



Rights of the Child in Ukraine

OMCT

OPERATING THE **SOS-TORTURE** NETWORK



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The aim of OMCT country reports are to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regards to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

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COMMITTEE ON THE RIGHTS OF THE CHILD
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Report on the implementation
of the Convention
on the Rights of the Child
by Ukraine

Researched and written by Simon Petite
Co-ordinated and edited by Roberta Cecchetti
Director of the publication: Eric Sottas

I. Preliminary observations

Ukraine ratified the Convention on the Rights of the Child (hereafter the Convention) on 21 August 1991 which came into force on 20 September of the same year. Ukraine is also a party to other international instruments related to human rights, in particular to the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. At a regional level, Ukraine became a member of the Council of Europe in 1995 and has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Organization for Security and Cooperation in Europe (OSCE) admitted Ukraine as a participating State in 1992.

OMCT welcomes the second report, submitted by the State of Ukraine to the Committee on the Rights of the Child (hereafter the Committee). Since the submission by Ukraine of its first report in 1993, the

country has undergone significant legislative changes. Among others, a new Constitution has been promulgated in 1996 and Ukraine's Verkhovna Rada – the Ukrainian Parliament – approved a new Criminal Code in April 2001 that became effective on 1 September 2001. The adoption of the 1996 Constitution gave legal recognition to human rights and freedoms of the individual and a number of offences that previously were not punishable are now penalized under the new Criminal Code.¹

Despite these positive developments, OMCT notes that many of the suggestions and recommendations of the Committee linked to the initial report of Ukraine remain pertinent. In particular, violations of children's rights, such as the right of the child to be free from discrimination, torture and ill treatment, continue to occur. The plight of abandoned children as well as the situation of children in conflict with the law also continue to raise deep concern. OMCT believes that there are still serious deficiencies in the

1 - Human Rights Committee, Concluding Observations: Ukraine, UN Doc. CCPR/CO/73/UKR, 5 November 2001, para 4.

legislative system of protection of children, but deficiencies are most acute from the level of implementation of legislation and the enforcement of the law. In accordance with article 9 of the 1996 Constitution, all international treaties that have been ratified by Ukraine should automatically become part of the national legislation. However, in its concluding observations on the fifth periodic report of Ukraine, the Human Rights Committee expressed its concern that the provisions of international treaties do not occupy a high enough position in the legal hierarchy of Ukraine and noted that the standards contained in the treaties

ratified by Ukraine are not necessarily given primacy over contradictory laws.² Concerning the new Criminal Code which replaced the previous Code dating from the Soviet era, it is not clear how it is implemented by law enforcement officials and members of the judiciary.³

In addition to legislative gaps, children greatly suffer from the economic crisis experienced in Ukraine. Since the independence of the country in 1991, the national product has dramatically declined⁴ and unemployment has increased⁵. As a result, State spending on children's education and on assistance for poor families with children has declined. This fact is recognized by Ukraine in its second report to the Committee. The aggravating crisis in society also has profound impacts on children's health: over the last years, there has been an increase in the number of disabled children and a rise in infant mortality. In addition, thousands of children and adolescents continue to suffer as a result of the Chernobyl disaster. The number of abandoned children is also rising in Ukraine, a large number of them having parents who are still alive.⁶ It is preferred that orphans and children lacking parental care be raised in families, but large numbers of them are placed in

2 - Ibid., para 8.

3 - As noted by the International Helsinki Federation (IHF) in its report "Human rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America, in 2001", "Judges frequently simply ignored the legal norms to be applied. The most widely spread violation was the fact that judges passed sentences on the basis of information extracted through coercion, including "confession" submitted under torture. They also typically refused to base their judgments upon the Constitution or international standards ratified by Ukraine. If there were contradictions between the Constitution or international standards and other laws (most often outdated Soviet era legislation), the old legislation took precedence..."

4 - It is believed that Ukraine's GDP is actually 60% lower than it used to be in the Communist era (*Le Monde Diplomatique*: "Enfances sacrifiées d'Europe de l'Est", juin 2000).

5 - At the end of 1999, 5.1 per cent of the population was registered as unemployed (in 1992 - 0.3 per cent), and according to the ILO methodology, 11.9 per cent were out of work (source: UNICEF Innocenti Research Centre: "Child and family welfare in Ukraine: trends and indicators", Country Paper prepared for UNICEF report "A Decade of Transition", 2001).

6 - UNICEF Innocenti Research Centre: "Child and family welfare in Ukraine: trends and indicators", Country Paper prepared for UNICEF report "A Decade of Transition", 2001.

institutions. The homes for children are without electricity one day and heating the next. Children are fed potatoes and oil. Many doctors of these institutions leave the country attracted by the promises of a better life in Western Europe. Their replacements have no antibiotics. Isolated and

abandoned by the authorities, these homes become death houses; the mortality is dramatically high.⁷ On the other hand, the State report presented by Ukraine does not even mention the numerous homeless children roaming the Ukrainian cities.

II. General observations on the situation of children in Ukraine

2.1 Discrimination

The Convention obliges States Parties to respect and ensure the rights of the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States Parties must also act positively and take all the appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.⁸

OMCT believes that discrimination is one of the root causes of torture. Article 24 of the Ukrainian Constitution provides that "citizens have equal constitutional rights and freedoms and are equal before the law"⁹. However, the reality is far from satisfactory.

a) Discrimination against girls

Although the Constitution ensures the equality of the rights of women and men¹⁰,

7 - See Le Monde Diplomatique: "Enfances sacrifiées d'Europe de l'Est", juin 2000.

8 - Article 2 of the Convention.

9 - The same article further stipulates that "there shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics".

10 - Article 24(3) 1996 Ukrainian Constitution.

Article 18 of the Marriage and Family Code specifies that the legal age for marriage is 18 for men and 17 for women, and this age may be lowered in “exceptional circumstances”. This provision is clearly contrary to Article 2 of the CRC and appears incompatible with the principle of the best interests of the child. OMCT believes that there can be no justification for such discrepancy in the legal age of marriage and calls on the Government to amend the Marriage and Family Code in order to raise the legal age of marriage for women to 18 years in line with that for men. As Ukraine openly admits that this discrepancy is “discriminatory”¹¹, OMCT hopes that it is just a matter of time before the needed amendment is implemented.

b) Discrimination against children belonging to ethnic minorities

OMCT deeply regrets the absence in the State report of information on prejudice against

children on ethnic grounds. Ukraine does not keep official statistics on children belonging to ethnic minorities living in the country. According to the estimates of the latest census (which was realised in 1989), Ukraine's population includes 37.4 million Ukrainians which comprises 72.7% of the total population of the country and 14.0 million (27.3%) members of other nationalities. The Russians are the largest national minority in the country (11.4 million people or 22.1% of the total population). Eight other ethnic groups include from 100.000 up to 500.000 persons each, as follows: 486.3 thousand Jews (0.9% of the total of Ukraine's population), 440 thousand Belorussians (0.9%), 342.5 thousand Moldovans (0.6%), 233.8 thousand Bulgarians (0.5%), 219.2 thousand Poles (0.4%), 163.1 thousand Hungarians (0.3%), and 134.8 thousand Romanians (0.3%).¹²

Despite this diversity, Ukrainian is the only language to be constitutionally recognized as State language.¹³ However, the free development and the use of other languages of national minorities of Ukraine are guaranteed by the Constitution¹⁴. The 1992 Law on National Minorities allows individual citizens to use their respective national languages

11 - Ukraine State report, para. 28.

12 - Thirteen other ethnic groups include 10.000 to 100.000 persons each, particularly Greeks, Armenians, Roma, Germans, Azerbaijanians, Gagauzes, Georgians, Chuvashes, Uzbeks, Mordvinians, Lithuanians and Kazakhs. The rest of the nationalities have populations less than 10 thousand persons each (source: Council of Europe: Report submitted by the Ukraine pursuant to article 25, paragraph 1 of the framework convention for the protection of national minorities, received on November 1999).

13 - Art. 10(1).

14 - Art. 10(3).

in conducting personal business and permits minority groups to establish their own schools. The Law on National Minorities guarantees national minorities rights to cultural and national autonomy. Furthermore, Article 11 of the Constitution provides that the State promotes the consolidation, development and protection of the country's national minorities. The European Commission against Racism and Intolerance (ECRI) has, however, received reports suggesting that the real situation is different: for example, some ethnic Russians (who are in the majority in the eastern part of Ukraine) have complained about the increased use of Ukrainian in schools and in the media, as did Romanian-Moldovan minorities for the difficulties in using their language in school and in the written press.¹⁵ While examining the latest State report of Ukraine, the Human Rights Committee expressed concern “about the vague and undefined concept of national minorities”. One could question if all ethnic minorities present in Ukraine are considered “national minorities” and, therefore, are entitled to special rights.

Various sources continue to report cases of harassment of aliens and persons belonging to ethnic minorities in Ukraine. In its report

on Ukraine, ECRI condemned the “particular frequent harassment by authorities of young dark skinned men from the Caucasus, based on the stereotype that these people are involved in criminal activity”¹⁶.

c) Roma

Official statistics supplied by Ukrainian authorities to the Human Rights Committee do not include the Roma. The various Roma groups are believed to comprise almost 48,000 people¹⁷. Facing massive societal discrimination, Roma seem to be the favourite targets of law enforcement officials.¹⁸ During a visit to the Transcarpathian region of

15 - ECRI: First Report on Ukraine, March 1999.

16 - Ibid.

17 - Human Rights Committee: Summary record of the 1957th meeting, 19 October 2001 (CCPR/C/SR.1957).

18 - After examining the fifth periodic report of Ukraine, the Human Rights Committee pointed out “allegations of police harassment, particularly of the Roma minority” (Human Rights Committee: Concluding Observations: Ukraine, UN Doc. CCPR/CO/73/UKR, 5 November 2001, para 13). In August 2001, the Committee on Elimination of Racial Discrimination expressed his concern “about reports of the continuing discriminatory treatment of Roma and violence against them and their property”. The Committee was also particularly concerned about reports of police brutality against the Roma population, including arbitrary arrests and illegal detention” and recommended “that the State party take immediate and effective steps to stop these abuses”. In 1999, Mr. Glélé-Ahanhanzo, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance stated in its annual report that police violence against Roma communities – either police raids targeting Roma or abuse in custody – was occurring in almost all countries of Central and Eastern Europe, including Ukraine (doc. E/CN.4/1999/15, par. 81).

Ukraine in June and August 1996 and in March 1997, the European Roma Rights Center found a crime prevention strategy which is solely applied to Roma, who are systematically associated with criminality. These provisions include the maintenance of a special list of all Roma with criminal records, forced registration and fingerprinting (often following collective arrests) of young Romani men and police raids on whole communities in order to search for suspects or for simple intimidation.¹⁹ This pattern of police harassment was confirmed by ECRI's first report on Ukraine.²⁰ Those who are arbitrarily arrested are often abused and beaten. Children are not immune to these practices.

Moreover, children greatly suffer from the discrimination imposed on Roma communities in virtually all public spheres, including education, employment, access to health and social services or housing. According to the ERRC, when they have access to school, Romani children are schooled in separate establishments, not because they are entitled to the right to do so, but because they are

segregated. Even if children could be taught in their mother tongue, "Roma schools" are of significant lower quality than other schools.²¹ Since they are not in majority in any of the regions of Ukraine, Roma do not enjoy the rights to which other "national minorities" under the Law on National Minorities are entitled. Nor can they count on the Constitutional anti-discrimination provisions.

d) Tatars of Crimea

According to the UN High Commission for Refugees (UNHCR), over 250 thousand Crimean Tatars, deported by the Stalinist regime to Central Asia 50 years ago, have returned to Crimea (in south-eastern Ukraine), mainly in the last decade. The percentage of children among them is unknown. In 2001, the Ukrainian parliament adopted a new Citizenship law, which enabled the acquisition of citizenship by persons of Ukrainian origin and their descendants, in particular Crimean Tatars. However, the Committee on the Elimination of Racial Discrimination, in its concluding observations on the Ukraine's report, noted the ongoing difficulties experienced by the Crimean Tatars in acquiring Ukrainian citizenship.²² In its

19 - European Roma Rights Center (ERRC): "The misery of law: the rights of Roma in the Transcarpathian region of Ukraine", Country reports series, N°4, April 1997.

20 - ECRI: First Report on Ukraine, March 1999.

21 - European Roma Rights Center (ERRC): "The misery of law: the rights of Roma in the Transcarpathian region of Ukraine", Country reports series, N°4, April 1997.

22 - Committee on the Elimination of Racial Discrimination: Ukraine, Concluding Observations (doc. A/56/18, paras. 360-379).

last report on Ukraine, ECRI brought to attention that, without Ukrainian citizenship, Crimean Tatars would have “no access to numerous benefits which would allow them to be reintegrated into their homeland”²³. Crimean Tatars (as well as other ethnic groups) have also complained of discrimination by the Russians (who are in majority in the Autonomous Republic of Crimea) and have requested that Crimean Tatar language be given equal treatment to the Russian.²⁴

OMCT urges the Committee to remind Ukraine of its obligations under article 2 of the Convention, and further emphasise the interdependent and indivisible nature of the CRC which requires States Parties to apply the principle of non-discrimination to all the other articles of the Convention. According to OMCT, rights set in the Law on National Minorities and in the Ukrainian Constitution must be granted to all ethnic minorities. Moreover, OMCT would call on the Ukrainian Government to take urgent measures in order to stop police harassment against aliens from Caucasus and Roma/Gypsies. Violence committed against Romani/Gypsy communities is contrary to Ukrainian laws as well as to international conventions – in particular to the Convention as well as the Convention

Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, both of which Ukraine ratified (see section 4.2). OMCT feels that the impunity actually prevailing for these acts encourages further abuses, and therefore would urge Ukrainian authorities to conduct the necessary investigations and to bring those responsible before the courts.

2.2 Health situation

The aggravating crisis of the Ukrainian society causes severe effects on health care, particularly on the most vulnerable, like the children. Recent years have seen an increase in the child mortality rate. The rapid spreading of HIV infection is of particular concern. At the end of 1999, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the World Health Organization (WHO) estimated that, at the end of 1999, there were 240,000 persons HIV positive in Ukraine, including 7,500 children under 16 years of age. Today, the total number is believed to reach 300,000 people. 1% of the adult population is infected by the virus, which is the highest rate in

Europe and the former Soviet Union, according to *Médecins sans Frontières (MSF)*. Despite the fact that HIV/AIDS has been declared a “national emergency”, one could question the real will of the Government to combat the epidemic. Various NGOs criticized the Government for not taking sufficient measures to provide cheaper treatment for those infected with HIV, particularly antiretroviral drugs (which are used to prevent the transmission of HIV from mother to child during pregnancy).²⁵

At the beginning of 2000, there were 151,000 disabled children registered with social security agencies, which was 25 per cent more than four years ago. Out of every thousand children and adolescents, 14 were disabled (the 1995 figure was 10).²⁶ The State report fully recognizes that the financial situation of institutions hosting disabled children has considerably worsened and that a large number of them are not placed in special schools and therefore are denied the right to education. OMCT would like to remind Ukraine of its obligations under Articles 2 (non-discrimination) and 23 of the Convention²⁷.

The worsening of environmental conditions also endangers a child's fragile health. In particular, Ukrainian children continue to pay a heavy toll for the Chernobyl disaster. As of January 1, 2000, 1,264,329 children and adolescents were granted Chernobyl victim status²⁸ and, according to the State Report, could receive medical care by specialized institutions, including stays in sanatoriums. However, thousands of children still face dangerous conditions, hazardous to both their health and development, which is in total contradiction with Articles 3, 6 and 24 of the Convention²⁹. Indeed, in January 2000, UNICEF listed 570,837 children living in zones of radioactive contamination.³⁰

25 - At the end of May 2002, MSF, together with the All Ukrainian Network of People living with HIV/AIDS, criticized a recent agreement between four multinational pharmaceutical companies and the Ukrainian Government. HIV/AIDS medicines discounted under the agreement by the multinational companies were still six times more expensive than generic medicines. Therefore, this deal would limit access to treatment for far less patients, argued the two NGOs (see: <http://www.msf.org/countries/page.cfm?articleid=AE63C824-C70E-4570-BDF41BC92B425B5F>).

26 - UNICEF Innocenti Research Centre: “Child and family welfare in Ukraine: trends and indicators”, Country Paper prepared for UNICEF report “A Decade of Transition”, 2001.

27 - Article 23 provides the right of mentally or physically disabled children “to enjoy a full and decent life” and to have (among other opportunities) “effective access to (...) education”.

28 - UNICEF Innocenti Research Centre: “Child and family welfare in Ukraine: trends and indicators”, Country Paper prepared for UNICEF report “A Decade of Transition”, 2001.

29 - Article 3 provides obligations to consider the best interests of individual children, Article 6 recognizes “that every child has the inherent right to life” and states that “States Parties shall ensure to the maximum extent possible the survival and development of the child”, and Article 24 establishes “the right of the child to the enjoyment of the highest attainable standard of health”.

30 - Source: UNICEF Innocenti Research Centre: “Child and family welfare in Ukraine: trends and indicators”, Country Paper prepared for UNICEF report “A Decade of Transition”, 2001.

III. Definition of the Child

Ukrainian law does not define a “child”, but rather a “minor”, which, under Article 1 of the 1993 Act “On promotion of the social advancement and development of young people”, is every citizen under the age of 18 years. The civic majority is attained at the same age (Article 70 of the Constitution). Both definitions are in conformity with Article 1 of the Convention. The age of majority may be reduced under the Marriage and Family Code³¹, whereby girls of 17 may get married. Marriage can be permitted at an earlier age “in exceptional circumstances”. However, these “exceptional circumstances” remain unclear.

The minimum age of sexual consent is not formally set by law. The Criminal Code penalizes sexual intercourse with “a sexually immature person”³². None of the legislative provisions, however, defines when sexual maturity is reached. Article 156 of the Criminal Code punishing the “debauchery of minors” is more precise: it defines a minor as a person under 16 years of age. Hence, we could conclude that sexual majority is attained at the age of 16 years.

In accordance with the Constitution³³, the Law “on universal conscription and military service” adopted in 1999 states that all citizens who reached 18 years of age might be called up for compulsory military service. The minimum age for participation in hostilities is also set at 18 years. Ukrainian armed forces are composed of a mix of conscripts and professional soldiers. Professional enlistment in the armed forces is available to persons aged 17 to 21³⁴. OMCT suggests that the Committee remind Ukraine of its obligations under article 38 of the Convention to recruit in preference the oldest soldier applicants among those who are between 15 and 18 years old. Ukraine should be urged to ratify the Optional Protocol to the Convention on the

31 - Art. 16.

32 - Art 155(1) Criminal Code: “Sexual intercourse with a sexually immature person shall be punishable by restraint of liberty for a term up to three years or imprisonment for the same term.”

33 - Art. 65 which states that: “Defence of the Motherland, of the independence and territorial indivisibility of Ukraine, and respect for its state symbols, are the duties of citizens of Ukraine. Citizens perform military service in accordance with the law”.

34 - The fact is recognized by Ukraine State report (see para.24).

involvement of children in armed conflict³⁵ that Ukraine signed in September 2000, and deposit a declaration clarifying its recruitment standards in conformity with Article 3(2)³⁶ of the Optional Protocol.

OMCT urges the Committee to exhort Ukrainian authorities to make sure that the

definitions of the child are harmonised and in accordance, in the whole of the legislation, with the one provided by Article 1 of the Convention, in order to ensure the efficient protection of people under 18.

IV. Protection against torture and other cruel, inhuman or degrading treatment or punishment

OMCT deeply regrets that the entire section devoted to the implementation of Article 37 of the Convention is one of the least detailed and least critical of all the sections of the Report. Indeed, the report does not provide any information on *de facto* ill-treatment or torture of children. And, except the formal mention that “under the existing

legislation minors may not be subjected to torture or other degrading treatment”³⁷, no information can be found on *de jure* protection of children against torture or other degrading treatment. OMCT believes that the State report’s handling of the issues of torture and other forms of ill-treatment is totally insufficient and would therefore recommend that Ukraine present to the Committee a much more comprehensive picture of the occurrence of torture and ill-treatment against Ukrainian children.

35 - In particular, Article 3 provides special protection for persons under the age of 18 years who are recruited in armed forces. Under Article 3(3), such recruitment shall be “genuinely voluntary” and shall be with the consent of the parents or legal guardians; minors recruited shall be “fully informed of the duties involved in such military service” and the future soldiers must reliably prove their age.

36 - Article 3(2) states that: “Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced”.

37 - State report, para. 61.

4.1 Ukraine's Legal Framework

Ukraine's obligation under article 37 of the Convention to prohibit torture or other cruel, inhuman or degrading treatment or punishment of children is enshrined in Article 28 of the Constitution which states that "everyone has the right to respect of his or her dignity and no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity". Furthermore, Article 64 of the Constitution provides that the prohibition of torture, cruel, inhuman or degrading treatment or punishment may not be suspended in any circumstances, including in wartime or during state of emergency. The new Criminal Code which entered into force in September 2001 contains an article qualifying torture as a specific crime. Article 127 defines torture as "a willful causing of severe physical pain or physical or mental suffering by way of battery, martyring or other violent actions for the purpose of inducing the victim or any other person to commit involuntary actions". Under this provision, torture is punishable by imprisonment for three to five years and five to ten years, if such acts are committed repeatedly or by a group of persons after conspiracy.

OMCT notes that article 127 of the Ukrainian Criminal Code does not comply with the definition of torture stated in Article 1 of the Convention and Article 37 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This discrepancy has already been raised by the UN Committee against Torture, which noted that "the definition in the Criminal Code differed in two respects from Article 1 of the Convention [against Torture]. First, it did not mention the use of torture to obtain confessions and, secondly, it made no reference to public officials."³⁸ OMCT welcomes the fact that the penal provision criminalizing torture seems to apply to acts committed by private citizens, but it regrets that Article 127 makes no reference to State officials. In addition, OMCT notes that the definition of torture contained in Article 127 does not mention psychological torture. OMCT suggests that the members of the Committee ask the Government of Ukraine to amend the law in order that the definition of torture also includes acts of torture committed by State officials as well as psychological torture.

Furthermore, Articles 364 and 365 of the Criminal Code of Ukraine provide for criminal responsibility in cases of abuse of

38 - Committee against Torture: Summary record of the 488th meeting: Ukraine, 21 November 2001 (doc. CAT/C/ SR. 488.), par. 10.

official powers or authority. Under Article 365(2), if the abuse of authority is accompanied by “force, use of weapons, or actions that caused pain or were derogatory to the victim’s personal dignity”, it is punishable by terms of imprisonment ranging from three to eight years along with a deprivation of the right to assume certain offices or activities for up to three years. Although both articles do not explicitly mention torture, acts of torture committed by public officials seem to be punishable under Article 365. OMCT would recommend that the government of Ukraine clarifies if crimes of torture committed by State officials are punished under article 127, under article 365(2) or under a combination of both of them.

The International Helsinki Federation reported that, during discussions in the Parliament at the beginning of 2000, the criminalisation of the use of torture by law enforcement officials met with resistance from the Security Service and Ministry of Justice.³⁹ Finally, a definition of torture was

included in article 127 of the new Criminal Code, but no reference was made to public officials.

Furthermore, the Criminal Code, which was adopted in April 2001, failed to declare evidence extracted under torture inadmissible. OMCT expresses its dissatisfaction in regard to this compromise which, among others, admits evidence that is obtained through the use of torture.⁴⁰

4.2. Practice

In their concluding observations on the last reports presented by Ukraine, both the Human Rights Committee and the Committee against Torture⁴¹ remained concerned about “the persistence of widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials”⁴². According to information received from the International Helsinki Federation, in spite of legislative progress, the pattern of torture and ill-treatment by law enforcement officials continued to persist in Ukraine.⁴³ In 2001, the non-governmental organization denounced the fact that the use of torture by

39 - International Helsinki Federation, Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America, 2001, p. 323.

40 - See art. 15 of the Convention against Torture.

41 - See UN doc. CCPR/CO/73/UKR. and CAT/C/XXVII/Concl.2.

42 - Human Rights Committee: Concluding observations, Ukraine, UN doc. CCPR/CO/73/UKR, para. 15.

43 - International Helsinki Federation, Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America, 2002, p. 328.

law enforcement officials against prisoners was generally regarded as a routine matter rather than an exceptional occurrence.⁴⁴

While there are no official statistics on the practice of torture in Ukraine, non-governmental organizations have estimated that there are several thousands of cases each year.⁴⁵ This estimation has been confirmed by Nina Karpachova, the Ukrainian Commissioner for Human Rights, who stated that 30% of prisoners are victims of torture⁴⁶. The Office of the Parliamentary Ombudsman, charged with the responsibility for protection of human rights in Ukraine, receives several hundred reports of torture in detention per year. Most of the complaints channelled to the Office concern abuses committed by law enforcement officials. The torture methods most commonly used are reportedly beating, kicking, electroshocks, placing a gas mask over the face of the victim and blocking the air hose almost until the point of suffocation by the victim, and tying the victims so that they are forced to remain in an arch-shaped position for as long as an hour at a time.⁴⁷

In 2000, the Ukrainian and American Human Rights Advocacy Bureau together with a number of Ukrainian non-govern-

mental organisations conducted a series of visits to prisons throughout Ukraine. The findings of the survey disclosed that 71.6 per cent of all prisoners experienced violence on the part of law enforcement officers, 81.1 per cent of them becoming victims of such physical violence when already in investigation and detention centers. The researchers found that 33.8 per cent of respondents reported threats of investigators in case of denial of guilt and 25.3 percent of detainees stated that they had been subjected to repeated beatings until they signed admissions of guilt. Only 43.7 of detainees were immediately informed about their right to legal counsel and defence.⁴⁸

44 - International Helsinki Federation, Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America, 2001, p. 323. Amnesty International has also received, by victims or Ukrainian human rights organizations, a number of allegations of ill-treatment and torture of detainees by police officers (see: Amnesty International: Ukraine Before the UN Human Rights Committee, 15 October 2001, www.web.amnesty.org/ai.nsf/index/EUR500012001?OpenDocument&of=COUNTRIES/UKRAINE).

45 - International Helsinki Federation, Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America, 2001, p. 323.

46 - Committee against Torture: Concluding observations, Ukraine, UN doc. CAT/C/XXVII/Concl.2., para. 4.

47 - OMCT's alternative report to the Committee against Torture, November 2001, p. 15.

48 - Yu. Shcherbina: Monitoring of Prisons in Ukraine: First Steps, Informational bulletin Aspect # 2, 2001, pages 19-20, cited in Olexandra Rudneva: Violence against Women in Ukraine: Contribution to OMCT's alternative report to the Committee against Torture, Kharkiv Centre for Women's Studies, November 2001, pages 14-15.

To assert that children are not subjected to torture or other degrading treatment in their country, Ukrainian authorities seem to argue that no clear evidence of such abuses against anyone has been found.⁴⁹ However, in the last years, Mr. Nigel S. Rodley, the former UN Special Rapporteur on torture, has repeatedly sent urgent appeals to the government of Ukraine concerning cases of torture or ill-treatment.⁵⁰ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁵¹ has already carried out three visits to Ukraine (in 1998, 1999 and 2000) and plans to return to Ukraine during the year 2002. Faithful to its principles of cooperation and confidentiality, the CPT has not yet

made public the reports on its three fact-finding missions. However, according to Amnesty International⁵², it intended to do so by the end of the year 2001, but the Ukrainian authorities were very reluctant to agree to this outcome.

Contrary to the State report's assertions, OMCT believes that the situation in which children find themselves the victims of torture or other cruel, inhuman or degrading treatment or punishment is part of the wider context of "persistence of widespread use of torture and cruel, inhuman or degrading treatment or punishment by law enforcement officials"⁵³. Furthermore, having in mind that persons who have attained the age of 16 years are legally considered normal criminals (see section 6.1), OMCT does not see any reason why children would be spared from the recurrent practice of torture and ill-treatment.

According to the Ukrainian non-governmental organization Donetsk Memorial, one can judge from the general situation in Ukraine that there are cases of torture in juvenile detention centres.

Ethnic minorities (see section 2.1.) – including Roma communities – are particu-

49 - State report, para. 61.

50 - These cases include Sergey Valkovanyish (see: Report of the Special Rapporteur, Mr. Nigel S. Rodley, before the 44th session of the Commission on Human Rights; Addendum: summary of cases transmitted to Governments and replies received; doc. E/CN.4/1998/38/Add.1), Sergey Lazerenko, Anatol Zhovtan and Sergey Ostapenko (see: reports of the Special Rapporteur, Mr. Nigel S. Rodley, before the 57th and 58th session of the Commission on Human Rights; Addendum: summary of cases transmitted to Governments and replies received; doc. E/CN.4/2001/66 and E/CN.4/2002/76/Add.1).

51 - Ukraine is part of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment whose Article 1 sets *in situ* missions to prevent abuses of detainees.

52 - Amnesty International: Ukraine Before the UN Human Rights Committee, 15 October 2001, www.web.amnesty.org/ai.nsf/index/EUR500012001?OpenDocument&of=COUNTRIES/UKRAINE, page 11.

53 - Human Rights Committee: Concluding observations, Ukraine, 12 November 2001, UN doc. CCPR/CO/73/UKR, para. 15.

larly at risk of being targeted by law enforcement officials. As the following cases collected by the European Roma Rights Center (ERRC) prove, Romani children also find themselves victims of racially motivated abuses.

- During its visit to Ukraine in August 1996, ERRC gathered a testimony of a 14 year-old Romani boy who was rounded up in a mass arrest and severely beaten on the back with *dubinkas* – the local truncheons. Four months after his detention, the boy still had kidney-pains.⁵⁴
- In 2000, the *Roma Youth Association* reported the raid, in the middle of the night of 5 September 1999, of a police unit against a Romani tent camp in the outskirts of Kiev. The policemen set fire to the tents and reportedly attempted to kidnap a 17 year-old girl. Many inhabitants fled in panic, only having time to save their children.⁵⁵
- More recently, in October 2001, five Roma – including three children – were killed by arson in the Poltava Province of Ukraine.⁵⁶

According to ERRC, Roma/Gypsies are denied justice most of the time, either as defendants charged with crimes or as victims seeking remedy for official abuse. In the case of the arson attack, which caused five deaths in October 2001, the investigation was still ongoing in May 2002. A police officer suspected of being involved in the five killings has reportedly been temporarily suspended from his duties, but he has not been charged in the case.⁵⁷

In reality, Roma/Gypsies are not the only ones to be failed by the justice system. Considering the fourth periodic report of Ukraine, the Committee against Torture expressed its concern about the failure on the part of the Ukrainian authorities to carry out prompt, impartial and thorough investigations into allegations of torture or ill-treatment and to prosecute and punish those responsible.⁵⁸ Despite the new legal provisions prohibiting and punishing torture and ill-treatment, the culture of impunity has not

54 - European Roma Rights Center (ERRC): "The misery of law: the rights of Roma in the Transcarpathian region of Ukraine", Country reports series, N°4, April 1997, pages 19-20.

55 - ERRC, Roma Rights: "snapshots from around Europe: Ukrainian police terrorise Roma", N°1, 2000 (http://errc.org/rr_nr1_2000/snap22.shtml).

56 - All the details are available on http://errc.org/publications/letters/2002/ukraine_may_22_2002.shtml.

57 - Ibid.

58 - Committee against Torture: Conclusions and recommendations, Ukraine, 21 November 2001, UN doc. CAT/C/XXVII/Concl.2, para. 4(e).

been challenged. It has been alleged that prosecutors often overlook crimes committed by the police and that, on the rare occasions upon which they are brought, criminal proceedings against police are rapidly closed.⁵⁹

OMCT considers that impunity is one of the most important factors contributing to the continuation of torture and ill-treatment of children. Therefore, the Ukrainian government should be urged to ensure that allegations of such grave abuses are effectively investigated by an independent authority, those responsible are prosecuted and the victims given adequate compensation.

Moreover, certain legal and practical safeguards against abuses are still lacking, and until these are set and implemented in practice, children will continue to be at risk of severe mistreatment by law enforcement officials and Ukraine will remain in breach of its most fundamental obligations under the Convention. In this respect, OMCT would particularly remind Ukraine of the observations and recommendations made by the Human Rights Committee and the Committee against Torture⁶⁰. Among other measures to be urgently implemented, relatives or lawyers should be immediately informed on arrest and the place of detention, the right to a defence counsel – as enshrined in the Ukrainian Constitution⁶¹ – should be effectively entitled to every detainee as soon as possible after his/her arrest and free access to medical assistance should be guaranteed during all stages of detention.

59 - Olexandra Rudneva, Violence against Women in Ukraine: Contribution to OMCT's alternative report to the Committee against Torture, Kharkiv Centre for Women's Studies, November 2001, p. 15. The International Helsinki Federation also stated that the new progressive legislation has seldom led to improvements in practice (International Helsinki Federation, Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America, 2002, p. 323)

60 - See Human Rights Committee: Concluding observations, Ukraine, 12 November 2001, UN doc. CCPR/CO/73/ UKR and Committee against Torture: Conclusions and recommendation, Ukraine, 21 November 2001, UN doc. CAT/C XXVII/Concl.2.

61 - Pursuant to article 28 of the Constitution, arrested persons may be held in detention for a maximum of 72 hours prior to being brought before a judge. The detainee shall be immediately released, if he or she has not been provided with a court decision about his or her holding in custody within 72 hours. This provision also recognizes, among other, the right to be informed without delay of the reasons of the arrest, to have the assistance of a legal counsel and to immediately inform relatives of the arrest. Furthermore, article 63(2) of the Constitution states that "a suspect, an accused, or a defendant has the right to a defence".

V. Protection from other forms of violence

Article 19 of the Convention requires children's protection "(...) 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 52 of the Ukrainian Constitution provides the prosecution by law of any violence or exploitation against children⁶² and the Criminal Code states aggravating punishment for offences committed against minors⁶³. Furthermore, Article 137 of the same Criminal Code penalizes improper professional and official performance of duty with regard to children's life safety and health care. Under this provision, the offenders are punishable by fine, community service or deprivation of the right to occupy certain positions, if their acts have resulted in significant deterioration of the victim's health and, if their actions caused death of a minor or other grave consequences, by restraint of liberty or imprisonment for a term up to three years. OMCT welcomes the entry in

force of this provision, since it penalizes abuse and neglect by actors who have responsibility over children.

However, OMCT regrets that the threshold of applicability of this provision is excessively high, since it requires a "significant deterioration of the victim's health, the victim's death or an other grave consequence". Moreover, it remains unclear if parental neglect is covered by this provision and if psychological violence is punishable under this provision. For these reasons, OMCT doubts whether Article 137 effectively protects children against abuse, in particular against violence in the family.

5.1. Violence in the family

Violence in the family is a widespread problem in Ukraine. However, law enforcement

62 - Art. 52(2): "Any violence against a child, or his or her exploitation, shall be prosecuted by law".

63 - Art. 67 "circumstances aggravating punishment". It is difficult to ascertain whether a minor is a person under 18 years of age in accordance with the 1993 Act "On promotion of the social advancement and development of young people" (see section 3) or if it is a person who has not reached the age of 16 years as enshrined in the Criminal Code (see section 6.1).

officers and judiciary do not consider it to be a serious crime or else perceive it as constituting a private affair. As a result, some prosecutors refuse to pursue prosecution of such cases.⁶⁴ According to the All-Ukrainian Committee for Children's rights⁶⁵, Ukrainian children are beaten for poor marks, bad conduct or because their parents are under the influence of alcohol. The figures on domestic violence against children are constantly increasing. For instance, in 1996, 144 children died of such brutal actions and 89 children committed suicide, 50% of which, according to criminal investigators, were caused by the family environment⁶⁶.

Cases of domestic violence are generally brought under articles 121-127 of the Criminal Code⁶⁷. In practice, very few com-

plaints of domestic violence have been brought under the Criminal Code⁶⁸. Unfortunately, no data on complaints of violence against children within the family are provided by the State report. It is to be noted that no aggravating circumstances are provided if the offence is committed against children. Article 126(1), which penalizes intended blows, battery or other violent acts which cause physical pain, provides for fines, community service or correctional labour. OMCT regrets that this provision does not include psychological violence to which children are particularly sensitive. Furthermore, the imposition of a fine does not prevent the risk of retaliation against the victim. OMCT would, therefore, recommend that the government of Ukraine improve its legislation in order to offer better protection to children. At present, existing legal rules should be effectively implemented by law enforcement officials and members of the judiciary.

Finally, OMCT notes with great concern that, while corporal punishment is prohibited in schools as well as in the penal system, it remains one of the principal methods of discipline in the home.⁶⁹ Therefore, Ukraine should be urged to explicitly ban all forms of corporal punishment.

64 - Olexandra Rudneva: Violence against Women in Ukraine: Contribution to OMCT's alternative report to the Committee against Torture, Kharkiv Centre for Women's Studies, November 2001, page 5.

65 - See the All-Ukrainian Committee for Children's Rights alternative report to the Committee on the Rights of the Child, page 4.

66 - About the Status of Ukrainian Children, Summary of 1996, page 17, cited in the All-Ukrainian Committee for Children's Rights alternative report to the Committee on the Rights of the Child, page 4.

67 - Articles 121, 122 and 125 punish intended grievous bodily injury, intended bodily injury of medium gravity and intended minor bodily injury.

68 - Olexandra Rudneva: Violence against Women in Ukraine: Contribution to OMCT's alternative report to the Committee against Torture, Kharkiv Centre for Women's Studies, November 2001, page 5.

69 - Global Initiative To End All Corporal Punishment of Children (http://www.endcorporalpunishment.org/pages/progress/table_u-z.html).

5.2. Sexual abuse

According to the All-Ukrainian Committee on Protection of Children, one girl out of three experiences sexual harassment, one out of five experiences unwanted sexual touching and one out of ten suffers sexual violence before she turns 18. One boy out of seven becomes a victim of unwanted sexual touching or sexual harassment.⁷⁰ Overall, 7.5% of adolescents surveyed in 1996 reported experiencing sexual violence, 33% of them noting that they considered suicide after being raped.⁷¹

Articles 155 and 156 of the Criminal Code⁷² criminalize acts of sexual abuse against children below the age of 16. Statistical information on the incidence of such crimes is not systematically collected in Ukraine. In particular, incest was considered until very recently to be a taboo topic that was not widely discussed. These legal rules, like many other provisions concerning children's rights, are not always fully applied in practice.⁷³ In the relevant paragraph of its official report, the Government of Ukraine admits that "the Ukrainian legislation on children is principally of a declarative rather than of a practical nature, so that Ukraine is unable to guarantee compliance with and

exercise of the established rights of the child"⁷⁴. Furthermore, an effective mechanism for the monitoring and the protection of children's rights "is virtually non-existent"⁷⁵. OMCT is profoundly concerned by the fact that children who are older than 16 years are not protected by the Ukrainian Criminal Code against sexual abuse. In this respect, OMCT wishes to remind Ukraine of its obligation under Articles 1, 19 and 34 of the Convention. Finally, OMCT would also recommend that Ukraine collect reliable and complete data on child sexual abuse in order to set up global policies aimed at fully protecting children from sexual abuse.

70 - All-Ukrainian Committee on Protection of Childhood: Sexual Abuse, Sexual Exploitation and Sexual Corruption of Children and Adolescents in Ukraine, July-December 1996, report of a study cited in Olexandra Rudneva: Violence against Women in Ukraine: Contribution to OMCT's alternative report to the Committee against Torture, Kharkiv Centre for Women's Studies, November 2001, page 8.

71 - O. Ivashchenko: Social Motives of Sexual Abuse of Children and Adolescents, in Family Violence edited by O. Rudneva, Kharkiv, Pravo, 2000, page 64, cited in Olexandra Rudneva: Violence against Women in Ukraine: Contribution to OMCT's alternative report to the Committee against Torture, Kharkiv Centre for Women's Studies, November 2001, page 8.

72 - Under Article 155, "sexual intercourse with a sexually immature person" might be punishable for a maximum of three years of imprisonment, while incest is punishable for three to five years of imprisonment. Article 156 provides slightly lighter punishments for "debauchery of minors". Both articles provide aggravating circumstances for acts committed by parents or surrogate parents.

73 - State report, para. 159.

74 - State report, para. 159.

75 - Ibid.

5.3. Child trafficking

The trafficking of women and girls, especially for sex work, is a serious and increasing problem for the country. Evidence exists from a wide variety of sources including police, non-governmental organisations, health care providers, prosecutors and international organisations of the widespread and increasing nature of the problem. Although no reliable official statistics have been published on the magnitude of the problem, in 1999, La Strada, a non-governmental organization working on the trafficking of human beings in Ukraine, reported that 420,000 Ukrainian women had

been taken out of the country during the last decades.⁷⁶ The same estimation is cited by the Ukrainian Ministry of Interior.⁷⁷ However, the real number of victims is believed by some non-governmental organizations and independent researchers to be much higher.⁷⁸

Ukraine is mainly a country of origin for women and girls who are victims of trafficking. Ukrainian citizens are generally transported for sexual purposes⁷⁹ to Western and Central Europe, as well as to the Mediterranean region. Ukraine is also a transit country for trafficked women and girls and there is increasing evidence to suggest that it could also be regarded as a destination country.⁸⁰ Traffickers make huge profits from the transporting and selling of women to the sex industry and such traffic is carried out by sophisticated and violent criminal networks.⁸¹

The majority of victims are women and girls. The percentage of children who fall into the hands of trafficking networks is difficult to estimate. Children may either be at risk of being trafficked to the commercial sex industry or for other purposes such as illegal adoption.⁸² According to the International Organization for Migration (IOM), women

76 - La Strada, cited in Minnesota Advocates for Human Rights: Trafficking in Women: Moldova and Ukraine, December 2000, page 16.

77 - International Organization for Migration (IOM): Information Campaign Against Trafficking in Women from Ukraine, Research Report, 1998, page 16

78 - Ibid.

79 - The Special Rapporteur on the Sale of children, child prostitution, child pornography, in its 1999 report before the Human Rights Commission (UN doc. E/CN.4/1999/71, para. 65), noted that, while trafficking of children is most commonly associated with prostitution, many children are in fact recruited as a cheap source of labour. Although child labour is often thought to be a problem in developing countries, information indicated children are now being trafficked from a number of countries in Eastern Europe, including Ukraine.

80 - International Helsinki Federation for Human Rights in its Women 2000 report at page 491 and IOM Publication: Migrant Trafficking and Human Smuggling in Europe: A review of the evidence with case studies from Hungary, Poland and Ukraine, 2000, page 331.

81 - International Organization for Migration (IOM): Information Campaign Against Trafficking in Women from Ukraine, Research Report, 1998, page 16

82 - Minnesota Advocates for Human Rights: Trafficking in Women: Moldova and Ukraine, December 2000, page 15.

are increasingly being trafficked at a younger age. Three-quarters of the women in one of the IOM's trafficking studies were reported to be under 25 years old, and many were teenagers aged between 15 and 18, especially among those from Central and Eastern Europe.⁸³ A survey by the IOM in Ukraine has confirmed this worrisome trend.⁸⁴ The goal of this study conducted in 1998 was to establish the profile of potential victims, in order to prevent them from being cheated by promises made by traffickers of a better life⁸⁵. The nation-wide survey found that 40% of all respondents were considered "at risk of becoming a victim of trafficking". Despite the fact that women aged between 15 and 19 accounted for 39% of the respondents, they constituted 45% of the women considered "at risk". Moreover, the share of potential victims of trafficking among respondents was higher for this age group than for any other age group.⁸⁶ As noted by Minnesota Advocates for Human Rights, they may also be secondary victims of trafficking.⁸⁷ On the basis of this information, OMCT expresses its concern over the current and potential incidence of trafficking of children. Street children are also particularly at risk of being driven into the sex industry.

The Government of Ukraine has employed different strategies to tackle the problem. A National Coordination Council for the Prevention of Trafficking in People under the Parliamentary Ombudsman was created. In addition, the Cabinet of Ministers adopted a comprehensive "Program for the Prevention of Trafficking in Women and Children" in September 1999. However, resources dedicated to these programs do not seem sufficient enough to have any significant impact on trafficking.⁸⁸

83 - IOM: Trafficking and Prostitution: the Growing Exploitation of Migrant Women from Central and Eastern Europe, Geneva, 1995, cited in IOM: Information Campaign Against Trafficking in Women from Ukraine, Research Report, 1998, page 22.

84 - IOM: Information Campaign Against Trafficking in Women from Ukraine, Research Report, 1998.

85 - In some cases, women going abroad are aware they are to work in sex industry. Still, they cannot imagine the degree of violence that goes along with trafficking in people. Other women become entrapped having answered announcements about positions of dancers, waitresses, nannies, etc, abroad. Upon arrival, they are detained against their will and are forced to work as prostitutes. Some women are kidnapped, often pumped with drugs to subdue them and are taken abroad without their consent. In countries of destination, women heavily risk to be constantly beaten, raped and even killed (Olexandra Rudneva: Violence against Women in Ukraine: Contribution to OMCT's alternative report to the Committee against Torture, Kharkiv Centre for Women's Studies, November 2001, page 10).

86 - IOM: Information Campaign Against Trafficking in Women from Ukraine, Research Report, 1998, page 22.

87 - The non-governmental organization mentions the case of one mother who let her three children in Ukraine to earn money from prostitution in Romania. After sending back money to her children during six months, she disappeared (Minnesota Advocates for Human Rights: Trafficking in Women: Moldova and Ukraine, December 2000, page 17).

88 - Minnesota Advocates for Human Rights: Trafficking in Women: Moldova and Ukraine, December 2000, pages 29-30.

Since 1998, trafficking, abduction and illegal adoption of children are severely punished by law.⁸⁹ The new Criminal Code, which entered into force in September 2001, contains a specific anti-trafficking provision. Article 149 mandates 3 to 8 years of imprisonment for the sale of a person for purposes of sexual exploitation, use in the porn industry, engagement in criminal activities, peonage, adoption for commercial purposes, use in armed conflicts or labour exploitation.⁹⁰ The same actions committed against minors⁹¹, multiple persons or involving illegal taking of children abroad are sentenced to 5 to 15 years of imprisonment.⁹² Despite the presence of the aforementioned article, law enforcement officers undergo serious difficulties in bringing evidence of trafficking in people committed by local firms and organizations acting as employment, marriage or travel agencies. At the same time, instances of sales and forced exploitation take place in foreign countries,

and there is very little evidence of Ukrainian traffickers' involvement. Due to the lack of confidence in authorities, victims are very reluctant about reporting what happened to them.⁹³

In addition, law enforcement officers are not provided with practical guidance to prosecute cases of trafficking. Lack of proper resources also hinders their efforts to implement the law.⁹⁴ The government of Ukraine openly admits that the number of opened cases concerning sale or abduction of children is "insignificant".⁹⁵ According to the State report, there were 17 cases in 1997.⁹⁶ OMCT expresses its disappointment about the very little information given by Ukraine on the phenomenon of trafficking. It feels that the Committee should be provided with much more abundant and recent data.

OMCT would also recommend that Ukraine improve its anti-trafficking legislation. Indeed, article 149 requires that the offence is committed when the person is transported across the border of Ukraine. Because many of the women and children trafficked do not necessarily leave the country, this requirement reduces the scope of the law and leaves some traffickers un-prosecuted.

89 - Articles 115(2) and 124(1) of the earlier Criminal Code.

90 - Article 149(1).

91 - Again, it is difficult to ascertain whether a minor is a person under 18 years of age in accordance with the 1993 Act "On promotion of the social advancement and development of young people" (see section 3) or if it is a person who has not reached the age of 16 years as enshrined in the Criminal Code (see section 6.1).

92 - Article 149 paras. 2 and 3.

93 - Olexandra Rudneva: Violence against Women in Ukraine: Contribution to OMCT's alternative report to the Committee against Torture, Kharkiv Centre for Women's Studies, November 2001, page 11.

94 - Ibid.

95 - State report, paras. 160-162.

96 - Ibid.

5.4. Child labour and street children

The economic crisis undergone by Ukraine has caused a lot of children to work in order to improve the material situation of their families. In this respect, the Constitution of Ukraine states that the use of forced labour, as well as the employment of women and minors for work that is hazardous to their health, is strictly prohibited.⁹⁷ Under the Labour Code, the minimum age for work has been fixed at 16 years old.⁹⁸ However, in exceptional circumstances, persons aged 15 years may be employed, outside of school hours and with the consent of their parents or surrogate parents. For the purposes of training young people for productive work, pupils aged 14 may also be employed under the same conditions.⁹⁹ Children who have not attained the age of 18 may not be employed in arduous work, in work performed under harmful or dangerous conditions, in carrying or moving weights exceeding the maximum norms established for them¹⁰⁰, for work at night, for overtime and for work on days off.¹⁰¹ In addition, the recruitment of any person aged under 18 must be preceded by a medical examination. Article 150 of the Criminal Code penalizes exploitation of

children who are under the legally employable age.

OMCT regrets that the State report does not provide any data on child labour. But, according to UNICEF, in 1999, the average rate of employment of children was 3.8 per cent, including permanent and temporary work.¹⁰² 24% of working children were between the ages of 7 and 12, who are prohibited from working. For the same year, 45,700 teenagers were registered in the State Employment Agency as seeking jobs.¹⁰³ However, children at work are believed to be much more numerous, as the majority of them are illegally employed in the informal sector of the economy, selling

97 - Art. 43(3) and 43(5).

98 - Art. 188.

99 - Ibid.

100 - The Ministry of Health approved weight limits for the lifting or moving of heavy objects by youth under 18 years. A list of heavy work and work in harmful or dangerous conditions which are prohibited to them was also set.

101 - Art. 190 and 192.

102 - UNICEF Innocenti Research Centre: "Child and family welfare in Ukraine: trends and indicators", Country Paper prepared for UNICEF report "A Decade of Transition", 2001, page 36.

103 - Ibid.

newspapers, washing cars, transporting heavy loads, collecting scrap metal etc.¹⁰⁴ As a result, these children are particularly at risk of working in conditions detrimental to their health and development. While Ukraine admits difficulties in monitoring child labour use, OMCT would recommend that the Government improve mechanisms of state control.

Youths deprived of parental care present a particularly high rate of children's labour. In this respect, OMCT expresses its deep concern regarding the situation of children

living in the streets. Street children resort to stealing, dealing drugs, committing petty crimes, begging or doing odd jobs. As noted by UNICEF, they regularly consume alcohol, take drugs or sniff glue. Because begging or pickpocketing can be profitable, they are exploited by adults to do so. Street children often become victims of sexual crimes and are drawn by adults into other illegal activities. Their lives and health are under constant threat. In Ukraine, the numbers of street children are estimated to be in the several hundred thousands¹⁰⁵ and there are more than 80 shelters providing social rehabilitation services.

OMCT deeply regrets that the Ukrainian State report is silent on the plight of street children and would like to recall that article 19(2) of the Convention requires the Ukrainian State to adopt effective protective measures against child abuse, neglect and exploitation.

104 - According to a survey conducted by the Ukrainian Institute of Social Research along with the Social Monitoring Center, 31,7% children from 10 to 17 years have already been involved in a paying job. Two thirds of them started their activity before reaching the legal working age (N. Komarova: *Some Aspects on Juvenile Labour in Ukraine*, Ukrainian Magazine for Human Rights, Kiev: Ukrainian Legal Foundation, 1999, #3-4 (1998), pages 58-59; cited in the All-Ukrainian Committee for Children's Rights alternative report to the Committee on the Rights of the Child, page 15). Other studies, realised in 2000, found that 59% of the questioned children worked for money. Among them, one fifth work 6-7 days, while the same percentage work 6-8 hours a day (Ukrainian Institute of Social Researches: *Children's Labour in Ukraine*, 2000, page 132 cited the All-Ukrainian Committee for Children's Rights alternative report to the Committee on the Rights of the Child, page 15).

105 - A study conducted in September 2001 by the State Committee for Family and Children indicated that there were 300,000 homeless children in Ukrainian cities, which was a drop of 25 percent from the previous year. This estimation was, however, challenged by social workers, who were accomodating in their shelters more and more vagrant children, particularly in the capital, Kiev. Moreover, social workers criticised the way in which the study was carried out. To determine the scope of the problem, police raided the nation's homeless, picking up vagrant children for begging, stealing and vandalizing (Kyiv Post: "Officials: Child vagrancy falling", 10 May 2002).

VI. Children in conflict with the law

6.1. Age of criminal responsibility

The new Criminal Code states that persons who have reached the age of 16 before the commission of a criminal offence are fully criminally responsible.¹⁰⁶ Therefore, children in the age group of 16 to 18 years are not guaranteed any special protection but are judged and sentenced as adults. Adolescents who are older than 14 years old at the time of the commission also bear criminal liability¹⁰⁷, but only for certain crimes. In the State report, Ukraine defines these crimes as those “constituting a serious danger to society”. In fact, the Criminal Code contains an extensive list of offences for which 14 and 15 year-old persons are criminally responsible, including “theft” and “hooliganism”.

6.2. Grounds of arrest

The Ukrainian Constitution provides that “every person has the right to freedom and inviolability” and that “no one shall be

arrested or held in custody other than pursuant to a substantiated court decision and only on the grounds and in accordance with the procedure established by the law”.¹⁰⁸ According to the government of Ukraine, “juveniles”¹⁰⁹ may be arrested and taken into custody as preventive measures only “in exceptional circumstances”, that is to say when they have committed a serious crime for which convincing evidence is at hand.¹¹⁰ However, OMCT echoes the concern of the UN Committee against Torture about the legal possibility¹¹¹ of detaining suspected vagrants¹¹², even if no provision of the Criminal Code provides for the punishment of vagrancy or begging. The UN Committee already expressed its concern about the detention of vagrants for up to 30 days.¹¹³ OMCT feels that this practice of arrest and detention is unacceptable. It is

106 - Art. 22(1).

107 - Art. 22(2).

108 - Art. 29.

109 - In the State report, persons aged under 18 years are considered as juveniles.

110 - State report, para. 132.

111 - Under Article 11 of the Militia Act.

112 - Committee against Torture: Summary record of the 488th meeting, Ukraine, 21 November 2001, UN doc. CAT/C/SR.488., para. 39.

113 - Committee against Torture: Conclusions and recommendations, Ukraine, 21 November 2001, UN doc. CAT/C/XXVII/Concl.2.

feared that socially and economically disadvantaged children, such as street-children, are particularly targeted by this practice of arrest. The vagueness of this provision allows for a considerable scope of interpretation for law enforcement officers, which could lead to arbitrary practices. In this regard, OMCT wishes to recall Article 37(b) of the Convention which provides that “no child shall be deprived of his or her liberty unlawfully or arbitrarily” and that “the arrest, detention or imprisonment of a child shall be used only as a measure of last resort”, as well as Article 2 of the Convention which obliges the States Parties to respect its provision “without discrimination of any kind”.

6.3. Police custody

The basic judicial guarantees during police custody are enshrined in the Ukrainian Constitution on which the Code on Criminal Procedure is based. Pursuant to Article 28 of the Constitution, arrested persons may be held in detention for a maximum of 72 hours prior to being brought before a judge. The

detainee shall be immediately released if he or she has not been provided with a court decision about his or her holding in custody within 72 hours. Moreover, this provision recognizes, among others, the right to be informed without delay of the reasons of the arrest, to have the assistance of a legal counsel and to immediately inform relatives of the arrest. Children are fully subjected to this provision as adults are. In accordance with the chapter entitled “Special proceedings in juvenile criminal cases” of the Code on Criminal Procedure, children may only be questioned or charged in the presence of their legal counsel and, when they are under 16 years or recognized to be mentally disabled, with the participation of their parents, teacher or doctor.

However, the real implementation of these legal safeguards is far from satisfactory. The survey of the Ukrainian and American Human Rights Advocacy Bureau together with a number of Ukrainian non-governmental organisations (see above section 4.2) found that it took, on average, 18 days for detainees' families to be informed of the detention and only 43.7 per cent of detainees were immediately informed about their right to legal counsel and defence.¹¹⁴ In this context, juveniles are likely to be denied the

114 - Yu. Shcherbina: Monitoring of Prisons in Ukraine: First Steps, Informational bulletin Aspect # 2, 2001, pages 19-20, cited in Olexandra Rudneva: Violence against Women in Ukraine: Contribution to OMCT's alternative report to the Committee against Torture, Kharkiv Centre for Women's Studies, November 2001, page 15.

presence of a legal representative or of one of his or her parents.

Of all the phases of the proceedings of juvenile justice, it is at the moment of the arrest or immediately after, during police custody, that children are most exposed to risks of torture and other forms of cruel, inhuman and degrading treatment. Therefore, OMCT wishes to recall the last concluding observations of the UN Committee against Torture recommending Ukraine to shorten the current 72 hours detention period before detainees see the judge.¹¹⁵ In addition, OMCT would like to remind Ukraine that children held in custody - even those aged between 16 and 18 years - shall be kept separate from adults, in conformity with article 37(c) of the Convention.¹¹⁶

6.4. Pre-trial detention

Children may be taken into detention as preventive measure only if there is “convincing evidence” that they committed “a serious crime”.¹¹⁷ However, OMCT is deeply concerned to note that, under the Ukrainian legislation, children (like adults) can be kept

in pre-trial detention up to 18 months. In reality, the preventive detention might last 2, 3 or even 4 years, without infringement of the law. Indeed, if evidence is not sufficient, courts have the power to prescribe a second investigation, in which case, the detention starts from zero. After their arrest, children are held in pre-trial detention centres (SIZOs) where adults are also detained. In this respect, OMCT wishes to remind Ukraine of its obligations under Article 37(c) of the Convention.¹¹⁸ Furthermore, OMCT is convinced that it is during pre-trial that a child faces the greatest risk of being held in very poor conditions of detention, and that international standards that must be applied are disregarded. OMCT believes, therefore, that the length of pre-trial detention goes beyond what is acceptable.

As there are reports that no distinction is made between suspects and convicted persons¹¹⁹, OMCT wishes to mention that children in temporary detention must be separated from children already convicted of crimes punishable by the law.

115 - Committee against Torture: Concluding observations, Ukraine, 21 November 2001, UN doc. CAT/C/XXVII/Concl.2, para. 5(k).

116 - Ukraine admits that, “in exceptional cases”, cells where juveniles are being held may also be occupied by adults (State report, para. 143).

117 - State report, para. 138.

118 - Article 37(c) provides that juveniles held in custody shall be kept separate from adults.

119 - Committee against Torture: Summary record of the 488th meeting, Ukraine, 21 November 2001, UN doc. CAT/C/SR.488, para. 18.

6.5. Procedure and sentences

There are no specialised juvenile courts in Ukraine. Children are entitled to the same legal safeguards as adults (right to a counsel, benefit of the doubt, presumed innocence, etc.). Although courts judging children take into account the accused's living conditions, the circumstance of his/her upbringing or his/her ability to understand the significance and the consequences of his/her acts¹²⁰, OMCT wishes to mention the necessity for every child to be judged by judges who have been specially trained to allow them to deal with situations that fall within juvenile justice.

The Criminal Code provides mitigating circumstances for offences committed by minors.¹²¹ However, children are subjected to punishments that are very similar to those for adults. In this respect, OMCT regrets that sentences imposed on children are rather punitive than educative. Chapter 15 of the Criminal Code, which specifically contains

provisions dealing with minors, sets the following punishments which may be imposed on them: fine, community service, correctional labour, arrest and imprisonment for a determinate term.¹²²

Community service and correctional labour may only be imposed on children who are older than 16.¹²³ Children aged between 11 and 14 years may be placed by court order in special educational institutions for their social rehabilitation and those older than 14 years in vocational schools¹²⁴, but it remains unclear if these measures imply a deprivation of liberty.

Under the Criminal Code, arrest shall only be applied for children who have attained the age of 16. It implies detention in isolation and in special institutions for a term of 15 to 45 days.¹²⁵ However, according to Ukraine's State report, the court may on a provisional basis place a child aged 11 to 18 in juvenile reception/distribution centres for a maximum period of 30 days. These institutions under the authority of the Ministry of the Internal Affairs are designed for the placement of juveniles who have committed acts constituting "a public danger" and who need to be immediately isolated.¹²⁶

120 - See the State report, para. 133.

121 - Art. 66(1). Again, it is difficult to ascertain whether a minor is a person under 18 years of age in accordance with the 1993 Act "On promotion of the social advancement and development of young people" (see section 3) or if it is a person who has not reached the age of 16 years as enshrined in the Criminal Code (see section 6.1).

122 - Art. 98.

123 - Art. 100.

124 - State report, paras. 134-136.

125 - Art. 101.

126 - State report, paras. 134-136.

OMCT is deeply concerned by the fact that children who are younger than 16 years may be sentenced to punishments such as deprivation of liberty, even if they are not criminally liable under Article 22 of the Criminal Code. In addition, OMCT believes that the practice of isolating children while in detention is completely contrary to any acceptable standards. In particular, the UN Rules for the Protection of Juveniles Deprived of their Liberty states that “corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned” amounts to “cruel, inhuman or degrading treatment” and shall, therefore, be strictly prohibited.¹²⁷

Finally, persons under 18 years of age may be sentenced to imprisonment for a determinate term, which may not exceed 10 years¹²⁸ (or 15 years in case of a special grave offence involving a murder¹²⁹). Children shall serve their sentences in correctional labour colonies, and not in normal prisons. OMCT wishes to have precise information on the correctional labour colonies. In particular, Ukraine’s State report mentions that these institutions are placed under the responsibility of the State

Department for Enforcement of Sentences¹³⁰, after stating that they are run by the Ministry of Internal Affairs¹³¹. If the correctional labour colonies, where convicted persons under 18 years serve their sentences of imprisonment, are still under the authority of the Ministry of Internal Affairs, OMCT would recall that the Committee on the Rights of the Child, while examining the initial report of Ukraine, recommended that the supervision of correctional labour colonies for juveniles be transferred from the Ministry of the Interior to the most appropriate structure to ensure the promotion and protection of children’s rights.

Juvenile delinquency has become an increasing problem in Ukraine. Recent years have seen a significant rise in the number of juveniles convicted of criminal offences. It is to be noted that almost half of the juvenile offences registered between 1993 and 1997 were thefts.¹³² According to the Ukrainian non-governmental organization Donetsk Memorial, 20,016 persons under 18 years were convicted in 2000 throughout the country; 8.7% of all convictions were of children.

127 - Art. 67.

128 - Art. 102(1).

129 - Art. 102(3).

130 - *Ibid.*, para. 141.

131 - State report, paras. 134-136.

132 - State report, para. 141.

The previous year, 17,652 children were convicted of criminal offences, which represented 7.9% of all convictions. In 2000, among those held to be criminally responsible, 4,810 were deprived of their liberty while serving their sentences in the 11 correctional labour colonies of the country (24% of all convicted children). In 1999, 4,444 were imprisoned, namely 25% of all convicted children. In this respect, OMCT wishes to remind Ukraine that, under Article 37(b) of the Convention, the arrest, detention or imprisonment of a child “shall be used only as a measure of last resort”. OMCT hopes that the current reduction in the prison population¹³³ (thanks to granted amnesties and the entry into force of the new Criminal Code which provides alternative punishments to imprisonment such as restraint of liberty – placement in an open penitentiary institution – or community

sanctions) will also affect children deprived of their liberty.

OMCT would also recommend that Ukraine clarify the legal minimum age - if there is any – for one to be deprived of his or her liberty.

Finally, OMCT welcomes the *de jure* abolition of the death penalty, which, under the new Criminal Code, is replaced by life imprisonment. A moratorium on executions had been in place since 1997. This punishment shall not be imposed on persons who committed offences under 18 years of age.¹³⁴

133 - In 2001, conditions in prison and pre-trial detention centres continued to fall short of international standards, according to International Helsinki Federation (International Helsinki Federation, Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America, 2002, p. 328). Many facilities did not meet even basic sanitary norms and were overcrowded. At February 2002, Ukraine had one of the highest prison population rates in the world (International Centre for Prison Studies, http://www.kcl.ac.uk/depsta/rel/iepc/worldbrief/highest_prison_population_rates.html). Cells in the penitentiary facilities were not adequately heated or ventilated, and the food served to detainees was often of poor quality. While diseases, in particular tuberculosis, were widespread, detainees were not always granted access to medical care.

134 - Art. 64(2) of the Criminal Code.

VII. Conclusions and recommendations

The International Secretariat of the OMCT is deeply concerned by the situation of children in Ukraine, in particular, by the degree of risk that children face of torture and other cruel, inhuman and degrading treatment or punishment while in custody or detention. OMCT believes that a number of safeguards, both legal and practical, must be implemented in order to fully guarantee the rights of children as enshrined in the Convention.

OMCT regrets that the Ukrainian authorities have not included important information in their report, particularly concerning prejudice against children on ethnic grounds, the protection of children against torture and other cruel, inhuman or degrading treatment or punishment, child labour, street children and child trafficking.

Regarding the discrimination against girls, OMCT recommends that the Committee of the Rights of the Child:

- urge the Ukrainian Government to:

- amend its legislation to fix the same minimum age of marriage for both girls and boys, without exception on a discriminatory basis.

Regarding the discrimination against children belonging to ethnic minorities, in particular to Romani/Gypsy communities, OMCT recommends that the Committee of the Rights of the Child:

- urge the Ukrainian Government to:
 - ensure that all ethnic minorities living in Ukraine are effectively protected by the rights set in the Law on National Minorities;
 - take immediate measures in order to stop police violence against Roma, including children;
 - challenge the impunity actually prevailing for such acts of harassment particularly targeting Roma, conduct the necessary investigations in order to bring those responsible before the courts and

give adequate compensation to victims.

- Regarding the discrimination against certain groups of children, OMCT recommends that the Committee of the Rights of the Child:
- urge the Ukrainian Government to:
- establish mechanisms for the care and support of HIV/AIDS affected children;
- implement policies to eliminate discrimination against children with disabilities, ensuring the right of mentally or physically children to enjoy a full and decent life;
- ensure that children do not face dangerous conditions that are hazardous to both their health and development and, in particular, that children are removed from the zones radioactively contaminated by the Chernobyl disaster.

Regarding the recruitment of persons under the age of 18 years into the armed forces, OMCT recommends that the Committee of the Rights of the Child:

- urge the Ukrainian Government to:

- ratify the Optional Protocol to the Convention on the involvement of children in armed conflicts.

Regarding the torture and other cruel, inhuman or degrading treatment or punishment of children, OMCT recommends that the Committee on the Rights of the Child:

- urge the Ukrainian Government to:
- respond to allegations of torture and other cruel, inhuman or degrading treatment or punishment of children in Ukraine;
- amend the legislation defining torture in order for the definition of torture to also include acts of torture committed by State officials and psychological torture;
- ensure the inadmissibility of evidence obtained through the use of torture;
- ensure that all children deprived of their liberty by the law enforcement agencies, irrespective of the crime of which they are suspected, be granted, from the outset of their custody, the right of access to an independent lawyer;

- ensure that all detained children, irrespective of the crime of which they are suspected, be informed of the right to immediately notify their next of kin of their situation;
- adopt and enforce appropriate sanctions for public officials who are found to have held a child in custody without immediately notifying the prosecutor, or have interrogated a child without the presence of a prosecutor or a lawyer;
- implement effective procedures for internal monitoring and disciplining of the behaviour of public officials, including sanctions for failure to provide children with a lawyer or to inform them of their right to notify their next of kin of their detention;
- ensure that independent and qualified medical personnel be required to carry out regular examinations on child detainees;
- ensure that prosecutors and judges diligently investigate all allegations of torture made by detainees;
- ensure that public officials indicted for

torture or ill-treatment be suspended from duty;

- ensure education and training for all personnel who may be involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment.

Regarding violence in the family, sexual abuse and child trafficking, OMCT recommends that the Committee of the Rights of the Child:

- urge the Ukrainian Government to:
 - ban all forms of corporal punishment;
 - collect reliable and complete data on violence in the family, child sexual abuse and child trafficking in Ukraine in order to set up global policies aimed at fully protecting children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, in accordance with the requirement of Article 19 of the Convention;
 - improve and fully implement its current legislation, in order to offer better pro-

tection to children.

Regarding child labour and street children, OMCT recommends that the Committee of the Rights of the Child:

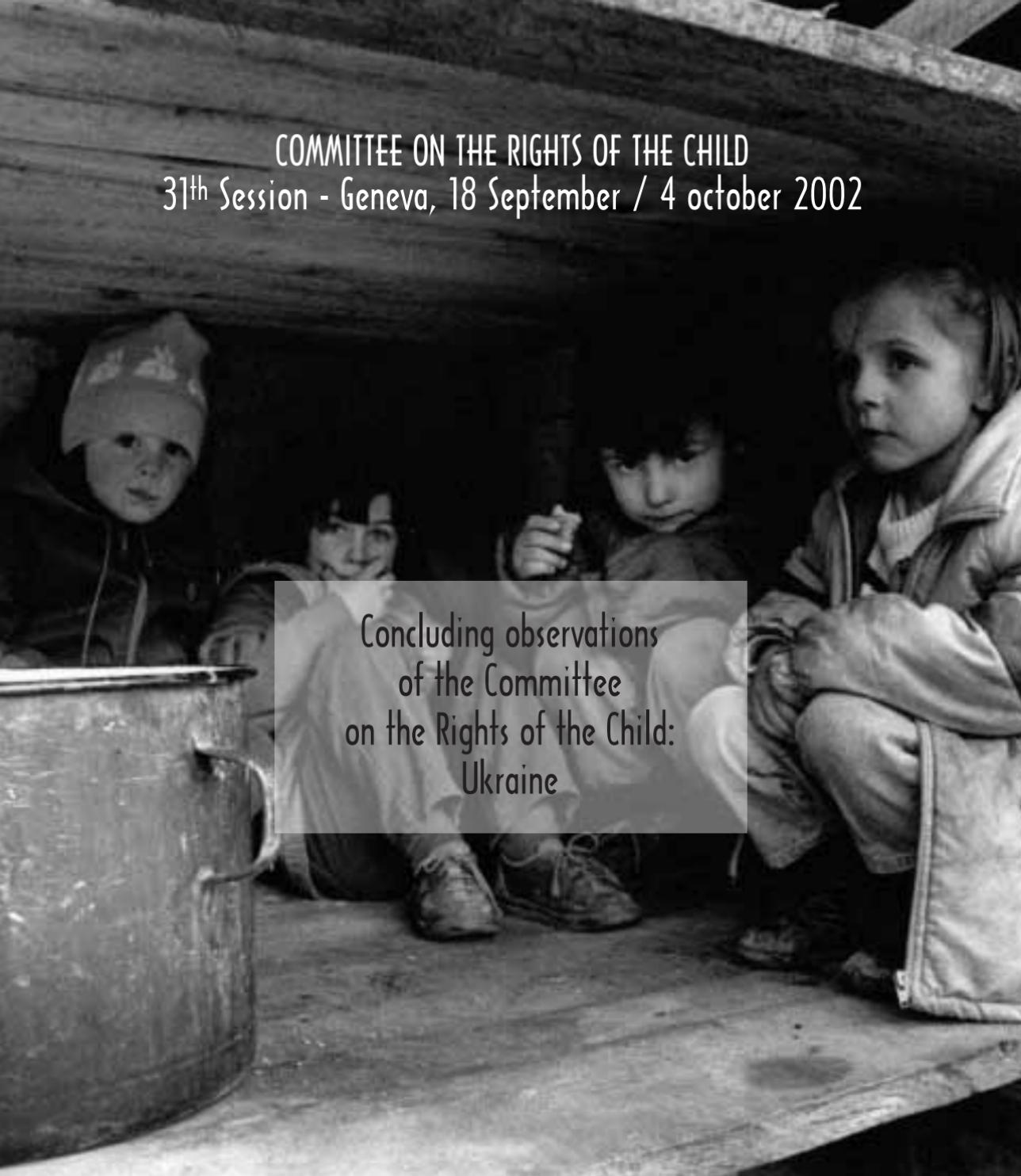
- urge the Ukrainian Government to:
 - make strong efforts to protect the rights of children currently living on the streets, including the rights to development, to health care, to nutrition, to housing and to education;
 - make strong efforts to protect all children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental or social development;
 - collect reliable and complete data on child labour in Ukraine in order to set up a global policy aimed at fully implementing the requirement of Article 32 of the Convention;
 - improve State mechanisms of child labour control.

Regarding the juvenile justice system in Ukraine, OMCT recommends that the Committee of the Rights of the Child:

- urge the Ukrainian Government to:
 - establish specialised juvenile courts, in order that every child is judged by judges who have been specially trained to allow them to deal with situations that fall within juvenile justice;
 - strictly define the possible grounds of arrest which might affect children in order to ensure that the deprivation of liberty is a last resort for all children in conformity with Article 37(b) of the Convention and rule 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;
 - ensure that children in conflict with the law stay in pre-trial detention for the shortest possible period of time;
 - ensure that child detainees are kept, at all times, separately from adults, unless it is in their best interests not to do so;
 - prohibit the practice of isolating children which, according to the United Nations

Rules for the Protection of Juveniles Deprived of their Liberty, amounts to cruel, inhuman or degrading treatment;

- clarify the legal minimum age for a child to be deprived of his or her liberty;
- set up and implement a policy on criminality aimed at promoting the reinsertion of children accused of or recognized as having infringed the penal law.



COMMITTEE ON THE RIGHTS OF THE CHILD
31th Session - Geneva, 18 September / 4 October 2002

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

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

1. The Committee considered the second periodic report of Ukraine (CRC/C/70/ Add.11) at its 821st to 822nd meetings (see CRC/C/SR.821-822), held on 26 September 2002, and adopted the following concluding observations¹.

A. INTRODUCTION

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

B. FOLLOW-UP MEASURES UNDERTAKEN AND PROGRESS ACHIEVED BY THE STATE PARTY

3. The Committee welcomes the adoption of the new Constitution in June 1996, giving legal recognition to human rights and freedoms of the individual.

4. The Committee notes the enactment of new legislation as listed in the written replies to the list of issues such as: State Social Assistance for Low-Income Families Act (No. 1768-III 1 June 2000); State Social Assistance for Persons Disabled from Childhood and Children with Disabilities Act (No. 2109- III, 16 November 2000);

Act amending the Housing Code of the Ukrainian Soviet Socialist Republic Act (No. 1525-III, 12 March 2000); Child Welfare Act (No. 2402-III 26 April 2001); Immigration Act (No. 2491-III, 7 June 2001); Refugees Act (No. 2557-III, 21 June 2001); Ukrainian Citizenship Act (No. 2235-III, 18 January 2001); Social Work with Children and Youth Act (No. 2558-III, 21 June 2001); Prevention of Domestic Violence Act (No. 2789-III, 15 November 2001) (with, inter alia, the ban on corporal punishment in schools, institutions and the home);

Criminal Code (1 September 2001); Pre-school Education Act (11 June 2001); Extracurricular Education Act (22 June 2001); Act amending the State Assistance for

Families with Children Act (1 January 2002); Family Code (10 January 2002).

The Committee welcomes the ratification of ILO Convention No. 182 on the Elimination of the Worst Forms of Child Labour. The Committee further welcomes the reforms to the education system with the introduction of the Act “On education” in 1996 and the adoption of the Act “On vocational and technical training” in 1997 as well as the introduction of human rights into the school curricula, the annual reports on the status of children and programs on national television and radio on children’s rights.

C. FACTORS AND DIFFICULTIES IMPEDING THE IMPLEMENTATION OF THE CONVENTION

5. The Committee notes that the State party continues to deal with many of the same serious economic and social problems as at the time of the Committee’s consideration of its initial report, with the prolonged period of economic transition having led to a deterioration of living standards, high unemployment rates, and growing poverty, affecting families with

children. Furthermore, the Committee notes the persistence of the negative consequences of the Chernobyl nuclear plant disaster and the harmful impact of the HIV/AIDS pandemic, affecting the population in general and the health and development of children in particular.

D. PRINCIPAL SUBJECTS OF CONCERN, SUGGESTIONS AND RECOMMENDATIONS

D1. General measures of implementation (arts. 4, 42 and 44, paragraph 6 of the Convention) Committee’s previous re- commendations

6. The Committee regrets that some of the concerns expressed and recommendations made in the concluding observations (CRC/C/15/Add.42 para 8; 17; 18; 20; 22; 25; 26; 29; 30) adopted following its consideration of the State party’s initial report (CRC/C/8/Add. 6) have been insufficiently addressed. The Committee notes that the same concerns are expressed and recommendations made in the present document.

7. The Committee urges the State party to make every effort to address those recommendations from the concluding observations of the initial report that have not yet been fully implemented and to address the list of concerns contained in the present concluding observations on the second periodic report.

Legislation and Implementation

8. The Committee is concerned that the legislation on the Convention has been considered to be of a declaratory nature and thus not fully implemented. The Committee is also concerned that very little information was received on the legislation enacted after the reporting period, making it difficult for the Committee to assess whether it has a rights-based approach and complies with the Convention.

9. The Committee recommends that the State party review, amend and renew, where necessary, the legislation in order to ensure full compliance with the rights in the principles and provisions of the Convention and strengthen the mechanisms for implementation of all legislation relevant to the Convention.

National Plan of Action and Co-ordination

10. The Committee noted information received on :

The State youth policy, including the National Programme “Children of Ukraine”; the State Committee on Family and Youth Affairs co-ordinating the implementation of the State policy on the rights of families, women and children between Government sectors and central and local authorities, as well as the cooperation between the central authorities, UNICEF and other international organisations; The Inter-Departmental Commission for Child Welfare coordinating measures, to implement the Convention, the World Declaration on the Survival, Protection and Development of Children and the National Programme “Children of Ukraine”.

11. The Committee remains concerned however that the State youth policy covers social assistance, healthcare, education, alternative care and child protection and that it lacks a rights-based approach and does not encompass all rights enshrined in the Convention. The Committee is further concerned that there is lack of clear coordination of implementation of all the rights in the Convention (ibid. para. 18).

12. The Committee recommends that the National Plan of Action should be right-based and cover all the principles and provisions of the Convention.

13. Committee recommends that the State party establish or appoint a single permanent body to coordinate the implementation of the Convention on the rights of the child at national and local levels, including by effectively coordinating activities between central and local authorities and cooperating with NGOs and other sectors of civil society.

Independent Monitoring Structures

14. The Committee notes the establishment of the Commissioner for Human Rights of the Supreme Council of Ukraine, however remains concerned that the mandate of the Commissioner for Human Rights does not provide for the regular monitoring and evaluation of progress in the implementation of the Convention. The Committee is further concerned that this office does not include a mechanism to address individual complaints relating especially to violations of rights guaranteed under the Convention.

15. The Committee encourages the State party

to establish, within its structure either a Commissioner specifically responsible for Children's Rights, or a specific section or division responsible for children's rights especially responsible for addressing complaints made by children in a child-sensitive manner. In this respect the Committee refers to its General Comment No. 2 on the Role of National Human Rights Institutions.

Resources for children

16. The Committee notes the priority accorded by the State party to health and education and the information that the budget has been increased for 2000-2001. However, the Committee remains concerned about the low level of resources in general for social services, health and education having a negative impact on the quality and accessibility of services, especially affecting families with children living in poverty. Also, the Committee is concerned that the "Children of Ukraine" programme is not accorded adequate funding. The Committee is further concerned that readjustment programmes may disproportionately negatively affect children if not appropriately addressed in the planning and budgeting of social services.

17. The Committee recommends that the State party, in light of article 2, 3 and 6 of the Convention, pay particular attention to the full implementation of article 4 of the Convention by:

- a) Further continuing to increase the budget for the implementation of the Convention and prioritising budgetary allocations to ensure implementation of economic, social and cultural rights of children to the maximum extent of available resources, in particular to socially marginalized groups, taking into account the decentralization of the provision of social services and of public finances;
- b) Strengthening its efforts to implement the poverty reduction strategy (2001);
- c) Ensuring sufficient resources for the full implementation of State programmes and policies for children, including “Children of Ukraine”;
- d) Identifying the amount and proportion of the State budget spent on children through public and private institutions or organizations in order to evaluate the impact and effect of the expenditures and also, in view of the costs, the accessibility, and the qual-

ity and effectiveness of the services for children in the different sectors.

Data collection

18. The Committee regrets that its previous recommendation to the State party to develop an efficient coordination and monitoring mechanism that could provide a systematic and comprehensive compilation of data and indicators on all areas covered by the Convention and in relation to all groups of children, including children in single-parent families, children of divorced parents, abandoned children and institutionalised children, has not been fully followed up (ibid. para 10).

19. The Committee recommends that the State party should, as a priority, systematically collect disaggregated data incorporating all the areas covered by the Convention and covering all children below the age of 18 years, with specific emphasis on those who are in need of special protection. The State party should also develop indicators to effectively monitor and evaluate progress achieved in the implementation of the Convention and assess the impact of policies that affect children. In this context, the Committee recommends that the

State party seeks technical assistance from UNICEF.

Training/dissemination of the Convention

20. The Committee welcomes the efforts undertaken by the State party to disseminate the Convention and to train professionals working with and for children, in line with its previous recommendation (ibid, para.21). However, the Committee is of the opinion that the measures to create widespread awareness and understanding of the principles and provisions of the Convention need to be even further strengthened and implemented in an ongoing, systematic basis.

21. The Committee recommends that the State party:

- a) Continue and strengthen its efforts to provide adequate and systematic training and/or sensitisation on children's rights of professional groups working with and for children, such as parliamentarians, judges, lawyers, law enforcement and health personnel, teachers, school administrators and others as required;
- b) Continue to develop more creative methods

to promote the Convention, including through audiovisual aids such as picture books and posters, in particular at local level, and through media.

Co-operation with NGOs

22. The Committee welcomes the improvement in relations between Government and civil society with increased cooperation between Government and NGOs, however, the Committee remains concerned that insufficient efforts have been made to involve civil society in the implementation of the Convention following the rights based approach.

23. The Committee emphasises the important role civil society plays as a partner in implementing the provisions of the Convention, including with respect to civil rights and freedoms and reiterates its recommendations (ibid. para 18) to promote closer cooperation with NGOs and in particular consider involving non governmental organisations, especially rightsbased ones, and other sectors of civil society working with and for children, more systematically throughout all stages of the implementation of the Convention.

D2 Definition of the child (article 1 of the Convention)

24. The Committee is concerned that despite its previous recommendation (ibid. para 17) there remain disparities in the minimum age of marriage for boys (18) and girls (17). It is also concerned that there is no clearly defined minimum legal age for sexual consent.

25. The Committee reiterates its previous recommendation to the State party to rectify disparities in the age of marriage between boys and girls by raising the minimum age of marriage for girls to 18. It also recommends that the minimum legal age for medical advice and counselling without parental consent be lowered and a clear legal minimum age for sexual consent be established.

D3. General principles (Arts. 2, 3, 6 and 12 of the Convention)

26. The Committee is concerned that the principles of the right to non-discrimination (art. 2 of the Convention), the right to have his/her best interest as a primary consideration (art. 3), the rights to life, survival and development of the child (art. 6) and the right to respect for

the views of the child according to age and maturity (art. 12) are not fully reflected in the State party's legislation, policies and programs at national and local levels.

27. The Committee recommends that the State party:

- a) Appropriately integrate 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 all children; and
- c) Apply these principles in planning and policy-making at every level, as well as in actions taken by social and health welfare and educational institutions, courts of law and administrative authorities.

Non-discrimination

28. The Committee remains concerned that the right to non-discrimination is not fully implemented for children of economically disadvantaged households; children living in

rural areas; children in institutions; children with disabilities, Roma children and children affected with HIV/AIDS, especially regarding healthcare, social welfare and education.

29. The Committee recommends that the State party monitor the situation of children of economically disadvantaged households; children living in rural areas; children in institutions; children with disabilities, national minorities such as the Roma children and children affected with HIV/AIDS. On the basis of the results of this monitoring, comprehensive proactive strategies containing specific and well targeted actions aimed at eliminating all forms of discrimination, including in particular access to education and health care.

30. The Committee reiterates its previous recommendation (ibid. para 22) that measures be taken to prevent a rise in discriminatory attitudes or prejudices, in particular children belonging to the above-mentioned vulnerable groups.

31. 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 Declaration and Programme of

Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of General Comment no 1 on article 29(1) of the Convention (aims of education).

Respect for the views of the child

32. The Committee welcomes the creation of the Child Parliament by the State party, but remains concerned that traditional attitudes towards children in society still limit the respect for their views, within the family, schools and at the community level. The Committee is further concerned that children's opinions are insufficiently taken into consideration, in accordance with their age and maturity, in the context of judicial or administrative decisions, including in the context of child custody procedures and decisions concerning alternative care, such as foster or institutional care or other forms of alternative care.

33. The Committee recommends that the State party:

- a) Promote and facilitate, within the family and the school as well as in judicial and administrative procedures, respect for the

views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention;

- b) Provide educational information to, inter alia, parents, teachers, government administrative officials, the judiciary, children themselves and society at large on children's right to participate and to have their views taken into account;
- c) The Committee recommends, further, that the State party undertake a regular review of the extent to which children's views are taken into consideration and of the impact this has on policy, programme implementation and on children themselves.

D4. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a))

Torture and other cruel, inhuman or degrading treatment or punishment

34. The Committee is concerned that the definition of torture in the Criminal Code 2001 is not compatible with the definition of torture in the Convention against torture as it does not explicitly include acts of torture including

psychological torture committed by State officials. The Criminal Code also fails to declare evidence extracted under torture inadmissible.

35. The Committee is also concerned at continued allegations of children, in particular Roma children, being ill-treated and tortured by law enforcement officials and that these allegations are not effectively investigated by an independent authority.

36. The Committee recommends that the State party:

- a) Amend the legislation defining torture in order for the definition to be compatible with Art. 37 (a) of the Convention;
- b) Respond to allegations of torture and other cruel, inhuman or degrading treatment or punishment of children;
- c) Ensure the inadmissibility of evidence obtained through the use of torture;
- d) Undertake measures to ensure follow-up to the recommendations made by the Human Rights Committee and the Committee Against Torture as they relate to the Convention on the Rights of the Child;

- e) Take immediate measures to stop police violence against children belonging to minorities, in particular the Roma and challenge the impunity actually prevailing for such acts of harassment;
- f) Take all legislative measures to prohibit all forms of torture and other cruel, inhuman or degrading treatment or punishment;
- g) Provide care, recovery, reintegration and compensation for victims.

D5. Family Environment and Alternative Care (arts. 5; 18 (paras. 1-2); 9-11; 19-21; 25; 27 (para. 4); and 39)

Family environment

37. The Committee notes with deep concern that, as noted in the State party's report, family disintegration, including high rates of divorce, growing numbers of single parent families and cases of parental neglect, are a growing phenomenon. The Committee is further concerned at the growing percentage of families living below the poverty line, and regrets that its previous recommendation that the State party take further steps to strengthen

the system of assistance to both parents in the performance of their child rearing responsibilities has not been followed-up, (ibid. para.25). Moreover, financial assistance to families has decreased.

38. The Committee expresses its serious concern at the high increase in number of children left without parental care and regrets that its previous recommendations (ibid. para. 26), to the State party to develop a comprehensive strategy to assist vulnerable families has not been followed.

39. In light of article 18, the Committee recommends that the State party:

- a) Strengthen its efforts to protect children's right to a secure family environment, and ensure through a comprehensive new Children's Act effective protection of children and access for all children and parents in need of financial assistance and in this regard;
- b) Introduce the recently drafted social assistance bill designed to restructure the system of social security benefits;
- c) Improve social assistance and support to families through advice and education to promote positive child-parent relationships;

- d) Provide adequate training to social workers;
- e) 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;
- f) Consider increasing financial support for the families with children living in poverty under the Poverty Reduction Strategy 2001 on the national, regional and local levels.

Corporal punishment

40. The Committee welcomes the new Protection of Domestic Violence Act 2001, but remains concerned that it is not yet implemented.

41. The Committee recommends that the State party:

- a) Conduct a study to assess the nature and extent ill-treatment, abuse and neglect of children in the home, and design policies and programmes to address it;
- b) Establish effective procedures and mechanisms to receive, monitor, and in-

vestigate complaints, including intervening where necessary; investigate and prosecute instances of ill-treatment, and all forms of domestic violence including corporal punishment, ensuring that the abused child is not victimized in legal proceedings and his/her privacy is protected;

- c) Train teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of all kinds of cases of violence against children;

d) Take into consideration the recommendations of the Committee adopted on its days of general discussion on children and violence (CRC/C/100, para. 688, and CRC/C/111, paras. 701-745);

- e) Carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment.

Recovery of maintenance

42. The Committee is concerned that State assistance to single parents is inadequate and

that the system for recovering child maintenance is inefficient and allows for delay in payments, which can in some cases extend to several years.

43. The Committee recommends that the State party establish a mechanism that will implement and monitor more pro-active, timely and effective policy for collecting maintenance from the other parent.

*Children deprived of family environment
/ Alternative care*

44. The Committee notes that the Ministry of Education and Ministry of Health and Housing are responsible for alternative care institutions.

45. The Committee is concerned by the predominant use of institutional responses to provide assistance to children in difficulty and that children who are cared for in institutions for many years, until the age of 18, are not given the educational and vocational skills necessary for them to make an independent living once they leave the institution. The Committee also expresses concern at the low quality of care in some institutions and at the condition of these institutions.

46. Alternative care, such as foster care, or other forms of family-based alternative care, are not sufficiently developed and available, the Committee is further concerned that children lack effective mechanisms to communicate concerns and complaints about their placement.

47. In light of article 20 of the Convention, the Committee recommends that the State party:

- a) Consider establishing or strengthening at the national, regional and local levels the mechanism in charge of alternative care within the system of social welfare;
- b) Take effective measures, including the development of strategies and awareness-raising activities, to prevent and reduce the abandonment of children;
- c) Take effective measures to increase and strengthen foster care, family-type foster homes and other family-based alternative care and correspondingly decrease institutional care as a form of alternative care;
- d) Place children in institutions only as a measure of last resort and as a temporary measure;

- e) Take all necessary measures to improve conditions in institutions, in accordance with art. 3.3 of the Convention and increasing the participation of children;
- f) Provide support and training for personnel in institutions, including social workers;
- g) Continue to monitor standards of care and, in light of article 25 of the Convention and to establish regular periodic review of placement;
- h) Provide adequate follow-up and reintegration support and services for children who leave institutional care.

Adoption

The Committee regrets that its previous recommendation to the State party to consider ratification of the Hague Convention on Protection of Children and Cooperation in respect of Inter country Adoption of 1993 has not yet been followed-up (ibid. para. 28). The Committee is concerned that adopted children have not the right, as far as possible, to know the identity of their biological parents.

48. The Committee reiterates its recommen-

dation to ratify the Hague Convention on Protection of Children and Cooperation in respect of Inter country Adoption of 1993. In light of articles 3 and 7 of the Convention, the Committee recommends the State party to undertake all necessary measures to allow all adoptive children to obtain information on the identity of their parents as far as possible.

D6. Basic health and welfare (arts. 6; 18, para. 3; 23; 24; 26; 27, paras 1-3)

49. The Committee is deeply concerned at the severely reduced quality and accessibility of health care services. The Committee is further concerned at the inaccessibility of medical assistance to children who have left their homes; the increase in child morbidity; high maternal mortality rates, the increase in the number of disabled children; and the high incidence of iodine deficiency and nutrition problems, especially among children from low income households.

50. The Committee urgently recommends that the State party:

- a) Ensure that all children, especially from the most vulnerable groups, have access to primary health care;

- b) Develop a national policy in order to ensure an integrated and multidimensional approach to early childhood development, with a focus on health and nutrition;
- c) Continue to operate with and seek assistance, from among others, UNICEF and WHO.

Children with disabilities

51. The Committee is concerned at the prevailing poor situation of children with disabilities and the increase in the number of disabled children in the period 1993 - 1997. In particular it is concerned at:

- a) The practice of institutionalising children with disabilities;
- b) The lack of counselling and psychological care provided by the State for disabled children;
- c) The lack of State support to families with disabled children;
- d) The societal discrimination faced by children with disabilities;

- e) The considerable reduction in the resources allocated to residential homes;
- f) The limited inclusion of and access by children with disabilities to various areas of daily life, in particular with regards to the education system.

52. In light of article 23 of the Convention, the Committee reiterates its previous recommendation to:

- a) Undertake studies to determine the causes of and ways to prevent disabilities in children;
- b) Conduct public awareness campaigns to raise awareness of the situation and the rights of children with disabilities;
- c) 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;
- d) In light of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (General Assembly Resolution 48/96) 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 more accessible.

Environmental health

53. The Committee welcomes the information that the State party has moved the families from the most affected areas in the aftermath of the Chernobyl disaster. However the Committee remains concerned that as noted in the State party's report "The main factors exerting a harmful impact on children's health (and pregnant women) remain the aftermath of the Chernobyl disaster, the high level of chemical pollutants in the atmosphere and food products, and the high level of noise pollution". It further notes that insufficient attention has been given to the long term health and psycho-social consequences of the Chernobyl disaster.

54. The Committee recommends that the State party:

- a) continue to improve the specialised health care provided to children affected by the Chernobyl disaster, including its psycho-social aspect;
- b) strengthen its efforts to detect and prevent diseases related to nuclear contamination;
- c) focus more on a long-term developmental approach for the assistance to people through, inter alia, supporting UN initiatives in this area;
- d) take all appropriate measures, including seeking international cooperation, to prevent and combat the damaging effects of environmental degradation on children, including pollution of the environment and food products.

Adolescent health / HIV/AIDS

55. With regards to adolescent health, the Committee is concerned at the rise in the number of children and adolescents addicted to drugs, alcohol and smoking. The Committee expresses concern about the lack of access,

without parental consent, to medical counselling and advice. The Committee is also concerned about the high number of teenage abortions, this being the principal cause of maternal mortality.

56. While noting the State party's efforts in the domain of HIV/AIDS, the Committee remains concerned at:

- a) The growing number of cases of HIV/AIDS among the youth;
- b) The very serious impact of HIV/AIDS on the cultural, economic, political, social and civil rights and freedoms of children infected with or affected by HIV/AIDS, including the Convention's general principles and with particular reference to rights to non-discrimination, to health care, education, food and housing as well as to information and freedom of expression;
- c) The absence of an effective national system to manage, monitor, implement and evaluate the efficiency of the State party's HIV/AIDS prevention programmes, and the lack of uniform standards regulating care, treatment, medical services and social assistance for people and families living with HIV;

- d) Insufficient counselling services provided to people with HIV/AIDS, especially adolescents.

The Committee recommends that the State party:

- a) Undertake the necessary measures to address the increase in alcohol abuse, smoking and drug addiction and provide adolescents access to medical counselling and advice without parental consent taking into consideration the evolving capacities of the child;
- b) Ensure adolescents have access to and are provided with education on reproductive health and other adolescent health issues, including mental health, as well as with child-sensitive and confidential counselling services;
- c) Undertake a comprehensive and multi-disciplinary study to assess the nature and extent of adolescent health problems including the negative impact of STDs and HIV/AIDS and, with the full participation of adolescents, use this as a basis to formulate adolescent health policies and programmes;

- d) Integrate respect for the rights of the child into the development and implementation of its HIV/AIDS policies and strategies on behalf of children infected with and affected by HIV/AIDS, as well as their families, including by making use of the International Guidelines on HIV/AIDS and Human Rights and with particular reference to children's rights to non-discrimination, health, education, food and housing, as well as the rights to information and freedom of expression;
- e) Increase its efforts to prevent HIV/AIDS and take into consideration the recommendations of the Committee adopted on its day of general discussion on children living in a world with HIV/AIDS (CRC/C/80, para. 243);
- f) Seek further technical cooperation from, among others, UNAIDS and UNDP.

D7. Education, leisure and cultural activities (arts. 28, 29, 31)

57. The Committee welcomes the efforts taken by the State party to improve the education system, with the introduction of the Act “On

education” which includes such aims as ensuring the delivery of compulsory secondary education to all children of school age. The Committee also welcomes the drafting and adoption of the State standards for higher education. The Committee remains concerned, however, that:

- a) The financial management of the system is inefficient and non-transparent;
- b) The increase in costs for education has limited access to children from economically disadvantaged households;
- c) The decrease in number of pre-school establishments which limits children's access to pre-schooling;
- d) The increasing drop out rates in secondary and vocational education;
- e) There are important regional disparities in the number of education establishments and the quality of education available, with rural areas being at a particular disadvantage and that small national minorities such as Roma children do not get quality education, including in their own language;

- f) Education reforms are being implemented without the necessary preliminary preparation and training of teachers.

58. The Committee recommends the State party to:

- a) Ensure the availability of free primary education and accessibility for all children in the State party, giving particular attention to children in rural communities, children from Roma, the Crimean Tatar and other minorities, as well as children from disadvantaged backgrounds, to good quality education, including in their own language;
- b) Undertake the necessary steps to increase the number of pre-school establishments;
- c) Ensure that legislation with regard to compulsory education is enforced, including through the provision of the appropriate resources for this purpose;
- d) Ensure that education reforms are implemented with sufficient preparation and support to schools to implement the reform, including extra funding and teacher training, and establish a process for quality evaluation of the new programmes;

- e) Improve the quality of education in the whole country in order to achieve the goals mentioned in article 29 (1) of the Convention and the Committee's general comment on the aims of education; and ensure that human rights education, including children's rights, are included into the school curricula.

D8. Special protection measures (arts. 22, 38, 39, 40, 37 (b)-(d), 32-36)

Refugee and internally displaced children

59. The Committee welcomes the enactment of the Refugee Law 2001, but remains concerned that:

- a) As noted in the State party's report "some refugee children, especially older ones, do not attend school and this prevents them from obtaining an education and leads to their isolation in Ukrainian society";
- b) The registration and refugee status determination procedures have been suspended since August 2001, pending the implementation of the new 2001 refugee law.

- c) Inadequate nutritional and medical care provided for illegal migrants, including children, who are detained at points of entry and held on the premises of the border guards.

60. The Committee recommends that the State party:

- a) Develop a procedure to attend to the specific needs and situation of unaccompanied child refugees, as suggested in the State party report;
- b) Implement the Refugee Law 2001;
- c) Ensure that asylum-seeking, refugee and illegal immigrant children have access to education and health services;
- d) Ensure adequate nutritional and medical care for children detained in border guard facilities;
- e) Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Economic exploitation

61. The Committee notes the creation of the Ministry of Labour and Social Policy in 1996, which is responsible for monitoring compliance with the labour legislation, particularly in respect of children, it remains concerned that there is inadequate enforcement of the Ukrainian Labour Code, in particular with regards to hazardous labour and forced labour, and that a large number of children are reported to be working, particularly in the informal sector.

62. The Committee recommends that the State party:

- a) Undertake a national survey on the causes and extent of child labour with a view to adopting and implementing a national plan of action to prevent and combat child labour;
- b) Continue efforts to protect all children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental or social development;

Sexual exploitation and trafficking

- a) The Committee is concerned at:
- b) The growing involvement of children in the sex industry;
- c) The lack of implementation of the National Plan of Action to prevent trafficking in women and children;
- d) The large-scale trafficking of children, in particular girls, for the purpose of sexual and other forms of exploitation and the lack of a clearly defined minimum age for sexual consent.

63. The Committee recommends that the State party:

- a) Take action to combat trafficking, child prostitution and other forms of sexual exploitation of children;
- b) Implement the 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; and

- c) Continue and strengthen its efforts to combat trafficking of women and children, including, through the new National Plan of Action to prevent trafficking in women and children and ensure that this programme is provided with sufficient resources to guarantee its effective implementation;
- d) Establish recovery and social reintegration programmes for child victims;
- e) Ratify the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Street children

64. The Committee is extremely concerned at:

- a) An increasing number of street children and unacceptable policies and programmes implemented by the juvenile affairs services to address this situation;
- b) The special preventive sweeps such as “Lesson”, “Street children”, “Railway

station” and “Holiday” and at the keeping of a special data base on information on these children is being considered as social assistance in order to prevent abandonment and criminality;

- c) Street children are vulnerable to, inter-alia, sexual abuse, violence, including from the police, exploitation, lack of access to education, substance abuse, sexually transmitted diseases, HIV/AIDS and malnutrition;

65. The Committee recommends that the State party:

- a) Ensure that street children are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skill training, in order to support their full development;
- b) Ensure that street children are provided with services which promote physical and psychological recovery and social reintegration;
- c) Undertake a study to assess the scope and the causes of the phenomenon and consider establishing a comprehensive strategy, to

address the high and increasing number of street children with the aim of preventing and reducing this phenomenon in the best interest of these children and with their participation;

- d) Consider addressing the situation of street children under the system of youth social welfare services rather than by juvenile’s affairs services.

Administration of juvenile justice

66. The Committee, welcomes the adoption in 1995 of the Act “On juvenile affairs agencies and services and on special juvenile institutions”, which are responsible for social protections and prevention of crime with respect to children and the establishment of Juvenile Police Units. The Committee, however, remains particularly concerned at:

- a) The absence of specialised juvenile courts and juvenile judges despite the legal provisions for these bodies in national legislation, and the limited number legal professionals, social workers, community educators and supervision officers working in this field;

- b) The extended period of time before detainees' families are informed of the detention; the length of detention before seeing a judge (72 hrs) and duration of pre-trial detention (18 months);
- c) The placement in isolation of children aged 11 to 18 in juvenile reception/distribution centres under the authority of the Special Ministry and the poor conditions in these centres and in all institutions where children are deprived of their liberty;
- d) The insufficient education and guidance provided in corrective and other institutions and the lack of social and psychological rehabilitation provided.

67. The Committee recommends that the State party:

- a) "ensure the full implementation of juvenile justice standards and in particular articles 37, 40 and 39 of the Convention, as well 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), and in the light of

the Committee's 1995 discussion day on the administration of juvenile justice."

- b) Use detention, including pre-trial detention, only as a measures of last resort, for as short a time as possible and for no longer than the period prescribed by law;
- c) In light of article 39, take appropriate measures to promote the recovery and social reintegration of the children involved in the juvenile justice system, including adequate education and certification to facilitate that reintegration;
- d) Seek assistance from, inter alia, the Office of the High Commissioner for Human Rights, the United Nations Centre for Crime Prevention, the International Network on Juvenile Justice and UNICEF through the Coordination Panel on Technical Advice and Assistance on Juvenile Justice.

Criminal Code

68. The Committee is concerned at the general lack of comprehensive information on the Criminal Code 2001. The Committee is, however, particularly concerned at the information

received in the written replies which note that disorderly conduct has been defined as a serious crime constituting a danger to society and leading to the criminalization of behavioural problems. The Committee is further concerned at the severe penalties imposed on minors under the new Criminal Code 2001.

69. The Committee recommends the State party review its classification of serious crimes in order to minimize the scope of criminal responsibility for 14-16 year old children. The Committee further recommends, in light of art. 37, 39 and 40 of the Convention, to review the new Criminal Code 2001, so that penalties for children are conducive to the realization of the goals of juvenile justice as spelled out in art. 40 para. 1 of the Convention and are at least not more severe than under the previous Criminal Code.

D 9. Optional protocols

70. The Committee welcomes the signing and encourages the State party to ratify 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.

D 10. Dissemination of the report

71. In light of article 44, paragraph 6, of the Convention, the Committee recommends that the second periodic report and 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 thereon 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.

D 11. Next report

72. 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 includes ensuring that the UN Committee on the Rights of the Child has

regular opportunities to examine the progress made in the Convention's implementation. In this regard, regular and timely reporting by State parties is crucial. The Committee recognises that some State 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 third and fourth periodic reports by 26 September 2008, due date of the fourth periodic report.

The World Organisation
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Rights Programme:



P.O. Box 21 - 8, rue du Vieux-Billard
CH 1211 Geneva 8
Tel. +4122-809 49 39 - Fax +4122-809 49 29
[http:// www.omct.org](http://www.omct.org) - Electronic Mail: omct@omct.org

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