland. For this reason, OMCT would recommend that all law enforcement personnel and members of the judiciary be given appropriate gender-sensitive training in responding to cases of rape and other forms of violence against women. OMCT would further recommend that greater numbers of female police officers be recruited and that these officers be, as a priority, assigned to specialised units created to respond to cases of violence against women.

Finally, OMCT would insist upon the need for the Government to fully implement all of the provisions of the Convention for the Elimination of All Forms of Discrimination Against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials.

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Committee on Economic, Social and Cultural Rights

TWENTY-NINTH SESSION – 11-29 NOVEMBER 2002

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT**

**CONCLUDING OBSERVATIONS BY THE COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS: POLAND**

1. The Committee on Economic, Social and Cultural Rights considered the fourth periodic report of Poland on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/4/Add.9) at its 33rd and 34th meetings, held on 13 and 14 November 2002 (E/C.12/2002/SR.33 and 34), and adopted, at its 56th meeting held on 29 November 2002, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Poland, which was prepared in conformity with the Committee's guidelines. The Committee notes with appreciation the comprehensive written replies to its list of issues (E/C.12/Q/POL/2) and the additional information provided during and after the constructive dialogue with the delegation of the State party.

B. Positive Aspects

3. The Committee notes with appreciation the range of concrete measures that have been undertaken during the reporting period in accordance with the Committee's previous recommendations.
4. The Committee commends the State party for its ongoing process to bring its legislation in harmony with the provisions of the Covenant and for the specific measures it has taken in order to ensure the enjoyment of economic, social and cultural rights within its jurisdiction.
5. The Committee welcomes the establishment in November 2001 of the Government Plenipotentiary for Equal Gender Status with the responsibility of promoting the principle of equality between men and women in government legislation and policies. The Committee also notes the recent expansion of the responsibilities of the Plenipotentiary to include combating discrimination based on race, ethnic origin, religion and belief, age and sexual orientation.
6. The Committee welcomes the programmes and measures undertaken by the State party to address the alarming rise in unemployment, including the National Strategy for Employment Growth and Human Resources Development for the years 2000-2006.
7. The Committee welcomes recent amendments to the Labour Code, which bans discrimination on the grounds of sex, age, disability, nationality or belief, and guarantees equal remuneration for work of equal value. The Committee also commends that under the new Labour Code the burden of proof is incumbent on the employer if an employee complains about discriminatory practices.
8. The Committee commends the recent change in the definition of juvenile work, which raises the minimum working age from 15 to 16.
9. The Committee welcomes the establishment in the year 2000 of the Ombudsman for Children responsible for monitoring children's rights in Poland.
10. The Committee welcomes the adoption of the Charter of Disabled Persons' Rights (1997) as well as the entry into force in 1998 of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities.

11. The Committee notes with appreciation the initiatives undertaken by the State party to reduce the consumption of alcohol and tobacco in the country, including the recent ban on the selling of alcohol to minors and on the promotion and advertising of tobacco products.

C. Factors and Difficulties Impeding the Implementation of the Covenant

12. The Committee notes the difficulties encountered by the State party in implementing the rights provided for in the Covenant, which arose from the process of transition to a market-oriented economy.

D. Principal Subjects of Concern

13. The Committee is deeply concerned about the recent increase in xenophobic manifestations and acts of violence against certain minorities, in particular Jews and Roma.
14. The Committee regrets that the State party has not provided data about the Romani population living in Poland and that it has not yet adopted and implemented a comprehensive programme to address the problems Romani communities face, in particular unemployment and inadequate living conditions. The Committee also expresses its concern over the high drop-out rates among Romani students.
15. The Committee notes with regret that it did not receive a satisfactory answer by the State party as to whether migrant workers and members of their families enjoy the right to appeal in courts. The Committee is concerned that the rights enshrined in the Covenant are insufficiently protected for the large number of migrant workers residing in Poland.
16. The Committee is concerned about the high level of unemployment in the State party which has steadily increased since the consideration of the last periodic report and currently affects over 17 % of the active population. The Committee notes with concern that rural areas are particularly affected in this regard as a result of the restructuring of the public sector in agriculture.

17. The Committee is concerned that, despite the measures taken by the State party to combat discrimination against women in employment, discrepancy persists between the law and actual practice with respect to equal remuneration for work of equal value and promotion in employment, as acknowledged by the State party' delegation.
18. The Committee is concerned that there are no specific regulations against sexual harassment in the State party. It notes with regret that the State party was not able to provide information on this subject in its report and written replies to the list of issues as requested by the Committee.
19. The Committee notes with concern the consequences of different retirement ages for men (65) and women (60), which in practice lead to lower pensions for women.
20. The Committee is concerned that the minimum wages in Poland are insufficient to provide a worker and his/her family with a decent standard of living.
21. The Committee is concerned about the inadequacies in enforcing occupational safety laws and regulations in the State party, resulting in a relatively high number of accidents in the workplace.
22. The Committee notes with concern that the legislation of the State party still contains restrictions on civil servants' right to join trade unions and to strike.
23. The Committee expresses its concern that the relatively widespread incidence of child labour in rural areas, as acknowledged by the State party's delegation, has a negative impact on children's health and right to education.
24. The Committee is concerned about the rising incidence of trafficking in women for the purpose of sexual exploitation.
25. The Committee is concerned about the high number of reported cases of domestic violence. It also notes with regret that insufficient information was provided on this issue by the State party.

26. The Committee is concerned that, under existing legislation, forced evictions may be carried out in the State party without provision for alternative lodging, as provided for in the Committee's General Comment No. 7 on forced evictions.
27. The Committee regrets that it did not receive adequate information from the State party on the number of people who live below the poverty line.
28. The Committee is concerned that family planning services are not provided in the public health-care system and that women have no access to affordable contraception. It also expresses concern that education in sexual and reproductive health is not adequately covered in the national school curriculum.
29. The Committee is concerned about the restrictive abortion legislation, which has resulted in a large number of women risking their health when they resort to clandestine abortionists.
30. The Committee expresses its concern at the high level of cardiovascular diseases, as acknowledged by the State party.
31. The Committee expresses deep concern at the high number of people who suffer from mental illness and the high number of children and young adults who required psychological care during the reporting period.
32. The Committee notes with regret that the State party did not provide sufficient information on its programmes to combat HIV/AIDS.

E. Suggestions and Recommendations

33. The Committee requests the State party to clarify, in its fifth periodic report, whether individuals within the State party's territory may invoke the rights enshrined in the Covenant before the domestic courts and to provide relevant case law, if available, on the application of the Covenant. In this respect, the Committee draws the attention of the State party to its General Comment No. 9 on domestic application of the Covenant. The Committee urges the State party to take

measures to increase public awareness of the Covenant and of the possibility of invoking its provisions before the courts.

34. The Committee recommends that the State party formulate and implement a comprehensive national plan of action for the protection and promotion of human rights, as recommended in paragraph 71 of the 1993 Vienna Declaration and Programme of Action. The Committee requests the State party to include a copy of the national plan of action and information on its implementation in its next periodic report.
35. The Committee urges the State party to take measures, legislative or otherwise, to ban and prosecute organizations which incite to or promote racial discrimination.
36. The committee urges the State party to provide updated information on the Romani population and to adopt a comprehensive programme to address the obstacles to the advancement of the Romani population, including measures to ensure effective remedy for cases of discrimination against Roma in employment, housing and health care. The Committee also urges the State party to adopt effective measures to combat the low school attendance and high drop-out rates among Romani students and to provide for their integration into regular classes on an equal footing with other Polish children.
37. In view of the large number of migrant workers in Poland, the Committee urges the State party to ensure the effective protection of the rights under the Covenant for migrant workers and their families.
38. In order to fight unemployment, the Committee urges the State party to intensify its efforts to implement the relevant national plans of action with a view to adapting the workforce to a changing labour market and providing alternative sources of income for workers affected by restructuring programmes, particularly with regard to the heavy industry and agricultural sectors.
39. The Committee reiterates its previous recommendation, urging the State party to ensure the implementation of the legal provisions and administrative regulations ensuring equal remuneration for men and women and the equal opportunity for promotion in employment,

subject to no consideration other than those of seniority and competence. The Committee encourages the adoption of the draft legislation on the equal status of men and women, currently being considered by the Senate of the State party.

40. The Committee reiterates its previous recommendation to the State party that sexual harassment be prohibited by law and urges the State party to provide information on sexual harassment in its next periodic report.
41. The Committee recommends the adoption of the same age of retirement for men and women.
42. The Committee recommends that the State party regularly evaluate and adjust the minimum wage in consonance with the cost of living so as to ensure that the worker and his/her family are able to have a decent standard of living.
43. The Committee reiterates its previous recommendation that the State party intensify its efforts to ensure that occupational safety legislation is properly implemented, especially by allocating sufficient resources to the State Labour Inspectorate and imposing effective sanctions with respect to violations of safety regulations.
44. The Committee recommends that the legislation on civil service be amended with a view to lifting the restrictions imposed on civil servants' right to join trade unions and on their right to strike in conformity with the comments made by the International Labour Organization Committee of Experts in 2001 concerning the Right of Association and Protection of the Right to Organize Convention (No. 87).
45. The Committee recommends the adoption of legislation in order to regulate child labour in rural areas in such a way that the right to health and right to education of working children be fully protected.
46. The Committee recommends that the State party take effective measures to combat trafficking in women, including ensuring that those responsible for trafficking be prosecuted, and to ratify the international instruments aimed at intensifying cooperation in this field among states, including the Protocol to Prevent, Suppress and Punish

Trafficking in Persons, especially Women and Children. The Committee requests the State party to report on the progress of this matter in its next periodic report

47. The Committee recommends that the State party strengthen programmes and increase budget allocations for combating domestic violence, including ensuring the availability and accessibility of crisis centres where victims of domestic violence can find safe accommodation and counselling.
48. The Committee reiterates its previous recommendation that the conditions for permissible forced evictions be specified in law, with provisions that address the need for alternative lodging for those evicted, as provided for in the Committee's General Comment No. 7 on forced evictions.
49. The Committee recommends the State party to closely monitor the level of poverty and provide in its next periodic report disaggregated and comparative data on the number of people living under the poverty line. The Committee furthermore urges the State party to fully integrate human rights, including economic, social and cultural rights, in the formulation of a national strategy for poverty reduction. In this respect, the Committee refers the State party to its Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights adopted on 4 May 2001 (E/C.12/2001/10).
50. The Committee recommends that family planning services be provided by the public health-care system, that contraceptives be available at affordable prices, and that sexual and reproductive health education be included in the national school curriculum.
51. The Committee requests that the State party provide in its next periodic report detailed information, including comparative data, about the problem of abortion in Poland and the measures, legislative or otherwise, including the review of its present legislation, it has undertaken to protect women from clandestine and unsafe abortions.
52. In view of the high level of deaths caused by cardiovascular diseases, the Committee recommends that the State party monitor the situation closely and include in its next periodic report disaggregated and

comparative data documenting the effects of measures taken in this respect.

53. The Committee requests the State party, in its next periodic report, to provide detailed information on the conditions in psychiatric in-patient health-care facilities and to include data documenting the results of the Mental Health Protection Programme.
54. The Committee requests the State party to include in its next periodic report information on concrete results of the implementation of the Charter of Disabled Persons' Rights (1997) as well as of the Act on vocational and social rehabilitation and employment of disabled persons (1998).
55. The Committee request the State party to provide information on legislation and programmes concerning persons with HIV/AIDS as requested in the list of issues in the present fourth periodic report.
56. The Committee encourages the State party to provide human rights education in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among State officials and the judiciary.
57. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, and in particular among State officials and the judiciary, and, in its next periodic report, to inform the Committee on all steps taken to implement them.
58. Finally, the Committee requests the State party to submit its fifth periodic report by 30 June 2007, and encourages the State party to consult with non-governmental organizations and other members of the civil society in the preparation of its fifth periodic report.

Violence against Women in Spain

A Report to the Committee against Torture

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**Concluding observations of the Committee against Torture:
Spain**

Twenty-eighth session – 11-22 November 2002

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1. Preliminary Observations

The submission of a report on violence against women in Spain to the United Nations Committee against Torture forms part of OMCT's Violence against Women Programme which has as one of its objectives the integration of a gender perspective into the work of the five "mainstream" United Nations Human Rights Treaty Monitoring Bodies.

Spain ratified the Convention against Torture¹ on 21 October 1987.

At the moment of ratification, Spain recognized the competence of the Committee Against Torture (CAT) to receive and process both inter-state and individual complaints as provided for in articles 21 and 22 of the Convention, respectively.

At the international level, Spain is a State Party to most of the major international treaties for the promotion and protection of human rights.

Spain is a party to the following UN human treaties which have corresponding treaty bodies: the International Covenant on Economic Social and Cultural Rights,² the International Covenant on Civil and Political Rights, as well as its first and second Optional Protocol,³ the International Convention on the Elimination of all Forms of Racial Discrimination,⁴ the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Elimination of Discrimination Against Women⁵ and the Convention on the Rights of the Child as well as its second Optional Protocol.⁶ Spain has also signed the first Optional Protocol to the Convention on the Rights of the Child.

In addition, within the European Human Rights system, Spain has ratified the European Convention on Human Rights.⁷

Spain also ratified the European Convention for the Prevention of Torture in 1989. This treaty authorises the European Committee for the Prevention of Torture (CPT) to carry out visits to places of detention. A delegation from the CPT carried out its seventh visit to Spain from 22 to 27 July 2001. The main purpose of the visit was to examine the efficacy in practice of the formal legal safeguards against ill-treatment that are available to persons deprived of their liberty in Spain. The delegation reviewed the action being taken by the Spanish authorities to implement the CPT's

recommendations on this subject. It also examined the internal accountability procedures of the National Police and the Civil Guard in cases involving allegations of ill-treatment by members of those agencies. Further, the delegation interviewed a number of persons recently detained by the National Police and the Civil Guard on suspicion of terrorist-related offences. The report of the visit is not yet publicly available.

OMCT regrets the lack of information provided on violence against women and girls in Spain in the government report (UN Doc. CAT/C/55/Add.5) and it is also concerned by the absence of any data disaggregated by gender. In light of the government report's lack of attention to the manner in which gender shapes the form of torture, the circumstances in which it occurs and its consequences, including the availability and accessibility of remedies, and in line with its objective of integrating a gender perspective into the work of the human rights treaty bodies, OMCT has decided to concentrate in this report on torture and other forms of violence against women in Spain.

States have an obligation to take positive measures to ensure basic rights guaranteed under international law and to apply a minimum of due diligence in response to serious violations of those rights, in particular for violations of a person's personal integrity.⁸

The Committee Against Torture has, on a number of occasions, expressed its concern about the lack of due diligence exercised by certain States in responding to acts carried out by private individuals or private entities that have violated the rights guaranteed in the Convention.

In its conclusions on the Czech Republic, the CAT expressed concern regarding: "Instances of racism and xenophobia in society, including the increase in racially motivated violence against minority groups, as well as the increase in groups advocating such conduct."⁹ Similarly, in its conclusions on Slovakia, the CAT expressed concern at: "inaction by police and law enforcement officials who fail to provide adequate protection against racially motivated attacks."

In its 2001 conclusions on Greece, the CAT recommended that "steps be taken to prevent and punish trafficking of women and other forms of violence against women."¹¹ The Committee's concluding observations on Georgia also raised the issue of violence against women, including

trafficking in women and recommended that “effective measures be taken to prosecute and punish violence against women, as well as trafficking in women.”¹² Finally, in its recent conclusions on the report of Zambia, the CAT included amongst the issues of concern: “Incidence of violence against women in society, which is illustrated by reported incidents of violence in prisons and domestic violence.”¹³

In this context, violence against women, including domestic violence, female genital mutilation and trafficking in women can raise concerns in States parties to the Convention against Torture in situations where the State at issue has failed to act with due diligence in the prevention, investigation, prosecution, punishment and reparation of this violence.

2. General Background

The Spanish State is a Parliamentary Monarchy. The monarchy was re-established in Spain after the death of General Franco in 1975. King Juan Carlos I oversaw the transition from the dictatorial Franco regime towards democracy which was marked by the adoption of a new Constitution in 1978. After a long period of Socialist Government (1982-1996), the country is today governed by the conservative People’s Party.

The State is organized territorially into municipalities, provinces, and the Autonomous Communities. All these entities enjoy autonomy for the management of their respective interests. The Autonomous Communities that have exercised the right of autonomy have jurisdiction in some areas (for instance in matters related to social assistance, health, culture, etc. article 148), but the State alone is competent in matters such as international relations, administration of justice, penal, legislation, immigration and the right of asylum, international relations. (article. 149).

In the Basque country, the armed group ETA (Basque Fatherland and Liberty) has long carried out a campaign for independence. It is reported that in 2001 alone 15 persons, including 8 civilians were killed by the ETA.¹⁴ In response, the government has adopted anti-terrorist legislation that severely curtails certain basic rights. The application of this legislation has been linked to numerous cases of torture.

Ill-treatment and torture have also been frequently linked to racial discrimination directed against the immigrant population and Roma people living in Spain.¹⁵

Article 96 of the Constitution regulates the conclusion and entry into force of international treaties. According to that article, validly concluded international treaties are part of the internal legal order upon official publication. Prior authorization of the parliament (*Cortes Generales*) is nevertheless required for the conclusion of some treaties, including those that require the adoption of measures of a legislative nature, or involve the modification or repeal of a law (articles 93 and 94 of the Constitution).¹⁶

Although international law has precedence over domestic law, if international law contradicts provisions of the Constitution, the Constitution prevails. Constitutional control of the international treaties can take place *a priori* and *a posteriori* by the Constitutional Court.¹⁷

Article 10, paragraph 2 of the Constitution stipulates that all norms relative to the fundamental rights and liberties recognized in the Constitution must be interpreted in conformity with the Universal Declaration of Human Rights and the international human rights treaties that are binding upon Spain.

3. Legal Provisions Relevant to the Practice of Torture

Article 15 of the Spanish Constitution of 1978 provides that: “Everyone has the right to life and physical and moral integrity and in no case may be subjected to torture or inhuman or degrading punishment or treatment. The death penalty is abolished except in those cases which may be established by military penal law in times of war.” The Penal Code forbids life imprisonment and limits to thirty years of imprisonment the maximum penalty which can be imposed on adults by the courts.

On October 10, 1987 Spain ratified the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁸ Subsequently, a provision was adopted in the Penal Code criminalizing torture.¹⁹ However, the definition in the Spanish Penal Code differs significantly from the CAT definition in two ways. Firstly, the Spanish definition limits torture to acts committed as a means to obtain a confession or

to punish a person, while the CAT definition is expansive, recognizing torture when it is committed for “for any reason based on discrimination of any kind.” Secondly, the Spanish definition only recognizes torture when it is engaged in by public officials, while the CAT definition includes as torture acts committed “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” Thus, the narrow Spanish definition of torture excludes many circumstances of torture that would be recognized under the CAT.

Article 17 of the Constitution establishes the right to liberty and fair trial. The Constitution also guarantees detained persons immediate access to a lawyer during police investigations and judicial proceedings. However, the Constitution also allows legislators to suspend these rights with respect to specific individuals in order to facilitate the investigation of armed gangs or terrorist groups.²⁰

Sexual crimes are covered by the articles 178-180 of the Spanish Penal Code and can be punished with prison sentences of 1-15 years, depending on the nature and seriousness of the assault. Article 180 of the Penal Code provides for prison sentences from 4 to 10 years for sexual crimes committed with violence or intimidation on someone who is vulnerable by reason of age or disability.

3.1 Anti-terrorist Legislation

Many allegations of torture are linked to the application of anti-terrorist legislation and the insufficient guarantees of liberty therein.²¹ Articles 520 bis and 527 of the Ley de Enjuicimiento Criminal authorize holding persons incommunicado for up to three days, a period which can be extended to five days with judicial authority. Moreover, reports claim that judges often authorize the imposition of incommunicado detention without assessing the detained person’s mental and moral state. Incommunicado detention often creates conditions which allow torture to occur and is a practice that should be outlawed in Spain.²²

Furthermore, sources indicate that in numerous cases family members of persons detained are not informed of the detention of their relative or not told where their relative is being held.²³ Persons detained are not given the right assistance by a lawyer or a doctor of their choice. Lawyers are

appointed by the court and only forensic doctors are allowed to visit detainees. The independence of forensic doctors is questionable as they often do not record statements made by the detainee during the medical examination, thus neglecting relevant evidence of torture.²⁴

4. General Observations on the Status of Women

4.1 Legal Guarantees and Government-sponsored Institutions and Initiatives

While profound and positive changes in the field of women's rights have taken place in government policy and legislation over the last 30 years, in practice, discrimination against women remains a problem in Spain.

At the international level, Spain ratified the Convention on the Elimination of All Forms of Discrimination against Women on 5 January 1984 without any reservations. This Convention obliges States parties to pursue a policy of eliminating discrimination and to ensure that public authorities and institutions act in conformity with this obligation. In 1992, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted General Recommendation 19 in which it stated that "gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention." Spain has also ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, an instrument that provides the Committee on the Elimination of Discrimination against Women with the competence to receive and examine individual communications from women in Spain.

The Spanish Constitution contains three specific articles regarding gender-based discrimination.

[Discrimination]: Article 14 of the Constitution states:

Spaniards are equal before the law, without any discrimination for reasons of birth, race, sex, religion, opinion, or any other personal or social condition or circumstance

[Work]: Article 35 (1) provides:

All Spaniards have the duty to work and the right to work, to the free election of profession or office career, to advancement through work, and to a sufficient remuneration to satisfy their needs and those of their family, while in no case can there be discrimination for reasons of sex.

[Marriage, Matrimonial Equality]: Article 32 (1):

Man and woman have the right to contract matrimony with full legal equality.

Policy initiatives related to the promotion and protection of the human rights of women are mainly carried out through the *Instituto de la Mujer* (Institute of Women's Issues) a mixed body which includes representatives from both government organs and non-governmental organisations. Its Executive Board comprises representatives from 12 of the 17 existing Ministerial Departments and six committee members from non-governmental women's groups.

The government has enacted several national action plans for the promotion of gender equality. *The First Plan of Equal Opportunities for Women* was adopted in 1987. *The Second Plan of Equal Opportunities for Women* of 1993-1995 gave priority to the promotion of structural changes in attitudes that would permit women to freely develop and participate actively in the areas of culture, work, and politics. *The Third Plan* (1997-2000) emphasised measures to integrate women into the labour market.

Other Plans have been adopted at the local and regional levels, such as "*Plan Clara*" which is addressed to women with special difficulties in accessing the labour market and tries to provide a better qualification for the employment.

4.2 The Situation of Women

Despite the measures that have been taken by the government to more effectively promote and protect the human rights of women, the *de facto* situation of women in Spain remains far from ideal. In practice, traditional socio-cultural stereotypes concerning the status of women persist and

women continue to be viewed primarily in the context of their role in the 'private' sphere of the family.²⁵

Although the participation of women in the political process has increased in recent years, the percentage of women in government or politics still falls far short of their percentage of the population. Of the 19 Cabinet ministers, 3 are women and following the 2000 elections, 99 of the 350 members of the lower house of parliament are women. In the Senate, there are 63 women out of a total of 259 Senators.²⁶

Discrimination in the workplace and in hiring practices persists. Discriminatory wage differentials continue to exist. A 1999 report by the General Workers' Union shows that women's salaries were 30 percent lower than those of their men working in the same jobs.²⁷ Statistics published by the Ministry of Social Affairs for the year 2001 revealed that while women constituted 43 per cent of the work force, they only held 18 percent of senior management positions. The female unemployment rate was 18.6 per cent in the third quarter of 2001, nearly twice that of the rate of male unemployment which was 8.9 per cent.²⁸

The fact that women suffer from higher levels of unemployment than men in Spain and that when they are employed they frequently work in precarious and less well remunerated jobs, leads to a situation whereby women are often economically dependent on their male partners and are therefore less able to leave violent relationships.

5. Domestic Violence

Violence against women and, in particular, domestic violence, remains a serious problem in Spain. According to statistics from government sources, 42 women and 3 men were killed as a result of domestic violence in the year 2001 as compared with 40 women and 6 men in 2000. During the year 2001, women filed 5,983 criminal complaints and 18,175 misdemeanour complaints against male partners while in the year 2000, women filed 5,722 criminal complaints and 14,846 misdemeanour complaints.²⁹

The reported cases of domestic violence invariably do not reflect the real extent of the problem as women are generally very reluctant to report this kind of abuse to the authorities. In 1999, 4.2 per cent of women reported

domestic violence, however, a survey conducted by the Women's Institute, which is part of the Ministry of Labor and Social Affairs, concluded that the real rate of this form of violence was probably around 12.4 per cent.³⁰ Information from the Instituto Aragonés de la Mujer concludes that up to 90 per cent of battered women do not file reports with the police or with the magistrature.³¹

5.1 Legal Provisions Relevant to Domestic Violence

Spain does not have comprehensive legislation that specifically prevents and punishes domestic violence, nor is there a system of quasi-judicial remedies for victims of domestic violence or a mechanism to ensure that perpetrators receive counselling. It was not until 1989 that Spain incorporated a specific provision punishing repeated domestic violence within its Penal Code, outside of this provision, the only mechanism for prosecuting perpetrators of domestic violence is to use the general assault provisions of the Penal Code.³²

Acts of repeated domestic violence are addressed in article 153 of the Penal Code³³ which reads:

Whoever *habitually* exerts physical or psychological violence on his/her spouse or a person to whom he/she is bound by an analogous relationship, or on his/her own children or the children of the spouse or of the person who cohabits with him/her ... will be punished with a sentence of prison from six months to three years, without prejudice to the penalties that could be applied to him/her for crimes or misdemeanours arising from specific acts of physical or psychological violence.

The number of acts of violence as well as the temporal proximity of these acts will be considered in order to determine whether the violence is 'habitual' independently of whether this violence was committed by the perpetrator against the same person or against other persons covered by this article and whether the violent acts have been prosecuted previously.

One of the essential elements of this definition is the term *habitually*. If the acts complained of are not considered to be repeated ('habitual') they

may be qualified as a misdemeanour as defined in article 617(2) of the Penal Code.³⁴

Individual incidents of domestic violence are punishable under the general assault or ill treatment provisions contained in articles 147 and 180 of the Spanish Penal Code. Importantly, these provisions do not take into account the special context of domestic violence which, unlike other forms of assault, involves people that are emotionally and financially involved with one another and therefore requires a different response.

The crime of “ordinary” ill treatment is one that is classified as being of a “public character” and, as such, its prosecution does not depend on the victim lodging a complaint. However, due to the circumstances in which domestic violence usually takes place, prosecution of this crime normally requires the cooperation of the victim or of persons who live with her, or a neighbour or friend who can provide evidence to support the complaint. The fact that it is a crime of “public” prosecution also means that law enforcement officials and health care workers have the duty to report suspected instances of domestic violence, even without the authorization of the victim. However, some doctors do not report suspected cases of domestic violence for various reasons including; fears that they will be called as witnesses in any proceedings that may arise.

5.2 Legal Provisions and Judicial Action for the Protection of Victims

As mentioned previously, Spain does not have comprehensive legislation that provides for ex-parte restraining or protective orders. Following the lodging of a complaint concerning domestic violence, however, individual judges do have the discretion to adopt provisional measures of protection in order to prevent the perpetrator from approaching the victim. According to the Practical Guide against the Domestic Violence published by the Spanish General Council of the Judiciary, the elements the judge should take into consideration when making a decision on the adoption of preventive measures are essentially to the danger of the aggressor, the seriousness of the reported case and the necessity of protection of the victim or other family members.

A judge can adopt numerous types of preventive measures in alleged cases of domestic violence such as prohibiting the accused from living in

a certain district. However, judges do not always apply such measures because they consider these to be in conflict with the right to freedom of movement or the presumption of innocence. Another problem is the high rates of non-compliance with such measures and the small penalties applied for their violation.

5.3 Reasons for the Ineffectiveness of Existing Legal Provisions

Two important socio-cultural factors work to deter many women in Spain from reporting domestic violence: a strong sense of privacy and an emphasis on the unity of the family. Victims also frequently have difficulties reporting cases of violence because they are emotionally and financially involved with the aggressor, they fear retaliation from the perpetrator and because they do not regard the violence as a public affair. Other factors are the possible repercussions of their decisions for the family or even for the aggressors.

Another deterrent aspect is the judicial process itself and its effects on the victim including considerations such as the excessive length of procedures. The length of legal procedures for domestic violence in Spain is extremely long. The average length of legal proceedings is around 4 months in cases of misdemeanours, 14 months for crimes and 2 years in cases of serious crimes judged by the High Court.³⁵

It should also be noted that impunity for domestic violence is the norm and that very few complaints actually result in convictions. According to a study by the Themis Association, defendants are convicted in only 18 per cent of domestic violence cases. In most of the cases that do go to trial, the minimum penalty is imposed.³⁶

Moreover, the criminal procedure is not, on its own sufficient. In more than the half of the cases of domestic violence, women decide to discontinue the procedures due to a lack of protection and support.³⁷

Finally, the difficulties involved in successfully prosecuting cases of psychological ill-treatment, even though this form of domestic violence is covered under article 153 of the Penal Code, reflects the lack of adequate training and awareness of judges in this area.

5.4 Services and Assistance Available to Victims

Two specialized bodies, the SAM (Victims Service run by the National Police) and the EMUNES (Civil Guard unit for the protection of women and minors) were created in the eighties and nineties to better protect and provide redress for victims of violence. These bodies are staffed by women police officers who go to police stations in order to assist and advise women wishing to report violent crimes. Both of these units only work in major urban centres and they do not have the resources to respond to all the cases of domestic violence.

There are around 260 shelters for women victims of domestic violence in Spain and these are all managed by NGOs with government funding. There are three kinds of centres and they have a total capacity of 4,137 places: shelter houses (where women normally stay between 1-6 months) emergency centres (where women can stay 24 hours/day when they are at special risk) and monitored flats.

Victim of the domestic violence are entitled to receive compensation from the perpetrator.³⁸ However, in order to obtain compensation, the perpetrator must have first been tried and sentenced by a court.

5.5 Government Policy Initiatives

In 1998 the Government unveiled a 3-year, \$60 million "Plan Against Domestic Violence." The plan calls for a quadrupling of the number of offices that assist victims and an expansion of medical and legal services. Other provisions of the plan include: public awareness campaigns in the media and in schools; the establishment of a domestic abuse database to streamline judicial investigations; increased access of victims to public housing; and greater linkage between medical, police, legal, and counselling services in order to promote an integrated approach to assisting and protecting victims.

As a result of the Plan, there has been an improvement in the resources available to victims, however, it does not appear to have resulted in a decrease in the number of cases of domestic violence.

The Government has now introduced the “Second Plan Against Domestic Violence”, (2001-2004) with a proposed budget of \$72 million, but expectations of results are not better than those for the first Plan. The four main areas outlined in the plan are preventive education; improvements in judicial regulations and practices to protect victims and increased penalties for abusers; the extension of social services for abused women to all parts of the country; and increased coordination among the agencies and organizations involved in preventing domestic violence.

6. Female Genital Mutilation (FGM)

The number of women living in Spain who come from countries that practice Female Genital Mutilation (FGM) is currently more than 30,000 and is increasing. With this increase FGM has become a concrete problem in Spain too. The practice of FGM not only violates a woman’s human rights, but has detrimental, long term effects on her body and mind.

According to an article published in the newspaper *El Pais*,³⁹ in the last seven years, doctors have reported 30 FGM procedures, which they suspect have been performed in Spain as the evidence of the procedure was so recent. Most of the cases took place in Aragon, Catalonia and Balearic, where most immigrants live. The FGM procedures performed in Spain generally take place in private residences and they are performed in often unsanitary conditions. The operations are performed by persons who go to neighbourhoods where immigrants live in order to offer their services. Although cases have been brought to prosecute people who commit FGM, in most cases it was difficult to prove that the procedure actually took place within Spanish borders.

In addition, regarding protection from FGM, it is noteworthy that the Spanish have made public statements⁴⁰ promising to assist women who request residence permits because they may be subjected to FGM. Nevertheless, so far these promises have not had any effect in practice. Authorities interpret Spain’s Asylum Law⁴¹ as only applying to persons claiming to be victims of political prosecution and therefore women who are fleeing their countries in order to avoid being subjected to FGM have not been successful with asylum applications in Spain.⁴²

OMCT welcomes the initiative that was taken in Catalonia in June 2002 where the Generalitat of the Catalan government introduced the first protocol in Spain for the prevention of the FGM. The project contains basic guidelines for the different collectives of professionals who are in touch with the immigrant communities that practice the mutilation. The protocol recommends educative actions addressed to families and relevant professionals. With this initiative, the Generalitat involves teachers, doctors, social assistants, judges and security forces in the task of preventing and eradicating FGM. However, OMCT encourages the national government to take similar initiatives in all areas of Spanish territory in order to raise awareness of the problem and to educate communities about the harm that FGM inflicts on women.

7. Trafficking in Women

Spain is both a destination and a transit country for trafficked women. Trafficking is carried out almost exclusively for the purpose of sexual exploitation. Most victims come from the Western Hemisphere (including Colombia, the Dominican Republic, and Brazil), Sub-Saharan Africa (Nigeria, Guinea, and Sierra Leone), northern Africa and Eastern Europe. Trafficking and related exploitation makes women particularly vulnerable to violence. Women do not generally report their situation to law enforcement officials out of shame and fear, which has prevented the collection of information and compiling of accurate data on the problem of trafficking.

The 2000 Immigration Law provides a new definition of trafficking and it is classified as a criminal offence.⁴³ Spanish law punishes trafficking as an “abuse of power” or “forcing someone into prostitution” and it carries a sentence of 2 to 8 years.⁴⁴

After a victim of trafficking makes a statement to the police, she will generally be held in custody for 24 hours. Although prostitution is not a crime in Spain, victims of trafficking will also often be deported for engaging in an “undeclared activity.”⁴⁵ The Immigration law provides protection for trafficking victims who cooperate with police against traffickers and establishes the possibility of granting special resident permits to victims of trafficking who collaborate with the authorities.

Women who obtain these permits can continue to reside in the country.⁴⁶

At least one NGO provides aid to victims of trafficking who cooperate with the police by operating shelters and offering medical and legal assistance.⁴⁷ However, these special permits are only granted to women who collaborate with the police or with judicial authorities. Moreover, this permission can be revoked if the woman, during the procedure in which she is a victim or a witness, suspends cooperation.

OMCT is concerned that, although foreign trafficking victims may be offered temporary residence when they agree to testify against the trafficker, foreign victims of trafficking are treated as illegal immigrants and often are detained or expelled from the country.

8. Discrimination against Roma Women

There are approximately 500,000 Roma living in Spain. OMCT notes that the Spanish Administration has adopted a number of different measures to improve the situation of this community such as launching “The National Plan of Roma Development” and supporting several NGO's dedicated to improving the condition of the Roma. However, the Roma continue to be marginalized and face discrimination in their access to employment, housing, and education and suffer from substantially higher rates of poverty and illiteracy than the rest of the population. OMCT would like to note that no official statistics or reports about discrimination against Roma exist in Spain.

The situation of Roma women in Spain raises a number of concerns. Roma women face discrimination on three different levels. As members of the Roma community they suffer from racial discrimination including over-policing and violence at the hands of State officials. According to the *Barañi Project*, 57% of Roma women reported suffering, during their lives, severe anxiety and psychological problems as a consequence of police harassment. Roma women may also face discrimination within their own communities as a result of their gender. Finally, as women living in Spain they are also exposed to the different types of gender discrimination that have been discussed in the previous sections of this report.

OMCT considers that there is evidence indicating that Roma women suffer disproportional surveillance by the authorities and that they are more frequently arrested and sentenced to time in prison than other women. Of those arrested, 51 per cent of the Roma women complained of their treatment during arrest. Complaints included: reports of physical ill-treatment (41 per cent); insults and degrading treatment (23 per cent) and threats (10 per cent). In a number of cases, women complained of the manner of their arrest, such as being detained and handcuffed in front of their children.

A large proportion of the women interviewed, 46 per cent, complained of their treatment whilst being held at police stations. Of these: 28 per cent alleged that they had suffered physical mistreatment; 21 per cent complained of humiliating and degrading treatment and 6 per cent of threats. More than the half of the women were kept in detention for the maximum legal period allowed for police detention which is three days.

OMCT notes that 85 per cent of Roma women charged with a criminal offence are held preventive detention. Preventive detention in Spain is generally applied only exceptionally and its widespread application in cases of Roma is difficult to justify as, in most cases, they are accused of having committed minor offences.

Although there are no official statistics, it has been reported that a very high percentage of incarcerated women in Spain are Roma. Finally, it should be noted that Roma women very rarely lodge complaints regarding their treatment because generally they do not trust the police and the judicial system.

9. Violence Against Women by State Agents

9.1 Arrest and Detention at Police Stations and Detention Centers

As mentioned above, Spanish law prohibits arbitrary arrest and detention, and the Government generally observes these prohibitions in practice.

However, it should be noted that reports of ill-treatment and torture of

persons in detention at police stations or in detention centers are common. The majority of complaints concern persons held under anti-terrorist legislation⁴⁸ and migrants or persons belonging to certain ethnic groups.⁴⁹ A number of these complaints have arisen in the context of deportation procedures.⁵⁰

Regarding persons being held in police stations, it is noteworthy that in Spain, complaints of ill-treatment generally cannot be filed directly with an independent judicial authority or body but must be registered with the examining judge responsible for the detainee's case. The judge then decides whether any action will be taken such as referring the case to another judicial authority or initiating legal proceedings. Complaints may also be filed with the judicial authorities at later stages in proceedings. Prosecutors play an essential role and can initiate and follow up a complaint. It is also the prosecutor's role to ensure that other judicial authorities carry out their functions. There have been allegations that judges and prosecutors do not always exert their functions with the necessary diligence when allegations of ill-treatment and torture are made.⁵¹

9.1.1 Reports of Torture under Anti-Terrorism Legislation

There are regular reports of ETA suspects being subjected to torture and other ill-treatment whilst being held incommunicado under the anti-terrorist law. The Basque NGO Torturaren Aurkako Taldea (TAT) reports receiving some 100 complaints of torture and other ill treatment each year. In most cases, those alleged to be responsible are members of the Civil Guard.

The TAT⁵² has registered numerous cases of allegations by women of torture and ill-treatment. Sexual assault appears to be a frequently employed method of torture and inhuman and degrading treatment. Women detainees have reported having been forced to undress and being insulted, touched on their breasts and genital area and threatened with rape.

One of the most well-known cases is that of **Iratxe Sorzabal Diez**, an ETA⁵³ suspect expelled from France to Spain in 1999 who alleged that members of the Civil Guards tortured her in Madrid in March 2000. According to **Iratxe Sorzabal Diez**, after she was subjected to torture

including electric shocks, she was forced to undress, stand in the middle of a circle of officers and to repeatedly bend up and down or raise and lower her arms while being beaten. She alleged that she was touched on her breasts, buttocks and genital area, threatened with rape and made to kneel on all fours on a blanket and punched. On 31 March, the forensic doctor attached to the National Court ordered that she be taken to San Carlos Hospital in Madrid for medical tests. She subsequently lodged a formal complaint of torture with the National High Court. She was released in September, reportedly because of lack of evidence against her.⁵⁴

According to TAT, at least 19 additional cases of women detainees who were submitted to ill-treatment and torture have been registered with their organization. Recent examples include that of Miren Azkarate, aged 18, detained on 11 September 2002, who alleges she was continually submitted to sexual violence during interrogation. According to Miren Azkarate, she was forced to undress and was touched all over her body. She was also forced to touch the genital areas of the personnel of the Civil Guard who were interrogating her.

9.2 Prisons

Statistics from the General Office of Penitential Institutions of the Ministry of Justice registered 4,119 women in prison in Spain which means that women constituted 8.1 per cent of the prison population.⁵⁵

Research has shown that, generally, women in prison can suffer from discrimination simply because they form a minority within the prison system. Because of their reduced numbers, government authorities frequently do not take their needs into account. The situation of women prisoners in Spain illustrates such findings. Spanish NGOs report that women in prisons tend to receive treatment which does not take into account their specific needs.⁵⁶

Today there are three prisons exclusively for women in Spain: Brieva, Madrid- Mujeres and Alcalá-Mujeres. In other penitentiary facilities, women are held in segregated areas inside the men's prisons. Because they are a minority, women generally have less access to economic, material or personal resources, as well as educative, cultural and recreational

programs as these are considered unprofitable for such a small number of persons.

The Spanish Ombudsman, has criticised the inequality of treatment between female and male prisoners in Spain. In his 2001 report, he described the lack of space and worse facilities which are usually reserved for women, and pointed out that the general structural inadequacy of women's detention facilities results in restricted access to activities and makes it almost impossible for the women to benefit from educational programmes.⁵⁷ In some prisons,⁵⁸ women have no access to basic infrastructures such as cooking, medical and library facilities while in others, women have very limited use of such facilities and are only allowed to use these when they are not being used by the male prisoners.

In addition, due to a lack of space, the separation of different categories of women prisoners is not ensured and, in many cases, all women are held together irrespective of the seriousness of the offence committed. In some cases, women in preventive detention have been kept with convicted prisoners.

Moreover, not all Spanish prisons⁵⁹ have facilities for holding women prisoners so that in many cases women are held far away from their homes and families. This phenomenon can also result in less frequent contact with their lawyers.

9.2.1 Medical Assistance and Sanitary Conditions

Women prisoners often receive inadequate sanitary and medical assistance. In most cases, once again because they are a segregated minority, prison staff do not include doctors or gynaecologists to attend to women prisoners who must be taken to hospitals outside prison when in need of medical assistance. As a result, many delays have been reported in the provision of adequate medical care. An example, in 2002 Angela Corral had her uterus removed because of a tumour, and who subsequently complained to no avail, of continuing pain. When she was finally brought to a hospital, she was in a state of advanced metastasis and died shortly afterwards.

10. Conclusions and Recommendations

While Spain has, in recent years, introduced several initiatives aimed at promoting and protecting the human rights of women, violence and other forms of discrimination against women remains a problem in the country.

OMCT is deeply concerned by the prevalence of domestic violence in Spain. OMCT believes that more far-reaching legislative and policy measures need to be taken in order to address the issue of domestic violence. Consideration should be given to the drafting of additional, comprehensive legislation for the prevention and eradication of domestic violence. These measures should be based on the guidelines proposed by the Special Rapporteur on Violence Against Women (U.N. doc. E/CN.4/1996/53, Add.2) and should include the development of quasi-judicial remedies such as restraining and protective orders as well as the allocation of increased resources for the housing and reintegration of women who have been victims of domestic violence. In addition, a systematic training and awareness-raising programme for all law enforcement officials and members of the judiciary in relation to the investigation, prosecution and punishment of domestic violence should be developed. OMCT would also like to emphasise the need to provide legal aid to women wishing to pursue complaints, and the necessity of adopting measures to minimise delays in the administration of justice.

The government should collect and maintain accurate statistics on the scope and nature of domestic violence and develop a broad-based public awareness campaign concerning this form of violence and the legal and policy measures that are being taken to prevent and combat it.

Trafficking in girls and women remains a serious problem in Spain and OMCT would urge the government to consider using the Recommended Principles and Guidelines on Human Rights and Human Trafficking (UN Doc. E/2002/68/Add.1) as adopted by the Economic and Social Council in July 2002 as the basis for the development of a comprehensive legislative and policy response to the issue.

The government should develop appropriate services to support and assist trafficked women and girls and additional support should be provided to non-governmental organisations working with women and girls who have been trafficked. OMCT would recommend that the government give seri-

ous consideration to the adoption of comprehensive anti-trafficking legislation that enshrines the rights of trafficking victims to appropriate protection and assistance. These rights should not be made contingent upon the willingness of the victim to lodge a complaint or to participate as a witness in proceedings against traffickers.

Any future anti-trafficking legislation should also ensure that trafficked women are provided with the opportunity to bring complaints against their traffickers and that they are granted visas to enable them to remain in the country for the duration of these proceedings. In addition, measures should be taken to ensure that women wishing to provide testimony against trafficking operations are given adequate protection against potential reprisals from these groups.

OMCT would like to urge the Spanish government to adopt all necessary measures to ensure that Roma women do not suffer discrimination at the hands of police or in the administration of justice.

The government should guarantee that women supervisors are present at all places of detention where women are held. The presence of women supervisors should also be ensured during police custody and interrogations.

The Spanish government should take measures to guarantee that women's prisons are allocated adequate resources and that women being detained in mixed facilities are provided with access to the same infrastructure as male prisoners.

Finally, OMCT would insist upon the need for the Government to fully implement all of the provisions of the Convention for the Elimination of All Forms of Discrimination Against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials.

1 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted by UN General Assembly resolution 39/46 of 10 December 1984, entry into force on 26 June 1987.

- 2 International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, entry into force 3 January 1976, *op. cit.*, p. 8-19, ratified on 17 April 1977.
- 3 International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, entry into force 23 March 1976, *op. cit.*, p. 20-45, on 17 April; Optional Protocol to the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966, entry into force 23 March 1976, , *op. cit.*, pp. 41-45, accession on 25 January 1985; Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, adopted and opened for signature, ratification and accession by General Assembly Resolution 44/128 of 15 December 1989, *op. cit.*, pp. 46-49, ratified 11 April 1991.
- 4 International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 A (XX) of 21 December 1965, entry into force 4 January 1969, *op. cit.*, pp. 66-79, accession on 13 September 1968.
- 5 International Convention on the Elimination of All Forms of Discrimination against Women, adopted by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981, *op. cit.*, pp. 150-166, ratified on 5 January 1984. Optional Protocol to the Convention on the Elimination of Discrimination against Women, Adopted by General Assembly resolution A/54/4 on 6 October 1999, entry into force 22 December 2000, ratified on 6 July 2001.
- 6 Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, *op. cit.*, pp. 174-200, ratified 6 December 1990 and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002, ratified on 18 December 2001.
- 7 Reservations and Declarations: Articles 11; declarations under articles 5, 6, 10 (1) and 15.
Protocol 1: ratified: 27 November 1990. Reservations and Declarations: Article 1.
Protocol 4: Signed: 23 February 1978.
Protocol 6: ratified: 14 January 1985.
Protocol 7: Signed: 22 November 1984.
Protocol 11: ratified: 16 December 1996. Declaration under article 3.
- 8 The Inter-American Court stated in its decision in the *Velasquez Rodríguez* case that
174. The State has a **legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction**, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

176. The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. **The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.** (emphasis added), Velazquez Rodríguez Case, Judgment of July 29 1988, Series C N° 4, paras. 174 and 176.

The Human Rights Committee has found that:

“ article 6, paragraph 1, entails **an obligation of a State party to protect the right to life of all persons within its territory and subject to its jurisdiction.**” *Rodger Chongwe v Zambia*, 9 November 2000, CEPR/C/70/D/821/1998, para. 5.2 (emphasis added)

- 9 A/56/44/paras. 106-114 , para.113(a).
- 10 A/56/paras. 99-105, para. 6 (c).
- 11 A/56/44/paras. 83-88, para. 6 (d).
- 12 A/56/44/paras. 77-82, para. 82 (j).
- 13 Conclusions and Recommendations of the Committee Against Torture: Zambia 23/11/01, *CAT/C/XXVII/Concl.4. (Concluding Observations/Comments)*.
- 14 See Amnesty International Report 2002 at <http://web.amnesty.org/web/ar2002.nsf/eur/spain!Open>
- 15 see *Anistía Internacional, España Crisis de Identidad: Tortura y malos tratos e por motivos racistas a manos de agentes del Estado*, AI:EUR41/006/2002.
- 16 Article 93: “The conclusion of treaties conferring the exercise of competences deriving from the Constitution on an international organization or institution may be authorized through an organic act. . . .”
Article 94: “(1) The giving of the consent of the State to obligate itself to something by means of treaties or agreements shall require prior authorization of the Parliament in the following cases: a) Treaties of a political nature; b) Treaties or agreements of a military nature; c) Treaties or agreements which affect the territorial integrity of the State or the fundamental rights and duties established in Title I; d) Treaties or agreements which imply important obligations for the public treasury; e) Treaties or agreements which involve modification or repeal of some law or require legislative measures for their execution. . . .”
- 17 Article 95: “(1) The conclusion of an international treaty which contains stipulations contrary to the Constitution shall require a prior constitutional revision. . . .”
Article 96: “Validly concluded international treaties once officially published in Spain shall constitute part of the internal legal order. Their provisions may only be abolished, modified, or suspended in the manner provided for in the treaties themselves or in accordance with general norms of international law. . . .”
- 18 Article 1 of the UN Convention Against Torture (CAT): “For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having

- committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”
- 19 Article 174 of the Spanish Penal Code provides: “Any legal authority or any public servant, who by the abuse of his or her position, and with the aim of obtaining a confession or information from any person, or to punish a person for any act which he or she has committed or is suspected of having committed, submits that person to conditions or procedures which by their nature duration or other circumstance, inflict physical or mental suffering, suppression or alteration of judgement or mental faculties or assault on her/his moral integrity, commits an act of torture. The perpetrator of an act of torture will be punished by a period of imprisonment of two to six years if the act is considered to be serious and of one to three years if not considered to be serious. A penalty covering the loss of civil and political rights of up to eight to twelve years will also be incurred. The same penalties will apply to the authorities or the agent of the penitentiary, or centre for juvenile protection or correction, who perpetrate the acts described above, against the inmates” (OMCT translation).
- 20 Article 55 of the Spanish Constitution (Chapter V Suspension of Rights and Liberties) provides: (1) The rights recognized in Articles 17, 18 (2) and (3), 19, 20 (1)(a) and (d) and (5), 21, 28 (2), and Article 37 (2) may be suspended when a state of emergency or siege is declared under the terms provided in the Constitution. Article 17 (3) is exempted from that which was established previously in the event of the declaration of a state of emergency, (2) An organic law may determine the manner and the cases in which, in an individual manner and with the necessary judicial intervention and adequate parliamentary control, the rights recognized in Article 17 (2) and 18 (2) and (3) may be suspended for certain persons with respect to investigations having to do with the activities of armed bands or terrorist elements. The unwarranted or abusive utilization of the powers recognized in said organic law will result in criminal responsibility as a violation of the rights and liberties recognized by the laws.
- 21 In particular articles 384 bis, 520 bis and 527 of the Ley de Enjuiciamiento Criminal.
- 22 In his 2002 report, the Special Rapporteur on Torture stated that “Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal, and persons held incommunicado should be released without delay.” Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission resolution 2001/62, E/CN.4/2002/76, 27 December 2001, annex I, f.

The CAT has also expressed concern over the application of measures of incommunicado detention on several occasions and in some cases recommended that these be abolished. CAT recommended that the period of pre-trial incommunicado detention be abolished in its examination of the report of Peru, 15 November 1999, A/55/44, para.61 (b). In addition, the CAT stated that prolonged incommunicado detention, in spite of legal provisions regulating, seemed to create conditions that may lead to violations of the Convention and recommended access to a lawyer at all stages of detention: Libyan Arab Jamahiriya, 11 May 1999, A/54/44, para. 182 (a) and 187.

- 23 Article 520 (2) (d) of the Code of Criminal Procedure provides that certain categories of persons detained by the law enforcement agencies can be denied the right to have their family informed of their detention and the place in which they are being held.
- 24 Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 November to 4 December 1998, Ref.: CPT/Inf (2000) 5 [EN] - Publication Date: 13 April 2000, paras. 25 and 26.
- 25 According to 2001 Women's Institute Statistics: Women spend 7 hours and 22 min. of their time in the housework and men only 3 hours ten min.
- 26 US State Department, Country Reports on Human Rights Practices – 2001, Released by the Bureau of Democracy, Human Rights, and Labour, 4 March 2002, www.state.gov, Section 3.
- 27 *Ibid.*
- 28 *Ibid.*
- 29 *Ibid.*
- 30 *Ibid.*
- 31 Instituto Aragones de la Mujer, *Violencia contra las mujeres*, www.aragob.es.
- 32 The term “family” in article 153 covers not only married couples but also couples living in *de facto* relationships.
- 33 OMCT translation. The last paragraph of this article was introduced in 1999 with Organic Law 14/1999 which also extended the provision to cover couples living in *de facto* relationships.
- 34 Article 617 of the Penal Code reads:
Who, by any means or procedure, causes to another person an injury not defined as a crime in the Penal Code, will be punished with arrest of three to six weekends or fines of one-two months.
Who strikes or mistreats another person without causing injuries to him will be punished with arrest of one to three weekends or fines of ten to thirty days. When the offended is a person of the article 153 the penalty will be arrest of three to six weekends or fine of one to two months, taking into account the possible economic repercussion that the penalty could have on the victim or on the whole members of the family.”
Another article that can be applied to the domestic violence is article 173 of the Penal Code: “Who inflicts to another person a degrading treatment damaging seriously his/her moral integrity will be punished with prison from six months to two years” (OMCT translation).
- 35 THEMIS (Asociación de mujeres juristas), <http://themis.matriz.net>.
- 36 *Ibid.*
- 37 *Ibid.*
- 38 According to the Spanish Law 35/1995, of 11 of December, of Help and Assistance to the victims of violent crimes and against sexual freedom.
- 39 EL PAIS 29.04.2001
- 40 ENRIQUE FERNÁNDEZ-MIRANDA Y LOZANA, Spanish Government representative for overseas and immigration.

- 41 Asylum Law is regulated by the Law 5/1984 of 26 March 1984 on Right of Asylum and the condition of refugee. This Law was modified by the Law 9/1994 of 19 May 1994. A decree of implementation 203/1995 was adopted on 10 February 1995.
- 42 Anna Büllsbach, UNHCR, "Right to refugee status, mandatory return and risks of female genital mutilation (FGM)", available at <http://www.web.net/~ccr/excision.htm>.
- 43 Human Rights Report for Spain: Trafficking in Persons, available at <http://www.ncbuy.com/reference/country/humanrights.html?code=sp&sec=6f>.
- 44 European Parliament, Working Paper, "Trafficking in Women," (2000), p. 43.
- 45 *Ibid*, p. 54.
- 46 Human Rights Report, *op.cit*.
- 47 *Ibid*.
- 48 see numerous appeals of Behatokia (Basque Observatory).
- 49 See for example OMCT appeals on the situation of migrant children in Melilla cases: Case ESP 210802.CC, 22/8/2002; Case ESP 061101.CC, 6/11/2001; and Case ESP 200801.EE; 21/8/2001 in annex.
- 50 There have been continuing complaints regarding such procedures. See Amnesty International's 2002 report Anistía Internacional, *España Crisis de Identidad: Tortura y malos tratos e por motivos racistas a manos de agentes del Estado*, *op.*; and the European Committee for the Prevention of Torture's report on its 1997 visit; Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 28 April 1997, CPT/Inf(98) 9., pp. 11-15.
- 51 See reports by Behatokia (Basque Observatory). Also Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 November to 4 December 1998, *op. cit.*, para. 15.
- 52 Observatorio Vasco de Derechos Humanos
- 53 ETA, which stands for Euzkadi Ta Askatasuna (Basque Fatherland and Liberty), is a terrorist organization founded in 1959 and dedicated to promoting Basque independence. ETA employs bombings and assassinations, mainly aimed against non-nationalist politicians, journalists, intellectuals, and the Guardia Civil and other Spanish security forces, and has killed an estimated 800 people since the 1960s.
- 54 See Report of Behatokia (Basque Observatory) of 16 September 2002.
- 55 According to the statistics of the General Office of Penitentiary Institutions of the Ministry of Justice (31-05-2002)
- 56 Information provided by the Asociación de Colaboradores con las Presas (ACOPE).
- 57 Informe Anual del Defensor de Pueblo, 2001, at <http://www.defensordelpueblo.es>
- 58 Prisons of Albacete, Cuenca, Santa Maria II, Ibiza, Leon, Murcia, Pamplona, Santander and Melilla.
- 59 There are no place for women in the following prisons: Alcazar de San Juan, Bilbao, Burgos, Cartagena, Daroca, Herrera, Huesca, Jerez, Lugo, Ocaña, Segovia, Soria, Teruel and Vigo.

Committee against Torture

TWENTY-EIGHTH SESSION – 11-22 NOVEMBER 2002

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**CONCLUDING OBSERVATIONS BY THE COMMITTEE AGAINST TORTURE:
SPAIN**

1. The Committee considered the fourth periodic report of Spain (CAT/C/55/Add.5) at its 530th, 533rd and 540th meetings, held on 12, 13 and 19 November 2002 (CAT/C/SR.530, 533 and 540), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the fourth periodic report of Spain, which was submitted by the State party by the scheduled deadline. Although the report contains abundant information on legislative developments, the Committee observes that it provides little information on the implementation in practice of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during the period since the submission of the previous report.
3. The Committee appreciates Spain's sending a large and highly qualified delegation for the consideration of the report, thus demonstrating the State party's concern to continue the frank and constructive dialogue which Spain has been holding with the Committee. The Committee welcomes with satisfaction the additional information provided by the State party in the form of a supplementary report and its exhaustive oral replies to the questions of members, on which occasion it also furnished pertinent statistics.

B. Positive aspects

4. The Committee welcomes with satisfaction the fact that under article 96 of the Spanish Constitution the Convention forms part of the domestic legal order and may be invoked directly before the courts.
5. The Committee reiterates, as stated in its previous conclusions and recommendations (A/53/44, paras. 119-136), that the Penal Code in force since 1996 conforms, generally speaking, to article 1 of the Convention. It welcomes with satisfaction the fact that article 57, as amended by Organization Act No. 14/1999 of 9 June, allows judges and courts in torture cases to add ancillary injunctions for the subsequent protection of the victim to the main sentence.
6. The Committee also notes with satisfaction:
 - (a) The ratification in October 2000 of the Rome Statute of the International Criminal Court;
 - (b) The adoption of measures to protect the rights of detainees, such as the preparation of the Standards Handbook for Judicial Police Proceedings and its distribution to members of the State security and police forces and to judges and prosecutors. The Handbook lays down rules governing acts by officials, particularly in cases which entail specific restrictions on rights and freedoms;
 - (c) The efforts made to provide training programmes for officials of the State security and police forces;
 - (d) The new Instruction from the Secretary of State for Immigration on the treatment of foreign stowaways, replacing the Instruction of 17 November 1998 on the same subject. This establishes a series of safeguards concerning the right to official legal representation in administrative or judicial proceedings which may lead to the acceptance of possible asylum applications, refusal of entry or expulsion from Spanish territory;
 - (e) Progress in modernizing the prison system, with the building of 13 new prisons with a capacity of more than 14,000 inmates;
 - (f) Reduction in numbers of prison inmates awaiting sentencing;

- (g) Regular donations to the United Nations Voluntary Fund for Victims of Torture.

C. Factors and difficulties impeding the application of the Convention

- 7. The Committee is aware of the difficult situation confronting the State party as a result of the serious and frequent acts of violence and terrorism which threaten the security of the State, resulting in loss of life and damage to property. The Committee recognizes the right and the duty of the State to protect its citizens from such acts and to put an end to violence, and observes that its lawful reaction must be compatible with article 2 (2) of the Convention, whereby no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Subjects of concern

- 8. The Committee observes with concern the dichotomy between the assertion of the State party that, isolated cases apart, torture and ill-treatment do not occur in Spain (CAT/C/55/Add.5, para. 10) and the information received from non-governmental sources which reveals continued instances of torture and ill-treatment by the State security and police forces.
- 9. Of particular concern are the complaints concerning the treatment of immigrants, including sexual abuse and rape, allegedly on racist or xenophobic grounds. The Committee notes that Spain has become an important gateway to Europe for immigrants, and that this has meant a significant increase in the country's foreign population. In this context the omission from the definition of torture in article 174 of the Penal Code of torture "based on discrimination of any kind," notwithstanding the fact that, under the Code, racism is deemed to be an aggravating factor in any offence, takes on particular importance.
- 10. The Committee continues to be deeply concerned by the fact that incommunicado detention up to a maximum of five days has been maintained for specific categories of particularly serious offences.

During this period, the detainee has no access to a lawyer or to a doctor of his choice nor is he able to notify his family. Although the State party explains that incommunicado detention does not involve the complete isolation of the detainee, who has access to an officially appointed lawyer and a forensic physician, the Committee considers that the incommunicado regime, regardless of the legal safeguards for its application, facilitates the commission of acts of torture and ill-treatment.

11. The Committee also expresses its concern at the following:

- (a) The substantial delays attending legal investigations into complaints of torture, which may lead to convicted persons being pardoned or not serving their sentences owing to the length of time since the offence was committed. This further delays the realization of the rights of victims to moral and material compensation;
- (b) The failure of the Administration, in some cases, to initiate disciplinary proceedings when criminal proceedings are in progress, pending the outcome of the latter. Delays in judicial proceedings may be such that, once criminal proceedings have concluded, disciplinary proceedings are time-barred;
- (c) Cases of ill-treatment during enforced expulsion from the country, particularly in the case of unaccompanied minors;
- (d) The severe conditions of imprisonment of some of the prisoners whose names appear on the list of inmates under close observation (FIES). According to information received, prisoners under level one of the close observation regime have to remain in their cells for most of the day, and in some cases are allowed only two hours in the yard, are excluded from group, sports and work activities, and are subjected to extreme security measures. Generally speaking, it would seem that the physical conditions of imprisonment of these prisoners are at variance with prison methods aimed at their rehabilitation and could be considered prohibited treatment under article 16 of the Convention.

E. Recommendations

12. The Committee recommends that the State party should consider the possibility of improving the definition of torture in article 174 of the Penal Code in order to bring it fully into line with article 1 of the Convention.
13. The Committee recommends that the State party should continue to take measures to prevent racist or xenophobic incidents.
14. The Committee invites the State party to consider precautionary measures to be used in cases of incommunicado detention, such as:
 - (a) A general practice of video recording of police interrogations with a view to protecting both the detainee and the officials, who could be wrongly accused of torture or ill-treatment. The recordings must be made available to the judge under whose jurisdiction the detainee is placed. Failure to do this would prevent any other statement attributed to the detainee from being considered as evidence;
 - (b) A joint examination by a forensic physician and a physician chosen by the detainee held incommunicado.
15. The Committee reminds the State party of its obligation to carry out prompt and impartial investigations and to bring the alleged perpetrators of human rights violations, and of torture in particular, to justice.
16. The Committee recommends that the State party should ensure the initiation of disciplinary proceedings in cases of torture or ill-treatment, rather than await the outcome of criminal proceedings.
17. The Committee encourages the State party to take the necessary measures to ensure that the process of expulsion from the country, in particular in the case of minors, is in keeping with the Convention.
18. The Committee recommends that these conclusions and recommendations should be widely disseminated in the State party in all appropriate languages.

Violence against Girls in Sudan

A Report to the Committee on the Rights of the Child

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Concluding observations of the Committee on the Rights of the Child: Sudan

Thirty-first session – 16 September - 4 October 2002

Consideration of Reports Submitted by States Parties

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1. Preliminary Observations

The submission of specific information on violence against girls to the Committee on the Rights of the Child in tandem with the submission of a global alternative report on the Rights of the Child in Sudan by the World Organisation Against Torture (OMCT), forms part of the Violence Against Women Programme of OMCT, which focuses on the integration of a gender perspective into the work of the United Nations human rights treaty monitoring bodies.

The Convention on the Rights of the Child establishes standards for the protection of girls from physical and psychological violence in the home, in the community and from violence perpetrated by state officials. The Convention on the Rights of the Child uses both feminine and masculine pronouns in its provisions and it stresses in article 2 (1) that : “state parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s ... sex ...” In particular, article 6 recognises every child’s right to life. Article 19 (1) states that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” Article 24 (3) provides that “States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.” In addition, article 34 states that “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.” Norms applicable to violence against girls detained in penal or psychiatric institutions include: article 37 (a) which declares that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment,” and article 37 (c) which provides that “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of her age.” Article 39 provides that “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any form of cruel inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and

reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

The reporting guidelines of the Committee on the Rights of the Child contain an umbrella clause which requests States Parties to provide gender-specific information, statistical data and indicators on various issues covered by the Convention on the Rights of the Child. The particular situation of the girl child is also dealt with more specifically with regard to certain articles. For example, with respect to article 1 of the Convention (definition of the child), the Committee on the Rights of the Child has identified gender-specific issues of particular relevance to the girl child, such as the linking of the age of criminal responsibility to the attainment of puberty and the minimum age for marriage which is particularly problematic in cases where it is set very low. With respect to article 2 (non-discrimination), States Parties are requested to provide information “on the specific measures taken to eliminate discrimination against girls and when appropriate indicate measures adopted as a follow-up to the Fourth World Conference on Women.”¹

Sudan ratified the Convention on the Rights of the Child (CRC) in 1990. However, OMCT notes with concern that Sudan has neither ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict nor the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

With regard to other international instruments which establish standards for the protection of girls against violence, OMCT notes with concern that Sudan has neither signed nor ratified the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol and that the State has signed but not yet ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²

Sudan is a party to the International Covenant on Civil and Political Rights (ICCPR),³ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁴ and the International Convention on the Elimination of all forms of Racial Discrimination (CERD).⁵ OMCT notes with concern that Sudan has neither signed nor ratified the Optional Protocols to the ICCPR.

At the regional level, Sudan is a state party to the African Union and it has ratified the African Charter on Human and Peoples' Rights. Article 2 of the African Charter stipulates that "Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any such kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin fortune, birth and other status." Article 18(3) provides that State Parties shall ensure the elimination of all forms of discrimination against women as well as protection for the rights of women and children "as stipulated in international declarations and conventions." Article 5 of the African Charter prohibits torture, cruel, inhuman or degrading punishment or treatment.

The report by the Government of Sudan to the Committee on the Rights of the Child (U.N. Doc: CRC/C/65/Add71), whilst being comprehensive in other respects, provides little information on torture and other forms of violence against girls in Sudan. While the Government report states in paragraph 63 that "Gender-based differences, exclusion and preferences are non-existent in the law and in administrative practices, labour relations, education and health," OMCT has found that girls in Sudan are subjected to violence and other forms of discrimination based on their gender.

The global alternative report on the Rights of the Child by OMCT provides detailed information on the brutal and systematic violence against children by the government, the Sudanese People's Liberation Movement/Army (SPLM/A) and other factions participating in the armed conflict. Women and children have borne the brunt of the long-lasting civil war in Sudan. The UN estimates that 1.8 million individuals, mostly women and children have been displaced from Southern Sudan to refugee camps in the North and surrounding countries. Girls in Sudan continue to suffer from the specific gender-based effects of the armed conflict.

This report will focus on the linkage between gender and violence against girls in Sudan. Attention is given to the manner in which gender and age shape the form of violence, the circumstances in which this violence occurs and its consequences. The report places particular emphasis on domestic violence, early marriages, female genital mutilation, slavery, forced labour and trafficking of girls, violence by the state and violence against girls in the context of the armed conflict. An annex containing

urgent appeals on violence against women distributed by the International Secretariat of OMCT has also been included. Although these urgent appeals concern women aged over 18, OMCT believes that these cases are illustrative of a pattern of systematic violence against both women and girls in Sudan.

2. General Observations Concerning the Position of Girls and Women

OMCT notes the proclamation of the Constitution of the Sudan which entered into force on 1 July 1998 and which provides the basis for the protection of human rights and freedoms. Article 21 of the Constitution states:

“All people are equal before the courts of law. Sudanese are equal in rights and duties as regards to functions of public life; and there shall be no discrimination only by reason of race, sex, or religious creed. They are equal in eligibility for public posts and offices and not being discriminated against on the basis of wealth [emphasis added].”

Article 15 of the Constitution states:

“The State shall care for the institution of the family, facilitate marriage and adopt policies to purvey progeny, child upbringing, pregnant women and mothers. The State shall emancipate women from injustice in all aspects and pursuits of life and encourage the role thereof in family and public life.”

However, OMCT notes with grave concern the considerable discrepancy between the Constitutional provisions and the provisions in the criminal and family law regarding equality in marital relations and cases of public morality. In addition, many traditional and customary practices in Sudan discriminate against women and girls in the family and community spheres.

Since 1983, Sudan has adopted laws based on Islamic *Sharia* law. *Sharia* governs the individual rights of Muslims. Those parts of the country that are predominantly Christian are regulated by customary law.⁶

Despite the fact that Sudan is a party to international instruments that prohibit discrimination on the basis of sex, Sudanese legislators have adopted an interpretation of the Koran and Sunna that has resulted in laws that discriminate on the basis of sex. A number of regulations and laws that severely curtail the human rights of women have been enacted, among them the explicitly discriminatory Muslim Personal Law Act of 1991.

According to the Muslim Personal Law Act of 1991, a woman cannot contract her own marriage. She has to have a male guardian (*wali*), who is usually her father or her brother, for concluding her marriage. However, the woman's or girl's consent to the marriage is required. The woman has the right to challenge the guardian in court when she does not consent to the proposed marriage and a minor girl can only be married with the permission of the court. If a woman marries against the will or in the absence of the guardian, he may annul the marriage. The law allows the woman to challenge the annulment in court. Her husband becomes her guardian as soon as a girl or woman is married.

The Muslim Personal Law Act of 1991 provides that during marriage, the wife is required to obey the husband and care for him by protecting herself and his property.⁷ In return, she has the right to maintenance and permission to visit her relatives.⁸ It should be noted that in some parts of the country, such as in western Sudan where women are providers of food for their families, they are allowed to work or gather food away from the family home. Nevertheless, even in these areas, there have been cases in which the law has been used to confine women and girls to their homes.

Another illustration of inequality under the Muslim Personal Law Act is the right of a man to unilaterally repudiate his wife. If the husband says the words "You are divorced," the divorce immediately takes effect. Women or girls can only ask for a divorce if they first seek permission from their husbands. If a woman or girl does not ask the permission of her husband, then she has to go to court and appeal for a divorce showing that there is an acceptable basis for divorce such as impotence, violence, or the inability to adequately provide for her.

Polygamy is permitted under the Muslim Personal Law Act. According to article 10 of this Act, men may marry up to four wives. Men involved in polygamous marriages are obliged to treat each of their wives equally. OMCT notes with concern, however, that the lack of equal treatment

between wives is not a legal ground for divorce to be claimed by one of the wives in a polygamous marriage. According to the government report in paragraph 233, 17% of women in Sudan live in polygamous marriages.

OMCT is concerned that polygamous marriages perpetuate notions of male dominance, creating domestic environments where women become vulnerable to abuse. The practice of polygamy inherently conflicts with women's economic, social, and personal freedom. General Recommendation 21 of the Committee on the Elimination of Discrimination against Women states, "Polygamous marriage contravenes a woman's right to equality with men and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited."⁹

Women and girls are subjected to discriminatory curtailment of their freedom of movement despite the fact that article 23 of the Constitution provides for the right of freedom of movement, residence in, exit from and entry into the country for every citizen. Women and girls cannot travel on their own. Either a man must travel with them or they must have written permission from their guardians. Women and girls who do travel may only be accompanied by their husbands or those male family members that they cannot be married to, such as their brothers or fathers.

Women's rights are also restricted in other areas. A woman's testimony is given limited effect: the testimony of two women is given the same credibility as the testimony of one man. According to the Civil Procedure Act of 1983, in order to have legal effect, documents must be witnessed by either two men or by one woman and two men.

Women are severely affected by the application of the law on adultery, which is regarded in Sudan as an offence against public morality. Although the law does not, in theory, differentiate between male and female offenders, in reality, women are far more vulnerable to accusations of adultery and face greater difficulties than men in proving their innocence. If a woman is caught in "suspicious circumstances" with a man who is not a relative within the forbidden category (mohrim, i.e. not a father, brother or uncle), she can be charged with adultery. In such cases, in the absence of witnesses, the proof will be obtained through the physical examination to provide evidence of intercourse or the status of the woman's virginity.¹⁰ In many cases, a mere suspicion that a woman or girl

has engaged in inappropriate behaviour may lead to severe repercussions from her family including; murder, physical assault, isolation, and restrictions on freedom of movement.¹¹ Penalties for adultery, which vary according to marital status and region of origin, can include execution by stoning for married women, 100 lashes for unmarried women, imprisonment for at least a year, a fine or both for unmarried women. (See the attached urgent appeal on Abok Alfa Akok, who was convicted for adultery.)

Regarding the dress code for women, they are legally required to cover all parts of their bodies, except for the face and the hands. According to Chapter 3 of the Public Order Law, any woman who appears in the workplace or on the streets not wearing the required dress will receive a punishment not exceeding 25 lashes, a penalty of Ls 50,000 or both (See below Chapter 5 on Violence committed by the State).

Customary laws in some parts of Sudan also deny the human rights of women. These laws treat women as property bought by her husband from her father. Upon her husband's death, a woman is either "inherited" by the eldest son, who is not her own son, or the nearest kin of the deceased.

The subordinate position of girls and women in the family and in society has negative effects on the educational opportunities open to girls and on the employment opportunities for women. As noted by the government of Sudan in its report, girls in Sudan are underrepresented in the educational system due to gender discrimination and practices such as early marriage.

In summary, girls and women face discrimination based on their gender under both the *Sharia* law and customary law of Sudan. The *de jure* and *de facto* status of girls renders them vulnerable to various forms of violence in the family, in the community and at the hands of State agents.

3. Violence against Girls in the Family

Both girls and boys may be subjected to violence in the family. However, as a result of differences in gender, they experience different patterns of abuse and vulnerability, with girls at higher risk of wife-battering and harmful cultural or traditional practices affecting their health, such as

female genital mutilation and early marriages. In 1993, the Committee on the Rights of the Child expressed its “serious concern at the continuance of traditional practices harmful to the health of women and children, particularly the practice of female genital mutilation.”¹²

OMCT welcomes the establishment of the government-sponsored Sudan National Committee for the Eradication of Harmful Practices. At the same time, however, it is concerned that the measures taken by the government to eradicate female genital mutilation and early marriages as well as its support for safe motherhood and women’s reproductive health remain inadequate.

3.1 Wife-Battering

Domestic violence against girls and women in Sudan reportedly continues to be a problem. Given the lack of reliable statistics concerning the prevalence of domestic violence, however, the scope of the problem remains largely unknown. Girls, when married before the age of 18, are at greater risk of physical and psychological violence perpetrated by their husbands or other members of their extended families.

OMCT notes with concern that wife battering is not criminalised in Sudan. According to *Sharia* law, the husband has the right to chastise his wife if she disobeys him. In Sudan, a husband is allowed to beat his wife if she conducts herself in a manner which is deemed inappropriate as long as he does not inflict any serious injury (i.e. bleeding or broken bones).

Section 162 of the Muslim Personal Law Act deals with physical abuse within the institution of marriage. It provides for judicial divorce when there is *excessive* mistreatment by the husband. It has been reported that in dealing with the issue, Courts generally look into social, economic and tribal background of the wife to determine whether the physical abuse is detrimental to the marriage or not: if tribal traditions or customs in her social environment excuse wife-beating, the court takes this into consideration and declares the claim for divorce void.¹³

Wife battering is not commonly reported to the police because of the tradition in extended families, which “allows” family members to intervene in order to reach compromises. Other reasons for not complaining to the

police – which do usually not intervene in domestic disputes – are the shame and bad reputation the woman will endure after she files a complaint, and the lack of awareness she has of her rights.

3.2 Marital Rape

OMCT notes with concern that marital rape is not considered a crime in Sudan. The consent of the wife is not a condition for having sexual intercourse. Marriage is viewed as an institution where sexual needs are to be served.

3.3 Cultural Practices in the Family that Violate the Human Rights of Girls

3.3.1 Early Marriage

Article 34 of the Personal Status of Muslims Act of 1991, states that “a guardian may give a mature woman in marriage if she consents to the husband and to the dowry.” According to the government report, paragraph 30, the maturity which signals the end of childhood is attained when an individual becomes fully rational and discerning and acquires intellectual, mental and physical maturity. The reports add in the same paragraph that in the view of jurisprudence, maturity is defined in two ways: “the first is the appearance of the usual outward “signs of maturity”, such as puberty, the growth of pubic hair and, in the case of young girls, menstruation and the ability to conceive; the second is the attainment of a full legal age, a subject on which jurists hold differing views and on which positives laws are also at variance.”

Article 40 of the Personal Status of Muslims Act permits the marriage of a person of discretion; in accordance with the paragraph 2 of the article, discretion is acquired at 10 years of age. The marriage of a ten year old girl requires the permission of a judge. The guardian has the right to undertake the marriage of a 10-year old girl if it is considered that the marriage would be particularly beneficial to the family or in cases where fears exist concerning the girl’s “moral conduct and integrity.”

However, neither the attainment of the judges approval nor the reaching of

10 years of age are essential requirements for a valid marriage, as there have been cases in which marriage contracts have been considered to be valid even where the girl has been married before the age of 10 without a judge's approval.¹⁴ Furthermore, the Personal Status of Muslims Act does not include any penalties for breaches of the minimum age requirement by the guardians.

OMCT is concerned that the passivity of the legislation in restricting the age of child marriage has led to an increase in early and child marriages which are reportedly now common practice in remote and rural areas. Economic problems have, in particular, contributed to the perpetuation of such practices: the sooner the girl gets married, the better the economic status of the family will be.

Marriages of non-Muslims in Sudan are regulated by the Marriage of Non-Muslims Act of 1926. Article 10 of that Act stipulates that the competent court may invalidate a marriage entered into under the Act by a male under 15 years of age or a female under 13 years of age. The difference of the legal age of marriage in this law is clearly discriminatory against girls and, in addition, OMCT considers that 13 is an unacceptably young age for a girl to be married.

Early marriage has the effect of limiting the educational opportunities open to girls. Once a girl is married, she is expected to take on the duties of a wife, and eventually a mother, therefore rendering education less important.

Early marriage is also often cited as one of the causes of domestic violence. Being separated from her family at a vulnerable age and sent off to live with a man much older than she is, a young girl is exposed to increased risks of domestic violence including marital rape.

Early marriage often leads to early pregnancy and may thus prolong women's reproductive life. Childbearing during early or middle adolescence, before girls are biologically or psychologically mature, is associated with adverse health outcomes for both the mother and the child.¹⁵ The high maternal mortality rate in Sudan may be linked to the consequences of early marriage. Other factors leading to high maternal mortality rate in Sudan are female genital mutilation and clandestine abortions.

3.3.2 *Dowry-related Violence*

Article 27 of the Personal Status of Muslims Act emphasises the obligation or commitment to pay a dowry, *El Mahr* (the payment from the husband's side to the to establish the marriage contract) rather than the actual amount of dowry paid. Currently, however, the *Mahr* has become more and more commercialised. As has been mentioned above, early marriage is often closely linked to the payment of dowry.

The *Mahr* is paid in two instalments, both of which should be specified in the marriage contract. The *Mukadam* (the first deposit) is the amount to be paid in advance and before the actual beginning of the marital relation between the spouses. The Act gives the wife the right to forbid any sexual relation with the husband till she receives the agreed amount of the *Mukadam*. Nevertheless, traditionally, the payment of the *Mukadam* amount is used to fulfill various demands related to preparations for the wedding and the family home. As a consequence of this traditional use of the *Mukadam* money, it is usually the wife's family who receives, owns and decides upon the use of the *Mukadam*.¹⁶

OMCT is concerned about the fact that the continued practice of the payment of *Mahr* may lead to domestic violence as it reinforces the perception that the husband and his family have "purchased" the wife and are therefore entitled to treat her as they see fit.

3.3.3 *Female Genital Mutilation*

According to the World Health Organisation, female genital mutilation (FGM) is defined as comprising "all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for cultural or other non-therapeutic reasons."¹⁷ These procedures can vary greatly depending on religion, country and ethnic group. The World Health organisation has recommended the following classification to clarify and standardise typology.¹⁸

Type I: Clitoridectomy: Excision of the prepuce, with or without excision of part or all of the clitoris.

Type II: Excision: Excision of the prepuce and clitoris with partial or total excision of the labia minora.

Type III: Infibulation: Excision of part of all the external genitalia and stitching/narrowing of the vaginal opening.

Type IV: Unclassified: includes pricking, piercing, or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterisation by burning of the clitoris and surrounding tissues; scraping of tissue surrounding the vaginal office (angurya cuts) or cutting of the vagina (gishiri cuts); introduction of corrosive substances or herbs into the vagina to cause bleeding for the purpose of tightening or narrowing it; and any other procedure that falls under the definition of female genital mutilation.

FGM is widespread in Sudan. Although the practice was previously concentrated in the north of Sudan, due to the war and the high numbers of internally displaced people who have been forced to migrate, it is gradually moving towards the west and the south of the country.¹⁹ The Sudanese Human Rights Organisation (SHRO) carried out a fact-finding mission to the Bahr Al Ghazal region in Sudan to investigate reports of slavery and found that some of the enslaved women were circumcised by midwives to ensure their “cleanliness” or to prepare them as concubines.²⁰ According to an impact assessment of field interventions in Sudan some ethnic sub-cultures in urban areas (e.g. Southern Sudanese, Nuba and groups of West African origin) have started a new drive towards FGM.²¹ A study reported that 86% percent of the women and girls surveyed had undergone FGM before they reached the age of ten and 74% had been subjected to FGM between the ages of five and nine.²²

It is estimated that 89.2% of the women and girls in Sudan have undergone FGM and that 82% of women have undergone infibulation, the most severe form of FGM.²³ Infibulation involves the amputation of the clitoris, the labial minora are shaved off and incisions are made in the labia majora to create raw surfaces. These edges of the labia majora are brought together and made to fuse using thorns, poultices or stitching, and the girl’s legs are tied together for two to six weeks.²⁴ The healed scar creates a “hood of skin” which covers the urethra and parts or most of the vagina and acts as a physical barrier to intercourse.²⁵ A small opening of around two to three centimetres in diameter is usually left in order to allow for menstruation and urination but in some cases, this opening may be as small as the head of a match stick.²⁶

If after infibulation, the posterior opening is large enough, sexual intercourse can take place after gradual dilation, which may take weeks, months, or in some recorded cases, as long as two years.²⁷ If the opening is too small to start the dilation, re-cutting before intercourse is traditionally done by the husband or one of his female relatives using a sharp knife or a piece of glass. In almost all cases of infibulation, re-cutting must also be performed during childbirth to allow exit of the foetal head without tearing the surrounding scar tissue.²⁸ Traditionally, re-infibulation is performed after childbirth.²⁹

FGM has serious physical and psychological health consequences for girls and women. HIV infection is also a substantial problem in Sudan as a result of the use of dirty razors and un-sterile needles and stitching.³⁰ In Sudan, recent statistics show that maternal mortality rate is over 550 per 100,000 of normal childbirths, with one of the main causes of this high MMR being Female Genital Mutilation and its complications.³¹

Girls who are not infibulated often feel like they do not fit into Sudanese society. They are ridiculed by other girls who have gone through the process and they are told that they are “unclean” and should therefore not be allowed to be around the other girls.³²

OMCT recognizes, as described in paragraph 217 Government Report of Sudan, the steps taken by the Government toward eliminating FGM, particularly in terms of awareness-raising, training and research. The health law in Sudan forbids doctors and midwives from performing infibulation. However, to date, there have been no arrests or prosecutions under this law.

Legislation to proscribe FGM was enacted in the 1946 Penal Code, which prohibited infibulations, but permitted “Sunna”. The law was ratified again in 1957 when Sudan became independent. Although the Sudanese government reaffirmed its commitment to the eradication of FGM in 1991, OMCT notes with concern that the Penal Code of 1991 does not mention FGM at all.

Recently, there has reportedly been a backlash against the struggle for the elimination of FGM in Sudan. On 22 May 2002, a workshop organized by the Ministry of Religious Affairs and Endowment in collaboration with the Female Student Centre of Omdurman Islamic University was held in

Khartoum. The workshop was predominantly attended by government officials and supporters of the Islamic Government in Sudan. According to the Sudanese Women's Rights Group, a number of recommendations were made including; that female circumcision (FC) be legalised; that awareness raising campaigns concerning the importance of FC to Sudanese society be conducted; and that greater support should be given to the efforts of the Female Student Centre of Omdurman Islamic University to establish centers all over the country for the training of practitioners (excisors) of female circumcision.

4. Violence against Girls in the Community

4.1 Rape and other Forms of Sexual Violence

In Sudan, rape is one of the most common forms of violence against women. Displaced women and girls are particularly vulnerable to rape and sexual abuse. However, OMCT notes with concern that the government of Sudan has yet to adequately address this problem.

Women and girls in Sudan are not very likely to report instances of rape for fear of the reflection it might have on their families, and the reputation that they might acquire if anyone finds out about it. In addition to the social stigma which is attached to rape in Sudan, the laws relating to rape do not encourage women to denounce the crime of rape.

Article 149 of the Criminal Act of 1991 defines rape as the act of sexual intercourse, by way of adultery or homosexuality without the consent of the person. The offence of rape is punishable with whipping and a hundred lashes and with imprisonment for a term not exceeding ten years. OMCT is concerned that the emphasis is put on consent and not on coercion, which places a large part of the burden of proof on the victim.

Reportedly, the lack of consent cannot be proved without testimony of physical violence.³³ Testimony from 4 adult witnesses is also a prerequisite to proving rape. Proving rape can therefore be extremely difficult as the crime is generally not committed in front of witnesses.

The victim may run the risk of being accused of committing adultery, which is considered a Hudood offence, an offence of honour, reputation

and public morality. In the case of Hudood offences, a woman's testimony has limited effect: the testimony of two women has the same credibility as the testimony of one man. Therefore, a woman or a girl who has been raped runs the risk, if she fails to prove the rape, of being prosecuted, convicted and sentenced for adultery – according to article 146 of the Criminal Act 1991 – with death by stoning if she is married and with 100 lashes if she is not married.

Displaced women and girls are particularly vulnerable to rape and other forms of sexual abuse. OMCT is gravely concerned about situations such as that of Achol Kuol, a girl who fled her village in Southern Sudan and ended up in a refugee camp in Kenya. It is alleged that three Sudanese men tried to take her from the refugee camp and bring her back to Sudan to be married off against her will.³⁴ Another Sudanese refugee in the same camp testified that she had been raped and impregnated when she was approximately nine or ten years old.³⁵

4.2 Slavery, Forced Labour and Trafficking

Article 20 of the Constitution of Sudan criminalises slavery and forced labour. Article 161 of the Criminal Code of 1991 prohibits the abduction of any person below puberty by taking or coercing them for the purposes of removing them from the custody of their lawful guardian without the guardian's consent. Article 163 of the Criminal Code provides for the punishment of persons responsible for subjecting others to forced labour. Article 164 of the Criminal Code punishes whoever confines any person and prohibits their movement, or unlawfully forces them to move to a certain place. The law does not specifically prohibit trafficking in persons.

At its most recent session in 2002, the United Nations Working Group on Contemporary Forms of Slavery reported that it had again received information concerning forced labour and slavery in Sudan.³⁶ However, according to the representative of Sudan, the information submitted lacked objectivity and, in fact, was frequently groundless. The representative further mentioned that in his view, the continuing abduction of women and children was more an issue of tribal traditions than forms of slavery. He noted that the tribes concerned wished to cooperate in seeking a solution without government intervention.³⁷

However, in 1999, the government formed the Committee to Eliminate the Abduction of Women and Children (CEAWC) and promised to take steps to end the practice of hostage-taking. The mandate of the Committee is:

- a. To facilitate the safe return of affected women and children to their families as a matter of priority by giving full support (whether financial, administrative or other) to the efforts of the tribal leaders concerned.
- b. To investigate reports of the abduction of women and children. and to bring to trial any persons suspected of supporting or participating in such activities and not cooperating with CEAWC .
- c. To investigate cases of the abduction of women and children subjected to forced labour or similar conditions and recommend ways and means to obtain the eradication of this practice.³⁸

In a January 2002 Presidential Decree, the Committee was given more power and instructed to work closely with relevant international and regional organisations.

OMCT has received various credible reports that the practices of abduction and slavery by all parties to the civil war continues.³⁹ It has been reported that since the mid-1980's, about 14,000 women and children have been abducted from their villages in raids by the Sudanese militia.⁴⁰ After abduction, many of the girls become victims of rape, forced pregnancy and other human rights violations. Girls who are left orphaned by the civil war are particularly at risk of becoming victims of the slave trade in Sudan. They often find themselves being forced into prostitution.

The slave raids reportedly take place primarily in the province of Bahr El Ghaza against Dinka people by a government-backed armed militia of the Baggara ethnic group, known as the Muraheleen. The abducted girls are often forced into sexual slavery.⁴¹

OMCT notes with concern that, despite the establishment of the CEAWC and the provisions of the Criminal Code, which punish rape, abduction, kidnapping, forced labour and unlawful confinement, the government has not undertaken any action to investigate, prosecute and punish the perpetrators of these crimes. OMCT hopes that the strengthening of the

CEAWC will result in the elimination of impunity for the perpetrators of the abductions and the slave trade.

4.3 *Refugee Girls*

Children whose parents were killed or lost in the civil war often spend years avoiding conscription into armies and militias while seeking a safe place to live. Some girls have managed to make their way to refugee camps, but many have simply vanished from official records.⁴²

While boys are generally kept together as a group, living in villages within the camp, girls are often placed with guardians who are supposed to protect them. As poverty is rampant, however, girls are viewed as a valuable commodity who can be sold off for a good bride-price.⁴³

The fact that girls are kept with guardians does not make the camp a safe place for young orphaned girls. Sexual abuse, forced marriages and beatings are reportedly widespread.

5. Violence against Girls Perpetrated by the State

Article 20 of the new Constitution protects “the right to life, freedom and safety of person and dignity of honour” and the right to be free “of subjection to slavery, forced labour, humiliation and torture.” Article 115 (2) lays out the penalty for threats and torture of a witness or accused in order to extract information: up to only 3 months imprisonment or a fine. Assisting a prisoner to escape is punishable with seven years’ imprisonment. Moreover, article 89 of the Criminal Act of 1991 punishes any government official who contravenes the law to cause injury to any person. Article 90 of the same Act punishes misuse of power in cases of references to courts and in cases of detention which, when read together with article 4 (d) of the Criminal Procedure Act, provides for extremely low penalties for misuse of power: imprisonment for a period not exceeding three years in addition to a fine. However, OMCT notes with concern that the Criminal Act of 1991 does not criminalise torture as it is defined under article 1 of the Convention against Torture and other Cruel, inhuman or Degrading Treatment or Punishment.⁴⁴

Systematic human rights violations by the state remain widespread in Sudan. Government security forces continue to act with impunity and have reportedly been responsible for extra-judicial killings, disappearances, arbitrary detention, torture and other cruel, inhuman or degrading treatment or punishment. Prisoners are frequently beaten or subjected to arduous physical drilling. Women and girls have reported that their torture included threatened or actual sexual abuse. The Sudanese Organisation Against Torture has reported the case of a 12 year old girl who lost her way home and was taken by policemen to the criminal investigations department where she was raped.⁴⁵

As reported above, in the war zones, Government security forces and associated militias have reportedly been responsible for the abduction of women and children, the rape of women and girls, forced child labour, slavery and forced conscription of male children. The opposition SPLM/A have also reportedly been responsible for numerous human rights abuses including extra-judicial killings, beatings, rapes, arbitrary detention and forced conscription of boys.

OMCT would like to recall that Sudan is bound by common article 3 of the Geneva Conventions which requires that all people who are not actively engaged in fighting be treated humanely at all times by all parties to the conflict.

5.1 Criminal Responsibility of Girls

(For detailed information on criminal responsibility in Sudan, see OMCT's Report on the Rights of the Child in Sudan.)

According to article 8 of the Criminal Act of 1991, only “mature persons of free will” are criminally responsible. With regard to acts of children, article 9 of the same code provides that a child who has not attained puberty shall not be deemed to have committed an offence, provided that care and reform measures set out in this act may be applied to a child who has completed seven years of age, as the court may deem fit. Article 3 of the Criminal Act of 1991 stipulates that “a mature person” means any person showing the unmistakable physical signs of proof that he has reached puberty, which could apply to a person having attained 15 years of age and that any person having attained 18 years of age is considered mature,

even if they show no such signs of maturity. According to article 47 of the Criminal Act, a child who is seven years old but younger than 18 years of age at the time of the perpetration of a criminal offence, may be subjected to reform measures for juveniles stipulated in this article which include whipping not exceeding twenty lashes, by way of discipline (article 47 (b)).

OMCT notes with concern that as girls generally show signs of puberty earlier than boys, girls may therefore be recognized as “mature” with criminal responsibility at an earlier age than boys. As a consequence, girls may be at risk earlier than boys of corporal punishment and the death penalty.

5.2 Corporal Punishments and the Death Penalty

(For detailed information on corporal punishments and execution by stoning, see OMCT’s Position Paper on Flogging, Stoning and Amputation submitted to the Committee on the Rights of the Child at www.omct.org)

OMCT notes with concern that the 1991 Criminal Act provides for corporal punishments such as whipping, lashing, stoning, and amputation. Women and girls in Sudan are particularly vulnerable to being sentenced to such punishments. For example, OMCT notes with concern that according to article 154 of the Criminal Act, a person who is found in a place of prostitution is deemed to commit the offence of prostitution, which is punishable with whipping not exceeding hundred lashes or with imprisonment for a term not exceeding three years. As reported above, girls in Sudan have been forced into prostitution and these victims may face whipping when found in a place of prostitution. Another example is the problem that, due to evidentiary requirements, women and girls are far more likely than men to be convicted for adultery for which penalties vary from stoning to lashes.

The Law of Public Order also provides for the punishment of whipping which affects women and girls in particular: while walking in the streets with an uncovered head or when wearing trousers, while working after certain hours, or while found unaccompanied with a stranger in a public place. The whipping is usually carried out summarily without giving the woman or girl the chance to defend herself against the criminal

charge. Despite the fact that article 194 of the Criminal Procedures Act stipulates that in executing sentences such as flogging the state of health of a person sentenced must be taken into account, whipping is generally carried out without any consideration of the health situation of the woman or girl.⁴⁶ There have been several cases where pregnant women and old or sick women have been whipped.⁴⁷

According to the Law of Public Order, the legally allowable dress for women is defined as “The dress that covers all the body except the face and hands.” Flagrant dress is defined as “The dress that violates the rules of conduct and does not pay deference to others.” Under the Public Order Laws, Security of the Community police can round up “improperly” dressed women before taking them to special tribunals to be jailed, flogged, or fined.⁴⁸ Harassment of female students has developed as a systematic policy used by the Security of the Community police (formerly the Public Order Police), with the regulations placed on women with regard to the dress justified by means of the demands of “Islamic propriety”.⁴⁹ It is believed that reports of harassment often do not receive public attention as women are afraid to complain publicly.⁵⁰

In January 2002, the Committee on Public Appearance and Behaviour at Khartoum University introduced a new Code of Conduct and Dress to regulate the appearance and dress of students at the university. The new code prohibits women from wearing figure hugging dresses, trousers or short sleeves and transparent head coverings. This has led to a crackdown by the Security of the Community Police, who have continued their campaign against those young female students regarded as failing to conform to the demands of Islamic propriety. In February 2002, a number of incidents were reported in which young women were rounded up, taken to police stations, detained and, in some cases, subjected to repeated floggings.⁵¹

According to information received by the Sudanese Organisation Against Torture, Iman el Shikh Mohammed, a secondary school student was stopped, with two other girls, on 6 July 2001 in Khartoum by the Security of Community Police and questioned about her clothing. When she and the two other girls protested, the police attacked them, beating and verbally abusing them. All three girls sustained injuries.⁵²

With regard to stoning to death, according to article 33 of the new Constitution: “no death penalty shall be inflicted for offences committed by a person under eighteen years of age; and such penalty shall be executed neither upon pregnant nor breastfeeding women, save after two years of lactation; nor shall the same be inflicted upon a person who passed 70 years of age other than in retribution and prescribed penalties (hudud).”

Article 27 paragraph 2 of the 1991 Criminal Act states: “with the exception of Hudud and Retribution (qusas) offences, death sentences shall not be passed against any person who has not attained the age of 18 or who exceeds 70 years of age.” According to the 1991 Criminal Act: “Hudud offence means the offences of drinking alcohol, apostacy (hiraba), adultery (zina) defamation of unchastity (quazf), armed robbery and capital theft.”

OMCT fears that girls are particularly vulnerable to being stoned to death for Hudud crimes under the Criminal Act of 1991. Under the Criminal Act, female victims of rape run the risk, due to its evidential requirements, of being charged with adultery or fornication which carries the punishment of execution by stoning when the offender is married (article 146).

OMCT considers that amputation and stoning should be deemed to constitute torture in all circumstances because these two practices inherently cause severe pain and suffering, and that flogging may amount to torture depending on the number of lashes inflicted, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.

6. Conclusions and Recommendations

OMCT regrets the fact that Sudan has not ratified major international instruments aimed at the promotion and protection of human rights. OMCT would welcome the ratification by Sudan of the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. In addition, OMCT would call upon the government of Sudan to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Optional Protocol to the Convention on

the Rights of the Child on the sale of children, child prostitution and child pornography and the two Optional Protocols to the International Covenant on Civil and Political Rights.

OMCT regrets the fact that the Government report contains scarcely any detailed information concerning violence against girls in Sudan and would call upon the Government to provide such information, including statistics on rates of violence against girls in its next periodic report to the Committee on the Rights of the Child.

Girls in Sudan face many obstacles to the realisation of their human rights and OMCT fears that there are no signs of improvement in the status of girls in Sudan. OMCT is of the view that girls are discriminated against in all areas of life due to many factors, including the persistence of a traditional male-dominated society.

OMCT notes with grave concern that girls are severely discriminated against, either directly or indirectly, under the Muslim Personal Law Act of 1991 and that girls are particularly vulnerable to punishments under the Criminal Act of 1991 and the Public Order Laws, thereby contributing to the subordinate role played by girls and women in the family and in Sudanese society and rendering them vulnerable to violence. OMCT would recommend that the government take urgent action to amend any legislation which either directly or indirectly discriminates against girls and women.

Domestic violence is a little-documented but apparently serious problem in Sudan. OMCT is very concerned that the Government has yet to develop a comprehensive policy and legislative response to the problem. In fact, wife-battering is, to a certain extent, allowed in Sudan and there is no legislation that specifically protects girls and women against domestic violence, taking into account the special relationship and the inter-dependence that exist between the victim and the perpetrator of this form violence.

OMCT would recommend that effective measures be taken with respect to the enactment of legislation on domestic violence along the lines of the guidelines submitted by the United Nations Special Rapporteur on violence against women to the fifty-second session of the United Nations Commission on Human Rights (U.N. doc. E/CN.4/1996/53, Add.2). The

measures that the government could envisage incorporating within domestic violence legislation would include; the establishment of a system for the enforcement of *ex-parte* restraining and protective orders that would have the effect of ensuring that the perpetrator could not approach the victim and other witnesses and that the perpetrator be obliged to vacate the family home; and provisions on the rights of victims to receive appropriate legal, medical and other assistance including alternative shelter and reparations.

OMCT also notes with grave concern that marital rape is not a crime in Sudan and it would recommend that the government take steps to explicitly criminalise rape occurring within the context of marriage.

In addition, greater attention must be paid to the factors that currently prevent girls in Sudan from lodging complaints in relation to domestic violence. These factors include traditional social beliefs concerning the subordinate status of women in family relationships. OMCT would recommend the development of broad-based public awareness campaigns concerning domestic violence, if possible in conjunction with local human rights organisations. Recent initiatives amongst health care professionals and members of the NGO community to establish hotline facilities for victims of domestic violence should be encouraged and expanded. Moreover, OMCT would insist on the necessity of training for law enforcement officials and members of the judiciary in relation to the investigation, prosecution and punishment of cases of family-based violence.

OMCT is very concerned about the early marriage of girls, which is allowed by law at the age of 10 for Muslim girls and 13 for non-Muslim girls. Early marriage has been shown to render girls more vulnerable to domestic violence and, by prolonging their reproductive lives, it can also lead to other serious health consequences. OMCT would strongly encourage the government to raise this age limit to 18 years for both women and men and to ensure that the legal age limit for marriage is strictly enforced.

The payment of bride price, strongly related to early marriages, may have the effect of increasing the vulnerability of girls to violence at the hands of their husbands and parents-in-law. OMCT would urge the government to outlaw this phenomenon.

OMCT is gravely concerned about the widespread practice of FGM in Sudan which violates the right to life, physical integrity, and the right to health of women and girls. OMCT would call upon the government to take stronger measures for the eradication and punishment of female genital mutilation including through the adoption of legislation prohibiting the practice and through the involvement of religious and community leaders in education and awareness-raising campaigns on FGM.

OMCT is very concerned that in Sudan, besides the social stigma attached to rape, penal laws encourage girls and women not to lodge complaints as, due to evidentiary rules, they may run the risk of being prosecuted and punished for adultery if they fail to prove the rape, while the perpetrator goes unpunished.

OMCT would urge the government of Sudan to amend the laws concerning rape which should provide for a broad, gender-neutral definition for rape that protects the victim against all forms of sexual abuse in a non-discriminatory way. Evidentiary rules which place a large part of the burden of proof on the rape victim and put girls at risk of being punished for adultery should be repealed. Instead, the focus should be on the perpetrator.

OMCT is very concerned about the impact of the on-going armed conflict on the situation of human rights, the adverse effects of the conflict on the civilian population, especially women and children, and the continued serious human rights violations being committed by all parties to the conflict. OMCT is, in particular, gravely concerned about the continuing occurrence of abductions, forced labour, slavery and trafficking of girls which is closely, but not exclusively, related to the ongoing armed conflict. Displaced girls are particularly at risk of becoming victims of these serious violations of their human rights.

OMCT welcomes the strengthening of the Committee for the Eradication of Abduction of Women and Children. However, it notes with concern that the government has not undertaken any action to investigate, prosecute and punish the perpetrators of abduction, slavery and forced labour. OMCT would urge the government to bring the perpetrators of the abductions and slave trade to justice. OMCT would also recommend that the government adopt legislation which clearly criminalises trafficking in persons.

OMCT is gravely concerned by reports that girls and women are frequently subjected to torture and ill treatment including beatings and sexual violence. Of further concern is the fact that most of the perpetrators of these acts of violence against women and girls reportedly enjoy impunity. OMCT would call upon the Government of Sudan to put an end to torture and other cruel, inhuman and degrading treatment, and specifically to stop rape and sexual abuse by government agents, paramilitary agents; to conduct prompt, thorough and impartial investigations into all reports of torture or ill-treatment and bring those responsible to justice.

The fact that girls are at a great risk of being prosecuted and punished with corporal punishment or execution by stoning for “crimes against morality” or improper behaviour or dressing is a matter of deep concern for OMCT. OMCT considers that amputation and stoning should be deemed to constitute torture in all circumstances because these two practices inherently cause severe pain and suffering. Flogging may amount to torture depending on the number of lashes inflicted, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. OMCT would strongly recommend that the Government of Sudan modify its legislation in order to eliminate these practices.

In addition, all law enforcement officials and members of the judiciary should receive adequate training which includes training in the application of international instruments and standards relating to human rights and, in particular, those standards that deal with the treatment of persons in detention and the human rights of women.

Finally, OMCT would insist upon the need for the Government to fully implement the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials.

1 U.N. Doc. CRC/C/58, para. 28.

2 *Signed on June 4, 1986.*

3 *Accession on March 18, 1976.*

- 4 *Accession on March 18, 1986.*
- 5 *Accession on March 21, 1977.*
- 6 Asma mohamed Abdel Halim, Challenges to the Application of International Women's Human Rights in Sudan, in Rebecca J. Cook ed, *Human Rights of Women, National and International Perspectives*, p. 497.
- 7 *Ibid.*
- 8 *Ibid.*
- 9 U.N. Doc.HRI/GEN/1Rev.4.
- 10 Sudan Organization Against Torture, *Female Genital Mutilation*, at :
- 11 *Women and Law in Sudan*, vol. 2, pp. 8-9.
- 12 U.N. Doc. CRC/C/15/Add.10.
- 13 "Women and Law in Sudan", vol.2, p.6.
- 14 *Women and Law in Sudan*, Volume One.
- 15 WHO Doc. WHO/FRH/WHO/97.8, *Violence Against Women*.
- 16 *Women and Law in Sudan*, Volume One, page 32.
- 17 WHO, *Female Genital Mutilation : An Overview*, 1998.
- 18 *Ibid.*
- 19 Sudanese Organisation against Torture, *Female Genital Mutilation*, at <http://www.soatsudan.org/reports>.
- 20 *Ibid.*
- 21 H. El-Beshir, *Women and the Agony of Culture: SNCTP and the Eradication of Harmful Traditional Practices in Sudan. An Impact Assessment for SNCTP Field Interventions*, University of Khartoum, 1995, quoted in Nahid Toubia, *Women and Heal. Female Circumcision / Female Genital Mutilation*.
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- 27 M.A. Dirie and G. Lindmark, *the risk of medical complications after female circumcision*, *East Africam medical Journal*, 1992, quoted in Nahid Toubia, *Women and Heal. Female Circumcision / Female Genital Mutilation*.
- 28 Nahid Toubia, *Women and Heal. Female Circumcision / Female Genital Mutilation*.

- 29 *Ibid.*
- 30 World Health Organization, at [http://: www.who.org](http://www.who.org).
- 31 Sudanese Women’s Rights Group, Press Release of 18 June 2002 on Legislation of Female Circumcision in Sudan.
- 32 Nahid Toubia, A Call for Global Action, Female Genital Mutilation.
- 33 “Women and Law in Sudan”, vol.2, p.9.
- 34 UNHCHR, Refugees Magazine, v.1, no. 126, p.8, 2002
- 35 *Ibid.*
- 36 U.N. Doc. E/CN.4/Sub.2/2002/23, para 42.
- 37 *Ibid.*
- 38 <http://www.sudanembassyus.org/ceawc.html>.
- 39 Gerhart Baum, question of the Violation of Human Rights and Fundamental Freedoms in Any part of the World, Situation of Human Rights in Sudan, U.N. Document E7Cn.4/2002/46; Sudanese Organisation Against Torture, Female Genital Mutilation, at www.soatsudan.org/reports; Coalition to stop the Use of Child Soldiers Global Report 2002.
- 40 UNICEF, A Humanitarian Appeal for Women and Children, January- December 2002.
- 41 A Sudanese Organisation Against Torture, Female Genital Mutilation in Sudan, at <http://www.soatsudan.org/reports>.
- 42 Isabel Matheson, the Lost Girls of Sudan, 7 June 2002, at <http://news.bbc.co.uk>.
- 43 *Ibid.*
- 44 Article 1 of the Convention against Torture defines “torture” as “...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.
- 45 Sudanese Victims of Torture Group (SVTG, currently, SOAT), “Sudanese Victims of Torture Group Annual Report: 2000-2001”, p. 6.
- 46 Sudanese Human Rights Organisation, review of the Human Rights situation in Sudan, presented to the 55th Session of the UN Commission on Human Rights, 1999.
- 47 *Ibid.*
- 48 Sudan Organization Against Torture, Annual Report on the Human Rights Situation in Sudan March 2001-2002 p. 12.
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- 50 *Ibid.*
- 51 Sudan Organisation Against Torture newsletter. Issue 31 Feb-March 2002.
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Committee on the Rights of the Child

THIRTY-FIRST SESSION – 16 SEPTEMBER - 4 OCTOBER 2002

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION**

**CONCLUDING OBSERVATIONS BY THE COMMITTEE ON THE RIGHTS OF THE
CHILD: SUDAN**

1. The Committee considered the second periodic report of the Sudan (CRC/C/65/Add.17) at its 817th and 818th meetings (see CRC/C/SR.817 and 818), held on 24 September 2002, and adopted at its 833rd meeting (CRC/C/SR.833), held on 4 October 2002, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's second periodic report and the written replies to its list of issues (CRC/C/Q/SUD/2). The Committee appreciates the informative written replies to the list of issues which were submitted and notes the constructive dialogue held with the State party's delegation.

B. Follow-up measures undertaken and progress achieved by the State party

3. The Committee notes the progress made by the State party in assisting the hundreds of thousands of persons displaced from their homes during the armed conflict and in addressing the problem of landmines.

4. The Committee takes note of the adoption of the Constitution of the Sudan, providing for human rights and freedoms, and which entered into force on 1 July 1998.
5. The Committee welcomes the establishment of children's and women's rights services within several ministries and bodies; the establishment of a Commission on Human Rights and Public Obligations in the National Assembly; the establishment of the Sudan National Committee for the Eradication of Harmful Practices; and the State party's various measures to improve respect for the rights of women, including the campaigns against female genital mutilation and early marriage, and the encouragement of child spacing.

C. Factors and difficulties impeding the implementation of the Convention

6. The Committee notes the extremely negative impact of the armed conflict on children and that it has created conditions in which even a minimal implementation of the Convention is difficult. While noting the de facto control by non-State actors of areas of the State party's territory, notably in southern Sudan, the Committee emphasizes the full responsibility of the State party; it invites all other parties to respect child rights within the area under their control.
7. The Committee further notes the current and long-standing economic difficulties, including a high level of foreign debt and dependency on declining foreign assistance.

D. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation

8. The Committee expresses its concern that the large majority of the concerns and recommendations contained in the concluding observations (CRC/C/15/Add.6) adopted following consideration of the State

party's initial report (CRC/C/3/Add.3) in 1993 have been insufficiently addressed. Many of the same concerns and recommendations are made in the present document.

9. The Committee recommends that the State party make every effort to address those recommendations contained in its concluding observations on the initial report that have not yet been implemented and the concerns contained in the present concluding observations.

Legislation

10. While noting that consideration of a draft children's code is continuing, the Committee, in light of Commission on Human Rights resolution 2001/18, expresses its concern that:
 - (a) Domestic legislation across the whole of the country, including in southern Sudan, is not in full conformity with the Convention;
 - (b) The State party has yet to ratify a number of core international human rights treaties.
11. The Committee recommends that the Sudanese authorities:
 - (a) Make every effort to bring all domestic legislation, including with regard to southern Sudan, into line with the Convention through, among other things, advocacy targeting the various bodies within the country responsible for adopting legislation;
 - (b) Implement fully existing legislation that safeguards children's rights;
 - (c) Sign and ratify the African Charter on the Rights and Welfare of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination against Women and proceed with ratification of the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography, and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction.

Resource allocation

12. The Committee is concerned that insufficient attention has been paid to article 4 of the Convention regarding the implementation to the “maximum extent of ... available resources” of the economic, social and cultural rights of children. Moreover, while appreciating that decentralization of services, particularly in the areas of health and education, allows authorities to respond better to local needs, the Committee is concerned that this delegation of responsibility without adequate resource allocation would result in serious deficiencies in the provision of these services for children, especially in the poorer areas. It emphasizes that the State party is responsible for ensuring that resources reach the most vulnerable groups during the period of economic reform and structural adjustment.

13. The Committee recommends that the State party:

- (a) Prioritize allocation of resources to the maximum extent for the economic, social and cultural rights of children at the national and local levels for the implementation of the Convention;
- (b) Identify the amount and proportion of the national and local budgets spent on children through public and private services, non-governmental organizations and international development aid, and evaluate the impact and effects of the expenditures and of privatization;
- (c) Study the impact of structural adjustment on the cost, quality, accessibility and effectiveness of services for children in order to prevent a decline in services.

Coordination

14. Noting the largely advisory role of the National Council for Child Welfare, the Committee is nevertheless concerned at the lack of administrative coordination and cooperation at the national and local government levels and civil society, which makes it difficult to achieve a comprehensive and coherent child-rights policy.

15. The Committee recommends that the State party:

- (a) Ensure that a central and permanent mechanism, which is adequately resourced, coordinates the implementation of the Convention, intersectorally as well as between national and local levels of government and civil society;
- (b) Prepare and implement a national policy and a plan of action for children that would include the implementation of the Convention that is comprehensive and human rights based, and that is undertaken through an open, consultative and participatory process at the national and local levels.

Monitoring structures

16. While noting the work of the Government's advisory council for human rights, the Committee is nevertheless concerned at the absence of an independent mechanism with the mandate to regularly monitor and evaluate the progress in the implementation of the Convention, and which is empowered to receive and address complaints.

17. The Committee recommends that the State party:

- (a) Establish an independent national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex), to monitor and evaluate progress in the implementation of the Convention at the national and local levels. This institution should be accessible to children and empowered to receive and investigate complaints of violations of child rights in a child-sensitive manner and to address them effectively;
- (b) Seek technical assistance from, among others, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Children's Fund (UNICEF).

Data

18. Noting the very serious lack of data, the Committee welcomes information by the delegation on steps being taken to build an information system based on the UNICEF Multiple Indicator Cluster Survey.

19. The Committee recommends that the State party:

- (a) Establish an effective mechanism for the systematic collection of disaggregated quantitative and qualitative data incorporating all the areas covered by the Convention and covering all children below the age of 18 years;
- (b) Make use of indicators and data in the formulation of policies and programmes for the effective implementation of the Convention;
- (c) Seek technical assistance from, among others, UNICEF.

Cooperation with non-governmental and intergovernmental organizations

20. The Committee recognizes the important role of civil society, as well as of international organizations, under the prevailing conditions, in the implementation of the provisions of the Convention, and is concerned at the insufficient efforts by the State party to fully cooperate with and facilitate their efforts.

21. The Committee recommends that the State party strengthen its cooperation with NGOs and international organizations and continue to ensure the safety of all NGO and intergovernmental personnel in the course of their work on behalf of children.

Training/dissemination of the Convention

22. The Committee notes with concern that awareness of the Convention amongst professionals working with and for children and the general public, including children themselves, remains low. The Committee is concerned that the State party is not undertaking adequate dissemination, awareness-raising and training activities in a systematic and targeted manner.

23. The Committee recommends that the State party:

- (a) Strengthen, expand and continue its programme for the dissemination of information on the Convention and its implementation among children and parents, civil society and all sectors and levels of government, including initiatives to reach those vulnerable groups that are illiterate or without formal education;

- (b) Develop systematic and ongoing training programmes on human rights, including children's rights, for all professional groups working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers, health personnel, and religious leaders);
- (c) Seek assistance from, among others, OHCHR and UNICEF.

2. Definition of the child

24. The Committee is concerned that the definition of the child is unclear under Sudanese law and is not in conformity with the principles and provisions of the Convention. For example, minimum ages may be determined by arbitrary criteria, such as puberty, and discriminate between girls and boys, and in some cases are too low (e.g. the minimum age of marriage is as low as 10 years).
25. The Committee recommends that the State party review its legislation so that the definition of the child, the age of majority, and other minimum age requirements conform to the principles and provisions of the Convention, and that they are gender neutral, and ensure that the laws are enforced.

3. General principles

Non-discrimination

26. The Committee is concerned that:
- (a) There are significant inequalities regarding access to basic health and education services between children living in different parts of the country, most especially between southern Sudan and the rest of the country;
 - (b) There is discrimination with regard to children born out of wedlock, children with disabilities and refugee children, and discrimination on religious and ethnic grounds;

- (c) Throughout the State party traditional patterns of discrimination limit the opportunities available to girls and women.
27. The Committee recommends that the State party:
- (a) Ensure that all children, regardless of the region of the country in which they live, enjoy equal respect for their rights, including with regard to basic services;
 - (b) End all discrimination against children, giving particular attention to discrimination based on religious beliefs;
 - (c) Conduct a study to assess the scope and causes of discrimination between boys and girls and take steps to address such discrimination, giving particular attention to the impact of traditional and cultural practices upon girls and women with a view to adopting a proactive and comprehensive strategy for the elimination of discrimination against them.
28. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and taking account of the Committee's General Comment No. 1 on article 29, paragraph 1, of the Convention (aims of education).

Best interests of the child

29. The Committee is concerned that in actions concerning children, the general principle of the best interests of the child contained in article 3 of the Convention is not always a primary consideration, such as in matters relating to family law.
30. The Committee recommends that the State party review its legislation and administrative measures to ensure that article 3 of the Convention is duly reflected therein and that this principle is taken into account when administrative, policy, court or other decisions are made.

Child participation and respect for the views of the child

31. While welcoming efforts to establish children's parliaments, the Committee remains concerned that the views of the child, especially girls, are not often respected and may be seen as contrary to traditional concepts of the role of the family, clan and tribe.
32. The Committee recommends that the State party:
 - (a) Ensure full respect for the views of the child and consider ways of ensuring that a child's views are given due consideration in accordance with the age and maturity of the child within the family, clan and tribe;
 - (b) Give particular attention to ensuring respect for the views of girls.

4. Civil rights and freedoms

Name and nationality

33. Noting the efforts made by the State party to establish a civil registry, the Committee is nevertheless extremely concerned that large numbers of children, as high as 70 per cent in some parts of the country, are not registered.
34. The Committee recommends that ongoing efforts be continued and strengthened to improve birth registration throughout the country with a view to ensuring that all children are registered at birth, or as soon as possible afterwards, and are provided with birth certificates.

Ill-treatment and violence

35. The Committee is concerned that corporal punishment is widely practiced in the State party, including within the family, schools and other institutions; that children have been the victims of violence by, among others, the police; and that acts of torture, rape and other cruel, inhuman or degrading treatment have been committed against children in the context of the armed conflict.

36. The Committee recommends that the State party:

- (a) Prohibit under law the practice of corporal punishment in the family, in schools and in all other contexts and make use of legislative and administrative measures, as well as public education initiatives, to end the use of corporal punishment, including the provision of information on alternative non-violent methods of discipline;
- (b) Prevent all forms of violence against children and make sure that perpetrators of violence against children, including the police, are prosecuted;
- (c) Immediately end the practice of detaining children in camps where they suffer torture and other cruel, inhuman or degrading treatment or punishment and make sure that those responsible for such acts are brought to justice;
- (d) Take into consideration the other recommendations of the Committee adopted at its days of general discussion on violence against children (CRC/C/100, para. 688 and CRC/C/111, paras. 701-745);
- (e) Seek assistance from, among others, UNICEF and the World Health Organization (WHO).

5. Family environment and alternative care

37. The Committee is concerned that:

- (a) Widespread and severe poverty, and the disruption of family life by war, famine and related population displacement have seriously weakened the family environment of massive numbers of children within the State party;
- (b) The severe legal penalties applied to women who become pregnant outside of marriage are such that many women and adolescent girls seek to conceal their pregnancies and then abandon their newborn children, and that the survival rate of these children is extremely low.

38. The Committee recommends that the State party:

- (a) Assess the scope of problems faced by children in the realization of their right to a family environment and take urgent action to strengthen its support to the family;
- (b) Give particular attention to the protection of children born out of wedlock and ensure that their mothers receive protection and support.

Abuse

39. The Committee is concerned that physical and psychological abuse occurs within the family, but is not adequately monitored, reported upon or addressed.

40. The Committee recommends that the State party:

- (a) Establish effective child-sensitive procedures and mechanisms for the reporting, monitoring and investigation of instances of child abuse, and intervene where necessary;
- (b) Provide child victims of abuse with the appropriate medical and psychological support, including recovery and social reintegration assistance for their families;
- (c) Strengthen the education provided to young parents in the care they should give to their children and in the prevention of abuse and neglect;
- (d) Take into consideration the recommendations of the Committee adopted at its days of general discussion on violence against children (CRC/C/100, para. 688 and CRC/C/111, paras. 701-745);
- (e) Seek assistance from, among others, UNICEF and WHO.

Alternative care

41. Noting the breakdown of many families and extended family networks, the Committee is concerned that there are insufficient alternative care mechanisms to provide for children in need of such care and that existing mechanisms need to be strengthened.

42. The Committee recommends that the State party:

- (a) Strengthen and extend alternative care mechanisms and take all necessary measures to provide children separated from their parents with family-type alternative care (e.g. by strengthening the capacity of extended family and increasing the availability of quality foster care);
- (b) Ensure that the rights of children in need of alternative care are fully protected;
- (c) Seek technical cooperation from UNICEF in this regard.

6. Basic health and welfare

43. The Committee notes the progress with regard to child immunization programmes, but remains deeply concerned at the very poor availability, accessibility and quality of basic health-care services. The Committee is concerned, among other things, at the high rates of infant, child and maternal mortality, the significant inequalities in the provision of health-care services between the north and the south of the country, the very limited access to safe drinking water responsible for 40 per cent of deaths of children under 5, and other serious health problems like malaria, acute respiratory diseases, lack of iodine and malnutrition. These and other concerns of the Committee regarding health care are reflected in the following recommendations.

44. The Committee urgently recommends that the State party:

- (a) Take immediate action to reduce infant, child and maternal mortality rates;
- (b) Strengthen the provision of health-care services, including with regard to management, staffing, equipment and medical supplies, giving particular attention to the decentralization of responsibility for services to local authorities;
- (c) Reduce inequalities in the levels of health of children in the State party through, inter alia, improving access to safe drinking water and adequate sanitation and strengthening the availability of health services in rural areas;

- (d) Establish adequate and effective services for children who have been exposed to highly traumatic events;
- (e) Take immediate action to address preventable health problems among children, including with regard to iodine deficiency, malaria, diarrhoea, acute respiratory diseases, measles, meningitis and malnutrition;
- (f) Ensure the availability and accessibility of essential drugs;
- (g) Seek technical assistance from, among others, UNICEF and WHO.

Children with disabilities

45. While encouraged by the progress indicated by the delegation, the Committee remains concerned at societal stigmatization and discrimination against disabled children, the lack of disaggregated data concerning them and the very limited services and opportunities offered to those children.
46. In the context of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96, annex) and the results of the Committee's day of general discussion on the rights of children with disabilities, held on 6 October 1997 (see CRC/C/69, paras. 310-339) the Committee recommends that the State party:
- (a) Undertake effective collection of disaggregated data with regard to children with disabilities;
 - (b) Make every effort to bring an end to traditional beliefs and stigma prejudicial to children with disabilities, including through education and information programmes;
 - (c) Ensure the integration within its child-rights policy of the perspectives of the rights of children with disabilities with regard to, inter alia, non-discrimination, participation, survival and development, health, education (including vocational education for future professional employment) and integration in society;

- (d) Significantly strengthen the provision of health services for children with disabilities;
- (e) Adopt and implement, as needed, legislative and administrative provisions to ensure that children with disabilities have access to public buildings, including hospitals and schools;
- (f) Strengthen the assistance, both financial assistance and counselling, provided to the families of children with disabilities;
- (g) Seek international cooperation from, among others, UNICEF, in this regard.

Harmful traditional practices

47. While noting the efforts undertaken to end female genital mutilation, the Committee remains deeply concerned that it continues to be practised widely.
48. The Committee recommends that the State party continue and strengthen its efforts to end the practice of female genital mutilation and to seek cooperation with other countries in the region with a positive experience in combating this harmful practice. Religious and community leaders should be mobilized in this regard.

HIV/AIDS

49. The Committee is seriously concerned at reports, including the State party's report, that HIV/AIDS infection rates are likely to rise and at the lack of adequate measures in the area of prevention, care and treatment.
50. The Committee recommends that the State party integrate into its policies and practices the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37, annex I) in consultation with and participation of religious leaders.
51. Noting the positive progress made by the State party in establishing a social security network in 14 States, the Committee is convinced that social security coverage needs to be extended further and strengthened.

52. The Committee recommends that the State party continue and strengthen its efforts to provide social security protection to children and their families.

7. Education, leisure and cultural activities

53. The Committee takes note of the adoption of the General Education Act 2002 and the establishment of a girls' basic education service and of an education service for nomadic children, but remains concerned:

- (a) At the very low level of public spending on education;
- (b) At the very low level of enrolment in pre-school, primary and secondary schools owing, among other things, to the fact that education is not compulsory and that a birth certificate is required for enrolment;
- (c) That the drop-out rate is very high and that many children do not complete their primary education.

54. The Committee recommends that the State party:

- (a) Significantly increase public spending on education;
- (b) Ensure that primary education is free and compulsory for all children;
- (c) Continue and strengthen efforts to increase enrolment in pre-school, primary and secondary education through, inter alia, increasing the number of schools, classrooms and teachers and establishing flexible forms of school registration which do not require the presentation of a birth registration certificate;
- (d) Reduce the number of children dropping out of education by, inter alia, enforcing compulsory education requirements, providing additional financial support to cover the costs of education, and through the use of public information campaigns on the value of education;
- (e) Give particular attention to ensuring the enrolment in school of girls, children with disabilities, refugee children and children from nomadic groups, and continue and strengthen efforts to provide special education and mobile education facilities for

children with disabilities and nomadic children, respectively, who are in need of them;

- (f) Strengthen education infrastructure and resources, including the provision of sufficient resources to local authorities, the construction of classrooms and schools, the provision of materials and school equipment, the revision and updating of school curricula and the improvement of teacher training;
- (g) Make particular efforts to improve access to education in southern Sudan;
- (h) Improve the opportunities for children to have access to tertiary education;
- (i) Implement the recommendations and aims contained in paragraphs 235 and 292 of the State party's report;
- (j) In light of the Committee's General Comment No. 1 on article 29, paragraph 1, of the Convention (The aims of education), take measures to strengthen the accessibility, quality and management of schools and take action to address the problems identified.

55. The Committee is deeply concerned at the fact that the availability, accessibility and quality of education in the southern part of the country is much worse than in the rest of the country (e.g. only 16-18 per cent of children have access to education and not more than 20 per cent of those are girls; the drop-out rate is still high; teachers are not paid salaries and most of them are not qualified; schools are often too far away and education is regularly disrupted by the armed conflict; and availability of educational material is very limited). These and other concerns lead to the following recommendations, particularly for the southern part of the country.

56. The Committee recommends that the State party:

- (a) Urgently implement measures to raise the number of children enrolling in education and, as far as possible, support children so that they enrol at the correct age;
- (b) Significantly strengthen teacher training through, inter alia, improving the quality of training and significantly raising the

number of teachers trained, including teachers able to teach in local languages;

- (c) Implement measures to improve children's access to schools through, inter alia, the provision of transport to schools over a certain distance away or the establishment of additional schools closer to children;
- (d) Give particular attention to increasing the number of girls enrolling in and completing education;
- (e) Ensure appropriate use of the new curriculum;
- (f) Seek technical assistance from UNICEF in this regard.

8. Special protection measures

Refugee and internally displaced children

57. The Committee is concerned at the large number of Sudanese children who continue to live as refugees in neighbouring countries; that refugee children from neighbouring countries do not enjoy all their rights contained in the Convention; at the situation of internally displaced children; and at reports of forced evictions for the purposes of oil exploration.

58. The Committee recommends that the State party:

- (a) Strengthen its efforts to secure the voluntary and safe return of Sudanese refugee children and their families, in accordance with all international standards;
- (b) Continue and strengthen its efforts to provide protection to children and their families from neighbouring countries who seek shelter as refugees within the Sudan;
- (c) Make every effort to provide assistance and support to the resettlement of internally displaced persons;
- (d) Continue efforts to support family reunification;

- (e) Ensure that oil exploration activities do not lead to the forced displacement of families, including children, and that the rights of all children in regions where these activities are undertaken are respected.

Children in armed conflict

59. While noting the demobilization of some children, the Committee is deeply concerned that:

- (a) Children are still being used as soldiers by the Government and opposition forces;
- (b) Landmines continue to pose problems for the safety of children, including in regions where armed conflict is no longer taking place;
- (c) Government forces have conducted indiscriminate bombing of civilian areas, including of food stocks;
- (d) Access to needy populations by humanitarian organizations has sometimes been impeded.

60. The Committee recommends that the State party and, as far as applicable, other relevant actors:

- (a) End all recruitment and use of children as soldiers, in accordance with applicable international standards; complete demobilization and rehabilitate those children who are currently serving as soldiers; and comply with Commission on Human Rights resolution 2001/18;
- (b) End the military recruitment of professionals working with children, such as teachers;
- (c) Include respect for children's rights in any negotiated agreement to end the armed conflict;
- (d) Ratify and fully implement the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and On Their Destruction, of 1997;

- (e) Respect the provisions of article 38 of the Convention and related provisions of international humanitarian law with regard to the protection of civilians, including children, in armed conflicts;
- (f) Guarantee the delivery of humanitarian assistance to the populations in need, and respect the rights of children among civilian populations to, among others, food, water, medical care and adequate housing;
- (g) Fully cooperate with the United Nations verification team investigating alleged abuses against civilians, including children, during the armed conflict.

Slavery and abduction

61. The Committee welcomes the work of the Committee for the Eradication of Abduction of Women and Children. However, it remains concerned that the State party's legislation does not adequately prohibit slavery or sanction those engaged in it and that thousands of children have been abducted and enslaved in the context of the armed conflict as well as for commercial gain (i.e. sold as servants, agricultural labourers and concubines, or forcibly recruited as soldiers).

62. The Committee recommends that the State party:

- (a) Ensure that child slavery is prohibited under domestic legislation and in accordance with the Convention and other relevant international standards;
- (b) End all forms of slavery and abduction of children within the State party and, in this context, urgently implement the provisions of Commission on Human Rights resolution 2001/18;
- (c) Prosecute those persons engaged in the abduction, sale, purchase or illegal forced recruitment of children;
- (d) Continue and strengthen the work of the Committee for the Eradication of Abduction of Women and Children, including through making available greater financial resources and giving the Committee more authority at the regional and local levels;

- (e) Provide assistance to children returning from slavery or abduction with reintegration in their families and communities;
- (f) Seek international cooperation in this regard.

Economic exploitation

63. The Committee is concerned that:

- (a) Many children, including children under 15, regularly work and bear heavy responsibilities within the family;
- (b) The large scale and intensity of work demands placed upon children prevents many of them from attending school;
- (c) Some child labourers are the victims of economic exploitation and work in very poor conditions, including without insurance or social security benefits, with very low wages, for long hours and in dangerous and/or abusive conditions.

64. The Committee recommends that the State party:

- (a) Make greater efforts to reduce the number of children engaged in regular labour, with particular emphasis on younger children;
- (b) Make every effort to ensure that children do not work under conditions which are harmful to them and receive appropriate wages and other work-related benefits;
- (c) Make every effort to ensure that those children who do work continue to have access to formal education.

Sexual exploitation

65. The Committee is concerned at increasing instances of sexual exploitation of children, including through prostitution.

66. The Committee recommends that the State party strengthen its efforts to address the sexual exploitation of children.

Street children

67. While taking note of the adoption by the President of a decision on 19 June 1999 “to deal with the problem of street children”, the Committee remains concerned that:

- (a) There are large numbers of children living on the street in urban areas and that these children are vulnerable to, among other things, sexual abuse, violence, exploitation and the abuse of various substances and that they lack access to education and adequate health services;
- (b) Street children are classified as “vagrants” in the context of government practices.

68. The Committee recommends that the State party:

- (a) Amend its definition and policies with regard to street children, ensuring that these children are seen as victims of their circumstances and are not criminalized;
- (b) Make additional efforts to provide protection to children living on the street and to ensure their access to education and health services, including substance abuse counselling;
- (c) Proceed with the implementation of the “national project to combat the problem of street children”, ensuring that this project is in full conformity with the Convention and addresses the concerns raised in the present concluding observations;
- (d) Seek international cooperation from, among others, UNICEF.

Juvenile justice

69. Noting the reference to a juvenile court project in the State party’s response to the list of issues, the Committee is concerned that the holistic approach to addressing the problem of juvenile crime advocated in the Convention, including with respect to prevention, procedures and sanctions, has not been sufficiently taken into consideration by the State party. The Committee is concerned that the age of criminal responsibility is too low as a child may be punishable by detention in a reformatory from the age of 7.

70. The Committee recommends that the State party:

- (a) Raise the minimum age of criminal responsibility;
- (b) Establish a system of juvenile justice that fully integrates into its legislation and practice the provisions of the Convention, in particular articles 37, 39 and 40, as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System;
- (c) Ensure that all children under 18 years of age benefit from the protection of juvenile justice standards;
- (d) Guarantee that sentences of capital punishment are not given for acts committed when the perpetrator was a child under 18 and that sentences of life imprisonment without possibility of release are likewise not handed down;
- (e) End the imposition of corporal punishment, including flogging, amputation and other forms of cruel, inhuman or degrading treatment or punishment, on persons who may have committed crimes while under 18;
- (f) Ensure that children who are homeless, unaccompanied, begging and in other similar situations are not criminalized.

9. Optional Protocols

71. The Committee recommends that the State party ratify the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

10. Dissemination of the reports

72. The Committee is concerned that the State party's periodic report was not made widely available and did not fully reflect concerns expressed by non-governmental organizations.

73. In light of article 44, paragraph 6, of the Convention, the Committee recommends that the report and the written replies submitted by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and concluding observations adopted by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within all levels of administration of the State party and the general public, including concerned non-governmental organizations.

11. Next report

74. In light of the recommendation on reporting periodicity adopted by the Committee and described in the report on its twenty-ninth session (CRC/C/114), the Committee, aware of the considerable delay in the State party's reporting, underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States' responsibilities to children under the Convention is to ensure that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the implementation of the Convention. In this regard, regular and timely reporting by States parties is crucial. The Committee recognizes that some States parties experience difficulties in initiating timely and regular reporting. As an exceptional measure, in order to help the State party catch up with its reporting obligations in full compliance with the Convention, the Committee invites the State party to submit its third and fourth periodic reports in one consolidated report by 1 September 2007. The Committee expects the State party to report thereafter every five years, as foreseen by the Convention.

Violence against Women in Togo

A Report to the Human Rights Committee

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Concluding observations of the Human Rights Committee:

Togo

Seventy-sixth session – 14 October - 1 November 2002

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1. Preliminary Observations

The submission of information specifically relating to violence against women to the United Nations Human Rights Committee forms part of OMCT's violence against women program which focuses on integrating a gender perspective into the work of the five "mainstream" United Nations human rights treaty monitoring bodies. OMCT's gender analyses and reporting entail an examination of the effects of gender on the form which the human rights violation takes, the circumstances in which the abuse occurs, the consequences of those abuses, and the availability and accessibility of remedies.

OMCT notes that the third periodic report by the government of Togo (UN Doc. CCPR/C/TGO/2001/3), while being comprehensive in a number of respects, does not - with the exception of a section on female genital mutilation - contain detailed information on the issue of violence against women. In fact, apart from its analysis concerning the implementation of article 3 of the International Covenant on Civil and Political Rights (ICCPR) in relation to the position of women in the family, the participation of girls and women in education and of women in the field of labour and politics, the report rarely refers to discrimination against women.

OMCT would like to reiterate the fact that article 3 of the ICCPR stresses the need to ensure the equal right of men and women to the enjoyment of "*all* civil and political rights set forth in the present covenant." [emphasis added]

The Human Rights Committee has considered the concept of discrimination against women in several of its general comments. Already in 1981, in general comment 4, the Human Rights Committee drew attention to the fact that article 3 of the Covenant had been insufficiently dealt with in a large number of State reports and recalled that the prevention of varying forms of discrimination, and more particularly on the grounds of sex, required "(...) not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights."¹ This general comment was updated in March 2000 when the Human Rights Committee adopted a comprehensive new general comment on gender equality.²

The implications of general comment 28 are evident in light of the explicit reference in paragraph 4 that States Parties should “take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions both in the public and the private sector which impair the equal enjoyment of rights.” The emphasis on the combat of discrimination by non-state actors is very important as much of the violence against women takes place within the private sphere of the family or in the community. In this regard, paragraph 11 of the general comment is of prime importance as it reads: “To assess compliance with article 7 of the Covenant, as well as with article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practices with regard to domestic and other forms of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape. The States Parties should also provide the Committee information on measures to prevent forced abortion or forced sterilisation. In States Parties where the practice of genital mutilation exists, information on its extent and on measures to eliminate it should be provided. The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated.” In the same light, in 1992, general comment 20 on article 7 of the Covenant dealing with the prohibition of torture and ill-treatment, provides that a state has a duty “to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”³ General comment 28 also relates to other forms of violence against women such as trafficking in women and children and forced prostitution in paragraph 12, prison conditions of women in paragraph 15, and pornography in paragraph 22.

Following its examination of Togo’s implementation of the International Covenant on Civil and Political Rights in 1994, the Human Rights Committee expressed regret “that the State party has not yet embarked on all the factors and difficulties impeding equality of men and women in order to fully implement article 3 of the Covenant”. It further stated that “the reported cases of trafficking in women, the effect of certain customs and traditions, as well as the lack of effective government measures aiming at promoting equality of the sexes constitute matters of grave concern.”⁴

In light of the above and in line with the objectives of OMCT's violence against women programme, this alternative report will, after a brief overview of the status of women in Togo, examine violence against women in the domestic and community spheres as well as violence perpetrated by the State from both a *de jure* and from a *de facto* point of view. The report ends with a series of conclusions and recommendations.

1.1 Background Information on Togo

Togo was a German protectorate from 1884 up until the adoption of the Treaty of Versailles, when it was divided into two territories under the control of the League of Nations and subsequently mandated to France and Great Britain. The French part obtained independence on April 27, 1960, whilst the English part was annexed to Ghana.

Independent Togo is a narrow strip around 600 kms in length, with a width varying between 50 and 150 km for a surface of 56600 km². Togo has approximately 4.7 million inhabitants with an annual population growth rate currently at around 2,6 %. The population is extremely young. According to the 1999 government report on Human Sustainable Development in Togo, 70% of the Togolese population is below 30 years of age and about 55% is younger than 15. Of these, 51,3% are women, 75% of which live in rural areas. Togo is a mosaic of people belonging to different backgrounds and about forty ethnic origins.

The Togolese economy is mainly dominated by agriculture and trade. Togo is classified as an LDC (Least Developed Country) and as such remains dependant upon foreign aid; however, due to the socio-political situation the country is experiencing - the slowness of the establishment of a truly democratic government system - the main financial backers have now suspended their cooperation with Togo for a decade, which renders the socio-economic conditions of the people extremely precarious and fragile.

On a political level, Togo is constitutionally run by a semi-presidential system with a parliament with one chamber the members of which are elected by direct universal suffrage, as is the President of the Republic. The current president, Gnassingbé Eyadéma, came to power in 1967 following a coup and was re-elected twice in 1993 and 1998 as head of State.

According to the country's fundamental law, he must leave power at the end of his current mandate, meaning in 2003.

On a legal level, the Togolese Constitution establishes the independence of the judiciary, however magistrates are often subjected to the influence of those in power in their official capacities, especially during political trials.

1.2 The Status of Ratified Conventions

Togo has been a State party to the International Covenant on Civil and Political Rights since 24 May, 1984. On 30 March 1988, Togo ratified the Optional Protocol to the International Covenant on Civil and Political Rights, thereby enabling the committee on human rights to receive and examine communications on behalf of individuals. OMCT regrets, however, that Togo has not yet ratified the Second Optional Protocol to the above-mentioned Covenant aimed at abolishing the death penalty.

Togo has also ratified other international conventions that protect women and their rights, prohibiting the violence they are subjected to and promoting gender equality. Togo is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ratified on 26 September, 1983 without any reservations.

Togo is not, however, a party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, which allows individuals or groups of people - after they have exhausted all national remedies - to present communications to CEDAW concerning violations of the Convention. This Protocol also enables the Committee to investigate severe or systematic violations of the Convention occurring in countries that are parties to the Convention and the Optional Protocol.

Togo is also party to the International Covenant on Economic, Social and Cultural Rights, to the Convention against Torture (Togo has declared that it recognises the competence of the Committee to receive and act on individual communications (articles. 21, 22)), to the Convention on the Rights of the Child (CRC) and to the Convention on the Elimination of Racial Discrimination.

At the regional level, Togo adhered to the African Charter on Human and People's Rights on 5 November, 1982 (CADHP). The Charter came into force four years later on 21 October, 1986. This Charter, mirroring other international human rights instruments, protects all individuals against violence including torture or cruel, inhuman or degrading treatments and provides for the promotion of gender equality. Thus, article 2 of the Charter states that "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as ... gender, ...". Article 3 guarantees that all are "equal before the law" and that they everyone is "entitled to equal protection of the law". Article 4 protects each human being's right to life and to physical and moral integrity followed by article 5 which forbids physical or psychological torture and cruel, inhuman or degrading treatment or punishment.

As far as the status of these international and regional conventions are concerned vis-à-vis the Togolese Constitution, article 50 of the Constitution provides that "the rights and responsibilities stated in the Universal Declaration of Human Rights and in the international instruments relative to human rights, ratified by Togo, are an integral part of the present Constitution". Further on, article 140 of the afore-mentioned Constitution points out that "treaties and agreements that are regularly ratified or adopted have, after their publication, superior authority compared to the law, ..."; and it is even highlighted in article 58 that the Head of State is responsible for the observance of international treaties.

Although Togo is party to these various international treaties and mechanisms for the promotion and protection of human rights, the human rights situation in Togo is far from ideal. Human rights violations are common and are perpetrated within the family and in the community as well as by State officials – in particular, the security forces are responsible for many abuses whilst acting in their official capacity. These human rights violations are aggravated by the inherent impunity attached to such acts, which is typical in Togo, as is intimidation and threats of retaliation directed at those victims and their families who speak out about these violations.

2. General Observations on the Status of Women

From a legal point of view, some efforts have been made in order to guarantee women the full enjoyment of their rights. Togo has at its disposal a legal arsenal for the promotion of women's advancement. These provisions are found in national legislation enacted in the Constitution of the 4th Republic of 14 October, 1992; the Individual and Family Code deriving from decree n° 80-16 of 31 January 1980; and in the Labour Code adopted following decree n° 16 of 8 May 1974 which in its article 88 ensures equal pay for equal work, professional qualification, with no distinction between sexes and in article 112 protects pregnant women's professional rights.

The Constitution of Togo guarantees gender equality, the right to life and security, and protection and respect for the physical and moral integrity of individuals. Article 2 of the Constitution provides that "the Republic of Togo ensures all citizen's equality before the law without distinction of any kind such as origin, race, gender, social condition or religion (...)"; article 5 recognises that persons from both sexes right to vote, so long as they fulfil the conditions required by law. Article 10 providing that "all human beings bear inherent, inalienable and imprescriptible rights. The maintenance of these rights is the aim of all human communities. The State is obliged to respect, guarantee and to protect them (...)" recognises the rights of all individuals. Article 11, on the other hand, guarantees all individuals' rights with no distinction of any kind, their equal rights and their equal protection by the law providing that "human beings are equal in dignity and in rights. Men and women are equal in front of the law...". Moreover, article 13 protects the right to life, freedom and security for all stating that: "The State is obliged to guarantee the physical and psychological integrity, life and security of all persons living on its national territory. No one can be arbitrarily deprived of his or her freedom or his or her life." Further on, article 21 of the Togolese Constitution formally forbids torture and other forms of cruel, inhuman or degrading treatment and demands the perpetrators to be punished regardless of the motives, allowing for no mitigating circumstances. This sanction is also applicable to any person found guilty of having "explicitly and gravely injured the respect of human rights and public freedoms." In *extenso* this article states: "the human person is sacred and inviolable. None shall be subject to torture or other forms of cruel, inhuman or degrading treatments. None shall be able

to relinquish from the sanctions resulting from these violations through the invocation of higher public authorities or the response to orders. All individuals, all state officials guilty of such acts, either in their private or official capacity will be punished according to the law. All persons, all state official is unbound to their pledge of allegiance when the order they receive constitutes an explicit and severe violation of the respect of human rights and public freedoms.”

The State, through article 31 “is obliged to ensure the protection of marriage and of the family”. This article also guarantees “children, whether born in or out of wedlock” the same social and family protection. Furthermore, article 32 allows for children born of either a Togolese mother or father to the right to Togolese nationality. Article 35 “recognises children’s right to education” and renders “school compulsory for children of both sexes until the age of 15.” And finally, through article 37, the State is asked to ensure that each citizen has equal opportunities in the labour market and to guarantee each working person a just wage: “None shall be wronged in their work on the grounds of gender...”.

2.1 National Initiatives Dealing with the Status of Women

The measures taken to reinforce the legal status of women have been backed up by government initiatives for the promotion of equality. These government initiatives are outlined in the 1999 report on Sustainable Human Development in Togo, published by the General Administration of Development and Planning and mainly involve:

- The creation of a Ministry in charge of the promotion and protection of women. This Ministry is charged with the promotion of women’s welfare and with taking into account their needs in the process of development.
- The adoption of global and sectorised strategies of promotion of women such as:
 - Strategies relative to the improvement of women’s legal status by revising the Personal and Family Code, the intensification of IEC (Information, Education, Communication) activities in favour of women, the integration of a gender perspective into the conception,

elaboration, follow-up and assessment of all socio-economic development programmes.

- Strategies relative to the promotion of women in the struggle against poverty based on compulsory schooling for all girls up until 15 years of age, the reorganisation of support to girls' schooling, awareness-raising for parents concerning the importance of young girls' education, the multiplication of literacy centres in areas where literacy rates are low. At the moment, the government is attempting to promote the education of girls by allowing them to slightly lower fees than boys for the same level of education.
- The planned management of natural resources according to an approach to soil management which gives priority to the active participation of women in decision-making; this mainly addresses the issue of reinforcing their capacities as far as organisation and management are concerned.

These government's initiatives are welcome, however, much remains to be done in order to ensure that the various plans and programmes are effectively implemented. For instance, the review of the Personal and Family Code which has been in the draft stage since the 1999 Report on Sustainable Human Development in Togo, has yet to be finalised. In this context, organisations that defend, protect and promote human rights and women's rights in particular, perform vital work in terms of lobbying for change and pushing for the implementation of policies and legislation.

2.2 The Status of Women in the Family

The Personal and Family Code of Togo (hereafter named the PFC) is currently under revision and the finalisation of this process should lead to the promulgation of a new Code. The Code currently in place contains a number of provisions that protect the human rights of women on an equal footing with those of men, in particular the freedom of both men and women to choose their spouse, reciprocity between spouses, married women's legal capacities are specified as being equal to those of men, women's equal participation in parental authority, etc; these provisions are found in the following articles of the PFC: article 100 of the Code provides that "spouses owe each other mutual faithfulness. They should care

and assist each other in the ethical and material interests of the household and children”; article 238 provides that “during marriage fathers and mothers exert equal authority ”; article 371 allows women to freely open bank accounts in their name.

This Code also includes some provisions that mainly protect women; particularly article 44 that invalidates consent to marriage when this has been obtained through the use of violence and in relation with article 86(1) leads to the annulment of the marriage. Articles 368, 378 and 379 of the PFC also provide for specific protection for women in the context of marriage and the family. Article 368 provides – in cases of communal estate – that “when the husband’s lack of order and responsibility in his affairs affects the wife’s rights, she may legally obtain the administration and disposal of her property acquired during the exertion of her professional activity”; article 378 along with article 379 allow the woman to retrieve her property from the communal estate before her husband, in the case of dissolution of the communal estate.

While many of the 1980 PFC provisions are dedicated to the achievement of equality between men and women, the Code also contains many articles that discriminate against women. In fact, OMCT notes that many provisions in Togolese national legislation discriminate against women and impair their advancement and the enjoyment of their rights both *de jure* and *de facto*. Among others, article 16(1) of the PFC provides that married women should reside at their husband’s abode or in the home he designates for them; article 42 acknowledges polygamy and monogamy, however, according to article 52 of the Code “the declaration of monogamy or polygamy is taken by the future spouses before an official registrar at the wedding celebration ...”. Article 51 of the same code allows for “the husbands who have opted for monogamous marriage to remarry if the wife is confirmed to be sterile.” While article 65 allows married women in polygamous marriages to oppose a further marriage by their husband if they can provide evidence that they and their children have been abandoned by the husband, the fact that the PFC acknowledges the right to polygamous marriage establishes a serious obstacle to the promotion of women’s rights because many inquiries have revealed that this type of marriage exposes women to violence and grave violations of their rights.

OMCT maintains that polygamous marriages perpetuate notions of male dominance, creating domestic environments where women become vulnerable to abuse. The practice of polygamy inherently conflicts with women's economic, social, and personal freedom. General Recommendation 21 by the Committee on the Elimination of Discrimination against Women states, "Polygamous marriage contravenes a woman's right to equality with men and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited."⁵

In article 43 of the PFC, the legal age for marriage is set at 20 for men and 17 for women, it also provides that "Nevertheless, the president of the court or judge may waive the age limit for serious motives". One of the consequences of the implementation of the article in question is that girls may end their education much earlier than boys for marriage and the provision allowing for a waiver of the age limit for serious motives – motives that are not defined in the law – can also lead to early marriages. Moreover, early marriage exposes women to increased risks of violence including marital rape as well as to teenage pregnancies which may result in serious risks to the health of women.

A further provision in the PFC that discriminates against women is article 359, which, within the communal estate, defines the husband as the administrator of common property of the spouses with the reservation of article 360 which authorises wives to practice a commercial profession, and of article 361 which allows women to undertake legal action to attain the administration and disposal of her assets acquired in the exertion of her profession, when the husband does not fulfil his marital obligations. However, many women are unable to exercise their rights in the case of their husband's irresponsibility for the following reasons – ignorance of their rights, social obligations and lack of financial resources. Contrary to the PFC, which provides for the surviving spouse to have parental authority over the children, upon the death of the husband the brothers of the deceased still refuse to recognise and grant the woman the exertion of parental authority. In rural as well as in urban areas, all social backgrounds grant guardianship and administration of the deceased husband's assets and children to a member of the husband's family, who often takes advantage of this to take over the property rather than respond to the responsibility of taking care of the orphans and their education. This is a

consequence of the weight of a tradition that ill-perceives the handing over of family responsibilities to women. There are also questions of widows and orphans having trouble withdrawing their allocated pensions in opposition to the legal provisions establishing civil and military pensions of Togo's Pension Fund and decree n° 79 November, 1973, which brings into effect the social security code recognising that all citizens, including women, have the right to family benefits and pensions (for widows, orphans...). These obstacles are inherent to the fact that in family affairs women are not directly designated as administrators of their deceased spouse's property.

We can also add article 101 to the list of PFC provisions that discriminate against women in practice, as it establishes the man as the head of the household. Although this article further points to the fact that the wife replaces the husband in his functions as head of the family in the event of his indisposition and acknowledges that the husband exercises this power in the common interest of the household and children with the wife's support, the reality is far from the subtleties contained in this article. In reality, the husband becomes the boss in the home and generally imposes his decisions and views, which most women find normal, due to beliefs derived from customs and tradition.

With regards to divorce, article 119 of the PFC allows for one of the spouses to demand divorce when he/she is insulted or abused; or in case of medically confirmed impotence or sterility of one or the other spouses. Although this ensures that both men and women are allowed to file for divorce and it even specifies that violence constitutes a reason for divorce, women are also disproportionately subjected to abusive divorces and repudiations on behalf of their partners. Although the husband is under a legal duty to contribute to household expenses and the children's education, in practice this obligation is often not fulfilled.

Article 109 of the PFC allows women to perform a separate profession from that of their husband, unless he opposes it and this opposition is justified by the best interests of the family; otherwise, the woman may be authorised by the court to ignore her husband's opposition. In reality, the husband's legal opposition to his wife's application of her right to exert a profession is another of the discriminatory practices directed against women, even though few women know they can turn to the judicial

system for relief, and for those who do, cultural realities do not allow for such issues to be brought outside the framework of the family. This provision does not facilitate women's advancement and participation in the public, economic and political life of the nation.

Both article 76 of the PFC which provides that "solely marriages celebrated by the official registrar are legally binding" and article 84(7) which pronounces all marriages that are not celebrated by an official registrar are null and void, contain provisions that contradict or diminish those of article 75 stating that "marriages must be celebrated by an official registrar or a traditional chief who, in marriage issues, is vested with this capacity". By not attributing the legal effects of marriage to a wedding celebrated by a traditional chief, this legislation is a serious obstacle to the implementation of women's rights in Togo – mainly those of women living in rural areas who represent 75% of the population of rural regions – who have no alternative to traditional customary marriage celebrated by traditional authorities. Besides, article 95 which specifies that "no one can claim the benefits of civil marriage unless they present an official marriage certificate ..." mainly penalises women – for they are most subject to the liabilities of marriage – and even more so are those from rural areas due to the fact that very few weddings are celebrated by the elaboration of an official certificate.

2.3 Inheritance Rights of Women

As regards inheritance rights, Togo's PFC promotes *de jure* equality among heirs making no distinction at all between them, including none related to gender: article 421 for example, provides that "ascendants of the same degree inherit per capita and in equal portions." This Code also recognises the rights to inheritance of children born out of wedlock through article 413 which provides that "children and their descendants inherit from their fathers, mothers, grandfathers and grandmothers ... whether they are the result of different marriages or born out of wedlock." Furthermore, article 430 recognises inheritance rights of the surviving spouse against whom there is no existing order for divorce or separation. This article even points out "... when there are several widows, the portion set by the above articles is divided between them per capita." Articles 421, 432 and 433 of the Code specify that the portion of the inheritance

that goes to the surviving spouse may vary from a quarter to the whole of the inheritance depending on whether the deceased has any descendants alive or ascendant or collateral relatives (brothers, sisters, cousins...).

However, one must recognise that *de facto*, the strength of these provisions of the PFC regarding inheritance are compromised by those of article 391 which specifies that “the provisions of this Title (Inheritance) are only applicable to the inheritance of those who have declared to have renounced the status of customary law in matters of inheritance. This declaration can take the form of a will or an option taken in the presence of a registrar.” In Togo, whether in a rural or urban context, there are very few people who leave a testament or take an option in front of a registrar to ensure the provisions of the PFC are applied to their eventual heirs. This means that inheritance is still covered by customary rules, which such as they are now, involve serious discrimination towards girls and women. We can quote, among other things, the fact that custom does not allow girls or women to inherit land or other real estate (houses for example). In the case of widows for instance, particularly in rural areas, they may carry on working the land of the deceased husband to ensure their children’s upbringing and education up until they are capable of exploiting the land left to them by their father: which means that the land never actually belongs to the widow, and even less to her female children, it remains exclusively the property of the boys. Girls and women can only inherit real estate when they inherit it from their mother, and this occurs very rarely. Moreover, even in cases where girls do inherit property at the same time as boys, the division is unequal and is always carried out to the girl’s loss. In some regions of Togo, for instance, boys inherit twice as much as girls and children born out of wedlock are not allowed to inherit. Sometimes – in the areas where the custom of *lévirat* is still practiced – instead of inheriting, the woman herself is considered part of the inheritance.

To conclude, we can quote article 397, which by providing “the refusal of the widow to submit herself to bereavement rituals destined to harm her physical integrity or her dignity can constitute an insult to the deceased on a par with successional indignity. The non-insulting character of her refusal will be observed at the discretion of the customs of the deceased”, thus preventing widows who refuse to submit themselves to widowhood rituals from inheriting their husband’s property.

2.4 Educational Opportunities

Togolese girls do not have the same opportunities to study as boys do. Even when girls have access to education, they have less time to devote to their study than boys as they are expected to take on other household tasks after school. This discrimination is apparent in the considerable gap that exists between the literacy rates of girls compared to that of boys.

According to statistics regarding education in the UNDP 2002 Human Development Report, in the year 2000 in Togo the rate of literacy was 42.5% among adult women (15 plus) as compared to 72.4% for adult men. The UNDP report further notes that the combined primary, secondary and tertiary gross enrolment ratio is 49% for girls and women and 76% for boys and men.⁶

2.5 Employment Opportunities

With regards to employment, women are occupied mainly in trade, agriculture and the cottage industry; they form 43% of active workers in these sectors in urban areas.

70% of commercial activities in the informal sector are carried out by women. There are also many women in agriculture particularly in rural areas, where they form the majority of the labour force and constitute 57% of active cultivators. They also secure secondary chores such as ploughing (40%), sowing (80%), weeding, harvesting (70%) and the commercialisation of food crops (90%).

According to the 1999 Report on Sustainable Human Development in Togo, published by the General Administration of Development and Planning, the Gender-specific Index of Human Development (ISDH) that measures social inequalities between men and women is 0.45 which ranks Togo as the 118th country out of 143 countries ranked by the United Nations Programme for Development (UNDP). The Gender Empowerment Measure (GEM) – established by the UNDP to measure the proportion of women in the national assembly, higher education, management positions, independent professions, technical labour, and their wages – is very poor although it progressed between 1996 and 1999 passing from 0.182 to 0.185 which ranked Togo in 1999 as the 100th country out of a total of 102 in the UNDP classification.

Women are the first victims of poverty. Even as far as agriculture and trade are concerned, areas in which they represent the majority of the work force, they live in precarious and delicate financial situations due to the lack of support necessary for agricultural production, the discrimination they are subjected to regarding land ownership, their lack of access to credit, all of which does not allow them to undertake investments generating a significant income.

The analysis of non- agricultural activities where women are concentrated shows that their work is poorly paid and they receive inadequate remuneration. The paid positions they occupy are generally unskilled due to their lack of education.

2.6 Political Representation

On the political scene, there are very few women in decision-making positions. Women in politics have always been confined to positions with little scope for advancement throughout the various Togolese governments. They have often been involved in the ministry of social welfare and women's affairs, which sometimes encompasses either healthcare, or trade and prices, or the crafts industry. The current government comprises two women out of the twenty-three ministers and they retain the portfolios of Social Affairs and the Promotion of Women, and of the vice ministry to the Prime minister for the promotion of the private sector. As far as the central government is concerned, three women were appointed prefects (managing the prefectures) in October 1991 following the democratic renewal, only two of them were effectively able to exercise their functions, and even they were dismissed after a few months without there being any questioning of their capacities. Currently, there are no women among the 30 prefects and 4 vice-prefects in Togo. At a municipal level, there is only one female mayor in Togo. Among traditional leaders in Togo, only two village chiefs are women.

Within the context of political parties, women have been relegated to secondary roles. Women have rarely constituted more than 7% of the total number of members of parliament. The highest rate of representation was 7.57% and was registered in the national assembly of the third republic from 1979 to 1984. The first general assembly of the fourth republic

comprised one woman out of 81 MPs, which is equivalent to 1.23% of its composition, the current second general assembly has five female MPs out of 81 which makes a total of 6.17% of parliament's composition.

3. Violence in the Family

Due to the lack of available statistics relative to violence against women, this report is based on a national study conducted based on a survey of 1020 women aged over 16 by the NGO Christian Action Against Torture (ACAT-TOGO). The results of this survey form the basis of the statistical data provided in this part of the report.

3.1 Domestic Violence

Domestic violence is a serious problem in Togo regardless of socio-economic or educational background. Out of those women who responded to the ACAT-Togo survey, 85% stated that they knew at least one woman victim of domestic violence and 52% stated that they had themselves been victims of this kind of violence.

In Togo, this form of violence is considered an ordinary crime, as the Criminal Code does not contain any provisions specifically dealing with it. There are no plans for the drafting of a specific law addressing domestic violence.

Some provisions of the Criminal Code, particularly those contained in article 56 (c) concerning "intentional violence and homicide committed by a person against his/her spouse and his/her accomplice if they are caught in flagrant adultery" – while gender-neutral in theory, may, in practice, lead to the male perpetrators of spousal homicide receiving mitigated punishments, because the local mentality and custom and tradition have entrenched the belief that only women are capable of adultery.

The study reveals that 93% of domestic violence committed against women in Togo is addressed within the family structure. In this sense, only 28% of victims dare report the phenomenon and nearly all who bring complaints (86%) turn to the head of the family or the traditional chief. There are many reasons why this phenomenon is under-reported. These

reasons include; women's ignorance of their rights, the absence of a legislative base for complaints of domestic violence, the lack of financial resources to pursue complaints and traditions that educate women from childhood to accept male dominance including violence. Fears of retaliation and social ostracism also play a significant role in maintaining silence around the issue, which, according to the figures, is widespread.

When cases of domestic violence are brought to the police, research shows that police officers generally react in one of two ways: some are willing to register the complaint; others advise the victim to try and resolve the question within the family, without formally refusing to lodge the complaint. The advocates of the latter course of action explain their point based on their experience according to which this kind of complaint is usually withdrawn or abandoned by the complainant. The few plaintiffs that do bring their cases of domestic violence to the police or to the justice system are pressed to withdraw the complaint under the pressure of their families, in-laws and friends.

Law enforcement officers do not receive specific training adapted to addressing cases of domestic violence.

3.2 Marital Rape

Physical violence perpetrated by a partner may include rape and sexual violence. Around 22% of the women surveyed by ACAT-Togo stated that they had been victims of marital rape. There are virtually no statistics available on this phenomenon and the few available only illustrate a minute part of what the situation is in reality, considering the fact that in most Togolese societies, forced sexual relations between married couples or partners living together, are not identified as rape. Furthermore, complex social and cultural taboos regarding sexual relations produce further barriers to victims who are already reluctant to denounce, even informally, this type of violence.

Togolese legislation does not make a distinction between rape and marital rape and certain legislators have stated that they would not support a move to define forced sexual relations between people who are married or live together, as rape.

3.3 Violence Against Domestic Workers

It is estimated that over 60% of domestic workers have been subjected to violence. In most cases, these employees, mostly girls and young women, are subjected to long arduous hours of work. On top of that, they are deprived of wages, food and medical care in the event of illness. Sometimes they are subjected to sexual harassment or abuse by their employers and male family members.

As with domestic violence, this form of violence is often not reported mainly because the victims fear losing their jobs, but also because they are not aware of their rights and spend nearly all their time engaged in their work. They only leave the house for determined chores and this has the effect of isolating them from their families or communities, a situation which is exacerbated by the fact that most domestic workers come from remote rural areas.

Although the phenomenon is widespread, the Togolese Criminal Code does not specifically deal with this form of violence. When these cases are brought to justice – which is rare in Togo although this violence happens regularly – they are treated as any other form of violence under articles 45 to 49 and articles 51 and 52 of the Criminal Code of Togo (CCT).

The government has not adopted any particular measures for the prevention and eradication of the violence domestic workers face. This could be because the authorities do not understand the extent of the phenomenon, as there are hardly any statistics about it and furthermore, very few victims dare to report this form of violence.

3.4 Cultural Practices in the Family that Violate the Human Rights of Women and Girls

OMCT notes with concern that certain cultural practices in Togo hamper the effective implementation of the provisions of the Covenant with regard to women and girls.

3.4.1 Violence Related to the Dowry: Girls Kidnapped for Marriage

In Togo, in the great majority of communities, the husbands' family has to

pay a “dowry” comprising both material and financial assets to the family of the bride. According to tradition, even if the marriage is dissolved, the wife belongs to the husband until the dowry has been reimbursed.

In some regions of Togo, although the phenomenon is dying out, parents receive the dowry upon birth of the girl or long before they have reached the age of taking a decision regarding their future marriage. Nowadays, girls often refuse to take the husband who has been chosen for them; in such situations, the parents often attempt to force the girl to comply with the marriage as arranged. Violence may occur at this point as some of these girls are kidnapped and taken by force to the future husbands’ abode. There they are subjected to different forms of abuse – physical and psychological – by their “fiancé” and their future in-laws until they accept the marriage.

The Personal and Family Code of Togo refers to forced marriages, specifying in article 44 that “each future spouse, even under-age, must personally agree to the marriage. Consent is not valid when it has been obtained by the use of violence or if it was only given as a result of an error as to the physical or civil identity, or other essential quality such that the other spouse would not have agreed had he/she known of the error.”

Although violence - including forced marriages - relating to the dowry, is still practiced in some Togolese communities, there are no penal, civil or administrative sanctions in Togolese legislation for the punishment of this type of violence nor are there any mechanisms to provide redress to victims.

3.4.2 Early Marriages

In some areas of the country, mainly in Muslim and rural communities, girls may be married as early as at the age of 12, to men who are sometimes four times as old as they are. Some reasons put forward for this are traditional, religious and economic. It has been suggested that many parents feel that by marrying their daughter early, they guarantee her virginity – which is a determining factor in marriage in some religions – and relieves the family of another mouth to feed.

Although article 43 of the PFC establishes the legal age for marriage at 17 for girls, there are no administrative or penal provisions in Togolese

legislation that sanction those who violate this age limit. Moreover, there are no provisions for the victims' redress.

3.4.3 Female Genital Mutilation

Female genital mutilation (FGM), which may result in the total or partial ablation of external genital organs or other mutilations inflicted on these organs, is a form of extreme violence against girls and women. FGM is usually practised without any anaesthetic using non-sterile instruments that have not been designed for surgical procedures.

The combined action of NGOs and the government along with the adoption of a 1998 Decree forbidding FGM and punishing those who carry out or promote its use, has led to a considerable reduction in the number of girls and women being subjected to this practice. Prior to the adoption of the Decree, a comprehensive awareness-raising programme was carried out by the government and NGOs, mainly directed at traditional chiefs, the practitioners, the children's parents, etc, explaining the harmful nature of FGM and the reasons why it should be abandoned.

At present, FGM is only carried out in some remote, predominantly Muslim, areas. However, OMCT notes with concern that the government appears to have recently ceased to take active measures for the elimination of FGM in those areas of the country where the practice is still common.

3.4.4 Widowhood

The rituals of widowhood are discriminatory in Togo in the sense that men are not subjected to them and even if they do wish to comply with them, the ceremonies are much briefer and are only symbolic, unlike those for women.

In nearly all Togolese communities, women who lose their husbands must comply with the rituals of widowhood. Although the practices the rituals involve are improving, it must be noted that widowhood is still carried out in inhuman and degrading conditions in some regions of the country. Locked in a room and deprived of all light for a period of time that varies between 7 and 21 days, depending on the region, women are still subjected to rituals that involve having their hair shaved off, having to remain

topless – sometimes they are only allowed to wear clothing covering their pubic area – and sleeping on the ground. During this time, they are not allowed to eat cooked food or to clean their teeth or their hands after eating.

Some communities also view widowhood as a tradition aimed at establishing whether or not the wife is to blame for the husband's death. Family members of the deceased base their assumptions in this regard on events that may occur during the rituals of widowhood in order to settle, as tradition requires, what responsibility the woman had in the death of her spouse. Thus, in some regions, people believe that a widow who goes to the lavatory more than once per day played a part in the death of her husband. It is the same for a widow who does not cry during the ceremony that precedes the shaving of her head. Widowhood rituals are also thought to reveal whether the widow was faithful to her husband during their marriage.

We must underline that with the intervention of NGOs and certain traditional leaders, especially the chiefs, the rituals of widowhood have improved as far as the dehumanising conditions and the length of the rituals are concerned. Only recently, the traditional authorities of a region in the southwest of the country decided they would no longer submit their population to widowhood rituals.

3.4.5 Lévirat / Sororat

According to tradition in some communities – mainly in villages – after grieving the widow must choose one of her brothers-in-law to remarry unless one is imposed upon her. The woman is considered part of her husband's property and of his family. This tradition, however, is dying out. Sometimes in the case of polygamous marriages, the eldest brother or the father of the dead man is asked to take the widow as a wife. Also, sometimes the sister of a deceased woman is asked to marry the widower.

Those who respect this practice believe that as the new husband or wife belongs to the family of the deceased he or she would be more willing to take care of the orphans.

A priori, these traditions are not compulsory, but women – who are more frequently subjected to these practices than men – are often forced to

comply as they feel that otherwise they may not be able to keep their children, or exercise their right to inherit their husbands possessions; social relations also force them to conform and this pressure is particularly strong in rural communities.

3.4.6 Convent Rituals

In reality, the rituals of convents are different from one region to another and have different bases. In some areas, they aim to prepare girls for adulthood and marriage. In others, they aim to convert persons who enter it to the ways of the convert and to prepare them to serve a particular “fetish”. When they leave the convent, the followers have a new name given by the fetish, and must no longer answer to their former one.

De facto, gender is not a selection criteria for the purposes of entering a convent; however, it has been observed that the number of girls entering the convents is vastly superior to that of boys. The convents are not mixed.

Generally, convent initiation rituals happen outside the village and last at least three months. The initiates and the masters of the convent believe these rituals are sacred and thus do not make public the details of what occurs during the rituals. Although some of these practices may be degrading and dehumanising, it is difficult to know precisely what it is that renders them inhuman and degrading.

With the increasing influence of monotheistic religions and modernisation, more and more of those “summoned” to serve are not willing to enter the convent. Thus, they are obliged and those who try to escape are kidnapped and taken to the convent by force. Threats and intimidation are also often used to force people to accept to enter.

4. Violence in the Community

4.1 Rape and Other Forms of Sexual Violence

Article 87 of the Criminal Code of Togo defines rape as the act “ of imposing sexual relation upon someone by fraud or violence against their

will”. This definition does not explain what the term “sexual relations” refers to, thus it is difficult to know whether this also encompasses acts that go beyond vaginal penetration with the penis, such as the penetration with other parts of the body or with objects, oral sex, or anal sex. In accordance with the provisions of the same article “any person perpetrator or accomplice of rape will be punished with an imprisonment from five to ten years.” The sanction can extend to 20 years “... if the perpetrator imposes various sexual relations on the victim or if the violations caused a pregnancy, or an illness, or the inability to work for more than 6 weeks. This is also applicable if the victim is less than 14 years old.”

Indecent assault is defined under article 84 of the Criminal Code as “... any physical contact taking place against the victim’s will in the aim of exciting one’s senses.” According to article 86, all persons found guilty of indecent assault “... against a person of less than 14 year of age will be punished by imprisonment from one to five years.” The sentence can be extended to 5 to 10 years of imprisonment “... if the assault was executed with violence on behalf of other people, or if it caused an infirmity or inability to work for more than six weeks”. Article 85 of the same Code punishes the perpetrator of “... indecent assault committed without violence on a child below 14 years of age” with one to five years imprisonment. The sanction can be extended to 5 to 10 years imprisonment if the child was subjected to violence or threats by the perpetrator.

Although this violence inflicts immeasurable physical and psychological pain to the victims, the latter, as in the case of marital rape, often remain silent, which renders the task of estimating the extent of this phenomenon in the country extremely difficult. The silence is maintained and enforced by the victims’ lack of awareness as to their rights, shame, and the intricacies of social relations and the judicial system for women who do not have the financial resources to afford a lawyer.

Beyond the required training for exercising their official capacities, police officers, judges, prosecutors and other law enforcement officials do not receive specific training in how to respond to cases of rape, other forms of sexual assault or any other violence committed against women such as domestic violence.

4.2 Violence Against Women in the Workplace

4.2.1 Sexual Harassment

Sexual harassment is a phenomenon recognised as widespread by most of the Togolese population (88%) and happens in all sectors, but is most common in educational institutions, training centres and the workplace. Although it concerns both sexes, women and girls are the principal victims of sexual harassment. 37% of respondents surveyed by ACAT-Togo declare having been subjected to sexual harassment at least once. Sexual harassment is an insidious form of violence against women as it allows those who perform it to keep their victims – who generally do not report the phenomenon – in a state of subordination.

At the moment, there are no legal provisions for the prohibition and punishment of sexual harassment in Togo. It must be said that a few years ago no particular attention was paid to the phenomenon at all. NGO intervention was crucial – especially that of NGOs defending women’s rights – in bringing the issue of sexual harassment into the open. However, in spite of NGO action, the phenomenon is still not of particular concern to public authorities.

4.2.2 The Situation of Women Working in Factories in Free Trade Zones

Togolese national legislation, namely the Constitution and the Labour Code, protects women’s rights at work. However, these rights are generally not observed in factories in free trade zones where the labour force is overwhelmingly female.

The factories in the free trade zones, belonging to foreign investors, are established in Togo within the framework of a development policy aiming at attracting foreign investment. Foreign investors, therefore, benefit from various special privileges and exemptions contained in the investment Code. To quote one example, the factories in the free trade zones benefit from tax exemptions for ten years of exploitation.

While it is true that the factories in the free trade zones offer employment opportunities to women – for whom employment opportunities are rare – the working conditions in most of these factories do not meet

international standards and the workers are very badly paid. They are subjected to long, stressful days (over eight hours a day) in unpleasant conditions, they do not receive social benefits such as sickness pay or workers' compensation. They cannot even exercise their right to strike or their freedom to organise and bargain collectively – despite the recognition of these rights in national legislation – on the one hand, due to an unawareness of their rights and, on the other, out of fear of being fired. These are also the reasons why women employed in factories in the free trade zones endure their arduous working conditions in silence.

4.2.3 Violence Against Internal Migrant Workers

Hoping for better living conditions and a higher salary compared to their income in rural regions, many people from rural areas emigrate toward the city. Among these people are a great number of girls and women. Due to their level of education and lack of qualifications, once they reach the city these women undertake unskilled jobs such as domestic chores, carrying bags at the market, or helping the salespeople. Besides being subjected to long working hours, they are also frequently victims of various forms of physical violence such as being slapped in the face, kicked and sexually assaulted and psychological violence such as being insulted, being refused food or falsely accused of various crimes.

Although NGOs have been mobilised in this field on a national level, this form of exploitation is constantly expanding because, on the one hand, the victims are not willing to report the incidents due to a lack of awareness regarding their rights, and also due to their fear of losing a job that, however precarious, guarantees them a source of income. On the other hand, national legislation does not provide specific provisions for the prevention and punishment of this phenomenon.

As a result of their working conditions and the additional jobs that they are often forced to take on in order to earn supplementary income, many migrant workers are exposed to the risk of sexually transmitted diseases and unwanted pregnancies. In fact, many of them turn to prostitution at nighttime and others are forced to sleep on the empty market stands that are used for display during the day.

4.3 *Trafficking in Children*

The issue of trafficking in persons, particularly women and children, is of major concern to the government and to national NGOs at the moment. Considering the conditions of extreme poverty and precariousness in which families live, parents and children are easily lured by promises of better living conditions and good wages. Thus, the parents let their children leave with these traffickers who, upon arrival in the country of destination mainly in Gabon, Nigeria, or in the Ivory Coast, place them in homes where they carry out domestic chores. They suffer all kinds of physical and psychological abuse within these homes: long and arduous working hours, deprivation of food, wages, leisure time and holidays, and they are often forbidden to leave the house. Sometimes they are subjected to sexual harassment and abuse or are directly placed in brothels where they are forced to prostitute themselves for their employer.

Often these children cannot complain or report their exploitation because they are monitored and not allowed out. After having been exploited, they are freed and return to their country with little money and they often suffer from ill health as a consequence of their work.

5. Violence Against Women Perpetrated by the State

In Togo, physical and psychological torture is often used in prisons, detention centres, police stations and by the security forces during detention and custody. It is frequently difficult to obtain information concerning these incidents because they often occur in places where human rights NGOs do not have easy access and furthermore, once they are “lucky” enough to get out, most victims do not wish to relive what they went through.

Although Togo became a party to the Convention against Torture (CAT) on November, 18 1987, - and although the Constitution of the 4th republic of October 14 1992 condemns the use of torture and of cruel, inhuman and degrading treatment in articles 16 and 21 demanding the perpetrators and accomplices be punished according to the law – since the ratification of the Convention, no legislative measures have been taken to criminalize the use of torture or to determine which sanctions are to be applied to perpetrators and accomplices. Thus, these incidents continue to be covered

by national legislation dealing with intentional violence or battering (see articles 46 and 47 of the CCT adopted August 13 1980), which does not aid the victims nor does it assist NGO actions attempting to classify certain practices as torture. Furthermore, victims cannot claim redress.

5.1 Women in Detention

Women in detention in State prisons or in custody in police stations are often subjected to torture and inhuman and degrading treatment perpetrated by State officials. These incidents are generally kept secret and, upon their release, very few victims dare to even talk about the torture and ill treatment they have suffered, let alone report it. This is because of the fact that they are not aware of their rights and fear retaliation. Even when they do wish to bring charges, they come up against huge obstacles due to the fact that, although articles 16 and 21 of the 4th Republic's Constitution condemn the use of torture, and of cruel, inhuman and degrading treatment and states that perpetrators and accomplices shall be punished according to the law, there is no provision in the Criminal Code specifically relating to torture and the sanctions that apply to those found guilty of such acts

As with their male counterparts, women imprisoned in Togo face difficult and precarious living conditions in state prisons. As far as health care is concerned they are not followed medically at all, and nearly all 11 state prisons in Togo are deprived of a medical centre. When the prisoners are ill, they are taken care of by their families or church charities. The daily ration of food is insufficient. The detainees live in precarious unhygienic conditions; in some prisons, the same bucket is used in the showers and in the kitchens.

There are no separate prisons for women in Togo, but in nearly all of the countries' prisons there is a separate wing reserved for women. The prison wardens are all male even in the women's wing.

The employment of male staff to supervise female inmates breaches international standards, such as rule 53 of the Standard Minimum Rules for the Treatment of Prisoners which provides that no male member of staff shall enter the part of the institution set aside for women unless accompanied by a woman officer. Further, paragraph 3 of rule 53 states that "women

prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties.”

Inside the wing, the accused and convicted, juvenile and adult offenders share the same cell (Togo only has one detention centre for children which is located in Lomé) and they are subjected to the same treatment by their wardens. In their stuffy cells, detainees sleep on the ground with no covers because they have none. Over half have experienced several months of preventive detention and some are imprisoned for acts such as “witchcraft” that, according to the Criminal Code, are not punishable by detention.

6. Violations of Women’s Reproductive Rights

Among women’s fundamental rights are the right to control their sexuality and to take decisions relating to their sexual and reproductive health. Thus, they must be in a position to decide, along with their partner the number of children they wish to have as well as when their reproductive life is to start and to end. Despite the combined efforts of NGOs and governments to render information on family planning and women’s reproductive health accessible to all the population, many women still do not have access to contraception, are not followed through their pregnancy and have no decision-making power over their reproductive life and in the number of children they wish to have. This is mainly due to economic issues and the high level of female illiteracy.

With regards to abortion, although no provision contained in the Criminal Code formally forbids and punishes those guilty of aborting, abortion is generally treated by the judiciary under the chapter of the Code devoted to voluntary homicide (articles 44 and 45). Usually, those involved prefer to reach an agreement in cases of abortion so that, in practice, courts rarely deal with these cases.

Because of the sanctions that may be applied to women who practice or undergo abortion, many women and girls would rather perform abortions in illegal, informal circles, which operate in unhygienic conditions and where they run the risk of suffering from post-abortion complications including sterility or even death.

7. Conclusions and Recommendations

While article 11 of the Togolese Constitution, proclaims the equality of men and women before the law, as far as human dignity and rights are concerned; and although Togo has ratified international instruments for the promotion and protection of all human rights and despite the fact that the government has established a Ministry in charge of protecting women and children, women and young girls in Togo continue to be subjected to violence and other forms of discrimination. The poor rates of women's school attendance, women's fragile socio-economic status added to traditional cultural beliefs concerning the status of women in society, all contribute to the perpetuation of this discrimination. Women's status does not allow them to intervene in decision-making arenas, let alone express themselves on issues of concern to them. These are all factors that constitute serious barriers to the promotion and protection of women's rights on an equal footing with men.

In Togo, this discrimination is perpetuated and condoned both by the law and by socio-cultural stereotypes and attitudes.

Among the discrimination maintained by the law, are the differences between women and men's legal ages for marriage, the obligation of wives to live where their husband tells them to, the acceptance of polygamy, and the assumption that the husband will be in charge of the administration of the spouses' common property and personal belongings.

Those forms of discrimination that are perpetuated by societal relations and obligations which depend on culture and tradition are mainly related to taboo subjects such as restrictions preventing women from eating certain things or exercising certain professions. The status of women in relation to inheritance is also conditioned by socio-cultural stereotypes.

In order to ensure women the full enjoyment of their rights, certain measures need to be taken by the governors, civil society and society at large. Within this context, the public authorities must be lobbied to ratify all international conventions promoting and protecting women's rights; and to take concrete measures aiming at implementing those that have already been ratified. In view of this, national legislation, and particularly the Criminal Code, and the Personal and Family Code must be reviewed in order to eliminate those provisions that discriminate against women and

to introduce new provisions in compliance with the international treaties already ratified by Togo. For this legislation to be assimilated and adapted to the reality of the situation in Togo, they must take into account NGO concerns and those of all those involved in the promotion and protection of women's rights.

Furthermore, regular training on the international and national standards concerning the promotion and protection of the human rights of women should be provided to security agents (police, prison guards and other law enforcement officials), to members of the judiciary (judges, prosecutors), to paralegal staff and all those involved in responding to the different forms of violence and discrimination women and girls face.

Public authorities and actors in sustainable development also have to contribute to the improvement of women's socio-economic conditions. In rural areas especially, measures have to be taken to promote and intensify girls' education and even that of adults; diminish the inequalities between men and women, for these are also factors that contribute to the perpetuation of discrimination including violence against women. Moreover, the population must be informed, through public education and awareness-raising campaigns, of the negative consequences of the different forms of violence and discrimination directed against women. These campaigns should also aim at developing a culture of reporting acts of violence against women. Regular research regarding violence and discrimination against women must take place in order to adapt the information given through the aforementioned campaigns to the realities of the situation.

Given the perpetuation of certain traditional practices violating women's rights, the public authorities must take measures aimed at their elimination. These practices include, female genital mutilation, widowhood and convent rituals and forced marriages.

As far as inheritance is concerned, action must be taken to prevent women and girls from suffering from any form of discrimination related to their gender in their access to inheritance.

Regarding women' employment, the situation of women and girls working in factories in free trade zones and in houses as domestic workers is very worrying. Those in power must address the situation of working

women and ensure that their working conditions and wages comply with national and international norms.

OMCT welcomes the measures taken by the government to put an end to trafficking in children. However, in order to find a long-term solution to this issue, it would recommend that the public authorities take further measures to reduce poverty in rural areas, which, in the end, constitutes one of the root causes of this trafficking.

OMCT is deeply concerned that women who have been arrested or detained are frequently subjected to torture and ill treatment. Of further concern is the fact that most of the perpetrators of these acts enjoy impunity. The Criminal Code of Togo contains no provision that specifically criminalizes torture. OMCT would call upon the government to amend the Criminal Code in order to ensure that torture, as defined in article 1 of the Convention against Torture, is criminalized and to ensure that all acts of torture and ill treatment are appropriately punished and the victims provided with adequate reparations.

The conditions of detention in Togo do not meet international standards. OMCT is particularly concerned by the fact that in violation of article 53 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, women are supervised by male guards, which is often a contributing factor to sexual violence against women in prison.

OMCT would further call upon the government to ensure that the period of 48 hours of custody be observed and that those arrested do not suffer from any inhuman or degrading treatment during this time. Furthermore, the conditions of detention in detention centres must be improved, particularly with regards to nourishment, health care and the treatment of prisoners in order to comply with the United Nations Standard Minimum Rules. The accused must also be separated from those convicted and the trials – fair and just – must take place as expeditiously as possible in order to avoid long periods of preventive detention which have sometimes lasted 7 years – or more – for the accused. OMCT would strongly recommend that the government take steps to set up a committee of experts which would carry out random visits to detention centres and police stations and that NGOs operating in the field of prisons also be authorised to carry out such visits.

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- 1 U.N. Doc. HRI/GEN/1/Rev.3, General Comment 4, para. 2.
 - 2 U.N. Doc. CCPR/C/21/Rev.1/Add.10, General Comment 28.
 - 3 U.N. Doc. HRI/GEN/1/Rev.2, General Comment 20, para 2.
 - 4 U.N. Doc. CCPR/C/79/Add.36.
 - 5 U.N. Doc.HRI/GEN/1Rev.4.
 - 6 UNDP, Human Development Report 2002,
<http://www.undp.org/hdr2002/hdi.pdf>.

Human Rights Committee

SEVENTY-SIXTH SESSION – 14 OCTOBER - 1 NOVEMBER 2002

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

**CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE:
TOGO**

1. The Human Rights Committee considered the third periodic report of Togo (CCPR/C/TGO/2001/3) at its 2052nd and 2053rd meetings, held on 21 and 22 October 2002 (see CCPR/C/SR.2052 and 2053). It adopted the following concluding observations at its 2064th meeting (CCPR/C/SR.2064), held on 24 October 2002.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Togo, containing detailed information on Togolese legislation relating to civil and political rights, and the opportunity thus afforded to it to resume its dialogue with the State party after eight years.

Nevertheless, the Committee regrets the lack of information concerning the practical implementation of the Covenant, and on the factors and difficulties encountered by the State party in that regard. The Committee notes that the information supplied orally by the delegation replied only in part to the questions and concerns expressed in the list of written questions and during consideration of the report.

3. The Committee wishes in particular to express its concern at the major contradictions between the many consistent allegations of serious

violations of several provisions of the Covenant, notably articles 6, 7 and 19, and the sometimes categorical denials of the State party.

In the view of the Committee, the State party has not demonstrated its resolve to get to the bottom of the allegations. Noting that the submission and consideration of reports are designed to institute a constructive and sincere dialogue the Committee encourages the State party to make every effort to that end.

B. Positive aspects

4. The Committee is gratified at the importance attached in article 50 of the Constitution of Togo to international human rights instruments, and particularly the Covenant, the provisions of which form an integral part of the Constitution.
5. The Committee welcomes the adoption on 17 November 1998 of an Act prohibiting female genital mutilation. The Committee takes note of the State party's commitment to pursue its efforts in that regard.

C. Principal subjects of concern and recommendations

6. The Committee notes with concern that the process of bringing domestic laws, many of which predate the 1992 Constitution, into line with the provisions of the Constitution and international human rights instruments is at a standstill. Proposals drawn up with the help of the Office of the High Commissioner for Human Rights during the 1990s have not been followed up. The Committee is also concerned at the fact that many proposed reforms dealing in particular with the rights of children and women, some of them announced several years ago, have still not been enacted. The State party should revise its legislation so as to bring it into line with the provisions of the Covenant.
7. The Committee notes that, notwithstanding the provisions of articles 50 and 140 of the Constitution, the provisions of the Covenant have not been directly invoked in any case before the Constitutional Court or ordinary courts.

The State party should provide training for judges, lawyers and court officers, including the persons already serving in those capacities, concerning the content of the Covenant and the other international human rights instruments that Togo has ratified.

8. The Committee would like to receive additional information on the structure, functions and results of the National Human Rights Commission, and welcomes the delegation's promise to forward the Commission's annual reports to it speedily (article 2 of the Covenant).

9. The Committee is concerned at:

(i) information that many extrajudicial executions, arbitrary arrests, threats and intimidation perpetrated by the Togolese security forces, against members of the civilian population, in particular members of the opposition, have not been investigated in a credible manner. The Committee notes that the adoption of laws such as the December 1994 Amnesty Act is likely to reinforce the culture of impunity in Togo.

(ii) The fact that the Joint United Nations/OAU International Commission of Inquiry concluded that "a situation involving systematic violations of human rights existed in Togo during 1998" (E/CN.4/2001/134, para. 68). Those violations relate, in particular, to article 6 of the Covenant, and also to articles 7 and 9. The categorical rejection of the Commission's report, which the State party has declared to be inadmissible, and the creation some weeks later of a national commission of inquiry, which has clearly not sought to identify precisely those responsible for the violations drawn to the Government's attention, also prompt the greatest concern on the part of the Committee.

The State party should adopt legislative or other measures to combat and prevent the perpetration of such violations, in keeping with articles 6 and 9 of the Covenant and the "Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions". The State party should establish, through judicial proceedings, the individual responsibilities of the alleged perpetrators of these violations.

10. The Committee notes with satisfaction that for several years no death sentence imposed by a court has been carried out in Togo, but it remains concerned by the vagueness of the crimes for which the death penalty may be imposed.

The State party should limit the cases in which the death penalty is imposed and ensure that it is applied only for the most serious crimes. The Committee requests that it be provided with precise information (procedure followed, copy of court decisions, etc.) on the persons who have been sentenced to death under articles 229 to 232 of the Penal Code, which relate to attacks against the internal security of the State. The Committee encourages the State party to abolish the death penalty and to accede to the Second Optional Protocol to the Covenant.

11. The Committee expresses its concern at the consistent information that law enforcement personnel make excessive use of force in student demonstrations and various gatherings organized by the opposition. The Committee is surprised at the State party's reply in this regard, to the effect that the security forces never make excessive use of force and that the demonstrators are principally the victims of movements within the crowd. The Committee regrets that the State party has made no mention of any inquiry having been opened following these allegations.

The State party should open impartial inquiries following any allegation relating to the excessive use of force by the security forces. In particular, such inquiries should be carried out into the December 1999 demonstrations by students and teachers, and the demonstrations organized by non-governmental human rights organizations and political parties which were reported to have been violently broken up during 2001 and 2002.

12. The Committee notes with concern the many allegations that torture is common practice in Togo, particularly on arrest, during police custody and in places of detention, whereas the State party claims that only a few rare cases of torture have taken place and that they were punished (art. 7). The State party should honour its promise to transmit to the Committee as soon as possible, written information concerning the treatment of detainees in Landja and Temedja camps.

The State party should ensure that all acts of torture constitute offences under its criminal law, and prohibit any statement obtained under torture from being used as evidence. Impartial and independent inquiries should be carried out with a view to addressing all allegations of torture and inhuman and degrading treatment ascribed to public officials, and bringing the presumed perpetrators of the violations to justice. The Committee requests the State party to provide it with statistics on complaints of torture, proceedings undertaken to address such complaints, and sentences passed.

13. The Committee, taking note of the State party's, acknowledgement that arbitrary arrests sometimes take place, is concerned at the many reports of the arbitrary arrest of members of the opposition and civil society, human rights defenders and journalists, in violation of article 9 of the Covenant.

The State party should identify the prisoners who have allegedly been detained for political reasons in Togo, and review their situation. The State party should also ensure that persons who have been arbitrarily arrested are released as soon as possible, and that judicial proceedings are instituted against the perpetrators of such violations.

14. The Committee notes with concern that, on the one hand, the provisions of the Code of Criminal Procedure relating to police custody contain no reference to notifying detainees of their rights, the presence of a lawyer or the right of the detainee to inform a member of his family of his arrest. On the other hand, a medical examination of the detainee is possible only at his request or at the request of a member of his family, and with the consent of the procurator's office. Moreover, the time limit of 48 hours for police custody is allegedly rarely observed in practice, and some persons have reportedly been detained for years without being charged.

The Committee welcomes the delegation's promise to reply to it in writing concerning the cases of the persons whose names have been transmitted to it. The State party should reform the provisions of its Code of Criminal Procedure that deal with police custody with a view to ensuring the effective prevention of violations of the physical and psychological integrity of persons held in police custody, and protecting their right to a defence, pursuant to articles 7, 9 and 14 of

the Covenant. It should also ensure that justice is administered in a timely fashion, in accordance with article 14.

15. The Committee notes with concern that detention conditions in Togo are appalling, particularly in the civil prisons in Lomé and Kara, which are very overcrowded and where the food supply is uncertain and inadequate. This situation has been acknowledged by the State party, which draws attention to its financial difficulties and to its officers' lack of training.

The State party should develop alternative sentences to imprisonment. In addition, the State party should establish an independent inspectorate to carry out regular visits to all detention centres. That inspectorate should include elements independent of the Government, to ensure transparency and observance of articles 7 and 10 of the Covenant and should be charged with making all the necessary proposals concerning ways of improving detainees' rights and detention conditions, including access to health care.

16. The Committee is deeply concerned at the alleged harassment, continuous intimidation and arrest of journalists, including incidents that took place in 2001 and 2002, and at reports that several independent publications and radio stations have been banned since the beginning of the year. The Committee takes note of the delegation's assertions that such restrictions on freedom of expression are imposed in accordance with article 26 of the Constitution but finds that the Press and Broadcasting Code has been amended over the past two years in a particularly repressive spirit.

The State party should review the Press and Broadcasting Code and ensure that it is consistent with article 19 of the Covenant.

17. The Committee is concerned at reports that opposition political parties lack practical access to public audio-visual and sound media and that the members of such parties are the target of continuous public slander campaigns in the media (articles 19 and 26 of the Covenant).

The State party should guarantee the fair access of political parties to public and private media and ensure that their members are protected against slander. The Committee would like to receive additional information on the way in which the High Audio-visual and

Communications Authority (HAAC) ensures, in practice, parties' fair access to the media, as well as on the results obtained. The substance of the regulations in that area should also be transmitted to the Committee.

18. The Committee is concerned at reports that peaceful demonstrations organized by civil society are regularly prohibited and forcibly dispersed by the authorities, while marches in support of the President of the Republic are regularly organized by the authorities.

The State party should ensure the practical enjoyment of the right of peaceful assembly and should restrict the exercise of that right only as a last resort, in accordance with article 21 of the Covenant.

19. The Committee is disturbed by the distinction that the State party makes between associations and non-governmental organizations, and reports that non-governmental human rights organizations have been unable to obtain permission to register. The State party should provide information on the consequences of the distinction made between associations and non-governmental organizations. The State party should ensure that this distinction does not violate, in law or in practice, the provisions of article 22 of the Covenant. The Committee notes the assurance given by the delegation that human rights defenders who have submitted information to the Committee will not be harassed in Togo.

20. The Committee takes note of the State party's decision to dissolve, in June 2002, on the basis of article 40 of the Electoral Code, the Independent National Electoral Commission (CENI) that was the outcome of the Lomé Framework Agreement and was composed of representatives of various political parties. The Committee also takes note of the delegation's explanations in that regard, as well as of other reports that the State party has not made all the necessary efforts to ensure the smooth operation of CENI. In such conditions, the legislative elections of 27 October 2002, in which part of the opposition again refused to participate, might not have been sufficiently in keeping with the requirements of transparency and honesty under article 25 of the Covenant.

The State party should do everything in its power to ensure that the

spirit and letter of the Lomé Framework Agreement are respected. The Committee also requests the State party to ensure the safety of all members of civil society, particularly the members of the opposition, during the forthcoming elections.

21. The Committee notes with great concern that the Individuals and Family Code, which has been under review since 1999, still contains provisions that discriminate against women, particularly with respect to the minimum age for marriage, the choice of the matrimonial home and freedom to work; that it authorizes polygamy and designates the husband as head of the family; and that it upholds the primacy of particularly discriminatory customary laws relating to marriage and succession. The State party should bring the Individuals and Family Code into line with articles 3, 23 and 26 of the Covenant and bear in mind, in this regard, the concerns expressed by non-governmental organizations active in the field of women's rights.
22. The Committee is worried about continuing discrimination against women and girls with respect to access to education, employment, inheritance and political representation in Togo. Moreover, as the State party itself has acknowledged, certain cultural practices, as well as women's unawareness of their rights, give rise to many violations of women's rights.

The State party should eliminate all forms of discrimination against women, increase its efforts to educate girls and make the population more aware of women's rights, and carry out new programmes with a view to giving women access to employment and political posts.

23. The Committee recommends the introduction of a far-reaching human rights education programme for law enforcement personnel, particularly policemen, gendarmes and members of the armed forces, as well as all prison staff. Regular and specific training should be conducted with a view to combating torture and inhuman and degrading treatment and prohibiting extrajudicial executions and arbitrary arrests; such training should also include the treatment and rights of detainees. In this regard, the Committee suggests that the State party request assistance from the Office of the United Nations High Commissioner for Human Rights and from non-governmental organizations.

24. The State party should disseminate widely the text of its third periodic report and the present concluding observations.
25. In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should within one year provide information on the measures that it has taken or plans to take with a view to implementing the recommendations contained in paragraphs 9, 10, 12-14 and 20 of these observations. The Committee requests the State party to provide in its next report, which it is scheduled to submit by 1 November 2004, information on the other recommendations made and on the implementation of the Covenant as a whole.

Violence against Women in Uzbekistan

A Report to the Committee against Torture

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Concluding Observations of the Committee against Torture: Uzbekistan

Twenty-eighth session – 29 April –17 May 2002

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1. Preliminary Observations

The submission of this report entitled “Violence against Women in Uzbekistan” to the United Nations Committee against Torture, in addition to a global alternative report on torture and other cruel, inhuman or degrading treatment in Uzbekistan and a report on violence, repression and violations of economic, social and cultural rights in Uzbekistan, forms part of OMCT’s Violence against Women Programme which has as one of its objectives the integration of a gender perspective into the work of the five “mainstream” United Nations Human Rights Treaty Monitoring Bodies.

With regard to women and gender issues, the report by the government of Uzbekistan CAT/C/53/Add.1 remains virtually silent. Therefore, this report will, after some observations on Uzbekistan’s international obligations to protect women from violence and an introduction on the status of women in Uzbekistan, focus on violence against women in the family, in the community and violence perpetrated by state agents.

Uzbekistan acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter called the Convention against Torture) on 28 September 1995.

In 1995, Uzbekistan acceded to the Convention on the Elimination of All Forms of Discrimination against Women without any reservations. This Convention obliges States parties to pursue a policy of eliminating discrimination and to ensure that public authorities and institutions act in conformity with this obligation. In 1992, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted General Recommendation 19 in which it stated that “gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.” Uzbekistan is not, however, a party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Uzbekistan is also a State Party to the International Covenant on Civil and Political Rights, Article 7 of which prohibits torture and other cruel, inhuman or degrading treatment or punishment. In March 2000, the Human

Rights Committee adopted General Comment 28 on article 3 of the Covenant, which concerns the equal rights of men and women. General Comment 28 states that in order to assess compliance with article 7 of the Covenant as well as with article 24, which mandates special protection for children, the Committee must receive information on national laws and practice with regard to domestic and other types of violence against women, including rape, on access to safe abortion for women who have become pregnant as a result of rape, and on measures to prevent forced abortion or forced sterilisation. Uzbekistan has also acceded to the first Optional Protocol to the International Covenant on Civil and Political Rights, but not to the second Optional Protocol.

Moreover, Uzbekistan is a Party to the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of Racial Discrimination. Uzbekistan has further commitments to protect and promote the human rights of women under the Declaration on the Elimination of Violence against Women, adopted by the General Assembly of the United Nations in 1993.

The Preamble of the Constitution of Uzbekistan states : “The People of Uzbekistan, recognizing the primacy of generally recognized norms of international law adopt the present Constitution of the Republic of Uzbekistan,” Article 15 of the Constitution states: “The Constitution and the laws of the Republic of Uzbekistan shall have absolute supremacy in the Republic of Uzbekistan. The state, its bodies, officials, public associations, and citizens shall act in accordance with the Constitution and the laws.”

Article 16 of the Constitution states: “None of the provisions of the present Constitution shall be interpreted in a way detrimental to the rights and interests of the Republic of Uzbekistan. None of the laws or normative legal acts shall run counter to the norms and principles established by the Constitution.”

OMCT is deeply concerned by the limited applicability of international law in the Uzbekistan as it believes that international human rights law is not being adequately implemented in the national legislation of Uzbekistan.

2. General Observations on the Status of Women and Girls

Under Soviet rule, the emancipation of women was seen as a key part of the process of modernising Uzbekistan. The Soviet Constitution created formal equality. But although some aspects of women's lives significantly improved, such as life expectancy and literacy rates, even at the peak of the Soviet period, only 47 % of Uzbek women worked outside the home, as compared to 87% in Russia.¹ Women enjoyed little power in the community, the workplace and particularly in the domestic sphere, where customs and traditions (both positive and negative) were preserved and many of them were in conflict with the Soviet legislation.²

Uzbekistan became independent in 1991. As in many of the republics of the former Soviet Union, the post-Soviet period in Uzbekistan has affected the situation of women adversely. Attitudes towards women's roles in society and the workforce have grown more conservative since 1991. The Uzbek government has sought to legitimise independence through a reaffirmation of national traditions and culture while simultaneously stating that it will protect women's rights and those elements inherited from Soviet period that promoted women's equality. The government also has an ambivalent attitude toward Islam, which has known a revival under the population since Independence. On the one hand, Islam is promoted as an aspect of national identity, but on the other Islam is suppressed by the government when it challenges state authority.³ In general, the government portrays Islam as a threat to women's exercise of their rights, ignoring aspects of the region's own Islamic heritage, such as the *jaded* movement before Soviet rule which was supportive of female emancipation.⁴ During the last few years, the attitude of the State has grown more hostile towards independent Islam as it fears that freely expressed religious beliefs may lead to political and social unrest.⁵ In 1998, the state passed a law on Religion that restricts all forms of religious practices which are not regulated by the state and forbids the wearing of religious dress in public. The government has expelled female students from universities for choosing to wear a veil.

From a *de jure* point of view, Uzbekistan is nevertheless upholding the principle of gender equality. Article 18 of the 1992 Constitution of Uzbekistan states that all citizens of the Republic of Uzbekistan shall have equal rights and freedoms, and shall be equal before the law, without

distinction on grounds of sex, race, nationality, language, religion, social origin, convictions, individual and social status and that any privileges may be granted solely by the law and shall conform to the principles of social justice. Furthermore, article 46 of the Constitution stipulates that women and men shall have equal rights.

The notion of gender equality is also incorporated into the Criminal Code, of which article 45 stipulates that all persons enjoy equal rights before the law regardless of any differences, including gender. Furthermore, Article 141 of the Criminal Code states that the direct or indirect violation or restriction of rights or establishing of direct or indirect benefits of citizens on the basis of sex, race, nationality, language, religion, social status, convictions, personal and social status shall be punished.

In addition, the government has created the Committee of Women of Uzbekistan with branches in various regions in the country. Although the Committee of Women has the status of an NGO, it is a governmental organisation but reportedly does not play a substantive role in the formulation of policy. In 1995, by presidential decree, the Chairwoman of this Committee was appointed as deputy Prime Minister, and at the same time the female heads of city and district level women's committees were appointed deputy mayors (hokim) in charge of women's affairs.

Also in 1995, the parliament created the office of the National Human Rights Ombudsman and its regional offices to promote human rights and improve national legislation. One of its departments is concerned with issues related to women, maternity and children. The office of the Ombudsman has the authority to consider individual complaints, monitor compliance with human rights standards and sanction human rights violators. However, like the deputy majors, the ombudsman's offices have reportedly been neither given the power nor the resources to adequately respond to human rights violations.

Despite existing legal guarantees for gender equality, women face discrimination in various spheres of life. However, as will be discussed in greater detail below, out of fear and shame and the general assumption in Uzbek society that a woman is always guilty, women rarely pursue their rights through legal means.

2.1 Women and Girls in the Family

The equality principles of the Constitution are echoed in the Family Law of 1998. Article 2 of this law establishes the principle of equality of the spouses within marriage and article 19 states that spouses have equal rights as well as equal responsibilities. Article 21 of the same law stipulates that decisions concerning the upbringing of children and marriage are to be decided by common agreement of the spouses.

Article 4 of the Family Code provides for the states' special protection for "the family, motherhood, fatherhood, and childhood," and for the defence of the interests of mothers and children. Article 9 of the Family Code also explicitly provides for the primacy of international law and treaties, if any of the provisions of domestic law are found to be in contradiction with international law. Article 37 of the Family Code guarantees the right of either spouse to apply for a divorce. Articles 29-36 allow couples to conclude pre-marital agreements specifying the terms for property division in the case of a divorce.

Despite legal guarantees, *de facto*, women and men do not enjoy equal rights in marriage as traditions and customs continue to rule the relations between and roles of women and men in marriage. Although vaguely formulated, article 8 of the Family Law may reinforce traditions and customs in family relations and undermine gender equality. This article states: "In the absence of pursuant norms in the legislation to regulate family relations, local customs and traditions not in contradiction to the legal principles of the republic of Uzbekistan may be applied." In general, customary law seldom protects the rights of women in family relations.

The legal age for marriage for women is 17 and 18 for men. Under special circumstances, with permission from the head of the local administration, the age may be reduced by one year. OMCT believes that there can be no justification for this difference in the legal age of marriage. Moreover, in reality, the age of marriage is currently decreasing. State statistics show that the average age of women for a first marriage is 21⁶, more than 45% of women, but only 8% of men, marry before the age of 20.⁷ Many women are married off by their families at 15 or 16, although the legal marital age for women is 17.⁸ Human Rights Watch reports that religious marriage ceremonies and anecdotal evidence indicates that many

marriages are contracted before being registered with state agencies.⁹

A girl's access to school and paid employment are generally severely compromised by the fact of early marriage. Early marriage is also often cited as one of the causes of domestic violence. Moreover, early marriage frequently leads to early pregnancy, before girls are biologically and psychologically mature, which is both detrimental to both the mother and child's life.¹⁰ It prolongs women's reproductive life increases the risk of unwanted pregnancy.

According to article 63 of the Constitution, the family is the primary unit of society and shall have the right to state and societal protection and marriage shall be based on the willing consent and equality of both parties. Forcing women into marriage or preventing marriage is forbidden under article 136 of the Criminal Code. However, in reality, according to Uzbek tradition, it is the parents who arrange the marriages of their children, and girls, in particular, have little influence on their parent's decision.

Although polygamy is a punishable offence under article 126 of the Criminal Code, it continues to be tolerated in Uzbekistan and often goes unpunished. OMCT maintains that polygamous marriages perpetuate notions of male dominance, creating domestic environments where women become vulnerable to violence. The practice of polygamy, inherently conflicts with women's economic, social, and personal freedom. General Recommendation 21 of the Committee on the Elimination of Discrimination against Women states that, "Polygamous marriage contravenes a woman's right to equality with men and can have serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited."¹¹

2.2 Women's and Girls' Educational Opportunities

(For additional information see OMCT's report "Uzbekistan: Violence, Repression and Denial of Economic, Social and Cultural Rights.")

Although women's literacy is very high in Uzbekistan, with the official rate exceeding 99%,¹², their educational level is reportedly falling because of poverty, early marriages and an increased emphasis on traditional roles in society. The number of women enrolling in higher education has

declined since independence. While in 1991, 41.9% of the students enrolled in higher education were women, in 1997, only 38.6 of the students were women.¹³

2.3 Women's Employment Opportunities

(See OMCT's report "Uzbekistan: Violence, Repression and Denial of Economic, Social and Cultural Rights.")

With the transition to a market economy, discrimination against women in the labour sector has increased and there has been a disproportionate decrease of the number of women in employment. Available data indicate that the rate of unemployment for women is at least one and a half times that of men.¹⁴ The United Nations Development Programme states that: "the period of transition has negative effects on female employment. Often women have to work without long-term guarantees or in dangerous conditions, be home workers or remain unemployed."¹⁵

Although article 240 of the labour law forbids the denial of employment or the reduction of the salary of a woman on the grounds of pregnancy or having children, in reality a woman without children is preferred over a woman with young children and pregnant women are rarely hired. In general, women more easily fired than men.¹⁶ Men are promoted more quickly than women with the result that their salaries and status are higher than those of women with the same experience and qualifications. An increasing number of women have started to run their own businesses.

The fact that women have fewer employment opportunities has rendered them dependent on the men in the family, often leaving women with little power and decision-making opportunities.

2.4 Representation of Women in Parliament and Government

(For additional information see OMCT's report "Uzbekistan: Violence, Repression and Denial of Economic, Social and Cultural Rights.")

Out of 250 members of parliament, only 22 of them are women. Only 1 out of 28 members of Government is female.

2.5 Women's Reproductive Rights

After a decline in the maternal mortality rate until 1998, there was an increase in 1999. In 1998, the maternal mortality rate was 9.6 and in 1999 the rate was 14.6 per 100.000 live births.¹⁷

OMCT is concerned about reports by the International Helsinki Federation that although forced sterilisation is not permitted under the law, it does occur in practice.¹⁸ Women wanting an abortion at a gynaecological clinic may be sterilised without their consent on the decision of a doctor, and a survey indicated that, particularly in rural areas, a woman giving birth to her fourth or fifth child at a maternity unit may also be forcibly sterilised or have an intrauterine device fitted without her consent. Doctors are reportedly following the indirect instruction of the authorities to reduce the birth rate by practicing sometimes coercive family planning strategies.¹⁹

3. Violence against Women in the Family

3.1 Domestic Violence

According to several reliable sources, violence against women in the family is widespread.²⁰ It occurs across all ethnic and religious groups and social classes. An inspector from the Ferghana Valley estimated that 80% of the calls he receives are family quarrels, and that 50% to 60% of these involve injuries.²¹ A survey conducted by one governmental institution considered domestic violence to be a "normal situation".²²

The organisation "Juridical Consultations on Civil Cases and Protection of the Rights of Women" received 2,327 victims of various sorts of violence from May 1998 to May 2000 and 4,281 victims called their hotline. Among these, 620 women came in person to the organisation with complaints of physical violence. 1,237 called the telephone hotline with anonymous complaints. Women who used the hotline explained that they feared possible retribution from their husbands, did not want to break up the family, or were ashamed. Incidents of sexual violence were reported in person by 122 women, and on the hotline by 185 women. 264 women came in person with complaints of psychological violence, while 514

women reported incidents on the hotline. Violence by husbands stemming from traditions, culture or religion were reported by 32 women in person, and 98 anonymously by phone. Also, many women are victims of violence committed by their mothers-in-law. 606 women reported in person psychological violence by their mothers-in-law; 1619 reported this anonymously by phone. Eight women complained of physical violence by their mothers-in-law in person, and five reported such incidents on the hotline. There was one case in which a woman assaulted her mother-in-law. 64 women reported that their mothers-in-law committed violent acts against them based on traditions, culture or religion; 193 called the hotline with such complaints. Women are also victims of violence committed by their fathers-in-law and other relatives of their husbands, or by their boyfriends. Most often, this violence stems from traditions, cultural factors and upbringing. As long as women –as brides, wives, and daughters– are accorded only a small role in family life, they will continue to be victims of violence.

The monitoring by the Juridical Consultations on Civil Cases and Protection of the Rights of Women has also uncovered cases of polygamy, when as well as one official marriage, a man may take an additional two or three wives through religious wedding ceremonies (nikoh). Forty-eight “second” wives reported incidents of physical violence in person, while 23 called the hotline; “third” wives registered 22 such complaints in person and five on the hotline. Boyfriends were also responsible for acts of violence against women: 142 in-person complaints and 68 hotline calls. Also violence against children and forms of violence by neighbours were recorded.

Although the government of Uzbekistan has publicly declared that it recognises the problem of domestic violence, until now, besides the adoption of the new Family Code in 1998, its response has been limited to the creation of education and training programmes for government personnel and others such as school children. These programmes are largely under the responsibility of the women’s committees, which, as will be discussed below, generally lay the emphasis on preserving the family and the submission and subordination of women to their husbands and family-in-law.

OMCT is concerned that the Uzbek government has not developed effective measures to meet the needs of the victims and it does not keep statistics on assault or other crimes that indicate the relationship between the perpetrator and the victim.

Domestic violence in Uzbekistan is a highly underreported crime. Among the reasons discouraging women from divulging their experiences of domestic violence outside the home, Human Rights Watch has found: fear of the husband, fear of abandonment, protection of the family from shame, lack of awareness of police reporting possibilities, fear that criminal penalties, including fines and jail time may harm the family budget.²³ According to the Juridical Consultations on Civil Cases and Protection of the Rights of Women, women are raised in the spirit of obedience and patience and do not realize that their rights are being violated by domestic violence.

OMCT notes with concern that there are currently no specific laws dealing with domestic violence in place, neither in the penal law nor in the civil law. Individuals who use violence against their spouses or others can, in principle, be prosecuted under articles of the Criminal Code covering crimes against the life or health of persons. Article 97 deals with premeditated murder, and article 98 deals with “murder carried out in a state of high psychological stress.” Article 103 of the Criminal Code holds that driving a person to suicide or attempted suicide through severe ill-treatment or systematically attacking the honour and dignity of a person who is in a position of economic or other dependence upon the guilty party is to be punished with imprisonment. Articles 104 to 111 dealing with crimes against the health of a person foresee punishment for the purposeful infliction of heavy to light degrees of physical injury. A forensic doctor establishes the level of injury. Article 106 prescribes lesser penalties if the violence is committed under psychological stress and article 107 concerns intentionally causing serious injury in excess of necessary self-defence. However, these provisions do not take into account the special relation and the inter-dependence between the victim and the perpetrators of domestic violence and thus their special (protection and remedial) needs. Moreover, besides article 103, which includes psychological violence leading to a suicide or attempted suicide, psychological violence is not taken into consideration.

Besides seeking relief from the criminal justice system, women may first turn to either the *mahallas* (local community government bodies), and, in rural areas, the super-ordinate executive structures of the former state and collective farms, or to the representatives of the women's committees within the municipal, district or provincial governments. Both government structures are charged with mediating and resolving family conflicts. Both answer directly to the local executive branch of government. The Law on Citizens' Self-Government of 1999 requires in article 12 that the *mahalla* committees take measures directed towards protecting the interests of women, raising their role in social life, in forming the "spiritual And moral atmosphere" of families and in the education of the younger generation.

Human Rights Watch reported that all of the agencies interviewed by them exhibited a strong aversion to victims of domestic violence leaving their abusive spouses, and against any criminal sanctions for the perpetrator.²⁴ Reconciliation seems to be their main objective thereby undermining the individual rights of women in the family. Although there is no legal requirement stating that the *mahalla* should become involved before the police are contacted, it is common practice that the *mahalla* decides whether the police should be contacted or not. When victims first contact the local police, the police refer the matter to the *mahalla* before taking any action.²⁵ In some cases, the police may pursue criminal or administrative cases only with the assent of the *mahalla* or village council.²⁶ *Mahalla* officials may close criminal cases or press women to withdraw charges. Some women appeal directly to women's committee representatives. Sometimes, the women's committee chairwoman refers the case back to the *mahalla* or village council.

When women turn to the criminal justice system in cases of violence against them, the crime is often not effectively addressed. On the one hand, the legal system also focuses on reconciliation, which means in practice that the police, prosecutors and judges refer cases of family violence to the *mahalla* for reconciliation, unless these involve serious injury or death. On the other hand, when the police take action, domestic violence cases are charged as violations of the Administrative Code rather than as crimes. The articles of this Code that are commonly applied to domestic violence cases are article 152 on intentional infliction of light injury and article 183 on minor hooliganism (defined as intentional

disregard of societal norms). Administrative violations are primarily investigated by the police rather than the prosecutor's office and penalties are lower than in criminal cases.

In fact, cases of domestic violence are rarely prosecuted and often only receive attention when victims commit suicide.²⁷ The problem of female suicide has also caught the attention of state officials in Uzbekistan. The Government report submitted to the Committee on the Elimination of Discrimination against Women, reviewed in January 2001, shows that the number of female suicides increased between 1995 and 1998: in 1995, 1,327 cases; in 1996, 1,460 cases; in 1997, 1,573 cases; and in 1998, 1,560 cases.²⁸

There are no civil remedies such as protective orders in Uzbekistan. No laws exist to remove abusive men from their homes for a period of time. Divorce currently appears the only way for women to escape a violent marriage. However, despite the legal guarantees of equal access to divorce, the *mahallas* and women's committee chairpersons, (although they have no formal role in the divorce proceedings under the law), as well as judges prevent women in seeking divorce. This is particularly the case since 1998, which was named the "Year of the Family." On the other hand, while victims of domestic violence face many difficulties in filing for divorce, when men would like to file for a divorce, the *mahalla* seems to be less energetic in pursuing reconciliation.²⁹

In some cases, *Mahallas* may take it upon themselves to "divorce" couples informally, orchestrating a separation and a division of property without incurring an official divorce.³⁰ Men simply seek an Islamic divorce, pronouncing by the Koranic triple renunciation of their wives, and so liberating themselves to marry again. However, their wives, without a civil divorce, have no access to the joint property of the marriage and to alimony and may not remarry.

It should, however, be noted that polygamy through religious marriage ceremonies in Uzbekistan – which has increasingly become tolerated – is not recognised by the State which only accords legal status to marriages registered in civil registry offices. According to article 16 of the Family Code, the parties to a registered marriage may not enter into another legal marriage. The Criminal Code states in article 126 that polygamy, or cohabitation with two or more women in a common household, is punish-

able with a fine of fifty to one-hundred times the monthly wage, or corrective labour of up to three years, or by imprisonment for three years. The problem with this article lies in the fact that it seems not to apply in cases where the women do not live in the same household.

3.2 Marital Rape

Uzbekistan's articles on rape in the Criminal Code neither explicitly address marital rape nor do they exclude it. However, 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.³¹

4. Violence against Women in the Community

4.1 Rape

Rape is believed to be widespread in Uzbekistan, but due to cultural norms and values which place great importance on women's sexual purity, the crime is underreported. Public condemnation of rape victims is common, particularly in rural areas.³² The delegation of Uzbekistan responded to the Committee on the Elimination of Discrimination against Women that 520 cases of violence against women (sexual violence) had been reported in the year 2000. This means that the number of reported cases have, according to the data in the Uzbek government report submitted to CEDAW, declined during the past few years: from 791 cases in 1995, 808 cases in 1996, 687 cases in 1997, to 675 in 1998.³³

Article 118 of the Criminal Code criminalises rape, i.e. sexual intercourse using physical force, threats and abusing the helpless condition of a victim, and provides that it is punishable by three to five years' imprisonment. Rape committed by a) two or more persons; b) by a dangerous recidivist or a repeat offender; c) by a group of persons; or d) accompanied by a threat of murder is punishable by seven to ten years imprisonment. The rape of a) of a person under the age of 18 if they are known to the perpetrator, b) committed during mass riots, c) committed by an especially dangerous recidivist; or c) resulting in grave consequences is punishable by 10 to 15 years imprisonment or capital punishment.

Rape of a person under the age of 14, if the age of the victim is known to the perpetrator, is punishable by imprisonment for a period of fifteen to twenty years or by the death penalty.

OMCT is concerned about the fact that according to article 321 and 325 of the Criminal Procedure Code, rape is not subject to automatic prosecution in Uzbekistan as criminal proceedings can only be initiated after a written complaint is filed by the victim. Thereafter the investigator starts to gather evidence. A case may be dropped if the victim withdraws the charges herself. As a result, many rape cases are not prosecuted as women do not report or drop charges because of social pressure.

According to the law, perpetrators of rape cannot avoid prosecution by marrying the victim. However, in practice, rapists escape criminal prosecution when all sides agree to arrange a marriage between the perpetrator and the victim.³⁴

4.2 Trafficking in Women

(For additional information see OMCT's report "Uzbekistan: Violence, Repression and Denial of Economic, Social and Cultural Rights.")

The following provisions of the Criminal Code may apply to the prosecution and punishment of trafficking in women. Article 121 of Chapter IV entitled "Crimes against Sexual Freedom" provides that forcing a woman to have sexual intercourse and satisfy sexual needs in unnatural forms at work or by a person on whom the woman is economically dependent is punishable by correctional work of up to two years or detention for up to six months. In chapter 6 entitled "Crimes against Freedom, Honour and Dignity", article 135 states that the recruitment of persons for the purpose of sexual or other exploitation, committed through deception, is punishable by a fine ranging from 40 to 100 times the minimum salary, correctional work for up to three years or detention for up to 6 months, with or without the confiscation of property. The same crime committed a) repeatedly; or b) by a group of persons in prior conspiracy; or c) against a minor, is punishable by imprisonment for up to five years, with or without the confiscation of property. The same crime, committed for the purpose of trafficking persons abroad from Uzbekistan is punished by 5-8 years imprisonment with the confiscation of property.

The International Helsinki Federation for Human Rights reports that officially trafficking in women, as understood by international experts, does not exist.³⁵ In reality, hundreds of young women are sent abroad illegally (officially as tourists) in order to earn money to live. They are promised employment as nannies, tutors, babysitters etc. However, most of them end up in the business of sexual services.³⁶ Women and girls are trafficked for the purpose of forced prostitution to destinations including the Persian Gulf, South Korea and Turkey. Children's advocates reported that the trafficking of minor children for work in the sex industry abroad continued. Human Rights Watch reports that according to one local NGO, girls as young as thirteen and fourteen years old were provided with false passports and sent to countries including the United Arab Emirates. The traffickers who arranged for the girls' travel and placement in prostitution in the foreign location typically paid large bribes to Uzbek law enforcement officials.³⁷ According to ECPAT International, 40% of the minors in prostitution in Greece are from Uzbekistan, Kazakhstan, Armenia, Albania and Iraq.³⁸

The Malaysian police arrested 93 Uzbek girls in the course of the anti-vice operation. The girls were working in small groups in several hotels in Kuala Lumpur under the supervision of their agent and were considered the most elusive among the foreign women who entered the country to work as prostitutes.³⁹ According to information broadcast on "Radio Liberty" in July 2001, about 20 young Uzbek girls were invited to Chicago by an Uzbek family. The girls were promised work in the modeling business. Instead, they were held captive in the house and used for sexual purposes. One of them managed to escape and asked the American police for help.⁴⁰

Women do not generally report their situation to law enforcement officials out of shame and fear, which has prevented the collection of information and compiling of accurate data on the problem of trafficking. Also, the media does not give attention to trafficking and no local NGOs deal directly with the problem. There are no official governmental and non-governmental programmes to return trafficked women.³¹

Women and girls are also forced into prostitution in Uzbekistan itself. Prostitutes who have been forced into prostitution may also run the risk of detention. According to article 190 of the Uzbek Administrative Code,

prostitution is punishable by administrative measures. 20 - 30% of girls in the Kokand detention centre are prostitutes. The reasons for sending these girls to the Detention Centre include; “amoral behaviour”, drinking of alcohol, and “behaviour not under the control of the family”.³²

The Committee on the Elimination of Discrimination against Women stated in 2001 that it “recognizes the efforts made by the Government to address the issue of trafficking in women and girls, which has greatly increased in the region following the opening of borders. The Committee, however, notes with concern that there is still not enough information on the subject nor a comprehensive policy to address the problem.”

5. Violence against Women by the State

(For general comments on torture and ill treatment by the Uzbek state authorities, see the OMCT's general report simultaneously submitted to the Committee against Torture.)

Torture remained routine in Uzbekistan. It has been reported 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. Women relatives of independent Muslim leaders are frequently arrested and harassed by state authorities.

5.1 Violence against and Arrest of Women Demonstrators

(For additional information see OMCT's report “Uzbekistan: Violence, Repression and Denial of Economic, Social and Cultural Rights.”)

The police forcibly disperse protests by women, relatives of prisoners held on political or religious charges, and numerous women have been arrested for demonstrating.

On 12 April 2001, a group of women protesting outside the Tashkent city government were violently dispersed and detained by the police. Some were injured. Several women taken to the 1st-Tashkent prison and detained incommunicado. They were charged under article 159 (anti-constitutional activity).⁴³

Also on 12 April 2001, women relatives of those convicted with religious charges picketed the building of the Andijan regional government (Khokimiyat) and demanded that it cease violating the religious rights and values of Muslims. The Khokim (head of the regional government) refused to meet with the women and told them to address the regional department of internal affairs concerning the issue. 30 women were arrested temporarily by internal affairs officials.⁴⁴

On 2 July 2001, a group of women, relatives of religious prisoners, staged a protest in Tashkent. Aziza Tokhtakhojaeva – one of the women participating in the protest was beaten and taken to the Yunusabad district department of internal affairs (GOVD) where she was fined 7.500 sums (about 6 US dollars) and held in detention until the next day.⁴⁵

On 4 January 2002, OMCT issued the following urgent appeal on violence against women by state agents in Uzbekistan.

Case UZB 040102.VAW

The International Secretariat of OMCT has been informed by the Kyrgyz Committee for Human Rights, a member of the OMCT network, of the arbitrary arrest and detention of more than 20 women.

According to the information received, on December 26th, 2001, more than 20 women were protesting against the use of torture and ill-treatment of their relatives, who are convicted for their participation in “Hizb ut-Tahrir” party, in Tashkent, near the “Detskii mir” shop in the market on Chorsu Square. They also demanded their release in view of the fact that they were innocent.

According to the information received, many of the protesting women referred to their difficult situation since the arrest and conviction of their husbands. They have no money to feed their children, as they are unemployed.

After two hours of demonstrating, members of the militia forced the women into a bus and took them to an unknown destination. According to a relative of one of the protesting women they were taken to the Shaihantahur regional Department of Internal Affairs of Tashkent. The women have been detained for several days.

The women's demonstration on December 26th is the second one that has been held over the last month.

5.2 Violence against Women in Detention

In two illustrative cases, which occurred before the Convention entered into force in Uzbekistan, women were victims of violence at the hands of militia and law enforcement officials.

A woman⁴⁶, born in 1978 was detained in IVS (detention centers for suspects) of Tahiatash GOVD (city department of internal affairs) in February, 1994. During a during a medical examination in Nukus city on 30 August 1994, it was revealed, that the woman, at that time still a child of 16 years old, was in her sixth month of pregnancy. During an interview she stated that in February 1994 whilst in the GOVD detention centre she was raped by a member of the militia and became pregnant. During her imprisonment, she gave birth to the child in a maternity home of Yunusabad district of the city of Tashkent. The militia officer has been charged under articles 121 and 206 of the Criminal Code (compulsion to sexual contacts; excess of authority or service powers).⁴⁷

Yuldasheva Rano Kadirovna was detained on suspicion of extortion on November 24, 1994. At that time she was 17 years old. She was delivered to the ROVD (district police station) of Sergely district, where she was detained in a cell together with adults. The custodial staff did not explain her rights to her and she was not given the opportunity to contact a lawyer. She spent 72 hours in ROVD before she was transported to IVS (temporary detention center). Whilst in the detention centre she was allegedly beaten by militia who used their hands, legs and sticks. They also threatened her stating: "If you tell about the torture, it will be even worse". The alleged perpetrators of the torture and ill treatment were: Jorik, Azam, Julbarsov Bakhtier. She did not receive any medical aid and no medical examination was carried out. During her time in prison, she was constantly intimidated and beaten.⁴⁸

5.3 The Specialized Vocational School for Girls⁴⁹

The Specialized Vocational School for girls _ 4 in Kokand is an educa-

tional-correctional establishment, organized in order to educate and correct young girls, who are deemed to be in need of “social help and rehabilitation.” This establishment is a closed educational-correctional establishment for keeping juveniles between the ages of 14-18, who have committed socially dangerous acts or who have “maliciously and systematically” infringed the rules of public conduct. About 60 inmates from different regions of Uzbekistan are kept in this establishment.

In its work, CVS _ 4 in Kokand follows the Regulations “on specialized educational-correctional establishments”. According to these Regulations, juveniles may be kept in an educational-correctional establishment up to the age of 18. The main objectives of these establishments are:

- re-education and correction of juvenile delinquents, forming their civic maturity, feeling of responsibility for their conduct before society and State;
- labor education, vocational training, increase of general education level, laying the basis of moral, physical, aesthetic and legal education.

Girls get placed in CVS for various reasons – systematic missing of classes in school, family problems (parents-alcoholics, poor economic conditions, bad relations with step-father), prostitution, drinking alcohol, drugs, antisocial conduct, delinquencies. There have reportedly also been cases of girls being placed in this school on the initiative of parents after having been raped in order to “avoid shame”.

A Girl, B.V. from Tashkent got to CVS at the age of 15 in 1998. She told the Legal Aid Society: “I got to CVS because my step-father beat me unmercifully and therefore I ran away from home, missed classes and smoked”.

Another 15 year old girl was also placed in CVS in 1998. She told the Legal Aid Society: “I was raped by my step-father in my mother’s absence. In order to avoid shame I was put in CVS”.

The conditions are bad in the CVS nr. 4. There is reportedly a lack of normal hygiene and sanitary conditions and the food is allegedly of very poor quality.

Girls are put in isolation as a form of punishment. The isolation cell is a small room, 2 square meters, with a cement floor. The girls sit there for three days without clothes, and get food only once a day. There is one chair in the cell. At night, one blanket is provided.

A matter of concern is also the fact that all incoming correspondence is opened and read by the administration of CVS. As a consequence, inmates have no opportunity to send petitions and complaints to different administrative and law-enforcement organs or international organisations in order to report physical and psychological violence and abuse.

6. Conclusions and Recommendations

OMCT welcomes the various steps taken by the government to improve the situation of women in Uzbekistan, including the ratification of several international treaties for the promotion and protection of the human rights of women, as well as the promulgation of the Constitution in 1992 and other legislation, such as the Family Code, which appear to be founded on the principle of equal rights and opportunities for men and women. However, due to the prevailing socio-economic and political factors as well as patriarchal culture and traditions, women continue to face inequality in many aspects of their lives such as high levels of unemployment, unequal representation in government, decreasing educational opportunities as well as discrimination in the family sphere.

The legal age for marriage for women is 17 and 18 for men. OMCT believes that there can be no justification for this difference in the legal age of marriage and would call upon the government to amend the Family Law in order to raise the legal age of marriage for women to 18 years in line with that for men. This is even more urgent when taking into account that in reality, the age of marriage of girls is currently decreasing, limiting a girl's access to school and paid employment and prolonging women's reproductive lives.

OMCT also notes with concern that polygamy in Uzbekistan exists and that it often goes unpunished. OMCT would recommend that the government of Uzbekistan enforce the prohibition on polygamy in criminal law and that this law be amended so that it applies to all cases of multiple

simultaneous marriages, regardless of whether these are contracted through civil or religious procedures, and irrespective of whether the wives live in the same household.

Reports indicate that domestic violence is a serious and widespread problem in Uzbekistan. Legal, economic and social structures prevent women from acquiring adequate reparation and redress for domestic violence. In Uzbekistan, there is no legal procedure in place that deals consistently and adequately with domestic violence; the Uzbek government has not created a criminal justice system that provides effective protection and remedies to women from violent husbands or other family members and the police take insufficient steps to address the problem (in fact, the police refer cases of domestic violence to the *mahallas* instead of investigating complaints of domestic violence and arresting the presumed perpetrators). The current “system” for dealing with domestic violence focuses on reconciliation rather than on investigating, prosecuting, and punishing the perpetrator with due diligence. Moreover, when family violence is prosecuted and punished, the punishments imposed on the perpetrators do not take account of the specific situation of domestic abuse and frequently also punish the victim. The system does not protect women from further violence as abusers are rarely required to leave the house and protection orders do not exist. The failure by the Uzbek government to adequately respond to domestic violence violates international human rights standards, including those in the Convention against Torture.

OMCT would recommend that effective measures be taken with respect to the enactment of legislation on domestic violence along the lines of the guidelines submitted by the United Nations Special Rapporteur on violence against women to the fifty-second session of the United Nations Commission on Human Rights (U.N. doc. E/CN.4/1996/53, Add.2). The Uzbek government should adopt special legislation to meet the specific circumstances and needs created by family-based violence. Moreover, it should enact legislation which explicitly recognises marital rape, and rape of a *de facto* partner as criminal offences. The government should also ensure that the *mahallas*, women’s committees and other government officials, as well the police and all other law-enforcement officials enforce the law and protect women from all forms of violence. The Government should pass legislation to create civil remedies such as protection orders, for victims of domestic violence as well as establish shelters for women

where they can find relief from the violence. OMCT would also recommend that the government establish programmes in order to improve the economic situation of women as well as the implementation of public education programmes to eliminate traditional stereotypes of the roles of men and women in society and to eradicate practices which discriminate against women. OMCT would particularly recommend that training be provided to police officers, prosecutors, and *mahalla* officials. The government should also collect data and maintain accurate statistics on the scope and nature of domestic violence.

OMCT is concerned about the fact that rape is a private action crime whereby criminal proceedings can only be initiated after a written complaint from the victim. As a consequence, rape enjoys a high rate of impunity. OMCT would recommend that the Government of Uzbekistan amends the criminal code to change the crime of rape into an *ex officio* crime.

OMCT would like to express its great concern about the increase in prostitution and the trafficking of women and girls, which is largely related to poverty, lack of employment opportunities and a lack of effective national measures to suppress the growth of these practices. There is no effective legislation to combat trafficking in persons in Uzbekistan and the problem of trafficking has not been properly recognised and addressed. Prostitutes are frequently doubly victimised; first forced into prostitution and then detained.

OMCT would urge the Government of Uzbekistan to prepare and adopt new legislation criminalising trafficking in persons. Moreover, it would urge the Government to introduce programmes aimed at increasing awareness and understanding of the seriousness of trafficking. These programmes should focus on the methods used by traffickers and the hazardous consequences of being lured into trafficking. OMCT suggests that the government of Uzbekistan monitor and investigate employment and training agencies as well as recruitment networks operating in known trafficking centres. OMCT recommends that the government step up efforts to arrest, prosecute and punish perpetrators of trafficking in cooperation with other countries.

Facilitating the access of women to viable employment and training opportunities is an essential step in the fight against trafficking. The

conditions of women working in the informal sector should be improved through the introduction of legislation that would guarantee working conditions in accordance with internationally accepted labour standards.

OMCT is very concerned about the high incidence of torture and ill-treatment at the hands of law enforcement officials in Uzbekistan. Women family members of political and religious prisoners are particularly vulnerable to threats, arbitrary arrests and violence perpetrated by state officials. Some are placed under administrative detention where they are at high risk of torture, including sexual violence.

Of further concern is the fact that the perpetrators of these acts of violence against women reportedly enjoy impunity. OMCT would call upon the Government to ensure that all acts of torture and ill treatment of women in detention are appropriately investigated, prosecuted and punished and that the victims are provided with adequate reparations.

Finally, OMCT would insist upon the need for the Government to fully implement all of the provisions of the Convention for the Elimination of All Forms of Discrimination Against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials.

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 - 2 *Ibid.*, p. 9.
 - 3 *Republic of Uzbekistan, Crackdown in the Fargona Valley, arbitrary arrests and Religious Discrimination*, A Human Rights Watch report, vol. 10, no. 4, May 1998, Mehrdad Haghayegi, *Islam & Politics, in Central Asia*, New York 1996, quoted in Human Rights watch, *Sacrificing Women to Save the Family? Domestic Violence in Uzbekistan*, 2001, p. 8.

- 4 Human Rights Watch, see note 3, p. 8.
- 5 Uzbekistan has maintained forms of State control over religion through a centralised bureaucracy, stated in *Ibid.*, p. 9.
- 6 United Nations Development Programme (UNDP), Uzbekistan's human development profile 2000
- 7 United Nations Development Programme (UNDP), Status of Women in Uzbekistan, 1999, p.40.u
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- 11 U.N. Doc.HRI/GEN/1Rev.4.
- 12 United Nations Development Programme (UNDP), see note 7, p. 21
- 13 United Nations Development Programme (UNDP), Uzbekistan's Human Development Profile 2000.
- 14 United Nations Development Programme (UNDP), see note 7, p. 43.
- 15 *Ibid.*, p. 20.
- 16 International Helsinki Federation for Human Rights, Women 2000: An Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States, 2000, p. 496.
- 17 Source: Ministry of Health, statistical hands-outs "Natural Movement of the Population of the Republic of Uzbekistan in 1996-1998", "The Family in Uzbekistan", Ministry of Macroeconomics and Statistics, Republic of Uzbekistan, quoted in United Nations Development Programme (UNDP), Uzbekistan's Human development profile 2000.
- 18 International Helsinki Federation for Human Rights, see note 16, p. 500.
- 19 *Ibid.*; see also Minnesota Advocates for Human Rights, see note 1, p. 28.
- 20 Information received by the Legal Aid Society; Human Rights Watch, see 3, p. 13; Minnesota Advocates for Human Rights, see note 1, International Helsinki Federation for Human Rights, see note 16, p. 503.
- 21 Minnesota Advocates for Human Rights, see note 1, p. 20.
- 22 Quoted in Human Rights Watch, see note 2, p. 13.
- 23 *Ibid.*, 14-15.
- 24 *Ibid.*, p. 19.
- 25 *Ibid.*, p. 21.
- 26 *Ibid.*, p.35.
- 27 See International Helsinki Federation for Human Rights, see note 16, p. 503 and Human Rights Watch, see note 3, p. 41.

- 28 U.N. Doc. CEDAW/C/UZB/1.
- 29 Human Rights watch, see note 3, p. 21-22.
- 30 *Ibid.*, p. 28.
- 31 Information received by the Legal Aid Society. See also the International Helsinki Federation for Human Rights, see note 16, p. 505 and Human Rights Watch p, 38-39.
- 32 International Helsinki Federation for Human Rights, see note 16, p. 504.
- 33 U.N. Doc. CEDAW/C/UZB/1, p. 28.
- 34 Information received by the Human Rights Society of Uzbekistan; see also the International Helsinki Federation for Human Rights, see note, p. 505.
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- 36 *Ibid.*
- 37 Human Rights watch, World Report 2001.
- 38 ECPAT International, *A Step Forward*, 1999.
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- 45 Information received by the Human Rights Society of Uzbekistan.
- 46 Name confident
- 47 Information received from the Legal Aid Society.
- 48 Information received from the Legal Aid Society.
- 49 Information received from the Legal Aid Society.

Committee against Torture

TWENTY-EIGHTH SESSION – 29 APRIL-17 MAY 2002

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**CONCLUDING OBSERVATIONS BY THE COMMITTEE AGAINST TORTURE:
UZBEKISTAN**

1. The Committee considered the second periodic report of Uzbekistan (CAT/C/53/Add.1) at its 506th, 509th and 518th meetings, held on 1, 2 and 8 May 2002 (CAT/C/SR.506, 509 and 518), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the second report of Uzbekistan, which was submitted on time and in accordance with the Committee's previous request. It appreciates the substantial information on the many reforms aimed at bringing domestic legislation into harmony with the State party's obligations under the Convention. While noting that there was little information in the report on the implementation of the Convention in practice, the Committee wishes to express its appreciation for the informative oral update given by the representatives of the State party during the consideration of the report, and the State party's willingness to provide further information and relevant statistics in writing.

B. Positive aspects

3. The Committee notes the following positive developments:
 - (a) The ratification of several significant human rights treaties and the enactment of many laws aimed at bringing the legislation into conformity with the obligations in those treaties;
 - (b) Educational initiatives taken by the State party to familiarize various sectors with international human rights standards, and the extensive efforts made to cooperate with international organizations to promote understanding of human rights, including by inviting technical cooperation from the Office of the High Commissioner for Human Rights;
 - (c) The State party's reports of its efforts to draw up a new definition of torture that is consistent with the definition in article one of the Convention, and the introduction of a draft law in the parliament to allow citizen's complaints in matters of torture;
 - (d) Assurances from the representative of the State party that the state is determined to establish an independent judiciary;
 - (e) The report by the representative of the State party of the establishment of an appeals system for court sentences and the introduction of alternatives to prison sentences, releasing detainees on bail;
 - (f) The information conveyed by the State party's representative that responses were being developed to the findings of an official study into complaints filed with the Ombudsman's office that had revealed a number of questionable judicial convictions, incidents of torture or ill treatment by law enforcement officials, and inadequate supervision of the application of human rights norms by law enforcement agencies;
 - (g) The prosecution and sentencing in January 2002 of four police officials to prison terms for torture, and the statement by the State party's representative that this was a turning point signalling the State party's commitment to enforce the prohibition against torture in practice.

C. Factors and difficulties

4. The Committee is aware of the difficulty of overcoming the inheritance of a totalitarian system in the transition towards a democratic form of governance, and that this is compounded by instability in the region. Nonetheless, the Committee stresses that such circumstances cannot be invoked as a justification of torture.

D. Subjects of concern

5. The Committee expresses concern about the following:
 - (a) The particularly 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;
 - (b) The lack of adequate access for persons deprived of liberty, immediately after they are apprehended, to independent counsel, doctor or medical examiner and family members, all important safeguards against torture;
 - (c) The insufficient level of independence and effectiveness of the procuracy, in particular as the Procurator has the competence to exercise oversight on the appropriateness of the duration of pre-trial detention, which can be extended up to 12 months;
 - (d) A lack of practical training for (i) doctors to detect signs of torture or ill-treatment of persons who have been or are in custody, and (ii) law enforcement personnel and judges to initiate prompt and impartial investigations;
 - (e) The insufficient independence of the Judiciary;
 - (f) The 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;
 - (g) The definition of torture in the Criminal Code of the State party is incomplete and, therefore, is not in full conformity with article 1 of the Convention;

- (h) The numerous cases of convictions based on confessions, and the continued use of the criterion of "solved crimes" as the basis for promotion of law enforcement personnel, which, taken together, creates conditions that promote the use of torture and ill-treatment to force detainees to "confess;"
- (i) The absence of transparency in the criminal justice system and the lack of publicly available statistics on detainees, complaints about torture, and the numbers and the results of investigations into such complaints; moreover, the State party has not provided the information requested in connection with the initial report reviewed in November 1999 regarding the number of persons detained and the number executed after being sentenced to death;
- (j) The extradition or expulsion of individuals, including those seeking asylum in Uzbekistan, to countries where they may be exposed to risk of torture.

E. Recommendations

6. The Committee recommends that the State party:

- (a) Proceed promptly with plans to review the proposals to amend its domestic penal law to include the crime of torture, fully consistent with the definition contained in article 1 of the Convention and supported by an adequate penalty;
- (b) Take urgent and effective steps (i) to establish a fully independent complaints mechanism, outside the procuracy, for persons who are held in official custody, and (ii) to ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities, and the prosecution and punishment, as appropriate, of perpetrators;
- (c) Ensure that those who complain of torture and their witnesses are protected from retaliation;
- (d) Ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained by torture;

- (e) Take measures to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards, notably the United Nations Basic Principles on the Independence of the Judiciary;
- (f) Adopt measures to permit detainees access to a lawyer, doctor, and family members from the time when they are taken into custody, and ensure that doctors will be provided at the request of detained persons, rather than at the permission of prison officials; maintain a register with the names of all detainees, the times at which such notifications have taken place and the results of examinations, which should be accessible by the lawyers and others as appropriate;
- (g) Improve conditions in prisons and pre-trial detention centers, and establish a system allowing for unannounced inspections of pre-trial detention centers and prisons by credible impartial investigators, whose findings should be made public. The State party should also take steps to shorten the current pre-trial detention period and provide independent judicial oversight of the period and conditions of pre-trial detention. Furthermore, the sanction of an arrest should be made only by a court;
- (h) Ensure that law enforcement, judicial, medical and other personnel who are involved in the custody, interrogation, treatment or otherwise come in contact with detainees are trained regarding the prohibition of torture and that the requalification procedure ("re-attestation") of those personnel include both awareness of the Convention's requirements, and a review of their own records in treating detainees;
- (i) Consider further steps to transfer the prison system from the Ministry of Internal Affairs to the Ministry of Justice, thereby advancing the conditions of the penitentiary system in accordance with the Convention;
- (j) Review cases of convictions based solely on confessions in the period since Uzbekistan became a party to the Convention, recognizing that many of these may have been obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigation and take appropriate remedial measures;

- (k) Ensure in the legislation and in practice that no one will be expelled, returned or extradited to a State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture;
- (l) Consider making the declarations under articles 21 and 22 of the Convention;
- (m) Provide data in the next periodic report, disaggregated, inter alia, by age, gender, ethnicity and geography, on civil and military places of detention as well as on juvenile detention centers and other institutions where individuals may be vulnerable to torture or ill-treatment under the Convention; provide information in the next periodic report regarding the number, types and results of cases, both disciplinary and criminal, of police and other law enforcement personnel for torture and related offences;
- (n) Widely disseminate the Committee's conclusions and recommendations and the summary records of the review of the State party's reports, including to law-enforcement officials, in the public media and through popularization efforts by non-governmental organizations;
- (o) Consider consulting directly with independent non-governmental human rights organizations in the preparation of the next periodic report.

Violence against Women in Venezuela

A Report to the Committee against Torture

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1. Preliminary Observations

Venezuela has ratified a number of different international conventions for the promotion and protection of human rights in general and of women's rights in particular. The most recent Convention to be ratified by Venezuela is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (1984).

Prior to the ratification of the Convention against Torture, Venezuela also ratified, without any reservations, the International Convention on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the Optional Protocol to the International Covenant on Civil and Political Rights (1966) and the Convention on the Elimination of All Forms of Discrimination against Women (1979).

In 1992, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted General Recommendation 19 in which it is stated that “gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.”

Venezuela has also ratified the Convention on the Rights of the Child (1989) with two reservations. The reservations are related to article 21 of the Convention focusing on national and international adoption.

At the regional level, Venezuela has ratified the American Convention on Human Rights (1969), the Inter-American Convention to Prevent and Punish Torture (1985) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, known as the Convention of Belém do Pará (1994). In fact, this Convention was actually based on a proposal by Venezuela, as it was felt there was a need for women to have an international legal instrument in order to protect them against violence and punish its perpetrators.¹ Article 1 of the Convention of Belém do Pará describes violence against women as “any female gender based action or behaviour which leads to death or causes physical, sexual or psychological damage or suffering, both within the public and the private spheres”.

The National Constitution of Venezuela, which came into force in 1999, is the supreme law of the country. In its article 23, the Constitution states that conventions and treaties related to human rights that have been signed and ratified by Venezuela are to be enforced to the extent that these provisions are more favourable than those contained in the National Constitution and in other national legislation.²

At national level, Venezuela has adopted laws to tackle torture and violence against women. The National Constitution includes 42 articles protecting human rights, including some of the most advanced in the hemisphere.³ However, the most pressing human rights issues facing the current government, involve reform of the criminal justice system. “High levels of violent crime placed great stress on public institutions, whose level of professionalism was often low. Corruption and violence in the police forces and the prison system remained endemic, while the judiciary, under-funded, inefficient and often corrupt was incapable of dispensing justice in an efficient manner”.⁴

This report is about violence against women in Venezuela. The report submitted by the Government of Venezuela (UN Doc. CAT/C/33/Add.5), states that the country has taken various legislative, administrative and judicial measures to prevent the use of torture.⁵ While it welcomes the measures that have been taken in order to prevent and punish torture as well as violence and other forms of discrimination against women, OMCT is seriously concerned by the fact that the government report does not discuss the manner in which legislation and policy are implemented in practice. In addition, the report by the government provides only very limited information on gender-based and gender-specific forms and consequences of torture and inhuman and degrading treatment or punishment. For this reason, and also in line with the goal of gender mainstreaming, the Violence against Women Programme at OMCT has chosen to focus this report on violence against women in Venezuela. A general report on torture and inhuman and degrading treatment or punishment is also being presented to the Committee by OMCT and the Red de Apoyo por la Justicia y la Paz.

2. Status of Women

“All people are equal before the law and in consequence: no discrimination founded on by race, gender, beliefs, social conditions (...) will be allowed (...)”.

Article 21 of the Venezuelan Constitution

In Venezuela, improvements in the status of women, in theory, started in the 1940's, when there was an amendment to the Civil Code which declared women to be “citizens”. Since that time, women have begun to play a larger role in Venezuelan society and steps have been taken by the current government in order to better promote and protect the human rights of women. The Venezuelan government claims that the establishment of a democratic government and the National Constitution have permitted women to be fully equal and free in their civil rights.⁶

In 1982, a reform of the Civil Code established equal rights and responsibilities between men and women within the household and in the family sphere. The reform provides, in article 137, that “the husband and wife shall acquire the same rights and assume the same obligations”.

In 1990, the Organic Labour Law was published coming into force on 1st May 1991, containing innovative provisions towards the protection of maternity, including the rights of adoptive mothers.

In 1992, following the Second Venezuelan Congress on Women, which took place in 1991, the creation of the National Women's Council was approved. The Council's main objective is to contribute to the equality between men and women, as is stipulated in the Convention of Belém do Pará.

In August 1993, the Law on Equal Opportunities was approved. The main objective of this law is to guarantee the full exercise of women's rights and the creation of the Autonomous Institute for Women, which has been given a mandate to develop policies in relation to the advancement of women. The law also provides for the creation of the National Office for the Defence of Women's Rights responsible for ensuring compliance with and awareness of legislation and for providing free legal aid in defence of such rights. OMCT has been unable to ascertain whether or not this office has been established and, if so, whether it is currently functioning.

With regard to women in custody, the Ministry of Justice has adopted a resolution (#402 of 17th December 1993), which authorizes “intimate visits” to women inmates. Nevertheless only four jails, out of a total of 16, currently make arrangements for female prisoners to have “intimate visits”. The main reason for the lack of implementation of their visiting rights, according to Fabio Figueredo, the director of the *Custodia y Rehabilitación de Recluso*, is the absence of an adequate space.⁷

The Organic Magistrate’s Law and Related Procedures Act, which came into force in August 1993, stipulates that the Peace Judge is to be responsible for resolving, based upon the principle of equality, any conflicts that might arise within the family sphere such as ill-treatment and violence.

After the ratification of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women in 1995 (Convention of Belém do Pará), the Bicameral Commission on Women of the Venezuelan Parliament drafted a bill on violence against women and the family and submitted it for consideration and study to the Bureau of the Congress of the Republic in 1996. In 1998, the Law on Violence against Women and the Family came into force.⁸

Available statistics provide a good source of information for gaining a better insight into the current status of women in Venezuela. While women have equal access to education (in 1999, while the access to education for men and women was respectively 64% and 66%, the literacy rate for men and women was respectively 92.9% and 91.8%), they still suffer from social and economic disadvantage when compared with men.⁹

The on-going economic crisis makes the level of unemployment extremely high. The unemployment rate in Venezuela is between 12% to 14.9% and since 1989 there has been a net increase in unemployment both among men and women.¹⁰ In 1997, the rate of unemployment among women aged between 20 to 24 years-old was 19.2% and aged between 24 to 54 years-old it was 8.9%. Among men the rate of unemployment was respectively 12% and 5.1%.¹¹

The birth rate has fallen significantly, though it is still considered high (30 births/1,000 people) and teenage pregnancy is a serious problem. The Venezuelan government itself does not have a population policy and the existing family planning services reportedly only reach 14% of women of

childbearing age. To complement this scenario there is no special programme concerning adolescents or rural areas. Also, abortion is illegal except when a woman's life is at risk.¹²

In 1999, in the political sphere women occupied only 9.7% of seats in parliament. At ministerial level there were no women representatives. Women only occupied 24% of high-ranking positions such as legislators, senior officials and managers. The income difference between men and women remains vast. In 1999, the estimated yearly male income was 7,855 US\$ while for women it was 3,104 US\$.¹³

As will be argued in the following sections, women are still generally perceived as inferior in comparison to men, an image which is perpetuated through traditional socio-cultural attitudes and practices. Women in Venezuela tend to suffer from high levels of violence in the family and in the community and there have also been reports that women have been the victims of torture and ill treatment at the hands of police and other law enforcement officials.

OMCT welcomes the adoption of legislation and policy designed to prevent and combat violence and other forms of discrimination against women. However, in spite of the now comprehensive legislative and policy framework that is in place for the promotion and protection of the human rights of women, there is little evidence to suggest that these measures have resulted in a real improvement in the status of women in Venezuela.¹⁴

3. Violence against Women in the Family

Socio-cultural patterns which perpetuate discrimination against women still exist in spite of the fact that there are laws specifically designed to address violence and other forms of discrimination against women. The media, the family and the school perpetuate the traditional female stereotype, in which women are seen primarily in terms of their reproductive role. This can also include formally employed women who end up having a double workload, since the fact that they may work outside the household does not mean a change in the roles played by both women and men in the family.

In fact, the media in Venezuela commonly portray women in a submissive role and present men as the protagonists in public life.¹⁵ School textbooks follow the same line. In addition there is a lack of male teachers at the primary school level, reinforcing the role that women play in childcare.¹⁶ The Convention of Belém do Pará, in its article 6, establishes that all women have the right to be valued and educated free of stereotyped behaviour patterns and social and cultural practices based in concepts of inferiority and subordination. In addition, article 8 of the Convention provides that States Parties must change socio-cultural patterns of conduct between men and women in order to avoid gender-based prejudice and customs that can be discriminatory.

At the same time, the government claims that in reality, the power to change existing social patterns is not within its control and that the Venezuelan people have actually imposed these patterns themselves.¹⁷ The government points to the fact that human rights have been included in the curricula of primary schools since 1996. This human rights education focuses on the study of the National Constitution, the Universal Declaration of Human Rights, the Convention on the Rights of the Child and the Organisational Act for the Protection of Children and Adolescents. Still, according to the government, the main obstacles are a shortage of trained teachers, the absence of pedagogical resources and the fact that the educational activities undertaken so far have not been promoted sufficiently.¹⁸

The existing provisions and measures designed to change social and cultural attitudes to women are to be encouraged. Nevertheless, it is of concern that despite the adoption of these measures, the real situation of women in Venezuela remains unchanged. OMCT believes that in order for genuine improvement in the status of women to occur, it will be necessary for the government to ensure that the national law on Violence against Women and the Family (1998) and the Convention of Belém do Pará are adequately implemented and enforced.

3.1 Legislative Framework

As mentioned above, the Law on Violence against Women and the Family entered into force in 1998. According to the Venezuelan Government, this

law is “an important step towards the eradication of violence against women and recognition of their human rights”.¹⁹ Moreover, according to the National Institute for Women, it was prompted by “the recognition of the equal and inalienable rights of all members of the human family as the basis of liberty, justice and peace in the world”.²⁰ The overall objective of the law is “to prevent, control, punish and eradicate the violence against women and the family as well as to support the victims of the abuses established in the law”. It aims to protect the right to dignity and physical, psychological and sexual integrity of the individual; equality between men and women; the protection of the family and all its members, and all the rights contained in the Convention of Belém do Pará.

The law defines violence, in its article 4, as “the aggression, threat or offence, directed towards the women or any other member of the family, perpetrated by the spouses, partners, former spouses, former partners or any other person who has previously inhabited the family sphere, ascendants, descendants and relatives, consanguineous or in laws which deprecates the physical, psychological, sexual or patrimonial integrity”.

It goes on to define these three forms of violence. Physical violence, is described in article 5 as “any conduct that causes physical damage to a person directly or indirectly (...). Physical violence is also defined as including “any conduct with the will of causing damage to the goods that are part of the victim’s patrimony”. It later defines, in article 6, psychological violence as “any conduct that causes emotional damage, decreases the self-esteem, impairs the healthy development of the women or any other member of the family as stated in article 4”. In article 7, sexual violence is defined as “any conduct that threatens the right of the person to voluntarily decide his/her sexuality, it comprehends not only the sexual act but also any form of sexual contact or access, genital or non-genital.”

The law is concerned with gender inequality in Venezuelan society and establishes legislative measures to address this issue and to deal with violence in the household.²¹ It does not focus only on the penalties for the perpetrators but also incorporates provisions on prevention and assistance, defining the functions of the National Women’s Institute and establishing the responsibilities of the Government Ministries for its enforcement. The Institute itself is responsible for the policies and programmes aimed at the

prevention of violence against women and the family. Even though the law is directed towards the family sphere, article 19 of the law covers sexual harassment in the work place.

The penalties to be applied in cases of domestic violence range from six months (in case of threats) up to ten years (in case of marital rape, in which case article 375 of the Penal Code is applied). If the sentence given does not exceed one year and the perpetrator is not a repeat offender it can be substituted for community service. The penalties stipulated can also be increased by half in cases involving aggravating circumstances.²² In addition, professionals including doctors, employers and civil servants who fail to report cases of domestic violence may be liable to pay a fine.²³

A very positive aspect of the law is that the perpetrator, besides serving the sentence, must take part in prevention and educational programmes following the advice of professionals and specialists who are part of the process. The law also establishes the civil responsibility of the offender, who, depending on the circumstances, must pay financial compensation to the victim.

3.2 Domestic Violence

The economic problems that have afflicted the country have led Venezuela to face the phenomenon of the feminisation of poverty, with women tending to be the head of the family. The frustrations deriving from this and from the growing number of women assuming the leading role as a provider in such a patriarchal society, have played a role in increasing the level of domestic violence. In addition, high levels of unemployment and the fact that many women are responsible for providing for their children mean that these women are frequently unable to leave situations of domestic violence.²⁴

Statistics from the Centre for Peace Studies at the Central University of Venezuela specify that during the first half of 1998, 26 women in Caracas died as victims of homicide. It is estimated that at least 50% of these deaths were due to conflicts with their partner. The study goes to state that from this it can be deduced that every twelve days a man in Caracas kills a woman for reasons related to their relationship. Moreover, another study, "Crime in Caracas", published in 1997, indicates that 40% of bat-

tered women attending help centres in the metropolitan area of Caracas involved violence against women within the household, and that 80% of these were repeat occurrences.²⁵

OMCT has not been able to obtain statistics on marital rape, however, based on information published by the University Institute of the Scientific Police, it is apparent that the majority of reported crimes involving sexual violence against women in Venezuela are perpetrated in the victim's home by a person known to the victim.

It is worth noting that usually the official rates of reported domestic violence do not accurately reflect the reality of the problem since women tend not to report violence within the household for a number of reasons including fear, shame or social pressure. Moreover, local organisations report that the police are usually unwilling to intervene to prevent such abuses and the perpetrators, themselves, are rarely prosecuted. These attitudes reinforce the lack of confidence that women have in the judiciary and law enforcement officials, thereby reinforcing impunity and sending the message that the protection of women's human rights is not a policy priority. Besides this, another worrying factor is that poor women are often not aware of the legal instruments they can use.²⁶

3.3 Marital Rape

The Venezuelan Penal Code does not explicitly criminalize marital rape. However, the Law on Violence against Women and the Family addresses this issue in its article 18, establishing the applicability of the same penalties provided for in article 375 of the Penal Code, which deals with sexual violence.

3.4 Crimes Committed in the Name of Honour

OMCT is particularly concerned by the fact that article 423 of the Penal Code was retained even following the revision of the Code in 2000. The article states that: "The husband who surprises his wife and her accomplice in adultery, and kills, injures or ill-treats one or both of them, will be exempt from the normal penalties for homicide or injury (...). Equally, these same penalties will be applied in case of homicides and injuries per-

petrated by fathers or grandfathers, if executed in their own homes, who surprise men having sexual contact with their single daughters or granddaughters.”

While it is unclear how and to what extent this provision is applied in practice, OMCT believes that the mere fact that this article continues to form part of the Penal Code sends an important message concerning the status of women in general and women’s sexuality in particular. By providing for reduced penalties for murder or injury committed in the name of honour, the Penal Code sanctions the discriminatory view that wives, daughters and granddaughters are the ‘property’ of their husbands, fathers or grandfathers and that they may be legitimately punished for stepping outside of their socially prescribed roles. As a result, OMCT would recommend that this provision be urgently repealed.

4. Violence in the Community

4.1 Sexual Violence

OMCT has received information which suggests that rape and other forms of sexual violence against women is widespread in Venezuela. In 1995, the University Institute of the Scientific Police claimed that in 64% of the 539 reports of rape that were filed in the metropolitan area of Caracas, the assailants were relatives, friends, neighbours or people the victims knew; 45% of these rapes occurred in the victim’s home; and in 74.25% of these cases the victim was subdued by either physical force or firearm. In addition, the statistical division of the Technical Judicial Police has published figures which indicate that in 1997 there were 7,426 sex crimes reported, including rape, seduction, kidnapping, incest and others, in which the victims were women. They claim that this number implies that 11.9 women were raped every day in Venezuela during 1997.²⁷

In its concluding observations on Venezuela in 2001, the Human Rights Committee expressed its concern at the level of violence against women including reports of kidnappings and murders that have not resulted in arrests or prosecution of those responsible. The Committee recommended that the government take “effective measures to guarantee women’s safety,

ensure that no pressure is put on them to dissuade them from reporting such violations, that all allegations of abuses are investigated and that those committing such acts are brought to justice.”²⁸ OMCT remains concerned that little has been done to implement these recommendations over the past year and it would call upon the government to ensure that women have access to effective complaints mechanisms and that law enforcement officials are adequately trained in their obligations with respect to the investigation, prosecution and punishment of acts of violence against women.

Of particular concern to OMCT is the fact that Venezuela has legislative measures which tend to reinforce and encourage violence and other forms of discrimination against women. Article 393 of the Penal Code which provides mitigated punishments for persons found guilty of raping sex workers, article 395 which stipulates that a man who rapes a woman will be exempt from punishment if he offers to marry her (“reparatory marriage”) and article 423 which, as discussed earlier, relates to crimes committed in the name of honour, were all retained during the 2000 revision of the Code.

The reparatory marriage measure provided in article 395 of the Penal Code is of particular concern in light of the fact that the minimum age of marriage for women is 14 years old and for sexual consent it is 12.²⁹ In addition, the age can be lowered without any limits in case of pregnancy. This only tends to increase impunity, since victims and their families are often reluctant to report such cases out of shame, family and community pressure. In general, girls who are not virgins have difficulties finding a marriage partner and therefore many girls who have been raped are subjected to intense pressure to marry their rapist.

In its concluding observations on Venezuela in 2001, the Human Rights Committee stated that the reparatory marriage provision in Article 395 of the Code is incompatible with articles 3, 7, 23, 26, 2 (3) and 24 of the International Covenant on Civil and Political Rights.³⁰ In the same vein, OMCT believes that the maintenance of provision is similarly incompatible with Venezuela’s obligations under the Convention against Torture.

4.2 Trafficking and the Exploitation of the Prostitution of Women

There is little information available on the extent of the problem of trafficking in women and girls in Venezuela and to date the government has not developed a comprehensive legislative and policy response to the issue.³¹ It has been alleged, however, that clandestine immigration, including trafficking in women and girls, has been facilitated in Venezuela by the fact that there is widespread official complicity in this trafficking and that there has been a corresponding failure by the government to adopt and enforce adequate legislation for the purpose of preventing and eradicating trafficking. The geographic position of Venezuela, forming as it does a continental bridge for trafficking to other countries within the region or other parts of the hemisphere, when combined with the fact that officials are often complicit in trafficking, makes it an ideal host country for traffickers.³²

According to a recent study into trafficking in Venezuela, those involved in trafficking in women to, from and through the country also promote sex tourism with women from Venezuela being advertised abroad as part of sex tourism “packages.”³³ The study also found that traffickers often use legal tourist visas to bring women into Venezuela for domestic work and that ultimately, these women are exploited as domestic workers and then also sexually exploited within the sex industry in Venezuela or abroad. Many women are reportedly trafficked from Venezuela to the Caribbean islands, North America, Europe and other parts of the Mediterranean, and Asia.³⁴

The former Ecuadorian Consul in Caracas has revealed that about 150 children from Ecuador were brought into Venezuela via Colombia to perform domestic servitude. The children, aged between about 12 and 14 years of age had been “sold” by their parents to traffickers for around \$ 400 and it is alleged that many of the girls were later re-trafficked for the purposes of sexual exploitation. Most of the children reportedly came from the impoverished provinces of Chimborazo and Cañar in the Ecuadorian Andean region.³⁵

Women who were trafficked from or to Venezuela reported that they were often victims of violence including severe beatings and sexual violence and that traffickers frequently used blackmail and threats related to the women’s illegal immigration status in order to curtail their freedom of

movement. According to one study, 78% of Venezuelan women who had been trafficked reported having suffered some form of physical violence.³⁶

Venezuela admits that due to the economic problems faced by the country, prostitution has increased and is considered a problem of public health. Prostitution is illegal in Venezuela and is regarded as constituting a form of discrimination against women.³⁷ Importantly, however, article 393 of the Penal Code establishes lower penalties for crimes of sexual violence, such as rape, if the victim is a prostitute. As prostitutes are generally more vulnerable to sexual violence than other women, article 393 only reinforces a culture of minimising violence against prostitutes and effectively holds prostitutes responsible for crimes of violence committed against them.

Since 1985, there have been proposals for amendments to be made to the controversial articles of the Penal Code, possibly including this article, however, OMCT has been unable to obtain any information concerning progress in this area.

5. Violence by the State

5.1 Torture and Ill-Treatment

For detailed information on the issue of torture and ill treatment, please refer to the joint report by Red de Apoyo por la Justicia y la Paz and OMCT “Comments on the Second Periodic Report of the State of Venezuela Concerning the Implementation of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”

According to information received, there has been a recent increase in the number of women who have been victims of torture and ill treatment at the hands of State agents. This increase has been noted by Provea who registered 78 women as being victims of torture and/or ill treatment during the period 1999-2000 and 121 victims in the period from October 2000 to September 2001. Of these victims, 11 were pregnant and, as a result of ill-treatment, three of them lost their babies.³⁸

OMCT has been made aware of an alarming number of cases of transgender people (women in particular) who have been subjected to police harassment including torture and ill treatment in the Venezuelan state of Carabobo.³⁹ According to reports, State violence against transgender people has been an ongoing problem in Carabobo for at least the past two years. This violence recently escalated following instructions from the State Governor Enrique Fernando Salas Feo-Römer who has allegedly issued a decree authorising the authorities to “eradicate” transsexual practices by arresting transsexual persons and charging them with offences under State law. There have also been reports that police were allegedly involved in the murder of transgender women Angie Milano in March 2002, Michelle Paz in January 2002 and Dayana Nieves in July 2000.

Amongst the reported cases of torture and ill treatment, the *Policías Estadales* (State Police) are allegedly responsible for 41% of the abuses, followed by the *Fuerza Armada Nacional* (National Armed Forces) with 17.2%. In the cases of ill-treatment and torture registered by Provea, the *Guardia Nacional* (National Guard), which is part of the Armed Forces, is responsible for 12.9% of them.⁴⁰

The case of José Luis Urbano and his sisters Luz Damaris and Luz Noemí Guicara

José Luis Urbano’s brother had a car accident involving a friend from the Anzoategui State Police. Following this incident members of the State Police forcibly entered José Luis Urbano’s home, beat him and threatened him and his mother. Both were then taken from their homes and detained for four hours. This case was denounced to the Sixth State Prosecutor of the State of Anzoategui (*Fiscalía sexta del Estado Anzoategui*).

On 8 February 2000, José Luis Urbano’s wife received an anonymous telephone call from a woman who said that they were about to have a surprise for having denounced the previous case and that if they dared to denounce again his mother would be killed. Soon afterwards another family member received a call and was told that they should search for José Urbano’s two underage sisters in a mountainous region named Los Pocos some 20 minutes away from the city of Barcelona.

José Luis Urbano found both his sisters in tears. They had been brutally raped and their vaginas and bladders severely injured by being slashed with a razor blade.

5.2 Women in Custody

“The State guarantees a penal system that assures the rehabilitation of the inmate and the respect for his/her human rights”

Article 272 of the Venezuelan Constitution

According to Carlos Nieto from *Una Ventana a la Libertad* (A Window to Freedom), even though there are proposals for reform currently being discussed with a view to restructuring the jail system, in practice, prison conditions are extremely poor. Impunity reigns among prison officials and members of the *Guardia Nacional*, which amongst its duties is responsible for guarding the exterior of prisons. Indeed, the *Guardia Nacional* is the security force allegedly responsible for the largest number of human rights violations.⁴¹

Prison conditions, after the implementation of the Organic Code of Criminal Procedure (COPP) in 1999, have improved, particularly in relation to overcrowding in the jails, as many inmates were released following the adoption of the new code. The prison population has been stable (16,751 people) and globally there is no overcrowding. But, separately, there are prisons, such as the *I. J. de Valencia (Tocuyito)* that reportedly exceed their capacity by up to 81%.⁴²

Female prisons follow the same pattern as male ones and while there are significantly less women in prison than men, their conditions of detention are not more favourable. Women represent 5.5% of the jail population in the country, meaning that, as of September 2001, the number of female inmates was 936. Officially there is only one women’s jail in Venezuela, the *Instituto Nacional de Orientación Feminina (INOF)*, which holds 30% of the female prison population.⁴³ Besides this, there are female annexes in male jails where men and women co-exist openly.⁴⁴

Furthermore, in its consideration of the periodic report of Venezuela in 2001, the Human Rights Committee expressed its deep concern over “the many allegations of rape or torture of women in custody by members of

the security forces, offences such women do not dare to report.” The Committee noted that these allegations give rise to “serious concerns in light of Articles 6 and 7 of the Covenant” and it recommended that Venezuela take “effective measures to guarantee women’s safety, ensure that no pressure is put on them to dissuade them from reporting such violations, that all allegations of abuses are investigated and that those committing such acts are brought to justice.”⁴⁵

OMCT is concerned that the situation of women who are subjected to torture or ill treatment whilst in detention has not changed since the Human Rights Committee’s recommendations in 2001. This is all the more serious in light of the fact that women who are victims of such abuses tend not to report violations of their rights by State officials. The main reasons for this reluctance to report are fear of further persecution or retaliation, shame, and a lack of confidence in the authorities.

According to the US Department of State (2001), violations of the rights of detainees (both male and female) by police and security officers are commonplace and the Government has systematically failed to punish those responsible even though article 29 of the National Constitution addresses this issue. It establishes that “the Venezuelan State is obliged to investigate and sanction any human rights violations, committed by its authorities (...). Such violations will be investigated and judged by ordinary tribunals. Such felonies are exempted from benefits that can bring them to impunity, including indult and amnesty”. Moreover these abuses are also in violation of article 24 of the Presidential Decree 3179 from 1993, which enacted the Police Services Coordination Regulations and the Rules of Conduct for Members of the Police Forces. This article states that “no member of the police force shall inflict or tolerate any act of torture or other cruel, inhuman or degrading treatment or invoke as justification for such conduct the order of a superior or special circumstances (...)” and the Prison Acts and Regulations, which prohibit “subjecting prisoners to any kind of degrading or humiliating treatment and the use of measures of coercion which are not authorized by law.”⁴⁶

Another example of violence perpetrated by state agents happened on September 7th, 2001, in Maracay (State of Aragua). The married couple Marlene Liendo Vidal and Jesús Oswaldo Vidal, were detained

for allegedly committing “immoral acts in the street”. They were verbally abused and battered by officers from the *Policía Estatal* of Aragua. When they were first detained, Marlene was locked in the back of the car. Afterwards, in the police station, she was called a prostitute, and threatened with rape if she screamed. She was pushed to the floor and beaten, leaving her with bruises on her right eye, legs and arms. Both of them were kept incommunicado until the following day, and were denied access to their families. When set free, they were threatened with death if they complained about the episode and their belongings; a mobile telephone, gold jewellery and identity documents were confiscated.

6. Conclusions and Recommendations

OMCT welcomes Venezuela’s ratification, without reservations, of the international and regional conventions for the promotion and protection of human rights in general and of the human rights of women in particular. OMCT is also encouraged by the creation of national initiatives for the promotion and protection of these rights: the National Constitution, the establishment of the Autonomous Institute for Women and the adoption of the Law on Violence against Women and the Family. All of these measures have been designed to prevent and punish violations of women’s human rights and to reduce gender inequality.

Nevertheless, OMCT is concerned by the fact that the Government report does not provide detailed information on the *de facto* status of women in Venezuela and that there has been no formal commitment to amending or repealing legislation that discriminates against women. Article 393 of the Penal Code which provides mitigated punishments for persons found guilty of raping sex workers, article 395 which stipulates that a man who rapes a woman will be exempt from punishment if he offers to marry her (“reparatory marriage”) and article 423 which relates to crimes committed in the name of honour were all retained during the 2000 revision of the Code. OMCT would urge the government of Venezuela to repeal these discriminatory provisions as soon as possible.

OMCT would also encourage the Venezuelan government to effectively apply the Convention of Belém do Pará and the Law on Violence against Women and the Family in order to start changing socio-cultural

stereotypes and attitudes which perpetuate violence and other forms of discrimination against women.

OMCT is very concerned that even though the Law on Violence against Women and the Family came into force in 1998, there are reports that the Venezuelan authorities are reluctant to become involved in “family issues” and that in cases of domestic violence the perpetrators are rarely prosecuted. OMCT insists that Venezuela has an obligation under international law to ensure that violence against women - whether this is committed by public officials or private individuals - is effectively prevented, investigated, prosecuted and punished and it believes that the adequate enforcement of the Law constitutes a necessary step in this direction.

To this end, OMCT would recommend that law enforcement officials including police officers, judicial authorities and other members of the public service who have contact with women victims of violence, are provided with adequate and systematic training on human rights law and on specific measures for the prevention, investigation, prosecution and punishment of acts of violence against women.

OMCT recommends that the legal age for marriage be amended so that it is the same for both men and women. The legal age for a woman to be married is very low (14 years old), this increases the vulnerability of girls to domestic violence and exposes them to the serious health risks associated with early maternity. As mentioned previously, article 395 of the Penal Code which relates to “reparatory marriage” may lead to impunity for rape as girls are pressured by their families or by the perpetrator into agreeing to marriage following rape. This provision of the Penal Code should be urgently repealed.

Sex workers, particularly transgender women working as prostitutes, have reportedly been subjected to harassment and violence at the hands of private individuals and law enforcement officials. Despite the increased vulnerability of sex workers to violence including rape, the Venezuelan Penal Code does not provide prostitutes with equality before the law, decreasing the penalties for sexual crimes committed against them. OMCT would insist upon the need to repeal article 393 of the Penal Code which provides that the penalty for rape will be discounted by one fifth where the victim is a sex worker.

The trafficking of women and girls into and through Venezuela has allegedly been facilitated by widespread official complicity. OMCT urges the Venezuelan government to investigate, prosecute and punish those responsible for trafficking and would encourage the government to conduct research into the issue with a view to developing an effective legislative and policy response. OMCT is of the belief that firm measures need to be taken by the government in order to ensure that proportionate and dissuasive sanctions are applied to law enforcement and border officials found to be implicated in trafficking and related activities. In addition, measures should be taken to establish and enforce a regime of criminal, civil and administrative liability for natural and legal persons including travel agencies, internet service providers, bars and hotels implicated in the trafficking of women and girls.

Training should also be provided to relevant officials in order to sensitise them to the human rights violations that give rise to and result from trafficking and to reiterate their obligations in relation to the prevention, investigation, prosecution and punishment of trafficking.

OMCT is concerned by recent reports that a number of transgender women have been subjected to violence including; harassment, arbitrary arrests, torture and ill treatment and extra-judicial executions. Of particular concern is the situation in the state of Carabobo, where the Governor has allegedly issued a decree authorising the “eradication” of transgender people and has encouraged law enforcement officials to take steps to this effect. OMCT would call upon the Federal and State governments to take strong measures to protect the human rights of transgender persons within their jurisdiction and it would recommend that appropriate sanctions be applied to law enforcement officials found guilty of having engaged in the harassment, torture, ill treatment or murder of transgender persons.

OMCT is deeply concerned about the living conditions of female detainees in Venezuela. There are reports of women inmates being abused by the prison officers who are supposedly responsible for their custody. This concern is particularly acute as it is well-known that such violations are rarely reported due to fear of further persecution, leading then to impunity and to a perpetuation of this cycle of violence. OMCT urges the Venezuelan government to effectively apply existing measures in order to prevent and punish violence against women in detention. In addition and

in line with international standards on detention, OMCT would recommend that detained women are only supervised by female prison staff and that all detainees are granted access to effective and confidential complaints mechanisms.

Finally, OMCT would recommend that in its next periodic report to the Committee, the government of Venezuela provide more detailed information concerning the real situation of women in Venezuela as well as on the measures that it is taking in order to prevent and punish violence against women.

Annex of cases

Case VEN 230102.1

Follow-up case to VEN 230102
Extrajudicial execution / Arbitrary detention

The International Secretariat of OMCT requests your URGENT intervention in the following situation in Venezuela.

New information

The International Secretariat of OMCT has received information from a reliable source that on March 26th, 2002, the body of **Angie Milano** (legal name: Andy Rafael Milano), a 28-year old transgender woman, was found in an advanced state of decomposition behind the commercial centre Sambil, Mañongo sector, city of Valencia, State of Carabobo.

According to the information received, Angie Milano was a member of the organization *Respeto a la Personalidad* dedicated to the defence of Human Rights of transgender persons. The organisation has documented a pattern of police abuse against transgender persons in Carabobo including harassment, death threats, arrests and arbitrary detentions, torture and

other cruel or inhuman treatment. Furthermore, victims are also allegedly forced to engage in sexual relations with police officers under the threat of arrest, a frequent practice in this State.

According to the report, on March 26th, 2002, the *División de Inteligencia Policial* of Carabobo, issued an order for the arrest of **Maury Oviedo**, President of the aforementioned organisation. Once arrested she was to be handed immediately to the intelligence officials of the police. Maury Oviedo, fearing police custody, decided to hide. She had previously denounced locally, nationally, and internationally, the extrajudicial execution of two members of the organisation (Ms. Dayana Nieves and Michelle Paz, who were killed on July 2000, and January 2002 respectively – see case VEN 230102).

According to the information received, two members of “Respeto a la Personalidad”, **Estrella de los Angeles Alvarez Vásquez** and **Paola Sánchez**, together with **Yoseline Martínez Rujano**, have been detained since March 20th, 2002 in the Isabelica prison. Dr. Ana Guerra, Assistant Defender of the People of the State of Carabobo, had declared that she was the prefect of the church of Santa Rosa, following orders of the state governor, who had captured the victims with the support of over 80 policemen when they were travelling within the city. They were arbitrarily detained under the charge of “sexual prophylaxis”, without a judicial warrant and without informing the Public Ministry.

According to the report, the victims were forcibly stripped of their clothes in a special closed room and were then mocked while being beaten severely by the police. They were then locked in a cell, where they currently remain.

According to the report, the wave of violence goes back at least two years and has recently intensified, as it seems that in Carabobo a model of persecution has been established by the State Governor, Mr. Enrique Fernando Salas Feo-Römer, and his police agents. This persecution and other serious violations of the human rights of transgender persons are tolerated and encouraged by the authorities. An order has been reportedly issued that calls to the eradication of transsexual practices in the State of Carabobo, including a list of crimes with their corresponding sentences that constitute clear and serious human rights violations against transgender persons.

According to the information received, police officers were involved in both crimes. A report has been presented by the aforementioned organisation to Mr. Santiago Cantón, Executive Secretary of the Interamerican Commission of Human Rights. None of these serious violations of the human rights of transgender persons have been adequately investigated, and the perpetrators continue to enjoy impunity.

The extrajudicial execution of Ms. Angie Milano is the second this year in the State of Carabobo. On 11 January 2002, OMCT received information that the body of Ms. Michelle Paz, another transgender woman, had been discovered and that it was likely that the police were involved in that murder as well as in a number of separate acts of harassment, arbitrary arrests, detention, torture and ill treatment against transgender persons in the city (see case VEN 230102).

Case VEN 230102

Extra-judicial killing/Attack/Arbitrary arrests/Incommunicado detention

The International Secretariat of OMCT has been informed by a reliable source of the suspected extra-judicial killing of a transgender woman, an attack of another transgender woman, and the arbitrary arrest and incommunicado detention of two transgender activists in the state of Carabobo, Venezuela.

According to the information received, on January 11, 2002, **Ms. Michelle Paz** (legal name: Janny Paz) was found shot dead in Urbanización Santa Cecilia, near the capital city of Valencia in the state of Carabobo. Ms. Paz had been shot four times, and was last seen between 3 and 4 am on the morning of January 11th, while doing sex work on Avenida Bolívar, one of the main streets of Valencia. While her earrings, watch, cellular phone and cash were not stolen, her identification papers were missing. In Santa Cecilia, where her body was found, neighbours did not hear any shots, which has led to presumptions that she was killed elsewhere and then carried to Santa Cecilia, where few people circulate at night.

According to the report, local activists allege that police officers did not seal off the area where the body was found, and did not properly protect the victim's personal belongings. As a result, articles of Ms. Paz's clothing disappeared. A Venezuelan transgender organisation, *Respeto a la Personalidad*, considers that it is highly possible that the police were involved in the murder. Previously, a police officer has been accused of involvement in the murder of **Dayana Nieves**, a transgender woman, who was shot in July 2000, and the indicted officer in question has not been charged and brought to justice to this day.

According to the information received, in a separate incident, on January 13, 2002, a police officer shot at **Ms. Paola Sánchez**, another transgender woman. Although Ms Sánchez escaped this attack unharmed, policemen broke into Ms. Sanchez's house without a warrant several hours later and grabbed her by the hair and arrested her without charges. She has since been released, but there are fears that she will again be subjected to attacks or harassment by the police.

According to the information received, on January 16, 2002, **Mrs. Vicky Martínez** and **Mr. Kevin Capote**, two transgender activists, were arrested and beaten by members of the Carabobo police. Presently, they are at La Isabelica, a local prison, where they are being held in incommunicado detention. No information has as yet been made public regarding the reasons for their arrest or charges.

The International Secretariat of OMCT is gravely concerned for the physical and psychological integrity of Vicky Martínez and Kevin Capote, given that they are being detained incommunicado, and also fears that Ms. Sánchez may be the victim of further police harassment. More generally, OMCT condemns the attacks performed by Venezuelan police officials against transgender persons, notably those resulting in death, and fears that, given the historical precedent, the perpetrators of these acts will not be brought to justice, and that they will continue to remain active within the police force.

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- 1 Venezuela, Third Periodic Report (UN Doc. CEDAW/C/VEN73) to the Committee on the Elimination of Discrimination against Women (CEDAW), 1995.
 - 2 US Department of State, "Country Reports on Human Rights Practices - 2001", February 2002.

- 3 Human Rights Watch, “World Report 2001. Venezuela, Human Rights Developments”.
- 4 Ibid .
- 5 Venezuela, Second Periodic Report (UN Doc. CAT/C/33/Add.5) to the Committee Against Torture, 2000.
- 6 Venezuela, Third Periodic Report (UN Doc. CEDAW/C/VEN/3) to the CEDAW, 1995.
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- 15 According to the Law on Violence against Women and the Family, article 12, the Ministry of Transport and Communications is the one responsible for the effective dissemination in the media of messages and programs which address violence against women and the family.
- 16 Article 9 of the Law on Violence against Women and the Family, clearly expresses that the Ministry of Education must take all the measures to eliminate all the discriminatory material from educational institutions.
- 17 Venezuela Third Country Report (UN Doc. CEDAW/C/VEN/3) to CEDAW, 1995.
- 18 Venezuela’s Second Report (UN Doc. CAT/C/33/Add.5) to the Committee against Torture, 2000.
- 19 Ibid.
- 20 Ibid.
- 21 These measures include education on human rights, conflict resolution, gender relations and equal opportunities at all school levels; capacity-building plans for employees involved in law enforcement and any other employees responsible for handling the issues established in the Law, dissemination of information regarding violence against women and the family, cooperation at local government level, the creation of specialised units to deal with violence against women and the establishment of shelters for victims of violence.
- 22 The aggravating circumstances established by the law are: to enter the victim’s residence or where he/she lives when the marital relationship is over; failure to leave the family residence when this has been ordered by a responsible authority, perpetrating any of the acts of violence described in the law whilst carrying a gun, perpetrating violence against pregnant women, handicapped people, minors or the elderly.

- 23 Omission in cases of sexual harassment in the work place, doctors failing to denounce cases of domestic violence and government servants who fail to apply, properly, the measures provided by the law.
- 24 Refer to Section II, Status of Women in Venezuela.
- 25 UNDP, "Against Violence, Venezuela National Report", www.undp.org.
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- 28 Human Rights Committee, Concluding Observations on Venezuela, UN Doc. CCPR/CO/71/VEN, 26 April 2001, para. 17.
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Committee against Torture

TWENTY-NINTH SESSION – 11-22 NOVEMBER 2002

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**CONCLUDING OBSERVATIONS BY THE COMMITTEE AGAINST TORTURE:
VENEZUELA**

1. The Committee considered the second periodic report of Venezuela (CAT/C/33/Add.5) at its 538th, 541st and 545th meetings, held on 18, 19 and 21 November 2002 (CAT/C/SR.538, 541 and 545), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes with satisfaction the second periodic report of Venezuela, which should have been submitted in August 1996 but was received in September 2000 and updated in September 2002. This report contains the information which the State party was to have included in its third periodic report, which should have been submitted in August 2000.
3. The Committee notes that although the report contains abundant information on the legal provisions which have entered into force since the previous report was submitted, it lacks information on facts relating to the implementation in practice of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It contains no descriptions of situations or facts which have been examined or considered by the judicial, administrative or other authorities with jurisdiction over the issues dealt with in the Convention.
4. The Committee also had before it additional material supplied by the State party, and a report specially prepared by the Office of the Ombudsman. The information contained in this document and its

annexes has been very useful in evaluating compliance with the obligations the Convention places on the State party.

5. The Committee thanks the State party for sending a large and well-qualified delegation of representatives of the Government and the Office of the Ombudsman; its frank and constructive dialogue with them facilitated consideration of the report.

B. Positive aspects

6. The Committee welcomes with satisfaction the entry into force on 30 December 1999 of the new Constitution of the Bolivarian Republic of Venezuela, which contains areas of progress in human rights. In particular, the Committee considers as positive the following aspects of the Constitution:
 - (a) It gives constitutional status to human rights treaties, covenants and conventions, declares that they take precedence in domestic law, prescribes that they should be immediately and directly applicable and provides that the absence of any law regulating these rights does not impair their exercise;
 - (b) It recognizes the right of individuals to submit petitions or complaints to the international bodies established for the purpose in order to seek protection for their human rights. This recognition is in accordance with the declaration by the State party in 1994 under article 22 of the Convention;
 - (c) It requires the State to investigate and impose penalties on human rights offences, declares that action to punish them is not subject to a statute of limitations and excludes any measure implying impunity, such as an amnesty or a general pardon;
 - (d) It requires offences concerning human rights violations and crimes against humanity to be heard in the ordinary courts;
 - (e) It imposes on the State the obligation of compensating in full victims of human rights violations and recognizes the right to rehabilitation of victims of torture and cruel, inhuman or degrading treatment, inflicted or tolerated by agents of the State;

- (f) It regulates custody safeguards appropriately, e.g. a prior court order is required for any arrest or detention, except in flagrante delicto; a period of 48 hours is established at the constitutional level for bringing a detainee before a judicial authority, as the Code of Criminal Procedure already provides; the liberty of the person charged is taken as the general rule and pre-trial custody as the exception;
 - (g) It admits a series of safeguards for the detainee, such as access to a lawyer immediately on being detained and a ban on obtaining confessions by torture;
 - (h) It makes compulsory the extradition of persons charged with human rights offences, and makes provision for a brief, public, oral procedure for trying them.
7. The Committee considers of particular importance the establishment under the Constitution of the Office of the Ombudsman as an independent body responsible for the promotion, protection and monitoring of the rights and safeguards established in the Constitution and in the international human rights instruments ratified by Venezuela.
 8. The Committee takes note with satisfaction of the adoption of various legislative provisions and the establishment of units in various sectors of the State administration as an indication of the importance assigned to better protection and promotion of human rights. Important instances of such provisions are the organization acts on states of emergency, on refugees and asylum-seekers, on the Public Prosecutor's Office and on the protection of children and young people. Among the units established, mention should be made of the Human Rights Department of the Ministry of the Interior and Justice.
 9. It also welcomes with satisfaction the ratification of the Rome Statute of the International Criminal Court in December 2000.

C. Subjects of concern

10. The Committee expresses its concern at the following:

- (a) The failure, despite the extensive legal reforms undertaken by the State party, to classify torture as a specific offence in Venezuelan legislation, in accordance with the definition in article 1 of the Convention;
- (b) The numerous complaints of torture, cruel, inhuman and degrading treatment, abuse of authority and arbitrary acts committed by agents of State security bodies which render inoperative the protective provisions of the Constitution and the Code of Criminal Procedure;
- (c) Complaints of abuse of power and improper use of force as a means of control, particularly during demonstrations and protests;
- (d) Complaints of threats and attacks against sexual minorities and transgender activists, particularly in the State of Carabobo;
- (e) Information on threats to and harassment of persons who bring complaints of ill-treatment against police officers and the lack of adequate protection for witnesses and victims;
- (f) The absence of prompt and impartial investigations of complaints of torture and cruel, inhuman and degrading treatment, and the lack of an accessible, institutionalized procedure in order to ensure the right of victims of acts of torture to obtain redress and fair and adequate compensation, as article 14 of the Convention provides;
- (g) The numerous instances in prisons of prisoner-on-prisoner violence and violence against prisoners by prison officers, which have led to serious injuries and in some cases to death. The precarious material conditions in prisons are also a matter for concern;
- (h) The lack of information, including statistical data, on torture and cruel, inhuman or degrading treatment or punishment, broken down by nationality, gender, ethnic group, geographical location and type and place of detention.

D. Recommendations

11. The Committee recommends that the State party should:
- (a) Adopt legislation making torture a punishable offence. Pursuant to the fourth transitional provision of the new Constitution, this requires a special act or the reform of the Penal Code within a year of the establishment of the National Assembly; this period had already been greatly exceeded;
 - (b) Adopt all necessary measures to ensure immediate and impartial investigation of all cases of complaints of torture and cruel, inhuman or degrading treatment. The agents concerned should be suspended from their duties during these investigations;
 - (c) Adopt measures to regulate and institutionalize the right of victims of torture to fair and adequate compensation and draw up programmes for their physical and mental rehabilitation to the fullest extent possible, as the Committee had already recommended in its previous conclusions and recommendations;
 - (d) Continue its activities of education in and promotion of human rights, particularly the prohibition of acts of torture, for law-enforcement and medical personnel;
 - (e) Adopt measures to improve material conditions of detention in prisons and prevent both prisoner-on-prisoner violence and violence against prisoners by prison personnel. It is also recommended that the State party should strengthen independent prison inspection procedures.
12. The Committee requests that the State party should include statistical data in its next periodic report, broken down, inter alia, by nationality, age and gender of the victims, and an indication of the services to which the persons accused belong, with regard to cases under the Convention coming before domestic bodies; it should also include the results of the investigations carried out and the consequences for the victims in terms of redress and compensation.
13. The Committee invites the State party to submit its fourth periodic report at latest by 20 August 2004 and to disseminate widely the Committee's conclusions and recommendations.

Violence against Women in Yemen

A Report to the Human Rights Committee

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Seventy-fifth session – 8-26 July 2002

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1. Preliminary Observations

The submission of information specifically relating to violence against women to the United Nations Human Rights Committee forms part of OMCT's violence against women programme which focuses on integrating a gender perspective into the work of the five "mainstream" United Nations human rights treaty monitoring bodies. OMCT's gender analyses and reporting entail an examination of the effects of gender on the form which the human rights violation takes, the circumstances in which the abuse occurs, the consequences of those abuses, and the availability and accessibility of remedies.

OMCT notes with concern that the third periodic report by the government of Yemen (UN Doc. CCPR/C/YEM/2001/3), while being very comprehensive in a number of respects, does not address the issue of violence against women. In fact, apart from its analysis of the implementation of article 3 of the International Covenant on Civil and Political Rights (ICCPR) in relation to the participation of women in politics and education, the report rarely refers to discrimination against women.

OMCT would like to reiterate the fact that article 3 of the ICCPR stresses the need to ensure the equal right of men and women to the enjoyment of "*all* civil and political rights set forth in the present covenant." [emphasis added]

Moreover, with regard to violence against women, OMCT would like to recall that in paragraph 11 of General Comment 28 adopted by the Human Rights Committee in March 2000, which examines the equality of rights between men and women and updates its earlier General Comment on that topic adopted in 1981,¹ the Committee addresses the fact that much of the violence suffered by women is violence that occurs at the hands of private individuals and recognises that this violence can amount to torture which is prohibited by article 7 in the Covenant. The paragraph reads: "To assess compliance with article 7 of the Covenant, as well as with article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practices with regard to domestic and other forms of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape. The States Parties should also

provide the Committee information on measures to prevent forced abortion or forced sterilisation. In States Parties where the practice of genital mutilation exists, information on its extent and on measures to eliminate it should be provided. The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated.”

1.1 The legal framework

Yemen acceded to the International Covenant on Civil and Political Rights (ICCPR) as well as to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 9 February 1987.

With regard to other international human rights instruments, Yemen has also acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of Racial Discrimination (CERD) and it has ratified the Convention on the Rights of the Child (CRC).

OMCT notes with concern that Yemen has neither signed nor ratified the Optional Protocols to the ICCPR, to the CEDAW or to the CRC. In addition, Yemen has not yet recognized the competence of the Committee against Torture (under Article 22 of the CAT) or the Committee on the Elimination of Racial Discrimination (under Article 14 of CERD) to receive and process individual communications.

The unification of Yemen in 1990 brought together two contrasting and, at times contradictory, sets of legislative and constitutional positions concerning the human rights of women. The former Yemen Arab Republic (YAR) primarily had a Shari’a based and traditional legal system whereas the former People’s Democratic Republic of Yemen (PDRY) was grounded in a socialist and secular ideology. The post-unification Constitution attempted to construct a bridge between these two positions and while it did not incorporate many of the commitments to State intervention on behalf of women contained in the Constitution of the former PDRY, it did expand upon the limited constitutional rights afforded to women under the Constitution of the former YAR.

The 1990 Constitution provided in Article 19 that all citizens would be assured “equal political, economic, social and cultural opportunities” while Article 27 restated this commitment to equality before the law and prohibited discrimination.

The Constitution as amended following the 1993 elections and the 1994 civil war omitted the previous references to gender, race and social status. A new article, article 31 was added stating that “women are the sisters of men. They have rights and duties, which are guaranteed and assigned by Shari’a and stipulated by law.”

2. General information on the Status of Women and Girls

Yemen is among the countries with one of the lowest levels of gender equality in the world according to the criteria developed by the United Nations Development Programme. In the 2001 Human Development Report, Yemen ranks 131 out of the 146 countries that figure on the gender development index.² This gender inequality is characterized by low levels of female literacy, high average birth rates as well as high maternal mortality, a lack of female representation and participation in decision-making structures at all levels of government, restricted educational and economic opportunities for women and high levels of violence against women in both the private and public spheres.³

In general, the position and status of women in Yemeni society are heavily influenced by family and tribal structures and the ‘correct behaviour’ of women is regarded as being central to the honour of the family.⁴ These social customs inform and support restrictive interpretations of the Shari’a and have frequently resulted in ongoing violations of women’s rights, including a widespread failure to provide women with legal protection against violence and the increased vulnerability of women to accusations of “moral crimes.”⁵

2.1 De jure discrimination

Discrimination against women is deeply entrenched in Yemeni legislation and there are provisions in the Penal Code, the Personal Status Act (1992) and the Citizenship Law that clearly violate international norms prohibiting discrimination on the grounds of gender.

A comprehensive study prepared for Oxfam GB Yemen in 2001 notes in relation to the Penal Code that it emphasizes “women’s limited rights as legal and social personae subordinate to the authority of their male family members. In addition to the statutory gender inequities, police behaviour and judicial interpretation often punish female victims rather than male criminals.”⁶

The Personal Status Act (1992) governs family law in Yemen. The Act contains many provisions that discriminate against women, for example article 23 provides that while the consent of the bride is required in order to conclude the marriage contract, when the bride is a virgin silence will be interpreted as consent. The groom is a direct party to the marriage contract while the bride is not.⁷

Of particular concern is article 40 of the Personal Status Act which establishes the marital obligations of the wife. Article 40 states that a woman is legally required to provide her husband with “sexual access”, thereby excluding the possibility of marital rape. The article further states that wives are required to obey their husbands in all “matters that are not sinful” and to perform tasks in the marital house. The obligation of obedience includes a prohibition on leaving the house without the husband’s permission “except for a legal excuse or for socially accepted reasons that do not violate honour or her duties towards the husband, particularly looking after her interests or practicing a job.”⁸

Polygamy is permitted and regulated by article 12 of the Personal Status Act which provides that a man may have four wives provided that he: (a) treats them in an equal manner; (b) is capable of providing for all of them; and (c) informs each wife of his marriage to the other wives.

With regard to divorce, the Personal Status Act allows for verbal unilateral repudiation of the wife by the husband in its articles 72, 73 and 74. Women may initiate divorce proceedings however they, unlike men, must

provide justification such as; abandonment, non-payment of maintenance, alcohol or drug abuse, adultery, impotence, disease or marriage to a second wife without permission. A critical legal issue for women seeking divorce is that they must return their dowry (*mahr*) and there is therefore a strong economic disincentive for women to divorce. The rules governing child custody in the event of divorce are laid out in articles 141 and 142 of the Personal Status Act where it is recognized that “the mother is the most deserving party to guardianship of her children” until her son turns nine or her daughter turns twelve. Importantly, women wishing to obtain guardianship of their children must show “maturity, sanity, faithfulness and moral and physical capacity” with remarriage or “misconduct” being grounds for the father to revoke or bar custody. No similar requirements exist for men seeking custody of their children.

The Citizenship Law provides that Yemeni women are not permitted to marry foreigners unless they receive permission to do so from the Minister of the Interior. Under a 1995 Regulation by the Ministry of the Interior, a Yemeni woman wishing to marry a foreigner must present proof to the Ministry of her parents’ approval. A foreign woman wishing to marry a Yemeni man must prove to the Ministry of the Interior that she is ‘of good conduct and behaviour’ and is ‘free from contagious disease.’ There is no corresponding requirement for men to provide parental approval or to demonstrate good conduct and good health.⁹

In addition to the gendered provisions of the Citizenship Law, article 6 of the Yemeni Passport Law is interpreted in practice as requiring women to seek male sponsorship prior to being issued with a passport.

2.2 Discrimination under Tribal Law or Ahkam al-aslaf

The application of tribal laws or *ahkam al-aslaf* (rules of ancestors) continues to have a direct and frequently negative impact upon the human rights of women in Yemen. A major study on women and children conducted in 1998 noted that tribal law generally mirrors the strongly patriarchal nature of rural society in Yemen in that it considers women to be the property of men in their paternal lineage prior to marriage while after marriage women come under the authority of their husband’s family.¹⁰

Women are generally not able to negotiate their own marriage contracts under tribal law and while the law in Mareb, Al Jawf and Saddah reportedly permits women the same right of divorce as men, this right is normally only accorded to women of high social status and is not available to women under tribal law in other areas.

In addition, tribal law typically denies a woman the right to inherit tribal lands if she marries outside of her tribe in order to prevent the land from being transferred to another tribe through inter-marriage.

2.3 Educational Opportunities and Literacy

According to information received from the Programme on Governance in the Arab Region, Yemen lags behind most countries in the region in terms of female education. Adult female illiteracy is over double that of men (76 per cent for women as compared to 33 per cent for men), and female youth illiteracy is also very high (56 per cent as compared to 18 per cent).¹¹

There is an alarming gap between the number of girls and boys enrolled in primary and secondary education in Yemen and the affects of this gap are clearly apparent in the low level of female literacy in the country as compared with that for men. According to statistics published by UNICEF, the net primary school enrolment ratio for girls is 39 per cent as compared to 79 per cent for boys, at the secondary school level, girls represent only 14 per cent of pupils.¹²

Women's lack of decision-making power in both the private and public spheres is strongly linked to their low levels of literacy and educational opportunities. Several surveys have demonstrated that there is a direct correlation between low levels of female literacy in Yemen and violence against women and girls including early marriages, female genital mutilation, domestic violence and child labour.¹³

2.4 Child Labour

According to statistics published in the 1998 Statistical Year Book, 11 per cent of girl children aged between 10 and 14 are active in the workforce

while 10.1 per cent of boys in the same age group are economically active.¹⁴

A survey conducted by the Yemeni General Federation of Worker's Trade Union and the Friedrich Ebert Stiftung found that the problem of child labour was most acute in rural areas of the country with 92 per cent of labouring children aged between 6 and 14 working in the agricultural sector and, of these, 54.4 per cent are girls who generally work without remuneration on family farms. The study attributed the increase in the number of girls working to the fact that girls are not encouraged to go to school and that when they do begin education, they often drop out early in order to get married.¹⁵

Other studies have shown that child labourers in Yemen are often subjected to insecure and hazardous working conditions and to violence including sexual harassment and assault.¹⁶ OMCT is concerned that the government has not taken adequate steps to tackle the issue of child labour, in particular through the establishment of programmes to facilitate and encourage girls to attend and remain in education.

2.5 Employment

Overall, women make up 28 per cent of Yemen's remunerated labour force, with higher rates of labour force participation in the southern areas of the country than in the north. Women tend to be concentrated in low-skilled and low status occupations and since unification in 1990, rising unemployment as well as institutionalized gender discrimination have seriously weakened the position of women in the labour market.¹⁷ There is no legal prohibition on sexual harassment in the workplace and it reportedly occurs in practice.¹⁸

Women are vastly under-represented in high level positions within the public service and in the private sector. To take just one example, of the 110 Ambassadors serving in the Yemeni foreign service, only one is a woman.

In 1999, there were 32 female judges on the bench (out of a total of 1232 judges throughout Yemen) and in 1997 there were only 25 women who had been appointed to posts in the public prosecution. It has been

suggested that, in general, women are not welcomed into the legal profession and that there is widespread discrimination against female lawyers and their clients.¹⁹

2.6 Political Representation

Women continue to be under-represented in the political sphere in Yemen and despite the fact that several women's organizations have attempted to raise the issue of temporary special measures in order to facilitate women's participation in politics, there has been no response from members of parliament. At the parliamentary elections in 1997, two women were elected to the House of Representatives out of a total of 301 members of parliament.²⁰ Women therefore represent less than one per cent of the total number of parliamentarians.

The situation is not any better at the local government level with 35 women having been elected to Local Councils in 2001 out of more than 5,000, again this is equivalent to one per cent of the total number of councilors.

In governmental Committees that are constituted by appointment rather than by election, women have also been overlooked. The Shura Council includes two women out of a total of 109 members appointed by the President.

Out of the 25 ministers currently in government, there are no female ministers and of the 6 State Ministers only one, the State Minister for Human Rights is a woman. Importantly, the Human Rights portfolio is reportedly more of an advisory position as opposed to the other State Ministers who are all heads of Departments and have control over substantial budgets and staff.

Despite their lack of representation in decision-making structures, women in Yemen do participate in the political process, over 1.3 million women voted in the 1997 general election, meaning that women cast approximately one quarter of all votes.²¹ Nevertheless, the high level of female illiteracy has severely circumscribed the ability of women to effectively lobby for political change or to have a greater influence over the political process.

2.7 Repression of Women's Rights Organizations

In December 1999, the Empirical Research and Women's Studies Center at Sana'a University was closed by a court order. Professor Mansour Al-Zindani, a political science professor at the university who pushed for the closure reportedly stated that the Dutch-funded center had provoked conservative Yemeni society by repeatedly using the word "gender" in its publications and during a conference in September 1999 on "Challenges for Women's Studies in the 21st Century." In audio cassette tapes allegedly available in shops in Sana'a just prior to the center's closure, a Muslim cleric reportedly describes the "gender conspiracy" stating that "Gender is total decadence, meaning families of men married to men or women married to women. It also means that a woman can offer herself to any man she fancies." Severe criticism of the conference, the center's curriculum and its staff was also circulated in various articles published in *al-Sahwa* the Yemeni Congregation for Reform's (*al-Islah*) weekly newspaper. These criticisms as well as threats from other quarters lead to a decision by the center's executive director, Ra'ufa Hasan al-Sharqi to employ personal body guards and later to continue her work from the Netherlands.²²

In a more recent case of repression, Ms. Souad Ata Al Geds, the Director of the Women's Forum for Research and Training in Ta'az, has reportedly been subjected to harassment, intimidation and death threats from individuals claiming to belong to the "Political Security" unit of the Yemeni government.²³

OMCT is also very concerned by the fact that much of the valuable information it received for the compilation of this report was provided on the basis of anonymity as the women and organizations contacted did not wish to be cited in the report for fear of being subjected to reprisals.

3. Violence against Women in the Family

3.1 Woman battering

Violence committed against women by family members is reportedly a widespread and increasingly serious problem in Yemen, however, the

exact extent and scope of this violence are difficult to quantify given that women are, for a number of reasons, unlikely to report domestic violence and that there has been very little research carried out at the national level.

One of the first exploratory studies on domestic violence in Yemen was completed by a team of two researchers in August 2000. The survey revealed that 46.3 per cent of the women questioned had experienced battering by spouses or other family members at some point in their lives. Other results of the study noted that 50.9 per cent of women had been the victims of threats of violence, 54.5 per cent had suffered physical abuse, 17.3 per cent had been subjected to sexual violence, 28.2 per cent had had their freedom restricted and 34 per cent had had property either damaged or stolen. Only 28.2 per cent of the women surveyed had not experienced any form of violence in the home while a sizeable 44.5 per cent suffered from three or more kind of violence.²⁴

Patriarchal socio-cultural attitudes and practices both perpetuate and reinforce domestic violence as it is widely believed that physical abuse by a husband in the privacy of the home is not aberrant behaviour but rather an acceptable way to enforce the duty of conjugal obedience.²⁵ One study notes that even though there are more governmental channels through which crimes, including domestic violence may be reported, there is a generalized reluctance among victims to use these due to a lack of confidence in these processes.²⁶

In spite of the fact that it would appear that domestic violence is a serious and relatively widespread phenomenon in Yemen, there is no specific legislation on domestic violence. The few cases of domestic violence that are prosecuted are brought under the general assault provisions of the Penal Code which do not take into consideration the special relationship that exists between the perpetrator and the victim in cases of family-based violence.

In fact, certain provisions in Yemeni legislation actually serve to perpetuate and condone domestic violence. For example, article 232 of the Penal Code provides that: "if a man kills his wife and the one committing adultery with her in the case of their being caught red-handed in the commission of adultery, or assaults them leading to death or an impairment, there shall be no retribution. However, the man may be punished with imprison-

ment for a period not exceeding one year or a fine. The same ruling shall apply to whosoever surprises any of his direct or subsidiary relations or sisters during the red-handed commission of the crime of adultery.”

Law enforcement authorities are reportedly lacking in the skills as well as the legislative framework necessary to adequately respond to complaints of domestic violence. The prevailing attitude amongst police officers is to regard women who report domestic violence as being lacking in virtue. Several of the police officers interviewed for the purposes of a 1999 study on violence against women reportedly stated that: “the respectable woman should put up with assaults made against her by family members, especially if the assault is done by the husband. Men’s assaults against women are at many times the result of women’s bad behaviour.”²⁷ There have also been a few instances of women being sexually harassed by police when they have come to police stations for the purposes of reporting domestic violence.²⁸

In addition to the other factors that work to discourage women from reporting domestic violence, in many cases, women who are victims of violence in the family are treated as co-perpetrators and in the event that they do decide to report crimes of violence committed against them by family members, they actually run the risk of being punished.²⁹ In May 2000, a woman who was repeatedly raped by her father and made pregnant by him was jailed for five years while the father received a prison sentence of 20 years.³⁰

Given the legal, social and cultural environment and, in particular, the prevailing attitudes of law enforcement authorities to the issue of domestic violence, it is not surprising that women do not feel that they can appeal to these authorities for assistance. In fact, it has been estimated that only 3.4 per cent of women who have been subjected to domestic violence report this violence to the police.³¹

3.2 Crimes Committed in the Name of Honour

Crimes of honour have been defined as “murder, harm and/or threats committed by a member of the family against another member of the family usually female, who is accused of actions that violate moral guidelines.”³² There is very little information concerning the prevalence of ‘honour

crimes' in Yemeni society and while some local non-governmental organizations have reportedly stated that the phenomenon is not widespread, other organizations assert that honour crimes do occur but that they currently lack evidence to substantiate this claim.³³

In one reported case from 1997, two Yemeni men allegedly bludgeoned their mother to death and threw her body onto a roadside embankment for "practicing immoral acts", it is unknown whether the men were arrested or prosecuted for the murder.³⁴ Information from UNICEF for the year 1997 states that as many as 400 honour killings took place during that year alone.³⁵

Some provisions of the Penal Code, such as article 232 effectively sanction honour crimes by providing for mitigated sentences for family members found guilty of having committed a "crime against honour". While the Code generally stipulates that the death penalty is the appropriate punishment for murder, if a husband who catches his wife or a "direct or subsidiary relation or sister" in the act of committing adultery and murders her and/or her alleged lover, he may be fined or sentenced to imprisonment for a term not exceeding one year.

In light of the fact that the prevalence of honour crimes in Yemeni society does not appear to have been studied in a systematic or detailed way, OMCT would call upon the government to provide more information on this issue in its next report to the Human Rights Committee. It would also emphasise the need for the government to consider modifying those provisions of the Penal Code that provide for mitigated punishments in cases of crimes committed in the name of honour.

3.3 Marital Rape

As mentioned previously, marital rape is effectively condoned in article 40 of the Personal Status Act which provides that a woman is legally obliged to grant her husband "sexual access."

Statistics gathered from a small scale survey conducted in 1997 show that up to 17.3 per cent of the women interviewed had been subjected to some form of sexual violence in the context of marriage but that only one of the women stated that she had been raped by her husband. The survey noted,

however, that all forms of domestic violence – and in particular marital rape - are vastly under-reported.³⁶

3.4 Early marriage

While the legal age for marriage for both girls and boys under article 15 of the Personal Status Act is 15 years old, in practice, the marriage of girls as young as 12 has been reported and child marriages are common in rural areas. The Yemen Women National Committee states that “early marriage is considered among the social phenomena that prevail in Yemen.”³⁷ Other statistical evidence suggests that in practice, the median age of marriage for girls in urban areas is 17.6 years while for those in rural areas it is 15.9.³⁸ The 1997 Demographic and Maternal and Child Health Survey found that over a quarter of respondents felt that 15 was an ideal age for girls to marry.³⁹

The phenomenon of early marriage is highly gendered as surveys have shown that in spite of the fact that boys are also legally permitted to be married at 15, the median age of marriage for men is around 4 years later than it is for girls.⁴⁰ In many societies where early marriage is common, there is a feeling that it is better for girls to marry before they lose their virginity and, thereby, their “honour” and there is thus a strong connection between early marriage and gendered codes of social behaviour which emphasize control of female sexuality.

The provisions in the Personal Status Act concerning the minimum age for marriage are clearly contrary to article 23 (3) of the ICCPR, article 2 of the CRC and article 16 of the CEDAW, and they render girls vulnerable to violence. It should be noted that early marriage may lead to childhood or teenage pregnancy and that in Yemen, the high level of fertility (on average 6.2 births per woman) is undoubtedly a direct consequence of early marriage.⁴¹ Childbearing during early or middle adolescence, before girls are biologically and psychologically mature, is associated with adverse health outcomes for both the mother and child.⁴²

4. Violence against Women in the Community

As with domestic violence, there has been little research done on the

extent and scope of violence against women within the community. Anecdotal evidence gathered by non-governmental organizations suggests that rape and other forms of sexual violence, sexual harassment in the workplace, female genital mutilation and trafficking in women do occur but that this violence is rarely reported.

Aside from the social and cultural factors which discourage women from reporting acts of violence committed against them in the community, there are also legal provisions that promote and reinforce the prevailing idea that women's lives and personal security are less important than men's. For example, under article 52 (2) of the Penal Code, the family of a woman who is murdered receives half of the "blood price" of that provided to the family of a murdered man, thereby sending the message that a woman's life is "half" as valuable as that of a man. According to a study carried out by a team of legal researchers from the National Women's Committee in 2001, this provision is contrary to both Quranic law and to the Constitution, both of which provide for equality between men and women in all matters including the payment of "blood price."⁴³

4.1 Female Genital Mutilation

According to a 1997 demographic survey conducted by the government, nearly 23 per cent of married women in Yemen have been subjected to female genital mutilation (FGM).⁴⁴ Nearly 97 per cent of FGM operations are performed in the home of the girl by traditional midwives while the remaining 3 per cent are performed in health care facilities.⁴⁵ Other information shows that women aged between 20 and 24 are only slightly less likely to have undergone FGM than women aged between 45 and 49, thereby leading to the conclusion that while the frequency of the practice has not increased in recent years, it has not substantially decreased either.⁴⁶

The practice of FGM is reportedly more prevalent in the eastern, coastal governorates of Al-Mahara and Hadramout. A study carried out in 2001 has shown that 69 per cent of women living in the coastal regions of Yemen had been subjected to FGM as compared to 15 per cent in the mountains and 5 per cent in the plateau and desert regions.⁴⁷

The government has only very recently begun publicly discouraging the practice of FGM and in January 2001, the cabinet reportedly issued a decree making it illegal for public or private health service practitioners to perform FGM.⁴⁸ Bearing in mind that at the moment only 3 per cent of FGM surgeries are performed by health service providers, it is clear that this government initiative will probably only have a very limited impact. Women's rights groups have reported that apart from issuing the January 2001 decree, the government has yet to take any comprehensive policy measures for the prevention and eradication of FGM.

4.2 Trafficking and Forced Prostitution

There is currently very little information available concerning trafficking in women and girls for the purposes of forced or bonded labour or for forced prostitution. For this reason, OMCT would like to call upon the government to provide further information concerning this form of violence against women in its next periodic report to the Human Rights Committee.

Prostitution is prohibited and it is generally grouped together with adultery for the purposes of punishment under the Penal Code. Article 277 of the Code defines both adultery and prostitution as "commitment of acts that abuse honour and contravene the Shari'a for spoiling manners of others or for illicit gain." Article 278 provides that "any person exercising adultery or prostitution shall be punished with imprisonment for a period not exceeding 3 years or with a fine."⁴⁹ Therefore the legal system does not appear to make any distinction between forced and consensual prostitution and it is unclear as to whether women who are forced or trafficked into prostitution are also liable to punishment.

Slavery is prohibited and punished under article 248 of the Penal Code which stipulates that "whosoever: buys, sells or presents a human being as a gift; brings into the country or takes a person out of the country for the purpose of trading that person; shall be punished with imprisonment for a period not exceeding 10 years."⁵⁰ It should be noted, however, that this article does not explicitly address trafficking in persons for the purposes of forced or bonded labour or for sexual exploitation.

5. Violence against Women Perpetrated by the State

5.1 Torture, Cruel and Inhuman or Degrading Treatment or Punishment

Torture is prohibited under article 47 of the Yemeni Constitution, as well as under article 6 of the Code of Criminal Procedure and articles 166-168 of the Penal Code. Importantly, however, the Constitution does not contain a detailed definition of torture and the criminal provisions on torture are infrequently and inconsistently enforced in practice.⁵¹

According to the UN Special Rapporteur on Torture as well as a number of national and international non-governmental organizations, cases of torture and inhuman or degrading treatment or punishment continue to occur in Yemen and there is allegedly widespread impunity for these practices.⁵²

There have also been a number of reports by local non-governmental organizations and by international human rights mechanisms alleging that police have engaged in corporal punishment and other forms of torture and cruel, inhuman or degrading treatment or punishment against women in detention.

A report released in June 2001 documented the corporal punishment and severe beating by police of six women detained in the interrogation center in the Taiz governmental district. The complaint was raised with the Supreme National Commission on Human Rights, the Office of the President and the Ministry of the Interior and, while the women were released from detention, the alleged perpetrators of the torture and ill treatment were not sanctioned.

The Minister for Human Rights has also been informed of several cases of the beating of women by police officers in the interrogation center in the Ibb District. In August 2000, Sabah Seif Salem reportedly died while being detained in a prison in the al-Udain district of the Ibb governorate. Her family claimed that security officials tortured her to extract a confession of adultery. The director of Ibb security ordered that an autopsy be performed and it was found that Salem was pregnant when she was detained for questioning, she went into labour while in police custody,

was transported to a clinic and reportedly died as a result of complications during the birth. The investigation subsequently concluded that Salem had not been tortured although the grounds upon which this conclusion was reached were not made public.⁵³

The Yemen Human Rights Guard (HRG) documented the case of ‘Shadia’ a woman who was arrested, held in the Criminal Investigations detention center and allegedly beaten by four soldiers in order to force her to give them the name of the person who had sexually assaulted her. She refused until two days later when she was summoned by an officer who promised that she would be released if she told him everything. Five months later, after having revealed the identity of her attacker, she was reportedly still being held in detention without any charges having been laid.⁵⁴

In another reported case, a girl was allegedly being held in the women’s prison in the Al-Mahweet Governorate after having been sentenced to death on a murder charge. The sentence was pronounced in spite of the fact that both Yemeni and international law do not permit the carrying out of the death penalty on minors. The case was raised with the Minister for Human Rights, however, it is unclear as to whether any action has been taken.

5.2 Women in Detention

There have been reports that women in Yemen suffer from entrenched gender discrimination in the judicial and penitential systems and that women are frequently subjected to arbitrary detention for alleged crimes against “morals.” UNICEF estimated that in 1998 there were approximately 1,000 women incarcerated in state detention facilities through Yemen.⁵⁵ There have been numerous reports that conditions for female prisoners are reportedly very poor with allegations that detained women are routinely abused by the almost exclusively male prison staff.⁵⁶

According to information received from local non-governmental organizations, women are regularly detained beyond the end of their prison sentences until such time as a male relative decides to come and collect them from prison, a situation which effectively means that some women are condemned to life imprisonment.⁵⁷ Many detained women either choose to remain in prison for fear of abuse by family members and rejection by

their communities or they are forced to remain because their male relatives refuse to take responsibility for them due to the ‘shame’ associated with their having been in detention. To date, the Yemeni government has taken little action with regard to accommodating women who have served their sentences but have no male relatives willing to take custody of them.⁵⁸

Women also reportedly receive disproportionate prison sentences, particularly in cases where they are charged with “moral” crimes such as *zina* (adultery or fornication) or *khilwa* (an offence which no longer appears in the Yemeni Penal Code but one for which men and women are still reportedly being detained and punished). In her report for the year 2000, the Special Rapporteur on Violence against Women documents several cases of women convicted for *zina* spending more than four years in prison despite the fact that the maximum punishment provided for in the Penal Code is one year. In addition, one of the women, aged 17 years, was reportedly being detained in Ta’iz prison following her arrest three years previously for *zina*. At the time that the Rapporteur submitted her report, the girl had yet to be sentenced.⁵⁹

In a visit to Mansoorah prison in Aden in 2000, Oxfam researcher Marta Colburn interviewed ten women detainees, one had been imprisoned for performing illegal abortions, two for theft, one for abuse of alcohol and six for *zina*. Of those arrested for *zina*, all but one claimed that she had been abandoned by her husband and had therefore had no choice but to live with another man in order to provide for her children. Of these ten women, only two had had their cases tried in court and been sentenced. A majority of the remaining eight had already served more than a year in detention without trial. One of the prisoners stated that she had been severely beaten by police as well as by her father at the time of her arrest (which was instigated by her father over an inheritance dispute). She stated that she was still suffering physically as a result of this incident.⁶⁰

There are also many cases of women being detained without charges for behaviour that is considered to be “improper” but which is not prohibited under the Penal Code or under the Personal Status Act. Research has shown that as many as half of all women being held in prison are still awaiting formal charges and have not appeared before a court.⁶¹ In one case, a woman who had left her allegedly abusive husband was arrested

and was being held in Ta'iz prison more than one year later for allegedly sleeping in the house of another man.⁶² Even when women do finally appear before a court, gender discrimination, as outlined above, affects both the hearing and sentencing of their crimes.

Conditions for female detainees are reportedly very poor and despite the fact that the Organization of Prisons Act No. 48 of 1991 stipulates that “female prisoners shall be isolated from male prisoners”, there appears to be no regulation providing that women’s prisons be staffed exclusively by female prison officers. Women in detention are often subjected to gender-based forms of torture and ill treatment including rape and sexual violence as well as being forced into prostitution and there is reportedly widespread impunity for these crimes.⁶³

6. Conclusions and Recommendations

OMCT welcomes the fact that Yemen has ratified most of the major international and regional instruments aimed at the promotion and protection of human rights. OMCT would also welcome the ratification by Yemen of the Optional Protocols to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women which would, amongst other things, enable women in Yemen to lodge individual complaints concerning violations of the rights guaranteed under these instruments. In addition, OMCT would call upon the government to make declarations under Articles 21 and 22 of the Convention Against Torture accepting the competence of the Committee against Torture to examine communications and individual complaints.

Women in Yemen face many obstacles to the realisation of their human rights and although the Government has taken some steps to integrate gender concerns into its policy-making, much work remains to be done in order to ensure that women do not continue to experience violence and other forms of discrimination. In the view of OMCT, there is a particularly urgent need to address social attitudes which reinforce the subordinate position of women and leave them vulnerable to violence in the family, in the community and at the hands of State officials. For this reason, OMCT would recommend that the Government develop a comprehensive strategy

for the prevention and elimination of all forms of violence against women and that this strategy include training for State officials at all levels in dealing with complaints of violence against women as well as a general public education campaign aimed at changing social attitudes concerning the status of women.

OMCT regrets the fact that the Government report does not contain any detailed information concerning violence against women and girls in Yemen and would call upon the Government to provide such information, including statistics on rates of violence against women in its next periodic report to the Human Rights Committee.

OMCT is very concerned that there are certain areas of law in which de jure discrimination against women persists and would recommend that the government take urgent action to amend legislation concerning the age of marriage, family law, criminal law, inheritance rights and nationality so as to guarantee women equal rights with men in these areas.

OMCT remains concerned by the fact that women are under-represented in decision-making structures in Yemen. The absence of women in positions of influence in the public service, in parliament and in the judiciary means that gender is rarely taken into account in the formulation of law and policy or in its implementation. For this reason, OMCT would welcome the development of affirmative action programmes designed to increase the numbers of women in policy and decision-making structures at all levels.

Domestic violence is a little-documented but apparently serious problem in Yemen and OMCT is very concerned that the Government has yet to develop a comprehensive policy and legislative response to the problem. OMCT would like to call upon the Government to urgently discuss, draft and adopt specific legislation for the prevention, prohibition and punishment of domestic violence. This legislation should be drafted in such a way that it covers both physical and psychological violence and that it provides for protective mechanisms including restraining orders.

In addition, greater attention must be paid to the factors that currently prevent women and girls in Yemen from lodging complaints in relation to domestic violence. These factors include traditional social beliefs concerning the subordinate status of women in family relationships as

well as the lack of specialised training amongst law enforcement personnel and members of the judiciary who frequently mirror prevailing social stereotypes concerning domestic violence and, as a result, often actively discourage women and girls from making complaints. OMCT would like to suggest the development of broad-based public awareness campaigns concerning domestic violence, if possible in conjunction with local human rights organisations. Recent initiatives amongst health care professionals and members of the NGO community to establish hotline facilities for victims of domestic violence should be encouraged and expanded.

In relation to the training of law enforcement personnel and members of the judiciary, OMCT would recommend that comprehensive training on responding to complaints of domestic violence be provided to all personnel currently in service as well as to potential police officers and judges in the context of their basic training. OMCT would also strongly encourage the government initiative to establish a female police authority.

OMCT is very concerned that marital rape is explicitly condoned in article 40 of the Personal Status Act and would call upon the Government to amend the Act as well as the Penal Code in order to ensure that rape in the context of marriage is criminalised.

The marriage of girls as young as 12, despite the fact that the Personal Status Act stipulates that the legal age of marriage is 15 for both boys and girls, is a matter of serious concern. Early marriage has been shown to render girls more vulnerable to domestic violence and, by prolonging their reproductive lives, it can also lead to other serious health consequences. OMCT urges the government to ensure that the legal age limit for marriage is strictly enforced and it would also strongly encourage the government to raise this age limit to 18 years for both women and men.

In light of the fact that the prevalence of honour crimes in Yemeni society does not appear to have been studied in any detailed way, OMCT would call upon the government to provide more information on this issue in its next report to the Human Rights Committee and it would also emphasize the need for the government to consider modifying those provisions of the Penal Code that provide for mitigated punishments in cases of crimes committed in the name of honour.

OMCT would also call upon the government to take stronger measures for the eradication and punishment of female genital mutilation including through the adoption of legislation prohibiting the practice and through the involvement of religious and community leaders in education and awareness-raising campaigns on FGM.

There is currently very little information available concerning trafficking in women and girls for the purposes of forced or bonded labour or for forced prostitution. For this reason, OMCT would like to call upon the government to provide further information concerning this form of violence against women in its next periodic report to the Human Rights Committee.

OMCT is gravely concerned by reports that women who have been arrested or detained are frequently subjected to torture and ill treatment including beatings and sexual violence. Of further concern is the fact that most of the perpetrators of these acts of violence against women reportedly enjoy impunity. OMCT would call upon the Government to ensure that all acts of torture and ill treatment of women in detention are appropriately punished and the victims provided with adequate reparations.

OMCT would recommend that the Government adopt measures to ensure that all law enforcement personnel are aware of the provisions of human rights law in relation to the protection of women against violence. In addition, OMCT would like to suggest that greater efforts are made to ensure that at least one female law enforcement official is present during the interrogation of women suspects and that women are always housed in separate detention facilities and supervised by female wardens.

The fact that many women are either sentenced to disproportionately long periods of imprisonment for ‘crimes against morality’ or, in some cases, detained without trial for alleged ‘improper behaviour’ is a matter of deep concern for OMCT. Steps should be taken to ensure that criminal legislation is modified in order to eliminate any of the gender biases or ambiguities that may be contributing to this situation. In addition, all law enforcement officials and members of the judiciary should receive adequate training which includes training in the application of international instruments and standards relating to human rights and, in particular, those standards that deal with fair trials, the treatment of persons in detention and the human rights of women.

The requirement that women in detention only be released into the custody of a male relative has meant that many women are effectively imprisoned for life and OMCT would call upon the government to take urgent measures in order to ensure that detained women are released into suitable accommodation following the completion of their prison sentences. Women who either cannot or do not wish to return to their communities following periods of detention should be provided with adequate support and assistance by the government preferably in cooperation with appropriate non-governmental organisations.

Finally, OMCT would insist upon the need for the Government to fully implement all of the provisions of the Convention for the Elimination of All Forms of Discrimination Against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials.

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Human Rights Committee

SEVENTY-FIFTH SESSION – 8-26 JULY 2002

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

**CONCLUDING OBSERVATIONS BY THE HUMAN RIGHTS COMMITTEE:
YEMEN**

1. The Committee considered the third periodic report of Yemen (CCPR/C/YEM/2001/3) at its 2027th and 2028th meetings (CCPR/C/SR. 2027 and CCPR/C/SR. 2028) on 17 and 18 July 2002 and adopted the following concluding observations at its 2036 meeting (CC/R/C/SR. 2036) on 24 July 2002.

A. Introduction

2. The Committee welcomes the timely submission by the State party of its report, containing important information on domestic legislation on the implementation of the Covenant. It notes with appreciation that the report contains useful information on some legal and institutional developments since the consideration of the second periodic report. It nonetheless regrets the lack of information on the jurisprudence and the practical aspects of the implementation of the Covenant. The Committee notes, however, the responses partly given in answer to the questions raised and the concerns expressed during the consideration of the report. It also welcomes the delegation's expressed readiness to cooperate.

B. Positive aspects

3. The Committee welcomes the importance attached in article 6 of the Yemeni Constitution to the Universal Declaration of Human Rights. It also welcomes some human rights initiatives undertaken by the State party in recent years, in particular the appointment of a Minister of State for Human Rights in 2001, and conclusion of a technical cooperation agreement with the Office of the High Commissioner for Human Rights (in keeping with the recommendation in the Committee's concluding observations of 3 October 1995, paras. 258 and 265) and with ILO to eradicate child labour, as well as the creation of aid centres for disadvantaged children. It also notes the increasing number of non-governmental organizations, particularly in the field of women's rights.

C. Principal subjects of concern and recommendations

4. The Committee regrets the lack of clarity about the question of the legal status of the Covenant in domestic law and the consequences thereof. The State party should ensure that its legislation gives full effect to rights provided for under the Covenant and that remedies are available for the exercise of those rights.
5. The Committee, while it takes note of the composition and role of the Yemeni National Committee for Human Rights which is a Governmental commission, nevertheless notes the absence of a human rights commission that is independent of the authorities and the lack of any project in this connection.

The State party should consider the establishment of such an independent institution for the protection of human rights, in particular with a mandate to receive complaints, initiate enquiries and institute proceedings where appropriate, with total independence.

6. The Committee notes with concern the continued practice of female genital mutilation (arts. 3, 6 and 7 of the Covenant). It notes also with concern the persistence of domestic violence, despite legislation adopted by the State party (arts. 3 and 7 of the Covenant).

The State party must pursue its efforts to eradicate such practices. It should in particular ensure that proceedings are instituted against the

perpetrators and promote a human rights culture within society, along with greater awareness of the rights of women, and especially the right to physical integrity. The State party must take more efficient measures to prevent domestic violence, to penalize it and provide assistance to the victims.

7. The Committee notes with concern the situation of discrimination against women in matters of personal status, more particularly in marriage and divorce as well as the rights and duties of spouses

The State party should review its legislation to ensure that, in all fields in the life of society, women enjoy complete equality with men, both in law and in fact, so as to comply with its obligations under the Covenant (arts. 3, 7, 8, 17 and 26 of the Covenant).

8. The Committee notes with concern that married women may not, at least by law, leave their home without the authorization of their husbands (arts. 3, 12 and 26 of the Covenant)

The State party should take appropriate measures to eliminate this practice and ensure, in law and in practice, that women's rights under articles 3, 12 and 26 of the Covenant are observed.

9. The Committee notes the persistence of the practice of polygamy which is an affront to the dignity of the human person and is discriminatory under the Covenant (arts. 3 and 26 of the Covenant).

The State party is strongly encouraged to abolish polygamy and to socially combat such a practice through efficient measures.

10. The Committee expresses its concern with the practice of marriage of very young girls, and with the inequality in the age of marriage between men and women (arts 3 and 26 of the Covenant).

The State Party should ensure protection of girls against very early marriage, and the elimination of discrimination against women regarding the marriage age.

11. The Committee notes the discriminatory situation that affects women in the acquisition and transmission of nationality (arts. 3 and 26 of the Covenant).

The State party must eliminate from its legislation all discrimination between men and women with regard to the acquisition and transmission of nationality.

12. The Committee is concerned at the continued detention of women who have served their prison sentence and are held in detention because of the social and family attitude of rejection of them (arts. 3, 9 and 26 of the Covenant).

The State party is encouraged to find appropriate solutions for the rehabilitation of such women in society.

13. While it welcomes the measures taken by the authorities in recent years to promote the participation of women in public life, the Committee notes the underrepresentation of women in the public and private sectors (arts. 3 and 26).

The State party is encouraged to pursue its efforts to secure better participation of women at all levels of society and of the State.

14. The Committee notes the lack of clarity regarding the legal provisions on declaring a state of emergency and derogating from the obligations established in the Covenant (art. 4 of the Covenant).

The State party is called upon to make its legislation conform to the provisions of the Covenant so as to ensure in particular that there are no breaches of non-derogable rights.

15. The Committee notes with concern that the offences liable to the death penalty under Yemeni law are not consistent with the requirements of the Covenant and that the right to seek a pardon is not guaranteed for all on an equal footing. The preponderant role of the victim's family in whether or not the penalty is carried out on the basis of financial compensation is also contrary to articles 6, 14 and 26 of the Covenant.

The State party should review the question of the death penalty. The Committee points out that article 6 of the Covenant limits the circumstances that may justify the death penalty and guarantees the right of every convicted person to seek a pardon. Consequently, it calls upon the State party to bring its legislation and practice into line with

the provisions of the Covenant. The State party is also called upon to provide the Committee with detailed information on the number of persons sentenced to death and the number of convicted persons executed since the year 2000.

16. The Committee is extremely concerned to find that amputation and flagellation, and in general corporal punishment are still prescribed by law and practised, contrary to article 7 of the Covenant.

The State Party should take appropriate measures to put an end to such practices and to ensure respect for the provisions of the Covenant.

17. The Committee is disturbed to note the existence of cases of torture and cruel, inhuman or degrading treatment for which law enforcement officers are responsible. It is equally concerned at the absence, in general, of investigations into such reprehensible practices and of punishment of the perpetrators. It is also concerned at the absence of an independent body to investigate such complaints (arts. 6 and 7 of the Covenant).

The State party should ensure that all allegations of human rights abuses are investigated and should, depending on the findings of the investigations, institute proceedings against the perpetrators of such violations. The State party must put in place an independent body to investigate such complaints.

18. While it understands the security requirements connected with the events of 11 September 2001, the Committee expresses its concern about the effects of this campaign on the human rights situation in Yemen, in relation to both nationals and foreigners. It is concerned, in this regard, at the attitude of the security forces, including Political Security, proceeding to arrest and detain anyone suspected of links with terrorism, in violation of the guarantees set out in the Covenant (art. 9). The Committee also expresses its concern about cases of expulsion of foreigners suspected of terrorism without an opportunity for them to legally challenge such measures. Such expulsions would, furthermore, be decided without taking into account the risks to the physical integrity and lives of the persons concerned in the country of destination (arts. 6 and 7).

The State party should ensure that the measures taken in the name of the campaign against terrorism are within the limits of Security Council resolution 1373 and are fully consistent with the provisions of the Covenant. It is requested to ensure that the fear of terrorism does not become a source of abuse.

19. The Committee notes that the independence of the judiciary does not seem to be guaranteed in all circumstances (art. 14).

The State party should ensure that the judiciary is free of any interference, in accordance with the provisions of the Covenant.

20. The Committee notes with concern the violations of freedom of religion or belief and inter alia the violation of the right to change one's own religion (art. 18 of the Covenant).

The State party should ensure that its legislation and practice are in line with the provisions of the Covenant and in particular that the right of persons to change their religion if they wish so, is respected.

21. The Committee expresses its concern about some restrictions under Yemeni legislation on freedom of the press and about the difficulties encountered by journalists in the exercise of their profession particularly when criticisms of the authorities are expressed (art. 19 of the Covenant).

The State party must ensure respect for the provisions of article 19 of the Covenant.

22. The State party should disseminate widely the text of its third periodic report and the present concluding observations.

23. In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should within one year provide information on the implementation of the Committee's recommendations in paragraphs 6 to 13 concerning the status of women and in paragraph 15 on the number of persons sentenced to death and executed since the year 2000. The Committee requests the State party to provide in its next report, which it is scheduled to submit by 1 August 2004, information on the other recommendations made and on the Covenant as a whole.

This publication forms part of OMCT's Violence against Women Programme, which focuses on integrating a gender perspective into the work of the United Nations human rights treaty monitoring bodies.

It compiles ten alternative country reports on violence against women which OMCT submitted in the year 2002 to the following five United Nations human rights treaty monitoring bodies: two country reports to the Human Rights Committee on Togo and Yemen; two country reports to the Committee on the Rights of the Child on Moldova and Sudan; two country reports to the Committee on Economic, Social and Cultural Rights on the Czech Republic and Poland; one country report to the Committee on the Elimination of Racial Discrimination on Croatia; and three country reports to the Committee against Torture on Spain, Uzbekistan and Venezuela.

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