Violence Against Women

for the protection and promotion of the human rights of women

10 REPORTS / YEAR 2003

Carin Benninger-Budel
Lucinda O'Hanlon

OMCT
OPERATING THE SOS-TORTURE NETWORK

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

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

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

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Introduction

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

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

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

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

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

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

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

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

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

torture."[5] However, the Committee against Torture only addressed genital mutilation in 2003.

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

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

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

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

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

1 The "mainstream" human rights treaty monitoring bodies of the United Nations are those treaty monitoring bodies that do not have women as their specified mandate. Thus, they are the Human Rights Committee; Committee Against Torture; Committee on Economic, Social and Cultural Rights; Committee on the Rights of the Child; Committee on the Elimination of Racial Discrimination; and, most recently, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families.

2 U.N. Doc. A/CONF.157/23, Part II.

3 U.N. Doc. A/CONF.177/20, Annex II.

4 ECOSOC Resolution 2001/41.

5 U.N. Doc. E/CN.4/1986/15, para 38.

Violence against Girls in Bangladesh

A Report to the Committee on the Rights of the Child

Contents

1. Preliminary Observations

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

The Convention on the Rights of the Child (hereinafter "Convention") establishes standards for the protection of girls from physical and psychological violence in the home, in the community and at the hands of State officials. The Convention uses both feminine and masculine pronouns in its provisions and it stresses in Article 2(1) that : "*State parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's … sex.*" Among the rights that States Parties must protect regardless of sex, are: the right to life; the right to be free from violence, mistreatment and exploitation while under the care of a parent or other guardian; the right to be free from harmful traditional practices; the right against sexual exploitation and abuse; and the right against torture.

Bangladesh has ratified the Convention on the Rights of the Child (September 2, 1990) and its two Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography (February 12, 2002 and January 18, 2002 respectively).

Bangladesh has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women (November 6, 1984). However, Bangladesh registered several reservations at that time, particularly to articles 2, 13(a), 16.1(c) and (f). On July 24, 1997 Bangladesh removed the reservations from articles 13(a) and 16.1(f), but the reservations on articles 2 and 16.1(c) are continuing.[1] Additionally, Bangladesh has ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women which allows individuals or groups of people – after they have exhausted all national remedies – to

present communications to the Committee concerning violations of the Convention. This Protocol also enables the Committee to investigate severe or systematic violations of the Convention occurring in countries that are parties to the Convention and its Optional Protocol.

Bangladesh has also ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Despite these international obligations, OMCT notes with concern that human rights violations, including torture, take place on a wide scale in Bangladesh. Women and girls suffer from violent attacks in the domestic and community spheres, including rape, murder and acid throwing. The authorities seldom order a judicial inquiry into such attacks, and if they do, they do not publish the findings or punish the perpetrators. OMCT is concerned about corruption, poor governance and the lack of independent investigation bodies in Bangladesh.

2. General Observations concerning the Position of Girls and Women

Bangladesh has a colonial historical background and achieved her independence in 1971 under the leadership of Bangabandhu Sheikh Mujibur Rahman. The economy is mainly agrarian and the population is approximately 140.4 million.[2] Women form over 50 percent of the total population and the growth rate is 1.75 percent per annum. The population of persons below 15 years is around 43 percent of the total population; and women of reproductive age (15 – 49 years) represent 46 percent of the total female population. The maternal and infant mortality rates are reported to be 4.5 and 78 per thousand live births respectively. Life expectancy has increased to 58.1 years for male and 57.6 for female compared with the 1991 level of 55 and 54.5 years respectively.

Women's rights to equality are guaranteed in the Constitution, which was written in 1972. Article 27 of the Constitution states, "*All citizens are equal before the law and are entitled to get equal protection of law*."

Similarly, article 28(1) states that "*the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex or place of birth*." Article 28(2) states, "*Women shall have equal rights with men in all spheres of the state and of public life.*" Additionally, article 28(4) provides that "*Nothing shall prevent the State from making special provisions in favor of women or for the advancement of any backward section of the population.*" Article 29(1) provides, "*There shall be equality of opportunity for all citizens in respect of employment or office in the service in the republic.*"

The Constitution further advances and incorporates the principle of special representation of women in local self-governing bodies (article 9) and provision has also been made to reserve thirty seats for women in the Parliament (article 65(3)). But unfortunately, the ten-year term of the women's reserved seats has expired with the ending up of the Seventh Parliament in 2001. In order to reinstate these special measures, a constitutional amendment is required by the government.

On March 8, 1997, the Bangladeshi Government, for the first time, introduced the National Policy for the Advancement of Women. The policy aims at improving women's fate recognizing that they have been oppressed and neglected for decades. Some of the major goals of this policy are i) to establish equality between men and women in all spheres of national life; ii) to eliminate all forms of discrimination against women and girls; iii) to establish women's human rights; iv) to establish equality between men and women in administration, politics, education, culture, sports and all other economic activities; and v) to provide support services in the advancement of women. The government has also developed a National Policy for the advancement of the girl child, which includes the following aims:

i. Eliminate all forms of discrimination against girl-child and enact necessary new laws.

ii. Strict enforcement of laws against early-marriage, rape of girl-child, oppression, trafficking and prostitution.

iii. Treat girl-child without any discrimination both in the family and the world outside and project a positive image of the girl-child.

iv. Take into consideration the needs of the girl-child like food, nutrition, health, education, sports, culture and vocational training.

v. Give special attention on the implementation of programs aiming at eliminating child labor, especially that of the girl-child.[3]

In spite of the declaration of equality in the Constitution regarding their rights as citizens and the development of the National Policies, women and girls are deprived of many rights such as the right to social security, freedom of expression, as well as rights to education, health, nutrition, and shelter. In most cases, women are also deprived of participation in any decision-making process in family, political, economic and cultural contexts. With respect to the family, women have little say in such decisions as children's education, marriage, divorce and guardianship of child, their own reproductive rights and even with respect to choosing a job.[4]

In education also, traditional socio-cultural practices limit women and girls' opportunities, skill development, employment and participation in the overall development processes. There is a large gender gap in relation to education in Bangladesh which is largely due to ancient tradition and common mentality. Ideas about the appropriate roles for women in the labour market or in society, about biological unsuitability of women for science, and about the gender division of work in the household and on the farm influence decisions about schooling. Accordingly, there is a disparity in the literacy rates of women and men, with rates of 29 percent and 52 percent in the year 2000 respectively.[5]

Violence against women and girls has not declined significantly though a number of laws have already been enacted. Oppression of women and girls, murder of women and girls for dowry, abduction, trafficking in women, rape, acid throwing on girls and other forms of violence against women are almost regular phenomena. Incidents like burning to death and stoning to death in a pit have also taken place in the country based on religious misinterpretation given by village arbitration councils. Additionally, state sponsored violence has been manifest through recent cases of rape and murder of women and girls by the police.

3. Violence against Girls in the Family

3.1 Wife Battering

Girls, when married before the age of 18, are at greater risk of physical and psychological violence perpetrated by their husbands or other members of their extended families. It should be noted that wife battering at home constitutes by far the most common form of violence against women and girls and is a significant cause of injury. Wife battering remains hidden, it is not the type of act that dominates headlines as it happens behind closed doors and victims fear speaking out. It is not often recognized as a crime and remains one of the biggest threats to women's security. In 1998, murders of wives by their husbands accounted for over 70 percent of reported domestic violence cases involving girls 13 – 18 years old.[6] Woman battering includes various methods of torturous physical violence. Women victims who have survived woman battering report violence such as slapping, punching, kicking, beating with fists or objects, biting, strangling, burning, raping with body parts or objects, stabbing and shooting. In the most extreme cases, woman victims die as a result of their injuries.

The law called 'Woman & Child Repression Prevention Act – 2000' (Bangla name – Nari O Shishu Nirjatan Damon Ain – 2000) deals specifically with women and children and includes measures against domestic violence against women and children. However, the Penal Code does not deal specifically with domestic violence.

Despite the Woman & Child Repression Prevention Act – 2000, domestic violence continues to go unpunished. Women are often reluctant to report the crime out of shame, and when the crime is reported, the investigation and prosecuting officers can be insensitive to the difficulties faced by victims of domestic violence. There is an apparent lack of due diligence in the investigation, prosecution and punishing of domestic violence. Although some shelters exist in the capital city of Bangladesh, the rural areas do not have many shelters.

3.2 Marital Rape

In Bangladesh, marital rape is excluded from the Penal Code and it is never treated as rape. Cultural and legal attitudes consider that wives should be always ready to meet the sexual "needs" of their husbands. In the Bangladesh Penal Code 1860, section 375, the definition of rape is provided and the exception of marital rape is clearly stated: "*Sexual intercourse by a man with his own wife, the wife not being under 14 years of age is not rape.*"

3.3 Early and Forced Marriage

Early marriages, especially without the consent of the girl, are very common in Bangladesh. Early marriage is intended for several reasons, such as to guarantee financially well-established husbands, relieve her family of the burden of a mouth to feed and at the same time ensure a long cycle of fertility to produce a number of sons.

In Bangladesh, under the Child Marriage Restraint Act 1929, a girl cannot be married until the age of 18 and boys not before 21. The differing legal ages of marriage for girls and boys is facially discriminatory. Additionally, it appears that even this discriminatory law has had little impact on the prevalence of early marriage in Bangladesh as it is estimated that half of women there are younger than 18 when they marry. The lack of birth registration and lack of awareness of the parents about the bad effects of early marriage makes enforcement of this law difficult.

The survey entitled, a Baseline on Grassroots Distress Women conducted by Naogaon Human Rights Development Association in 2000, shows that more than 50% of women do not know the minimum age of marriage. Additionally, although it is legally required to register marriages, 65.88% of marriages are not registered, which leaves many women unable to avail themselves of the rights associated with a legally recognized marriage, such as post-divorce payments. Moreover, about 54% of the respondents did not know how the legal system could help them and about 91% of respondents were unaware of the legal aid given by the government.[7]

Additionally, early marriage can lead to early childhood/teenage pregnancy. Childbearing during early or middle adolescence, before girls are

biologically and psychologically mature, is associated with adverse health outcomes for the both mother and child. A study analyzing the causes of maternal mortality in Matlab in Bangladesh during the period of 1976 – 1985 found a much higher maternal mortality rate among females age 15 – 19 years compared to those in the low-risk age group of 20 – 34 years.[8]

3.4 Dowry-related Violence

Dowry-related violence is particularly problematic in Bangladesh. A survey conducted by Naogaon Human Rights Development Associations (NHRDA) revealed that 84% percent of the cases it received in 2000 were dowry related wife battering cases. In 2001, 173 girls and women were killed due to dowry demand with 79 of these victims below the age of 18.[9]

The term 'dowry' has been defined by the 'Joutuk Nirodh Ain 1980' or the Dowry Prohibition Act – 1980, as "*property or valuable security given or agreed to be given as consideration for the marriage of the parties*" and it is generally offered by the wife's family to the husband before the marriage. The Dowry Prohibition Act of Bangladesh provides that payment or demand for payment of dowry by any one is punishable with imprisonment for up to five years or a fine or with both. The law was amended in 1983, 1995 and 2000 to provide for a sentence of death or life imprisonment and financial penalty to a husband or any of his relatives who causes or attempts to cause death or grievous injury to a wife on account of dowry.[10] OMCT stresses that in addition to being opposed to the death penalty as an extreme form of cruel, inhuman and degrading punishment and a violation of the right to life, as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments, it fears that the death penalty would rather function as a deterrent for prosecution and punishment of the crime.

Despite the legal prohibition, the practice of paying a dowry has not stopped or diminished in Bangladesh, neither in rural nor in urban areas. Repression of women for their inability to bring adequate or repeated instalments of dowry from their poor parents and resultant deaths or grievous injuries is rather disquietingly frequent.

The negative aspects of dowry i.e. the bitter negotiations, threats, extortion, and repercussions for unmet dowry demands are not generally manifest in middle and upper class families. It is the poor who really suffer economically and socially as a result of the practice of dowry. The economic consequences are that, the money of dowry is often raised by the sale or mortgaging of land at low prices. It also includes livestock, trees, household goods and family jewelry and as well as loans from NGOs and moneylenders at high rates of interest. Despite these economic consequences, payment of dowry is prevalent as shown by the abovementioned survey, which found that 77% respondents gave dowry during their marriage and only 23% of marriages were held without dowry.[11]

There are many severe consequences resulting from the payment of dowries. First, failure to meet the dowry demands or the new demands often results in verbal and physical abuse of the wife. Physical abuse includes beating, burning with cigarettes, withholding food, sleep deprivation and denial of medical treatment. The abuse may be meted out by the husband or members of his family, especially his mother. Verbal abuse may include starting rumors about the character or behavior of the wife and often the girls feel unable to disclose the situation to her parents. If the physical abuse continues and worsens, this may lead to the wife committing suicide.

Additionally, a common result of unmet dowry is sending the girl or woman back to her parent's house. When this happens everyone considers that it must be the fault of the girl or woman saying such things as: *"She could not adapt to her husband"* or *"She cannot look after her husband properly"*. So, once again both the girl and her parents suffer from rumours and criticism. This also affects the reputation of the younger sisters.

Apart from the social stigma attached to the girls being returned to live with her parents there are other problems. Her brothers and their wives may resent her presence, particularly if she has brought children with her. She is seen as a drain on the household resources and may be verbally, and even physically, abused by her own family.[12]

3.5 Honour Crimes - Acid Throwing

OMCT is gravely concerned over the increase in the number of reports regarding acid attacks against women in Bangladesh. The victims of acid throwing are usually young girls between 10 and 18 and the perpetrators are usually jealous boyfriends, spurned suitors, neighbourhood stalkers, and sometimes, angry husbands in search of more dowry or permission to enter into a polygamous marriage. The crime of acid throwing is particularly prevalent in rural areas and smaller towns, although there are some incidents in large cities among factory/garment workers and the slum dwelling population. Most victims of acid throwing are seriously burned on their faces and even after extensive treatment, the scars usually remain, making reintegration into society difficult.

Acid throwing is a type of "honour crime" which is perpetrated when a woman allegedly steps out of her socially prescribed role, especially, but not only, with regard to her sexuality or her relationship towards men. For example, in Bangladesh the reasons for the acid throwing attacks include the refusal of an offer of affair or marriage or illegal physical relations, dowry disputes, domestic fights and arguments over property. In 2002, 362 people were burnt through acid violence, among that number, 138 were girls and 188 were women, and with respect to these incidents, only 172 cases were filed.[13]

The Women and Children Repression Prevention Act 2000 provides for the death penalty for whoever causes the death of any woman or child by any poisonous, combustible or corrosive substance. Offence of grievous hurt that is caused by using the above substances resulting in permanent deprivation of the sight, disfiguration of head or face, deprivation of hearing, permanent destruction of any member or joint of the body of a woman or child has been made punishable with death, imprisonment for life, or imprisonment up to 14 years with a minimum of 7 years imprisonment.[14]

There are problems with the implementation of this law, caused by underreporting of the crime out of shame on the part of the victim, and a lack of willingness on the part of the police to take this crime seriously when it is reported. In some instances, police reportedly attempted to convince the victims to withdraw their complaints. OMCT stresses again that in addition to being strongly opposed to the death penalty as an extreme form of

cruel, inhuman and degrading punishment and a violation of the right to life, it fears that the death penalty would rather function as a deterrent for prosecution and punishment of the crime.

4. Violence against Girls in the Community

4.1 Rape and other forms of Sexual Violence

In the last few years, incidents of rape and other sexual offences has increased alarmingly. According to the Human Rights Situation Report by Bangladesh Institute of Human Rights (BIHR) in 2000 and 2001, the rape victims were accordingly 749 and 586 and most of the victims were minor and adolescent girls. The State Minister of Peoples Republic of Bangladesh informed the Parliament that in 2002, 4106 rapes occurred all over the country and in January 2003, 232 incidents of rape occurred.[15]

The daily newspaper 'Daily Janakantha' published two rape-incidents on April 30, 2003. One of these was in Manikgonj, 70 kilometers from the capital, where the perpetrators tied up the parents of the victim, a teenage girl of a minority (Hindu) family, and then raped her in front of her parents. Another was in Thakurgaonl, about 500 kilometers from the capital, where a teenage girl was gang raped. A representative of the local neighbourhood arranged a mediation concerning the incident of rape, but when the victim went to the mediation, she was then raped by the representative.

Earlier, two terrible rape incidents occurred in the capital city: one was rape and murder of 14/15 years girl Shazneen in the her bedroom at Gulshan and another rape case was that of Tania, a six year old child, who was raped in the police control room within the courthouse premises.

Many rape cases go unpunished for various reasons, including lack of cogent evidence, improper and poor forensic examination of the victim, corruption by police and some judicial officials, witnesses' fear reprisal by the accused, and legal complexity.[16]

The Sexual Offence Act 1976 defines rape as "*unlawful sexual intercourse with a woman who at the time of the intercourse does not consent*

to it." According to the Bangladesh Penal Code 1860, section 375 "*if a man has sexual intercourse with a woman or a minor girl against her consent or with her consent obtained by threat of death, hurt or fraudulence, he is said to commit rape. Sexual intercourse falling under any of the five following descriptions would be treated as rape: (1) against the woman's will, (2) without her consent, (3) with her consent when her consent has been obtained by putting her in fear of death or of hurt, (4) with her consent when the man knows that he is not her husband and that her consent is given because she believes herself to be lawfully married, and (5) with or without her consent when she is under 14 years old. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Sexual intercourse by a man with his own wife, the wife not being under 14 years of age is not rape.*"

The narrow definition of rape provided by the laws of Bangladesh is problematic. Firstly, it appears that rape only encompasses penetration by a man of a woman. Furthermore, the burden of proof to show lack of consent is on the victim, making it even more intimidating for victims of rape to report the crime.

It is often extremely difficult when the woman herself has to prove that she has been raped, rather than the culprit to prove the contrary. To prove a rape case, a victim has to produce medical evidence in court. The victim has to be examined by a doctor of her local government hospital as soon as possible after being raped and a doctor will in general be supportive for the victim if he or she notes that the clothes of the victim are stained with semen and blood. But in reality, it is found that, women who are raped in rural areas are not willing to come to the hospital. In most cases, rape victims feel ashamed of being violated and do not want to be checked by a male doctor and female doctors are often not available in the health complexes. In many cases, rape victims wash themselves and their clothes after the incident thereby doing away with vital evidence. Women are often unaware that a medical report is the concrete proof of rape. When a case is reported at the police station, the police show negligence and fail to get a medical examination for the victim in adequate time. As a result the case again becomes weak.

The law also demands the evidence of an eyewitness. While it is possible that a third party is present during the commission of rape, in general

rapes are not witnessed by a third party and if they are, the third party usually becomes a party to the crime. Where a rape is witnessed by a third party, the witness is often reluctant to testify against the accused out of fear or insecurity.[17]

When a rape victim comes to a police station to file a case, generally the male police officers interrogate her, as a result she feels ashamed and the First Information Report (FIR) will be very weak. The police often do not pay proper attention to allegations of rape and generally only intervene in such cases where the rape is followed by murder.

Rape of any woman or child has been made punishable with imprisonment for life with financial penalty. If any woman or child dies as a result of raping, the offender would be punished with death or imprisonment for life with financial penalty of 100,000 taka. Causing the death of a woman or child by gang rape is also punishable with death or imprisonment for life with financial penalty of 100,000 taka. Attempt to cause death or injury by raping a woman or child is also punishable with death or imprisonment for life with financial penalty. The penalty for attempt to rape a woman or child is a maximum of 10 years imprisonment and a minimum of 5 years imprisonment with financial penalty. Rape in police custody is also punishable with a maximum of 10 years imprisonment and a minimum of 5 years imprisonment with financial penalty.

Nari O Shishu Nirjaton Domon Ain 2000 (Women and Children Repression Prevention Act, 2000), section 10 includes the punishment of other forms of sexual violence, which are not considered rape, but rather are considered molestation. The punishment for these crimes is less than the punishment for rape. To be a rape, the act must fulfil one of the five conditions mentioned in article 375 of the Penal Code.

On a positive note, recently, due to awareness drives by NGOs the reporting on rape has increased. Journalists are also playing important role through front paging rape incidents and carrying out follow-up reports.

4.2 Prostitution and Trafficking in Girls

Bangladesh is considered a zone where many children and women are trafficked and there is little government control. Due to their low socio-

economic status women and children are particularly vulnerable to trafficking and sexual exploitation. Religious and cultural taboos perpetuate conditions that make women and children vulnerable to exploitation. Lured by promises of good jobs or marriage, trafficked victims are mainly forced into prostitution. Traffickers arrive in a village and convince a child's family to let the child leave with the trafficker.

There have been several research studies undertaken in recent years on the issue of trafficking in women and children. Some were national surveys, while others were studies done in pocket areas or based on media coverage of incidents being reported to the police or found during investigative report writing.

According to an Indian Researcher Dr. K.K Mukherjee, 20 percent of sex slaves in Indian brothels were trafficked from Bangladesh and Nepal. A review of UNICEF indicated that 200,000 women and children were trafficked to Pakistan from Bangladesh. The report further said that the figure might be below the real number, as all trafficking cases were not duly reported.[18] According to Center for Women and Children Studies (CWCS) about 100 children and 50 women are being trafficked to foreign countries every month from Bangladesh. Since independence at least 1,000,000 women and children have been trafficked from Bangladesh and of them about 400,000 were young women forced into the sex business in India.

According to the Consultation Meeting on Trafficking And Prostitution in 1997 organized by the CWCS, there are a variety of reasons leading to the trafficking of children, including the break up of traditional joint family system and the emerging nuclear families, child marriage or marriage problems, dowry demand, acute poverty forcing parents to sell their children, unequal power relations and discriminations in the family by gender and age.

Traffickers are able to lure parents into selling their children by promising employment and greater earning power for the children, who would send money back to the parents. Another scheme is to arrange fake marriages in order to gain control over children and women. In these arrangements, the women or girls are married and then sold into trafficking. Once children are trafficked, they are often forced into prostitution or domestic service.

The grievance nature and the magnitude of trafficking in women and children have led the policy makers to incorporate the issue in the various acts and laws over time. The Penal Code 1860, modified in 1991, contains provisions of kidnapping, abduction, slavery and forced labor.

Section 360 of the Penal Code states, *"Whoever conveys any person beyond the limits of Bangladesh without the consent of that person or of some persons legally authorized consent on behalf of that person, is said to kidnap that person from Bangladesh"*.

Section 361 of the Penal Code states, *"Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardian"*.

Section 363 of the Penal Code states that the punishment of kidnapping in each case is imprisonment for up to seven years, and possible financial penalty.

Furthermore, there are several aggravating factors to kidnapping warranting more punishment, such as intent to murder, kidnapping a child under the age of 10, intention to unlawfully confine the victim, or intention to force the victim to marry or to engage in sexual intercourse. Additionally, the Penal Code prohibits slavery.

Due to the increasing rate of trafficking in women and children, the Women and Children Repression Prevention Act, 2000 was enacted with more stringent punishment.

Section 06 states-

(1) Whoever brings from abroad or sends or traffics or buys or sells, or otherwise keeps a child in his/her possession, care or custody with the intention of using the child for any unlawful or immoral purpose shall be punished with death sentence or life imprisonment and shall also be liable for fine.

(2) Whoever steals a newborn baby from a hospital, child or maternity hospital, nursing home, clinic etc, or from the custody of concerned guardian shall be punishable accordance with subsection (1).

Section 07 states, *"Whoever kidnaps or abducts any woman and child except with the intention of using them for any unlawful purpose mentioned in section-5 shall be punishable with life imprisonment or rigorous imprisonment for at least fourteen years and shall also be liable to a monetary fine."*

However, the implementation of the above national laws seems to be insufficient. The low number of court cases and convictions regarding trafficking in Bangladesh illustrates the lack of enforcement of the Bangladeshi laws concerning trafficking. During the last five years, only 53 such cases were placed before the court, out of which 35 had to be dropped for lack of adequate evidence. Only 21 culprits have been convicted, the highest punishment being 10 years rigorous imprisonment.[19] So far, there has been no uniform law on slavery and trafficking of women and children in the region, especially the sending and receiving countries.

5. Violence against Women Perpetrated by the State

The Constitution of Bangladesh forbids torture under Article 35(5), which states: *"No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."*

Torture is also a criminal act under the Penal Code, which provides in section 330 that: "*Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

Governments in Bangladesh have shown no determination to enforce the law, which is there to protect the population. Charges of torture are rarely brought against police officers even in cases where allegations of torture have been substantiated.

On April 7, 2003, the High Court announced its judgment on a writ petition in public interest filed before the court in November 1998 by three

Bangladeshi human rights organizations and five concerned individuals following the death of a man in police custody in July 1998. The petition sought mandatory guidelines to prevent torture in custody after arrest under Section 54.[20] The judgment restricts arbitrary use of administrative detention law including the Special Powers Act. It makes it mandatory for the police to inform the family members of anyone arrested; for the accused to be interrogated by an investigation officer in prison instead of police interrogation cell, and behind a glass screen so that his/her family members and lawyers can observe whether or not he or she is being tortured; and for the detainee to receive medical examination before and after remand into police custody. It empowers the courts to take action against the investigating officer on any complaint of torture if it is confirmed by medical examination. It directs the government to amend relevant laws, including Section 54, within six months to provide safeguards against their abuse, and recommends raising prison terms for wrongful confinement and malicious prosecution.

While the constitution of Bangladesh guarantees fundamental human rights and specifically forbids torture and while torture is a criminal act under the Penal Code, a number of laws in Bangladesh create conditions that facilitate torture. The most commonly used of these is Section 54 of the Code of Criminal Procedure. Section 54 enables the police to arrest anyone without a warrant of arrest and keep them in detention for up to 24 hours on vaguely formulated grounds. In all cases of detention under Section 54 of the Code of Criminal Procedure reported to Bangladesh Institute for Human Rights, the detainees claimed that they had been tortured and that torture began from the moment of their arrest.

On January 9, President Iajuddin Ahmed issued "The Joint Drive Indemnity Ordinance 2003" which provided impunity to "members of the joint forces and any person designated to carry out responsibilities in aid of civil administration during the period between October 16, 2002 and January 9, 2003". Under the ordinance, no civil or criminal procedure could be invoked against "disciplinary forces" or any government official for "arrests, searches, interrogation and other steps taken" during this period. The Ordinance related to "Operation Clean Heart" which started on October 17 as a campaign against crime carried out jointly by army and police forces. The campaign was the government's response to growing concern within Bangladesh and the international community about the

continuing deterioration in law and order, including a rise in criminal activity, murder, rape and acid throwing. At least 40 men reportedly died as a result of torture after being arrested by the army. The government acknowledged only 12 deaths and claimed they were due to heart failure. Families of the victims and human rights activists, however, claimed that the deaths resulted from severe torture while in army custody.

The failure of successive governments to address human rights violations in a consistent and effective manner points to the desperate need for an independent, impartial and competent human rights watchdog in the country - such as a National Human Rights Commission (NHRC). Human rights defenders and the international community have been urging Bangladeshi governments to set up a NHRC. The present government has acknowledged the necessity for its formation, but the government has failed to take the appropriate action to establish it.

Following the elections in October 2001, Bangladesh witnessed unprecedented levels of political persecution and violence against supporters of the Awami League, which opposed the ruling party, the Bangladesh National Party (BNP). A new and frightening dimension has been added to the form of this violence, specifically the targeting of women and girls based on the political affiliations of their families. Although this violence is generally not committed directly by police officers or other State agents, the perpetrators are generally supporters of the ruling party, while the victims are generally supporters of the opposition party, and crimes appear to be politically motivated. The police often do not offer any help to the victims as they are controlled and influenced by the ruling party and thus not sympathetic to crimes committed against these victims, resulting in a lack of due diligence.

According to article 27 of the Constitution of the Peoples Republic of Bangladesh, “All citizens are equal before the law and are entitled to get equal protection of law”. Similarly, article 28(1) states that “the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex or place of birth.” But the reality is different than the constitutional rights. Violence against minorities, particularly minority girls, is prevalent in Bangladesh.

With respect to violence against girls, there are many documented cases. For example, on October 6, 2001, a 16 year old girl from the Azimnagar,

Bhanga Faridpur family was gang raped twice by BNP supporters, allegedly because her family supported the opposition party. The incident took place about 200 kilometers from the capital in the victim's home where the perpetrators forced her mother to watch the crime. They looted her house and she has not filed any complaint out of continuing fear of the perpetrators.

Another minority girl was raped due to her family's support of the opposition on October 8, 2001. On that day, the perpetrators entered the family's house and tortured all of the family members and then took Purnima, the 14 year old daughter, outside and gang raped her. Although the police initially refused to accept this case, despite clear evidence of the rape, a case was eventually filed with respect to this incident.

OMCT issued an urgent appeal on July 28, 2003 on a case where three Hindu women were raped on 5 July 2003. According to the information received, a gang of men attacked the homes of Hindu families in the village of Biswanathpur in the sub district of Kaligaonj in Satkhira, Bangladesh. During the course of the attack three women were raped and several houses were destroyed. The report indicates that the attack was politically motivated and targeted the Hindu minorities in an effort to drive them from their land.

According to the information received, the three women were released from the hospital on July 21. The doctors and police allegedly did not cooperate and the victims did not receive an official medical examination. The police reportedly warned the victims not to undergo a medical examination and threatened harm to the victims' husbands if they did have such an examination. The victims have reportedly been threatened and although a complaint has been filed, it was apparently drafted by the police and has no merit.

OMCT expresses concern that several hundreds of minority persons have been killed, thousands of minority women and girls have been raped, and thousands have been forced to flee Bangladesh since October 2001, when the current government came to power.

6. Concluding Observations and Recommendations

Although the Constitution prohibits discrimination based on sex, there is considerable divergence between the constitutional provisions and practice. Girls in Bangladesh face many obstacles to the realisation of their human rights. Traditional and customary malpractices and patriarchal society disenfranchise women from the equal right of men and women to the enjoyment of all their political, civil, economic, social and cultural rights. Their low status in all spheres of life renders women and girls vulnerable to violence in the family, the community and by the State.

OMCT notes with concern that although wife battering is a common practice in Bangladesh, this crime continues to go unpunished. Many wife battering cases are dowry related. Another crime which has increased at alarming rates is acid throwing, of which the victims are usually girls between 10 and 18 and the perpetrators are usually jealous boyfriends, spurned suitors, neighbourhood stalkers, and sometimes, angry husbands in search of more dowry or permission to enter into a polygamous marriage. The specific legal prohibition of domestic violence, acid throwing and dowry has not resulted in a diminishing of the violence.

OMCT is very concerned that the Government has yet to develop a comprehensive policy and legislative response to the problem of domestic violence. OMCT would recommend that effective measures be taken with respect to the enactment of legislation on domestic violence along the lines of the guidelines submitted by the United Nations Special Rapporteur on violence against women to the fifty-second session of the United Nations Commission on Human Rights (U.N. Doc. E/CN/.4/1996/53, Add.2). The measures that the government could envisage incorporating within domestic violence legislation would include; the establishment of a system for the enforcement of *ex-parte* restraining and protective orders that would have the effect of ensuring that the perpetrator could not approach the victim and other witnesses and that the perpetrator be obliged to vacate the family home; and provisions on the rights of victims to receive appropriate legal, medical and other assistance including alternative shelter and reparations.

In addition, greater attention must be paid to the factors that currently prevent girls in Bangladesh from lodging complaints in relation to domestic

violence. These factors include traditional social beliefs concerning the subordinate status of women in family relationships. Moreover, claims are often dealt with in an insensitive manner by the police and seldom result in punishment of the perpetrator. OMCT would recommend the development of broad-based public awareness campaigns concerning domestic violence, if possible in conjunction with local human rights organisations. Comprehensive programs of action to promote non-discriminatory treatment of girls and boys and to eradicate harmful traditional practices, including acid throwing and dowry payments, should be established. Recent initiatives amongst health care professionals and members of the NGO community to establish hotline facilities for victims of domestic violence should be encouraged and expanded and more shelters should be set up. Moreover, OMCT would insist on the necessity of training for law enforcement officials and members of the judiciary in relation to the investigation, prosecution and punishment of cases of family-based violence.

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

OMCT is very concerned about the early and forced marriage of girls in Bangladesh. Under the Child Marriage Restraint Act, the legal minimum marriage age for a woman is 18 and for a man 21. This law, which is facially discriminatory has little impact in Bangladesh where half of the girls are younger than 18 when they get married. Early marriage has been shown to render girls more vulnerable to domestic violence and, by prolonging their reproductive lives, it can also lead to other serious health consequences. OMCT would strongly encourage the government to encourage birth registration and raise awareness among the people about the bad effects of early marriages on girls.

OMCT expresses concern about the increase in trafficking in women and girls and the high incidence of prostitution. The criminal justice system should engage in serious efforts to prevent, investigate, prosecute and punish traffickers. Furthermore, the government should guarantee the social welfare of trafficking victims who want to be rescued by providing them with alternative ways of living, including strong health policies and activities directed at the problem of HIV/AIDS among women who have been trafficked for prostitution.

To prevent girls from being trafficked, emphasis should be laid on awareness-raising programmes, adequate legislation and better law enforcement, and the establishment of regional mechanisms. Other preventative measures include provision of health services, quality education and training i.e. more access to basic education and life skills; more information campaigns on reproductive and sexual health, HIV/AIDS, and counseling. Desperation to leave their home country makes women and girls easy victims to trafficking. Providing women with income earning opportunities and ways to become economically independent is another strategy to prevent trafficking.

OMCT expresses its concern over politically motivated human rights violations in Bangladesh. Women and girls belonging to religious minorities or who are political opponents or family members of political opponents are at risk of sexual abuse, including rape. The perpetrators are generally not state agents but they are often supporters of the ruling party and the human rights violations are generally not investigated, prosecuted and punished with due diligence. OMCT would insist that the government provide adequate redress, including compensation, to child victims of human rights violations, aimed at their rehabilitation and reintegration into society.

OMCT is concerned about corruption, poor governance and the lack of independent investigation bodies in Bangladesh. The failure of successive governments to address human rights violations in a consistent and effective manner points to the desperate need for an independent, impartial and competent human rights watchdog in the country – such as a National Human Rights Commission. Moreover, the Government of Bangladesh should repeal the Special Powers Act as it has pledged to do.

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

1 "The Government of the People's Republic of Bangladesh does not consider as binding upon itself the provisions of articles 2, [.....] and 16 (1) (c) and [.....] as

they conflict with *Sharia* law based on Holy Quran and Sunna." http://www.unhchr.ch/html/menu3/b/treaty9_asp.htm

2 Population Census, 2001, Bangladesh Bureau of Statistics.

3 The National Policy for the Advancement of Women, Government of Bangladesh.

4 A Baseline Survey on Grassroots Distress Women conducted by Naogaon Human Rights Development Association, 2000.

5 UNICEF, statistics by country, available at http://www.unicef.org/infobycountry/bangladesh_statistics.html.

6 Ministry of Women and Children Affairs, Government of Bangladesh.

7 Baseline on Grassroots Distress Women, *Ibid.*

8 Ministry of Women and Children Affairs, Government of Bangladesh.

9 Library and Documentation Centre, Bangladesh National Women's Lawyers Association, 2002.

10 BANGLAPEDIA: National Encyclopedia of Bangladesh- vol. 3.

11 Baseline on Grassroots Distress Women, *Ibid.*

12 Dowry – Poor People Perspective, a study conducted for UNDP by PromPT, 1996.

13 Human Rights Situation Report 2002, Bangladesh Institute of Human Rights, Bangladesh Institute for Human Rights.

14 BANGLAPEDIA: National Encyclopedia of Bangladesh- vol. 8.

15 Editorial, Daily Janakantha, May 03, 2003 issue.

16 Bangladesh National Women's Lawyers Association, Violence against Women in Bangladesh 2001.

17 A research on Rape and Burden of Proof on Women and Children, 1999 by BNWLA.

18 Anti-trafficking Programs and Promoting Human Rights – A Grassroots Initiative by Rights Jessore 2002.

19 Study on the Socio-economic Dimension on Trafficking Girl Child by INCIDIN, 2000.

20 "54(1) Any police officer may, without an order from a Magistrate and without a warrant, arrest-firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;
secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;
thirdly, any person who has been proclaimed as an offender either under this Code or by order of the [Government];
fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property [and] who may reasonably be suspected of having committed an offence with reference to such thing;
fifthly, any person who obstructs a police-officer while in the execution his duty, or who has escaped, or attempts to escape, from lawful custody;

sixthly, any person reasonably suspected of being a deserter from [the armed forces of Bangladesh];
seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;
eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3);
ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition."

Committee on the Rights of the Child

Thirty-fourth session – 15 September - 3 October 2003

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

Concluding observations by the Committee on the Rights of the Child: Bangladesh

1. The Committee considered the second periodic report of Bangladesh (CRC/C/65/Add.22) at its 912th and 913th meetings (see CRC/C/SR.912 and 913), held on 30 September 2003, and adopted at the 918th meeting (see CRC/C/SR.918), held on 3 October 2003, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's second periodic report and the additional information provided in the written replies to its list of issues (CRC/C/Q/BGD/2), which gave comprehensive and clear information about the implementation of the Convention on the Rights of the Child in Bangladesh. The oral presentations allowed for necessary updates and informed the Committee about initiatives and measures planned. The Committee acknowledges that the presence of a high-level, cross-sectoral delegation directly involved with the implementation of the Convention allowed for a better understanding of the rights of the child in the State party.

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

3. The Committee welcomes the positive developments in the area of human rights such as the formulation of a revised National Plan of Action for Children; the adoption of the National Policy for Safe Water Supply and Sanitation; the 2002 National Plan of Action to combat sexual abuse and exploitation, including trafficking; the 2000 Suppression of Violence against Women and Children Act; the 2002 Acid Control Act; the 2002 Acid Crimes Prevention Act; the 2002 law safeguarding the speedy progress of trials; and the withdrawal of the 2002 Public Safety Act.

4. The Committee recognizes with appreciation that the State party has made clear and visible progress, in some fields to a remarkable extent, in the field of child nutrition, health, education and labour. It also notes that the State party strengthened its cooperation with non-governmental organizations (NGOs).

5. The Committee welcomes the ratification by the State party of 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.

6. The Committee also expresses its appreciation to the State party for having ratified ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984.

C. Factors and difficulties impeding the implementation of the Convention

7. The Committee recognizes that poverty and recurrent natural disasters have impeded the full implementation of the Convention.

D. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation

The Committee's previous recommendations

8. The Committee regrets that some of the concerns it expressed and the recommendations it made (CRC/C/15/Add.74) after its consideration of the State party's initial report (CRC/C/3/Add.38), particularly those contained in paragraphs 28-47, regarding the withdrawal of the reservations (para. 28), violence against children (para. 39), the review of legislation (para. 29), data collection (para. 14), birth registration (para. 37), child labour (para. 44) and the juvenile justice system (para. 46) have been insufficiently addressed. Those concerns and recommendations are reiterated in the present document.

9. The Committee urges the State party to implement the previous recommendations that have not yet been implemented, as well as the recommendations contained in the present concluding observations.

Reservations

10. The Committee remains deeply concerned about the reservations to articles 14, paragraphs 1 and 21 of the Convention, which might impede the full implementation of the Convention, but welcomes the information from the delegation that the State party is willing to continue to review those reservations with a view to their withdrawal.

11. In light of the Vienna Declaration and Programme of Action (1993), the Committee reiterates its previous recommendation that the State party withdraw its reservations to the Convention (art. 14, paras. 1 and 21) and recommends that the State party take into account the experience of other States parties in this regard.

Legislation

12. The Committee notes with appreciation the legislative measures that have been undertaken by the State party in order to ensure the imple-

mentation of the Convention. Nevertheless, the Committee remains concerned that domestic legislation and customary law are not fully compatible with all the principles and provisions of the Convention and that laws implementing the Convention are frequently not applied, particularly in rural areas.

13. The Committee recommends that the State party take all effective measures to harmonize its domestic legislation fully with the provisions and principles of the Convention, in particular with regard to existing minimum ages of criminal responsibility and of marriage, child labour and harmful traditional practices affecting children.

Coordination

14. The Committee notes that the Ministry of Women and Child Affairs was given the mandate to coordinate the implementation of the Convention. It welcomes the reactivation of the Inter-ministerial Committee, which includes representatives from civil society and which will coordinate the efforts of the various ministries contributing to the implementation of the Convention. The Committee further welcomes the continued endeavour of the Ministry of Women and Child Affairs to establish within this Ministry a Directorate for Children's Affairs for, inter alia, the promotion and coordination of the implementation of the Convention. However, the Committee remains concerned that policies, and the bodies implementing them, may be insufficiently coordinated.

15. The Committee recommends that the State party take all necessary measures to improve coordination at the national and local level among the different bodies involved in implementing the Convention by:

    (a) Providing the Ministry of Women and Child Affairs, including the Directorate of Children's Affairs, with a clear mandate and adequate human and financial resources to carry out its coordination functions;

    (b) Expediting the establishment of the Directorate for Children's Affairs.

Independent monitoring structures

16. The Committee welcomes the information from the delegation concerning the intention to establish a National Human Rights Commission and an Ombudsperson; however, it remains concerned at the absence of an independent mechanism with a mandate to monitor regularly and evaluate progress in the implementation of the Convention and which is empowered to receive and address complaints, including from children.

17. The Committee recommends that the State party:

    (a) Expedite the process to establish an independent and effective mechanism in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex) and the Committee's general comment No. 2 on the role of independent human rights institutions;

    (b) Ensure that it is provided with adequate human and financial resources and is easily accessible to children with a mandate:

        To monitor the implementation of the Convention;

        To deal with complaints from children in a child-sensitive and expeditious manner;

        To provide remedies for violations of children's rights under the Convention;

    (c) Consider seeking further technical assistance in this regard from, among others, the United Nations Children's Fund (UNICEF) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

National plan of action

18. The Committee welcomes the State party's commitment to formulate by the end of 2003 a national plan of action based on the Convention, which would be monitored by the National Children Council and by the Ministry for Women and Children Affairs.

19. The Committee recommends that the State party:

(a) Complete its activities for the drafting of a national plan of action by the end of 2003;

(b) Involve a broad spectrum of civil society groups, including children, in the formulation and the implementation of the national plan of action;

(c) Ensure that the national plan of action includes all rights enshrined in the Convention, and the millennium development goals, as well as the plan of action foreseen in the outcome document, "A World Fit for Children" of the General Assembly special session on children;

(d) Provide the National Children Council with the necessary resources for an effective implementation and monitoring of the national plan of action;

(e) Create an executive committee within the National Children Council.

Resources for children

20. The Committee notes that budgetary allocations to the social sector, including education, health, family and social welfare, has increased over the past two years, and that the State party is preparing a Poverty Reduction Strategy Paper (PRSP) which includes children's concerns and rights. However, the Committee remains concerned that resources are insufficient for the full implementation of the provisions of the Convention, in particular those relating to the economic, social and cultural rights of children, in accordance with article 4 of the Convention.

21. The Committee recommends that the State party pay particular attention to the full implementation of article 4 of the Convention by prioritizing budgetary allocations to ensure implementation of the economic, social and cultural rights of children, in particular those belonging to economically and geographically disadvantaged groups, including tribal children, to the maximum extent of available

resources (at the national and local levels) and continue and strengthen its efforts to receive additional funding within the framework of international cooperation. In addition, the National Plan of Action for Children should be integrated into its PRSP.

Data collection

22. The Committee welcomes the annual Multiple Indicator Cluster Survey that allows for the systematic collection of data on a sample of children to analyze their standard of living and to provide national estimates. However, the Committee is concerned at the lack of an adequate data collection mechanism within the State party to allow for the systematic and comprehensive collection of disaggregated quantitative and qualitative data with respect to all areas covered by the Convention and in relation to all groups of children.

23. The Committee recommends that the State party:

(a) Further develop the Multiple Indicator Cluster Survey in order to gain a deeper insight into the situation of children and their families;

(b) Strengthen its efforts to establish a comprehensive and permanent mechanism to collect data, disaggregated by sex, age, and rural and urban area, incorporating all the areas covered by the Convention and covering all children below the age of 18 years, with emphasis on those who are particularly vulnerable, such as minority and tribal children;

(c) Develop indicators to effectively monitor and evaluate progress achieved in the implementation of the Convention and assess the impact of policies that affect children;

(d) Continue and strengthen its collaboration, inter alia, with the United Nations Statistics Division and UNICEF.

Training/dissemination of the Convention

24. The Committee takes note of the measures undertaken by the State party to disseminate the principles and provisions of the Convention,

such as translation of the Convention into the national language, the distribution of the Convention to relevant authorities and media campaigns. However, the Committee remains concerned that the public awareness of the Convention remains low and that many relevant authorities, for instance within the juvenile justice system, do not receive adequate training on children's rights.

25. The Committee recommends that the State party strengthen its awareness-raising efforts through, inter alia, systematic education and training on the rights of the child for all professional groups working for and with children, in particular parliamentarians, judges, lawyers, law enforcement officials, civil servants, municipal workers, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, social workers, religious leaders, as well as children and their parents. The Committee further recommends that the State party translate the Convention into the languages of tribal peoples.

2. Definition of the child

26. The Committee is concerned about the various legal minimum ages, which are inconsistent, discriminatory and/or too low. The Committee is also deeply concerned at the fact that the Majority Act 1875, setting the age of majority at 18 years, has no effect "on the capacity of any person in relation to marriage, dowry, divorce and adoption or on the religion and religious customs of any citizen" (CRC/C/65/Add.22, para. 45). The Committee is particularly concerned at the very low age of criminal responsibility (7 years).

27. The Committee strongly recommends that the State party:

    (a) Raise the minimum age of criminal responsibility to an internationally acceptable level;

    (b) Fix a minimum age for admission to employment, in line with internationally accepted standards;

    (c) Ensure that domestic legislation on minimum ages is respected and implemented throughout the country.

3. General principles

Non-discrimination

28. The Committee welcomes the measures undertaken by the State party to enhance the situation of girls, especially in relation to education. It remains deeply concerned about persistent discriminatory attitudes towards girls, which are deeply rooted in traditional stereotypes and limit access to resources and services. The Committee is also concerned about discrimination against children with disabilities, street children, child victims of sexual abuse and exploitation, tribal children and other vulnerable groups.

29. The Committee recommends that the State party take adequate measures to ensure implementation of the principle of non-discrimination in full compliance with article 2 of the Convention, and strengthen its proactive and comprehensive efforts to eliminate discrimination on any grounds and against all vulnerable groups. The Committee also recommends that the State party undertake an education campaign for boys and men on gender issues and sex discrimination.

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

Best interests of the child

31. The Committee notes that the principle of the best interests of the child has been given increased importance and the State party's efforts to raise awareness of this general principle, inter alia, through media campaigns, but remains concerned that the best interests of the child are not fully taken into consideration in policy-making and implementation and other administrative and judicial decisions.

32. The Committee recommends that the State party take all appropriate measures to ensure that the principle of the best interests of the child is integrated into all legislation, as well as in judicial and administrative decisions and in projects, programmes and services which have an impact on children. The Committee also encourages the State party to take all necessary measures to ensure that traditional practices and customary law do not impede the implementation of this general principle, notably through raising awareness among community leaders and within society at large.

Right to life

33. Despite the information that the death penalty has never been carried out against juvenile offenders in the State party, the Committee remains seriously concerned that capital punishment may be imposed for offences committed by persons from the age of 16 years and over, contrary to article 37 (a) of the Convention.

34. The Committee strongly recommends that the State party take immediate steps to ensure that the imposition of the death penalty for crimes committed by persons while under 18 is explicitly prohibited by law.

Respect for the views of the child

35. The Committee notes that, in practice, children are given a voice in some legal proceedings, subject to the discretion of the judge. However, while the National Plan of Action 1997-2002 emphasizes children's participation, the Committee is concerned that traditional attitudes impede full respect for the views of the child, especially within families, educational institutions and the juvenile justice system.

36. The Committee recommends that the State party:

(a) Promote and facilitate respect for the views of children and their participation in all matters affecting them in all spheres of society, particularly at the local levels and in traditional communities, in accordance with article 12 of the Convention;

(b) Provide educational information to, inter alia, parents, teachers, government and local administrative officials, the judiciary, traditional and religious leaders and society at large on children's right to participate and to have their views taken into account;

(c) Amend national legislation so that the principle of respect for the views of the child is recognized and respected, inter alia in custody disputes and other legal matters affecting children.

4. Civil rights and freedoms

Birth registration

37. The Committee welcomes the efforts undertaken by the State party regarding the registration of births, but remains concerned at the lack of a functional birth registration system as well as the low public awareness of the obligation to register children after birth.

38. In light of article 7 of the Convention, the Committee urges the State party to continue and strengthen its efforts to ensure a coordinated system for registration of all children at birth, covering the whole of the country, including through awareness-raising campaigns, as well as to continue its cooperation in this regard with, inter alia, UNICEF and relevant international NGOs.

Name and nationality

39. In light of article 7 of the Convention, the Committee is concerned at the apparent discrimination in respect of nationality, and that a child's name and nationality are derived solely from her/his father and not her/his mother.

40. The Committee recommends that the State party amend its legislation so that citizenship can be passed on to children from either their father or their mother. It also encourages the State party to introduce proactive measures to prevent statelessness.

Torture and other cruel, inhuman or degrading treatment or punishment

41. While taking note of the efforts by the State party to raise public awareness of the ill-treatment of children, the Committee is concerned at reports of ill-treatment and violence against children in State institutions such as orphanages and rehabilitation centres, including by law enforcement agents, as well as at the solitary confinement of juvenile and child prisoners. The Committee is also concerned at reports of violence against street children. Furthermore, the Committee expresses its deep concern at the reported inhuman and degrading punishment carried out by order of traditional village councils ("shalishes") as well as at the increasing incidents of acid attacks on women and girls.

42. The Committee strongly recommends that the State party:

    (a) Review its legislation (inter alia, Code of Criminal Procedure, 1898) with the aim of prohibiting the use of all forms of physical and mental violence, also within educational and other institutions;

    (b) Conduct a study to assess the nature and extent of torture, ill-treatment, neglect and abuse of children, to assess the inhuman and degrading treatment of children attributable to "shalishes", and effectively to implement policies and programmes as well as to amend and adopt laws to address these issues;

    (c) Establish effective procedures and mechanisms to receive, monitor and investigate complaints, including intervening where necessary, and investigate and prosecute cases of torture, neglect and ill-treatment, ensuring that the abused child is not revictimized through legal proceedings and that his or her privacy is protected;

    (d) Undertake all necessary measures to prevent and punish police violence;

    (e) Take all necessary effective measures to ensure the implementation of the 2002 Acid Control Act and of the 2002 Acid Control Prevention Act;

(f) Provide care, recovery, compensation and reintegration for victims;

(g) Take into consideration the recommendations of the Committee adopted at its day of general discussion on the theme "Violence against children" (CRC/C/100, para. 688 and CRC/C/111, paras. 701-745);

(h) Seek assistance from, inter alia, UNICEF and the World Health Organization (WHO).

Corporal punishment

43. The Committee expresses its profound concern at the prevalence of corporal punishment in schools, as well as at the fact that corporal punishment is still legal and widely practised within the legal system, in educational and other institutions and in the family.

44. The Committee recommends that the State party, as a matter of urgency, review existing legislation and explicitly prohibit all forms of corporal punishment in the family, schools and institutions, as well as 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, particularly at the local level and in traditional communities.

5. Family environment and alternative care

Children deprived of family environment

45. The Committee is concerned that the current facilities for alternative care of children deprived of their family environment are insufficient, do not provide enough protection and that large numbers of children do not have access to such facilities.

46. The Committee recommends that the State party urgently take measures to increase alternative care opportunities for children and, in line with article 25 of the Convention, conduct periodic reviews of the placement of children and ensure that institutionalization is used only

as a measure of last resort. The Committee also recommends that the State party take effective measures to prevent abandonment of children, inter alia, by providing adequate support to families.

Adoption

47. In light of article 21 of the Convention, the Committee is concerned about the lack of a uniform adoption law in the State party.

48. The Committee recommends that the State party establish uniform legal provisions for domestic as well as intercountry adoption, and reiterates its previous recommendation that the State party consider becoming a party to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993.

Abuse, neglect and violence

49. The Committee is concerned at the high incidence of abuse, including sexual abuse, within the State party, and at the lack of effective measures to combat this phenomenon. The Committee is particularly concerned that existing legislation, notably the Suppression of Violence against Women and Children Act 2000, is rarely implemented and that the prosecution of abuse against women is rare even in very serious cases because of societal attitudes. The Committee is further concerned that the current legislation protects children from abuse only up to the age of 14 years. In addition, the Committee is concerned that child victims of abuse and/or exploitation are placed in "safe custody", which may result in depriving them of their liberty for as long as 10 years.

50. The Committee recommends that the State party:

(a) Continue and strengthen its efforts to address the issue of child abuse, including through ensuring there is public awareness of the relevant legislation;

(b) Assess the scope, nature and causes of child abuse, particularly sexual abuse, with a view to adopting a comprehensive strategy and effective measures and policies and to changing attitudes;

(c) Provide adequate protection and assistance to child victims of abuse in their homes, whenever possible, and take appropriate measures to prevent the stigmatization of victims;

(d) Ensure that all children below the age of 18 years are specifically protected under domestic legislation against abuse and exploitation;

(e) Ensure that the placement of children victims of abuse and exploitation in institutions for reasons of protection and treatment is used only as a measure of last resort and for the shortest possible period of time;

(f) Take into consideration the recommendations of the Committee adopted at its days of general discussion on the issue of "Violence against children" (CRC/C/100, para. 688 and CRC/C/111, paras. 701-745).

6. Basic health and welfare

51. The Committee notes with appreciation the efforts undertaken and the achievements made by the State party to reduce infant and under-5 mortality rates, as well as the eradication of polio and the improved immunization coverage. Nevertheless, the Committee remains deeply concerned:

(a) That infant and under-5 mortality rates remain high, and that stunting, wasting and severe malnutrition among both children and their mothers are extremely widespread;

(b) At the unhygienic practices surrounding childbirth, which results in, among other things, tetanus, and at the lack of prenatal care;

(c) At the low level of exclusive breastfeeding, which contributes to malnutrition;

(d) At the low level of awareness among the population, particularly in rural areas, of the need to use hygienic, sanitary practices;

(e) At the high rate of children dying as a result of accidents, such as drowning, and that little is done by the State party to prevent these deaths;

(f) At the lack of infrastructure for access to health facilities, notably in rural areas.

52. The Committee recommends that the State party:

(a) Ensure that appropriate resources are allocated for the health sector and develop and implement comprehensive policies and programmes for improving the health situation of children;

(b) Facilitate greater access to free primary health services throughout the country as well as prevent and combat malnutrition, paying particular attention to pre- and antenatal care for both children and their mothers;

(c) Enhance its efforts to promote proper breastfeeding practices;

(d) Enhance the efforts to educate the population in hygienic, sanitary behaviour, notably through awareness-raising campaigns and programmes;

(e) Explore additional avenues for cooperation and assistance with the aim of improving child health with, inter alia, WHO and UNICEF.

Environmental pollution

53. The Committee welcomes the adoption of the National Policy for Safe Water Supply and Sanitation. However, the Committee is concerned, despite the measures taken by the State party, about the extent of water contamination, specifically with arsenic, air pollution and the low availability of sanitation facilities which have serious negative consequences for children's health and development.

54. The Committee urges the State party:

(a) To continue and strengthen its efforts to reduce contamination and pollution of air and water as well as improve sanitation facilities, including by strengthening the implementation of the National Policy for Safe Water Supply and Sanitation;

(b) To intensify awareness-raising campaigns and educational programmes in order to inform children and adults about appropriate behaviours protecting them against risks.

Children with disabilities

55. The Committee is concerned at the situation of children with disabilities, and societal discrimination against these children, including their exclusion with the exception of the visually impaired, from the educational system.

56. The Committee recommends that the State party:

(a) Undertake studies to determine the causes of, and ways to prevent, disabilities in children;

(b) In light of the Standard Rules on the Equalization 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 issue of "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 to children with disabilities;

(c) Undertake an awareness-raising campaign to sensitize the public to the rights and special needs of children with disabilities;

(d) Take the necessary measures to provide children with disabilities with appropriate care and services, and ensure that they are registered at birth;

(e) Seek technical assistance cooperation for the training of professional staff working with and for children with disabilities from WHO, among others.

HIV/AIDS

57. The Committee is concerned at the lack of systematic data collection

on the prevalence of HIV/AIDS, making it more difficult to address the issue and to provide victims with care and support. It also notes that national estimates of the prevalence of the pandemic are significantly lower than those presented by UNAIDS and WHO.

58. The Committee recommends that the State party:

(a) Undertake a study to estimate the prevalence of HIV/AIDS within the country;

(b) Undertake appropriate measures to prevent HIV/AIDS, taking into account the Committee's general comment No. 3 on HIV/AIDS and the rights of children;

(c) Seek further technical assistance from, inter alia, UNICEF and UNAIDS.

Adolescent health

59. The Committee is concerned that insufficient attention has been given to adolescent health issues, particularly reproductive health concerns, which is reflected in the large number of teenage and unwanted pregnancies.

60. The Committee recommends that the State party:

(a) Undertake a comprehensive and multidisciplinary study to assess the scope and nature of adolescent health problems, including the negative impact of sexually transmitted infections, and continue to develop adequate policies and programmes;

(b) Increase its efforts to promote adolescent health policies;

(c) Strengthen the programme of health education in schools;

(d) Undertake further measures, including the allocation of adequate human and financial resources, to evaluate the effectiveness of training programmes in health education, in particular as regards reproductive health, and to develop youth-sensitive and confidential counselling, care and rehabilitation facilities that are accessible without parental consent when this is in the best interests of the child;

(e) Seek technical cooperation from, among others, the United Nations Population Fund, UNICEF, and WHO.

Harmful traditional practices

61. The Committee is deeply concerned at the existence of harmful traditional practices, such as child marriages and dowry-related violence, which are widespread and pose very serious threats, in particular to the girl child.

62. The Committee recommends that the State party continue and intensify its efforts to eradicate harmful traditional practices, by strengthening awareness-raising programmes and enforcement of the law.

7. Education, leisure and cultural activities

63. The Committee welcomes the progress made by the State party in the field of education, notably with regard to increases in primary and secondary enrolments, the reduction in gender disparities in enrolment and improvement in the literacy rates. The Committee also notes with great appreciation the abolition of tuition fees for primary schools and the establishment of a Tk 500 million stipend programme, of the "food for education" programme, and the pilot project on early childhood education. However, the Committee is concerned that challenges remain in the above-mentioned areas, that free compulsory education ends after grade 5, that the school dropout rate is high and that gender-based discrimination persists within schools. Other concerns include reports of abuse and sexual molestation, especially of girls, inaccessibility to schools, inadequate sanitation and the misuse of allocated resources.

64. The Committee notes with appreciation the efforts made by the State party to monitor the quality of education in the madrasas. However, it is concerned about the narrow content of the education provided within these schools.

65. The Committee recommends that the State party:

(a) Take effective measures to raise the maximum age of compulsory

education, and to increase enrolment rates through, inter alia, raising awareness of the importance of education and taking measures to improve the provision and quality of education;

(b) Continue to address gender-based discrimination and other difficulties encountered by girls within the educational system and school environment;

(c) Monitor and evaluate existing programmes on early childhood education and development, and extend services, especially parenting education and education for caregivers to all regions;

(d) Provide appropriate sanitation facilities, especially for females, in all schools;

(e) Provide appropriate training for teachers in order to create a more child-friendly school environment;

(f) Encourage the participation of children at all levels of school life;

(g) Seek assistance from UNICEF, the United Nations Educational, Scientific and Cultural Organization and relevant NGOs.

66. The Committee also recommends that the State party continue and strengthen its efforts to streamline the education given in the madrasas to ensure more compatibility with formal public education.

8. Special protection measures

Refugee and internally displaced children

67. The Committee is very concerned about the difficult conditions under which some refugee children, especially children belonging to the Rohingya population from Myanmar, are living, and that many of these children and their families do not have access to legal procedures that could grant them legal status. Furthermore, the Committee is concerned at the lack of a national refugee policy and that refugee children are not registered at birth.

68. The Committee recommends that the State party:

(a) Adopt a national refugee legislation and accede to the Convention relating to the Status of Refugees of 1951 and its Protocol of 1967;

(b) Grant all refugee children and their families immediate access to relevant procedures determining refugee status;

(c) In collaboration with and with support from international agencies, undertake effective measures to improve the living conditions of refugee families and children, particularly with regard to educational and health-care services;

(d) Provide unaccompanied refugee children with adequate care, education and protection;

(e) Register all refugee children born in Bangladesh.

Economic exploitation, including child labour

69. The Committee notes that, through education, stipend, recovery and social reintegration programmes, progress has been made in reducing the economic exploitation of children, although this has been confined mainly to the formal sector of the economy. However, the Committee remains deeply concerned:

(a) At the high prevalence of child labour and the fact that the phenomenon is widely accepted in society;

(b) At the wide variety of minimum ages for admission to employment in different economic sectors, several of which do not adhere to international standards;

(c) That many child labourers, notably children working as domestic workers, are very vulnerable to abuse, including sexual abuse, completely lack protection and are deprived of the possibility to maintain contact with their families.

70. The Committee recommends that the State party:

(a) Continue and strengthen its efforts to eradicate child labour, including in the informal sector, in particular by addressing its root causes through poverty reduction programmes and strengthening of the children's component in the new PRSP, and facilitation of access to education;

(b) Ratify and implement ILO Convention No. 138 concerning the Minimum Age for Admission to Employment;

(c) Increase the number of labour inspectors and develop a comprehensive child labour monitoring system in collaboration with NGOs, community-based organizations and ILO/IPEC;

(d) Undertake a study of child labour in the agricultural and informal sectors with a view to developing policies and programmes to eradicate this phenomenon.

Sexual exploitation, including prostitution

71. While welcoming the National Plan of Action against sexual abuse and exploitation, the Committee is deeply concerned at the prevalence of sexual exploitation of children and the social stigmatization of the victims of such exploitation, as well as at the lack of social and psychological recovery programmes and the very limited possibilities for victims to be reintegrated into society. The Committee is also concerned about the widespread practice of forcing children into prostitution.

72. The Committee recommends that the State party:

(a) Fully and effectively implement the National Plan of Action against sexual abuse and exploitation, in order to ensure appropriate policies, laws and programmes for the prevention, protection, recovery and reintegration of child victims, in line with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;

(b) Ensure that victims of sexual exploitation are never considered as offenders, but rather benefit from programmes for their recovery and reintegration;

(c) Investigate, prosecute and sentence perpetrators of sexual offences against children;

(d) Develop and monitor a code of conduct for law enforcement officials;

(e) Seek assistance from, among others, UNICEF.

Sale, trafficking and abduction

73. The Committee is deeply concerned at the high incidence of trafficking in children for purposes of prostitution, domestic service and to serve as camel jockeys and at the lack of long-term, concentrated efforts on the part of the State party to combat this phenomenon.

74. The Committee recommends that the State party:

(a) Undertake all necessary efforts to prevent and combat domestic and cross-border child trafficking, including through international cooperation;

(b) Take all necessary measures for the recovery and reintegration of children victims of trafficking;

(c) Investigate, prosecute and sentence perpetrators of trafficking, including through international cooperation;

(d) Seek assistance from, among others, UNICEF and the International Organization for Migration.

Children living and/or working on the streets

75. The Committee notes the efforts undertaken by the State party to provide children living or working on the streets with access to health services and education. However, the Committee is concerned at the large population of children living or working on the streets and at the extremely difficult conditions under which this very

marginalized group is living, and at the lack of sustained efforts to address this phenomenon. The Committee is further concerned at the incidence of violence, including sexual abuse and physical brutality, directed at these children by police officers.

76. The Committee recommends that the State party:

(a) Ensure that children living or working on the streets are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development;

(b) Ensure that these children are provided with recovery and reintegration services for physical, sexual and substance abuse; protection from police brutality; and services for reconciliation with families;

(c) Undertake a study on the causes and scope of this phenomenon and establish a comprehensive strategy to address the high and increasing numbers of children living or working on the streets with the aim of preventing and reducing this phenomenon.

Administration of juvenile justice

77. The Committee acknowledges the efforts made by the State party to improve the juvenile justice system. However, the Committee remains concerned at the limited progress achieved in establishing a functioning juvenile justice system throughout the country. In particular, the Committee is concerned at:

(a) The minimum age of criminal responsibility (7 years), which remains far too low;

(b) The sentencing to life imprisonment of children from the age of 7 years and to the death penalty of children from the age of 16 years;

(c) The absence of juvenile courts and judges in some parts of the State party;

(d) The extensive discretionary powers of the police, reportedly resulting in incarceration of street children and child prostitutes;

(e) The use of caning and whipping as a sentence for juvenile offenders;

(f) The failure to ensure full respect for the right to a fair trial, including legal assistance for alleged child offenders and the very long periods of pre-trial detention;

(g) The detention of children with adults and in very poor conditions, without access to basic services.

78. The Committee recommends that the State party ensure the full implementation of juvenile justice standards, in particular articles 37, 39 and 40 of the Convention, and other United Nations standards in the field of juvenile justice, including 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), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, the Vienna Guidelines for Action on Children in the Criminal Justice System, in the light of the Committee's day of general discussion on the administration of juvenile justice, held in 1995. In particular, the Committee recommends that the State party:

(a) Raise the minimum age of criminal responsibility to an internationally acceptable level;

(b) Ensure that the imposition of the death penalty, of life imprisonment without possibility of release, and of caning and whipping as sanctions for crimes committed by persons while under 18 is explicitly prohibited by law;

(c) Ensure the full implementation of the right to a fair trial, including the right to legal or other appropriate assistance;

(d) Protect the rights of children deprived of their liberty and improve their conditions of detention and imprisonment, including by guaranteeing separation of children from adults in prisons and in pre-trial detention places all over the country;

(e) Establish an independent child-sensitive and accessible system for the reception and processing of complaints by children;

(f) Request technical assistance in the area of juvenile justice and police training from, inter alia, OHCHR and UNICEF.

Minorities

79. The Committee is deeply concerned about the poor situation of children of the Chittagong Hill Tracts, and other religious, national and ethnic minorities, tribal groups or similar marginalized groups and the lack of respect for their rights, including the rights to food, to health care, to education and to survival and development, to enjoy their own culture and to be protected from discrimination.

80. The Committee urges the State party to gather additional information on all minorities or similar marginalized groups of the population, and to elaborate policies and programmes to ensure the implementation of their rights without discrimination, taking into account the Committee's recommendations adopted at its day of general discussion on the theme "The rights of indigenous children".

9. Dissemination of the report

81. 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 by the Committee. The Committee notes with appreciation the intention of the State party to translate and widely disseminate the present concluding observations. Such documents should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the general public, including concerned NGOs.

10. Next report

82. The Committee, aware of the delay in the State party's reporting, wishes to underline the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. Children have the right that the committee in charge of regularly examining the progress made in the implementation of their rights, does have the opportunity to do so. In this regard, regular and timely reporting by States parties is crucial. As an exceptional measure, in order to help the State party catch up with its reporting obligations so as to be in full compliance with the Convention, the Committee invites the State party to submit its third and fourth periodic reports in one consolidated report by 1 September 2007, the date on which the fourth report is due. The consolidated report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report thereafter every five years, as foreseen by the Convention.

Violence against Women in Brazil

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

Contents

1. Preliminary Observations

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

OMCT appreciates the fact that the report submitted by Brazil to the U.N. Committee on Economic, Social and Cultural Rights[1] underlines certain gaps in Brazilian policies and lists the legislative measures taken to remedy these problems. OMCT recognizes the efforts, mentioned in the report, that have been made during the past decade to bring the country up to international standards regarding the human rights of women and violence against women, and the frankness with which Brazil recognizes that a lot more needs to be done. OMCT appreciates the close partnerships established between institutional and civil society organizations to deal with certain issues, and encourages the government to pursue these participative governance activities. More actions, especially in terms of information and education of the population, are necessary for a change of mentalities to take place regarding women's place in society.

OMCT is concerned that many measures taken at a federal level trickle down rather slowly before reaching a state level, and many measures are lost before indeed reaching their destination. Coordination between states is needed in order to implement effective legislation. Contrasts in such a wide country are to be expected, but not to their current extent, which is appalling in many cases. More homogeneity throughout the regions and a greater effort to implement laws directly into the rural areas are two main objectives that the government should strongly pursue.

In line with the overall objectives of OMCT's programme on Violence against Women, this alternative report will focus on Brazil's obligations in relation to the prevention and eradication of violence against women.

After an initial introduction on the status of women in Brazil, the report will examine violence against women in the family, violence against women in the community and violence against women at hands of State agents. It also contains a chapter on violations of women's reproductive rights. The report ends with a series of conclusions and recommendations for future action.

1.1 Background Information on Brazil

Brazil is a Constitutional Federal Republic composed of 26 states and the Federal District. The population is about 172.8 million inhabitants. Women account for roughly half of the population. The socio-demographic profile[2] of the Brazilian woman is quite heterogeneous and varies considerably across regions.[3] 84% of women live in urban areas, of which 52% grew up in town while 32% grew up in the countryside. Of the 16% who live in the rural areas, the great majority already grew up there, and only 3% came from the cities. Roughly one out of four women live in state capitals. Urbanization rates vary considerably from North (around 70%) to South (around 90%).[4]

The population is racially mixed with roughly 40% of Brazilian women having black and white ascendance and another 12% adding indigenous roots to both those ascendances, while 9% have white and indigenous origins. Again distribution varies across regions, with around 70% women from black and mixed origins inhabiting the North and North East, 47% in the Centre West and only 34% in the South East. This rate drops even lower in the South at 15%.[5]

With respect to religion, almost 70% of women in Brazil are Catholic, though only 40% declare an active practice. Evangelism is the second main religion with 20% of women adherents. Roughly 10% of women profess other religions, of which 1% is camdomblé or umbanda.

Marital status is still quite important in Brazil, with 57% of women being married, 36% legally and 21% informally. Only 8% of women are separated or divorced. Maternity is equally important, with 3 out of 4 women being mothers.

1.2 Brazil's International Obligations

Brazil acceded to the International Covenant on Economic, Social and Cultural Rights on 24 January 1992. With regard to other international human rights instruments, Brazil is also State Party to the Convention on the Elimination of All Forms of Discrimination against Women (ratified on 1 February 1984) as well as its Optional Protocol (ratified on 28 June 2002); the International Covenant on Civil and Political Rights (acceded on 24 January 1992); the Convention on the Elimination of All Forms of Racial Discrimination (acceded on 27 March 1968); the Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (ratified on 28 September 1989); and the Convention on the Rights of the Child (ratified on 24 September 1990).[6] OMCT notes with concern that Brazil has neither signed nor ratified the Optional Protocols to the International Covenant on Civil and Political Rights and signed, but not ratified, the two optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. Moreover, Brazil has recognised the competence to receive and process individual complaints of the Committee on the Elimination of Racial Discrimination but not of the Committee against Torture.

Within the inter-American human rights system, Brazil has ratified the American Convention on Human Rights, which prohibits, in Article 1, discrimination on the basis of, inter alia, sex, in guaranteeing protection of the human rights contained in the Convention. Article 24 of the same Convention determines the right of each person to equal protection of and before the law. Article 17.4 establishes the obligation of the State to "take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses" with respect to marriage or its dissolution. In 1995, Brazil ratified the Interamerican Convention to Prevent, Punish and Eradicate Violence against Women, established in Belém, in the State of Pará, in 1994.

The applicability of international law in Brazil is rather slow, since treaties which have been ratified must be approved by Congress through a Legislative Decree and then promulgated through an Executive Decree in order to be applicable internally. This process is normally very time-consuming since it involves the approval by both Congressional Houses.

2. General Observations on the Status of Women in Brazil

2.1 Legal Status of Women

The Brazilian Constitution[7] details in its five chapters individual and collective rights and duties, social rights, nationality, political rights and political parties. Article 5 establishes the equality of all people before the law, and sets forth that men and women have equal rights and obligations. It also determines the punishment by law of wrongful discrimination with respect to individual rights and freedoms.

OMCT recognizes current initiatives aiming at the modernization of domestic law in order to bring domestic legislation in conformity with international obligations. Since 2001, 44 law projects regarding violence and human rights are transiting through the National Congress. OMCT appreciates the fact that many of these deal specifically with gender-related issues. In particular, four law projects address crimes against sexual freedom, six deal with sexual crimes against minors, ten address measures against discrimination, two deal with the conditions of women in detention, five regard domestic violence and six 6 deal with other violence-related issues.

The new civil code, which has been in force since 11 January 2003, embodies the Constitutional principle of equality between men and women. OMCT underlines the revocation of the ancient provision which allowed the husband to file annulment if he was not aware that his wife was not virgin before marriage.[8]

The current Brazilian Civil Code introduces the concept of "family entity" to describe an informal and stable union between spouses, regardless of having obtained legally married status. Therefore, the civil code abandons the discriminatory concept of "legitimate" marriage, becoming thus more adjusted to the current Brazilian reality, since there has been a great increase in the number of informal rather than legal marriages in the past years, especially among persons under 45 years old.[9]

Prior to 1988, married women were legally subordinate to their husbands and under the former Brazilian Civil Code, dated 1916, women were considered perpetual wards, like minors and some elderly.[10] Divorce was only made legal in 1977.[11]

However, the provisions regarding rape under the Penal Code still severely discriminate against women as is dealt with in depth in section 4 of this report.

OMCT appreciates the fact that new rights regarding women status were conquered with the approval of more than 30 laws during the 1990s, and encourages this growing process where more than 200 law projects regarding equal gender status have been submitted in the past few years to the National Congress and are now awaiting approval. Nevertheless, OMCT is concerned that despite the fact Brazil ratified most international conventions regarding equal gender status, legislation follow-up is rather slow. Though the legislative body is mostly in agreement with women's demands regarding their rights, gender status does not yet seem to have become a priority as far as political themes go. Even issues that have gained a relatively high level of parliamentary consensus[12] take very long to be approved, because of lack of political will. According to a 1999 survey[13] by CFEMEA, the Fourth World Conference on Women (also known as the Beijing Conference) Platform for Action needs to gain greater visibility amongst members of parliament, since 35% of those who answered the survey were not aware of its existence. Amongst those who acknowledged its existence, gender differences are astounding, since 75% of women were aware of it while only 5% of men were aware of it.

2.2 Women's Educational Opportunities

Despite the enormous progress that has been achieved over the past decades, there is no equal access to education in Brazil. Though many women now have access to education, according to a 2001 study,[14] 7% of women have never been to school and 60% did not even reach high school. The dropout-rate is high, reaching 18% both at primary and early secondary levels. Amongst the 60% of women who never go beyond primary education level, only 10% do in fact complete it. According to Article 28 of the Convention on the Rights of the Child, States should make primary education compulsory and available free to all.

More discrepancies appear in high school, with only 27% of women starting this level of education, while only 16% of these eventually achieve a

secondary education degree. Most preoccupying is the extremely low level of higher education, with only 6% of women gaining access to university, of which only 3% receive a bachelor's degree. In the end, only 1% of Brazilian women pursue post-graduate studies.[15]

Though nowadays there is a considerable increase in female-headed households, these also happen to be the poorest in more than 30% of the cases. More than half of the women at the head of a household are very poorly educated.[16]

2.3 Women's Employment Opportunities

Article 7 of the Constitution puts forward specific rights of female workers, such as maternity leave and protection of female job market. Though most women can now achieve the same level of education as men, at least in theory, and professions traditionally dominated by men are now becoming more balanced in terms of gender, this is still not reflected in access to actual jobs in the field and senior positions within the companies.

As a consequence of the *de facto* exclusion of women from education, women have difficulties entering the formal labour market. Thus, only 17% of women are employed in the formal market, while 23% recur to informal opportunities and 12% remain unemployed. 30% of women have an official status of housewives, though this figure climbs up to 46% when adding the students, unemployed and retired women who also declare to practice this function at home.

There is still a considerable wage gap between men and women, particularly pronounced in regions such as the Northeast. According to 1998 statistics established by the International Confederation of Independent Unions, women are paid, on average, 44% less than men. According to the government's statistics for the same year, women with a high-school education earn, on average, 63% less than men with the same education level. Black women earn even less, barely reaching 26% of a male salary.[17] Reportedly, only 10 to 20% of these differences can be explained by education or experience. For the most part, the wage gap reflects discriminatory practices.[18]

Furthermore, the family income is still extremely low for a great majority of women. 42% of women live with less than two minimum salaries,[19] and another 34% live with less than five minimum salaries. Only 2% live with more than 20 minimum salaries, around 1'300 USD.

Women are still most commonly employed as domestic servants. OMCT notes with concern that many domestic servants are children, who thus fail to get an education. According to the Government's institute for Applied Economic Research, in 1998 there were approximately 800'000 girls between 10 and 17 years old working as domestic servants.[20] According to the ILO, 20% of girls under 14 work as domestic servants, and these figures may rise as high as 35% in rural areas.[21] More than 70% of the active women working in the formal sector are employed in the services sector, as opposed to 42% men, and women are underrepresented in agricultural and industrial activities.[22] A study on business-women carried out in 2000[23] points out that there are still major gender differences in attempting to gain independent status. Married women and women with children start their own business less often than men in the same situation, while divorced women work in their own enterprise twice as much as divorced men. Women tend to feel the disruptions these independent activities bring into the family organisation, especially in relation to house maintenance, having meals at home and educating their children.

With respect to entrepreneurship, age does not seem to be a major discriminating factor,[24] nor the degree of instruction alone. Yet crossing this factor with being the head of the household shows a certain increase of small business enterprises amongst women who have not achieved their primary or secondary studies. The pressure to provide the whole family income encourages them to find alternative solutions to the strained employee status and the very low income they could possibly get in the formal labour market. These independent businesses are more often than not small structures aimed at survival on a daily basis, not reaching a break-even point allowing long-term growth.

OMCT is concerned that only 1% of the women, and 1,5% of men, have benefited from government measures of encouragement in setting up their own business. OMCT strongly encourages the government to increase such measures in order to help future entrepreneurs create their own companies, while taking into account gender issues. As far as financial

support goes, women tend to resort less to loans, and when they do, they apply for financial help mostly from Banco do Brasil (26,3 against 16,5) and Caixa Econômica Federal (8,5 against 3,2), while men mostly obtain their funding from private banks (4,9 against 30,4). No one applied for funding at Banco da Mulher, the women's bank. This lack of demand is worrisome and shows the necessity to promote existing structures amongst the population or else evaluate their adequacy in responding to actual needs.

2.4 Representation of Women in Politics and the Judiciary

Though women have full political rights under the constitution, and have gained the right to vote since 1933, women are still widely underrepresented in active politics, especially at the country level. The percentage of women in politics and government does not correspond to their percentage amongst the population. Cultural, institutional and financial barriers continue to limit women's participation in political life. The Supreme Electoral Court (TSE) reported that there were over 70,000 female candidates for the municipal elections nationwide in 2000. At 18.3 percent of the total number of candidates, this was a 40 percent increase from the last municipal elections in 1996. In December 2000, the first woman took her seat on the country's highest court, the Supreme Federal Tribunal. The first female senator was elected only recently, in 1991, the first elected governor in 1994,[25] and at that date women made up only 7% of Congress. Ten years later the situation has not shown much improvement. In the last elections in 2002, only one woman was elected in the 1st poll, and only 4 ran for the 2nd poll.

3. Violence against Women in the Family

Contrary to men, who are usually victims of violence by strangers in public places, women are subject to violence most of all by their companions or close relatives within the domestic sphere. Violence in Brazil is still deeply engrained in habits, customs and other socio-culturally induced behaviours.

3.1 Domestic Violence

The Brazilian Constitution, in its article 226 §8, ensures State assistance to the family and determines that mechanisms to suppress violence in family relationships shall be created. In spite of the protection created by the law and the engagement of the State responsibility in the Constitutional text, the rates of crimes against women have not been reduced. Most of the cases concerning harmful physical assault against women occur in the domestic environment.[26]

The figures of São Paulo city in 1992 registered cases of domestic violence against women portray this reality: 81,5% of the registered cases of domestic violence correspond to harmful physical assault, 4,47% are cases of rape or attempted rape, 7,77% are cases of threats and 1,53% to sexual harassment.[27] A survey in Rio de Janeiro in 1999 regarding violence in the domestic sphere shows women have been 4 times more aggressed than men in cases of minor physical assault and 2 times more aggressed in cases of major physical assault.

In April 2001, the Inter American Commission for Human for the first time ruled on a case of domestic violence against women. In the case of Maria da Penha Maia Fernandes, who was left paraplegic as a consequence of continuous beating by her husband, the Commission recommended the prosecution of the perpetrator and the compensation of the victim. The recommendations to the government requested the "end [of] the condoning by the State of domestic violence."[28]

In fact, besides the few articles applicable to domestic violence in the Brazilian Constitution and the Penal Code and related laws, there is no specific legislation dealing with domestic violence.[29] Legislation considers domestic violence as a minor crime (law 9.099/95) and the current judicial practices tend to punish perpetrators of violence against women very lightly. OMCT recognizes a first step has been made through approving legislation that speeds up the possibility of obtaining a restraining order.[30]

The overflow of violence cases in Brazilian courts has led to the creation of Special Courts in order to speed up procedures when the tried cases call for light punishment sentences not exceeding one year. Almost all domestic violence cases are run through these Special Courts, where

penalties are very rarely applied, and where they are applied, they remain extremely light.[31] Lack of court follow-up limits the power of police stations in dealing effectively with domestic violence, since initial punitive action is usually not pursued.

The special courts are not the only reason why domestic violence remains un-addressed. Police and judiciary policies applicable against violence cases still tend to disregard the gravity of violent acts that occur within the domestic sphere. In cases of first or deemed minor offences, when the penalty does not exceed one year imprisonment, the offender may receive suspended sentences with no jail term whatsoever.[32] Women therefore tend to drop charges since there is no effective punishment at stake. Furthermore, since a fine is usually imposed rather than seclusion, women who still have to share the same household with their companions, for lack of alternative housing and/or financial means, end up being equally punished by a sentence that reduces the family's global income. These financial restrictions seriously affect women of the poorest classes who also happen to be frequent violence victims, and fear of this unwanted result may lead them to withdraw the case. OMCT is concerned that overall the present system is simply not aimed at punishing these types of crimes or protecting the victim.[33]

OMCT acknowledges the fact that the government has made substantial efforts to set up special police stations ("delegacias da mulher")[34] to process cases regarding rape, other sexual crimes and domestic violence and abuse. Indeed their numbers have risen from 125 in 1993 to 307 in 1999. Yet, OMCT is concerned that these numbers should not mask the fact that less than 10% of more than 5'000 municipalities in Brazil possess these facilities, and of those of do, 61% are situated in the Southeast and 16% in the South, while the North, the Northeast and the Central East are clearly underrepresented with respectively 11%, 8% and 4%. Furthermore, most of the existing special police stations are ill-equipped to respond to the needs of women victims of domestic violence.[35] The lack of human resources, especially well-trained personnel to deal with cases of violence perpetrated against women on the one hand, and the inadequate infrastructure and non-exchange of information between the offices on the other hand, are the main reasons of their incapacity to solve the problem. Furthermore, the special police stations have low status amongst the police and frequently receive old or inefficient equipment.

Services not directly related to the police, such as therapy and social services, are not considered essential, despite having been clearly demonstrated as an important part of the help process.

OMCT appreciates the fact that since these special structures have been set up women reportedly seek help sooner and more often, and the number of aggressions seems to have diminished. However 70% of the cases have been filed without criminal pursuit,[36] more often than not because the victim herself withdraws the case, either because her companion, who is also her aggressor, promises to change, or because her socio-economic status makes her too dependent on him to be able to leave. More disturbing though is the fact that the justice system contributes towards impunity: in 21% of the cases of domestic violence, the accused have been acquitted.[37] Only 2% of complaints regarding domestic violence against women lead to convictions.[38] The light penalties and the lack of follow-up and monitoring of the aggressors' conduct reinforces the sense of impunity regarding these crimes.

Lack of adequate housing for themselves and their children is one of the main reasons that restricts women from leaving an intolerable situation of violence within the domestic sphere. To address this problem, the government created another special structure under the form of shelters (Casas Abrigo) that provide hospitality and protection to women victims of domestic violence. Though these are in high demand, questions arise as to their effectiveness in protecting the women against their partners, especially since these are only temporary solutions. Women in shelter homes usually lose touch with their references: neighbours, family, work, social gatherings. In the absence of integrated policies, the shelters fail to provide them with the economic and social bases that would substitute these vital links and allow them to reconstruct their lives. For all of these reasons, most women are forced to go back to their previous lives, and many situations of chronic violence evolve into fatal situations.[39] Nevertheless, the initiative of the government of Rio de Janeiro city should be recognized. In March 2001, a centre for victims of domestic violence was created, where psychological and legal assistance is provided to 130 women per month.[40]

Regarding domestic violence committed against children and adolescents, though there are no national statistics, it is assumed that at least each

minute a child is victim of domestic violence in Brazil. [41] There is an increase in age that reaches a peak between 4 and 11 years old, this age range accounting for 53% of the cases. Violence affects equally girls and boys and is perpetrated mainly by the mother (52), followed by the father (27%). Sexual abuse, on the other hand, which accounts for 13% of all domestic violence, is perpetrated on girls in 80% of the cases, by a masculine aggressor in 90% of these cases. Most of the victims are extremely young, ranging between 2 and 5 years old in half of the cases, followed by a remaining 33 % between 6 and 10 years old.

3.2 Marital Rape

Marital rape and violent sexual assaults within the home are not specifically addressed in Brazilian law. Such charges would have to undergo the same procedures as general rape, though in practice such criminal procedure is almost unheard of, and the outcome might well result in much lighter penalties since women's complaints probably will not be taken seriously by courts. Society still largely admits a conservative view whereby it is a woman's duty to submit to her husbands sexual desires.

Half of the women who have reported marital rape are between the ages of 30 and 40, and 30% are between 20 and 30. In 50% of the cases, the couple has been together for 10 to 20 years, and in 40% between 1 and 10 years. After reporting marital rape to the police, 60% of the couples continue together. Nevertheless, it should be noted that 70% of the cases are dropped on the request of the woman who changes her views due to the promises of her husband towards a change in the relationship.

3.3 Crimes against Women Committed in the Name of Honour

Crimes committed in the name of honour are not specifically addressed by Brazilian legislation and are covered in the Penal code under titles such as violent physical assault or murder. Intentional homicide in Brazil is set out by article 121 of the Penal Code as a crime, which may be classified as either simple or qualified/aggravated. When aggravated, it carries a sentence of 12 to 30 years in prison. Reductions of up to one-half may be obtained for first-time offenders. Most men are sent to jail for killing

their wives for the first time are likely to obtain this reduction and serve very little time because it is usually their first offence. Men convicted of killing their spouses serve an average of four years in prison.

When the homicide is committed in self-defense, it is not punished in Brazil, as long as the person uses the "necessary means with moderation" to respond to "unjust aggression […] to his right or someone else's".[42] In wife-murder cases, the prosecution usually claims that the murder was an intentional homicide, while the defence characterises it as an unintentional or "privileged" homicide. In legitimate defence of honour cases, in which the defence seeks to obtain acquittal for the crime, the defence of honour is equated with legitimate self-defence.[43] However, it should be noticed that the Brazilian law does not equate a threat to a man's honour with the danger of a physical attack.

The honour defence has deep historical roots that go back to Portuguese colonial law. When Brazil became independent and created its own penal code, the honour justification was not included. Defence lawyers used instead the argument of crime of passion and temporary insanity. The 1940 Penal Code, however, specifically states that violent emotion cannot be used to exculpate the defendant, but only as a mitigating factor reducing the sentence of up to a third.[44] "Honour", on the other hand, used as if it were the equivalent of legitimate self-defence, leads in case of a successful defence trial to a total discharge of criminal liability.[45]

Despite the 1991 Supreme Federal Court ruling against an honour defence in the murder case of João Lopes, this thesis is still prevalent in Brazil, especially in the inner regions, to discharge men of their crimes against their own spouses. This Supreme Court decision carries no precedential force, and although in general lower courts tend to follow the decisions of the Supreme Court, this is not so in the honour defence ruling. Because homicides are tried by a jury rather than a judge, in most cases social prejudices and stereotypical attitudes towards women prevail. As a result courts are still reluctant to prosecute and convict men, as soon as they claim they have acted to defend their honour against the woman's infidelity. In many cases, though, infidelity remains a mere suspicion and is not even proven. Even if it were proven, infidelity would be no excuse for murdering, since the use of self-defense in that case is clearly not in proportion of the attack.

Adultery, while still being considered as a crime by article 240 of the penal code, only calls for a light sentence of 15 days up to six months. This charge cannot be brought if the couple is separated or divorced.

In the state of Pernambuco, 70% of the 415 women killed in 1992 were murdered by a male intimate. In 1998 the National Movement for Human Rights estimated that female murder victims were 30 times more likely to be killed by current or former husbands and lovers than by other people.[46] In a research regarding 110 honour crimes' trials in the state of Rio Grande do Norte,[47] the great majority refer to husbands and companions not contented with their spouses' decision to separate, or out of jealousy.

In 1995 in Upanema, a jury composed of seven women absolved a man charged with stabbing his wife and mother of their five children to death, upon her accusation of him "not being a man." In 1993 a husband stabbed his wife to death because he was being "betrayed," after 27 years of married life. Sentenced to 7 years in jail in part-time imprisonment, he is under conditional liberty since he has accomplished a third of his penalty.

In another case, an accused married to the victim for five years used to beat her until she left him. He then came to her mother's house and shot her in the head. The crime was proven to be premeditated and the accused was sentenced to 18 years in full-time imprisonment. After spending 4 years and 2 months in jail, which corresponds to 1/6th of the sentence, he was allowed a part-time regime in 1995, and since 1997 he has been granted conditional liberty.

According to other relevant data provided by the research in the state of Rio Grande do Norte,[48] quite a few murders happen in retaliation to women's complaints at the special women police stations for being beaten. Even when the crime has been witnessed by several people the murderers are able to run away, receive permission to await trial in liberty or get short penalties. The relative impunity of homicidal husbands in Brazil contributes to the perception that men are able to exercise control over their wives, particularly over their sexual freedom, as if they were their "property", since the jury tends in quite a few cases to support this view and approve infidelity or neglect by the women as justification for their death.

4. Violence against Women in the Community

4.1 Rape and Other Forms of Sexual Violence

Certain provisions in the Penal Code dating from 1940 regarding rape and assault are clearly discriminatory against women and contrary to the instruments that Brazil has undertaken in the international level. Firstly these types of crimes are classified under the Brazilian Penal Code as crimes against customs (articles 213 to 234) rather than against a person. Articles 213, 215, 216 and 217 deal with the crime of rape, article 214 deals with sexual assault and article 218 with minor corruption. To be considered as a crime, rape is defined *as "'To constrain a woman to a carnal conjunction upon violence or serious menace."* Punishment for rape is imprisonment for a period of 6 up to 10 years. In accordance with article 5 of the Constitution, rape and violent sexual assault are considered by law 8.072/90 as "crimes hediondos" and are therefore not subject to amnesty, bail or conditional freedom. In addition, the Penal Code increases by one-fourth the sentences for those sexual crimes where the offender is an ascendant, adoptive parent, stepfather, brother, tutor or healer, guardian or maintains any other type of authority over the victim.

In cases of minor sexual assault, if the offended is a "mulher honesta" (an honest woman with irreproachable moral standards) that has been constrained to intercourse by means of fraud, than the sentence is of 1 up to 3 years of imprisonment.[49] This kind of moral judgment is an open door to defence lawyers to criticise the victim's behaviour in order to excuse or diminish the seriousness of the aggressor's crime. This term is clearly discriminatory and no woman, as "dishonest" as she may be considered, should have to bear to see such a crime go unpunished because of a reference to her moral behaviour.

Brazilian law is harsher in its protection of minors from sexual violation. If the victim is a minor between 14 years of age and 18 years of age and/or still a virgin, than the sentence is increased proportionally to 2 up to 6 years of imprisonment.

The new article 163 of the Penal Code, if approved by the National Congress, will modify the current article 124a by extending rape punishment to all carnal conjunction with minors under 14 years of age,

mentally-ill women and women incapable of offering resistance, regardless of the presence or not of any presumed violence in connection with the act. Imprisonment sentences will also become harsher, from 8 to 12 years. OMCT is concerned that the setting of the age of consent at 14 offers insufficient protection to children from sexual violence.

OMCT is particularly concerned by the fact that article 107, § VII of the Brazilian Penal Code provides that in case the aggressor decides to marry the victim, he will not face charges. This reparatory provision, perpetrates impunity and closes the door to the Judiciary system to address the human rights of women victims of rape. Furthermore, this provision may lead to a woman being pressured into marrying her rapist in order to preserve her family's "honour."

Data on rape cases registered in 2000[50] throughout Public Security State Secretaries shows higher rates in the North, Centre West and South and Southeast regions with figures between 9.18 and 11.96 per 100'000 inhabitants. The Northeast region, with 5.66, is the only region where this rate is lower, the national average for Brazil being of 8.78 per 100'000 inhabitants.

Absolute figures show that the Southeast region accounts for nearly half of all the rape cases in the country, with 6'632 cases out of a total of 14'881. The Northeast and South regions come next with respectively 2'699 and 2'619 cases, and the North and Centre West regions have the lowest figures with respectively 1'542 and 1'389 cases.

OMCT is concerned that more than 40 women are still raped per day in Brazil, of which 11 are in the state of São Paulo alone. Rio Grande do Sul, Rio de Janeiro and Bahia are the three other states where rape rates exceed 1000 per year, with respectively 1392, 1261 and 1196 cases, and though these states are more densely populated than others, percentage rates remain high, corresponding to 13.67, 8.78 and 9.15 cases per 100'000 inhabitants.

Conversely, low absolute figures, particularly when they regard sparsely populated states, do not necessarily mean a low percentage of rape cases. Thus Amapá, Rondônia, the Federal District, Amazonas and Mato Grosso do Sul, to name a few states with relatively low absolute rates of less than 500 cases, have the highest percentage rates in the country with respectively 30.05, 25.98, 15.56, 14.54 and 13.20 per 100'000 inhabitants.

Regarding sexual assault, figures for state capitals show an increase from 1999 to 2001 for all the regions. The North presents the highest rate with 114% increase, followed by the Northeast and the Center West with respectively 77% and 54% increase. The South and the Southeast on the other hand present much lower rates with respectively 4% and 16% increase.[51] According to these same statistics, rape cases have globally decreased in state capitals over the same period, with – 9% in the North, – 14% in the Southeast and – 13% in the South. On the contrary it was on a rise in the Northeast and the Center West with respectively 22% and 13% increase.[52]

A socio-juridical study[53] of rape data between 1985 and 1994 has collected 50 judicial cases and 101 jurisprudence illustrations from all over the country, and establishes the following profiles for rape crimes: Women and female children are the main victims of rape. Convicted rapists are usually young men under 30 years old of low social status. The socio-economical and ethnic profile of the victim coincides in most cases with that of the assailant. The victim and aggressor usually knew each other prior to the crime, being parents, friends, neighbours or acquaintances. The majority of the victims were minors and virgins, many of them being repeatedly violated by their own father or stepfather. Psychological intimidation and greater physical strength were in most cases the only weapons men used to constrain women.

Judicial procedures in Brazil remain rather slow. Though most cases lasted for 3 years, other cases had lengthy trials, some lasting for more than 8 years. Prejudice and discrimination against women interfere in judicial practices, in particular the demand that women conform to certain moral standards. Moral judgment of the victim's behaviour intervene against an objective analysis of the facts, and judges, lawyers and police alike usually do nothing to prevent this discrimination, and sometimes even actively disqualify the victim's behaviour and dignity.

In 1998, the São Paulo Center for Assistance to Female Victims of Sexual Violence reported that 400 women sought their intervention in rape cases after receiving no help from the police. In 2000, there were more than 8'000 complaints of violence against women filed with the police Delegate to the protection of women, an increase of 40% over 1999.[54]

4.2 Sexual Harassment

The Beijing Conference platform of action, which Brazil signed, defines fear of violence, including sexual harassment, as a permanent constraint that limits women mobility and access to activities and resources essential to their welfare. Therefore the platform recommends that governments set up and enforce a legal framework to eliminate sexual harassment and discrimination against women in their working place. OMCT is pleased that Brazil has complied recently with this demand, since a bill outlawing sexual harassment was just passed in 2001. Law 10.224/01, added to the penal Code under article 216a,[55] sets detention sentences of up to two years for cases in which a person uses his or her hierarchical superiority to gain sexual advantage over another. Detention though does not mean reclusion. Penalties therefore can be applied in a semi-open or an open system or even be commuted to alternative community service sentences.

The Brazilian bill embodies the provision of the CEDAW, ensuring the equality between man and women and the elimination of the discrimination against women in the exercise of their civil, political, economical, social and cultural rights. OMCT praises the substantial progress brought by this law in considering sexual harassment at the workplace as a crime. Nevertheless, the law remains very difficult to implement in practice, mainly because most people are still not aware of the implications of this change of legislation for their rights. The victims suffer extreme pressure to remain silent in order not to lose their jobs. OMCT encourages the government to take measures to publicize this bill and make people more aware of their rights regarding sexual harassment. Furthermore, the government should take measures to protect victims of sexual harassment from being fired after filing a complaint.

4.3 Trafficking and Prostitution of Women

The majority of Brazilian trafficking victims are women and girls who are trafficked for the purpose of sexual exploitation to Europe, Japan, Israel, and the United States.[56] An estimated 75'000 women from Brazil[57] work abroad in the sex industry, though it is not clear how many of these women are victims of trafficking.

From 1990 to 1995, 100 women were trafficked for prostitution from remote villages in Brazil to London, where they were held under debt bondage.[58] In 2000, the federal police arrested a person connected to a trafficking ring that brought women from the state of Goiás to Spain. Four women were with the suspect at the time of arrest. Following this event the police unmasked a travel agency in Goiás which had recruited and sent at least 20 women to Spain to work as prostitutes. The two agency owners are now in prison awaiting trial, but the recruiters have not been caught.

Trafficked women suffer human rights violations as they are denied the right to liberty, the right not to be held in slavery or involuntary servitude and the right to be free from violence. The right to health[59] is also at stake as involvement in the sex industry is a risk factor for sexually transmitted infections and HIV/AIDS. Unwanted pregnancies may result in further risks being taken with illegal abortions in harsh conditions, since these women have no access to health care. According to victims' testimonies traffickers exercise control by restricting the victims' movements and recurring to violence as a means of intimidation and punishment, while physical assault and rape are commonly used to initiate women into the sex industry.[60]

OMCT is concerned with the lack of anti-trafficking legislation in Brazil. Apart from article 231 (on the international trafficking of women for prostitution) and articles 227, 228, 229 (on the exploitation of the prostitution of women) in the Brazilian Penal Code, there is no specific legislation concerning trafficking in individuals. Thus, the penal law limits the trafficking of persons to the sexual exploitation of women and prostitution, leaving aside, for instance, the trafficking of children. In fact, it was legally dealt with after the entering into force of the statute on children and adolescents (ECA), in 1990 (article 244-A concerns the submission of children to sexual exploitation and prostitution).

Though penalties for trafficking in persons include fines and prison sentences ranging from 1 to 12 years, in practice traffickers are seldom caught, because they must be caught in the act of travelling with the victims, and the fear of reprisals keeps women from seeking police intervention or from testifying against their persecutors.

4.3.1 Child Trafficking, Abuse and Exploitation

To call attention to the issue of Sexual Exploitation of children, the government declared a National Day against the Sexual Exploitation of Children and Adolescents and took measures to launch the first national pilot program to combat child prostitution.

The statute on children and adolescents (ECA), dating from 1990, devotes several articles to fight child abuse and exploitation, namely article 82 that prohibits hosting children or adolescents in hotels except when accompanied by their parents or an adult responsible for them, and article 250 that installs a fine of up to the equivalent of 20 minimum salaries and a 15-day closure for those who infringe the law. Articles 240 and 241 do not allow filming, photographing nor publishing any sort of sexual or pornographic scene involving children or adolescents. Law 8.069/90 changes the status of children and adolescents.

Despite the laws rendering these activities illegal, child abuse and exploitation in Brazil has continued to expand over the past few years. In Brazil, an estimated 1 million children are believed to enter the sex market each year.[61] According to CECRIA (Centro de Referências, Estudos e Ações sobre Crianças e Adolescentes), there are an estimated 500'000 girl prostitutes throughout Brazil, many of these trafficked internally.[62] The range of illicit activities varies widely across Brazil. According to Brazilian Center for Childhood and Adolescents (CBIA), a major destination are the gold mining regions in the Amazon. Data as of 1999 points out that in the North miners in particular ("garimpos") are responsible for a substantial amount of violent sexual exploitation including keeping the children captive, mutilations, selling and trafficking, especially at the borders. This is particularly worrisome since government programs to address the situation have great difficulties in penetrating these remote areas. For instance, the International Labour Organization reported that observers have cited over 3'000 girls who were subject to debt servitude and forced into prostitution in the state of Rôndonia. Girls brought to the mines are reportedly auctioned for as much as 4'000 USD each. In 1999, 150 child prostitutes were found in the Araras mine.[63]

According to ECPAT International, Brazil is a favoured destination for pedophile sex tourists from Europe and the United States.[64] In the Northeast coastal regions sex tourism prevails through an organised crime

network including travel agencies, taxi drivers and hotels. While researching sex tourism in this region NGO O CHAME has discovered connections between traffickers and sex tours organizers.[65] A recent phenomenon in these regions consists in delocalising child prostitution from the coast to the "Sertão," which makes it even harder to control. In the south, exploitation of street children is most frequent. Child trafficking connected with drug trafficking is also quite common. In the Southeast sexual tourism and private prostitution houses where children are secluded are both on the rise.

5. Violence against Women by the State

Brazil made only limited progress in dealing with problems such as police brutality, and inhumane prison conditions. A recent positive step has been the passage of a renewed National Human Rights Program to fight against discrimination and protect the rights of minority groups, including blacks, indigenous people, lesbians and gay men, and the elderly. However, OMCT is concerned that not much progress has been achieved in practice since its first implementation in 1996. Another positive step was the opening of police archives containing information on abuses committed during the 1964-1985 dictatorship, though these can only be consulted by families and a special commission in charge of examining those abuses. [66]

The Special Rapporteur on Torture concluded in its report on his visit to Brazil that training and professionalism of police and other personnel responsible for custody are often inadequate, sometimes to the point of non-existence. A culture of brutality and, often, corruption is widespread.[67] The few rich suspects, if deprived of liberty at all or even convicted, can purchase tolerable or at least less intolerable treatment and conditions of detention than the many who are poor and usually black or mulatto or, in rural areas, indigenous.[68]

He concluded further that torture and similar ill-treatment are meted out on a widespread and systematic basis in most of the parts of the country. He found evidence of torture and ill treatment at all phases of detention: arrest, preliminary detention, other provisional detention, and in penitentiaries and institutions for juvenile offenders. It does not happen to

all or everywhere; mainly it happens to poor, black common criminals involved in petty crimes or small-scale drug distribution. And it happens in the police stations and custodial institutions through which these types of offenders pass. The Special Rapporteur stated that the purposes range from obtaining of information and confessions to the lubrication of systems of financial extortion.[69]

Despite widespread police abuses, only four of Brazil's twenty-six states (São Paulo, Pará, Minas Gerais, and Rio de Janeiro), and the Federal District, have a police ombudsman's office to respond to complaints of police brutality. In 2000, the São Paulo police ombudsman received 481 complaints alleging torture, abuse, mistreatment or neglect, and believes many more cases are not reported.[70] There is widespread corruption and violence among police forces, reinforced by harsh work conditions such as low wages, poor training and inadequate equipment.

OMCT notes that Brazilian law prohibits arbitrary arrest and detention. Although the government generally observes this prohibition, police continues at times to arrest and detain persons arbitrarily. The Constitution limits arrests to those caught in the act of committing a crime or those arrested by order of a judicial authority. Though the authorities generally respect the Constitutional provision for a judicial determination of the legality of detention, many convicted inmates are detained beyond their sentences due to poor record keeping. The law permits provisional detention for up to 5 days under specific conditions during a police investigation, but a judge may extend this period. However, groups that work with street children claim that the police sometimes detain street youths illegally without a judicial order or hold their suspects incommunicado. Defendants in criminal cases arrested in the act of committing a crime must be charged within 30 days of their arrest, depending on the crime. Other defendants must be charged within 45 days, although this period can be extended. Defendants for all but the most serious crimes have the right to a bail hearing. Human rights monitors alleged that civil and uniformed police regularly detain persons illegally to extort money or other favours.

Violence, torture and exactions against rural workers remain widespread and sometimes involve police participation. According to the Pastoral Land Commission (Comissão Pastoral da Terra, CPT) a total of 1,548 rural workers were killed in land disputes in Brazil from 1988 to August

2002. In 2002 alone, at least sixteen rural laborers were murdered in land conflicts and seventy-three people received death threats. Cases of rural violence, including killings, were rarely prosecuted, and criminal prosecutions rarely ended in convictions, mainly because local interests at stake exercise too much pressure on local courts.

5.1 Torture and Ill-treatment

Torture is considered a crime by law 9455/97. Assimilated to other "crimes hediondos,"[71] punishment of torture consists therefore of 3 up to 6 year-imprisonment, not subject to amnesty, bail or conditional freedom.

State Police are divided into two forces: (a) the civil police, who has an investigative role and the (b) uniformed police, know officially as the "military police," both responsible for the maintaining of public order. One of the main characteristics of the uniformed police is the fact of having a separate judicial system.

The lack of accountability and the inefficiency of the criminal justice system are major problems.[72] Some examples are stated below:

In October 2000, the authorities arrested two civil guards in São Paulo and accused them of the sexual assault of three teenage girls caught trespassing in a cemetery. Police authorities began an internal investigation into the matter, but no further information was available on the status of the case.[73]

A prominent case of torture was reported in Rio de Janeiro in January 2001, where two women were taken into custody by private security guards after allegedly shoplifting sunblock lotion from a department store of the Carrefour chain. Instead of turning the women over the police, the security guards called in local drug traffickers who beat the women. Police have charged three Carrefour employees and four alleged gang members in the case.

5.2 Women in Custody

With respect to criminal legislation, several remedies for the defense of threatened rights are foreseen by law, as follows: (a) habeas corpus; (b)

habeas data; (c) writ of mandamus; (d) collective writ of mandamus; (e) writ of injunction; (f) popular action and (g) public civil action. Women facing charges have the right to be represented by a lawyer and have full access to these remedies.

The Brazilian Constitution contains explicit guarantees for the protection of the inmate population.[74] Certain State Constitutions have similar provisions. The Constitution of the State of São Paulo provides, for example, that "state prison legislation will guarantee respect for the United Nations Standard Minimum Rules for the Treatment of Prisoners [and] the [right to] defence in cases of disciplinary infractions."[75]

The most detailed statement of Brazil's prison rules – or at least of its aspirations for the prison system-can be found in the Law of the Execution of Sentences (Lei de Execução Penal, hereinafter the "national prison law"). Adopted in 1984, the national prison law evidences respect for prisoners' human rights and contains numerous provisions mandating individualized treatment, protecting inmates' substantive and procedural rights, and guaranteeing them medical, legal, educational, social, religious and material assistance. Viewed as a whole, the focus of the law is not punishment but instead the "resocialization of the convicted person." Besides its concern for humanizing the prison system, it also invites judges to rely on alternative sanctions to prisons such as fines, community service, and suspended sentences.

The Minimum Rules of the Treatment of Prisoners in Brazil (Regras Mínimas para o Tratamento do Preso no Brasil), which dates from 1994,[76] consists of sixty-five articles largely modelled after the U.N. Standard Minimum Rules, the rules cover such topics as classification, food, medical care, discipline, prisoners' contact with the outside world, education, work, and voting rights.

Despite the recent progress within the legislation, in reality, the country's penal system lacks the physical infrastructure needed to ensure compliance with the law. The living conditions of many of Brazil's penitentiaries, jails, and police lockups remain inhumane, and violence against prisoners is widespread. A central problem remains the overcrowding of Brazil's prisons, especially in the states of São Paulo, Rio de Janeiro, Bahia, Rio Grande do Sul, and Pernambuco. According to official figures, as of April 2002, Brazil's 903 penal institutions housed 235,000 inmates,

well above the system's capacity of 170,000. Of these, 8,510 are female inmates, constituting about 4% of the inmate population. The lack of space, combined with an underfunded and understaffed penal system, led to frequent prison riots and other outbreaks of violence.[77] More than 32'000 prisoners, most of them already convicted, remain in temporary holding facilities in police stations.

A positive step was taken in September 2002, when São Paulo state authorities shut down the largest prison in Latin America, the Casa de Detenção, in the Carandirú prison complex. Prisoners have been transferred to smaller and more modern penitentiaries in the state's interior. However, many prisoners complain about the transfer because they can no longer receive visits from family as it is too far away from their homes.

Women's facilities in São Paulo's penitentiary system are even more overcrowded than those for men. Certain facilities are said to hold more than 500 inmates above the capacity limit and the state's expansion program for Brazilian penitentiaries does not envisage the building of new female facilities.

Women in custody in Brazil are also reportedly subjected to ill-treatment in some facilities. For instance in April 2001, civil police were called to put down a rebellion that occurred in São Paulo city. A representative of a human rights organisation claimed to have seen women with severe head injuries. Police reportedly have beaten pregnant inmates and there has been no investigation against the responsible officers.[78]

Consistent with international rules, Brazil's national prison law stipulates that women prisoners must be supervised by women guards.[79] In practice, some women's prisons employ both male and female guards, although they normally impose restrictions on which areas of the facility male guards can enter, so that men do not venture into the more private areas. Women prisoners in several facilities report, nonetheless, that male guards often enter these areas, what may lead to sexual abuse and extortion of sexual favors. In the States of São Paulo and Rio de Janeiro, for instance, prisons destined for the holding of females are served by male officers. Women in João Pessoa Women's Penitentiary also complained about verbal abuse, particularly from the male guards. Similar complaints of verbal abuse were voiced at the São Paulo Women's Penitentiary, where women inmates said that male guards occasionally refer to them as "prostitutes."

At the Manaus prison, women stated that male guards had entered several times to verbally and physically abuse a mentally ill woman prisoner.[80]

Another reported problem is the lack of gender segregation within the same detention facilities. In Rio de Janeiro state, for instance, there are only two police districts in which women in lockup are held in gender-segregated short-term jail facilities.

Women in custody have limited recreational facilities with respect to men and face discrimination in conjugal visiting rights. Unlike the men's prisons, most women's prisons do not have very large exercise areas. Many of them include only small paved patios, allowing women inmates almost no space to exercise. In Brazil intimate visits of women in custody are not seen as a right[81] but as a benefit. Only two prisons allow these visits, one in Porto Alegre, in the state of Rio Grande do Sul, and the other in São Paulo. In the one located in Porto Alegre the anachronism on the regulation of male and female intimate visits is made very clear: female intimate visits are allowed only to partners with legal married status and only twice a month,[82] while male intimate visits are allowed 8 times a month without the requirement of marriage.

Equally, most prisons do not observe the Law of Criminal Executions regarding the obligation of creating kindergartens for children under 6 years old if they are to remain without care[83] following their mothers' detention. This situation is made worse by the fact that the vast majority of women in prison are mothers and heads of their household.

Despite the fact that women prisoners usually have more medical needs than men prisoners, medical care is often extremely deficient in penal facilities for women.[84] HIV/AIDS is a serious threat to the health of women prisoners: indeed, studies indicate that the disease strikes an even higher percentage of incarcerated women than men. Twenty percent of the women prisoners tested for the AIDS virus at the Women's Penitentiary in São Paulo were found to be HIV-positive. Medical staff at the Women's Penitentiary in Porto Alegre, Rio Grande do Sul, said that they believed at least 10 percent of inmates at that facility to be HIV-positive.

6. Women's Reproductive and Sexual Rights[85]

OMCT recalls that the Committee on Economic Social and Cultural Rights adopted General Comment 14 on the right to the highest attainable standard of health at its 22nd Session, in 2000.[86] With regard to gender, "the Committee recommends that States integrate a gender perspective in their health-related policies, planning programmes and research in order to promote better health for both women and men." With regard to women and the right to health, the Committee notes in paragraph 21 that "to eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span." The same paragraph states: "A major goal should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence." Moreover, the Committee stresses that "it is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights."

Despite the continuous demand of women's organisations and health care professionals' coalitions to legalize pregnancy interruption, abortion still remains illegal except under severe circumstances, such as when the mother's life is threatened or in case of rape, as stated in article 128 of the Penal Code, introduced by law 2848 in 1940. There exists a law project on abortion, still to be approved by the National Congress, PL 1135/91 and annexes, which would modify articles 124, 125 and 126 of the Penal Code dating from 1940 that consider abortion caused by the mother or with her consent as a crime.[87]

In the wake of the first program of legal abortion initiated in 1989 by the Woman's health Assessor (Assessoria da Saúde da Mulher) in a public hospital through the approval of the Sao Paulo municipal law 692/89,[88] and following the increasing demand of women for these services in other areas, the Ministry of Health published in 1999 the first edition of the Technical Standard regarding the prevention and treatment of the ill resulting from sexual violence, which guarantees abortion services in the two cases legally admitted in the Penal Code offered by the Single Health Care System (SUS). [89] It took a resolution of the Constitutional Committee for Justice, barely obtained by 24 votes against 23 in 1997, to

implement this measure. The decision also encountered much criticism from opponent pro life and religious groups in the civil society, and even amongst health professionals, despite the appalling figures of illegal abortion cases and the very high rates of post medical treatment needed to patch up sequels due to interventions made in poor conditions, facts which underline the necessity of such a measure.

In 1999, abortion in the cases of sexual violence was, though allowed in the law, possible only in 8 public hospitals in Brazil.[90] The technical guidelines set forth by the Ministry of Health for the prevention and treatment of victims of sexual violence bring relevant changes since providing, among other issues, for the legal and medical procedures required for the performance of an abortion in all Brazilian public health establishments in the cases stated in the law.[91] Though the guidelines are not mandatory, since their publication, 48 hospitals part of the Single Health Care System (SUS) have adopted them and offer such interventions to women victims of sexual violence.[92]

Illegal abortions in Brazil are estimated at around a million per year, based on an estimate extrapolated from the Single Health Care System (SUS) interventions.[93] Among the factors leading to illegal abortion are poverty, exclusion, inequity, undesired pregnancy, unsafe sex practices and gender inequality.

Abortion is the fifth main cause for turning to public health services and the third cause of maternal death in the country. Eighty-five percent the Single Health Care System (SUS) interventions are related to aggravations due to clandestine abortions. In 2000, there were more than 247'000 cases of women accessing SUS services for abortion-related issues, of which 67 resulted in death.[94]

To address this particularly acute situation, as of 2001, there were already 27 public hospitals applying the Technical Standard and offering free abortion services in cases responding to the legal requirements. OMCT notes that the implementation of the Technical Standard has been quite successful but stresses the fact that these numbers are clearly not enough, especially since the existing services are not evenly distributed throughout and within the regions. Northern regions in particular, being the most deprived of health care equipment, show the highest rates of abortion.

A survey on legal abortion in Brasilia[95] points out that services provided by the Medical legal institute of the Federal District to women victims of rape only deal with the criminal part of the problem, leaving the social and psychological issues aside. While women victims of rape are in need of an effective and humane health service, they encounter a lack of specially trained professionals and prejudice-tainted attendance. Most interviewed women did not receive orientation regarding their rights on legal abortion or AIDS prevention and treatment.

The fecundity rate in Brazil remains quite high at 2.3 children per woman.[96] Furthermore, this average is not highly representative since fecundity rates vary considerably according to the women's level of education and across regions.[97] As recently as 1998,[98] a surprisingly high number (38,4%) of women gave birth to their first child when they were under 19 years old. In the North, this figures overpasses 51%, while in the Northeast and Center West values attain respectively 41.7% and 43.2%. In 1998 almost one out of every four mothers had not yet reached her 20th birthday,[99] and this figure has been on the rise since 1994, when that age group concerned one out of every five mothers.[100] More alarming is the fact that almost 2% of women become mothers when they are between 10 and 14 years old. This figure rises to 3.4% in the North, 2.3% in the Northeast and 2.4% in the Center West.

7. Conclusions and Recommendations

Brazil has, in recent years, introduced several initiatives aimed at promoting and protecting the human rights of women. The new Civil Code of 2003 embodies in full the Constitutional principle of equality between women and men. However, violence and other forms of discrimination against women remain problems in the country. Women continue to face inequality in many aspects of their lives such as high levels of unemployment, unequal representation in government, unequal educational opportunities as well as discrimination in the family sphere.

OMCT is deeply concerned by the prevalence of domestic violence in Brazil. In spite of the fact that domestic violence is a punishable act, domestic violence against women has not been reduced. As well as constituting a violation of articles 3, 10 and 11 of the ICESCR, the high rates

of domestic violence in Brazil are directly linked to failures to adequately guarantee the rights contained in articles 6 and 7 of the Covenant. Women suffer from higher levels of unemployment than men in Brazil and when they are employed, they frequently work in precarious and less well remunerated jobs, which makes them more economically dependent on their male partners and therefore unable to leave violent relationships. In addition, the shortage of adequate housing including emergency shelters for victims of domestic violence has created a situation whereby women who are victims of domestic violence often have little choice than to continue co-habitating with the perpetrators of this violence. Moreover, when the women report the violence, the police and the judiciary do not take the crime seriously. Reportedly, only 2% of complaints relating to domestic violence lead to convictions, and when convicted, the penalties are very light. As a result, there is a sense of impunity of these crimes in Brazil.

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

OMCT is gravely concerned about crimes committed against women in the name of "honour" in Brazil. Perpetrators of crimes against women committed in the name of "honour" – in most cases (ex) husbands or (ex) boyfriends who suspect their (ex) wife or (ex) girl friend of infidelity,

often receive reduced sentences. The defence of "honour" is equated with legitimate self-defence.

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

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

OMCT would recommend that the government give serious consideration to the adoption of comprehensive anti-trafficking legislation that enshrines the rights of trafficking victims to appropriate protection and assistance.

OMCT notes with concern that the Penal Code still discriminates severely against women, particularly in relation to rape. Article 107, para. VII of the Brazilian the Penal Code stipulates that a man who rapes a woman will be exempt from punishment if he offers to marry her ("reparatory marriage") and article 215 of the Brazilian Penal Code contains the criteria for punishment of a minor sexual assault that the victim is an "honest" woman. OMCT would urge the government of Brazil to repeal these discriminatory provisions as soon as possible.

The moral judgements towards victims of sexual violence by members of the police and the judiciary have lead to a lack of confidence in the law enforcement response to acts of violence against women and thus to the subsequent under-reporting of rape and other forms of violence against women in Brazil. For this reason, OMCT would recommend that

all references to "honest" women are repealed from the legislation and that all law enforcement personnel and members of the judiciary be given appropriate gender-sensitive training in responding to cases of rape and other forms of violence against women. OMCT would further recommend that greater numbers of female police officers be recruited and that these officers be, as a priority, assigned to specialised units created to respond to cases of violence against women.

OMCT is concerned about the situation of women in custody. There are reports of women inmates being abused by the prison officers who are supposedly responsible for their custody. A particular problem is the overcrowding of prisons in Brazil and the fact that women are not always guarded by women. OMCT would recommend that the government to ensure that immediate action is taken to guarantee that the prison conditions meet minimum international standards as laid down in the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and the Basic Principles for the Treatment of Prisoners. In addition and in line with international standards on detention, OMCT would recommend that detained women are only supervised by female prison staff and that all detainees are granted access to effective and confidential complaints mechanisms.

OMCT is concerned about the high mortality rate during illegal abortions. Particularly in the northern regions, where women are the most deprived of health care equipment, rates of abortion are very high. OMCT urges the government to implement the Technical Standard throughout the country.

OMCT believes that all persons should have the right to decide freely and responsibly about the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. This also includes the right to make decisions concerning reproduction free of discrimination, coercion and violence. OMCT would recommend the elaboration of adequate family-planning programmes.

Finally, OMCT would insist on the need to fully implement all provisions of the Convention on the Elimination of Discrimination against Women,

the Declaration on the Elimination of Violence against Women as well as the Beijing Platform of Action, in Brazil as these are the most relevant international instruments concerned with all forms of violence against women.

1 U.N. Doc. E/1990/5/Add53.

2 The information gathered under this chapter was taken from the research of Fundação Perseu Abramo, "A mulher brasileira nos espaços público e privado" (The Brazilian woman in public and private space), available at http://www.fpabramo.org.br/nop/mulheres/perfil.htm, (consulted December 16, 2002).

3 Brazil is divided into 5 regions: North, North-east, South, South-East, and Center-West, hereafter CW. Statistical results tend to vary widely across these regions, therefore Brazilian averages should be considered with caution.

4 IBGE and Seade foundations, values taken from the 2000 demographic census, available at http://www.mj.gov.br/sedh/cndm/genero/demografia/RG_pop003.htm, (consulted December 1, 2002).

5 *Ibid.*

6 Furthermore, Brazil is Party to, *inter alia,* the International Convention for the Suppression of The Traffic in women of Full Age (1933), and the International Convention on the Suppression of the Traffic in Women and Children (1921), as amended by the Protocol signed in Lake Success (1947); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and Final Protocol (1950) and the Convention on the Political Rights of Women (1953).

7 Adopted on 5 October 1988.

8 Article 219 IV.

9 Though the number of legal marriages has continued to slightly increase, from 36.8% in 1991 to 40.2% in 1995, the number of informal marriages has equally increased, from 11.4% in 1991 to 15.5 % in 1995, though the rates soar above 20% for the 20 to 35 years old. IBGE and Seade foundations, values taken from the 1991 Demographic Census, *Ibid.*; PNAD 1995 – Pesquisa National por Amostra de Domicílios, available at http://www.mj.gov.br/sedh/cndm/genero/demografia/RG_car004_1995.htm, (consulted December 1, 2002).

10 Articles 241and 242.

11 Jone Johnson Lewis, Brazil – Women, available at http://www.womenshistory.about.com/library/ency/blwh_brazil.htm, (consulted November 25, 2002).

12 Consensual issues include sexual violence, with 95% of parliament members in favour of legislation binding the public health system into offering free physical and psychological care services to women victims of sexual violence and covering abortion throughout the country in all the cases accepted by law. 91% of parliament members are in favour of legislation aiming at including sexual education courses in schools, 87% of parliament members are in favour of giving protection to women in the job market, and 76% of parliament members are in favour of considering sexual harassment as a crime requiring fine and detention. Abortion legislation is still widely considered as controversial with only roughly one out of two parliament members in favour of extending abortion possibilities.

13 Almira Rodrigues, *Legislativo Federal e os Direitos das Mulheres: não falta sensibilidade e sim vontade política*, Jornal da Rede Feminista de Saúde - nº 21 - Setembro 2000, available at http://www.redesaude.org.br/jornal/html/body_jr21-almira.html, (consulted December 16, 2002).

14 Fundação Perseu Abramo, "A mulher brasileira nos espaços público e privado" (The Brazilian woman in public and private space), http://www.fpabramo.org.br/nop/mulheres/perfil.htm, consulted 16.12.02.

15 *Ibid.*

16 Of a total of 55%, 20% have received no education and 35% received only between 1 year and 4 years of education, corresponding to primary school. Compared to the national mean at 20%, SE and South drop to less than 15% for uneducated women, while the NE bursts out at 32%. Instituto Brasileiro de Geografia e Estatísca, *Distribuição percentual de mulheres de 10 anos ou mais de idade, responsáveis pelos domicílios, por classes de anos de estudo*, *segundo as Grandes Regiões*, available at http://www1.ibge.gov.br/home/estatistica/populacao/perfildamulher/tabela/072000 (consulted December 16, 2002).

17 U.S. Dep't of State, Human Rights Report 2001 (2002), Brazil, available at http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8305.htm.

18 Jone Johnson Lewis, *Ibid.*

19 In April 2003, the minimum salary in Brazil is of 200 reais per month, corresponding approximately to 65 dollars per month.

20 U.S. Department of State, *Ibid.*

21 ILO-IPEC, (1999), Mainstreaming Gender in IPEC Activities.

22 Jone Johnson Lewis, *Ibid.*

23 This was the second study SEBRAE (Serviço Brasileiro de Apoio às Micro e Pequenas Empresas) dedicated to women who have founded their own business. A sample of 1000 small companies equally headed by male and female entrepreneurs has been compared. SEBRAE/UED, II Sondagem Sebrae 2000 "A Mulher Empresária."

24 The great majority for both sexes is between 30 and 50 years old and most age groups show the same results regardless of gender, except the percentage of women between 30 and 40 years which is significantly higher than that of men (38,5 against 30,7), while that of women above 50 years old is significantly lower (13,4 against 20,9). This could show a trend of change favourable to entrepreneurship amongst the younger generations, and OMCT hopes this trend will be reinforced by policies of encouragement addressed to young women.

25 Jone Johnson Lewis, *Ibid.*

26 Domestic violence, occurring between intimate partners, accounts for 65% to 80% of reported cases of violence against women. In Brazil, around a third of hospital emergencies are related with domestic violence. A Polícia , o Judiciário, as Mulheres, a Violência, available at http://www.redesaude.org.br/html/body_viol-02-5.html, (consulted December 16, 2002).

27 Domestic violence survey taking into account data from the special women police stations. Profiles regarding the couples involved show that many women subject to violence are quite young, with more than 30% between 20 and 30 years old and more than half between 30 and 40 years old. One in every two couples have lived together for more than ten years, and after the complaint 60% of the couples remain together. This situation calls for reconsidering the kind of intervention most suitable to address violence situations which are very likely bound to reoccur when there is no adequate follow-up with the couple. For more details, see www.redesaude.org.br.

28 Inter American Commission for Human Rights, case n. 12.051, Maria da Penha Maia Fernandes and Brasil, available at http://www.cidh.oas.org/annualrep/2000sp/capituloiii/fondo/brasil12.051.htm., (consulted December 16, 2002).

29 Law 10.455/02, Universo da Mulher, Legislação da Mulher, available at http://www.universodamulher.com.br/default.asp?page=materia&VCodMateria=165, (consulted April 21, 2003).

30 A Polícia , o Judiciário, as Mulheres, a Violência, *Ibid.*

31 Fines are particularly low, often consisting in the donation to social institutions of the equivalent of a minimum salary in nature (60 R$, around 30 US$) or serving the community through short-term tasks.

32 U.S. Dep't of State, *Ibid.*

33 See Samantha Buglione, *A mulher enquanto metáfora do Direito Penal*, available at http://www1.jus.com.br/doutrina/imprimir.asp?id=946, (consulted December 1, 2002).

34 When questioned on their capacities of response, 74% of these offices claim they do not have sufficient human resources, 53% say their officers are not sufficiently trained to deal with cases of violence perpetrated on women, 46% announce their infrastructure is not adequate, with 32% claiming the lack of weapons and 19% the lack of cars. 61% claim they do not have enough information circulating between the offices.

35 Oliveira, Eliany, "Os direitos das mulheres e as políticas públicas", in Jornal On-Line Noolhar.com, November 24, 2001, available at http://www.mj.gov.br/sedh/cndm/artigos/eliany.htm, (consulted December 1, 2002).

36 The special police station of Londrina, for instance, points out that since its founding in 1986 it has registered nearly 20'000 cases, of which only 10% have led to a legal inquiry, available at http://www.redesaude.org.br.

37 Only one out of every ten men is considered guilty at the end of a lengthy trial process. These meagre results may strongly discourage women to carry out with the legal proceedings. A significant portion of women declare there is no point in seeking help because they feel they won't be recognized as victims.

38 U.S. Dep't of State, *Ibid.*

39 A Polícia , o Judiciário, as Mulheres, a Violência, *Ibid.*

40 A hotline was installed that encourages women to register complaints. The rising demand of women and their children to stay in the shelters exceeds capacity and the Rio state government began construction of additional facilities already during the past year.

41 Reports received by Abrapia's SOS Children service regarding 1169 cases of domestic violence between 1998 and 1999.

42 Article 25 of the Penal Code.

43 Human Rights Watch, *Criminal Injustice, Violence against Women in Brazil*, p. 19.

44 Article 121, §1°, relating to murder and article 129, §4°, relating to violent physical assault, of the 1940 Brazilian Penal Code.

45 Silvia Pimentel e Valéria Pandjiarjian, "Defesa da honra: tese superada?", *Folha de S. Paulo*, (September 12, 2000), available at http://www.observatoriodaimprensa.com.br/artigos/iq200920003.htm, (consulted April 21, 2003).

46 U.S. Dep't of State, *Ibid.*

47 Teixeira, Analba and Grossi Miriam, Honour Crimes: the murder of women in the state of Rio Grande do Norte.

48 *Ibid.*

49 Article 215 of the Brazilian Penal Code.

50 All the data included in this paragraph regarding rape rates is taken from MJ/SENASP/DECASP/Coordenação de Estatisticas e Acompanhamento das Polícias, http:/www.conjunturacriminal.com.br/dados/est-estupro.htm, consulted 12.02.03.

51 Statistics from the Ministry of Justice, available at http://www.mj.gov.br/Senasp/senasp/estat_atentado.htm.

52 Statistics from the Ministry of Justice, available at http://www.mj.gov.br/Senasp/senasp/estat_estupro.htm.

53 Silvia Pimentel, Ana Lucia Pastore Schritzmeyer, Valéria Pandjiarjian, Estupro, direitos humanos, gênero e justiça, available at http://www.uol.com.br/cultvox/revistas/usp/_silvia.htm, (consulted February 12, 2003).

54 U.S. Dep't of State, *Ibid.*

55 Article 216a of the Penal Code, available at http://www.dji.com.br/codigos/1940_dl_002848_cp/cp213a216.htm, (consulted February 12, 2003).

56 U.S. Department of State, (2001), Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report, available at http://www.state.gov/g/inl/rls/tiprpt/2001.

57 *Ibid.*

58 Michael Hoskins, Trafficking in women for Sexual Exploitation, Metropolitan Police Service, 1996

59 Defined as "the highest level of physical, mental and social well-being" by the OAS in the protocol of San Salvador, article 10. See Alison Phinney, Trafficking of Women and Children for Sexual Exploitation in the Americas, OAS, CIM, 2000, available at www.oas.org/cim/English/Proj.Traf.AlisonPaper.htm.

60 Alison Phinney, *Ibid.*

61 Child Prostitution, ECPAT Bulletin, Vol. 4/1, 1996-97

62 Center for Reference, Studies and Action for Children and Adolescents (CECRIA), (2000), Tráfico de Mulheres, Crianças e Adolescentes para Fins de Exploração Sexual no Brasil, CECRIA, Brasília, Brazil

63 Coalition Against Trafficking in Women, The Fact Book on Global Sexual Exploitation (1999).

64 ECPAT International, available at http://www.ecpat.net/eng/index.asp, (consulted April 22, 2003).

65 O CHAME, (1998), O que é que a Bahia tem: o outro lado do Turismo em Salvador. Projeto CHAME/NEIM/UFBa, Salvador, Brazil.

66 For more details, see Human Rights Watch, Brazil Report, available at http://www.hrw.org/wr2k3/americas2.html, (consulted March 13, 2003).

67 U.N. Doc. E/CN.4/2001/66/Add.2.

68 *Ibid.*

69 *Ibid.*

70 U.S. Dep't of State, *Ibid.*

71 Law 9455/97, available at http://www.dji.com.br/leis_ordinarias/1990-008072-ch/8072-90.htm, (consulted February 12, 2003).

72 In 1999 the Globo Newspaper in Rio de Janeiro published the results of an investigation into the allegations of torture against state police. The police opened a total of 53 investigations regarding complaints of torture against authorities between 1997, when the torture law came into effect, and 1999. Only one of the inquiries, which had been suspended, had been officially concluded.

73 U.S. Dep't of State, *Ibid.*

74 Constitution of Brazil, art. 5, sec. XLIX. The Brazilian Penal Code also states that prisoners "retain all rights, except those that are not included because of the loss of liberty," and that the authorities are under "the obligation to respect [prisoners'] physical and moral integrity." Penal Code, art. 38.

75 São Paulo Constitution, art. 143, sec. 4.

76 Ministry of Justice, Conselho Nacional de Política Criminal e Penitenciária, *Regras mínimas para o tratamento do preso no Brasil*, Brasília: Conselho Nacional de Política Criminal e Penitenciária, 1995

77 Human Rights Watch, Brazil Report, available at http://www.hrw.org/wr2k3/americas2.html, (consulted March 13, 2003).

78 Jornal da Trade, available at http://www.jt.estadao.com.br/editorias/2001/04/28/ger156.html, (consulted April 23, 2003).

79 Lei de Execução Penal, art. 77, sec. 2. The provision makes an exception for specialized technical personnel such as doctors. Similarly, article 53 (3) of the Standard Minimum Rules states: Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women. In additions, article 53 (2) of the U.N. Standard Minimum Rules bars male staff members from entering women's facilities or sections outside of the presence of a female officer.

80 Human Rights Watch, O Brasil atrás das grades, available at http://www.hrw.org/portuguese/reports/presos/detentas2.htm, (consulted April 22, 2003).

81 U.N. Standard Minimum Rules, rule 8; Penal Reform International, *Making Standards Work*, The Hague: Penal Reform International, 1995.

82 Only 13% of female prisoners declared receiving intimate visits. From those who didn't, 20% affirmed it was to difficult to obtain and 14% said they were ashamed of asking. Though a simple written confirmation of the companion allows the male prisoners to receive their visit up to twice a week, female prisoners must see their companions for four months in a row on regular visits without having sex before being allowed to a maximum of two intimate visits per month. In these circumstances many women become homosexual by the force of circumstances, especially if they remain in prison for longer than a couple of years (20% over the first year, 52% after four years). Data from an inquiry made at Penitenciária Feminina Madre Pelletier in Porto Alegre/RS in 1997, available at http://www1.jus.com.br/doutrina/imprimir.asp?id=946, (consulted December 1, 2002).

83 *Ibid.*

84 The women's prison in João Pessoa, Paraíba, for example, lacks an infirmary and a doctor; medical care is provided by a nurse who visits three mornings a week.

85 More public attention was drawn to this issue recently as Rede Saúde held for a period of 2 years (2000-2002) the coordination of the 28th September Regional Campaign for abortion liberalisation in Latin America and the Caribbean. This Campaign, held since 1993, is supported by hundreds of NGOs in 18 countries.

86 UN Doc. HRI/GEN/1/Rev.5, General Comment No. 14 of the UN Committee on Economic, Social and Cultural Rights.

87 *Dossiê Aborto Inseguro, Direito ao aborto: um debate contínuo e crescente*, available at http://www.redesaude.org.br/dossies/html/body_ab-direito.html, (consulted December 9, 2002)

88 Aborto Legal por Estupro – Primeiro Programa Público do País, available at http://www.cfm.org.br/revista/bio1v2/abortleg.html, (consulted February 12, 2003).

89 Sistema único de saúde, public single health care system.

90 JB Online, Brazil, *Norma técnica da Saúde aumenta aborto legal*, available at http://jbonline.terra.com.br/papel/brasil/2001/12/01/jorbra20011201005.html, (consulted April 22, 2003).

91 Alessandra Casanova Guedes, *Cooperation Program on the Regulatory Framework on Family Health, Maternity, Woman and Indigenous Populations*, available at http://165.158.1.110/english/hpp/downloads/brasil.pdf , (consulted April 22, 2003).

92 In August 2002, the Ministry of Health published the 2nd edition of Technical Standard regarding the prevention and treatment of the ill resulting from sexual violence, available at http://www.aids.gov.br/final/assis/norma.pdf, (consulted April 22, 2003).

93 Estimate of the Rede Nacional de Saúde e Direitos Reprodutivos, available at http://www.redesaude.org.br, (consulted December 09, 2002).

94 Dossiê Aborto Inseguro, available at http://www.redesaude.org.br/dossies/html/body_ab-internacoes.html, (consulted December 9, 2002).

95 Costa, A. M.; Moura M. A. V., *Aborto legal: o desafio de se cumprir a lei*, Nesp/Ceam/UnB, Brasília, 1999.

96 Ministry of Justice, Brazil, available at http://www.mj.gov.br/sedh/cndm/genero/saude/BR_nfm007_1999.htm.

97 Thus the less studies women have accomplished, the higher this rate becomes. Women who have only achieved up to 3 years of studies have a fecundity rate of 3.7, while for women who have studied more than 7 years this rate drop as low as 1.6. From North to South there are considerable differences as well. For instance in the North uneducated women have a fecundity rate of 5.1, while educated women still attain more than the national average at 1.9. The South, Southeast and Center West regions all have rates under the national average, even when comparing the values for uneducated women. Black women, at an average of 3.4, tend to have a higher fecundity rate than white women, at 2.4.

98 Ministry of Justice, Brazil, available at http://www.mj.gov.br/sedh/cndm/genero/saude/BR_nfm004_1998.htm.

99 *Ibid.*

100 *Ibid.*

Committee on Economic, Social and Cultural Rights

Thirtieth session – 5 - 23 May 2003

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

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Brazil

1. The Committee on Economic, Social and Cultural Rights considered the initial report of Brazil on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.53) at its eight, ninth and tenth meetings, held on 8 and 9 May 2003 (E/C.12/2003/SR.8, 9 and 10), and adopted, at its twenty-ninth meeting held on 23 May 2003, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Brazil, which has been prepared in conformity with the Committee's guidelines, but regrets the late submission of the report and the absence of written replies to its list of issues (E/C.12/Q/BRA/1).

3. While welcoming the frank nature of the dialogue with the delegation, the Committee regrets that there were not enough experts in the delegation in the field of economic, social and cultural rights, who could provide more information to the Committee on the concrete measures taken by the State party to implement its obligations under the Covenant.

B. Positive aspects

4. The Committee notes with appreciation that the Federal Constitution adopted in 1988 incorporates a wide range of human rights, including a number of the economic, social and cultural rights enshrined in the Covenant. The Committee also takes note that under article 5 of the Constitution, the rights and guarantees in international treaties to which Brazil is party, are considered part of the national law.

5. The Committee welcomes the adoption of the new civil code in year 2002 which replaced the one of 1916 and established the principle of equality between men and women.

6. The Committee welcomes the adoption of a National Human Rights Programme in May 1996 and the creation of a Secretariat of State for Human Rights to monitor its implementation.

7. The Committee welcomes the new programmes adopted by the State party to combat discrimination, including the establishment of a National Council on the Rights of Women, a National Council to Combat Discrimination and affirmative action programmes for Afro-Brazilians, in particular women.

8. The Committee also welcomes the progress made in combating racial prejudices and barriers, which is illustrated by the appointment of persons of Afro-Brazilians origin to positions of high public office, on the basis of their professional merits and qualifications.

9. The Committee welcomes the program "Fome Zero" undertaken by the State party aimed at eradicating hunger which affects a substantial portion of the population.

10. The Committee takes note with appreciation the efforts made by the State party to reduce the rate of mortality caused by HIV/AIDS by 50 per cent since 1996.

11. The Committee notes with appreciation Constitutional Amendment No. 14 (adopted on 12 September, 1996), which established the National Fund for Primary Education Development and Enhancing the Value of the Teaching Profession (FUNDEF), reorganized the primary education system and earmarked more resources to education.

12. The Committee welcomes the creation within the State party of independent Special Rapporteurs responsible for monitoring of economic, social and cultural rights, particularly the right to food, to health and to education.

13. The Committee welcomes the positive position of the State party in relation to the draft optional protocol to the ICESCR.

14. The Committee welcomes the pro-active participation of civil society in monitoring the implementation of the Covenant, including the provision of a large amount of information to the Committee.

C. Factors and Difficulties Impeding the Implementation of the Covenant

15. The Committee notes that the persistent and extreme inequalities, and the social injustice prevailing in the State party have negatively affected the implementation of the rights guaranteed by the Covenant.

16. The Committee notes that the recent economic recession along with certain aspects of the structural adjustment programmes and economic liberalization policies, have had some negative effects on the enjoyment of economic, social and cultural rights as enshrined in the Covenant, in particular by the most disadvantaged and marginalized groups.

D. Principal Subjects of Concern

17. The Committee notes with concern the persistent and extreme inequalities among the various geographic regions, states and municipalities and the social injustice prevalent in the State party. The Committee is also concerned about imbalances in the distribution of resources and income and access to basic services in the State party.

18. The Committee is concerned that there is a gap between the constitutional and legislative provisions and administrative procedures set up to implement the Covenant rights and the absence of the necessary

effective measures and remedies, judicial or otherwise, to uphold these rights, especially with regard to the disadvantaged and marginalized groups.

19. The Committee is concerned about the lack of adequate human rights training in the State party, in particular with respect to the rights enshrined in the Covenant, especially among the judiciary, law enforcement officials and other actors responsible for the implementation of the Covenant.

20. The Committee is concerned about the widespread and deeply-rooted discrimination against Afro-Brazilians, indigenous people and minorities groups such as Gypsies and the Quilombo communities.

21. The Committee notes with concern that equal opportunities for persons with disabilities are hampered by physical barriers and lack of appropriate facilities.

22. The Committee is concerned about the widespread discrimination against women, in particular, in their access to the labour market, to equal pay for work of equal value and to an adequate representation at all levels of decision-making bodies of the State party.

23. In spite of the State party's successful efforts to release many workers from forced labour, the Committee is deeply concerned about the persistence of forced labour in Brazil, which is often close to slavery, particularly in the rural areas.

24. The Committee is concerned that the national minimum wage is not sufficient to ensure an adequate standard of living for workers and their families.

25. The Committee notes with concern the killing of landless farmers and the members of trade unions defending them and the impunity of those responsible for committing these crimes.

26. While takes note of the concern expressed by the State party in relation to the need for better policy coordination for children and young people, the Committee requests the State party to include, in its next periodic report, information on measures taken to improve the functioning of services of children and young people.

27. The Committee notes with concern the high rate of maternal mortality due to illegal abortions, particularly in the northern regions where women have insufficient access to health care facilities. The Committee is also concerned about the persistence of forced sterilization.

28. The Committee is concerned that some articles of the Penal Code discriminate against women. In particular, it is concerned that article 215 of the Code requires the victim of a minor sexual assault to be an "honest woman" in order to prosecute the offence.

29. The Committee notes with concern that sexual and domestic violence are widespread and not being sufficiently denounced in Brazil.

30. The Committee is deeply concerned about the high incidence of trafficking in women for the purpose of sexual exploitation.

31. The Committee notes with concern the high concentration of land in the hands of a minority, and its negative effects on the equitable distribution of wealth.

32. In spite of the efforts taken by the State party to reduce poverty, the Committee is concerned about the persistence of the poverty in the State party, especially in the North-East and in rural areas, and among the Afro-Brazilians and the disadvantaged and marginalized groups.

33. The Committee notes with concern that, according to the State party's report, at least 42 per cent of families currently live in inadequate housing facilities without adequate water supply, waste disposal and trash collection. It also notes that 50% of the population of major urban areas live in informal urban communities (illegal settlements and homes, as stated in paragraph 512 of the State party's report).

34. The Committee notes with concern that the State party has not facilitated the access to, and adequate provision of, housing credit and subsidies to low-income families, especially the disadvantaged and marginalized groups.

35. The Committee is deeply concerned that State party does not provide sufficient protection for indigenous peoples, who continue to be

forcibly evicted from their lands and face threats to their lives and even executions. The Committee also notes with concern that the rights of indigenous peoples to land ownership are not respected and that mineral, timber and other commercial interests have been allowed to expropriate with impunity, large portions of land belonging to indigenous peoples.

36. The Committee is concerned about the forced eviction of the Quilombo communities from their ancestral lands, which are expropriated with impunity by mineral and other commercial interests.

37. The Committee notes with concern about the living conditions of prisoners and detainees in the State party, especially with regard to provision to access to health care facilities, adequate food and safe and drinking water.

38. Although the State party has reduced HIV/AIDS related mortality, the Committee is concerned that, despite these efforts, there has been a significant increase in cases among women and children.

39. The Committee is concerned about the high rate of illiteracy in Brazil which, according to the State party's report, was 13.3 per cent in 1999, reflecting the social and economic inequalities still prevalent in the country.

E. Suggestions and Recommandations

40. The Committee recommends the State party to take immediate remedial action to reduce the persistent and extreme inequalities and imbalances in the distribution of resources and income and access to basic services among various geographical regions, states and municipalities, including speeding up the process of agrarian reform and of granting land titles.

41. The Committee urges the State party to take immediate remedial action to ensure that all the Covenant rights are effectively upheld and that concrete remedies, judicial or otherwise, are provided to those whose economic, social and cultural rights are infringed, especially in relation to the disadvantaged and marginalized groups. In this regard,

the Committee draws the attention of the State party to its General Comment No. 9 on the domestic application of the Covenant.

42. The Committee recommends that the State party improve its human rights training programmes in such a way as to ensure better knowledge, awareness and application of the Covenant and other international human rights instruments, in particular among the judiciary, law enforcement officials and other actors responsible for the implementation of the Covenant.

43. The Committee strongly recommends that the State party's obligations under the Covenant should be taken into account in all aspects of its negotiations with the international financial institutions to ensure that the enjoyment of economic, social and cultural rights, particularly by the most disadvantaged and marginalized groups, are not undermined.

44. The Committee urges the State party to take all effective measures to prohibit discrimination on the basis of race, colour, ethnic origin or sex in all fields of economic, social and cultural life. It further recommends that the State party undertake urgent measures to ensure equal opportunity for Afro-Brazilians, indigenous peoples and minority groups such as Gypsies and the Quilombo communities, especially in the field of employment, health and education. The Committee also requests the State party to include in its second periodic report detailed and comprehensive information, including comparative and disaggregated statistical data on these matters.

45. The Committee urges the State party to adopt all effective measures to ensure equality between men and women as provided for in articles 2 (2), and 3 of the Covenant. The Committee also requests the State party to adopt in its relevant policies the principle of equal pay for work of equal value as provided for in the Covenant; to reduce the wage gap between men and women; and to provide detailed information on these matters in the State party's second periodic report.

46. The Committee urges that the State party adopt concrete measures to enable persons with disabilities to enjoy fully the rights guaranteed by the Covenant.

47. The Committee urges the State party to implement its National Plan for the Eradication of Slave Labour and to undertake urgent measures in this regard, especially through the imposition of effective penalties.

48. The Committee calls upon the State party to ensure that the minimum wage enables workers and their families to enjoy an adequate standard of living.

49. The Committee urges the State party to take legal action against those who are responsible for committing crimes against landless farmers and members of trade unions and to take effective and preventive measures to insure protection to all farmers and members of trade unions.

50. In light of the indication given by the State party that the reform of the social security system foresees an improved role for the State in fundamental areas of social development, the Committee recommends to the State party in this regard that the social security system and the social development measures take into account the needs of disadvantaged and marginalized groups.

51. The Committee requests the State party to undertake legislative and other measures, including a review of its present legislation, to protect women from the effects of clandestine and unsafe abortion and to insure that women do not resort to such harmful procedures. The Committee requests the State party to provide in its next periodic report detailed information, based on comparative data, about maternal mortality and abortion in Brazil.

52. The Committee calls upon the State party to repeal all discriminatory provisions contained in the Penal Code, in particular article 215.

53. The Committee calls upon the State party to take all effective measures, including the enforcement of existing legislation and the extension of national awareness campaigns, to eliminate all forms of violence against women. The Committee also recommends that the State party insure that the police are trained to handle violence against women in addition to the "delegacies da mulher" in all parts of the country.

54. The Committee recommends the adoption by the State party of a specific anti-trafficking in persons legislation and to insure its effective implementation.

55. The Committee urges the State party to take effective measures to combat the problem of poverty, including the setting up of a National Plan of Action against Poverty integrating economic, social and cultural rights. In this regard, the Committee refers the State party to its Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights adopted on 4 May 20001 (E/C.12/2001/10).

56. The Committee urges the State party to give effect to its National Housing Policy and its Federal housing programmes and to adopt nation wide policies in order to insure that families have adequate housing facilities and amenities. In this respect, the Committee draws the State party's attention to its General Comment No. 4 on the Right to Adequate Housing.

57. The Committee urges the State party to provide access to housing credit, and subsidies to low-income families and the disadvantaged and marginalized groups.

58. The Committee calls upon the State party to ensure that indigenous peoples are effectively protected from threat and danger to their lives and eviction from their lands. The Committee particularly urges the State party to seek the consent of the indigenous peoples concerned prior to the implementation of timber, soil or subsoil mining projects and of any public policy affecting them, in accordance with ILO Convention No. 169.

59. The Committee urges the State party to adopt measures to guarantee the ancestral lands of the Quilombo communities and in case of forced eviction to insure that this is carried out in complies with the guidelines set out in General Comment No.7 of the Committee.

60. The Committee urges the State party to take effective measures, including policies, programmes and specific legislation aimed at improving the living conditions of prisoners and detainees.

61. The Committee urges the State party to undertake appropriate measures to insure effective realisation of agrarian reform.

62. The Committee urges the State party to continue its prevention and health care efforts, by providing sexual and reproductive health services to the population, with particular emphasis on those for women, young people and children.

63. The Committee requests the State party to adopt effective measures to combat illiteracy and to provide, in its next periodic report information on the measures undertaken by the State party and on the results of these measures. The Committee also requests the State party to include disaggregated and comparative statistics in its periodic report.

64. The Committee requests the State party to disseminate the present concluding observations widely at all levels of the society and, in particular, among State officials and the judiciary and to inform the Committee, in its next periodic report, of all steps undertaken to implement them.

65. The Committee also encourages the State party to continue to consult with non-governmental organizations and other members of the civil society when preparing the next periodic report.

66. The Committee requests the State party to submit its second periodic report by 30 June 2006.

Violence against Women in Cameroon

A Report to the Committee against Torture

Contents

1. Preliminary Observations

The submission of information specifically relating to violence against women to the United Nations Committee against Torture forms part of OMCT's Violence against Women Programme which focuses on integrating a gender perspective into the work of the five "mainstream" United Nations Human Rights Treaty Bodies. The need to integrate the human rights of women into the work of the human rights treaty bodies was stressed at the 1993 Vienna World Conference[1] on Human Rights and the reiterated in the Beijing Platform for Action adopted in 1995 by the Fourth World Conference on Women. [2]

The current report is the second alternative report on violence against women in Cameroon submitted by OMCT to the Committee against Torture after having submitted one in November 2000. Like the second report reviewed in 2000, the third report submitted by Cameroon to the Committee against Torture (CAT/C/34/Add.17) in accordance with article 19(1) of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment provides once again no gender disaggregated information concerning torture and other forms of violence against women. OMCT regrets the lack of information provided as, in reality, violence against women at the hands of state agents as well as private individuals appears to be a widespread human rights violation in Cameroon.

In the light of the lack of information on gender-based torture and other forms of violence against women in the government report, this report will examine the effects of gender on the form that torture in Cameroon takes, the circumstances in which the torture occurs, the consequences of the torture, and the accessibility of remedies and reparations by women. In this report, OMCT will focus on violence against women in Cameroon, which is often met with impunity. Particular emphasis will be given to the legal, economic, and social status of women in Cameroon, violence at the hands of state officials, domestic violence, traditional practices, rape and trafficking in women, and reproductive rights of women.

1.1 Cameroon's International Legal Obligations

The Republic of Cameroon acceded to the Convention against Torture and

Other Cruel or Degrading Treatment or Punishment on 19 December 1986. On 12 October 2000, Cameroon declared with regard to article 21 of the Convention against Torture that it recognizes the competence of the Committee against Torture to receive and consider communications from a State Party claiming that the Republic of Cameroon is not fulfilling its obligations under the Convention. However, such communications will not be receivable unless they refer to situations and facts subsequent to this declaration and emanate from a State Party, which has made a similar declaration indicating its reciprocal acceptance of the competence of the Committee with regard to itself at least twelve (12) months before submitting its communication. With regard to article 22 of the Convention, Cameroon also declared on 12 October 2000, that it recognizes, in the case of situations and facts subsequent to this declaration, the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.

Cameroon ratified the Convention on the Elimination of All Forms of Discrimination against Women on 23 August 1994. In 1992, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted General Recommendation 19 in which it confirmed that violence against women constitutes a violation of human rights. However, OMCT notes that Cameroon has not ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Cameroon acceded to the International Covenant on Civil and Political Rights (ICCPR) on 27 June 1984. In March 2000, the Human Rights Committee adopted a new General Comment on article 3 of the ICCPR which deals with the equal right of men and women to enjoy all rights set forth in that Covenant. This General Comment 28 states that, in order to assess compliance with article 7 of the Covenant, which deals with torture, the Committee must receive information on national laws and practice with regard to domestic and other types of violence against women, including rape, on access to safe abortion for women who have become pregnant as a result of rape, and on measures to prevent forced abortion or forced sterilization.[3] Cameroon has ratified the First but not the Second Optional to the ICCPR.

Furthermore, Cameroon acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 27 June 1984, and ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 24 June 1971. Cameroon has also been a State Party to the Convention on the Rights of the Child since 11 January 1993. Cameroon has only signed, but has not ratified, the two optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography on 5 October 2001. Further it ratified the Treaty of Rome establishing the International Criminal Court.

Cameroon has neither signed nor ratified the Convention on Protection of Rights of Migrant Workers, which entered into force on 1 July 2003.

At the regional level, Cameroon is a State Party to the African Charter on Human and People's Rights. This Charter, mirroring other international human rights instruments, protects all individuals against violence including torture or cruel, inhuman or degrading treatments and provides for the promotion of gender equality. Thus, article 2 of the Charter states that "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as … sex, …". Article 3 guarantees that all are "equal before the law" and that everyone is "entitled to equal protection of the law". Article 4 protects each human being's right to life and to physical and moral integrity followed by article 5 which forbids physical or psychological torture and cruel, inhuman or degrading treatment or punishment. Article 18(3) provides that States Parties shall ensure the elimination of all forms of discrimination against women as well as protection for the rights of women "as stipulated in international declarations and conventions."

On 11 July 2003, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted by the Assembly of the African Union second summit in Maputo Mozambique. The Protocol will enter into force thirty (30) days after the deposit of the fifteenth (15) instrument of ratification. The Protocol will complement the African Charter in ensuring the promotion and protection of the human rights of women in Africa. Its provisions include the right to life, integrity and security of person, right to participation in the political and decision

making process, right to inheritance, right to food security and adequate housing, protection of women against harmful traditional practices and protection of women in armed conflict. Others include access of women to justice and equal protection before the law.

In Cameroon, human rights instruments are generally incorporated into national law simply by means of ratification. OMCT notes that article 45 of the Constitution of Cameroon states that duly approved or ratified treaties and international agreements have priority over national law. Nonetheless, the Committee against Torture argued, when it examined the implementation of the Convention against Torture by Cameroon in the year 2000, for greater protection of the of Cameroon's international commitments in its domestic law, so as to be more easily accessible to judges and lawyers.[4] Also the Committee on the Economic, Social and Cultural Rights expressed its concern about the exact legal status of the Covenant in the Cameroonian legal system and whether it can be invoked in national courts of law.[5]

1.2 General Observations on the Human Rights Situation on Cameroon

Cameroon has more than 200 different ethnic groups, many of which are spread across neighbouring countries.[6] French and English are the two official languages, but 270 different languages are spoken, representing 24 language groups. The country is dominated by three major religions: Christian (40%), Muslim (20%), indigenous believers (40%).[7]

Since its independence on 1 January 1960, Cameroon has been governed by the same party and since 1982, Paul Biya has been the head of state, in whom power is highly centralised. The Bulu ethnic group, to which the president belongs, and the related Beti groups dominate the civil service, the management of state-owned businesses, the security forces, the military and the ruling Cameroon People's Democratic Movement (CPDM).[8]

Cameroon is a poor country. In 2001, its Human Development Index was 0,499, ranking it at 142nd in the world.[9] Between 1990 and 2001, 33.4% of the population was living below 1 USD a day.[10]

During the last session of the Committee against Torture in 2000, Cameroon admitted that its human rights record "left a good deal to be desired."[11] The UN Committee against Torture cited in 2000 a number of problems relating to police custody, the independence of the judiciary, the supervision of prison conditions and the need to investigate all allegations of torture and ill-treatment.[12] Cameroon's "concern with security and stability" apparently overrides "all other considerations, including some fundamental human rights."[13] In its Concluding Observations, the Committee against Torture expressed concern at, among others:

(a) The fact that, despite the policy pursued by the Government, torture seems to remain a widespread practice;

(b) The continuing practice of administrative detention, which allows the authorities reporting to or forming part of the executive branch (the Ministry of the Interior) to violate individual liberty, something which, under the rule of law, should come under the jurisdiction of the judiciary;

(c) The gap between the adoption of rules in accordance with human rights standards, including those designed to prevent the practice of torture, and the findings made *in situ* by an independent entity such as the Special Rapporteur on the question of torture, who reports the existence of numerous cases of torture;

(d) The imbalance between the large number of allegations of torture or ill-treatment and the small number of prosecutions and trials;[14]

No mention was made about gender-based human rights violations against women.

2. Status of Women in Cameroon

An analysis of the legal and socio-economic and political status of women in Cameroon shows the link between the high levels of violence against women in Cameroon and their low status in all aspects of life. Besides the fact that laws relating to women's legal status reflect social attitudes that affect the human rights of women, such laws often have a direct impact on women's ability to exercise those rights. The legal context of family life,

laws affecting women's socio-economic status, women's access to education, the labour market and politics contribute to violence against women and their access to redress and reparation.

As a result of the ethnic diversity, one can not distinguish the Cameroonian woman in a gender profile. However, all ethnic groups give great importance to local traditions, which widely detrimentally affect the status of women and their enjoyment of human rights.

Cameroon inherited two different legal systems; notably French law from the former Oriental Cameroon and British law from the former Occidental Cameroon, which coexist with local customary law. In addition to regional laws, there is a growing body of federal laws. While criminal *procedures* remain distinct between East and West Cameroon, criminal *law* itself was unified between 1965 and 1967 in one single Penal Code.[15]

Women in Cameroon experience high levels of discrimination, which despite Constitutional provisions recognising the human rights of women, is also enshrined in the law. No legal definition of discrimination exists.

However, civil law offers a more equal standard than customary law, another source of law in Cameroon, which is far more discriminatory against women. The broad persistence of customary law infringes the human rights of women, particularly in the areas of marriage and inheritance laws. Customary law varies depending on the ethnicity of the parties involved and the region.[16] In cases where the two types of legal systems have equal weight, an individual can choose whether to bring the case before the statutory law courts or customary law courts. The traditional jurisdiction cites custom except when custom is opposed to law and order and good morals.[17] The Supreme Court has sanctioned the primacy of contemporary law over traditional law.[18] However, due to the importance attached to traditions and customs, laws protecting women are often not respected.[19]

The United Nations has on several occasions expressed concern about the lack of progress made by the Government of Cameroon in reforming laws and combating practices that discriminate against women and girls and violate their human rights.[20]

In its Constitution signed on 2 June 1972, and revised by law No. 96/06

on 18 January1996, Cameroon incorporated some provisions of the Universal Declaration of Human Rights as well as of the African Charter of Human and People's Rights in the Preamble. The Preamble states that the nation "shall protect women, the young, the elderly and the disabled." According to article 65 of the Constitution, the Preamble has legal force: "The Preamble shall be part and parcel of the Constitution." The Preamble of the Constitution of Cameroon includes several provisions that enshrine gender equality: "We the people of Cameroon declare that:

> the State shall guarantee all citizens of either sex the rights and freedoms set fort in the Preamble of the constitution;
>
> the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights;
>
> all shall have the same equal rights and obligation."

Concerning discriminatory written laws, Article 213 of the Civil Code designates the husband as the head of the family, and as such he is regarded the principal moral and financial manager. It is the husband who establishes the marital home, and the household expenses are his main responsibility. Articles 108 and 215 of the Civil Code grant the husband the sole right to determine the family domicile. According to articles 1421 and 1428 of the Civil Code, women are not fully entitled to use, enjoy or sell their property, although this right is stipulated in the Constitution. In this context, article 1421 grants the husband the right to administer communal property, thereby giving him the right to sell or mortgage the couple's property without the wife's consent. The husband also manages his wife's personal property, and exercises all rights to it.[21]

Article 7 of the Trade Code allows a husband to interrupt his wife's working activity through notification of his opposition to the Trade Tribunal. Article 223 of the Civil Code and article 74 of Ordinance 81/02 of June 1981 gives the husband the power to object to his wife's pursuit of a separate trade or profession.

When a marriage ends, the community property should in theory be shared equitably between the two ex-spouses, but in practice the women often must renounce her property rights.[22] However, according to article 1449 of the Civil Code, the woman regains her personal property.

Articles 229 *et seq* of the Civil Code regulate all aspects of divorce. It only recognises fault-based divorce, on the grounds of adultery, the revocation of one spouse's civil rights resulting from an afflictive and defamatory penalty, or domestic abuse or injuries. According to the law, to be recognised as grounds for divorce, these actions, must constitute a serious or recurring violation of the marriage duty and obligations as well as make it intolerable to maintain the marriage bond. According to article 229, the first two grounds are mandatory; when proved, the judge must grant a divorce. The grounds of domestic abuse or injuries are optional; the granting of the divorce is discretionary for the judge. In the customary law of some ethnic groups, husbands not only maintain complete control over family property, but also can divorce their wives in a traditional court without being required to provide justification or give alimony.[23]

Although, women have, according to the Civil Code, the same rights to inheritance as men, the reality is very different as the extent to which a woman may inherit from her husband is normally governed by customary law in the absence of a will, which vary from group to group. In fact, a married woman is considered part of her husband's "estate," grouped with his personal property and real estate.[24]

Moreover, polygamy is permitted by law and tradition whereas polyandry is not.[25] In its General recommendation Nº 20, the Committee on the Elimination of Discrimination against Women states that polygamy violates the rights of women.[26]

Article 361 of the Penal Code defines the crime of adultery in terms more favourable to men than women. While a man may be convicted of adultery if the sexual acts take place in his home, a female may be convicted without respect to venue.

Also, under the law, men and women have the same right to enter into marriage and freely choose a spouse. However, OMCT is concerned by the difference between the minimum legal ages for marriage of boys (18 years) and that of girls (15 years), which is gender discriminatory and allows for the practice of early marriage, which is still widespread in Cameroon. A study carried out in Cameroon revealed that girls aged between 15 and 19 account for 24% of married women.[27] OMCT notes with particular concern that despite the law in certain communities, girls

are even married off at the age 12 years old.[28] In many of these cases, the girls are forced into marriage.

Often the parents of the bride are paid a "bride price" by the husband. The bride price is governed by the Civil Code, which, in articles 1540 and 1541, defines it as follows: "The dowry is the property which the wife brings to the husband for bearing the costs of the marriage. Everything that the wife brings with her or that is given to her under the marriage contract ..., unless otherwise stipulated." However, in the current practice, the dowry may be defined as the goods, which a future husband contributes to the family of his future wife. This has led men to regard their wife as property for which they have paid and the men and his family feel entitled to the physical labour of the wife.[29] It makes it also extremely difficult for a woman to divorce her husband.

When the husband dies, the widow is often unable to inherit since she is considered to be part of the inheritance herself. A practice related to dowry payments is the forcing of a widow to marry one of the deceased's brothers.

Moreover, early motherhood constitutes a serious health and emotional risk for young girls, many of whom are unable to take care of their babies or who die in the process of giving birth. Furthermore, an early marriage leads to girls dropping out of school and therefore to the vicious circle of poverty, lack of power and at the end, again, violence. It must be noted that the age at which women get married in urban areas is higher than in rural areas. Nevertheless, regardless of residence, it seems that entry into marriage at an older age has been the trend. This phenomenon is attributed to the increase in the school attendance rate of girls.[30]

Women in Cameroon are also discriminated from a de facto point of view. 51% of the population in Cameroon live below the poverty line and poverty has an increasingly feminine face, affecting women in particular. [31] As a result more and more women and girls enter prostitution and are thereby exposed to exploitation.

The pervasive poverty in the country impacts services such as health and education. According to UNICEF, in the year 2000, the adult literacy rate among men was 82% whereas the adult literacy rate of women was 69%.[32] The net primary school enrolment of boys was 76% between 1992

and 2001 and that of girls 71%.[33] In addition, fewer girls are found in secondary schools; their gross enrolment between 1995 and 1999 was 17 % as opposed to 22% of that of boys.[34]

Since the elections of February 2002, of the 180 seats in Parliament, only 16 (8.6%) are occupied by women.[35] This lack of opportunity for women to take decisions at the political level has serious implications for the advancement of women and their enjoyment of human rights.

3. Violence against Women Perpetrated by the State

3.1 Legal Safeguards to Prevent Torture

The Preamble of the Constitution provides for several safeguards against torture. With regard to torture, in particular, the preamble contains the following clause: "Every person has the right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment." Moreover, the constitution includes the following provisions: "No person may be prosecuted, arrested or detained except in the cases and according to the manner determined by law," "everybody has the right to a fair trial," and "no person shall be harassed on grounds of his origin, religious, philosophical opinions or beliefs, subject to respect for public policy."

OMCT welcomes the fact that in 1997 Cameroon adopted an article in the Penal Code concerning torture.[36] The definition presented in art. 132*bis* of the Penal Code is in line with the Convention against Torture. Art. 132*bis* section 5 (a) reads:

> "[t]he term torture refers to any act by which pain or severe suffering, whether physical, mental or moral, is intentionally inflicted on a person by a public official or any other person acting in an official capacity or at his instigation or with his consent, whether explicitly or implicitly, for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has

committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind."[37]

Moreover, the same article states under section 5(c) and (d), in compliance with the Convention against Torture, that exceptional circumstances such as a state of war, a threat of war or internal political instability, and defence on the grounds of an order from a superior officer, are not admitted.

The Penal Code requires that all detainees are brought promptly before a magistrate. Where a case reaches trial, the Constitution provides for an independent judiciary.

The Constitution also provides for a number of other human rights including the inviolability of the home, protection against illegal search, the privacy of all correspondence, freedom of expression and the press and freedom of religion. However, the Penal Code contains libel laws that punish "defamation, abuse, contempt and dissemination of false news" with prison terms and heavy fines. Moreover, it prohibits public meetings, demonstrations and processions without prior government approval.

A 1992 Presidential Decree on prison conditions guarantees the right of every detainee to food, clothing, bedding, health, hygiene, wages for prison work, cultural and recreational activities and the right to file a complaint.[38]

3.2 De Facto Situation

OMCT has received since its submission of its first report on violence against women in Cameroon in 2000 various credible reports on torture, arbitrary arrests and extra-judicial killings in Cameroon by security forces, including the Operation Command. OMCT has issued 2 urgent appeals on arbitrary arrests and detention following a demonstration,[39] 1 urgent appeal on the extra-judicial killings of three demonstrators and arbitrary arrests,[40] 1 urgent appeal on death in detention,[41] and 1 urgent appeal on death threats against a victim of torture after having lodged a complaint.[42]

OMCT is concerned about the persistence of torture and other cruel, inhuman and degrading treatment against prisoners and detainees by security forces. Torture and ill-treatment in prison in Cameroon reportedly includes gunshots, burns, strikes with machetes, strikes with the butt of a firearm, the ripping out of toe and finger nails, the withholding of medical care and adequate food supplies, overcrowding with inadequate sanitation facilities and beatings, especially on the soles of the feet, legs, arms and backs, sexual assault, forced nakedness, and electrical torture. On several occasions, this torture has resulted in the deaths of detainees.

Torture continues to be used to extract confessions and such confessions continue to be accepted as evidence in court.[43] Contrary to its commitment to the provisions of article 14 of the Convention against Torture, Cameroon still lacks legislative provisions for the compensation and rehabilitation of victims of torture.[44]

Cases of torture and other forms of violence generally go unpunished in Cameroon. Many cases are not reported to the authorities because of fear of reprisal and ignorance. Despite legal protection, the judiciary is inefficient and subject to political influence and corruption.[45] Charting levels of corruption in 133 countries, Transparency International rated Cameroon as a very corrupt country by placing it at number 124.[46] Moreover, detainees are often not brought promptly before a magistrate.

3.3 Torture and Ill-treatment of Women

In violation of article 8 of the Standard Minimum Rules for the Treatment of Prisoners and article 20 of Decree 92/052 of 27 March 1992 which stipulates that "women must be strictly segregated from men," female prisoners are often housed with male prisoners. The female prisoners are subjected to sexual violence by other prisoners as well as State officials.

Also during his mission, the Special Rapporteur on Torture found one woman in a cell with men in the Yaoundé criminal investigation unit, and she confirmed that she had always shared the cell with them, and one woman who had to sleep with her nine-month old child on a straw mattress in the entrance lobby of the police station.[47]

Prisons are overcrowded. According to ACAT Littoral, there are only 40 beds and 2 showers for 85 female prisoners in the female prison of Douala.

In the calendar years 2000 and 2001, the Medical Foundation for the Care of Victims of Torture in London documented evidence of torture in a total of 60% refugees from Cameroon. Of these, 27 were women. Of the 27 Cameroonian women receiving treatment by the Medical Foundation, 25 women had been raped by agents of the Cameroonian State and/or while in custody of the State.[48] Women also variously reported to the Medical Foundation for the Care of Victims of Torture that they were housed naked in a mixed cell, stripped naked and forced to dance, their bodies insulted and mocked, forced to stand in the sun naked, or stripped and sexually assaulted.[49]

The Medical Foundation for the Care of Victims of Torture also reported that one woman was raped repeatedly despite being pregnant. She was released from detention when she suffered a miscarriage in her cell. Another women was detained with her young child who had suffered a serious head injury during their arrest. After a few weeks in detention they were released in the middle of the night. The child died three days later. [50]

3.4 Threats against Women Human Rights Defenders

Members of the Christian's Action for the Abolition of Torture (ACAT Cameroon, a member of the OMCT SOS-Torture network) in Douala continue to be under surveillance and constant pressure from the State authorities. Their movements are monitored by individuals who watch the front door of the organisation's premises, and the telephone is still tapped.

Ms Madeleine Afite, Co-ordinator of ACAT Littoral, received anonymous phone calls at home and on her cell phone in 2002. In April of that year, she was held at the airport by a police officer who berated her for an hour and confiscated her papers to intimidate her. In the end the papers were returned by another policeman, who told her in mocking tones to go and lodge a complaint wherever she liked.[51]

4. Violence against Women in the Family

Most violence against women takes place in the within the private sphere. State responsibility arising out of acts by private individuals lies at the heart of the gender-interpretation of the Convention against Torture. A growing body of international human rights law has recognised State responsibility for private acts when the state fails to exercise due diligence in preventing, investigating, prosecuting, punishing and repairing human rights violations. While it is obvious that not all violence against women can be qualified as torture within the meaning of the Convention against Torture, the mere fact that the perpetrator is a private individual rather than a state official should not automatically lead to the exclusion of the violence from the scope of the Convention against Torture as according to its article 1, torture means not only acts of sever pain and suffering by the a public official, but also at the instigation of or with the consent or acquiescence of a public official or other person acting in the official capacity. Depending on the severity of the violence and the circumstances giving rise to State responsibility, OMCT believes that violence against women perpetrated by private individuals can constitute a form of torture or cruel, inhuman or degrading treatment.

4.1 Woman Battering

Although there are no reliable statistics on domestic violence against women in Cameroon, reports indicate that it is a widespread problem in the country.

OMCT is gravely concerned by the lack of measures taken by the government to eliminate domestic violence against women, which is still regarded as culturally acceptable by certain sectors of society. The Government has failed to take decisive action to combat the problem, such as passing legislation specifically prohibiting domestic violence abuse or training officials so that they understand the complexities of issues surrounding this type of abuse. OMCT also notes with concern that the government has not initiated any awareness raising campaign in order to eliminate of domestic violence against women.

As there is no special law dealing with domestic violence, victims of this type of violence have to file a complaint under the assault provisions of

the Penal Code. However, the Penal Code negates the specific circumstances and needs that are involved in violence between domestic inmates. In fact, domestic violence continues to be seen as a private matter by the law enforcement officials.

It has been reported that domestic violence is encouraged by judges' acceptance of the principle that a man has "disciplinary rights" over his wife. This principle can come into play due to a wife's refusal to have sexual intercourse with her husband or due to his alcoholism.[52] Moreover, as has been mentioned above, since husbands pay a "bride price" for their wives, its is difficult for women to divorce from their husbands, even in cases of domestic violence.

4.2 Marital Rape

It is not clear whether marital rape is considered a crime or not, since the doctrine is divided in to two camps and the courts are careful not to take a decision in favour of either side.[53] However, it seems to be culturally accepted that consent to marriage constitutes consent to each request of sexual intercourse.

4.3 Female Genital Mutilation (FGM)

The practice of female genital mutilation constitutes a serious offence against the physical and psychological integrity of the girl child. This practice, which mainly affects young girls, still exists in some regions of Cameroon, especially in the extreme north, the south-west and the north-west of the country where the practice is said to affect 100% of Muslim girls and 63.6% of Christian girls.[54] According to the WHO and UNFPA, up to 20% of all women in Cameroon undergo the practice of female genital mutilation (FGM).

Reportedly, the following three forms of FGM occur in Cameroon: clitoridectomy; excision; and the most severe form, infibulation. The least extreme form, clitoridectomy, consists of removal of the clitoris, to varying degrees. The second type, excision, consists of clitoridectomy together with partial or total removal of the labia minora. Finally, the most extreme form, infibulation, involves the removal of the entire clitoris and

the labia minora, as well as at least two thirds of the labia majora. Most of the cases constitute genital mutilation of young girls between the ages of 6 and 8 years old. FGM is often performed without anaesthesia under non-hygienic conditions by untrained practitioners and sometimes leads to fatal or serious health complications.[55]

Mbia Brokie, a woman from Akwaya village who has herself been circumcised, states: "A woman who is not mutilated is regarded as a pariah and is rejected by society."[56] It must be stated that in many cases the women themselves are supporting the continuation of female genital mutilation. Women regard female genital mutilation as a misfortune to which they have to inevitably succumb.

In 1999, the Human Rights Committee expressed its concern "at the fact that there is no specific law to prohibit female genital mutilation and that this practice continues in certain areas of Cameroon territory in violation of article 7 of the Covenant."[57] In its conclusions it recommended that the State set up a policy of eradication of female genital mutilation. Cameroon launched a campaign in the regions where the problem was most serious, but the Committee on Economic Social and Cultural Rights estimated that these measures were insufficient and inadequate.[58] Also the Committee on the Elimination of All Forms of Discrimination Against Women noted in the year 2000 with concern that, despite some efforts, there is no holistic approach to the prevention and the elimination of female genital mutilation.[59]

OMCT welcomes growing opposition to FGM from members of the civil society and from national and international NGOs. Although the government supports the activities of the NGOs, it has still not adopted an effective and adequate policy or project to stop FGM. OMCT is particularly concerned by the fact that there is no law specifically prohibiting female genital mutilation in Cameroon and no educational programmes.

OMCT would like to note that Professor Kooijmans, the first Special Rapporteur on torture, argued in 1986, that "the authorities' passive attitude regarding customs broadly accepted in a number of countries (i.e. sexual mutilation and other tribal traditional practices) might be considered as 'consent and acquiescence' particularly when these practices are not prosecuted as criminal offences under domestic law, probably because the State itself is abandoning its function of protecting its citizens from any kind of torture."[60]

5. Violence Against Women in the Community

5.1 Rape

Rape is punishable under article 296 of the Penal Code and punishable by a term of five to ten years imprisonment and is defined as "Whoever by force or moral ascendancy compels any female whether above or below the age of puberty to have sexual intercourse with him."

Article 297 of the Penal Code deals with subsequent marriage and provides that "Marriage freely consented between the offender and the victim if over puberty at the time of commission shall have on any offence under either of the two last forgoing sections the effect of section 73 (1) to (4) of this Code". Article 73(1) to (4) of the Penal Code deals with amnesty; in other words, the rapist will be exonerated when he marries the rape victim.

OMCT is gravely concerned about the exemption from punishment of the rapist when he marries the victim, as it allows the rapist's criminal responsibility to be extinguished, thus treating rape as a crime distinguished from other crimes against a person, and it undermines the woman's free and full consent to marriage since she is often put under pressure in order to save her and the family's "honour".

5.2 Trafficking and Exploitation of Prostitution of Women

Due to its geographic location within the sub-region, Cameroon is a centre for international trafficking, serving as a country of source, transit and destination,[61] but trafficking also occurs within the country. Contributing factors are traditions, cultural values and poverty. An important social tradition is the practice of placement, which is a tool of community help and social promotion. Poor family members would send their children to live with wealthy family members or with other families who lived in the city. In exchange for an education or money sent back to the family the children are expected to provide various services to the foster family. This intra-family help system is used by traffickers for creating networks of trafficking. The Cameroonian people also have ancient migration traditions, which make it easy for traffickers to hide themselves and their

victims in the large population flows. Additionally, women and children are perceived as objects owned by the male members of the family, in wide ranges of society. In order to escape poverty, young and uneducated Cameroonians especially seek to go abroad and are easy prey for traffickers.[62]

5.2.1 Cameroonian and International Laws Dealing with Trafficking

According to Article 293 (1) of the Penal Code "(a) Any person who reduces a person to or maintains a person in slavery, or (b) engages, even occasionally, in trafficking in human beings, shall be punished with imprisonment of ten to twenty years."

Moreover, procuring is criminalized under article 294 which provides that "(1) Any person who causes, aids, or facilitates the prostitution of another individual or who shares, even occasionally, in the proceeds of the prostitution of another individual or receives subsidies from a person engaging in prostitution shall be punished with imprisonment of six months to five years and fine of 20.000 (US$ 34.24) to 1.000.000 francs (US$ 1712.21). (2) Any person who lives with an individual engaging in prostitution and who cannot provide proof of sufficient resources to enable him to provide for his own needs shall be presumed to be receiving subsidies."

Also prostitution is a punishable offence. Article 343 states, "(1) Any person of either sex who habitually engages, for compensation, in sexual acts with others, shall be punished with imprisonment for six months to five years and a fine of 20.000 (US$ 34.24) to 500.000 (US$ 856.11) francs (2) Any person who publicly recruits individuals of either sex through gestures, words, writings or any other means, for purposes of prostitution or debauchery shall be punished with the same penalties."

Additionally, Article 292 criminalizes forced labour. It states that "any person, who in order to satisfy his personal interests, imposes on another person any work or service obligation for which that person has not freely applied shall be punished with imprisonment of five to ten years and/or a fine of 10.000 (US$ 17.12) to 500.000 (US$ 856.11) francs."

Cameroon has ratified the ILO Convention on the Abolition of Forced Labour and the UN Supplementary Convention on the Abolition of

Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Cameroon signed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, adopted by resolution A/Res/55/25, on 13 December 2000, but as of 09 October, 2003 had not ratified it.

OMCT notes with concern that it is the prostitute who is punished rather than the client who goes free. As many prostitutes do not prostitute themselves of their free will, they are doubly victimised through these punishments.

5.2.2 Trafficking for labour and sexual exploitation

Human trafficking, especially trafficking in children is widespread in Cameroon. Children are usually trafficked for labour purposes and sexual exploitation internally, to and from neighbouring countries, but also to Europe and the US. An ILO study revealed that trafficking accounted for 83% of child labourers.[63] There are reports from the northwest Cameroonian town of Bafoussam that indicate that trafficking is a business, with the girls regarded as just another product to be bought and sold for thousands of dollars.[64] However, it is difficult to deal with the issue since children and parents are reluctant to come forward out of fear.

According to the National Commission on Human Rights and Freedoms (NCHRF) there are reports of farm-to-city trafficking of girls, who were promised jobs in the city, but instead were forced into prostitution or other labour.[65] Furthermore, it is reported that Cameroonian nationals living abroad – mainly in the US – enslave Cameroonian children and teenagers after making false promises of education and care.[66] Reports also indicate that women are being trafficked for prostitution to European countries, including France and Switzerland.[67]

In one case, a poor family gave one of their daughters to the girl's aunt, who claimed she was living in France. However, she was running a small bar in Benin, where she exploited the girl, using her as a waitress and placing her in prostitution.[68] In another case, a girl who wanted to escape an abusive marriage was offered a job in a London restaurant, but when she arrived she was forced to work in a brothel.[69]

OMCT welcomes the commitment by the Cameroonian Government to engage in legislative and policy-based activities for the prevention of trafficking and for the provision of assistance to victims of trafficking. The government is currently participating in a two-part ILO trafficking project with Benin, Burkino Faso, Cote D'Ivoire, Ghana, Mali, Nigeria, Senegal and Togo and is working with Equatorial Guinea, the Central African Republic, Gabon, Chad, and Congo-Brazzaville to develop a sub-regional instrument to govern anti-trafficking actions on border control, extradition, and penalties. There are also plans to implement an anti-trafficking training for the police in late 2003. The government has also started to provide shelter and medical care to trafficking victims. Nevertheless, much work still needs to be done, especially in terms of effectively punishing traffickers. Prosecution remains marginal.[70]

6. Sexual and Reproductive Rights: Abortion Policy

Abortion is forbidden in Cameroon (art. 337 of the Penal Code). There are two exceptions to this rule laid down under article 339 of the Penal Code: when a woman becomes pregnant after rape or when the woman's health is in great danger because of the pregnancy. Anyone performing an illegal abortion is subject to one to five years' imprisonment and a fine of 100,000 to 2 million CFA francs. A woman who procures or consents to her own abortion is subject to imprisonment for fifteen days to one year and/or a fine of 5,000 to 200,000 CFA francs. Penalties applied to medical professionals who perform illegal abortions shall be doubled and they may be prohibited from carrying out their obligations or be subject to having their professional premises closed.

The UN Human Rights Committee stated in 1999, in its concluding observations concerning the human rights situation in Cameroon, that: "The Committee is concerned that the criminalization of abortion leads to unsafe abortions which account for a high rate of maternal mortality."[71] According to the World Bank, the maternal mortality rate in 1999 was at 430 for 100.000 living births.[72] The Human Rights Committee stated further that "The State Party must take measures to protect the life of all persons, including pregnant women."[73]

Although exact numbers of abortions are not available, abortions are known to be commonplace in Cameroon. A 1991 showed that 40% of all urgent gynaecological operations were linked to abortions.[74] Clandestine abortions are extremely frequent. The complications resulting from clandestine abortions carried out by non-professionals constitute a serious problem in Cameroon, particularly among adolescents and among married women whose husbands forbid them to use contraception. Because of a lack of medical knowledge and the carelessness of the person performing the abortion, the procedure is life threatening and there is a high risk of HIV-infection.

A national population policy was adopted by the Government in 1992 and an information and education programme on the benefits of responsible parenthood is being implemented. However, obstacles to an increase in contraceptive prevalence include pro-natalist attitudes, poor communication infrastructure in some areas of the country and insufficient family planning facilities.[75]

7. Conclusions and Recommendations

OMCT is concerned about reports of the poor human rights situation in Cameroon which is especially detrimental to the most vulnerable groups of society, such as women. Although the Cameroonian Constitution appears to be based on gender-equality, OMCT observes the persistence of gender-discriminatory provisions in several laws and the discriminatory customary law, as well as the prejudices and stereotypical attitudes concerning the role of women and men in the family and society. These roles are based on the notion of the superiority of men and the subordination of women. The low socio-economic status of women, which is partly manifested by the high illiteracy rate among women and low representation of women in politics, leaves women more vulnerable to violence at the public and private levels in Cameroon.

OMCT is extremely concerned about the persisting reports of torture and ill-treatment of prisoners by state officials, arbitrary arrests and detention, and extra-judicial killings and the impunity with which these human rights violations are met.

Women in detention centres are particularly subjected to gender-specific forms of torture such as rape and sexual harassment by both prison guards and other inmates. In this regard, OMCT is concerned about reports that women and men are detained in the same cells, which contributes to the underlying sexual violence against women in detention. When the method of torture consists of rape or sexual assault, it is less likely that the victim will complain out of fear and shame, thus leading to the negation of this violation and the impunity of the torturer.

Moreover, OMCT is gravely concerned about the reports of women human rights defenders who are threatened because of their human rights activities.

OMCT would insist that the physical and psychological integrity of the people in Cameroon be guaranteed by putting an end to torture and inhuman, cruel and degrading treatment and punishment, extra-judicial killings, arbitrary arrest and detention as well as the high level of impunity. OMCT would urge the government to guarantee an impartial and exhaustive inquiry into such events, identify those responsible, bring them before a competent and impartial civil tribunal and apply the penal, civil and/or administrative sanctions provided by law.

Moreover, OMCT would strongly recommend that Cameroon strengthen the prevention, investigation and punishment of human rights abuses against women in the private and public sphere and it would call for gender-disaggregated information on torture and other cruel, inhuman or degrading treatment or punishment.

OMCT would urge the government of Cameroon to ensure in all circumstances respect for human rights and fundamental freedoms in accordance with national laws and international human rights standards. It would urge the implementation of the Standard Minimum Rule for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, the Basic Principles for the Treatment of Prisoners, as they set fundamental rules and safeguards protecting arrested and detained persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment.

OMCT would call upon Cameroon to take steps to address the inequality of and discrimination against women both in law and reality. OMCT would urge Cameroon to prohibit customs and practices which violate the rights of women and to take active measures to combat such laws and practices by all means. Government action should especially focus on the elimination of polygamy, early and forced marriages, the practice of bride prices, and female genital mutilation.

OMCT regrets the lack of measures taken to eliminate domestic violence against women, which is still considered as culturally acceptable by certain sectors of society. OMCT is further concerned by the lack of clarification on the part of the legislation and the judiciary as to whether marital rape is criminalized.

OMCT would recommend that the government of Cameroon enhance its strategies and programmes aimed at combating domestic violence, including marital rape. In this regard, OMCT would urge Cameroon to enact special legislation on domestic violence along the lines of the guidelines submitted by the United Nations Special Rapporteur on violence against women to the fifty-second session of the United Nations Commission on Human Rights (U.N. doc. E/CN/.4/1996/53, Add.2), to criminalize marital rape, establish mechanisms to identify incest and prosecute perpetrators, and also to combat this problem through awareness-raising campaigns and educational programmes.

OMCT is also gravely concerned by the fact that no specific law is enacted to prohibit female genital mutilation and that this practice continues in certain areas of Cameroon. OMCT would recommend that Cameroon takes all measures, including legislation and educational programmes, to combat and eradicate the practice of female genital mutilation.

With regard to rape, OMCT is concerned about the fact that a rapist can be exonerated of his criminal responsibility by marrying the victim. OMCT would recommend that the authorities repeal the provision of the Penal Code that allows a man who rapes a woman to avoid prosecution if he marries her.

OMCT expresses grave concern about the exploitation of prostitution of women and trafficking of women and children. OMCT commends the government's commitment in legislative and policy-based activities for

the prevention of trafficking and for the provision of assistance to victims of trafficking. However, it notes at the same time with concern that trafficking and the exploitation of prostitution continues to happen with virtual impunity. Prostitutes themselves are on the other hand at risk of being arrested and detained.

OMCT urges the Government to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime. OMCT would also urge the government of Cameroon to assure that programmes are established to alleviate poverty so that women and girls do not have to resort to prostitution, to reintegrate prostitutes into society and to raise awareness and prevent such exploitation, instead of doubly victimising prostitutes by prosecuting and punishing them for prostitution.

OMCT also expresses concern about the criminalisation of abortion which leads to unsafe abortions that account for a high rate of maternal mortality. OMCT would urge the government of Cameroon to review its abortion laws and to develop programmes to protect mothers and children.

Finally, OMCT would strongly insist on the need to implement all provisions of the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women, as they are the most relevant international instruments concerned with all forms of violence against women.

1 Vienna Declaration and Platform for Action, UN Doc. A/CONF.157/23, Part II, para 42.

2 Beijing Declarartion and Platform for Action, Fourth World Conference on Women, UN Doc. A/CONF.177/20, Annex II, para 222.

3 UN Doc. CCPR/C/21/Rev.1/Add.10.

4 UN Committee against Torture, Summary Record of the 448th meeting: Cameroon, 23/11/2000, UN Doc. CAT/C/SR.448, para 37.

5 Concluding Observations of the Committee on Economic, Social and Cultural Rights, UN Doc. E/C.12/1/Add.40.

6 Three main cultural groups can be distinguished, "the Bantu, in the South, Littoral, South-West, Centre and South-East provinces; the Bantoid or semi-Bantu, in the West and North provinces; and the Sudanese, in the Adamaoua, North and far North provinces. The pygmy population, which is not included in these large groups, lives in the South, East and Centre provinces" quoted in: All Treaty-Based Committees' core document on Cameroon, UN Doc. HR/CORE/1/Add.109, June 2000.

7 Project IDEEELS. MUNO Profile – Cameroon, www.ideels.uni-bremen.de.

8 Medical Foundation for the Care of Victims of Torture, *"Every morning, just like coffee," Torture in Cameroon*, 2002; US Department of State, *Reports on Human Rights Practices for Cameroon*, 1998, 1999, 2000.

9 United Nations Development Programme, Human Development Reports 2003, available at www.undp.org/hdr2003/indicatory/cty_f_CMR.html.

10 *Ibid.*

11 UN Committee against Torture, Summary Record of the 448th meeting: Cameroon, 23/11/2000, UN Doc. CAT/C/SR.448, para 11.

12 *Ibid.*, para. 14.

13 *Ibid.*, para. 26.

14 Concluding Observations of the Committee Against Torture: Cameroon, 06/12/2000, UN Doc. A/56/44, para. 65 a-d.

15 Center for Reproductive Rights, *Women of the World: Laws and Policies Affecting Their Reproductive Lives - Francophone Africa,* 2000, p. 70.

16 UK Home Office*, Country Assessment of Cameroon*, 2001.

17 Order CS No.28 /CC of December 1981, No.35/Ccof November 25, 1982 (cited in: Center for Reproductive Rights, *Women of the World*, *Ibid.*, p. 69).

18 *Ibid.*, p. 70.

19 Afro Gender Profiles, available at www.Afrol.com.

20 E.g. Committee on Economic, Social and Cultural Rights, Concluding Observations 1999, UN Doc. E/C.12/1/Add.40 paras 13 and 14. and the Committee on the Elimination of All Forms of Discrimination against Women, Concluding Observations, UN Doc. A/55/38 paras. 45 and 53.

21 Article 1428 of the Civil Code.

22 Center for Reproductive Rights, *Women of the World*, *Ibid.*, p. 80.

23 Afro Gender Profiles, available at www.Afrol.com.

24 Center for Reproductive Rights, *Women of the World*, *Ibid.*, p. 80.

25 The Civil Code does not discuss polygamy, nor does it polyandry. The legal status of polygamy must be interpreted or deduced from Order 81/02 of 6/29/81 and the Penal Code. This interpretation makes it evident that polyandry, which allows a woman to have several husbands, is prohibited, whereas polygamy, which allows a man to have several wives, is permitted. Also the Supreme Court ruled in this

manner, (CS order ASSO an others) (cited in Center for Reproductive Rights, *Women of the World*, *Ibid.*, p. 79).

26 Committee on the Elimination of Discrimination against Women, General Recommendation No 20, UN Doc. HRI/GEN/1/Rev.3.

27 Panafrica News Agency, *Levée des Boucliers au Nord contre les marriages précoses*, 20 April 2001.

28 Afro Gender Profiles, available at www.Afrol.com.

29 It should be noticed that a dowry is not a condition of the validity of the marriage.

30 Association Camerounaise des Femmes Juristes, *Women's Reproductive Rights in Cameroon*, p. 10.

31 UNICEF, At a glance: Cameroon – The big picture, available at www.unicef.org/infobycountry/cameroon.html.

32 UNICEF, At a glance: Cameroon – Statistics, available at www.unicef.org/infobycountry/cameroon_statistics.html

33 *Ibid.*

34 *Ibid.*

35 Inter-Parliamentary Union, available at www.iup.org.

36 Law No 97/009 of 9 January 1997.

37 Unofficial translation.

38 Decree No.92/052.

39 Case CMR 080501.1, Follow-up to Case CMR 080501.1.

40 Case CMR 081001.

41 Case CMR 151002.

42 Case CMR 191200.

43 Medical Foundation for the Care of Victims of Torture, *Ibid.*, p. 8.

44 Concluding Observations of the Committee Against Torture: Cameroon, 06/12/2000, UN Doc. A/56/44, para. 65.

45 UK Home Office, *Country Assessment of Cameroon*, 2002 (cited in Medical Foundation for the Care of Victims of Torture), *Ibid.*, p. 9.

46 Transparency International, http://www.transparency.org/cpi/2003/ cpi2003.en.html, The CPI 2003 score relates to perceptions of the degree of corruption as seen by business people, academics and risk analysts, and ranges between 10 (highly clean) and 0 (highly corrupt). Cameroon's CPI score is: 1.8.

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49 *Ibid.*, p. 32-34.

50 *Ibid.*, p. 37.

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52 Association Camerounaise des Femmes Juristes, Women's Reproductive Rights in Cameroon, p. 14.

53 Center for Reproductive Rights, *Ibid.*, p. 81.

54 Inter-Parliamentary Union, available at www.iup.org.

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57 Conclusions of the Human Rights Committee on the report of Cameroon, UN Doc. HR/CT/99/48, 28 October 1999.

58 Conclusions of the Committee on Economic, Social and Cultural Rights, UN Doc. HR/ESC/99/48, 3 December 1999.

59 Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Cameroon. 26/06/2000, UN Doc. A/55/38, para. 49.

60 UN Doc. E/CN.4/1986/15, para. 38.

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62 The Protection Project, March 2002, A Human Rights Report on Trafficking of Persons, Especially Women and Children-Cameroon.

63 Quoted in the US Department of State, Country Reports on Human Rights Practices 2002.

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65 NCHRF, cited on www.afrol.com/Categories/Women/profiles/cameroon_women.htm.

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68 The Protection Project, March 2002, *Ibid.*

69 BBC News, 8 July,2003.

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71 U.N. Doc. CCPR/C/79/Add.116, para. 13.

72 World Bank, Cameroon, Gender Profile, available at http://www.worldbank.org/afr/gender/cameroon.pdf.

73 UN Doc. CCPR/C/79/Add.116, para. 13.

74 Quoted in Center for Reproductive Right, *Ibid.*, p. 76.

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Committee against Torture

Thirty-first session – 10-21 November 2003

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

Concluding observations by the Committee against Torture: Cameroon

1. The Committee considered the third periodic report of Cameroon (CAT/C/34/Add.17) at its 585th, 588th and 590th meetings, held on 18, 19 and 20 November 2003 (CAT/C/SR.585, 588 and 590), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the third report of Cameroon, which was prepared in conformity with the Committee's guidelines and contains responses to the Committee's previous recommendations. It nevertheless notes that the report, which was submitted at the end of 2002, covers only the period 1996-2000. The Committee welcomes the presence of a delegation of high-level experts to reply to the many questions put to them.

B. Positive aspects

3. The Committee takes note with satisfaction of the following:

   (a) The State party's efforts to pass legislation to give effect to the Convention;

(b) The dissolution, in 2001, of the Douala operational command responsible for combating highway robbery, as recommended by the Committee;

(c) The increase in the number of police officers, in conformity with the Committee's recommendation;

(d) The plan to build additional prisons in order to remedy prison overcrowding, and the collective pardon granted in November 2002 enabling 1,757 detainees to be immediately released;

(e) The assurance given by the delegation that the verification of the individual situations of detainees and appellants will eventually result in the release of the range of persons held in pre-trial detention, notably juveniles, women and sick persons;

(f) The proposed restructuring of the National Committee on Human Rights and Freedoms to make it more independent of the executive and give it greater prominence.

(g) The current finalization of a law against violence against women;

(h) The establishment of the Ad Hoc Technical Committee for Implementation of the Rome Statute of the International Criminal Court, with a view to ratification of that Statute;

(i) The establishment of nine new courts in 2001.

C. Subjects of concern

4. The Committee recalls that, in 2000, it found that torture seemed to be a very widespread practice in Cameroon, and expresses concern at reports that this situation still exists. It is troubled by the sharp contradictions between consistent allegations of serious violations of the Convention and the information provided by the State party. In particular, the Committee declares serious concern about:

(a) Reports of the systematic use of torture in police and gendarmerie stations after arrest;

(b) The continued existence of extreme overcrowding in Cameroonian prisons, in which living and hygiene conditions would appear to endanger the health and lives of prisoners and are tantamount to inhuman and degrading treatment. Medical care reportedly has to be paid for, and the separation of men and women is not always ensured in practice. The Committee notes with particular concern the large number of deaths at Douala central prison since the beginning of the year (25 according to the State party, 72 according to non-governmental organizations);

(c) Reports of torture, ill-treatment and arbitrary detention perpetrated under the responsibility of certain traditional chiefs, sometimes with the support of the forces of law and order.

5. The Committee notes with concern that:

(a) The draft code of criminal procedure has still not been adopted;

(b) The period of police custody may, under the draft code of criminal procedure, be extended by 24 hours for every 50 kilometres of distance between the place of arrest and the place of custody;

(c) The time limits on custody are reportedly not respected in practice;

(d) The periods of police custody under Act No. 90/054 of 19 December 1990 to combat highway robbery (15 days, renewable) and Act No. 90/047 of 19 December 1990 on states of emergency (up to 2 months, renewable) are too long;

(e) The use of registers in all places of detention has not yet been systematically organized;

(f) There is no legal provision establishing the maximum duration of pre-trial detention;

(g) The system of supervision of places of detention is not effective, responsibility for prison administration lies with the Ministry of Territorial Administration. The prison supervisory commissions have been unable to meet regularly and, according to some reports, public prosecutors and the National Committee on Human Rights and Freedoms seldom visit places of detention;

(h) The concept of a "manifestly illegal order" lacks precision and is liable to restrict the scope of application of article 2, paragraph 3, of the Convention;

(i) Appeals to the competent administrative court against deportation orders are not suspensive, and this may lead to a violation of article 3 of the Convention.

6. The Committee, while welcoming the effort made by the State party to transmit information relating to the prosecution of State officials responsible for violations of human rights, is concerned about reports of the impunity of perpetrators of acts of torture. It is particularly worried about:

(a) The fact that gendarmes can be prosecuted for offences committed in the line of duty only with the authorization of the Ministry of Defence;

(b) Reports that proceedings have actually been initiated against perpetrators of torture only in cases where the death of the victim was followed by public demonstrations;

(c) The fact that the case of the "Bépanda nine" remains unsolved;

(d) The reluctance of victims or their relatives to lodge complaints, through ignorance, distrust or fear of reprisals;

(e) Reports that evidence obtained through torture is admissible in the courts.

7. The Committee is also concerned about:

(a) The jurisdiction given to military courts to try civilians for offences against the laws on military weapons and weapons assimilated thereto;

(b) The absence of legislation banning female genital mutilation;

(c) The fact that the Criminal Code permits the exemption from punishment of a rapist if he subsequently marries the victim.

D. Recommendations

8. The Committee urges the State party to take all necessary measures to end the practice of torture on its territory. It recommends that the State party should:

   (a) Immediately end torture in police and gendarmerie stations and prisons. It should ensure effective supervision of these places of detention, permit NGOs to visit them and give more authority to the prison supervision commissions. The National Committee on Human Rights and Freedoms and public prosecutors should pay more frequent visits to all places of detention;

   (b) Immediately launch an independent investigation into the deaths at Douala central prison since the beginning of the year and bring those responsible to justice;

   (c) Adopt urgent measures to reduce overcrowding in prisons. The State party should enact a law establishing the maximum duration of pre-trial detention, and consider immediately releasing offenders or suspects imprisoned for the first time for petty offences, particularly if they are under 18 years of age; such persons should not be imprisoned until the problem of prison overcrowding has been solved;

   (d) Guarantee free medical care in prisons, ensure the right of prisoners to adequate food in practice, and effectively separate men and women;

   (e) Immediately end the torture, ill-treatment and arbitrary detention perpetrated under the responsibility of the traditional chiefs in the north. The Committee notes the delegation's assurance that proceedings have been brought in such cases and urges the State party to step up its efforts in this direction. The peoples concerned should be duly informed of their rights and of the limits on the authority and powers of these traditional chiefs.

9. The Committee further recommends that the State party should:

   (a) Adopt, as a matter of great urgency, and ensure the effective implementation of a law establishing the right of all persons held in

police custody, during the initial hours of detention, of access to a lawyer of their choice and an independent doctor, and to inform their relatives of their detention. The Committee remarks that any extension of detention in custody ought to be approved by a judge;

(b) Abandon the notion, in its draft code of criminal procedure, of extending the period of police custody depending on the distance between the place of arrest and the place of custody, and ensure observance of the time limits on custody in practice;

(c) Ensure that detention in custody under the Act on states of emergency conforms to international human rights standards and is not prolonged beyond what the situation requires. The State party should abolish administrative and military custody as options;

(d) Systematically organize, as a matter of great urgency, the use of registers in all places of detention;

(e) Separate the police from the prison authorities, e.g. by transferring responsibility for prison administration to the Ministry of Justice;

(f) Clarify the concept of a "manifestly illegal order", so that State employees, in particular police officers, members of the armed forces, prison guards, magistrates and lawyers, are clearly aware of the implications. Specific training on this point should be offered;

(g) Allow appeals by foreigners against decisions by the administrative court to confirm deportation orders to stay execution.

10. The Committee recommends that the State should greatly increase its efforts to end the impunity of perpetrators of acts of torture, in particular by:

(a) Removing all restrictions, notably by the Ministry of Defence, on the prosecution of gendarmes and by giving the ordinary courts jurisdiction to try offences committed by gendarmes in the line of policy duty;

(b) Pursuing its inquiry into the case of the "Bépanda nine". The Committee also recommends a thorough investigation of the activities of the Douala operational command while it was in operation

and, by extension, the activities of all anti-gang units that are still functioning;

(c) Ensuring that its authorities immediately undertake an impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed. The Committee recommends an independent body with the authority to receive and investigate all allegations of torture and other ill-treatment at the hands of State employees;

(d) Ensuring the protection of victims and witnesses against any intimidation or ill-treatment, and by informing the public of their rights, notably with regard to complaints against State employees;

(e) Adopting, as soon as possible, and ensuring the practical enforcement of a law making evidence obtained under torture inadmissible in all proceedings.

11. The Committee further recommends that the Cameroonian authorities should:

(a) Reform the National Committee on Human Rights and Freedoms with a view to closer conformity to the Principles relating to the status of national institutions for the promotion and protection of human rights (the "Paris Principles");

(b) Restrict the jurisdiction of the military courts to military offences only;

(c) Enact a law banning female genital mutilation;

(d) Revise its legislation to end the exemption from punishment of rapists who marry their victims;

(e) Consider ratifying the Optional Protocol to the Convention against Torture.

12. The Committee recommends that the present conclusions and recommendations, together with the summary records of the meetings devoted to consideration of the third periodic report of the State party, should be widely disseminated in the country in the appropriate languages.

13. The Committee recommends the inclusion in the next periodic report of detailed information on the current minimum safeguards governing court supervision and the rights of individuals in custody, and on how they apply in practice.

14. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 8 (b) and (c), 9 (c) and (d) and 10 (a) above. It wishes in particular to be given information about any prosecutions of traditional chiefs, on what charges, and the sentences handed down. It also looks forward to a detailed account of the situation at Douala central prison.

Violence against Women in Colombia

A Report to the Committee against Torture

Contents

1. Preliminary Observations

The submission of information specifically relating to violence against women to the United Nations Committee against Torture forms part of OMCT's Violence against Women programme which focuses on integrating a gender perspective into the work of the five "mainstream" United Nations human rights treaty monitoring bodies.

1.1 Colombia's International and Domestic Obligations

Colombia has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without reservations (7 January 1988). Despite the recommendation of the Committee Against Torture in 1999, Colombia has not made a declaration accepting the competence of the Committee Against Torture to examine communications under Article 21, para.1, relating to State Party claims that another State Party is in non-compliance with the Convention, or communications under Article 22, para.1, by individual victims of torture.

Colombia is also a State party to most of the principal international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC). Colombia has also ratified without reservation the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

OMCT notes that although Colombia signed the Optional Protocol to CEDAW on 10 December 1999, it has not ratified it and as a result, Colombia does not yet recognize the competence of the Committee on the Elimination of Discrimination against Women to receive and act upon individual communications or to undertake investigations in cases where serious or systematic violations of the Convention are allegedly occurring. Further, considering the extent to which the current armed conflict in Colombia is affecting children, OMCT notes with concern that while Colombia has signed the two Optional Protocols to the CRC on the Involvement of Children in Armed Conflict and on the Sale of Children,

Child Prostitution and Child Pornography, they have yet to be ratified. Colombia also does not recognise the competence of the Committee on the Elimination of Racial Discrimination to entertain individual communications.

On 5 August 2002, Colombia ratified the Rome Statute of the International Criminal Court. However, by invoking article 124 of the Statute, Colombia does not recognize the jurisdiction of the Court over war crimes committed during a period of seven years following the date of ratification. Thus the ICC's jurisdiction over war crimes committed in Colombia will not take effect until August 2009.

At the regional level, Colombia has ratified several conventions relevant to the eradication of torture and other violence against women including the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on the Prevention, Sanction and Eradication of Violence Against Women (the "Belem do Para Convention"). These treaties, taken together, impose an obligation on Colombia to guarantee the enjoyment by women of their equal rights in the civil, political, social, economic and cultural realms as well as to protect women from discrimination of any kind and to protect them from gender specific forms of violence in the public and private spheres.

Article 1 of the Inter-American Convention on the Prevention, Sanction and Eradication of Violence against Women defines violence against women to include "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere." Article 7 of the Convention also places specific obligations on States Parties "to prevent, punish and eradicate such violence."

Under Article 93 of the Constitution of Colombia (1991), international human rights treaties have the status of constitutional law and thus, take precedence over national law.[1] Article 93 further provides that the rights and duties enumerated in the Constitution must be interpreted "in accordance with international treaties on human rights ratified by Colombia."

Article 12 of the Constitution provides that "[n]o one shall be subjected to forced disappearance, nor subjected to torture or cruel, inhuman, or

degrading treatment or punishment." Article 13 guarantees to all individuals equality before the law, equal treatment by authorities, and entitlement "to enjoy the same rights, freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy." This article further imposes an affirmative obligation upon the state to "promote the conditions necessary in order that equality may be real and effective." Pursuant to Article 214, fundamental freedoms enumerated in the Constitution, Colombia's human rights obligations and obligations under international humanitarian law cannot be derogated from in times of war or states of emergency.[2]

1.2 General Observations on the Human Rights Situation in Colombia

The human rights situation in Colombia has deteriorated significantly in the past two years in tandem with the intensification of the internal armed conflict between insurgents, paramilitaries and state security forces. Significant increases in the numbers of internally displaced persons (IDPs) most of whom are women and children, in the period 2002-2003 reflect the extent to which the civilian population has been victimised by the conflict.[3] UNHCR estimates the IDP population at 195,000 but observers note that the true magnitude of this group may be as much as 2,000,000. The intensification of the fighting as well as the state's new security policies and expanded powers under the state of emergency declared in August 2002, have resulted in increasingly widespread human rights abuses and violations of international humanitarian law implicating all parties to the conflict. According to the Office of the United Nations High Commissioner for Human Rights (UNHCHR) in Colombia, most affected have been the rights to life, physical integrity, freedom and due process.[4] Persisting problems in the administration of justice including impunity, corruption and collusion of public officials with right-wing paramilitary organisations and, more generally, the lack of an effective and coherent policy on human rights and international humanitarian law[5] all contributed to the deterioration of the human rights situation in 2003. Of particular concern is Colombia's lack specific policies and effective action to protect women from violations of their rights including sexual and gender based violence which is widespread in Colombia.

Historically, Colombia has a long tradition of elected civilian rule unique in Latin America. However, the often less than inclusive policies of the established political elites, exacerbated by deep societal divisions, dramatic economic disparities between rich and poor and associated socio-political disenfranchisement, gave rise in the 1950s and 60s to alternative forms of political mobilization, including armed insurgency.[6] Colombia's internal armed struggle thus traces its origins to the rise of left wing guerrilla groups some 40 years ago, some of which were inspired by the Cuban revolution. Today, the Revolutionary Armed Forces of Colombia (FARC-EP[7]), with as many as 15,000 fighters, and the National Liberation Army (ELN[8]), estimated at about 7,000 fighters are two of the most prominent actors in the conflict. The 1980s and 90s also witnessed the rise of right wing paramilitary organizations partly as a response by wealthy landowners to the threat posed by the guerrillas. The most prominent paramilitary organization is the United Self-Defence Groups of Colombia (AUC[9]), which claims to have as many as 11,000 fighters, but observers suspect this number has increased over the past year. While the historical roots of the current conflict may have had an ideological basis, today the political motivations of armed insurgents have been discredited by their heavy involvement in a variety of lucrative criminal activities including drug trafficking, arms smuggling, abduction for ransom and extortion.[10] Many observers have characterised these activities, especially the illegal narcotics trade as both a cause and a consequence of today's continuing conflict.[11]

In early 2002, peace talks between the FARC, the ELN and the administration of former president Andrés Pastrana broke down in the face of continuing acts of violence by insurgents including several high profile kidnappings of political figures as well as increased operations by paramilitary groups, which are sometimes tolerated by the higher echelons of the military. Pastrana's ongoing contacts with the paramilitary group AUC similarly yielded no significant results. The demise of peace talks coincided with a pronounced increase in violence by armed insurgents including a concerted effort on their part to disrupt legitimate political processes and destabilise the state through acts of terrorism, indiscriminate violence and intimidation. For instance, the FARC (who has accused Uribe of having links with paramilitary groups) made several attempts to assassinate the newly elected president – Alvaro Uribe – who had campaigned on a political platform known as the "policy of democratic security" which

reflected a strategy of consolidating state authority through more decisive action and direct confrontation with insurgents and paramilitaries. President Uribe, who took office in mid-2002 made it clear from the outset that he would not negotiate with armed insurgent groups unless they met a series of demands including agreeing to a cease fire, cutting all ties with illegal narcotics trade and halting the killings and abductions of civilians. The guerillas are hesitant to lay down their arms without a clear agreement because in 1984 members of the guerilla movement agreed with then-President Betancourt to lay down their arms and form a political party, the Patriotic Union (UP), but on that occasion almost 3,000 of their leaders were subsequently killed.

Through his "policy of democratic security" president Uribe has sought to re-establish effective government control over the country by engaging in direct military confrontation with FARC and ELN, and to some extent AUC and by strengthening numbers and presence of the army and police forces, creating a network of civilian informants, establishing a system for recruiting peasants into the army, and training highly mobile elite forces. In addition, a state of "internal disturbance" was declared shortly after he took office granting expanded powers to state security forces. Under Decree 2002, the government instituted additional measures to restore public order which included the creation of "rehabilitation and consolidation zones" under direct military control, in which freedom of movement, residence, etc became subject to strict regulation. However, several of the measures of Decree 2002, notably those granting the security forces authority to carry out arrests and searches without a warrant as well as the "rehabilitation and consolidation zones" were subsequently declared unconstitutional by the highest court in a holding of 27 November 2002.[12] In April 2003, the government submitted a new anti-terrorist legislation to Congress calling for constitutional amendments once again designed to give the government expanded authorities.

According to Colombian human rights groups certain aspects of the government's new security policies have contributed significantly to the human rights crisis affecting the country. The army's part-time recruitment of peasants to serve as a stand-in replacement for regular security forces after they withdraw from a territory as well as the creation of a network of civilian informants has the effect of militarizing civilian populations and exposing them to a heightened risk of violence at the hands of

armed actors.[13] The government has also engaged in the practice of blockading civilian populations to prevent food, gasoline and other essentials from reaching armed groups[14] and many abuses perpetrated by state security forces have been directly linked to their expanded authorities under the state's new security policies.[15]

As pointed out above, the breakdown of peace negotiations in 2002 signalled an appreciable escalation of the conflict which has in turn resulted in immense humanitarian suffering for civilian populations largely caught in the cross fire. Insurgents, especially the FARC, stepped up their attacks on state institutions at all levels and began operating in urban areas resulting in mounting civilian casualties. Colombia's economic infrastructure including oil pipelines, electrical and telecommunication infrastructure, water reservoirs and roads were purposely targeted and severely damaged.[16] The victimisation of civilian population including their forced displacement has become a routine and deliberate strategy of insurgents and paramilitaries in their efforts to assert control over larger swaths of territory especially in strategically located gun and drug running corridors.[17] Landholding has also become an instrument to launder money from the illegal drug trade. Indeed, according to a recent report "[l]andholding is the 'best paramilitary instrument for laundering and saving money,'" and, in line with this, "the most efficient way to build a concentration of wealth is to force people to leave their land."[18] In this context, the AUC has systematically targeted for assassination those who are perceived to pose a threat to their dominance including social and human rights activists, labour and community leaders, women's rights groups as well as other civilians suspected of sympathising with the guerrillas.[19] FARC and ELN have committed similar abuses against civilian populations suspected of association with the paramilitaries or government forces. With respect to the government's rights record, Colombian rights groups have recorded numerous instances of serious abuses including torture, extra-judicial executions, arbitrary detentions and threats.[20] There are numerous and credible reports of collusion between state security forces and the AUC. The UNHCHR's Colombia office has described the situation in the following terms: "In their activities, the paramilitaries continued to take advantage of the lack of action, tolerance or complicity shown by public officials in several regions of the country. In many of these areas, the paramilitaries have replaced the

Government in important aspects of public life, including the use of armed force."[21]

"Plan Colombia," a multi-billion dollar aid package, has also contributed to the worsening human rights situation in Colombia. Although the plan contains human rights criteria, the United States, in particular, has paid little attention to these important needs, and instead has focused most of its aid on military support. Commentators have noted that this support has direct links with continuing human rights abuses.

UNHCHR notes that increasing incidence of breaches of international humanitarian law and human rights law involving have involved massacres, indiscriminate attacks on civilian populations, acts of terrorism, hostage-taking, disappearances and forced displacement.[22] In an incident in May 2002, in the town of Bojayá, a gas cylinder bomb launched by the FARC killed more than 110 civilians who had sought refuge from the fighting in a church. This incident alone resulted in the displacement of approximately 5000 people from Bojayá to Quibidó, the capital of the department.[23] More recently, a bomb exploded, allegedly set by the FARC, in the Southern city of Colombia, Florencia and killed 11 people.[24] Reports also indicate that paramilitaries have engaged in enforced disappearance, extrajudicial killings and torture.

Within the wider context described above, violence against women has become pervasive in all sectors of society. Credible reports of the use of rape, abduction and homicide as an instrument of war by armed actors against women are particularly common.[25] Rape and sexual violence by all sides of the conflict are reportedly common. Girls are also vulnerable to violence as combatants, both with the conflict and on the part of their co-combatants. Colombian rights groups observe that the government has not taken any specific steps to implement the recommendations of the Special Rapporteur on Violence Against Women which resulted from her mission to Colombia 1-7 November 2001.[26] Besides violence against women in the context of the armed conflict, women are also victims of violence in the family and in the community in Colombia.

Violence against women in Colombia is pervasive and widespread. In this regard, OMCT regrets the lack of information on violence against women and girls in Colombia in the Government report and it is also concerned by the absence of any data disaggregated by gender. In light of the

Government report's lack of attention to the manner in which gender shapes the form of torture, the circumstances in which it occurs and its consequences, including the availability and accessibility of remedies, and in line with the objectives of the Violence against Women Programme at OMCT, this report will focus on violence against women in Colombia. The report will begin with a brief description of the status of women in Colombia and then go on to examine violence against women perpetrated by the state and armed combatants, violence against internally displaced women, violence against women in the family, in the community, and finally with respect to their reproductive rights.

2. General Status of Women in Colombia

Article 13 of the Constitution of Colombia provides that "All individuals are born free and equal before the law and are entitled to equal protection and treatment by the authorities, and to enjoy the same rights and freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy." Additionally, Article 43 of the Colombian Constitution states that: "Women and men have equal rights and opportunities. Women may not be subjected to any kind of discrimination. During pregnancy and after childbirth, women shall enjoy special assistance and protection from the State, and shall receive an allowance from the State if unemployed or without support."

Colombia also has many laws, besides the Constitution, purporting to guarantee equality between men and women and Supreme Court cases in Colombia indicate a commitment to this ideal. Nevertheless, pervasive stereotypes about women persist in Colombia and the reality is that women suffer from discrimination in private and public life. Such discrimination is evident in women's employment opportunities as well as women's participation in politics.

Traditional stereotypes place women primarily in a role as caretakers and value the family over all else. Women are often viewed as sex objects and are taught from an early age to be submissive, objects of desire.[27] Additionally, these stereotypes lead to a gendered division of labor at an early age, with girls being tasked with domestic chores in the home and

boys having more time for playing and being away from the house.[28]

> Well, my mom used to tell us that our rights, women's rights, were first of all to respect them (men), know how to treat them with nice words and to obey them. (Testimony as reported in Mesa de Trabajo, Mujer y Conflicto Armado, p. 56).

With respect to employment, men generally earn 28% more than women for equal work.[29] In rural areas, women are more disadvantaged with respect to work – with 58% of rural women earning less than half of the legal minimum wage (compared with 31% of men earning so little).[30] Additionally, the unemployment rates indicate that less women are working, with 24.5% of women being unemployed as opposed to 16.9% of men in 1999. Although it is against the law to fire women for being pregnant, the reality is that many women fear being discriminated against in this manner.[31]

Article 40 of the Colombian Constitution provides that "the authorities will guarantee the adequate and effective participation of women in the decision making ranks of the public administration." Despite this article, women's participation in public and political life in Colombia is far from their proportion of the population. According to statistics from the Inter-Parliamentary Union, women in Colombia constitute 12% of the lower house (holding 20 out of 166 seats) and 9% of the upper house (holding 9 out of 102 seats). These participations rates lead to an overall rate of 8.8% with respect to women's presence in the legislature in Colombia.[32] Also, although women reportedly hold 59% of all posts within the central administration, their presence in decision-making positions is much less, with only 19% of directorships being held by women in 1999.[33] In spite of this clear disparity between women and men's participation in politics, there is reportedly a resistance to instituting affirmative action policies to guarantee women's presence in this sector.[34] Women's lack of access to the political sphere in Colombia has been described as a vicious cycle: "Women's inexperience does not allow them to access these spaces and since they cannot access, they cannot gain experience."[35]

OMCT is concerned that women affected by the conflict, particularly displaced women, are not represented in peace negotiations in Colombia.[36]

The importance of including women in peace-building efforts cannot be underestimated, as recognized in the recent report ofn the UN Secretary General on Women, Peace and Security.[37]

With respect to education, women have made great progress in achieving the same levels of education as men. In 2002, literacy rates in Colombia were reported to be roughly equal, at 92 percent.[38] Also, more women are attending secondary school and receiving higher education. However, it must be noted that women continue to be focused in "feminine" areas of study.

The minimum age of marriage is 18 for both boys and girls. However, with parental permission, boys are allowed to marry as young as 14 and girls as young as 12.[39] OMCT notes that this exception to the minimum age of marriage is discriminatory towards girls as it provides for different ages at which boys and girls may marry with parental consent.

Discrimination against women also manifests itself in various forms of violence against women. This gender-based violence takes place in different contexts but in all instances, the State is under an international obligation to investigate, prosecute and punish such violence with due diligence.

3. Violence against Women Perpetrated by the State and Armed Groups

It has been reported that in the year from October 1995 to September 1996, socio-political violence killed 172 women and caused the disappearance of 12 women. During the same year, at least 35 women were tortured and another 33 were threatened and harassed.[40] Another report indicates higher numbers, with a woman being killed every week in combat, every two weeks a woman being a victim of a forced disappearance, and 363 women dying each year because of socio-political violence.[41] Violence against women in the armed conflict in Colombia is committed by members of all sides of the conflict.

The Special Rapporteur on Violence Against Women has reported that "women are targeted for being relatives of the 'other' side. Armed factions threaten and abuse women for being in solidarity with their

husbands or partners, or because of the partner they have chosen, or for protecting their sons and daughters from forced recruitment."[42]

> I am 21 years old and used to work at a bar. One day, a miliciano of the FARC arrived and proposed me and other colleagues to travel and work with the guys. They requested all my documentation, because they decide who goes and who doesn't… they promised me I would earn three million pesos in three months and that after that I could return to Medellín. They sent me by airplane, great, with some others like me… The first day they showed us the place where we were going to live and work, but the thing got complicated when I saw the line of men touching me, dirty and with looks that disgusted me… They forced me to lay with all of them and with those to come. I also had to take part on communitarian working days, that is sweeping the streets, scratching coke, cooking and fucking extra with them, you can't imagine how terrible this was, I'm here because I got ill and they let me go, otherwise I would still be there like the others, they all stayed, poor them! (Testimony as reported in Mesa de Trabajo, Mujer y Conflicto Armado, p. 91).

Although sexual violence by combatants appears to be widespread, such incidents are underreported and the police often fail to adequately investigate these crimes. When women are found raped and murdered, police reportedly only register the murder and not the sexual violence.[43] Such practices show a lack of concern about violence against women and may partially explain why many women are hesitant to go to the police concerning sexual violence.

3.1 Violence against Women Human Rights Defenders

The Special Representative on Human Rights Defenders has expressed concern over the murders of several women human rights defenders in Colombia. She also recognized that before human rights defenders are killed, they are often "tortured, raped or mutilated, often atrociously."[44]

Certain women's organizations have been particularly targeted for threats and violence. Once such example is the National Association for Rural,

Indigenous and Black Women in Colombia (ANMUCIC). On July 21, 2000, Marlen Rincón, who was the Departmental President of ANMUCIC in San Juan, was killed, allegedly by paramilitaries who accused her of providing aid to guerillas. Additionally, on September 3, 2002, paramilitaries allegedly killed Gloria Marín de Borrero, another ANMUCIC leader, in the municipality of Zulia.[45] This organization, in particular its president, Ms. Leonora Castaño, was granted protection by the Inter-American Commission on Human Rights on March 2, 2001.[46]

More recently, another member of ANMUCIC, Mrs. Nhora Cecilia Valasquez Cortes, was taken by armed men, kept overnight, and tortured because of her activities with this organization. They accused her of providing aid to the guerrilla movement. (See OMCT appeal 290703.VAW and its follow up) Mrs. Velasquez and other members of ANMUCIC continue to be harassed and receive threats because of their work.

Women's organizations as well as individual women are put at additional risks because of their role in obtaining food. Paramilitaries reportedly intervene in attempts to collect food, accusing the women of supplying nourishment to the guerrilla movement. One such instance of intervention occurred in August 2002, to a worker with the League of Women Displaced by Violence in Bolívar, which coordinates a food program for displaced persons. When the worker went to receive food under the auspices of the program, she was met by a paramilitary and asked whether she was providing food to the guerrillas. She explained that the food was for displaced people, the paramilitary made a call on his radio, and then he warned her that her organization would be placed under surveillance by his group. Such threats discourage women from continuing their important work in providing food to displaced populations.[47]

Women are also vulnerable to violence in their attempts to mobilize manifestations against the war. For example:

> *"On July 25th, 2002, the National Women's Mobilization against the War took place in Bogotá. More than 25,000 women from every city in the country arrived with the collectively-shared proposal to protest against the war and to demand a negotiated political settlement to the Colombian armed conflict. On their return journey to the city of*

Cartagena (Bolívar), on July 27th, 2002, members of the Women's League, as well as women from other organizations, were victims of an act of violence on the highway. In the municipality of Río Negro (Antioquia), several armed men detained the caravan of buses in which they were returning to Cartagena from Bogotá. These armed men detained the first of the three buses in the caravan and with small weapons threatened the driver who terrorized, fled and hid himself in the cabin of the bus.

The majority of the women panicked. However, one of the leaders of the Women's League established calm, and from the stairwell of the bus, initiated a dialogue with the aggressors who, after taking down the bus's license plate, allowed them to move on"[48]

3.2 Child Soldiers

It has been reported that both guerilla and paramilitary groups recruit child soldiers and that girls form a significant percentage of those soldiers. It is estimated that between 800 and 1,600 child soldiers in Colombia are girls.[49]

Girls become combatants for various reasons, including the desire to escape sexual abuse at home.[50] One report indicates that a major reason for girls to decide to join the combatant groups was a strong desire to escape from maltreatment within their family, domestic violence and the extreme burden of domestic work.[51]

Older male combatants often form sexual relationships with these girls. These relationships are formed in a context where the girls are underage and the older, higher-ranked men have clear power and authority over them. Because commanders often can offer the girls a certain degree of protection, by giving them safer assignments, the girls frequently agree to sexual relations with the older men. However, there have also been reports of rape within the combating groups.[52]

The occurrence of rape within the combating groups may be much higher than reported given that rape generally is underreported, and that girls in

armed groups reportedly view sexual abuse as normal. Thus, they rarely speak about such abuse.[53]

Girl combatants are frequently forced to use contraception, such as intrauterine devices (IUDs) or contraceptive injections, even when they are not a part of a sexually active couple. When girls become pregnant from their relations with the men, they are often forced to have an abortion.[54]

4. Internally Displaced Women

The Representative of the Secretary General on internally displaced persons has noted that internal displacement is a severe problem in Colombia. In particular, he observed that displacement of populations in Colombia has occurred not only as a result of the armed conflict but also as a purposeful strategy of the combatants, who rarely confront each other directly, instead attacking civilians who they suspect of having contacts with the "other" side.[55]

Internal displacement has disproportionately affected women and children, who constitute 80% of the displaced population.[56] Additionally, reports indicate that over 34,000 women head households that are displaced.[57]

It has been reported that as many as 1 in 5 displaced women have been raped. Additionally, among this population, 8% of minors have been raped before reaching the age of 14.[58] Another report indicates that 30% of teenage girls who are displaced have children or are pregnant.[59] Combatants reportedly offer young girls money for sex, and displaced girls, as young as 11, reportedly accept prostitution as a way to support their family.[60] Similarly, there have been cases where paramilitaries have ask parents to give their daughters to the combatants for a couple days as a "community service."[61]

Not only are displaced women vulnerable to violence from armed groups, but they are also particularly vulnerable to violence within their own families. Interviews with displaced women reveal that they have perceived an increase in domestic violence since their displacement.[62]

Afrocolombian women face particular problems in displacement. This minority community lives in cocoa growing regions, which are highly desired by the combatants. Thus, they are often displaced and as such, the women face triple discrimination: as women, as Afrocolombians and as displaced persons. Stereotypes categorizing Afrocolombian women as sex objects and more general discrimination against this minority group leads to a situation where they are often targeted for sexual violence.[63]

5. Violence Against Women in the Family

5.1 Domestic Violence

Article 42 of the Constitution of Colombia provides that "Family relations are based on the equality of rights and duties of the couple and on the mutual respect of all its members. Any form of violence in the family is considered destructive of its harmony and unity, and will be sanctioned according to law."

Additionally, Law 294 punishes violence in the family, stating "he who maltreats physically, psychically, or sexually any member of his family nucleus, shall incur a prison sentence from 1 to 2 years." According to this law, maltreatment causing personal injuries is committed when: "he who by means of physical or psychic violence, cruel, intimidating or degrading treatment, should cause damage to the body or to the psychological health of a member of his family group, shall be deprived of liberty for the respective offense, increased by one third to half of the sentence." The law further defines maltreatment by means of liberty restriction: "he who by means of force and without any reasonable cause restricts the liberty of locomotion of another person of legal age belonging to his family group, shall incur a penalty of 1 to 6 months in prison and a fine of 1 to 16 minimum monthly salaries, if and when this occurrence does not constitute an offense sanctioned with a larger sentence."

The law punishing violence in the family also provides for court-ordered protection measures where maltreatment of family members has been determined. The punishment for violence in the family can be increased if such violence was perpetrated in violation of a protection order. Law 575

(2000) amended Law 294 by increasing the potential protection measures available.[64]

Before the amendment to Law 294, protection orders could also be obtained through a *tutela* action. This is a procedure whereby a complainant may request immediate protection of fundamental rights against a public authority or against a private person to whom the complainant is subordinate or vulnerable.[65] At first, courts did not accept the use of a *tutela* action to guarantee protection from domestic violence. However, the Constitutional Court of Colombia has interpreted the function of *tutela* actions broadly and has not limited the definition of fundamental rights to those rights enumerated in the Colombian Constitution. As such, the Constitutional Court asserted that domestic violence constitutes a violation of a woman's fundamental rights to "life and physical integrity" and thus the use of a *tutela* action was wholly appropriate.[66]

With the passage of Law 575 on domestic violence, the Constitutional Court held that *tutela* actions were no longer valid in cases of domestic violence, as the new law provided an alternative mechanism for obtaining protection. However, the lower courts have reportedly not been interpreting the new law in a way that effectively protects women and some observers have commented that the *tutela* action may need to be reinstated as a possible avenue for redress in cases of domestic abuse,[67] at least until the new law provides adequate protection for women victims of domestic violence. Use of the *tutela* action may be further limited by proposed constitutional amendments that foresee drastic changes in the permissible uses of this judicial mechanism.[68]

Another recent amendment to the law has also clarified that punishments under the law against domestic violence are only to be applied where charges with a more severe punishment do not apply. This amendment has been criticized as the law provides for a minimal punishment for domestic violence by itself, sending a message that such violence is not as serious as other types of violence.[69]

Despite many laws and court cases concerning domestic violence, the overriding view remains that domestic violence should be treated as a "private" matter. Hence, although domestic violence in Colombia is reportedly widespread, this prevailing perspective hinders reporting of the

crime and makes it exceedingly difficult to assess the true magnitude of the problem.

One study indicates that 41 percent of women between the ages of 15 and 49 in Colombia have been victims of physical violence perpetrated by a spouse or partner. The same study reveals that 11% of women in the same age group have experienced sexual violence by husbands or partners.[70] The National Institute of Legal Medicine and Forensic Science also offers information on the magnitude of the problem of domestic violence in Colombia. In 2002, they received, on average, 178 confirmed reports of inter-family violence on a daily basis. 70% of the violence they documented was between spouses, and 78% of the inter-family violence is directed against women.[71] In 2000, it was reported that there were 73,127 cases of conjugal violence – this leads to the statistics of 200 cases per day, 8 cases every hour.[72] With respect to violence between spouses, women are the victims in 91% of the cases. Additionally, women are disproportionately victims of violence committed by other family members.[73] Another report indicates that 93% of all domestic violence is directed towards women victims.[74]

Although no statistics exist, people in Colombia allegedly report a perceived increase in domestic violence and attribute this increase to the armed conflict.[75] Violence and aggressiveness are extremely present in Colombian society and these negative aspects in public life are spilling over into family life with more and more frequency. It is important to note, however, that violence against women in the home is a deep-rooted societal problem and the armed conflict is exacerbating a problem which was already existent in more peaceful times.

Domestic violence against internally displaced women is also a serious problem, as mentioned earlier. The poor living conditions and accompanying stress that families endure when they are displaced has reportedly led to an increase in domestic violence amongst this population.[76]

Traditional views which value family cohesion over individual rights create an environment in which it is difficult for women to report domestic violence. Accordingly, it is estimated that 95% of all domestic abuse is suffered in silence.[77] Another estimate indicates that only 27% of women victims of domestic violence report the crime.[78] These cultural mores are

often reinforced by police and other officials, who are responsible for responding to cases of domestic violence.[79]

Lack of awareness about rights and remedies is another major obstacle to women fully enjoying their right to be free from violence. Marginalized women, such as internally displaced women and rural women, are particularly unaware of their rights as well as the laws forbidding domestic violence. It has also been reported that culturally ingrained views create a situation where violence against women is seen by women as "normal" and expected.[80]

Additionally, many women do not trust the police and judicial system, thus there is a huge gap between legislation and actual implementation.[81] The lack of trust of the police is particularly evident with indigenous women who are hesitant to present their familial problems to the police, for fear of causing friction within their own community's fight for recognition and aggravating already existent prejudices against their community.[82] Besides the lack of trust of the police, there is also a general lack of faith in the law enforcement and judicial systems. Accordingly, if women want to see results from their complaints, they will often report to the paramilitaries or the guerillas before going to the police because the armed combatants will ensure quick action.[83]

> For example, some ill treated women, or those who want their husbands to give them food or something, they won't go to Bienestar Familiar, nor to the family court, nor to the prosecutor's office, because they say these institutions will not provide the immediate service. So, what are they doing now? Now they go and ask the paramilitary or the guerrilla, they say they are more effective indeed: "I go to the commander of the paramilitary, tell them my case, they come immediately, they catch him, beat him and next time he knows; that is enough". (Testimony as reported in Mesa de Trabajo, Mujer y Conflicto Armado, p. 59)

Few shelters exist to assist victims of domestic violence, and those that exist are reportedly subject to severe economic constraints.[84]

5.2 Marital Rape

In 1996, marital rape was criminalized in Colombia. When this law was originally enacted, it provided for a lesser punishment for rape within the context of marriage than for rape generally. However, the Constitutional Court of Colombia declared this difference in punishments unconstitutional. The new Penal Code has amended the law, providing that rape between spouses, partners or persons who have a child together is now an aggravating factor to rape, warranting a stricter punishment.[85]

Despite this law forbidding marital rape, 5.3% of women in Colombia report having been raped, and in 44% of these cases, the perpetrator was the spouse or the partner of the victim.[86] Additionally, it is reported that 1 in 5 women who are internally displaced have been raped with a significant proportion of the perpetrators being husbands or companions.[87]

6. Violence Against Women in the Community

6.1 Rape and Sexual Violence

The law divides sexual offenses into three general categories: rape, abusive sexual acts, and statutory rape. Under the law for rape, three sub-categories are delineated: violent carnal access, violent sexual act, and carnal access with a person who is incapable of resisting. The punishments for these crimes of sexual violence have recently been amended: violent carnal access is punishable with 8 to 15 years imprisonment (the maximum sentence having been lowered from 20 years); violent sexual act provides for a penalty of 3 to 6 years in prison (changed from 4 to 8 years); and committing a sexual act with someone who is not able to resist is punishable with 8 to 15 years imprisonment (increased from 4 to 8 years).[88] These punishments can be increased when certain aggravating factors are present, such as multiple perpetrators, the perpetrator has authority over the victim, the crime results in pregnancy or a venereal disease for the victim, the victim is less than 10 years old, or the victim is the spouse, partner of or has a child with the perpetrator.[89]

It is estimated that around 15,000 rapes went unreported in 1999.[90]

Furthermore, reports indicate that 5.3 percent of women report that they have been subjected to forced sexual relations at some point and that in most of these cases, the victims knew their perpetrator.[91] One study also indicates that girls who are between ages 12 and 17 are the most vulnerable to becoming victims of sexual violence – with 41 percent reporting violence in the home and 42 percent reporting violence in public.[92]

The trauma of rape is exacerbated by cultural views that link women's sexuality to notions of family "honour." Women victims of rape face stigmatization and rejection by their families when they are raped. Particularly, husbands reportedly feel betrayed when their wife is raped, as though she provoked the crime, and it can lead to the breakdown of the marriage.

> The AUC (Autodefensas Unidas de Colombia – Paramilitaries), came to Domingó, husbands fled to the fields and 5 to 10 men raped women between 19 and 30 years old. Two married couples have separated since. Husbands felt disappointed of the women that had been raped, they were ashamed. One of them (husband) left. The women felt ashamed. The other women that knew about these rapes didn't want to go to town because they were afraid that the same thing might happen to them. (Testimony as reported in Mesa de Trabajo, Mujer y Conflicto Armado, p. 27)

The situation for women who become pregnant from rape is also concerning. In addition to the lack of support and potential rejection they face from their families, women who have been raped face criminal charges if they decide to have an abortion. As described below, the law forbidding abortion only provides for a lessened punishment if the abortion is performed as a result of pregnancy from rape.

It is suspected that rape and other crimes of sexual violence are drastically underreported. Statistics demonstrate that about 775 teenagers are raped each year, while only 17% of the those victims report the crime publicly. Similarly, a 2001 survey of internally displaced women indicated that while rates of sexual violence are high, 84% of the women never sought out assistance after being abused.[93]

The Supreme Court in Colombia has demonstrated a progressive approach to rape cases. Specifically, it has held that the lifestyle of the victim, the fact that she knew her assailants, and the fact that she accompanied her assailants voluntarily are irrelevant factors in establishing consent. In the same case, the court also held that resistance to rape must only be reasonable to an objective observer.[94] Despite this important interpretation of the law, the judicial system as a whole has not necessarily adopted the same approach. Many courts reportedly still take into account subjective judgments about a victim's reputation, making her testimony less credible.[95]

When women do come forward to denounce such violence, they are often met with discriminatory stereotypes in the judicial and law enforcement systems that perpetuate notions that the victim is to blame for provoking the violence. Also, it is reported that protection of women is sometimes granted according to opinions of whether a woman is "honest" or not, and that some opinions do not view women as credible witnesses.[96]

Lack of funds is a serious obstacle to women's access to justice in Colombia. Legal services are not readily available free of charge and where they are, the providers have not received gender sensitivity training. Additionally, private lawyers are too expensive for most women. Additionally, the high cost of lab tests from government's forensic medicine department, which are required in order to sustain charges of rape, prevent many women from pursuing a case against their perpetrator.[97] One interview with a woman revealed the following testimony:

> Her brother-in-law raped her 16-year-old sister. They went to the authorities and to the hospital but were not able to pay for the laboratory analysis which cost $50.00. Without this, the investigation ended. My sister, she said tearfully, is now six months pregnant. (Testimony from Reproductive Health for Refugees Consortium, Displaced and Desperate: Assessment of Reproductive Health for Colombia's Internally Displaced Persons, p. 31 (2003)).

6.2 Trafficking

In the Constitution of Colombia, Article 17 prohibits "slavery, servitude and the slave trade." In June 2002, a new law was introduced to prohibit

trafficking in persons. It provides that:

> "anyone who promotes, induces, constrains, enables, finances, co-operates, or participates in a person's transfer within the national territory or abroad by resorting to any form of violence, ruse or deception, for exploitation purposes, to lead such person to work in prostitution, pornography, debt bondage, begging, forced labour, servile marriage, slavery for purposes of obtaining financial profit, or any other benefit either for himself or for another person, shall incur 10 to 15 years imprisonment and a fine."[98]

This important law has the potential to be an effective tool in fighting against human trafficking. However, given its recent enactment, the manner in which it is implemented remains to be seen. Colombia has signed but not ratified that Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

Colombia is a country of origin for trafficked women, with trafficking occurring internally, regionally and internationally. Reports indicate that as many as 35,000 women a year are sent abroad for trafficking purposes.[99] In particular, women from Colombia are trafficked to Japan in large numbers, with estimates claiming that 40% of all trafficked Colombian women are taken to Japan. It is reported that this trafficking route is heavily linked to the Japanese mafia, who also engage in drug and arms trafficking.[100]

Over the 8 year period between 1992 and 2000, only 99 cases were filed against traffickers and of those, only 7 actually went to trial. The average punishment was between two and five years in prison, which meant that many of the convicted traffickers were able to go free as two years is the minimum sentence and under the Colombian system these sentences are often not served.[101]

According to ESPERANZA, a Colombian NGO working on this issue, problems perpetuating the phenomenon of trafficking in women include poverty, lack of education, continuing violence and conflict, lack of awareness in all sectors of society and the lack of prevention mechanisms.[102]

The fact that traffickers have generally received only the minimum sentence in the past has been a discouraging factor for trafficking victims trying to evaluate whether they should file a case. Another obstacle is the long delays in the court system meaning that it may take years to get a judgment against a trafficker.[103] Many trafficking victims are also fearful of reporting their traffickers because their personal safety may be jeopardized. The police offer no protection to trafficking victims leaving them vulnerable to further contact with the traffickers.[104] Besides the lack of witness protection by the State, social services, such as housing and counseling, are also not provided by the State. The provision of these services falls to NGOs who suffer from a severe lack of resources.[105]

7. Reproductive Rights

Undergoing or performing an abortion is a criminal act in Colombia. The punishment is aggravated for persons who perform an abortion without the woman's consent. The penalty is lessened for women who undergo abortions when they are pregnant as a result of nonconsensual sex (rape) or nonconsensual artificial insemination. The new Penal Code adopted in 2000 adds a provision which allows judges to drop all punishment when the "abortion is been performed in abnormal and extraordinary circumstances of motivation." It remains to be seen how this phrase in the Penal Code will be interpreted by the courts.[106]

Women's access to contraceptive methods is hindered by traditional views that see the desire to use birth control as a sign of infidelity or "corruption" on the part of the wife. Also, the Catholic Church in Colombia exerts considerable influence in forbidding the use of non-natural birth control methods.[107] It is reported that decisions concerning the number and spacing of children a woman will have are taken almost exclusively by husbands.[108]

Despite the prohibition and criminalization of abortion, the practice is reportedly widespread. According to statistics from 1998, 26% of women attending university admitted to having had an abortion. The same statistics reveal that one third of all women who have been pregnant have had an abortion.[109] The illegal nature of the act puts many women's lives at risk as they have abortions performed in clandestine situations with no

medical standards regulating the circumstances. Thus, it is reported that complications from abortions is the second leading cause of maternal mortality in Colombia.[110] Reports also indicate that obtaining a safe (although illegal) abortion in Colombia is very much dependent upon the economic status of the woman, with poor women suffering from much more dangerous operations.

8. Conclusions and Recommendations

OMCT is pleased to note that Colombia's Constitution guarantees equality between men and women, and that several high level court cases indicate a commitment by the judiciary to enforce this guarantee. Colombia has also passed many laws attempting to ensure that women are able to fully enjoy their rights. However, the reality in Colombia is that women continue to suffer from multiple forms of discrimination, which often manifests itself through violence against women.

The government of Colombia is strongly urged take measures to guarantee women's equal opportunities in employment. Additionally, more efforts should be made to ensure that women are adequately represented at all levels of government. Women should also be included in peace negotiation efforts.

OMCT is concerned that girls in Colombia may be married as young as 12 and recommends that the government amend this provision so that the minimum age of marriage with parental permission is the same as the minimum age for boys and consider setting the age of marriage at 18 for both girls and boys in all circumstances.

Women in Colombia are particularly vulnerable to violence by armed combatants, both paramilitaries and guerillas, in the context of the internal conflict. OMCT insists on the government's obligations to investigate, prosecute and punish with due diligence all incidents of sexual violence perpetrated by armed combatants. OMCT also recommends that the government establish special support services for women victims of such violence by the armed combatants.

OMCT is deeply concerned for the safety of women human rights defenders. As such, OMCT particularly calls on the government to ensure the

physical and psychological integrity of all such women who are working to provide essential services to the population of Colombia.

OMCT is gravely concerned about the high numbers of children, including girls, among combatant groups. The government should examine the root causes that push children to join such groups and institute adequate programmes and services to address this problem. Also, support services for children who have participated in the conflict should be given priority in an effort to rehabilitate these children. Reports of rape within these groups must be investigated, prosecuted and punished with due diligence. Furthermore, the government should ensure that girls who have been forced to use contraception or forced to undergo abortions receive adequate reparations from these violations of their bodily integrity.

Internally displaced women are also severely at risk of violence both at the hands of armed combatants and within their own families. Protection and social services must be offered to these women. Law enforcement personnel must be trained to respond effectively to internally displaced women taking into account their specific needs arising from their displacement as well as their lower status as women.

Although Colombia has specific legislation outlawing domestic violence, this legislation could be strengthened. OMCT notes that the recent amendment to Law 294 by Law 575, providing that charges of domestic violence are only applied where more severe charges are not applicable sends a message that domestic violence is a less serious crime than other crimes. OMCT is also concerned at the removal of the *tutela* action with respect to domestic violence cases, as this procedure had served as a valuable tool for victims in securing their rights. Given that the alternative mechanisms for providing redress to victims of domestic violence have not fulfilled this purpose, OMCT observes that *tutela* actions should be reinstated as an avenue of protection for victims of domestic violence, at least while the protection measures provided for by law remain ineffective.

Domestic violence is reportedly widespread in Colombia and more efforts must be made to eradicate this violence. This violence, including marital rape, is drastically underreported. Awareness-raising programmes should be instituted to ensure that women are knowledgeable about the law and their rights and to encourage reporting of the crime. Additionally, campaigns to sensitize Colombian society to the gravity of domestic violence

should be embarked upon to overcome stereotypes about women and prevailing opinions classifying domestic violence as a private matter. Training courses for all law enforcement officers, including prosecutors and judicial personnel, should be created in order that these government officials handle cases of domestic violence in a sensitive manner. Additionally, the government should ensure that women victims of domestic violence have access to support services, including shelters, as well as judicial remedies. Furthermore, OMCT insists on the government's obligation to investigate, prosecute and punish domestic violence with due diligence.

Special attention must be paid to marginalized women with respect to violence within the family. These women are often unaware of their rights and they suffer from discrimination in accessing remedies. OMCT recommends that the government establish specific measures intended to reach out to these marginalized populations.

OMCT notes that recent amendments to the penal code have provided lesser punishments for rape. Rape is a particularly concerning crime in Colombia. OMCT is concerned that women are often blamed for having provoked the crime of rape and is alarmed that women victims of rape are sometimes doubly victimized because their families or husbands will reject them on account of the rape. OMCT finds that it is urgent that comprehensive measures be implemented to counteract these traditional views.

Additionally, women victims of rape face serious obstacles in filing a complaint against their perpetrators as all medical examinations must be conducted by the government forensic medicine department and many women cannot afford the attached fees for such an examination. OMCT urges the government to provide free medical examinations to women who have been raped and recommends that social services, such as counseling, be offered to victims.

OMCT is gravely concerned about the high incidence of trafficking in women from Colombia. OMCT further observes that traffickers are rarely prosecuted and when they are, they are often given a minimal punishment. Long delays in the court system and the lack of witness protection to trafficking victims also serve to discourage women from reporting the crime of trafficking. In implementing its recently passed legislation on traffick-

ing, the government of Colombia should ensure that cases are pursued in an efficient manner, that traffickers are punished in accordance with the gravity of their crime and that victims are guaranteed appropriate protection and social services. OMCT also calls upon the government to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

OMCT is deeply troubled by the high rate of death in connection with clandestine abortions and vehemently urges the government to consider legalizing abortion in cases of rape and incest. OMCT also believes that all persons should have the right to decide freely and responsibly about the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. This also includes the right to make decisions concerning reproduction free of discrimination, coercion and violence. OMCT would recommend the elaboration of adequate family-planning programmes.

Finally, OMCT would insist on the need to fully implement all provisions of the Convention on the Elimination of Discrimination against Women, the Declaration on the Elimination of Violence against Women as well as the Beijing Platform of Action, in Colombia as these are the most relevant international instruments concerned with all forms of violence against women.

1 Under Article 93 "the international treaties and agreements ratified by Congress that recognize human rights and prohibit their limitation in states of emergency prevail in the national law." Constitución Política de Colombia de 1991, actualizada hasta la Reforma de 2001, available at . www.georgetown.edu/pdba/Constitutions/Colombia/col191.html, (unofficial translation).

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3 According to the Sistema de Estimación por Fuentes Contrastadas (SEFC) a body set up in 2002 which uses multiple sources (SUR, CODHES, RUT) to generate IDP data, in 2002, 168,951 persons were displaced in Colombia in 2002. *See*

Mesa de Trabajo: Mujer y Conflicto Armado, *Informe Sobre Violencia Sociopolitica Contra Mujeres, Jóvenes y Niñas en Colombia, Tercer Informe - 2002*, pp. 18-19. *See* also, International Crisis Group (ICG), Latin America Report N°4, Bogota/Brussels, *Colombia's Humanitarian Crisis*, Bogota/Brussels, 9 July 2003. According to this report the year 2002 "saw the highest absolute and relative increases of internal displacement in the last ten years" in Colombia, p. 3.

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5 *E/CN.4/2003/13Ibid.*, p. 7.

6 *See* Anders Rudqvist, *Popular Participation in Colombia*, in "Breeding Inequality – Reaping Violence, Exploring Linkages and Causality in Colombia and Beyond," Collegium For Development Studies, Uppsala (2002)

7 Fuerzas Armadas Revolucionarias de Colombia – Ejercito Popular.

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9 Autodefensas Unidas de Colombia.

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13 Working Group on Women and Armed Conflict, Bogota, Colombia, October 2002: *Follow-up to the Recommendations of the United Nations Special Rapporteur for Violence Against Women, Its Causes and Consequences*, Ms. Radhika Coomaraswamy – Mission to Colombia (November 1-7, 2001).

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21 UN Doc. E/CN.4/2003/13, *Ibid.*, p.14.

22 *Ibid.*, p. 19.

23 Mesa de Trabajo: Mujer y Conflicto Armado, *Ibid.*, p. 19.

24 New York Times, *11 Killed in Colombian City Bombing*, September 28, 2003.

25 Mesa de Trabajo: Mujer y Conflicto Armado, *Ibid.* See Aalso, ICG Latin America Report N°4, *Ibid.*, ICG *Colombia's Humanitarian Crisis,* op. cit, p. 5 "The armed groups often force women heads of household to leave their homes because of the prominent role they play in community development."

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27 Mesa de Trabajo: Mujer y Conflicto Armado, *Ibid.* , p. 30, 56.

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Committee against Torture

Thirty-first session – 10-21 November 2003

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

Concluding observations by the Committee against Torture: Colombia

1. The Committee considered the third periodic report of Colombia (CAT/C/39/Add.4) at its 575th and 578th meetings, held on 11 and 12 November 2003 (CAT/C/SR.575 and 578), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the third periodic report of Colombia, but regrets that it was submitted on 17 January 2002, five years late. It notes that the report contains little information on the practical application of the Convention over the reporting period. The Committee is, however, grateful for the exhaustive oral replies that the State party's delegation gave to most of its members' questions and for the statistics provided during the consideration of the report.

B. Positive aspects

3. The Committee notes with satisfaction the State party's adoption of a number of domestic laws of relevance to the prevention and suppression of torture and ill-treatment, in particular:

(a) The new Penal Code (Act No. 599/2000), which defines the offences of torture, genocide, forced disappearance and forced displacement and states that due obedience will not be considered as justifying those offences;

(b) The new Military Penal Code (Act No. 522/1999), which excludes the offences of torture, genocide and forced disappearance from the jurisdiction of the military criminal courts and regulates the principle of due obedience;

(c) Act No. 548/1999, which prohibits the conscription of persons under 18 years of age;

(d) The new Code of Penal Procedure (Act No. 600/2000), title VI whereof provides that illegally obtained evidence will be inadmissible.

4. The Committee also welcomes:

(a) Act No. 742/2000 approving the ratification of the Rome Statute of the International Criminal Court, the instrument whereof was deposited on 5 August 2002;

(b) Act No. 707/2001 approving the ratification of the Inter-American Convention on Forced Disappearance of Persons.

5. Similarly, the Committee expresses its satisfaction at:

(a) The statement by the State party's representative that there neither has been nor will be any amnesty or clemency in the State party for acts of torture;

(b) The positive role of the Constitutional Court in the defence of the rule of law in the State party;

(c) The ongoing cooperation between the office in Colombia of the United Nations High Commissioner for Human Rights and the Government of Colombia.

C. Factors and difficulties impeding the application of the Convention

6. The Committee is aware of the difficulties with respect to human rights and international humanitarian law arising from the current complex situation in the country, especially in a context characterized by the activities of illegal armed groups. The Committee nonetheless reiterates that, as stated in article 2 of the Convention, no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Subjects of concern

7. The Committee reiterates its concern at the numerous acts of torture and ill-treatment reported widely and systematically committed by the State security forces and organs in the State party both during and outside armed operations. It also expresses its concern at the high number of forced disappearances and arbitrary executions.

8. The Committee expresses its concern that measures adopted or being adopted by the State party against terrorism and illegal armed groups could encourage the practice of torture. In this regard the Committee expresses its concern, in particular, at:

   (a) The recruitment of part-time "peasant soldiers", who continue to live in their communities but participate in armed action against guerrillas, so that they and their communities may be the target of action by the illegal armed groups, including acts of torture and ill-treatment;

   (b) Constitutional reform bill No. 223/2003, which, if adopted, would seem to confer judicial powers on the armed forces and enable persons to be detained and questioned for up to 36 hours without being brought before a judge.

9. The Committee also expresses its concern at:

   (a) The climate of impunity that surrounds human rights violations by State security forces and organs and, in particular, the absence of prompt, impartial and thorough investigation of the numerous acts

of torture or other cruel, inhuman or degrading treatment or punishment and the absence of redress and adequate compensation for the victims;

(b) The allegations of tolerance, support or acquiescence by the State party's agents concerning the activities of the paramilitary groups known as "self-defence groups", which are responsible for a great deal of torture or ill-treatment;

(c) The judicial reform bill, should it be approved, would reportedly provide for constitutional limitation of *amparo* proceedings and reduce the powers of the Constitutional Court, particularly with respect to the review of declarations of states of emergency. Similarly, the Committee expresses its concern at the "alternative penalties" bill, which, if approved, would, even if they had committed torture or other serious breaches of international humanitarian law, grant conditional suspension of their sentences to members of armed groups who voluntarily laid down their arms;

(d) The allegations and information indicating:

(i) That some prosecutors in the Human Rights Unit of the Public Prosecutor's Office have been forced to resign and that members of the Unit have been threatened in connection with their investigation of cases of human rights violations;

(ii) Inadequate protection against rape and other forms of sexual violence, which are allegedly frequently used as forms of torture or ill-treatment. The Committee further expresses its concern at the fact that the new Military Penal Code does not expressly exclude sexual offences from the jurisdiction of the military courts;

(iii) The fact that the military courts are allegedly still, despite the promulgation of the new Military Penal Code and the Constitutional Court's decision of 1997 that crimes against humanity did not fall within the jurisdiction of the military courts, investigating offences that are totally excluded from their competence, such as torture, genocide and forced disappearance in which members of the police or armed forces are suspected of having been involved;

(iv) The widespread, serious attacks on human rights defenders, who are playing an essential role in reporting torture and ill-treatment; in addition, the repeated attacks on members of the judiciary, threatening their independence and physical integrity;

(e) The numerous forced internal displacements of population groups as a result of the armed conflict and insecurity in the areas in which they live, taking into account the continuing absence in those areas of State structures that observe and ensure compliance with the law;

(f) The overcrowding and poor conditions in penal establishments, which could be considered inhuman or degrading treatment;

(g) The absence of information on the application of article 11 of the Convention as regards the State party's arrangements for the custody and treatment of persons subjected to arrest, detention or imprisonment, and the reports received by the Committee to the effect that the State party is failing to discharge its obligations in this respect;

(h) The lack of satisfactory information concerning the rules in the State party's law for ensuring the application of article 3 of the Convention to cases of refoulement or expulsion of aliens in danger of being tortured in the country of destination.

E. Recommendations

10. The Committee recommends that the State party take all necessary measures to prevent the acts of torture and ill-treatment that are being committed in its territory, and in particular that it:

(a) Take firm steps to end impunity for persons thought to be responsible for acts of torture or ill-treatment; carry out prompt, impartial and thorough investigations; bring the perpetrators of torture and inhuman treatment to justice; and provide adequate compensation for the victims. It recommends in particular that the State party reconsider in the light of its obligations under the Convention the adoption of the "alternative penalties" bill;

(b) Reconsider also, in the light of its obligation to prevent torture and ill-treatment under the Convention:

(i) The use of "peasant soldiers";

(ii) The adoption of measures that appear to give military forces powers of criminal investigation under which suspects can be detained for long periods without judicial control;

(iii) The judicial reform bill, so as to provide full protection for *amparo* proceedings and respect and promote the role of the Constitutional Court in defending the rule of law;

(c) Ensure that anyone, especially any public servant, who backs, plans, foments, finances or in any way participates in operations by paramilitary groups, known as "self-defence groups", responsible for torture is identified, arrested, suspended from duty and brought to justice;

(d) Ensure that the staff of the Human Rights Unit of the Public Prosecutor's Office are able to carry out their duties independently, impartially and in safety and provide the Unit with the resources needed to do its work effectively;

(e) Investigate, prosecute and punish those responsible for rape and other forms of sexual violence, including rape and sexual violence that occur in the framework of operations against illegal armed groups;

(f) That in cases of violation of the right to life any signs of torture, especially sexual violence, that the victim may show be documented. That evidence should be included in forensic reports so that the investigation may cover not only the homicide but also the torture. The Committee also recommends that the State party provide medical staff with the training necessary to determine when torture or ill-treatment of any kind has occurred;

(g) Respect the provisions of the Military Penal Code that exclude cases of torture from the jurisdiction of the military courts and ensure that those provisions are respected in practice;

(h) Take effective measures to protect human rights defenders against harassment, threats and other attacks and report on any judicial decisions and any other measures taken in that regard. The Committee also recommends the adoption of effective measures for the protection of the physical integrity and independence of members of the judiciary;

(i) Take effective measures to improve conditions in places of detention and to reduce overcrowding there;

(j) Ensure, so as to preclude all instances of torture or cruel, inhuman or degrading punishment, that persons subjected to any form of arrest, detention or imprisonment are treated according to international standards;

(k) Report in its next periodic report on the domestic legal provisions that guarantee non-refoulement to another State when there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture;

(l) Make the declarations referred to in articles 21 and 22 of the Convention and ratify the Optional Protocol to the Convention;

(m) Ensure the wide distribution in its territory of the Committee's conclusions and recommendations;

(n) Provide to the Committee, within one year, information on its response to the Committee's recommendations contained in subparagraphs (b), (d), (f) and (h) above.

Violence against Girls in Eritrea

A Report to the Committee on the Rights of the Child

Contents

1. Preliminary Observations

The submission of specific information on violence against girls to the Committee on the Rights of the Child forms part of the Violence Against Women Programme of OMCT, which focuses on the integration of a gender perspective into the work of the United Nations human rights treaty monitoring bodies.

The Convention on the Rights of the Child (hereinafter "Convention") establishes standards for the protection of girls from physical and psychological violence in the home, in the community and at the hands of State officials. The Convention uses both feminine and masculine pronouns in its provisions and it stresses in Article 2(1) that : "State parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's … sex." Among the rights that States Parties must protect regardless of sex, are: the right to life; the right to be free from violence, mistreatment and exploitation while under the care of a parent or other guardian; the right to be free from harmful traditional practices; the right against sexual exploitation and abuse; and the right against torture. Importantly, Article 39 provides that "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any form of cruel inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

The reporting guidelines of the Committee on the Rights of the Child contain an umbrella clause which requests States Parties to provide gender-specific information, statistical data and indicators on various issues covered by the Convention on the Rights of the Child. The particular situation of the girl child is also addressed more specifically in certain Articles. For example, with respect to Article 1 of the Convention (definition of the child), the Committee on the Rights of the Child has identified gender-specific issues of particular relevance to the girl child, including, for example, the minimum age for marriage, which can be problematic where it is set at a very young age for girls. With respect to Article 2 (non-discrimination), States Parties are requested to provide information

"on the specific measures taken to eliminate discrimination against girls and when appropriate indicate measures adopted as a follow-up to the Fourth World Conference on Women."[1]

Eritrea ratified the Convention on the Rights of the Child in April 1994, shortly after gaining its independence from Ethiopia. However, OMCT notes with concern that Eritrea has not ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which is particularly relevant for Eritrea because of its long history of hostilities with Ethiopia. Eritrea has also failed to sign the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

With regard to girls, Eritrea has acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (September 1995). However, OMCT regrets that Eritrea is not a party to the Optional Protocol, which provides the framework for the Committee on the Elimination of Discrimination Against Women to hear individual complaints and to conduct inquiries into grave systematic violations of women's rights.

Notably, the government of Eritrea has failed to sign the Convention Against Torture. Eritrea has ratified the International Covenant on Economic, Social and Cultural Rights (April 2001), the International Covenant on Civil and Political Rights (January 2002), and the International Convention on the Elimination of All Forms of Racial Discrimination (August 2001).

Eritrea gained independence in April 1993 through a referendum after 30 years of war with Ethiopia. Since that time, the conflict between Eritrea and Ethiopia has continued, eventually resulting in the establishment of a UN Mission for the two countries in 2000 to help keep the peace.[2] The continuous state of conflict in the region has been detrimental for the human rights of Eritreans in general. It has been reported that human rights abuses, committed by both Eritreans and Ethiopians, during the years of fighting, were rampant. More recently, in Eritrea, there has been increasing oppression of free speech and freedom of assembly, as well as problems with arbitrary arrests and detentions. In particular, reports indicate the growing persecution of journalists and dissidents[3] leading to Eritrea's label as the only country in Africa without a private press.[4]

There are also reports of detentions without trial and unfair trials.[5]

The State report from the government of Eritrea to the Committee on the Rights of the Child, U.N. Doc. CRC/C/41/Add.12 (2002), specifically recognizes discrimination against the girl child in several respects, including the prevalence of female genital mutilation (FGM), the common occurrence of early marriages for girls, division of labor in the home which puts an undue burden on the girl child, disparities in education between girls and boys, and the particular effect of armed conflict on the girl child.[6] While OMCT commends the government for its candour concerning some of the gender-specific problems faced by girl children, it remains concerned that domestic violence and incest are not adequately addressed and there is also insufficient information concerning the occurrence of rape.

This report will focus on the linkage between gender and violence against girls in Eritrea. Attention is given to the manner in which gender and age shape the form of violence, the circumstances in which this violence occurs and its consequences. Specific attention is given to domestic violence; traditional practices that violate the human rights of girls, including female genital mutilation; rape; child soldiers and girls in emergency situations.

2. Status of Women and Girls

The Constitution of Eritrea has strong protections of women's rights, a reflection of the high status women attained by participating in the liberation struggle as fighters. However, the respect women gained through the war and the resulting gender sensitive laws are in direct contrast to the traditional Eritrean attitude towards women and girls.

Provision for women's rights begins with the Preamble of the Constitution: "Noting the fact that the Eritrean women's heroic participation in the struggle for independence and solidarity based on equality and mutual respect generated by such struggle will serve as an unshakable foundation for our commitment and struggle to create a society in which women and men shall interact on the bases of mutual respect,

fraternity and equality." The Constitution also provides for the interpretation of the Constitutional language so that it applies equally to men and women (Article 5), the protection of women's human rights (Article 7), the prohibition of discrimination on the basis of sex (Article 14), and equality in family life (Article 22). However, despite these strong protections, the government applies these laws in an unbalanced way, resulting in inadequate protection of women's rights, because of deeply entrenched cultural attitude towards women and an ineffective judicial system.[7]

Because of Eritrea's recent establishment as a nation, the laws of country continue to be in transition. The Transitional Codes are in the process of being revised and Draft Penal, Civil, Civil Procedure, Criminal Procedure and Commercial Codes have been developed but they have not yet come into force. Where appropriate, this report examines the law under the Transitional Code and notes whether the Draft Code foresees changes with respect to that law.

Although Eritrea is composed of several different cultures, with differing perspectives towards women, customary views generally dominate many areas of society and are often discriminatory towards women and girls. This is especially true within the realm of the family, and is thus, extremely important when examining the rights of girls. For example, beginning at age 3-4, girls are accorded different treatment than boys as they are kept within the home while boys are able to play outside. By age 5, girls have begun to learn household chores and they move more towards their traditional domestic role, including "caring for their siblings, fetching wood and water, cooking, grinding, washing, and weaving baskets."[8] Many families anticipate that girl children will eventually leave their families to go to their husbands' families and therefore, the girls' families are hesitant to "invest" in the education and the future of girls.[9] Additionally, under customary law, girls are subjected to several harmful practices, such as, female genital mutilation (about 90% of all women in Eritrea have been circumcised), early marriage, dowry payments, and polygamous marriages.

The Eritrean State report acknowledges that, according to customary law, women hold an inferior position in society. The Eritrean government has attempted to counteract strong traditional patriarchal attitudes towards women by initiating special programs for women, especially women who

are ex-fighters. For example, affirmative action policies have been set up to give women 30% of the seats in the National and Regional Assemblies.[10] Nevertheless, customary practices often prove to be stronger than these laws protecting the rights of women. In addition, with about 50% of the population being practicing Muslims,[11] Sharia law is applied in some parts of Eritrea, which often excludes women from higher decision-making positions.[12]

Girls' education continues to loom behind boys', with female literacy at 45% and male literacy at 67%. This is attributable to many reasons. For example, education is expensive for many in Eritrea and families thus choose to send boys to school instead of sending girls. Additionally, there are not many schools and there is a lack of female teachers. Finally, parents are reluctant to send their daughters to school for fear that the girls will lose their traditional values and thus not be able to attract a husband.[13] When girls do attend school, it is unlikely that they will finish their education because of the prevalence of early marriages.[14] This, of course, limits the opportunities afforded to women later in life.

With respect to property rights, under customary law, women do not have the right to own or inherit land. Reports indicate that the government is in the process of implementing a law that will combat this discrimination against women, but the law has taken a long time to have any effect.[15]

Abortion is illegal in Eritrea even in cases of rape or incest.[16] The general population in Eritrea remains unaware of various family planning options. Although the government of Eritrea has reportedly taken a strong stance in favor of family planning, forming the Family Planning Association in 1992, adolescent pregnancies and unsafe abortions are becoming progressively more serious problems.[17]

3. Violence Against Girls in the Family

3.1 Domestic Violence

The government of Eritrea has yet to address domestic violence in a comprehensive way, although spousal abuse is considered a crime.[18] The

Draft Penal Code also does not envision a legal scheme to outlaw domestic violence, favoring awareness raising campaigns instead.[19] Victims of domestic violence can initiate a case against their perpetrators under the assault provisions of the Transitional Penal Code.

Domestic violence appears to be a grave problem in Eritrea despite limited amounts of information on the topic. Because of the prevalence of early marriages in Eritrea, domestic violence is a pertinent subject concerning violence against girls in Eritrea. Girls, when married before the age of 18, are at greater risk of physical and psychological violence perpetrated by their husbands or other members of their extended families.

According to one study, conducted in 2001 in the Central Region of Eritrea, 40% of women have been victims of domestic violence.[20] As of that time, there were no counseling or mediation services provided for domestic violence victims, nor were there any legal aid mechanisms for women who wanted to press charges. Additionally, that study indicated that prosecution for domestic violence will only be pursued where the violence is life-threatening, meaning that a weapon must be used.[21]

Another regional study indicated that as many as 90% of women are subject to domestic violence.[22] Specifically, most interviewees in the study estimated that the rate of "sexual and gender-based violence" is between 5% and 25%. However, it was pointed out that these estimates would change drastically, resulting in a 90% prevalence rate, if domestic violence was included within the definition of "sexual and gender-based violence."[23]

Very few women will report incidents of domestic violence to the authorities because issues of sexual violence are not openly discussed in Eritrean society.[24] If a woman does speak out, she will most likely turn to a neighbor or a friend, in which case, the neighbor or friend often makes an effort to reconcile the couple.[25]

OMCT is extremely concerned about the prevalence of domestic violence in Eritrea and is disappointed with the lack of specific legislation addressing this form of violence and the lack government services to assist victims. It seems that women are not aware of their rights or cannot speak publicly about the crime because of societal pressures. The government has, under international law, an obligation to protect children from vio-

lence in the home, to exercise due diligence in establishing an effective framework to receive complaints and prosecute cases of domestic violence, and to create mechanisms that educate women about their rights and remedies when they are victims of domestic violence.

The Convention on the Rights of the Child obligates all States Parties to take all appropriate measures to protect children from "all forms of physical or mental violence" in the family. Additionally, the Declaration on the Elimination of Violence Against Women explains that States have a duty to exercise due diligence in investigating all incidents of violence against women whether perpetrated by the State or by private persons. To this end, the Declaration notes that States should develop legislation to outlaw domestic violence, ensure that victims of domestic violence have access to the judicial system, provide domestic violence victims with "just and effective remedies," and inform women of their right to be free from such violence.

3.2 Marital Rape

Marital rape is not a crime under Eritrean law, as the Transitional Penal Code provides in Article 589 that rape, by definition, must occur outside of marriage.[26] The Draft Penal Code foresees a slight change in this definition, recognizing rape between spouses where the spouses are separated and living in different households.

OMCT is gravely concerned that marriage, when the spouses are living together, relieves a husband who rapes his wife of criminal responsibility. The impunity enjoyed by a husband who forces his wife to have sexual intercourse nullifies the enjoyment by women of their right to equality in marriage and heightens the risk of violence in the home.

The Special Rapporteur on Violence Against Women, it Causes and Consequences noted in her 2002 annual report that, in many countries, husbands can be prosecuted for assaulting their wives but not for raping their wives. She explains that under international norms, men and women are entitled to equal rights and responsibilities in marriage[27] and later asserts that the failure to criminalize marital rape is, in effect, "sanctioning a certain measure of violence by the husband against the wife in the home."[28]

3.3 Honour Crimes

According to one study, girls who become pregnant before marriage are sometimes vulnerable to violence. In the Gash-Barka region, pregnancy before marriage is viewed as a crime and pregnant girls may be kicked out of the home, beaten, stoned, or even killed.[29]

This type of violence is gender specific since only women and girls become pregnant and there is no report that the boys and men who impregnate the women are similarly treated. OMCT is deeply concerned by these reports of violence against women and girls who become pregnant before marriage.

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

3.4.1 Early Marriage

Eritrean civil law provides that the minimum age for marriage for both girls and boys is 18. Nevertheless, customary law carries great weight in Eritrean society and often girls are married at ages well below the legal limit.

It is widely acknowledged in Eritrea that girls are married earlier than boys.[30] The traditional view holds that the ideal age for marriage for a girl is between 12 and 18.[31] In one study, the view was expressed that marrying girls at a young age was necessary to ensure their virginity before marriage and protect "the woman from sin."[32] The ideal age for marriage for men is not correspondent with that of women. In the study mentioned above, many respondents claimed that men should wait until they are between at least 20 and 25, with some asserting that 25 be the minimum age, because of the many responsibilities a man assumes once he is married.[33] The big age difference created by these varying ideal ages results in a relationship where the girl is considerably younger than her spouse and lacks power both because of her age and because of her sex. Early marriage can also hamper a girl's access to education. Additionally, early marriage can lead to early pregnancy and a prolonged reproductive life, and these factors combined often result in negative health consequences for both the mother and her children.

3.4.2 Dowry

Reports also indicate that the practice of making dowry payments continues in Eritrea.[34] Such a practice may lead to discrimination against girls and women in the domestic sphere because the husband and his family may feel that they have a right to her domestic services, relegating the girl's status to little more than a piece of chattel. The Special Rapporteur on Violence Against Women, its Causes and Consequences, in her 2002 annual report, recognised that the practice of dowry payments can lead to abuse of women because of the perception of women as property.[35]

3.4.3 Polygamy

Some parts of Eritrea apply Sharia law, which allows men to take up to four wives. According to the Marriage Law introduced by the EPLF in 1977,[36] polygamy is illegal in Eritrea. Despite the formal illegality of polygamy in Eritrea, Sharia law is exempt from this law and thus polygamous unions (up to four wives) are permitted for people marrying under Sharia law.[37] The practice of polygamy threatens women's human rights because, with it being against the law, only one of the wives can have a registered marriage and the accompanying rights of such a marriage. The other wives have religious marriages which are not accorded protective legal rights.

General Recommendation #21 issued by the Committee on the Elimination of Discrimination Against Women states that "[p]olygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited" and asserts that polygamy is a violation of CEDAW. While OMCT commends Eritrea's early decision to outlaw the practice, an effort to raise awareness about the problems of polygamy, and to encourage women and men to cease the practice, must be instituted.

3.4.4 Female Genital Mutilation

According to the World Health Organisation, female genital mutilation (FGM) is defined as comprising "all procedures involving partial or total removal of the external female genitalia or other injury to the female

genital organs for cultural or other non-therapeutic reasons."[38] Factors such as religion, nationality and ethnicity result in differing practices concerning FGM. Because FGM varies across regional and ethnic lines, four classifications have been recommended by the World Health Organisation in order to clarify and standardize the terminology.

> Type I: Clitoridectomy: Excision of the prepuce, with or without excision of part or all of the clitoris.
>
> Type II: Excision: Excision of the prepuce and clitoris with partial or total excision of the labia minora.
>
> Type III: Infibulation: Excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening.
>
> Type IV: Unclassified: includes pricking, piercing, or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterisation by burning of the clitoris and surrounding tissues; scraping of tissue surrounding the vaginal orifice (angurya cuts) or cutting of the vagina (gishiri cuts); introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it; and any other procedure that falls under the definition of female genital mutilation.[39]

FGM is extremely common in Eritrea with about 89% of all girls and women having experienced this practice. Around 60% of women have had clitoridectomies, one third have been infibulated and 4% have undergone excision. Girls are usually circumcised several days after they are born,[40] although it can be performed any time up to when the girl is 12 years old.[41] Some women also get re-infibulated after giving birth.[42]

FGM has serious physical and psychological consequences and it has been widely condemned by health professionals around the world. The procedure is often performed by women in the community who are not medical professionals and they frequently use "crude" instruments such as razor blades, knives and needles. Many circumcised women have severe medical problems during childbirth. In particular, 19% of women experienced health problems during pregnancy and delivery.[43] In Eritrea, girls who are not circumcised are socially alienated and commonly viewed by the larger community as "impure, unmarriageable, sexual deviants or prostitutes."[44]

The reasons given for supporting the practice of FGM include religion, custom, tradition, virginity preservation and deterrence of immorality.[45] Additionally, as mentioned above, the procedure is considered an essential social element of marriage. Although the vast majority of women have experienced FGM, many women do not support the practice.[46] This demonstrates the weakened status of FGM, a trend that is also reflected in recent initiatives to raise awareness about the harmful consequences of FGM. For example, UNICEF, in collaboration with the National Union of Eritrean Women and the National Union of Eritrean Youths and Students, has implemented a strategy to eliminate FGM in Eritrea.[47] The plan includes the following goals: to

> "identify and mobilize partners for FGM eradication; develop capacity for planning and implementation of effective communication programmes; strengthen dissemination of FGM eradication messages in health facilities [and in communities] . . .; integrate FGM eradication messages in activities of selected institutions . . .; develop and use effective IEC (information, education and communication) materials to promote FGM eradication messages; [and] develop communication supervision and monitoring systems and use information collected for programme implementation."[48]

While OMCT commends the efforts being made to raise awareness about FGM and its harmful effects on girls and women, there is still no law in Eritrea outlawing the practice.[49] It is essential that the government attack the problem of FGM on multiple levels, thus social awareness programmes must be accompanied by legal change to prohibit the practice and protect women.

3.5 Sexual Abuse and Incest

Article 594-599 of the Eritrean Penal Code provides harsh penalties for sexual acts involving children. However, these punishments are rarely exercised because such crimes are seldom reported.

There is a lack of information concerning sexual abuse and incest within the family. The government report claims that the problem is

"unknown,"[50] but recognizes that with no available statistics on the subject, it is impossible to conclude that the problem is non-existent. Although the government report claims that Eritrean tradition imposes harsh penalties for people who abuse children, research on this topic is absolutely essential for ensuring protection of children within the family. Notably, the government foresees a study on child abuse within the next four years in a joint plan between the government and UNICEF. OMCT urges the government to give priority to such a study as its results are essential for assessing the situation of children, especially girls, in Eritrea.

4. Violence Against Girls in the Community

4.1 Child Sex Workers

The presence of girls in the commercial sex business is an increasing problem in Eritrea. The Eritrea State report recognizes that at least 5% of all commercial sex workers are under the age of 18.[51] It is, however, difficult to determine the true number of girl sex workers. The number of girls in the commercial sex business is often a reflection of girls who are separated from their parents at an early age for various reasons, including "desire to find a better job, avoidance of early marriage, divorce of parents, family abuse, and rejection by parents if the girl is pregnant."[52] After being separated from their parents, girls become street children or bar girls, and generally find themselves in situations of extreme poverty. These circumstances eventually lead to their entry into the commercial sex business, poverty being the reason most often cited for becoming a prostitute.

Girl sex workers are particularly vulnerable to sexual violence and abuse. Additionally, because they are ostracized by society, they are susceptible to psychological harm and stunted development. With very few child sex workers being aware of the need for contraception, they are also at extreme risk of contracting HIV/AIDS and other sexually transmitted diseases.[53]

The government has instituted a National Action Plan for the Prevention, Rehabilitation and Reintegration of Commercial Sex Workers and it is

currently being implemented. UNICEF, in conjunction with the Ministry of Labour and Human Welfare, is also concentrated on this "at risk" population. OMCT welcomes these efforts to curb the growing problem of child sex workers and encourages the government to make this issue a priority in the future.

4.2 Rape

The Transitional Penal Code of Eritrea provides for certain elements of the crime of rape in Article 589. These are: (1) force or violence must be present, (2) the victim must be a woman, (3) the intercourse must be between unmarried persons, and (4) force may be implied where the woman is unconscious or incapable of resisting the rape. Additionally, rape can have aggravating circumstances such as if (1) the victim is under 15 years of age, (2) the person is disabled, or (3) there are multiple perpetrators.[54] Rape is a public offense, which means that the public prosecutor has control over the case since it is in the interest of public security.[55]

OMCT notes that although there is no explicit definition of rape according to codified international treaty law, international norms defining the elements of this crime have arisen. In particular, rape has been recognized as a crime not only where force or violence are present, but also where the threat of violence or other forms of coercion are present. This is extremely important as violence does not always accompany the act of rape, but the threat of violence or other forms of coercion force women into sexual actions, because of lack of power and fear. These situations should not be excluded from the crime of rape. Moreover, the requirement of violence and force may place a large part of the burden of providing proof of the violence or force (in the form of bruises) on the rape victim.

There is little information concerning rape in Eritrea, but one study indicates that young women are particularly vulnerable to sexual violence in the community, including rape, and that rape and attempted rape are common occurrences in areas where refugees and returnees are living.[56] Although many Eritreans claim to condemn rape, the report found that village elders who handle rape cases often impose no punishment on the perpetrator.[57]

Despite the lack of information concerning rape, some reports indicate a cultural attitude towards this crime that focuses on its shamefulness, leading to silence on the part of the victim about the crime. Especially if the woman is not married, since virginity is seen as an absolute requirement to being married, raped women are often perceived as "unmarriageable."[58] The study, mentioned in the previous paragraph, reported that many of the respondents believed sexual violence, including rape, to be reported in most circumstances, although not by the victim herself but rather by her family members.[59] Nevertheless, the same study revealed that most communities were unwilling to discuss sexual violence, considering it a "shameful" topic and "against their culture."[60] The silence with respect to rape forces women to endure this physical and psychological harm alone. These attitudes may also explain the lack of information available on the topic.

In addition, OMCT is gravely concerned that if the perpetrator agrees to marry the victim, all charges of rape will be dropped.[61] This method of escaping punishment degrades the rape victim further by subjecting her to marry her perpetrator, possibly leading to forced marriage, implies that non-consensual sex is permissible within a marriage relationship and allows the perpetrator to enjoy impunity. It has been noted that the original purpose of this provision was to protect the victim because of the stigma attached to rape victims and their subsequent inability to find a husband.[62] Recognizing that this article has been abused and that marriages between rapists and rape victims do not last, the government hopes to repeal this provision with the passage of the new Penal Code.

The Draft Penal Code envisages other changes to the law concerning rape, specifically recognizing that victims of rape can be male or female, acknowledging rape between spouses where they are separated, and providing for a minimum sentence for the crime rather than only a maximum sentence.[63]

5. Violence Against Girls in Armed Conflict

5.1 Child Soldiers

The Eritrean Constitution makes it an obligation of every citizen to "complete one's duty in the National Service"[64] and the National Service Proclamation asserts that military service is mandatory for both males and females between the ages of 18 and 40. It is further reported that about 35% of the armed forces in Eritrea is female.[65]

The Coalition to Stop the Use of Child Soldiers, an international NGO, has reported that children remain at risk of being recruited into the military in Eritrea.[66] They have also received several reports that child soldiers have been used in Eritrea in the recent conflict with Ethiopia. Although the government denies recruiting child soldiers, it acknowledges that children do sometimes end up in the military because the country lacks a mechanism for systematic birth registration. Many of the fighters in the conflict with Ethiopia remain mobilized and this delay in demobilization leads to concerns that, even if the government is no longer actively recruiting children, there may still be children in the armed forces of Eritrea.[67]

Eritrea is unique in that women fighters have greatly participated in the armed conflict that led to Eritrea's independence as well as the subsequent conflicts. Interviews with female combatants have indicated that some joined the military service as minors during the war of independence.[68]

5.2 Girls in Emergency Situations

The conflict between Eritrea and Ethiopia has created special vulnerabilities for children, especially girls. Girls have the misfortune of being female and young, two population groups that are particularly susceptible to violence, especially in times of emergency. Reports indicate that many girls and young women were raped during the most recent war with Ethiopia (1998-2000). The government acknowledges in its report that sexual violence was widespread during the conflict and claims that the community is serving many of the important psychological needs of the victims of war. While the community structures may be "holding

strong"[69] in some aspects for the traumatized victims of war, with respect to rape, it is reasonable to infer that the community is neglecting the needs of the girls and young women because the prevailing social view of rape focuses on its shamefulness and leads to suffering in silence by the victim.[70] The government must take greater strides to encourage more openness about the crime of rape so that it will be reported and prosecuted more frequently.

6. Conclusions and Recommendations

The government of Eritrea has made numerous commitments at the national and international levels for the promotion and protection of all human rights and OMCT welcomes the fact that Eritrea has quickly ratified several international human rights instruments. OMCT regrets that Eritrea has not signed on to the Convention Against Torture. OMCT is also disappointed that Eritrea has yet to sign the Optional Protocols to the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, nor the Optional Protocols to the International Covenant on Civil and Political Rights.

OMCT commends the Eritrean government's efforts to ensure *de jure* equality for girls and women, but remains concerned that the reality is that girls and women in Eritrea do not enjoy equal status with boys and men. Serious efforts must be made by the government to counteract traditional practices and cultural attitudes that discriminate against girls and women and restrict their enjoyment of their human rights. In particular, because much violence against women is sexual violence, it is important that the government institute measures to encourage girls, women, boys and men to discuss sex and issues related to sex more freely, thereby detaching the shame that often accompanies violence against girls and women.

OMCT is concerned that Eritrea has yet to pass legislation specifically addressing domestic violence. While the envisioned awareness-raising campaigns are important in fighting domestic violence, comprehensive legislation is absolutely necessary in order to effectively protect girls and women from this form of violence. This legislation should be developed

in accordance with the guidelines submitted by the United Nations Special Rapporteur on Violence against Women to the fifty-second session of the United Nations Commission on Human Rights in 1996 (UN doc. E/CN/.4/1996/53, Add.2).

OMCT is deeply troubled that marital rape is not currently a crime in Eritrea and that the Draft Penal Code only envisions recognizing this crime where the spouses are separated. Marriage and cohabitation should not provide impunity for men who rape their wives. The absence of criminal legislation concerning marital rape while the spouses are living together is a denial of women's right to be free from violence in the home and OMCT insists on the need for marital rape to be criminalized in all situations, including where the spouses live together.

Equally disturbing are reports that girls and women who become pregnant before marriage can be subject to violence, sometimes fatal violence. The Eritrean government must take steps to protect girls and women who become pregnant before marriage from such violence, and where such violence occurs, exercise due diligence to ensure that the crime is investigated and that the perpetrators are punished accordingly.

Several traditional practices continue to occur in Eritrea, which violate the human rights of girls and women. OMCT is concerned by reports that indicate a high rate of early marriage in Eritrea. The government must strictly enforce the minimum age of marriage, which is 18 for both girls and boys, in order to protect girls from the harms associated with early marriage. The government of Eritrea must also be rigorous in its enforcement of the ban on polygamy. Additionally, the practice of making dowry payments can lead to discrimination against girls and women, and can make girls and women vulnerable to violence within the family. OMCT insists on the need to ban all of these practices and suggests that the government institute programs to raise awareness about the ways that these practices can jeopardize the full enjoyment of rights by girls and women.

While OMCT commends the Eritrean government's efforts to eradicate FGM through public awareness campaigns, it is equally important to outlaw the practice. Such a law should provide protections to girls and women who choose not to undergo the surgery and punish persons who subject girls and women to this practice.

OMCT is disappointed with the lack of information concerning incest and sexual abuse within the home, but is encouraged that the government foresees a research project on this topic. OMCT urges the government to accord this research a top priority as it is essential in understanding the situation of girls in Eritrea and the problems they face.

OMCT welcomes efforts by the government with respect to children involved in the commercial sex business and encourages the government to maintain concentration on this issue.

OMCT is gravely concerned that the current definition of rape requires force or violence, only recognizes rape of a woman, and does not recognize marital rape. While the Draft Penal Code envisions some improvements, namely the recognition that males can be raped and acknowledgement of marital rape when the spouses are separated, there remain several issues of concern. Firstly, OMCT insists on the need to recognize rape in situations of coercion or threat of violence, which effectively force a woman to engage in sexual acts because of a lack of power and/or fear. Additionally, as mentioned above, OMCT insists that rape within marriage must be recognized regardless of whether the spouses are living together.

Further, the government of Eritrea should encourage women and men in Eritrea to speak out against rape, create an atmosphere conducive for rape victims to come forward with their claims without repercussions, prosecute charges of rape with diligence, and gather more information on the frequency of this crime in order to effectively combat its occurrence.

OMCT insists the absolute prohibition of the use of child soldiers and urges the government of Eritrea to institute a system of birth registration to avoid recruiting minors. OMCT further notes with regret that Eritrea has yet to sign the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts and urges the government to sign the Optional Protocol immediately, as it is an essential tool in the effort to stop the use of child soldiers.

OMCT notes with concern that the government has not taken action to assist victims of sexual violence during the war. Because of the cultural of silence surrounding the issues of sexual violence, OMCT recommends that the government make greater efforts to ensure that girls and women

who were victims of sexual violence during the war have access to adequate social, medical and psychological services.

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

1 UN Doc. CRC/C/58, para. 28.

2 See United Nations Mission in Ethiopia and Eritrea, available at http://www.un.org/Depts/dpko/missions/unmee/background.html.

3 Human Rights Watch, Eritrea : Cease Persecution of Journalists and Dissidents (May 16, 2002).

4 Written Statement Submitted by Reporters Sans Frontières International, UN Doc. E/CN.4/2002/NGO/137.

5 Amnesty International, Annual Report 2002, Eritrea.

6 UN Doc. CRC/C/41/Add.12 (2002).

7 See AFROL Gender Profiles : Eritrea, available at http://www.afrol.com/Categories/Women/profiles/eritrea_women.htm.

8 UNICEF Eritrea Briefing Report on Violence Against Children and Women in Eritrea (2002), prepared for OMCT in response to requests for information; see also Charles M. Smith, Women and Education in Eritrea: Society and Development, Research Paper 2001.

9 HABEN and CARE International, Sexual and Gender-Based Violence in Gash Barka: A Qualitative Study (May 2002), p. 4.

10 Ministry of Education, Education for All in Eritrea: Policies, Strategies and Prospects (DRAFT), September 1999, available at http://www2.unesco.org/wef/countryreports/eritrea/contents.html.

11 Presbyterian Church, Ecumenical Partnership, Eritrea, available at http://www.pcusa.org/pcusa/wmd/ep/country/eridemo.htm.

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13 UNICEF, Girls' Education in Eritrea, available at www.unicef.org.

14 HABEN and CARE International, *Ibid.*, p. 5.

15 Tsehainesh Tekle, Women's Access to Land and Property Rights in Eritrea (February 1998)

16 Eritrea, Abortion Policy, http://www.un.org/esa/population/publications/abortion/doc/eritre1.doc

17 *Ibid.*; see also International Planned Parenthood Federation, Country Profiles, Eritrea, http://ippfnet.ippf.org/pub/IPPF_Regions/IPPF_CountryProfile.asp?ISOCode=ER

18 U.S. Dep't of State, Country Reports on Human Rights 2001, Eritrea (2002)

19 Muluberhan Berhe, Rape, Domestic Violence, Marriage and Female Genital Mutilation (FGM) Under Eritrean Laws (2003), paper prepared in response to questions from OMCT, p. 6.

20 UNICEF Eritrea Briefing Report, *Ibid.* (citing study by University of Asmara, 2001)

21 *Ibid.* (citing study by University of Asmara, 2001)

22 HABEN and CARE International, *Ibid.*, p. 6.

23 HABEN and CARE International, *Ibid.*

24 HABEN and CARE International, *Ibid.* ("No one spoke of punishment for people who assault their wives; it seems from responses to other questions that these incidents are not reported"); U.S. Dep't of State, *Ibid.*

25 HABEN and CARE International, *Ibid.*, p. 7.

26 Muluberhan Berhe, *Ibid.*, p. 1.

27 UN Doc. E/CN.4/2002/83, para. 62

28 *Ibid.*, para. 101

29 HABEN and CARE International, *Ibid.*, p. 5.

30 Atsuko Matsuoka and John Sorenson, *After Independence : Prospects for Women in Eritrea* (1999)

31 UNICEF Eritrea Briefing Report, *Ibid.* (reporting that ideal age for marriage for girls is between 12 and 15); HABEN and CARE International, *Ibid.*, p. 3 (study noting that most people interviewed claimed that "women should marry at around 16-18 years")

32 HABEN and CARE International, *Ibid.*, p. 3.

33 HABEN and CARE International, *Ibid.*, p. 25.

34 Charles Smith, *Ibid.*; Atsuko Matsuoka & John Sorenson, *Ibid.* (noting that practice of paying dowries continues but is now described as a "friendly exchange of gifts between families"); HABEN and CARE International, *Ibid.*

35 E/CN.4/2002/83, para. 60.

36 Cathy Green & Sally Baden, Gender Profile of the State of Eritrea (February 1994) (Bridge report).

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38 WHO, Female Genital Mutilation : An Overview, 1998.

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41 UNICEF Eritrea Briefing Report, *Ibid.*

42 Osede & Asghedom, *Ibid.*

43 *Ibid.*

44 UNICEF Eritrea Briefing Report, *Ibid*

45 Osede & Asghedom, *Ibid.*

46 UNICEF Eritrea Briefing Report, *Ibid*; Osede & Asghedom, *Ibid.*

47 UNICEF Eritrea Briefing Report, *Ibid.*

48 *Ibid.*

49 Center on Reproductive Law and Policy, Female Genital Mutilation: A Matter of Human Rights (2000), http://www.crlp.org.

50 UN Doc. CRC/C/41/Add.12 (2002), p. 96.

51 *Ibid.*

52 UNICEF Eritrea Briefing Report, *Ibid.*

53 *Ibid.*

54 Muluberhan Berhe, *Ibid.*, p. 1-2.

55 *Ibid.*, p. 2.

56 HABEN and CARE International, *Ibid.*, p. 6, 9

57 UNICEF Eritrea Briefing Report, *Ibid*. (citing report by HABEN/CARE International entitled Sexual and Gender-Based Violence in Gash-Barka, 2002)

58 UNICEF Eritrea Briefing Report, *Ibid.*

59 HABEN and CARE International, *Ibid.*, p. 7.

60 HABEN and CARE International, *Ibid.*, p. 47-49.

61 Immigrant Women's Support Service, *Ibid.*

62 Muluberhan Berhe, *Ibid.*, p. 5.

63 *Ibid.*, p. 4-5.

64 Eritrean Constitution, Article 25

65 Coalition to Stop the Use of Child Soldiers, Child Soldiers 1379 Report (November 2002), Eritrea, http://www.child-soldiers.org

66 Child Soldiers 1379 Report, *Ibid.*

67 *Ibid.*

68 Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2001, Eritrea, http://www.child-soldiers.org

69 Eritrea State Report to CRC, UN Doc. CRC/C/41/Add.12 (2002), p. 86 (the government acknowledges that the study cited does not assess the impact of rape on the well-being of Eritrean girls, but does not specify any steps taken to specifically address the needs of these victims).

70 UNICEF Eritrea Briefing Report, *Ibid.*

Committee on the Rights of the Child

Thirty-third – Date 19 May - 6 June 2003

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

Concluding observations by the Committee on the Rights of the Child: Eritrea

1. The Committee considered the initial report of Eritrea (CRC/C/41/Add.12) at its 865th and 866th meetings (CRC/C/SR.865 and 856), held on 20 May 2003 and adopted, at the 889th meeting (CRC/C/SR.889), held on 6 June 2003, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's comprehensive and well-written initial report, as well as the detailed written replies to its list of issues (CRC/C/Q/ERI/1), which gave a clearer understanding of the situation of children in the State party. It further notes with appreciation the high-level delegation sent by the State party and welcomes the frank dialogue and the positive reactions to the suggestions and recommendations made during the discussion.

B. Positive aspects

3. The Committee notes with appreciation the State party's successful efforts, following its independence in 1993:

(a) To reduce child mortality by over 50 per cent and increase immunization coverage from 10 to 60 per cent;

(b) To increase enrolment and literacy rates, and the introduction of the mother tongue as a language of instruction in primary schools;

(c) To develop programmes to improve girls' access to education, including through participation in the African Girls Education Initiative;

(d) To develop a strategy and programmes to combat female genital mutilation;

(e) To provide alternative care, while avoiding institutionalization, of children that have been orphaned due to past armed conflicts.

4. The Committee welcomes the State party's accession in 2001 to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 2001 and its ratification of ILO Convention, 1973 (No. 138) in 2000.

C. Factors and difficulties impeding the implementation of the Convention

5. The Committee recognizes that the continuing effects of past armed conflicts as well as the current drought, poverty and structural adjustment programmes present difficulties with respect to the full implementation of the Convention in the State party.

D. Principle areas of concern and recommendations

1. General measures of implementation

Legislation

6. The Committee welcomes the creation of the Child Law Committee

to examine the compatibility of domestic legislation with the Convention and also notes that the new Constitution generally conforms to the principles and provisions of the Convention. However, the Committee remains concerned that to a large extent customary laws and traditions, and in some cases newly enacted legislation and transitional codes still in force do not fully reflect the principles and provisions of the Convention.

7. The Committee recommends that the State party review transitional legislation, customary and local laws and adopt all necessary measures to ensure their compatibility with the principles and provisions of the Convention. The Committee also recommends that the State party ensure that legislation is effectively implemented.

Coordination and national plans of action

8. The Committee welcomes the adoption of the National Programme of Action on Children for the periods 1996-2000 and 2002-2006 and the establishment of the National Committee on the Rights of the Child to coordinate activities for the implementation of the Convention. However, the Committee is concerned that this mechanism does not have sufficient resources to carry out its mandate.

9. The Committee recommends that the State party strengthen the National Committee on the Rights of the Child, in particular its capacity to coordinate activities at both the national and local level. Sufficient financial and human resources should be allocated to the coordination mechanism and to the National Programme of Action on Children and, if necessary, the State party should seek international assistance in this regard.

Independent monitoring

10. The Committee is concerned at the absence of an independent mechanism with a mandate regularly to monitor and evaluate progress in the implementation of the Convention and which is empowered to receive and address individual complaints.

11. Taking into account its general comment No. 2 on national

human rights institutions, the Committee encourages the State party to pursue efforts to establish an independent and effective mechanism in accordance with the Paris Principles and that is provided with adequate human and financial resources and easily accessible to children, to monitor the implementation of the Convention, deal with complaints from children in a child-sensitive and expeditious manner and provide remedies for violations of their rights under the Convention.

Resources for children

12. While noting the increased investment in social services infrastructure following the peace agreement, the Committee is concerned that budgetary allocations and international development assistance are insufficient to respond to national and local priorities for the promotion and protection of children's rights.

13. The Committee recommends that the State party pay particular attention to the full implementation of article 4 of the Convention by prioritizing budgetary allocations to the implementation of the economic, social and cultural rights of children, in particular those belonging to economically disadvantaged groups, "to the maximum extent of … available resources and, where needed, within the framework of international cooperation". Furthermore, the Committee calls on both the State party and international donors to reopen their dialogue, in particular with regard to programmes for the implementation of children's rights.

Data collection

14. The Committee regrets the lack of comprehensive and up-to-date statistical data in the State party's report.

15. The Committee recommends that the State party develop a system of data collection that covers all areas of the Convention and ensure that all data and indicators are used for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention. The State party should consider seeking technical assistance from UNICEF, among others.

Cooperation with civil society

16. The Committee notes with appreciation the national commitment to children's rights and the cooperation existing between the Government and national civil society organizations in this regard. At the same time, it notes with concern that the State party has strictly limited its cooperation with international civil society since 1997.

17. The Committee emphasizes the important role civil society plays as a partner in implementing the provisions of the Convention, and recommends that the State party promote closer cooperation with NGOs and consider involving more systematically international NGOs, especially rights-based ones, and other sectors of civil society working with and for children throughout all stages of the implementation of the Convention.

2. Definition of the child

18. The Committee notes with appreciation that both the Transitional Civil Code of Eritrea and the draft Civil Code define children as all persons under the age of 18, and that the Constitution states that men and women of full legal age shall have the right, upon their consent, to marry and found a family freely. Nevertheless, the Committee is concerned that customary law does not have the same minimum age of marriage, and in practice many children are married between the ages of 13 and 15.

19. The Committee recommends that the State party develop sensitization programmes involving community, traditional and religious leaders as well as society at large, including children themselves, to enforce legislation and curb the practice of early marriage.

3. General principles

Discrimination

20. The Committee is concerned that, as noted by the State party, societal discrimination persists against vulnerable groups of children, including girls, children with disabilities, AIDS orphans and children born out of wedlock.

21. The Committee recommends that the State party increase its efforts to ensure implementation of existing laws guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups.

22. 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).

Best interest of the child

23. The Committee is concerned that in all actions concerning children, the general principle of the best interests of the child contained in article 3 of the Convention is not always a primary consideration, in particular in customary law.

24. The Committee recommends that the State party review its legislation and administrative measures to ensure that article 3 of the Convention is duly reflected therein and that this principle is taken into account when administrative, policy, judicial or other decisions are made. It further recommends that the State party collaborate with local authorities, NGOs and community leaders to develop awareness-raising campaigns regarding the general principle of acting in the best interest of the child.

Respect for the views of the child

25. The Committee notes with concern that the Transitional Civil Code guarantees the right to be heard only to children who have attained the age of 15 and that traditional practices and attitudes still limit the full implementation of article 12 of the Convention, in particular for girls.

26. The Committee recommends that the State party amend its legislation to fully reflect article 12 of the Convention so that any child "who is capable of forming his or her own views" can express those views freely, including in all administrative and judicial proceedings affecting them. It also recommends that the State party develop a nationwide campaign to increase public awareness of the participatory rights of children, particularly at the local levels and in traditional communities, and encourage respect for the views of the child in families, schools, and the care, administrative and judicial systems.

4. Civil rights and freedoms

Birth registration

27. The Committee is concerned that although parents are required by law to register the birth of their children, a significant number of children are not registered at birth.

28. In the light of article 7 of the Convention, the Committee urges the State party to increase its efforts to ensure that all children are registered at birth inter alia by eliminating administrative costs for parents, conducting awareness-raising campaigns and establishing mobile registration units in rural areas. The Committee also recommends that the State party undertake similar measures to register all children who were not registered at birth. In this regard, the State party should consider seeking technical assistance from UNICEF, the United Nations Population Fund (UNFPA) and other potential donors.

Freedom of expression and religion

29. The Committee, noting that the State party's Constitution guarantees the right to freedom of expression and religion, is concerned at reports that measures affecting children and young people were taken against students and religious groups, indicating that these rights were not fully upheld.

30. The Committee recommends that the State party take all necessary measures to ensure that these rights are fully respected for all

children, as stipulated in the Convention, and that violations of the freedoms of expression and religion are prevented.

Violence, including ill-treatment

31. The Committee is concerned at the lack of data on ill-treatment of children, including child abuse and corporal punishment. It also notes with concern that corporal punishment is not expressly prohibited by law and is widely practised in the home and in institutions.

32. The Committee recommends that the State party:

(a) Establish a mechanism to collect data on the victims and perpetrators of abuse, disaggregated by gender and age, in order to assess properly the extent of the problem and to design policies and programmes to address it;

(b) Carry out public education campaigns about the negative consequences of ill-treatment of children and, in collaboration with community leaders and others, promote positive, non-violent forms of discipline as an alternative to corporal punishment;

(c) Expressly prohibit by law corporal punishment in the home, schools and other institutions;

(d) Establish effective procedures and mechanisms to receive, monitor and investigate complaints of abuse, including intervening where necessary, and ensure that victims have access to assistance for their recovery.

(e) Seek technical assistance from, among others, UNICEF in this regard.

5. Family environment and alternative care

Parental responsibilities

33. The Committee notes with appreciation that the Constitution accords both parents equal rights and duties within the family, yet it is con-

cerned that the Transitional Civil Code and customary laws do not generally recognize the principle enshrined in article 18 of the Convention "that both parents have common responsibilities for the upbringing and development of the child", particularly with regard to the custody of children in divorce.

34. The Committee recommends that the State party ensure that when judicial proceedings or family councils decide to grant one parent custody of the child, the decision is taken on the basis of the best interest and with the participation of the child. The State party should also ensure that both parents are adequately informed of their rights and responsibilities, particularly in the case of divorce.

Alternative care and adoption

35. The Committee welcomes the State party's efforts to place orphans with their extended families while providing these families in particular female-headed households, with financial assistance. The Committee also welcomes the information provided during the dialogue that the criteria for potential adoptive families are not as narrow as presented in the State party report (para. 169). The Committee welcomes the State party's efforts to phase out large-scale orphanages and other institutions and to place children in group homes only as a last resort, but remains concerned that existing services are insufficient to provide for the large number of orphans, including AIDS orphans, and unaccompanied refugee or displaced children.

36. The Committee recommends that the State party continue to strengthen and expand its efforts to place children in need of alternative care with their extended families and to promote adoption of these children when appropriate. The Committee also recommends that the State party continue and expand as necessary its programme for the establishment of children's group homes, and seek international assistance in this regard.

Child abuse

37. The Committee notes with concern that there is no information

available on the various forms of child abuse in the family and that legislation does not provide for effective protection of children from sexual and physical abuse.

38. The Committee recommends that the State party:

(a) Reform its legislation on abuse in the family to expressly prohibit sexual and physical abuse;

(b) Undertake studies on domestic violence, ill-treatment and abuse (including sexual abuse within the family) in order to adopt effective policies and programmes to combat all forms of abuse;

(c) Develop an effective national system for receiving, monitoring and investigating complaints and, when necessary, prosecuting cases, in a manner which is child-sensitive and ensures the victim's privacy;

(d) Set up a comprehensive nationwide response system to provide, as appropriate, support and assistance to both victims and perpetrators of family violence, rather than only intervention or punishment, and which ensures that all victims of violence have access to counselling and assistance for their recovery and reintegration, while preventing stigmatization of victims of abuse;

(e) Seek technical assistance from, among others, UNICEF and the United Nations Development Programme (UNDP), in this regard.

6. Basic health and welfare

39. The Committee notes with appreciation the State party's programme to extend health services which has increased access from 10 to 70 per cent of the population since independence in 1991, as well as its programme of cooperation with UNICEF in the area of health and health services. However, the Committee is concerned at the high rate of child and infant mortality due to acute respiratory infections, diarrhoeal diseases, malaria and malnutrition. It is further concerned that a considerable number of families lack access to safe drinking water and sanitation facilities, which contributes to the spread of communicable diseases.

40. The Committee recommends that the State party:

    (a) Continue to expand access to health services, in particular in rural areas, and increase the skills of health personnel with a view to reducing infant mortality rates;

    (b) Continue to strengthen the implementation of existing health policies and programmes, in particular the National Policy on Breastfeeding and Weaning Practices (1995) and the Eritrean Rural Water Supply and Environmental Sanitation Programme;

    (c) Expedite the adoption of the draft Marketing of Infant and Young Child Foods Act.

Adolescent health

41. The Committee is concerned at the lack of available data regarding the prevalence of substance abuse, tobacco use and suicide. It is also concerned about the growing problem of sexually transmitted infections (STIs) among adolescents.

42. The Committee recommends that the State party take all necessary measures to assess the prevalence of substance abuse, tobacco use and suicide and take effective measures to prevent and treat health problems affecting adolescents, including the spread of STIs, through, inter alia, sex education, counselling and availability of condoms.

HIV/AIDS

43. The Committee is concerned about the rapid spread of HIV/AIDS within the State party.

44. The Committee recommends that the State party actively pursue its ongoing activities in collaboration with UNICEF to counter HIV/AIDS and 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 (E/CN.4/1997/37, annex) and the Committee's general comment No. 3 on HIV/AIDS and the rights of the child.

Harmful traditional practices

45. While the Committee notes with appreciation the adoption of a strategy to eliminate female genital mutilation, it is very concerned at the widespread practice of FGM, which affects almost 90 per cent of girls in the State party. It is also concerned about other harmful traditional practices, including early marriage, which contributes to the high rate of maternal mortality.

46. The Committee recommends that the State party continue to strengthen the implementation of its Strategy to Eliminate Female Genital Mutilation (1999) and undertake legislative reform to expressly prohibit the practice. It also recommends that the State party undertake similar educational and awareness programmes, in cooperation with NGOs and community leaders, with regard to other harmful traditional practices such as early marriage.

Children with disabilities

47. The Committee welcomes the information provided by the State party during the dialogue that it has drafted a National Child and Family Welfare Policy, which includes measures to integrate children with disabilities into the education system. Yet, it remains concerned that children with disabilities often suffer from societal discrimination and that a significant proportion do not attend school or participate in social and cultural life.

48. The Committee recommends that the State party:

    (a) Adopt and implement the draft National Policy on Persons with Disability, which should include measures to educate the public about ways to prevent disability, and ensure that children's rights are adequately integrated into the policy;

    (b) Adopt and implement the draft National Child and Family Welfare Policy;

    (c) Continue to strengthen efforts to combat discriminatory attitudes towards children with disabilities, particularly amongst children and parents, and promote their participation in all aspects of social and cultural life;

(d) Formulate a programme that includes appropriate teacher training in order to ensure that all children with disabilities have access to education, including vocational training, and that wherever possible they are integrated into the mainstream education system.

Standard of living

49. The Committee is concerned at the inadequate standard of living which hampers the respect for and fulfilment of the rights of children and the ability of their families to provide them with adequate protection.

50. The Committee recommends that the State party formulate a national strategy to combat poverty, with due emphasis on monitoring the impact on the rights of children, and that it allocate sufficient human and financial resources, including through international assistance, to ensure the implementation of its strategy.

7. Education, leisure and cultural activities

51. The Committee is encouraged by the State party's efforts to increase enrolment rates in basic education, reduce illiteracy, promote cultural and recreational activities and provide education in the native language of all nine ethnic groups. However, it is concerned that enrolment and literacy levels are still low, particularly in secondary and pre-primary education, and that there is a significant disparity between the number of boys and girls in school. It also notes with concern that there are few trained teachers and limited opportunities for teachers to upgrade their skills.

52. The Committee recommends that the State party:

(a) Continue to strengthen measures aimed at increasing enrolment rates in primary and basic education, in particular for girls;

(b) Undertake additional efforts to increase the budget for education;

(c) Continue its activities in the area of cultural and recreational activities;

(d) Expand public provision of early childhood education, in particular in rural areas, and increase the number of trained pre-school teachers, and raise awareness amongst parents about the value of early childhood education;

(e) Prioritize and continue to strengthen and expand efforts at teacher training and expand recruitment of qualified teachers, in particular women and persons from all ethnic groups for education in mother-tongue programmes;

(f) Include human rights education as part of the curriculum.

8. Special protection measures

Children affected by armed conflict, including refugee and displaced children

53. While noting with appreciation the State party's extensive experience in providing care and protection to vulnerable children separated from their families through national and field-level structures, as well as the Eritrean Refugees and Relief Commission, the Committee is concerned that there are still a significant number of children suffering from the effects of armed conflict, in particular returnees, internally displaced children, landmine victims and children who were separated from their parents following expulsions of Eritreans from Ethiopia during the border war (1998-2001).

54. The Committee recommends that the State party continue to strengthen programmes to provide assistance and support to children affected by armed conflict, including returnee and displaced children and landmine victims, while paying particular attention to female-headed households. In particular, the Committee recommends that the State party:

(a) Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and enact refugee legislation that adheres to international standards, in particular in the area of rights and obligations of asylum-seekers;

(b) Strengthen efforts to trace and reunite family members of refugee and displaced children, including those expelled from Ethiopia during the border war;

(c) Develop administrative structures and procedures for processing asylum-seekers, including children;

(d) Seek international support and technical assistance, where possible, from United Nations agencies, in particular UNHCR, and NGOs to expedite the process of demining and the social reintegration and, when necessary, rehabilitation of all victims of recent armed conflicts.

Economic exploitation

55. The Committee welcomes the State party's ratification of ILO Convention No. 138 in 2000. Nevertheless, it remains concerned at the significant number of children working on the street, in the agricultural sector and as domestic servants.

56. The Committee recommends that the State party:

(a) Undertake a survey of the number of children working as domestic servants and in the agricultural sector in order to design and implement policies to prevent and combat economic exploitation of children in these sectors;

(b) Continue to strengthen the implementation of the Street Children Rehabilitation Programme;

(c) Ratify the ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

Sexual exploitation

57. Although the State party recognizes that prostitution, including child prostitution, is not a serious problem, the Committee notes with concern the lack of specific data on the commercial sexual exploitation of children.

58. The Committee recommends that the State party:

(a) Expedite the adoption and implementation of the Eritrean Child Law and the National Plan of Action to Rehabilitate Commercial Sex Workers;

(b) Undertake a study of children involved in the commercial sex industry and use the data to design policies and programmes to prevent commercial sexual exploitation of children, including through the development of a National Plan of Action on Commercial Sexual Exploitation of Children as agreed at the first and second World Congresses against Commercial Sexual Exploitation of Children held in 1996 and 2001;

(c) Train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute complaints in a child-sensitive manner that respects the privacy of the victim;

(d) Prioritize recovery assistance and ensure that education and training as well as psychosocial assistance and counselling are provided to victims;

(e) Cooperate with countries in the region to combat commercial sexual exploitation and trafficking of children.

Juvenile justice

59. The Committee is concerned that the minimum age of criminal responsibility of 9 years is too low; children between the ages of 15 and 18 in conflict with the law are tried as adults; juvenile offenders who have been deprived of their liberty are not separated from adults and there are no programmes for their rehabilitation and integration.

60. The Committee recommends that the State party:

(a) Ensure that juvenile justice standards are fully adhered to, in particular articles 37, 39 and 40 of the Convention, 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 day of gen-

eral discussion on the administration of juvenile justice (CRC/C/46, chap. III, sect. C);

(b) Ensure, as a matter of urgency, that juveniles in detention are kept separately from adults;

(c) Set a clear minimum age of criminal responsibility which is at an internationally acceptable level;

(d) Ensure that all children from that minimum age till the age of 18 are accorded the special protection guaranteed under the Convention;

(e) Establish juvenile courts;

(f) Seek technical assistance from, among others, UNICEF and OHCHR in reforming the juvenile justice system, in particular with regard to juvenile detention and rehabilitation services.

9. Optional Protocols

61. The Committee notes that the State party has not ratified the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict.

62. The Committee recommends that the State party ratify the Optional Protocol 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.

10. Dissemination of documents

63. Finally, in light of article 44, paragraph 6, of the Convention, the Committee recommends that the initial 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 by the Committee. Such a document should be widely distributed in

order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the general public, including concerned NGOs.

11. Next report

64. In light of the recommendation on reporting periodicity adopted by the Committee at its twenty-ninth session (see CRC/C/114), 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 parties' responsibilities to children under the Convention is ensuring that the 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 States parties is crucial. As an exceptional measure, in order to help the State party catch up with its reporting obligations so as to be in full compliance with the Convention, the Committee invites the State party to submit its second and third reports in one consolidated report by 1 September 2006, the due date for the submission of the third report. This consolidated report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report thereafter every five years, as foreseen by the Convention.

Violence against Women in Estonia

A Report to the Human Rights Committee

Contents

1. Preliminary Observations

The submission of information specifically relating to violence against women to the United Nations Human Rights Committee forms part of OMCT's Violence Against Women Programme which focuses on integrating a gender perspective into the work of the five "mainstream" United Nations human rights treaty monitoring bodies. OMCT's gender analyses and reporting entail examination of the effects of gender on the form which the human rights violation takes, the circumstances in which the abuse occurs, the consequences of those abuses, and the availability and accessibility of remedies.

OMCT notes with concern that Estonia's Government report CCPR/C/EST/2002/2 (hereafter referred to as the government report), only addresses some women's issues when it discusses the implementation of article 3 of the International Covenant on Civil and Political Rights (ICCPR), but does not discuss human rights of women when discussing the other articles. Moreover, OMCT regrets that the government report only deals marginally with the issue of violence against women in Estonia.

OMCT would like to recall that article 3 of the ICCPR stresses the need to ensure the equal right of men and women to the enjoyment of "*all* civil and political rights set forth in the present covenant." [emphasis added]

Moreover, with regard to violence against women, OMCT would like to evoke that in paragraph 11 of General Comment 28 adopted by the Human Rights Committee in March 2000, which examines the equality of rights between men and women and updates its earlier General Comment on that topic adopted in 1981,[1] the Committee addresses the fact that much of the violence suffered by women is violence that occurs at the hands of private individuals and recognises that this violence can amount to torture which is prohibited by article 7 in the Covenant. The paragraph reads:

> "To assess compliance with article 7 of the Covenant, as well as with article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practices with regard to domestic and other forms of violence against women, including rape.

It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape. The States Parties should also provide the Committee information on measures to prevent forced abortion or forced sterilisation. In States Parties where the practice of genital mutilation exists, information on its extent and on measures to eliminate it should be provided. The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated."

1.1 Estonia's International Obligations

Estonia became a member state of the United Nations on 17 September 1991. Estonia acceded to the ICCPR on 21 January 1991. Estonia's government report is submitted in accordance with article 40, paragraph 1 of the ICCPR and is Estonia's second periodic report on the measures taken by the government to implement the rights proclaimed in the ICCPR and on the progress made in the exercise of those rights.

Estonia acceded to the First Optional Protocol to the Covenant on 21 October 1991. It is not a State party to the Second Optional Protocol to ICCPR aiming at the abolition of the death penalty.

Estonia is also a State party to other international and regional human rights instruments prohibiting violence, including torture, and other cruel, inhuman or degrading treatment, directed against women. Estonia acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the Convention against Torture) on 20 November 1991.

Estonia has acceded, without reservations, to the Convention on the Elimination of All Forms of Discrimination against Women on 20 November 1991. The Committee on the Elimination of Discrimination Against Women (CEDAW) considered Estonia's combined initial, second and third periodic report on the implementation of the Convention during its 26th session in January 2002. OMCT regrets the fact that Estonia did not ratify the Optional Protocol to the Convention.

In 1992, the CEDAW adopted General Recommendation 19, which states that "gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention." It defines gender-based violence as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."

Moreover, Estonia is a State Party to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of Racial Discrimination.

At the regional level, Estonia is a participating state in the Organisation of Security and Cooperation in Europe. Moreover, it became a member of the Council of Europe on 14 May 1993 and ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms on 16 April 1996. On 6 November 1996, Estonia ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

1.2 Status of International Law in Estonia

According to article 3 of the Estonian Constitution[2], universally recognized principles and norms of international law are an inseparable part of the Estonian legal system. If laws or other legislation of Estonia are in conflict with international treaties ratified by the *Riigikogu,* the Estonian parliament (including international human rights conventions), the provisions of the international treaty will apply (Article 123 of the Constitution).[3]

In accordance with the Foreign Relations Act, the Government of the Republic is responsible for the fulfilment of international treaties. If an Estonian legal act contradicts an international treaty, the Government either submits a bill to the *Riigikogu* to amend the act, or the Government amends other legal acts within its competence to comply with the treaty.

This is the theory but, as the CEDAW noted with regard to the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women, "although in accordance with articles 3 and 123 of the Constitution, the Convention is integrated into domestic legislation and takes precedence over such legislation the Committee is concerned that there is still a lack of familiarity among the judiciary, law enforcement agents and women themselves about the opportunities for the application of the Convention in domestic decision-making."[4]

1.3 Human rights situation in Estonia

Chapter 2 of the Estonian Constitution contains a catalogue of fundamental rights and freedoms applicable in the Republic of Estonia. The chapter comprises 48 articles setting out the framework for the protection of civil, political, economic, social and cultural rights.

All courts in Estonia are competent to deal with questions of human rights. The Constitution states that in a court proceeding, the court will leave unapplied any law or other legislation that is in conflict with the Constitution. The Supreme Court will declare invalid any law or other legislation that is in conflict with the provisions and spirit of the Constitution (article 152 of the Constitution).

Police violence and prison conditions are a problem in Estonia according to the International Helsinki Federation for Human Rights, a group of non-governmental organisations that act to protect human rights throughout Europe, North America and the Central Asian republics.[5] Reportedly ill-treatment of prisoners takes place in both prison and pre-trial detention facilities.

The lack of independence of the judiciary in Estonia is another important problem. The independence of the judiciary is guaranteed by law but in reality there are many deficiencies. This is mainly due to financial arrangements that restrict notably the lower-level courts and a huge backlog of cases that interferes with the proper functioning of the court system.

2. De jure and de facto status of women

2.1 Gender equality in legislation

The Constitution of Estonia sets out that the rights, freedoms and duties of each and every person will be equal for Estonian citizens and for citizens of foreign States and stateless persons in Estonia (art. 9).[6] According to the Constitution, everyone is equal before the law. No one will be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. The incitement of national, racial, religious or political hatred, violence or discrimination is prohibited and punishable by law (art. 12).[7] Everyone has the right of appeal to a higher court against the judgement in his or her case pursuant to procedure provided by law (art. 24).[8]

Although the most serious offences in the field of gender discrimination are punishable according to the Criminal Code, Estonian courts deal address with such cases. Additionally, courts and prosecutor offices often deny qualifying certain offences as having been motivated by discrimination.[9]

The CEDAW expressed its concern that, although the Constitution and domestic laws provide for the equality of all citizens, they do not contain a specific definition of discrimination against women based on article 1 of the Convention on the Elimination of Discrimination Against Women, which prohibits both direct and indirect discrimination.[10]

On 14 December 2001 the Estonian Government initiated the Draft Law on Gender Equality (Draft # 927 SE). Another relevant act, the Draft Law on Equality and Equal Treatment, was submitted by the Government of the Republic on 21 October 2002 (Draft # 1198 SE). It deals with discrimination on the basis of sex, race, ethnic origin, age, disability, sexual orientation, social or legal status, religious or other belief and provides for mechanisms that could be used in cases of the so-called multiple discrimination. The draft includes comprehensive notions of direct and indirect discrimination and harassment on the abovementioned grounds. The second reading of both drafts is currently suspended because of discussions in parliament to merge to the two acts.

According to paragraph 10 of the Employment Contracts Act, it is illegal to allow or give preferences, or to restrict rights on the grounds of the sex, nationality, colour, race, native language, social origin, social status, previous activities, religion, or political or other opinion. According to article 5 of the Wages Act, it is prohibited to increase or reduce wages on the grounds of sex, nationality, colour, race, native language, social origin, social status, previous activities, religion, political or other opinions or conscientious objection. It is prohibited to reduce wages on the grounds of marital status, family obligations, membership in citizens' associations or representation of the interests of employees or employers.

In addition, on 31 May 2000 Estonia ratified the Revised Social Charter, including article 4 that contains the recognition of the right to equal pay for work of equal value. All disputes arising from this law are considered by the Commission on Labour Disputes or by the courts. Neither in 2001 nor in 2002 did the Commission on Labour Disputes consider gender-related applications.

Since 1999, the Legal Chancellor of Estonia has been vested with the powers of ombudsman (under Ch. IV of Law on Legal Chancellor[11]). Everyone is entitled to refer to him or her for surveillance over performance of the state institutions, including the provision for constitutional rights and freedoms (Art. 19 of the Law). Also, the Legal Chancellor is empowered to receive and examine residences' complaints. Although the Legal Chancellor Office is theoretically independent, its head is a government official.

Between 1999-2000 the Legal Chancellor received only one gender-related complaint. It concerned the right of homosexual men to found a family[12]. The relatively few complaints relating to gender-related discrimination is explained by the Legal Information Centre for Human Rights in part by non-efficient dealing with discrimination-related problems and the absence of a specific mandate on these issues. Moreover, information regarding the activities of the Chancellor's Office is not easily accessible to the public, and official communications do not mention discrimination and human rights violations[13].

2.2 Women and education

According to article 37 of the Estonian Constitution, everyone has the right to education.

Estonia is well covered with a network of schools, but education is not always accessible to all children. According to State data, the overall number of children in general education schools in 1999 was 215 841. The dropout rate from the basic and upper secondary schools is extremely high in Estonia, which shows that education is not made accessible in a way that creates a possibility for everybody to receive a graduation certificate.

The percentage of dropouts according to the type of school and gender (% of girls/ boys, who studied in these types of schools) 1993/94 – 1998/99.

	a/y	Girls	Boys	Girls	Boys	TOTAL
	1993/94	0,4	1,0	389	901	1290
	1994/95	0,5	1,1	407	989	1396
	1995/96	0,4	1,0	361	995	1356
Basic school	1996/97	0,5	1,0	480	991	1471
	1997/98	0,4	1,0	366	996	1362
	1998/99	0,4	1,1	343	1051	1394
	1993/94	5,4	8,4	1064	1146	2210
	1994/95	5,5	8,5	1192	1271	2463
	1995/96	5,4	7,9	1160	1180	2340
	1996/97	5,4	8,8	1186	1367	2553
Upper secondary school	1997/98	6,4	9,0	1462	1390	2852
	1998/99	5,6	8,1	1248	1187	2435

Source: Annus etc. Overview of the educational system of Estonia 2000.

According to data of an Estonian labour survey in 1995, women outperformed men with regard to the majority of educational indicators: 19% of working age women had higher education, 30% had specialised secondary education, while among working age men 16% had higher education and 21% specialised secondary education. In continuation of education after

completing the basic school, there are remarkable differences between boys and girls: in secondary schools of general education there has been predominance of girls for years, on the other hand, in vocational educational institutions, boys hold the majority.

In 1997, the total proportion of participants in third level education among women was 51% and among men 41%. Thus, considering the trends in recent years it can be said that preconditions for universal post-secondary education are developing in Estonia, although mainly among women.

While noting with appreciation the high level of education among women, the CEDAW Committee expressed its concern at the continuing gender disparities regarding educational options of boys and girls, as well as the fact that this high level of education does not result in an elimination of the wage differential between men and women, in particular the gap between female- and male-dominated sectors of employment.[14]

2.3 Women's employment and earning

The high level of education among the country's women does not correspond with equal chances in terms of employment and political office. The labour participation rate among women is still significantly lower than that of men (53% versus 63% in 2000), and traditional labour market patterns prevail, with about 70% of the women employed in the service sector. The average salary of women is approximately one quarter less than that of men.[15] Estonia has ratified the Equal Remuneration Convention of the International Labour Organization calling for equal pay for men and women for work of equal value.

The CEDAW noted with concern that the position of women in the labour market is characterized by discrimination and by a strong occupational segregation with a concomitant wage differential. The Committee also voiced its concern about the situation of young women who face additional difficulties in the labour market, owing to the domestic and family responsibilities assigned to them, placing them in a vulnerable position and leading to a higher incidence in part-time work among women.[16]

"In 1997 the number of entrepreneurs was much higher among men (9,1%) than among women (about 3,0%) and this figure has not changed

much during the past decade."[17] Many studies have shown that women have less confidence in their ability to successfully conduct business than men. This is exacerbated by the lack of specific targeted programs for different groups of unemployed women addressing their training needs. It appears that these conclusions are especially relevant with regard to Russian-speaking women. Only 13% of Russian-speaking women are owners of private firms as opposed to 22% of Estonian women that have their own business.[18]

Population by sex and economic status, 2000

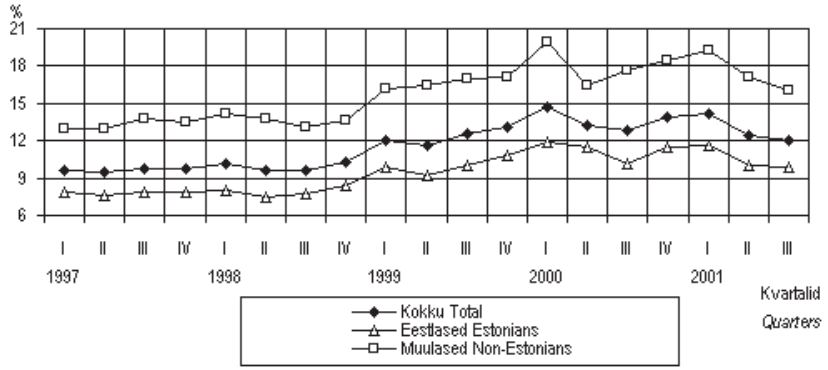
	Female	%	Male	%
Total	736 201	53.9	631 851	46.1
Labour force (active)	337 700	52.5	367500	68.4
Inactive persons	305 800		169 600	
Employed	294 800	45.8	313 800	58.4
Unemployed	42 800	12.7	53 600	14.6

Source: Estonian Labour Force Survey, 2000[19]

Employment rates for men are considerable higher. In 2000 the employment rates were 58.4% for men and 45.8% for women.

According to the Legal Information Centre for Human Rights, the level of unemployment among minority groups is higher than among Estonians. The majority of the population in North-Eastern Estonia (82%) is Russian-speaking. In this region, the unemployment rate is the highest at 21,1%.[20] As many of the people among this population are not citizens of Estonia, they are unable to participate in economic related decision making process.[21] Between "1992-1994, the main losers on the labour market were non-Estonian women with advanced levels of education."[22]

Unemployment rate by ethnic origin



Source: Statistical Office of Estonia[23]

2.4 Representation of women in politics

In the field of politics, women constituted 18% of the members of the Parliament and 26% of the members of local councils. The new Government formed at the beginning of 2002[25] has a record number of five women within its ranks. Surveys accounted for in the Estonian report on the implementation of the CEDAW indicated that, in particular, persons with higher education and well-paid jobs displayed a negative attitude towards the participation of women in politics, and that an overwhelming majority of both men and women remained unwilling to become involved in politics.[24]

While welcoming the information that the new Government will have 5 women ministers out of 14 Cabinet posts, including in portfolios traditionally reserved to men, the CEDAW Committee expressed its concern at the low representation of women in decision-making bodies in the various areas and levels of political and public life.[25]

According to the Estonian Constitution only Estonian citizens of 18 years or older have the right to vote. The Law on Riigikogu[26] Elections stipulates, that only Estonian citizen may run for candidate for the Riigikogu and have the right to vote. The law on Local Government Council Elections stipulates that only permanent residents who have been for 5 years in the territory of the particular local government have the right to vote.

After the 1999 elections there were 17 women in the Riigikogu: 16 Estonians and 1 Russian out of 101 parliamentarians. As of 16 January 2003, eleven political parties are participating in the parliamentary elections in March 2003. Each party has women candidates, usually one or two candidates in the top 10. The Estonian Social-Democratic Labour Party has five women candidates and the Estonian Reform Party has three women candidates.[27]

2.5 Access to citizenship

Certain categories of Estonian residents are denied the right to receive permanent residence status. Included in this group are the wives of former military officers who served in armed forces of foreign states. These women are denied this right because of the (former) status of their spouses[28]. Although the above-mentioned law is equally valid for both men and women, women are the ones who suffer the consequences of this provision in 99% of the cases. The CEDAW expressed its concern about this situation.[29]

3. Violence against Women in the Family

Domestic violence is not prosecuted as a distinct criminal offence in Estonia. Violence occurring in the family is penalised under the section concerning criminal offences against a person in the Penal Code.

The position and role of Estonian women has evolved through different periods in history. Estonian ethnographers and historians have expressed opposing opinions about Estonian women. On one hand, an Estonian woman is described as relatively independent and less dependent on the husband than women in other nations, but on the other hand she is described as depending on her husband. For centuries, strong traditional patterns of a patriarchal society have developed in Estonia. Female characteristics and women's activities were often underestimated and women's work was not valued to the same extent as men's work. The patriarchal structure has changed through time but many attitudes and stereotypes treating men's central role have survived until today.

Although the understanding of traditional values in Estonia has changed in recent decades, for example, the idea of a typical preferred family model has remained unchanged through centuries. Home and family as the main guarantees of security and stability are valued highly by the Estonian people. For Estonians, as a small nation, the family is also something that has served as a consolidating unit in preserving historical traditions and developing their own culture.

The results of the surveys on gender roles carried out by the Centre of gender studies of the University of Tartu in 1995 and 1998 reflect the modern Estonian society as male-centrist society appreciating masculine qualities more than feminine qualities.

According to statistical data every day in Estonia about 200 women suffer from physical violence and 33 from sexual violence. Two thirds of these cases take place in the home. There are shelters for women who suffer from violence within the family in Tartu and Tallinn. The age of women in the shelters varies between 17-70 years[30].

The CEDAW expressed its concern about violence against women and girls, including domestic violence in Estonia.[31] Therefore, the Committee urged the Government to place high priority on comprehensive measures to address violence against women in the family and in society, and to recognize that such violence, including domestic violence, constitutes a violation of the human rights of women under the Convention.

In the light of its general recommendation 19 on violence against women, the CEDAW called upon the Government to ensure that such violence constitutes a crime punishable under criminal law, that it is prosecuted and punished with the required severity and speed, and that women victims of violence have immediate means of redress and protection. It recommended that measures be taken to ensure that public officials, especially law enforcement officials, the judiciary, the medical professions and social workers are fully sensitized to all forms of violence against women. The CEDAW invited the Government to undertake awareness-raising measures, including a campaign of zero tolerance, to make such violence socially and morally unacceptable. It also recommended the introduction of a specific law prohibiting domestic violence against women, which would provide for protection and exclusion orders and access to legal aid.

In April 2000, the Ministry of Social Affairs in co-operation with the Open Society Institute and International Criminal Prevention Institute (HEUNI) conducted a study on violence against women, interviewing 102 women victims of violence. The study revealed that 62% of the interviewees considered the incident as a severe case of violence. The study also revealed that only 24% of the victims informed the police of the incident. A criminal charge was filed against the offender in only two cases of all of the incidents.[32]

4. Violence Against Women in the Community

4.1 Rape

The new Penal Code defines rape as sexual intercourse with a person against his or her will, or taking advantage of a situation in which the person was not capable of resisting or comprehending the act.[33] The definition of rape extends to rapes within the family. Sexual intercourse with someone under the age of 14 is criminalised by the penal code. However, Estonian law permits the marriage of a girl between the ages of 15 and 18 in exceptional circumstances such as pregnancy.

Family violence and violence against women as an area of concern is not regularly measured and statistically covered in Estonia. The official statistics do not fully reflect the scope of the problem. For example, data on rapes are reported to and officially registered by the Police. However, the data collected about rapes and attempted rapes are insufficient because only a small number of cases are reported to the police and therefore do not give a representative overview about incidences of violence against women.

A survey conducted in 1995 indicated that only 6% of raped women informed the police about the crime.[34] Police departments in Estonia have begun to create special interviewing rooms with modern equipment where statements are video taped so that a victim of crime does not have to provide repeated testimonies of his or her sufferings. So far such rooms have been created in Tartu and Võru and they are meant first of all for child victims, but they can also be used for female victims.

In some police prefectures there are also specially trained female officers who can recognise the behaviour of a sexually abused person and are able to handle the person in an appropriate manner. At the beginning of 2001, a number of police officers were given a five-day training session on the essence of violence against women and on practical methods of handling victims and violent persons.

4.2 Violence at work

Cases have been reported where pregnant women are forced by the management of private companies to write a petition on acquisitive resignation. Frequently, private firms refuse to engage pregnant women or the women are forced to work illegally without a contract. As a result the employers do not pay state taxes for these women and as a consequence, women have no state social protection.[35] As mentioned above, women are mostly occupied in the lesser prestigious and lesser paid professions.

As noted above, all labour disputes are considered by the Commission on Labour Disputes or by the Courts. Neither in 2001 nor in 2002 did the Commission on Labour Disputes consider gender-related applications.

4.3 Trafficking in women

The new Penal Code that entered into force in September 2002, finally criminalized trafficking in women.

The General Assembly adopted the United Nations Convention against Transnational Organized Crime in November 2000. The Convention is currently supplemented by two Protocols, one is trafficking in persons and one is on smuggling in persons. On 4 December 2002 Estonia ratified this Convention. The Convention is not yet in force.

Trafficking in human beings has become a serious global concern. International criminal groups, whose activities often include other forms of illicit trade such as smuggling of drugs and arms, often control trafficking in persons as well. In addition to abusing human rights, and violating labour and migration laws, trafficking in persons is also a problem of national and international security.

The social-economic situation of women in Estonia is generally worse than that of men as women are mostly in occupations that have lesser prestige and smaller wages. Therefore, women are more likely to become the victim of trafficking. Because of their even less favourable position, members of the Russian-speaking community in the northeast of Estonia constitute a large part of the number of victims.

Estonia is a source country for women and girls trafficked for the purpose of sexual exploitation. Victims are trafficked abroad to the Nordic countries and West Europe, including Germany, the Netherlands, Irelands, the United Kingdom, Italy and Iceland, Ireland and also to Japan and the USA. A recent IOM report estimated that about 500 women and girls from Estonia are transported abroad every year under false pretences and are forced to work as prostitutes, domestic workers or servants.

The CEDAW noted with concern that there is still not enough information on the subject of trafficking nor a comprehensive policy to address the problem. [36]

5. Violence against women at the hands of state agents

As stated before, Estonia acceded to the UN Convention against Torture and Other Inhuman or Degrading Treatment or Punishment on 21 October 1991 and the Convention entered into force with respect to Estonia on 20 November 1991.

Article 18 of the Estonian Constitution states that no one shall be subjected to torture or to cruel or degrading treatment or punishment and that no one shall be subjected to medical or scientific experiments against his or her free will.

Until 2002, the Criminal Code of Estonia did not consider torture as a crime. State references to the articles containing any punishment for committing violent actions by officials are justified. On September 1, 2002 a new Penal Code came into force, which had been adopted by the Parliament on June 6, 2001 (RT I 2001, 61, 364). It contains the chapter Violent Actions which defines in paragraph 122 torture as follows: *Continuous physical abuse or abuse which causes great pain*

is punishable by a pecuniary punishment or up to 5 years' imprisonment.[37]

By not including psychological suffering within its scope, the definition of torture used in the Estonian legislation is narrower than the generally accepted definition, as provided for in the Convention against Torture in Article 1. After consideration of the initial report of Estonia in 1995, the UN Human Rights Committee noted that the definition of torture in article 114 of the Criminal Code was limited to physical force and does not encompass psychological torture and duress. In this respect the Penal Code of 2001 is no improvement. With regard to article 7 of the Covenant, the Committee strongly recommended that article 114 of the Criminal Code be reviewed so as to ensure its compliance with the broader scope of torture under the Covenant, and called the attention of the authorities to its General Comment No. 20 (44).[38]

5.1 Detention

The conditions of detention are cause for concern. According to the International Helsinki Federation for Human Rights prison conditions remained poor despite considerable progress in this area.[39] Very often the conditions in which people are held during the arrest or imprisonment cause serious damage to their mental and physical health and could be considered as torture or inhuman and degrading treatment. In their letters to the Legal Information Centre for Human Rights prisoners often complain about the rudeness and psychological pressure from the administration, groundless tightening of the regime, length of the legal proceedings, very difficult conditions of imprisonment.[40] The media has reported about numerous hunger strikes in prisons.

Estonia acceded in 1996 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols no. 1 and 2. The Convention entered into force with respect to Estonia on 1 March 1997. The provisions of the Convention are directly applicable in domestic courts. Case law of the application of the Convention is also part of domestic law.

Under Article 7 of that convention European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

Punishment (CPT) has carried out two visits to Estonia from 13 to 23 July 1997 and from 15 to 21 December 1999. In October 2002 the reports of these visits were published, assessing the treatment of people detained in Estonia.[41]

During the 1997 visit, the CPT found that, in recent years, there had been a marked improvement in the manner in which detained persons were treated by the police. However, extremely poor conditions of detention prevailed in many police arrest houses. Detainees were held for prolonged periods in unhygienic and overcrowded cells, with no mattresses and a meagre amount of food. During a follow-up visit carried out in 1999, the CPT noted the first positive steps taken by the Estonian authorities to improve this situation.

The conditions of detention of remand prisoners observed at Tallinn Central Prison in 1997 were intolerable. Deplorable material conditions were compounded by a total absence of activities. In their responses, the Estonian authorities provide detailed information on the measures taken to improve conditions of detention in the establishment and throughout the prison system.

Many allegations of ill-treatment of patients were received at Valkla Social Welfare House during the 1997 visit. Further, the establishment was not adequately resourced, particularly in terms of staff. During a follow-up visit in 1999, the CPT noted that the situation had significantly improved. No allegations of ill-treatment were heard, and special training had been organised for staff.

6. Conclusions and recommendations

OMCT urges the government of Estonia to include the definition of discrimination against women in its Constitution and national legislation and recommends the speedy adoption of the draft laws on gender equality.

OMCT recommends that the government of Estonia increases the strength and visibility of the Gender Equality Bureau, a sub-unit of the Ministry of Social Affairs tasked with the responsibility of mainstreaming gender equality.

OMCT recommends that the public is properly informed about the activities of the Legal Chancellor's Office with regard to human rights violations and discrimination.

OMCT welcomes the high level of education among women in Estonia but regrets that this does not result in an elimination of the wage differential between men and women and better employment opportunities for women. OMCT therefore recommends that the government works towards bridging this gap and pays specific attention to Russian-speaking women as they are a specifically vulnerable group.

OMCT urges the government to stimulate the representation of women in decision-making bodies in the various areas and levels of political and public life.

The generalised inequality between men and women in Estonia has created a situation in which women are particularly vulnerable to violence. Violence against women constitutes a serious obstacle to the achievement of women's equality. In this light, OMCT expresses its concern about the fact that violence against women is not prosecuted as a distinct criminal offence and recommends that Estonia adopt a specific law prohibiting domestic violence against women, which would provide for protection and exclusion orders and access to legal aid. OMCT would recommend that effective measures be taken with respect to the enactment of legislation on domestic violence along the lines of the guidelines submitted by the United Nations Special Rapporteur on violence against women to the fifty-second session of the United Nations Commission on Human Rights (U.N. doc. E/CN/.4/1996/53, Add.2). The government should adopt special legislation to meet the specific circumstances and needs created by family-based violence. OMCT recommends that the government establish programmes in order to improve the economic situation of women and the implementation of public education programmes to eliminate traditional stereotypes of the roles of men and women in society and to eradicate practices that discriminate against women.

OMCT welcomes the criminalisation of trafficking in the new Penal Code and it would urge the Government to introduce programmes aimed at increasing awareness and understanding of the seriousness of trafficking. These programmes should focus on the methods used by traffickers and the hazardous consequences of being lured into trafficking.

The current definition of torture in the Penal Code contains only physical violence not psychological violence. OMCT urges the government to broaden the scope of the definition, in line with Article 1 of the Convention against Torture.

Finally, OMCT would insist on the need to fully implement all provisions of the Convention on the Elimination of Discrimination against Women, the Declaration on the Elimination of Violence against Women as well as the Beijing Platform of Action, in Estonia as these are the most relevant international instruments concerned with all forms of violence against women.

1 The complete text is available on the website of the Office of the High Commissioner for Human Rights: www.unhchr.ch and can be obtained under the symbol: UN Doc. CCPR/C/21/Rev.1/Add.10.

2 Article 3 Estonian Constitution, see for the English translation www.oefre.unibe.ch.

3 *Ibid.*, Article 123.

4 Concluding observations, UN Doc. CEDAW/C/2002/1/CRP.3/Add.7

5 See Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America, Report 2002, available at www.ihf-hr.org.

6 Article 9 Estonian Constitution, *Ibid.*.

7 Article 12, *Ibid.*

8 Article 24, *Ibid.*

9 Vadim Poleshchuk, *Legal Analyses of Existing Domestic Legislation Identifying Modifications Required to Conform to the Race Directive. Estonia;* Minority Policy Group, Interights, Roma Rights Center, September 2001.

10 Concluding observations, UN Doc. CEDAW/C/2002/1/CRP.3/Add.7.

11 Law on Legal Chancellor, RT I 1999, 29, 406.

12 Poleshchuk, *Ibid.*

13 "Minority protection in Estonia", part IV "Institutions for the Protection of Minorities", section A "Official Bodies". Report of the Legal Information Centre for Human Rights.

14 Concluding observations, UN Doc. CEDAW/C/2002/1/CRP.3/Add.7

15 Research conducted in 2000 by the UNDP and the Estonian Ministry of Social Affairs

16 Concluding observations, UN Doc. CEDAW/C/2002/1/CRP.3/Add.7

17 Rein Vöörmann, Men and women on the labor market: wage rations. *Towards a balanced society. Women and men in Estonia,* Ministry of Social Affairs of Estonia, UNDP, Tallinn, 2000 (Information received from the Legal Information Centre for Human Rights).

18 Ivi Proos, *Carrier for Estonian women money for Russians*, newspaper "Eesti Päevaleht", 04 January 2001 (Information received from the Legal Information Centre for Human Rights).

19 Cf. the official web site of the National Statistical Office http://www.stat.vil.ee/1-market/tt2000/9.htm (Information received from the Legal Information Centre for Human Rights).

20 Hilda Vall, Unemployment rate by regions, article in daily news "Estonia" on 27.02.2001 (Information received from the Legal Information Centre for Human Rights).

21 Statement by Vadim Poleshchuk, LICHR in "Social Dimension of Integration in Estonia and Minority Education in Latvia", ECMI Workshops "Social Dimension of Integration in Estonia" 19-21 October 2001, Pärnu, Estonia (Information received from the Legal Information Centre for Human Rights).

22 Statement by Jelena Helemäe, IISS, in "Social Dimension of Integration in Estonia and Minority Education in Latvia", ECMI Workshops "Social Dimension of Integration in Estonia" 19-21 October 2001, Pärnu, Estonia (Information received from the Legal Information Centre for Human Rights).

23 Estonian Labour Force Survey, 3rd quarter 2001. The monthly "Estonian Statistics" No 10. Statistical Office of Estonia, Tallinn 2001 http://www.stat.vil.ee/l-market/tt01_3kv/7.htm (Information received from the Legal Information Centre for Human Rights).

24 UN Doc CEDAW.

25 Concluding observations, UN Doc. CEDAW/C/2002/1/CRP.3/Add.7.

26 Riigikogu – the Estonian Parliament.

27 Information on the 2003 elections can be obtained from the Estonian National Electoral Committee at www.vvk.ee.

28 Article 21 Law on Citizenship.

29 Concluding observations, UN Doc. CEDAW/C/2002/1/CRP.3/Add.7.

30 Newspaper Eesti Päevaleht of 8 January, 2003, Home violence hale women to the shelters.

31 Concluding observations, UN Doc. CEDAW/C/2002/1/CRP.3/Add.7.

32 Voldemar Kolga, Estonia National Report on Law and Policy Addressing Men's Practices Work Package 3, available at http://www.cromenet.org/customers/crome/crome.nsf/resources/768155295D5F88C1C2256B6C00307EB1/$file/wp3+Estonia.doc.

33 §141 Penal Code.

34 Josing, Ahven 1999:98, cited in, Voldemar Kolga, Estonia National Report on Law and Policy Addressing Men's Practices Work Package 3, available at http://www.cromenet.org/customers/crome/crome.nsf/resources/768155295D5F88C1C2256B6C00307EB1/$file/wp3+Estonia.doc.

35 Information received from Legal Information Centre for Human Rights.

36 Concluding observations, UN Doc. CEDAW/C/2002/1/CRP.3/Add.7.

37 Translated by the Estonian Legal Translation Centre http://www.legaltext.ee/et/andmebaas/ava.asp?m=022.

38 UN Doc. CCPR/C/79/Add.59. (Concluding Observations/Comments).

39 Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America; Report 2001 (events of 2000), p.120.

40 Information received from the Legal Information Centre for Human Rights.

41 The CPT reports and the responses of the Estonian authorities are available on the CPT's website (http://www.cpt.coe.int).

Human Rights Committee

Seventy-seventh session – 17 March - 4 April 2003

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations by the Human Rights Committee: Estonia

1. The Committee considered the second periodic report of Estonia (CCPR/C/EST/2002/2) at its 2077th and 2078th meetings, held on 20 and 21 March 2003 (see CCPR/C/SR.2077 and 2078) and adopted the following concluding observations at its 2091st meeting (CCPR/C/SR.2091), held on 31 March 2003.

A. Introduction

2. The Committee welcomes the second periodic report of the State party and expresses its appreciation for the frank and constructive dialogue with the delegation. It welcomes the detailed answers that were provided to its written questions.

3. While the report was submitted with some delay, the Committee notes that it provides important information on all aspects of the implementation of the Covenant in the State party, as well as on concerns specifically addressed by the Committee in its previous concluding observations.

B. Positive aspects

4. The Committee expresses its satisfaction over several new legislative developments in areas related to the implementation of the provisions

of the Covenant that have taken place in the State party since the submission of the initial report.

5. The Committee welcomes the measures taken by the State party to create the office of the Legal Chancellor and the addition of Ombudsman functions to its responsibilities.

6. The Committee welcomes the measures and legislation adopted by the State party to improve the status of women in Estonian society and to prevent gender discrimination. It particularly notes article 5 of the "Wages Act", which now prohibits the establishment of different wage conditions on the basis of gender, and articles 120 to 122 and article 141 of the new Penal Code, which make domestic violence and marital rape specific criminal offences.

7. The Committee welcomes the delegation's affirmation that the problem of prison overcrowding is being resolved, through the decreasing number of persons detained owing, inter alia, to increasing resort to alternative forms of punishment, and the opening of a new spacious prison in Tartu.

C. Principal subjects of concern and recommendations

8. The Committee is concerned that the relatively broad definition of the crime of terrorism and of membership of a terrorist group under the State party's Criminal Code may have adverse consequences for the protection of rights under article 15 of the Covenant, a provision which significantly is non-derogable under article 4, paragraph 2.

   The State party is requested to ensure that counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity with the Covenant.

9. While welcoming the additional explanations of the delegation on a case of alleged ill-treatment committed by police officers, the Committee remains concerned that acts of ill-treatment or other forms of violence perpetrated or condoned by law enforcement officials are not prosecuted on the basis of the most appropriate criminal charges but only as minor offences.

The State party should ensure that law enforcement officials are effectively prosecuted for acts that are contrary to article 7 of the Covenant, and that the charges correspond to the seriousness of the acts committed. The Committee also recommends that the State party guarantee the independence from police authorities of the newly created "police control department", which is responsible for carrying out investigations of abuses committed by the police.

10. The Committee takes note of the delegation's acknowledgement that legislation on detention of mental health patients is outdated and that steps have been taken to revise it, including the adoption of a Draft Patient Rights Act. In this regard, the Committee is concerned at some aspects of the administrative procedure related to the detention of a person for mental health reasons, in particular the patient's right to request termination of detention, and, in the light of the significant number of detention measures that had been terminated after 14 days, the legitimate character of some of these detentions. The Committee considers that a period of 14 days of detention for mental health reasons without any review by a court is incompatible with article 9 of the Covenant.

    The State party should ensure that measures depriving an individual of his or her liberty, including for mental health reasons, comply with article 9 of the Covenant. The Committee recalls the obligation of the State party under article 9, paragraph 4, to enable a person detained for mental health reasons to initiate proceedings in order to review the lawfulness of his/her detention. The State party is invited to furnish additional information on this issue and on the steps taken to bring the relevant legislation into conformity with the Covenant.

11. The Committee is concerned at information that deserters from the armed forces may have been kept in solitary confinement for up to three months.

    The State party is under an obligation to ensure that the detention of alleged deserters is in conformity with articles 9 and 10 of the Covenant.

12. In the light of the State party's legislation on the use of firearms, the Committee expresses concern at the possibility to use lethal force in circumstances not presenting a risk to the life of others.

    The State party is invited to revise its outdated legislation to ensure that the use of firearms is restricted by the principles of necessity and proportionality as reflected in articles 9 and 16 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (U.N. Doc. A/CONF.144/ 28/Rev.1 at 112 (1990)) (articles 7 and 10).

13. While welcoming the precise information provided by the delegation on the procedure related to the determination of refugee status, the Committee remains concerned that the application of the principle of "safe country of origin" may deny the individual assessment of a refugee claim when the applicant is considered to come from a safe country.

    The State party is reminded that, in order to afford effective protection under articles 6 and 7 of the Covenant, applications for refugee status should always be assessed on an individual basis and that a decision declaring an application inadmissible should not have restrictive procedural effects such as the denial of suspensive effect of appeal (articles 6, 7 and 13).

14. Regretting that the concerns of its previous concluding observations (paragraph 12) have not been met, the Committee remains deeply concerned by the high number of stateless persons in Estonia and the comparatively low number of naturalizations. While the State party has adopted a number of measures designed to facilitate naturalization, a large number of stateless persons do not even initiate this procedure. The Committee takes note of the different reasons underlying this phenomenon but considers that this situation has adverse consequences in terms of the enjoyment of the Covenant rights and that the State party has a positive duty to ensure and protect those rights.

    The State party should seek to reduce the number of stateless persons, with priority for children, inter alia by encouraging their parents to apply for Estonian citizenship on their behalf and by promotion campaigns in schools. The State party is invited to reconsider its position as to the accessibility of Estonian citizenship to persons who have

taken the citizenship of another country during the period of transition and to stateless persons. The State party is also encouraged to conduct a study on the socio-economic consequences of statelessness in Estonia, including the issue of marginalization and exclusion (articles 24 and 26).

15. The Committee is concerned that the duration of alternative service for conscientious objectors may be up to twice as long as the duration of regular military service.

    The State party is under an obligation to ensure that conscientious objectors may opt for alternative service, the duration of which is without punitive effect (articles 18 and 26).

16. While welcoming the abolition of the requirement of proficiency in Estonian language for standing as a candidate in elections and the assertion by the delegation that the use or size of advertisements and signs in other languages is not restricted, the Committee is concerned at the practical implementation of Estonian language proficiency requirements, including in the private sector and the effect this may have on the availability of employment to the Russian-speaking minority. It is also concerned that, in those areas where a substantial minority speaks primarily Russian, public signs are not posted also in Russian.

    The State party is invited to ensure that, pursuant to article 27 of the Covenant, minorities are able in practice to enjoy their own culture and to use their own language. It is also invited to ensure that legislation related to the use of languages does not lead to discrimination contrary to article 26 of the Covenant.

17. Taking into account the considerable number of non-citizens residing in the State party as their own country, the Committee is concerned about legislation prohibiting non-citizens from being members of political parties.

    The State party should give due consideration to the possibility for non-citizens to become members of political parties (article 22).

18. The Committee regrets the lack of detailed information about the actual results of the activities of the Legal Chancellor and other bodies like

the Labour Inspectorate, in relation to their competence to receive and deal with individual complaints.

The State party is invited to furnish detailed information on the number, nature and outcome, as well as concrete examples, of individual cases submitted to the Office of the Legal Chancellor and other bodies dealing with individual complaints.

19. The State party should disseminate widely the text of its second periodic report, the replies provided to the Committee's list of issues, and the present concluding observations.

20. In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide within one year relevant information on the implementation of the Committee's recommendations in paragraphs 10, 14 and 16 above. The third periodic report should be submitted by 1 April 2007.

Violence against Women in Mali

A Report to the Human Rights Committee

Contents

1. Preliminary Observations

The submission of information specifically relating to violence against women to the United Nations Human Rights Committee forms part of OMCT's Violence Against Women Programme which focuses on integrating a gender perspective into the work of the five "mainstream" United Nations human rights treaty monitoring bodies. OMCT's gender analyses and reporting entail examination of the effects of gender on the form that human rights violations take, the circumstances in which the abuses occur, the consequences of those abuses, and the availability and accessibility of remedies.

OMCT notes with concern that Mali has only submitted its second periodic report (UN Doc. CCPR/C/MLI/2003/2) to the Human Rights Committee on its implementation of the International Convention on Civil and Political Rights (ICCPR) on 3 January 2003 whereas it was due on 11 April 1986. The list of issues, drafted by the Human Rights Committee before the session, was drawn up in the absence of the government report. OMCT regrets the late submission of the government report as this hampers a fruitful discussion between the government and the Human Rights Committee. Mali's second through fifth periodic reports were due on 11 April 1986, 1991, 1996 and 2001 respectively. Mali has an obligation under article 40, paragraph 1 to submit periodic reports on the measures taken by the government to implement the rights proclaimed in the ICCPR and on the progress made in the exercise of those rights.

The Malian State report (UN Doc. CCPR/C/MLI/2003/2) fails to address gender specific violence in any way. The report notes that women are accorded formal legal equality and recognizes that discrimination against women persists in some areas. However, the report neglects to examine violence against women, including but not limited to, domestic violence, marital rape, rape, and female genital mutilation.

With regard to violence against women, OMCT would like to evoke that in paragraph 11 of General Comment 28 adopted by the Human Rights Committee in March 2000, which examines the equality of rights between men and women and updates its earlier General Comment on that topic adopted in 1981,[1] the Committee addresses the fact that much of the violence suffered by women is violence that occurs at the hands of private

individuals and recognises that this violence can amount to torture which is prohibited by article 7 in the Covenant. The paragraph reads:

> "To assess compliance with article 7 of the Covenant, as well as with article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practices with regard to domestic and other forms of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape. The States Parties should also provide the Committee information on measures to prevent forced abortion or forced sterilisation. In States Parties where the practice of genital mutilation exists, information on its extent and on measures to eliminate it should be provided. The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated."

In light of the lack of information provided on violence against women in Mali, this report will focus on the linkage between gender and violence against women in Mali. The report places particular emphasis on domestic violence, early and forced marriages, the dowry system, polygamy and female genital mutilation. The report ends with conclusions and recommendations.

1.1 Mali's International Obligations

Mali became a member State of the United Nations on 28 September 1960. Mali acceded the ICCPR on 16 July 1976 and to the First Optional Protocol to the Covenant on 24 October 2001. It is not a State party to the Second Optional Protocol to ICCPR aiming at the abolition of the death penalty.

Mali acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the Convention against Torture) on 26 February 1999. Mali is also a State Party to other international and regional human rights instruments prohibiting torture, and other cruel, inhuman or degrading treatment directed against women.

Mali ratified the Convention on the Elimination of All Forms of Discrimination against Women on 10 September 1985 and acceded to the Optional Protocol to the Convention on 5 December 2000. Mali's second through fifth periodic reports (covering the period 1990 to 2002) have not been submitted to the Committee on the Elimination of Discrimination Against Women. The fifth periodic report was due 10 October 2002.

In 1992, the CEDAW Committee adopted General Recommendation 19, which states that "gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention." It defines gender-based violence as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."

Mali is also a State Party to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of Racial Discrimination.

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

1.2 Human rights situation in Mali

Chapter 1 of the Constitution provides for a catalogue of fundamental rights and freedoms applicable in Mali. The chapter comprises 24 articles

setting out the framework for the protection of civil, political, economic, social and cultural rights.

The Constitution also provides for an independent judiciary.[2] However, in practice the executive exerts influence over the judicial system. The Ministry of Justice appoints and has the power to suspend judges; it supervises both law enforcement and judicial functions. The President heads the Superior Judicial Council, which oversees judicial activity. The Human Rights Committee has insisted that "the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception."[3] This requirement is based on the principle that the different organs of the State must have exclusive power to decide on cases which are put before it. The judiciary as a whole as well as every judge in particular must be protected from any interference, *inter alia*, by the executive authority.

The judicial system's large case backlog results in long periods of pre-trial detention and lengthy delays in trials. In addition there were reports of corruption in the courts. In this respect, the UN Special Rapporteur on the freedom of opinion and expression transmitted a case to the government concerning the sentencing of the director-general of the Office de radio-télévision du Mali (ORTM) to one month in prison and a fine of 1 million CFA francs. Under the press law, he was convicted following the broadcast by ORTM of an interview in which the mayor of Bamako stated that magistrates are corrupt. The mayor was fined 3 million CFA francs.

The existence of trafficking in children for labour exploitation is another grave problem in Mali. The majority of those trafficked from Mali are boys from the areas of Ségou, Sikasso and Mopti. Networks for trafficking children to Côte d'Ivoire were established in the early 1990s following a demand for cheap labour on its cotton plantations. Most children are recruited by intermediaries and sold on to plantation owners. Trafficked children can work from 10 to 20 hours a day, carry heavy loads, operate dangerous tools and lack adequate food or drink. The Government of Mali is currently working with the International Labour Organization (ILO) to combat this problem. In the context of the ILO-IPEC program, an agreement has been reached between Côte d'Ivoire and Mali regarding the repatriation of victims and extradition of traffickers.[4]

Prostitution is widespread in Mali. The main reason women and girls go into prostitution is economic. The girls and women that fall into prostitution come from an economic background that is deprived. They come from families that have many children, where there are economic problems and a constant fight for survival. Several NGOs in Mali are working to combat the problem of prostitution and help the women involved.

2. De jure and de facto status of women

2.1 Gender equality in legislation

Although the Constitution of Mali proclaims in its preamble to defend the rights of women,[5] there are many laws in Mali that are facially discriminatory. For instance, it has been reported to OMCT that Malian women who marry foreigners are not able to pass on their Malian nationality to their children from such a marriage. On the other hand, Malian men suffer from no such restriction in passing on their Malian nationality to their children.[6] Such discrimination in citizenship extends beyond the blatant differential treatment of men and women in Mali. Under such a law, the children of women who marry non-Malian nationals are not eligible for the rights and privileges of Malian citizenship.

Other discriminatory provisions in Malian legislation limit a woman's power over the decisions affecting her own life. For example, with regard to type of marriage, the choice between a monogamous marriage and a polygamous marriage is the decision of the husband, not the wife.[7] A woman's rights are limited in marriage by law in other ways, including her husband's power over her right to work and the choice of residence.[8] Malian law also discriminates against women in marriage by providing that wives are obligated to obey their husbands.[9]

With respect to minimum age of marriage, the Malian law provides for different ages between girls and boys. The law expressly allows early marriage of girls, providing that girls may be married at 15, while the minimum age for marriage of boys is 18.[10]

With regard to a woman's right to remarry after divorce from her husband or the death of her husband, Malian law is also facially discriminatory. According to Malian law, a divorced woman must wait 3 months after her divorce before she is able to remarry.[11] This provision does not apply to men, who are able to remarry even during the divorce proceedings, or, under the polygamous system, while they are still married to other women. If the woman is widowed, then she must wait 4 months and 10 days before she can remarry.[12]

2.2 De Facto Status of Women

The prevailing image of women in Malian society is in their roles as wife and mother. As such, women remain in the private sphere and do not have much access to the public sphere, which is traditionally reserved for men. In accordance with these roles, women are blamed if their husbands are dirty or badly dressed, as well as if their child misbehaves. These attitudes towards women encourage the stereotype that women are inferior to men.[13] Women who try to rebel against these images and participate in the public sphere are viewed badly by society, including by some women, and are accused of "attempting to wear pants," meaning trying to become a man. Thus, women do not participate in politics or other civic affairs with fewer than 10% of all elected officials being women.[14] In essence, such views reflect an attitude that social and political power is a masculine sphere that women should avoid.

The marriage laws in Mali contribute to these stereotypical images of women by declaring that men are the head of the household and that women must obey their husbands. These laws reflect the reality that husbands make 90% of all decisions in the house.[15]

In education, women are also at a de facto disadvantage. Boys' education is considered a better investment for parents than girls' education and therefore, there remains a gender disparity in education in Mali.[16] UNICEF statistics indicate that women's literacy lags behind men's, at rates of 33% and 48% respectively. At the primary school level, the rate of girls' enrolment is 33% while boys' enrolment rate is 47%, and at the secondary school level, boys' enrolment is double that of girls (14% and 7% respectively).[17] Additionally, forced and early

marriages, as well as pregnancy, prevent girls from continuing education.[18]

The government of Mali has tried to rectify some inequalities between men and women by passing new laws. For example, a law was passed attempting to give women better access to land.[19] However, because of cultural attitudes towards women and a lack of political will, this law has not been effectively implemented. Additionally, the Malian government asserts that a Family Code is in the process of being legislated.[20] OMCT insists that such legislation must eliminate all facially discriminatory provisions in Malian law with respect to gender as well as establish effective mechanisms for full implementation of all non-discriminatory provisions.

3. Violence against Women in the Family

3.1 Forced Marriage

It has been reported that forced marriage frequently occurs in Mali, even though it is formally illegal.[21] Although the consent of both the wife and husband are required before a legal marriage can occur, young girls are sometimes pressured by their families, and even by state agents responsible for preventing forced marriages, to enter into a customary law marriage.[22] Oftentimes, people in the community and women in particular are unaware of the statutory requirements for a legal marriage and will enter into a customary law marriage, which has no legal standing, without full knowledge of their rights.[23] Forced marriages make women vulnerable to violence since, if they lack the power to decide to enter into the union, they likely lack the power to decide to leave the union.

3.2 Domestic Violence

Although the Penal Code was amended in 2001, there are no specific provisions outlawing domestic violence.[24] Domestic violence is also not addressed in the State Party Report submitted by Mali, contrary to the request in the General Comment 28, paragraph 11, of the Human Rights Committee.

Reports indicate that domestic violence is an accepted part of daily life in Mali. As such, women rarely report instances of domestic violence, or if they do report the violence, social pressures encourage the victim to withdraw the complaint before conviction of the perpetrator.[25] The silence around this violence may explain the lack of information regarding the crime of domestic violence. Although some efforts have been made by the NGO community, particularly by the Association pour le Progrés et la Défense des Droits des Femmes (APDF), to encourage women to speak out against domestic violence, the problem remains. APDF reports that in the two year period from 2001 through 2002, they recorded 511 incidents of violence against women (in the city of Bamako).[26] Without more proactive efforts by the government to raise awareness about the pervasiveness of domestic violence and women's right to be free from such violence, women will continue to be victims of domestic violence.

It is reported that the government does not offer any services to women victims of domestic violence.[27]

A specific law outlawing domestic violence and providing special services to victims is essential to effectively combating this problem. Moreover, OMCT would also urge the government of Mali to collect statistics and other information regarding domestic violence and include such information in its future reports to UN human rights treaty bodies.

3.3 Marital Rape

Under the Malian Penal Code, marital rape is not a crime.[28] The Special Rapporteur on Violence Against Women, it Causes and Consequences noted in her most recent annual report that, in many countries, husbands can be prosecuted for assaulting their wives but not for raping their wives. She explains that under international norms, men and women are entitled to equal rights and responsibilities in marriage[29] and later asserts that the failure to criminalize marital rape is, in effect, "sanctioning a certain measure of violence by the husband against the wife in the home."[30]

In line with the assertions of the Special Rapporteur, OMCT views marital rape as a grave violation of a woman's basic human right to be free from violence.

3.4 Cultural Practices in the Family that Violate the Human Rights of Women and Girls

3.4.1 Early Marriage

Statistics have shown that women in Mali are married at a young age, with 22% being married by age 15 and 93% married before the age of 22.[31] The average age of marriage in Mali is reported to be 16.[32] Although the age of marriage appears to be rising slowly, the discriminatory law which allows women to be married as young as 15 prevents full eradication of early marriage.

Early marriage of girls makes them vulnerable to violence because of their disadvantaged position due to both their gender and their age. Frequently, when girls are married as children, their husbands are substantially older and able to exert considerable power over their child wives. Furthermore, early marriage often leads to early pregnancy and may thus prolong women's reproductive life. Childbearing during early or middle adolescence, before girls are biologically or psychologically mature, is associated with adverse health outcomes for both the mother and the child.[33]

3.4.2 Dowry

It appears that in Mali, a husband must pay a dowry for his wife. In the case of divorce, a woman must, by law, repay the dowry to the husband.[34] OMCT fears that the "purchasing" of brides through the payment of a dowry may relegate the woman's status to little more than a piece of chattel. The Special Rapporteur on Violence Against Women, its Causes and Consequences, in her 2002 annual report, recognized that the practice of dowry payments can lead to abuse of women because of the perception of women as property.[35]

3.4.3 Polygamy

Polygamy is common in Mali, with many people following Islamic laws which permit the practice.[36] Polygamy is also legal under Malian law, as mentioned above. About 43% of women and 24% of men live in polygamous unions in Mali.[37]

General Recommendation #21 issued by the Committee on the Elimination of Discrimination Against Women states that "[p]olygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited" and asserts that polygamy is a violation of Convention on the Elimination of All Forms of Discrimination against Women. Considering this General Recommendation and the serious negative effects that polygamy can have on a woman's physical and mental health, efforts should be made to raise awareness about the harms of such a practice and to outlaw the practice.

3.4.4 Female Genital Mutilation

According to the World Health Organisation, female genital mutilation (FGM) is defined as comprising "all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for cultural or other non-therapeutic reasons."[38] Factors such as religion, nationality and ethnicity result in differing practices concerning FGM. Because FGM varies across regional and ethnic lines, four classifications have been recommended by the World Health Organisation in order to clarify and standardize the terminology.

> Type I: Clitoridectomy: Excision of the prepuce, with or without excision of part or all of the clitoris.
>
> Type II: Excision: Excision of the prepuce and clitoris with partial or total excision of the labia minora.
>
> Type III: Infibulation: Excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening.
>
> Type IV: Unclassified: includes pricking, piercing, or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterisation by burning of the clitoris and surrounding tissues; scraping of tissue surrounding the vaginal orifice (angurya cuts) or cutting of the vagina (gishiri cuts); introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it; and any other procedure that falls under the definition of female genital mutilation.[39]

FGM is extremely common in Mali, with 94% of women having experienced the procedure in both urban and rural areas of the country.[40] A majority of women (80%) support the practice in Mali.[41] Generally, the surgery is performed on girls between the ages of 6 and 8.[42] Clitoridectomy and excision are the most common types of FGM performed on girls in Mali.[43]

FGM has serious physical and psychological consequences and it has been widely condemned by health professionals around the world. Particularly, the practice of FGM can cause inflammation and infection at the time of the procedure and it can seriously affect the health of a woman later in her life in pregnancy and during childbirth.

Although the government has instituted an executive order aimed at raising awareness about the harms of FGM, outlawing the practice is not envisioned by the government as of yet.

The Human Rights Committee, in its General Comment 28, paragraph 11, specifically requests information regarding FGM from reporting countries. Mali neglected to include information on this topic in its report and is thus urged to include such information in its future reports.

4. Violence Against Women in the Community

4.1 Rape

Malian legislation provides that rape can be punished with 5 to 20 years of "hard labour" and potentially can include exile from the community. The crime of rape is aggravated if the rape is committed by several persons or if the victim is under 15 years of age.[44]

Rape is not addressed in the government report of Mali, despite the request for information concerning this topic in General Comment 28, paragraph 11, of the Human Rights Committee.

There appears to be a lack of statistical information concerning rape. Reports indicate that families are reluctant to report rape in order to preserve the "honour" of the victim and the family.[45] Cultural attitudes that

treat rape as a shameful taint on the family honour rather than recognizing the violation of the victim's rights reinforce a culture of silence regarding rape and inhibit the eradication of the crime.

5. Violence Against Women at the Hands of State Agents

It is reported that state agents, particularly police, prosecutors and judges continue to treat women victims of violence without any regard and sometimes even with violence. The victims are blamed by the authorities for the crimes they have suffered.[46] Although APDF has conducted many trainings to try to counteract these attitudes towards women, much remains to be done by the government to ensure that its agents do not commit violence against women and treat women victims of violence with dignity and respect.

5.1 Detention

Women are vulnerable to violence in detention at the Police Commissariats because there is no specific place for women detainees. In violation of article 8 of the Standard Minimum Rules for the Treatment of Prisoners, women and men are sometimes kept in the same cells, rendering female inmates at risk of sexual violence by the male inmates. Women are also sometimes subject to abuse by the police who are in charge of the investigation.[47]

At the Bollé Center, there is a detention center specifically for women where they have access to aid from NGOs and other services.[48]

6. Conclusions and recommendations

Although Mali has ratified numerous international and regional instruments guaranteeing the human rights of women, and despite the fact that Mali's Constitution declares that women's human rights will be protected, women are discriminated against because of their gender and subjected to gender-specific violence. There still exist many laws in Mali that are facially discriminatory against women as well as cultural attitudes

towards and stereotypes of women, which prevent women's full enjoyment of their human rights.

OMCT regrets that, despite General Comment 28 adopted by the Human Rights Committee in March 2000, the Government report contains no information on violence against women and would call upon the Government to provide such information, including statistics on rates of violence against women in its next periodic report to the Human Rights Committee. It would also recommend Mali to submit the next report in due time.

OMCT recalls that Article 3 of the International Covenant on Civil and Political Rights obligates member States to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the Covenant. Mali's laws demonstrate a disregard for this article, with several provisions in the laws that facially discriminate against women in Mali. OMCT insists that the Malian government should eliminate all facially discriminatory laws. For example, any law denying the right of a Malian woman to pass on her citizenship to her child fails to guarantee equality between women and men in Mali and should be repealed. Additionally, laws granting husbands control over decisions regarding type of marriage, the marital residence, and their wife's ability and right to work should be repealed to grant women control over their own lives and to promote women to a position of equal decision-making within marriage.

OMCT further recommends that discriminatory laws concerning remarriage of women who are divorced or widowed be removed.

OMCT not only considers that facially discriminatory laws must be removed, but new laws aimed at guaranteeing women's equal rights also must be implemented. Such laws must be accompanied with the necessary political will for enforcement.

Cultural attitudes and stereotypes that consider women inferior make full equality of women with men in Mali impossible to achieve. OMCT considers education and awareness raising campaigns essential to combating discrimination and violence against women. Thus, besides new legislation which is more protective of women's human rights, the government must make efforts to raise awareness among the general population about laws existing in Mali that protect women's human rights. Additionally, such

awareness raising campaigns should address the gender disparity in education in Mali and encourage people to consider their daughter's education an investment as important as the education of their sons.

OMCT is concerned that the laws of Mali provide for differing minimum ages of marriage for girls and boys, with girls at 15 and boys at 18. Early marriage has been shown to render girls more vulnerable to domestic violence and, by prolonging their reproductive lives, it can also lead to other serious health consequences. OMCT would strongly encourage the government to raise this age limit to 18 years for both women and men and to ensure that the legal age limit for marriage is strictly enforced.

Practices such as early marriage, dowry payments, and polygamy can lead to violence against women because women often find themselves powerless with such arrangements. OMCT strongly encourages the government to outlaw such practices.

OMCT is particularly concerned by reports that forced marriage occurs in Mali, and is alarmed that State officials sometimes participate in putting pressure on a girl to submit to a forced marriage. Such a practice is a violation of a woman's fundamental human right to freely enter into marriage, contravening article 23(3) of the International Covenant on Civil and Political Rights. Although Malian law claims that marriage is only possible with the consent of both spouses, the government must also ensure the full implementation and enforcement of this law.

Although domestic violence is not well documented in Mali, it appears to be a serious problem. OMCT is very concerned that the Government has yet to develop a comprehensive policy and legislative response to this problem. OMCT would like to call upon the Government to urgently draft and adopt specific legislation for the prevention, prohibition and punishment of domestic violence along the lines of the guidelines submitted by the United Nations Special Rapporteur on violence against women to the fifty-second session of the United Nations Commission on Human Rights (U.N. doc. E/CN/.4/1996/53, Add.2). The measures that the government should envisage incorporating within domestic violence legislation include; the establishment of a system for the enforcement of *ex-parte* restraining and protective orders that would have the effect of ensuring that the perpetrator could not approach the victim and other witnesses and that the perpetrator be obliged to vacate the family home; and provisions

on the rights of victims to receive appropriate legal, medical and other assistance including alternative shelter and reparations.

Additionally, in light of reports that women victims of violence are sometimes treated badly, or even subject to more violence, when they report the crime to police, OMCT would recommend that all law enforcement personnel and members of the judiciary be given appropriate gender-sensitive training in responding to cases of domestic violence, rape and other forms of violence against women. OMCT also strongly encourages the government to establish a female police authority.

OMCT is very concerned that marital rape is not a crime in Mali and would call upon the Government to amend the Penal Code in order to ensure that rape in the context of marriage is criminalised.

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

The lack of information concerning the occurrence of rape in Mali is another cause of concern for OMCT. Although there is legislation that punishes rape severely, it appears that victims of this crime are reluctant to report it, in the interest of preserving the "honour" of the woman and her family. OMCT urges the government to raise awareness about available legal, medical and social remedies for rape victims. OMCT also insists that all incidents of rape be investigated and that perpetrators are prosecuted and punished with due diligence.

Although OMCT commends the establishment of a separate facility for women at the Bollé Center in Mali, we remain concerned that women in detention at Police Commissariats are sometimes kept in the same cells as men and are vulnerable to violence at the hands of prison agents. All necessary efforts should be taken to guarantee women the right to be free from torture and other cruel, inhuman or degrading treatment or punishment and OMCT would urge the government of the Mali to implement the Standard Minimum Rules for the Treatment of Prisoners.

Finally, OMCT would insist on the need to fully implement all provisions of the Convention on the Elimination of Discrimination against Women, the Declaration on the Elimination of Violence against Women as well as the Beijing Platform of Action, in Mali as these are the most relevant international instruments concerned with all forms of violence against women.

1 The complete text is available on the website of the Office of the High Commissioner for Human Rights: www.unhchr.ch and can be obtained under the symbol: UN Doc. CCPR/C/21/Rev.1/Add.10.

2 Article 81 Constitution of Mali.

3 Gonzales del Rio v. Peru (comm.. 263/1987, paragraph 5.2, decision adopted on 28 October 1992).

4 For further details, please see www.ilo.org.

5 Mali Constitution (2003).

6 Code de la Nationalité (information from the Association pour le Progrés et la Défense des Droits des Femmes (APDF), a member of the OMCT-SOS Torture Network).

7 Code Malien du Mariage et de la Tutelle (1962), art. 7.

8 *Ibid.* art. 34 &38.

9 *Ibid.* art. 32.

10 *Ibid.* chap. III, art. 4.

11 *Ibid.* art. 80.

12 *Ibid.* art. 101.

13 Information received from APDF (27.02.03).

14 Center for Reproductive Rights, *Claiming Our Rights: Surviving Pregnancy and Childbirth in Mali*, p. 51 (2003).

15 Information received from APDF (27.02.03).

16 *Ibid.*

17 See www.unicef.org for statistics.

18 Information received from APDF (27.02.03).

19 Law No. 86-96/AN-RM (12 July 1986).

20 UN Doc. CCPR/C/MLI/2003/2 (13 January 2003), p. 34.

21 Center for Reproductive Law and Policy, *Reproductive Rights of Young Girls and Adolescents in Mali: A Shadow Report*, p. 14, available at www.reproductiverights.org.

22 *Ibid.*

23 *Ibid.*

24 Information received from APDF (27.2.03).

25 Center for Reproductive Law and Policy, *Reproductive Rights, Ibid.*, p. 16.

26 Information received from APDF (19.08.02).

27 *Ibid.*

28 Center for Reproductive Law and Policy, *Reproductive Rights, Ibid.*, p. 16.

29 U.N. Doc. E/CN.4/2002/83, ¶ 62.

30 *Ibid.*, ¶ 101.

31 Center for Reproductive Law and Policy, *Reproductive Rights, Ibid.*, p. 14, available at www.reproductiverights.org.

32 Population Reference Bureau, Mali, Profil Démographique ; see also *Protect the Lives of Pregnant Women, Rights Groups Urge*, **Africa News**, Feb. 6, 2003 (claiming that median age of marriage for women is 16.5 years).

33 WHO Doc. WHO/FRH/WHD/97.8, *Violence Against Women.*

34 Code Malien du Mariage et de la Tutelle (1962), art. 3.

35 U.N. Doc. E/CN.4/2002/83.

36 Information received from APDF (27.02.03)

37 Center for Reproductive Rights, *Claiming Our Rights, Ibid.*, p. 53.

38 WHO, Female Genital Mutilation : An Overview, 1998.

39 *Ibid.*

40 Center for Reproductive Rights, *Claiming Our Rights*, *Ibid.*, p. 51.

41 *Ibid.*, p. 52.

42 *Ibid.*

43 *Ibid.*

44 Center for Reproductive Law and Policy, *Reproductive Rights, Ibid.*, p. 15.

45 *Ibid.*, p. 16.

46 Information received from APDF (27.02.03)

47 *Ibid.*

48 *Ibid.*

Human Rights Committee

Seventy-seventh session – 17 March - 4 April 2003

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations by the Human Rights Committee: Mali

1. The Human Rights Committee considered the second periodic report of Mali (CCPR/C/MLI/2003/2) at its 2083rd and 2084th meetings, held on 24 and 25 March 2003 (CCPR/C/SR.2083 and 2084). It adopted the following concluding observations at its 2095th and 2096th meetings (CCPR/C/SR.2095 and 2096), held on 2 and 3 April 2003.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of Mali and the opportunity thus afforded to it to resume its dialogue with the State party after an interval of more than 20 years. In the view of the Committee non-submission of a report over such a lengthy period reflects a failure on the part of Mali to discharge its obligations under article 40 of the Covenant and an obstacle to in-depth consideration of the measures to be taken to ensure satisfactory implementation of the Covenant. The Committee invites the State party to submit its reports henceforth in accordance with the reporting interval established by the Committee.

3. The Committee welcomes the information provided on political and constitutional developments in the State party as well as on the constitutional and legal framework created by the democratic renewal since

1990. Nevertheless it regrets the formalistic nature of the second periodic report, which is not in accordance with the Committee's guidelines: the report contains very little information on the day-to-day implementation of the Covenant or on factors and difficulties encountered. The Committee notes with regret that the report does not address the issues transmitted to the State party in advance. It regrets that the delegation was unable to reply in depth to the questions and concerns raised in the list of issues as well as during consideration of the report.

B. Positive aspects

4. The Committee welcomes Mali's transition to democracy in the early 1990s. It notes the efforts made by the State party to ensure greater respect for human rights and establish a State governed by the rule of law through the initiation of wide-ranging programmes of legislative reform, settlement of the conflict in the north and establishment of the position of ombudsman. The Committee notes that these efforts have been made despite the meagre resources available to the State party, and the difficulties facing it.

5. The Committee welcomes the moratorium on the application of the death penalty in force in Mali since 1979, and the current trend towards the abolition of capital punishment.

6. The Committee commends the State party on the measures it has taken to combat the trafficking of Malian children to other countries.

C. Principal subjects of concern and recommendations

7. The Committee notes that under the Constitution treaties take precedence over legislation and that, according to information supplied by the delegation, the Covenant can be invoked directly before national courts. It regrets, however, that specific instances in which the Covenant has been directly invoked, or in which the Constitutional Court has considered the compatibility of national legislation with the Covenant, have not been brought to its attention.

The State party must ensure that judges, lawyers and court officers, including those already in service, are trained in the content of the Covenant and the other international human rights instruments ratified by Mali. The Committee wishes to be provided with more comprehensive information on the effective remedies available to individuals in the event of violation of the rights set forth in the Covenant, as well as instances in which courts or tribunals have invoked the provisions of the Covenant.

8. The Committee notes with concern that the National Advisory Commission on Human Rights, established in 1996, is yet to meet.

   The State party should take appropriate measures to allow the National Advisory Commission on Human Rights to function, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights ("Paris Principles"), as set forth in General Assembly resolution 48/134.

9. The Committee, while welcoming the conclusion in 1992 of the National Pact between the Government and the rebel movement in the north of the country, regrets that it has not been provided with adequate information on the status of implementation of the peace agreements.

   The Committee wishes to receive more detailed information in this regard, in particular on the repatriation of Malian refugees, economic and social development in the north, and the effects of the policy of decentralization on pacification and the situation of human rights in that region.

10. While welcoming the establishment of a Ministry for the Advancement of Women, Children and the Family, the Committee expresses its grave concern at the continued existence in Mali of legislation which discriminates against women, in particular with regard to marriage, divorce, and inheritance and succession, and of discriminatory customary rules relating to property ownership. The Committee, while appreciating that adoption of a Family Code requires wide-ranging consultations, notes with concern that the proposed reform, ongoing since 1998, has not yet concluded. The

Committee is also concerned by information that the practice of the levirat, a practice whereby a widow is inherited by the deceased husband's brothers and cousins, is said to persist in Mali (articles 3, 16 and 23 of the Covenant).

(a) The State party should expedite adoption of the Family Code; the Committee recommends that it should comply with the provisions of articles 3, 23 and 26 of the Covenant, in particular with regard to the respective rights of spouses in the context of marriage and divorce. In this connection the Committee draws the attention of Mali to its General Comment No. 28 (2000) on equality of rights between men and women, in particular with regard to polygamy, a practice which violates the dignity of women and constitutes unacceptable discrimination against women. The State party should abolish polygamy once and for all.

(b) Particular attention should be paid to the question of early marriage by girls, a widespread phenomenon. The State party should raise the minimum legal age for marriage by girls to the same age as for boys.

(c) The State party should establish a succession regime that does not discriminate against women: equality of heirs without discrimination on the basis of sex should be guaranteed, and the State should ensure that there are better guarantees of the rights of widows and that on succession there is a fair distribution of assets.

(d) The State party should abolish the levirat once and for all and apply appropriate penalties against those engaging in the practice, and take appropriate measures to protect and support women, especially widows.

11. The Committee notes with concern that a very high percentage of women in Mali have reportedly been subjected to genital mutilation. The Committee welcomes the programmes already implemented by the authorities and non-governmental organizations to combat the practice, but regrets that there is no specific legal prohibition. The State party, moreover, has not been able to provide precise information on the specific results produced by the actions already taken (articles 3 and 7 of the Covenant).

The State party should prohibit and criminalize the practice of female genital mutilation so as to send a clear and strong signal to those concerned. The State party should strengthen its awareness-raising and education programmes in that regard, and inform the Committee, in its next periodic report, of efforts made, results obtained, and difficulties encountered.

12. The Committee is concerned about reports of domestic violence in Mali and the failure by the authorities to prosecute the perpetrators of these acts and to take care of the victims. Bearing in mind the delegation's reply, to the effect that domestic violence is punishable under the current provisions of the Penal Code, the Committee stresses the need for special legislation to deal with such violence, given its specific nature (articles 3 and 7 of the Covenant).

    The State party should adopt specific legislation expressly prohibiting and punishing domestic violence. Victims should be properly protected. The State party should adopt a policy of prosecuting and punishing such violence, including by issuing clear directives to that effect to its police and through appropriate awareness-raising and training measures for its officials.

13. The Committee states its concern about reports that women do not enjoy rights on an equal basis with men as regards political participation and access to education and employment.

    The State party should strengthen its efforts to promote the situation of women in the area of political participation, access to education and access to employment, and invites the State party to give information, in its next report, on the action it has taken and the results obtained.

14. While noting the considerable efforts made by the State party, the Committee remains concerned by the high maternal and infant mortality rate in Mali, due in particular to the relative inaccessibility of health and family planning services, the poor quality of health care provided, the low educational level and the practice of clandestine abortions (article 6 of the Covenant).

So as to guarantee the right to life, the State party should strengthen its efforts in that regard, in particular in ensuring the accessibility of health services, including emergency obstetric care. The State party should ensure that its health workers receive adequate training. It should help women avoid unwanted pregnancies, including by strengthening its family planning and sex education programmes, and ensure that they are not forced to undergo clandestine abortions, which endanger their lives. In particular, attention should be given to the effect on women's health of the restrictive abortion law.

15. The Committee is concerned by reports of cases of torture and extrajudicial executions, allegedly committed by soldiers in 2000 following the murder of three tourists in Kidal. The Committee finds it difficult to accept the view of the delegation that there were no extrajudicial executions, even though no inquiry has been conducted by the State party. The Committee is also seriously concerned by the delegation's statement that no inquiries have been conducted into the complaints of torture and inhuman or degrading treatment made by members of opposition parties arrested in 1997, because of the national reconciliation process and the need to protect public order (arts. 6 and 7).

    The State party should avoid the growth of a culture of impunity for the perpetrators of human rights violations, and should ensure that systematic inquiries are conducted into allegations of violence against life and limb by its officials.

16. The Committee regrets that the State party has not given a clear response to the reports of slavery-like practices and hereditary servitude in the north of the country. While domestic law does not authorize such practices, the Committee is seriously concerned about their possible survival among the descendants of slaves and the descendants of slave-owners. The Committee stresses that the lack of complaints about such practices cannot be adduced as proof that the practices themselves do not exist (art. 8).

    The State party should conduct a careful study of the relations between the descendants of slaves and the descendants of slave-owners in the north of the country, with a view to determining whether slavery-like practices and hereditary servitude still continue and, if so, to inform the Committee of measures taken in response.

17. Recalling the efforts undertaken by the State party in this regard, the Committee remains concerned by the trafficking of Malian children to other countries in the region, in particular, Côte d'Ivoire, and their subjection to slavery and forced labour (art. 8).

    The State party should take action to eradicate this phenomenon. Information on measures taken by the authorities to prosecute the perpetrators of this traffic, as well as more precise details of the numbers of victims and of children benefiting from protection, repatriation and reintegration measures, should be provided in the next periodic report.

18. While welcoming the various programmes adopted by the State party, the Committee is very concerned about the situation of migrant girls leaving the countryside for the towns to work as domestic servants and who, according to some reports, work an average of 16 hours a day for very low or non-existent wages, are often the victims of rape and ill-treatment, and may be forced into prostitution (art. 8).

    The State party should intensify its efforts to punish those responsible for the exploitation of these migrant girls. The State party should adopt and develop appropriate complaint and protection mechanisms and is urged to provide information on the number of girls subjected to such exploitation, the number of those benefiting from protection and reintegration measures, and the content of its labour legislation and criminal law in this area.

19. The Committee notes that, under Malian law, police custody may be extended beyond 48 hours, and that such extensions are authorized by the public prosecutor.

    The State party should: (a) supplement its legislation to conform to the provisions of article 9, paragraph 4, of the Covenant, which requires that a court decide without delay on the lawfulness of detention in custody; and (b) supervise the conditions of such custody, in accordance with article 9 of the Covenant. Precise information about the rights of persons in custody, measures to uphold these rights in practice and the methods of supervising conditions under which people are held in custody should be provided in the next periodic report.

20. The Committee is concerned by reports of the hardship suffered by some 6,000 Mauritanian refugees who, for the last 10 years, have been living in the west of the country (Kayes region), are not registered, possess no identity papers, have the de facto status of stateless persons and whose right to physical security is not sufficiently protected.

    The State party should enter into discussions with the Office of the United Nations High Commissioner for Refugees (UNHCR), with a view to improving the status and conditions of these persons.

21. The Committee sets 1 April 2005 as the date of submission of Mali's third periodic report. It requests that the text of the State party's second periodic report and its present concluding observations should be published and widely disseminated throughout the country and that the third periodic report should be brought to the attention of civil society and non-governmental organizations working in Mali.

22. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should within one year provide information on its response to the Committee's recommendations contained in paragraphs 10 (a) and (d), 11 and 12. The Committee requests the State party to provide in its next report information on the other recommendations made and on the implementation of the Covenant as a whole.

Violence against Women in Russia

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

Contents

1. Preliminary Observations

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

OMCT regrets that the government report submitted by Russia to the Committee on Economic, Social and Cultural Rights does not address violence against women. Furthermore, although it addresses some issues with respect to women, it broadly points the Committee members to its report to the Committee on the Elimination of Discrimination Against Women as a reference document for its policies regarding women, instead of integrating a gender perspective throughout its report.

In line with the overall objectives of OMCT's programme on Violence against Women, this alternative report will focus on Russia's international obligations in relation to the prevention and eradication of violence against women. After a brief introduction, this report will examine violence against women in the family, in the community, at the hands of State agents, specifically in prison and against women human rights defenders, and in the context of armed conflict, namely the war in Chechnya.

The Russian Federation emerged from the fall of the Soviet Union in 1991. With a population of at least 144,978,573, the country is divided into 21 republics. Russia's population is diverse, claiming 140 different nationalities and ethnic groups.[1] The Russian Constitution was adopted in 1993 and it established a government structure that is divided into three branches: the executive (President), the judiciary and a bicameral legislature (consisting of the Federal Assembly and the State Duma). The transition to a market economy in Russia since 1991 has been a difficult process and human rights violations have been implicated in this process, in particular, the human rights of women, which will be discussed below.

Russia ratified the International Covenant on Economic, Social and Cultural Rights on October 16, 1973 (it inherited this ratification from its predecessor, the USSR). Additionally, Russia has ratified the following international human rights treaties: the International Covenant on Civil and Political Rights (October 16, 1973), the Convention Against Torture (March 3, 1987), the Convention on the Elimination of All Forms of Discrimination Against Women (January 23, 1981), the Convention on the Rights of the Child (August 17, 1990), and the Convention on the Elimination of All Forms of Racial Discrimination (February 4, 1969). Russia has also ratified the Optional Protocol to the International Covenant on Civil and Political Rights, allowing the Human Rights Committee to hear individual complaints and investigate grave and systematic violations of human rights. Similarly, Russia has recognized the competence of the Committee against Torture (Article 22) and the Committee on the Elimination of Racial Discrimination (Article 14) to hear individual complaints. OMCT notes that Russia has signed but not yet ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.

On a regional level, Russia has ratified the European Convention on Human Rights and its Protocols 1, 4, and 7 (May 5, 1998). Importantly, Russia is also a State Party to the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (September 1, 1998).

In Russia, international treaties take precedence over national law. This is clearly established by Article 15(4) of the Constitution, which provides that "if an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty apply."

1.1 Human Rights in Russia

Although many human rights are guaranteed under Russian legislation, the country has a varied human rights record. In particular, violations of both economic, social and cultural rights as well as civil and political rights have been documented. For example, access to health care and to education is becoming increasingly difficult in Russia. Additionally, free-

dom of expression and the principle of non-discrimination are frequently disregarded.

The Russian health care system became highly decentralized during the early 1990s with many aspects of the relationship between regional and federal levels remaining unclear. Due to limited resources and sometimes outdated practices, the quality of the health care system remains poor.[2] The challenges this system is facing are various: Birth-rates are still falling and even though infant mortality is decreasing, the health of young people is threatened by rising rates of substance abuse and the rapid growth of HIV/AIDS and other sexually transmitted diseases. The number of children born to HIV-positive mothers is steadily growing. The problem of care for these children becomes more acute as their numbers increase. Women's health is jeopardized by relying on abortion as a means of birth control.[3] Additionally, the number of people infected with tuberculosis is rising significantly.[4]

A decline in governmental funding and widely varying standards threaten educational quality in Russia.[5] Much of the education sector in Russia was decentralized under the 1992 Education Act. Under this law, responsibility for general education and school finance was entrusted to regional (*oblast*) and local (*rayon*) authorities. This rapid decentralization attempt, however, lacked the commensurate transfer of resources and never spelled out the extent of government responsibility. There is genuine concern that the emphasis on educational decentralization and diversity is creating greater inequities and contributing to a narrowing of educational choices and opportunities. Today the education system faces an increase in social stratification, a differentiation among educational institutions, and the emergence of a system of paid education services. All these developments are making education less accessible to low-income citizens.[6]

Freedom of expression has been severely curtailed by government arrests of alleged spies. These cases are typically characterized by unfair trial tactics and procedural irregularities. Freedom of expression is also limited by serious constraints on the media, with few independent television stations and alarming reports of suspicious deaths of journalists.[7] In fact, Russia has been labeled as the second most dangerous country in the world for journalists to work in.[8] Freedom of expression was further limited by the passage of the law on political extremism in Russia in June 2002. This

law offers no clear definition of "political extremism," which gives law enforcement officials a wide berth in interpreting its meaning and arresting people arbitrarily. Solely on the basis of this vague notion of political extremism, persons can be jailed for up to five years.[9]

Racial discrimination is reportedly widespread in Russia. Certain minorities, particularly the Roma, are targeted by the police with discriminatory treatment in the form of racial profiling. Discrimination against minorities is also evident in the denial of access to registration, which in turn affects access to basic services such as health services and education, because victims of this type of discrimination are not officially recognized in the Russian territory. Additionally, minorities in Russia experience discrimination in access to public accommodations (such as supermarkets), access to employment, access to education, and in their portrayal by the media.[10]

1.2 Chechnya

The conflict in Chechnya has been the source of many human rights violations in Russia. It has received much international attention, although access to the region has become increasingly restricted. Violations of economic, social and cultural rights are also a serious problem in Chechnya. OMCT conducted a training seminar in Ingushetia, the neighboring Republic to Chechnya, on economic, social and cultural rights, and collected much information on the situation in that regard. For more detailed information on this topic, please see OMCT's alternative report to this Committee "Chechnya: No Means to Live: An Appraisal of Violations of Economic, Social and Cultural Rights."

The history of this conflict is complex and will only be treated briefly here. As the Soviet Union began opening up in the 1980s, there was more allowance for the expression of nationalism and ethnic identity. Thus, in November 1991, Djokhar Doudaev, a former general in the Soviet army who was elected president in Chechnya, declared Chechnya to be independent from Russia, although Chechnya was never recognized by Russia or the international community as a sovereign state. In 1992, a Constitution was approved by the Parliament of Chechnya but in 1993, after a dispute with the Parliament, Doudaev installed an authoritarian regime.[11]

In December 1994, the Russian army entered Chechnya in an attempt to restore Russian sovereignty over the territory. The war that ensued was devastating for Chechnya and it lasted for almost two years due to the strong resistance by Chechen fighters. On August 31, 1996, the Chechen fighters and the Russian military signed a peace agreement, which became known as the Khasa-Vjurt agreement. According to this agreement, Russian troops would withdraw from Chechen territory and the status of the Chechen Republic was supposed to be the subject of long-term bilateral talks.

The first war destroyed the cities of Chechnya and was characterized by massive accounts of torture, ill treatment, disappearances, summary executions and arbitrary detention. It is estimated that between 50,000 and 100,000 civilians died in this war, and the Russian army lost between 3,000 and 10,000 soldiers. In the years that followed, very little was done to rebuild Chechnya.

Between 1997 (when the last Russian troops left Chechnya) and October 1999, Chechnya enjoyed self rule. Aslan Maskhadov was elected President (Doudaev was killed in the first war) and Chechnya was renamed "Ichkeria." However, with a country devastated by war, rising crime rates and hostage-takings became more and more common. There was also a movement against the installed government to instead establish a regime based on Islamic principles. The supporters of this movement envisioned a republic that re-united Chechnya with Dagestan under one Islamic state, and they invaded Dagestan from Chechen territory in August 1999. The Russians alleged that the Chechen government had connections to the group that invaded Dagestan and used this as a pretext to invade Chechnya in October 1999, claiming it was an "anti-terrorism operation."

The presence of Russian troops in Chechnya continues through the present and has led to many serious human rights abuses. In particular, there have been well-documented reports of widespread enforced disappearances, torture, summary executions, ill treatment, arbitrary detention, rape, forced evictions, and many other grave abuses perpetrated by Russian forces. After the September 11 attacks in the United States, Russia has found more justification for its "anti-terrorist operations" and the abuses continue with impunity.

The Chechen fighters have also violated human rights guarantees. Their attacks have focused on civilian members of the pro-Moscow government in Chechnya, including a bomb of the government headquarters which killed 45 people and injured some 80 others.

In its most recent visit to Russia, the European Committee for the Prevention of Torture concluded that "there is a continued resort to torture and other forms of ill-treatment by members of the law enforcement agencies and federal forces operating in the Chechen Republic, and that action taken to bring to justice those responsible has proved largely unproductive."[12]

The year 2003 has witnessed an attempt by the Russian government to "normalize" the situation in Chechnya. In March 2003, there was a constitutional referendum which approved a constitution establishing Chechnya as an autonomous republic within the Russian Federation, but the legitimacy of the referendum has been seriously doubted. Additionally, in October 2003, a presidential poll was held, in which Akhmad Kadyrov was elected. Similarly however, many doubts were expressed about this poll as many of the serious opposition candidates were forced out of the race a month before.

2. Status of Women in the Russian Federation

Women's equality is guaranteed in Russian national legislation. Specifically, Article 19 of the Constitution guarantees equal rights and equal opportunities to women and men. Women's equal rights are also provided for under the following laws of Russia: the Code of Labour Laws, the Law "On the Fundamentals of the RF Public Service," the Family Code, and the Criminal Code.[13] Additionally, there are several national institutions specifically concerned with women's rights, such as the Committee on the Affairs of Women, Family and Youth within the State Duma, the Committee on the Issues of Social Policy, which addresses women's equality under the Council of the Russian Federation, and the Commission on the Problems of Women's Status, which has been established at the federal level in the executive branch.

Despite these guarantees of equality and mechanisms concerned with women's rights, implementation is reportedly the biggest obstacle to

ensuring women's equality in Russia. No specific mechanism exists for prosecuting violations of the principle of non-discrimination with respect to gender, and any such claims are handled generally by the Ombudsman of the Russian Federation.[14] Cases of discrimination are very difficult to prove under the current system. Firstly, there is no definition of sex discrimination in Russian legislation. With respect to institutional discrimination, judges often require that victims change their claim from alleging discrimination to claiming violation of a specific right or they advise claimants to target their allegations against public officials, rather than institutions. These barriers present a potential explanation for the lack of claims of institutional discrimination.[15] It is also reported that efforts to install affirmative action policies to ensure equality between women and men are met with much resistance in the legislature and are rarely put into practice.[16]

With regard to women in government and politics, their participation levels are low. Only one woman has been appointed in the current Russian Federation government and the Federal Assembly has only 2 women.[17] Women make up only 7.6% of the members of the State Duma and in regional legislatures, they constitute only 10%.[18] Although it does not appear to be widespread, women involved in politics have been threatened and even subjected to violence on account of their candidacy. Generally, lack of financial resources is deemed the main reason for the lack of women in politics.[19] Reportedly, stereotypes dictate that government legislative work is more appropriate for men than for women.[20]

With the transition from a communist regime to a market economy, women have suffered especially with regard to work. In the early 1990s, many women were pushed out of work and they made up two-thirds of the unemployed. While the level of unemployment has roughly equalized between men and women, women still experience serious discrimination in the labour market. Russia has fallen victim to the larger global phenomenon of the feminization of poverty. Women generally have lower salaries than men—reportedly between 33% and 50% lower—despite the fact that many women are more educated than their male counterparts. Although women comprise 55% of all public servants, only 1.3% of these women actually hold positions with decision-making power.[21] Additionally, an opinion poll revealed that 56.3% of Russians believed that in situations of job shortage, men should be given priority by employers.[22] One

commentator has observed that the prevailing stereotype is that a woman cannot be the head of an enterprise, but only the assistant.[23] One Russian legislator, illustrating this stereotype, has been quoted as saying: "The man, driven by his hormones, is a real leader and fighter, whereas a female leader is an exception. Males are top managers – it is in their nature. The woman is an assistant."[24]

Additionally, the prevailing public opinion is that many employers do not hire women because of the extra expenses associated with maternity leave.[25] In connection with this view, it is reported that young women without children are discriminated against in the labour market because of the presupposition that they will become pregnant.[26] In some instances, women are reportedly made to sign employment contracts or to agree to conditions that they will not get pregnant. When women do become pregnant, instead of receiving paid maternity leave, they are frequently forced to resign or they are fired.[27]

Russian culture and society view women as being primarily responsible for their families, in their role as wife and mother. This label makes it very difficult for women to effectively balance their family and professional life. The need to give priority to the family as well as women's lower status in society with respect to economic, social and cultural rights, leaves women with less competitiveness in the labour market and enormous obstacles to establishing her career.[28] Additionally, recent societal changes have lead to an increased emphasis on the importance of women staying at home to care for children, as opposed to previous generation's focus on the importance of outside work for women. This shift has reportedly led to an increased economic dependence of women on their husbands or partners. Even after a couple divorces, women sometimes remain in the home with the ex-husband because they have no economic possibility of leaving.[29] The potential effects that this situation has on women's vulnerability to violence will be explored below.

3. Violence Against Women in the Family

3.1 Domestic Violence

Russian proverb – "A beating man is a loving man"

Russia has no specific legislation addressing domestic violence and has not developed a definition of the term. If a woman files a case, it will likely be dealt with under general assault provisions. For instance, cases of domestic violence may be prosecuted under Article 115 of the criminal code of Russia, which criminalizes "a deliberate infliction of light harm to health that caused a short-term health disorder or a minor but persistent loss of the general ability to work."[30] Where domestic violence has endured for a long time on a systematic basis, Article 113 may be used, which criminalizes "causing physical or mental suffering by means of systematic beating or other violent actions."[31]

There was reportedly a project to develop legislation on domestic violence but it was not approved, and at least one gender expert feels that the current Duma is not interested in this topic.[32] Her view is confirmed by the statement of one legislator from the Moscow City Duma who has explained that the legislature did not consider it "necessary" to adopt any legislation on any form of discrimination against women.[33] Specific legislation criminalizing domestic violence is important, recognizing the special relationship and interdependence between the victim and the perpetrator, which gives rise to the necessity for specially designed laws to combat this form of violence.

Domestic violence is reportedly widespread in Russia, and it is generally considered that available statistics do not accurately reflect the magnitude of this problem. The government report to the Committee on the Elimination of Discrimination Against Women acknowledged that as many as 14,000 women are killed by family members every year.[34] Significantly, in 1996, the Internal Affairs Ministry revealed that 80% of all murders were committed within families.[35] It is also reported that 36,000 women are beaten on a daily basis by their husband or partner and that three quarters of all Russian women suffer from some type of domestic violence.[36] Another research study revealed that an average of 79% of married women participants were victims of psychological violence, 50% of married women participants were subjected to physical violence, and 23% of married women participants were victims of sexual violence.[37]

Patriarchal values have led to a prevailing opinion that women should be in the home as demonstrated by a recent opinion poll revealing that 78% of all Russians hold such a view.[38] Also, there is an overwhelming

perspective that domestic violence is a private matter, with 43% of respondents in an opinion poll expressing this view, and one third of respondents recommending that women victims of violence reflect on why they "deserved the beating." Stereotypical images of women perpetuate violence within the family by blaming the victim for provoking the violence or creating justifications for the perpetrator's violence, i.e. "he was drunk," "he is going through a difficult time," "he could not control his actions."[39]

Significantly, several reports indicate that alcoholism and socio-economic conditions are cited as the main causes of domestic violence. Attributing gender specific violence to such causes neglects the underlying imbalance of power between men and women in Russia. Worldwide research on domestic violence has shown that such violence spans across all socio-economic classes of persons and that it often stems from power differentials as well as a need to control a woman's sexuality. Deeper causes of domestic violence must be addressed in order to effectively combat this type of violence rather than only focusing on surface, exacerbating causes of domestic violence such as socio-economic conditions and alcoholism.

Treating domestic violence as a private matter and blaming the victims are also common practices on the part of law enforcement officials.[40] Women victims of violence are often blamed for having provoked the attack. In addition, the police rarely take complaints of domestic violence seriously. If they do arrest the perpetrator, he is often released quickly and sometimes returns to the home even more violent than before. Local officials often have no experience in protecting victims from further violence and thus, the fear of further violence is a real threat to women who file complaints.[41] Women may also be at risk of further violence by police officials if they go to the police station.

Given these attitudes, women are often discouraged from seeking legal help from the police or the judicial system. In fact, statistics show that as many as 40% of women victims of domestic violence do not seek help from law enforcement officials.[42] Police claim that domestic violence is decreasing since they are receiving fewer complaints, but one women's NGO has highlighted that this claim is erroneous given the fact that women are hesitant to present themselves to the police.[43]

Although several crisis centers, run by NGOs, provide invaluable support to women victims of domestic violence, there is a severe shortage of shelters for domestic violence victims. It is reported that there are actually no shelters in Moscow for battered women.[44] This makes it very difficult for a woman to leave an abusive relationship because she has no safe place to go to. This, combined with the economic reality that many women do not have the financial means to move out of the apartment, results in a situation where many women remain in the same apartment with violent partners, even in cases where they have technically divorced. One report indicates that in these circumstances, sometimes "the former husband actually feels that he is beyond the law since he is not a husband anymore. At that point, the abuse manifests itself with new force."[45]

In general, crisis centers and shelters in Russia suffer from a severe shortage of funds. It has also been observed that the personnel of these organizations are ill-equipped to handle claims of gender based violence and that trainings are urgently needed to ensure that situations of violence are not made worse.[46]

3.2 Marital Rape

Marital rape is not specifically criminalized in Russia nor is it specifically legal—it is considered under general rape provisions. Social attitudes towards rape within marriage though seem to indicate that many people do not think such a crime exists. In an opinion poll, 70% of respondents indicated that they did not believe a woman's consent was necessary for sexual intercourse in marriage.[47] One crisis center has reported that, according to their records, as many as 47% of domestic violence cases result in pressure to have sex.[48] Like domestic violence, specific legislation criminalizing marital rape is very important given the relationship and interdependence between the perpetrator and the victim.

3.3 Polygamy

Although polygamy is formally prohibited by Russian legislation, this marriage arrangement is still common in some areas of the Federation, particularly in the Caucasus. Support for this practice was demonstrated when, in 1999, the President of the Republic of Ingushetia, introduced

legislation that would legalize polygamy in that region. The legislation enjoyed the support of the majority of the population of the Ingushetian Republic, but was not passed into law because it contradicted the federal law prohibiting polygamy.[49]

Generally, in polygamous marriages, only the first wife has an officially registered marriage and the rest of the wives are married unofficially, leaving these women without the official governmental protections afforded to persons in the context of marriage.

General Recommendation #21 issued by the Committee on the Elimination of Discrimination Against Women states that "[p]olygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited" and asserts that polygamy is a violation of CEDAW.

4. Violence Against Women in the Community

4.1 Rape

Rape is defined under Article 313 if the criminal code of Russia as "sexual intercourse with the use of violence or threat of violence against a female victim or other persons or by taking advantage of the helpless state of a female victim and shall be punished by imprisonment for 3 to 6 years." The punishment for rape can be increased (4 to 10 years) depending upon several aggravating factors such as a perpetrator who is a repeat offender; a rape committed by a group of persons; a rape accompanied by death threats, grievous harm or particular cruelty; a rape resulting in venereal disease; or a rape of a woman who is clearly under age. Factors resulting in the maximum punishment for rape (8 to 15 years) include accidental death, accidental infliction of severe harm; infection of the victim with HIV or rape of a girl clearly under the age of 14.[50]

Although the number of reported rape cases has been declining over the past years (with 9,766 cases being reported in 1999), it is important to note that rape is notoriously under-reported and that the numbers rarely reflect reality.[51]

Similar to domestic violence, victims of rape face serious obstacles in pressing charges against the perpetrators because of societal views. Stereotypical attitudes often blame the victim for promiscuous behavior which "invites" rape. One victim's statement serves as an important illustration of this tendency: "The fact is that some of my friends and I have also been raped. None of my friends reported to the police but I did and I regret it to this day. I have never been more humiliated, insulted and condemned than back then. It turned out that I was to blame for what had happened to me. My mother saved me from suicide whereas the police almost encouraged me to commit it."[52]

Additionally, law enforcement officers reportedly delay in sending rape victims to the hospital for a medical exam, thus losing essential evidence for a case against the perpetrator. With respect to medical exams, due to the poorly written law which does not adequately lay out the obligations of public officials, as well as serious bureaucratic obstacles, medical examiners reportedly do not conduct exams of rape victims unless they are explicitly responding to questions posed by the judge on the case. This creates grave problems for the victims since the medical evidence will likely be lost by the time the judge issues such questions or instructions.[53]

There is no program of protection for rape victims, thus leaving them vulnerable to further contact with the rapist, members of the rapist's family, or the rapist's friends. Furthermore, there is no specific department within the police department that deals with sex crimes, and there is no program of training available for police officers concerning how to handle rape cases in a sensitive manner.[54]

Alarmingly, women may face further violence when they go to the police station. In one case, it is reported that two women went to the police station to report the rape of one of the women. Both women were locked up and raped in the police station by police officers. It is reported that this case is not out of the ordinary.[55]

4.2 Trafficking

Trafficking is another serious problem in the Russian Federation, which is both a country of origin, transit and destination for trafficking victims. Since the fall of the Soviet Union, women in the former Soviet countries

have been particularly vulnerable to trafficking for a combination of reasons, including poverty, discrimination, and violence, which implicate their economic, social and cultural rights.

Trafficking in human beings has become a serious global concern. International criminal groups, whose activities often include other forms of illicit trade such as smuggling of drugs and arms, often control trafficking in persons as well. In addition to abusing human rights, and violating labour and migration laws, trafficking in persons is also a problem of national and international security.

Many women fall prey to trafficking schemes because of the adverse labour market conditions for women in Russia. It has been reported that women have fewer work opportunities than men. Thus, the level of education alone is reportedly not an effective indicator of who will become a trafficking victim as women with higher educations are also susceptible to these schemes.[56]

Additionally, visa restrictions in foreign countries make it exceedingly difficult for Russian women to find work abroad, given that they often seek low-skill employment. In these circumstances, many Russian women seek help from "employment agencies," which provide false promises of legitimate jobs abroad. When the women arrive in the foreign country, their passports and other papers are confiscated and they are often forced into prostitution.[57]

One opinion poll has revealed that, despite the fact that 85% of women considered trafficking to be a problem, 65.5% were still interested in leaving Russia to work abroad.[58] The Angel Coalition, a network of NGOs fighting against trafficking in the region, has documented 350 cases of trafficking in Russia, but they suspect that the number of victims could be as high as 5,000 per year.[59]

Women from the Newly Independent States are reportedly trafficked through Russia frequently in transit to third countries.[60] Trafficking victims are also reportedly working within Russia, having been trafficked from countries such as Moldova, Uzbekistan, Tajikistan, Kazakstan, Ukraine and Belarus.[61] Within Russia, traffickers reportedly have connections with local police, making it especially complicated for trafficking victims to escape from the hold of their captors.[62]

In February 2003, the State Duma proposed a draft law that would outlaw trafficking in persons and slavery. However, this legislation is still being developed and is not yet in force.

Furthermore, lack of resources, widespread corruption, and lack of understanding of this crime among the police, mean that cases are rarely investigated effectively. Victims who are returned to Russia are reportedly scared to press charges against the employment agencies who arranged the trafficking because of the power of organized crime in Russia and a lack of faith in law enforcement institutions.[63]

There is a lack of shelters (with only 5 across the entire Russian Federation) and there are no support services for trafficking victims who have been returned to Russia. The lack of shelters is a serious problem because, when trafficking victims are deported back to Russia, they are frequently sent to the "nearest point," usually Moscow. With no support services, the victims are forces to continue working in prostitution in order to have enough money to return home. Fortunately, an increase in the number of shelters is foreseen over the next year.[64]

4.3 Sexual Harassment

There is no law specifically prohibiting sexual harassment in Russia.

Sexual harassment of women in the workplace appears to be commonplace. One research project documented cases of sexual harassment in small businesses, where many women work. The cases indicate that women are often harassed but they rarely make complaints being resigned to "accepting the rules of the game." The typical case involves managers who propose relationship with female workers.[65] Another report indicates that when a woman is hired, she is told that her employment is conditioned on her willingness to subject herself to the proposals of her boss – this condition is implicitly stated in requests, for example, that she "go to the sauna" with the boss and the clients.[66] Although these forms of sexual harassment are openly directed against women, women rarely complain for fear of losing their jobs.

5. Violence Against Women Perpetrated by State Agents

5.1 Violence against Women in Prison

Women constitute 5.6% of the prison population in Russia, with about 58,000 women prisoners.[67] It is reported that women criminals often find themselves in jail as a result of violence and other disharmony in the family, with more and more penal colonies reporting inmates who have killed their husbands, fathers, etc.[68]

Reports of torture and ill treatment of women prisoners in Russia are particularly concerning to OMCT. This seems problematic specifically with regard to women from the Southern Republics of Russia in the Caucasus. Sexual harassment is one type of violence reportedly taking place in women's prisons in Russia but it is often difficult for the women prisoners to prove the necessary facts in order to file formal charges.[69] Additionally, most women's prisons are overcrowded and some are reported to be filled at twice their capacity.[70]

There are only 40 prisons for women in all of Russia, meaning that one in every two women convicted of a crime must be transferred to a different region. The decision about where a woman will serve her prison sentence is made based on convenience to the government, rather than considering the needs of the woman and her family. The time it takes to transfer prisoners is not directly related to the actual distance as the prisoners frequently must pass through "transit" prisons, meaning that a journey that should only take 2 days can take as much as 2 months. The conditions in the transit prisons are reportedly horrendous—with unsanitary living conditions, exposure to contagious diseases, overcrowding, and lack of access to medical help. Interviews conducted in one prison colony revealed that some of the inmates had been deprived of food while they were being transferred. Others had been beaten, either by the guards or by other inmates.[71]

A study of six women's prisons in Russia by the Center for Assistance to Criminal Justice Reform in 1999 found the following:

> "The core problem of accommodation of women in Russia's penitentiary system is that the conditions of serving the sen-

> tence that were shaped in the Soviet period reflect neither psychological nor physiological features inherent in women, i.e., women are kept as men or, more precisely, as certain averaged-out human beings without regard to sexual, age-related, or other characteristics."[72]

This problem is evidenced by the failure of the Russian government to issue hygienic materials for women who are menstruating. Thus, it has been reported that women try to find other ways to meet their hygienic needs, such as using technological cotton found at factories, clothes or mattresses as tampons. Medical experts note that these homemade solutions can cause serious problems for women's health.[73]

5.2 Violence Against Women Human Rights Defenders

Women human rights activists have also been subject to harassment in Russia. One example is Soldiers' Mothers of St. Petersburg, who report on the conditions for soldiers in the Russian army and also teach soldiers how to observe the laws and Constitution of Russia. This organization has been harassed through measures to close down their offices and allegations that their activities do not correspond with their "status."[74] These government actions obstruct the important work of this organization.

Also, in Chechnya, Malika Oumzhayeva, the ex-administrative head of the Alkhan-Kala, Grozny district, was shot to death by Russian soldiers on the night of November 29, 2002. It has been reported that she was killed shortly after meeting with the delegation from the European Committee for the Prevention of Torture. Human rights organizations have observed that Ms. Oumzhayeva defended the interests and rights of the local people in her district and allege that she was killed precisely for these activities.[75]

Another woman activist was killed in May 2003 along with 4 members of her family in the village of Kalinovskoe, district of Naourski. Zoura Bitieva was well known for her anti-war activities throughout the first and second war in Chechnya, having participated in many demonstrations against the war and having brought complaints before the European Court of Human Rights concerning human rights violations by the Russian military. Because of her activities, her family had received multiple threats

and suffered harassment by the authorities. According to reports, on the night of May 20, 2003, Ms. Bitieva, her husband, her youngest son and her brother were all shot in their home by fifteen men, four of whom were wearing masks.[76]

6. Violence Against Women in Chechnya

The conflict in Chechnya has had an effect on women as well as men. One report alleges that women constitute at least 10 % of the total number of civilians killed in the Chechen Republic in 2002.[77] It is important to note that men are primary targets in the context of the conflict in Chechnya, being subjected to arbitrary detention, torture and enforced disappearances in larger numbers than women. However, not only are women similarly subjected to these violations, but women have also experienced the wars in Chechnya in different ways than men. Widows make up a large part of the Chechen population and, as widows, many women have had to assume new roles in the family and community. In addition to this reality, women face serious obstacles in finding disappeared relatives, women are subjected to sex-specific violence such as rape, women are targeted by the military on account of their relationships with combatants, and increased visibility of women suicide bombers has led to a government policy of searching all Chechen women in increasingly invasive ways.

In 1997, before the start of the second war, the official number of widows in the Chechen Republic was 3000.[78] It is now suspected that that number is much higher, and higher than indicated by official estimates. The high number of widows in Chechnya has changed the role of women in Chechen society with women now being forced to assume the entire responsibility of supporting and caring for the family. Assuming these increased responsibilities in the family has serious consequences for the economic and social situation of these widows.

Disappearances are widespread in Chechnya, the victims of which are mostly men. At least three protest rallies have been organized, mostly by women, in a six month period with the protestors demanding to know the whereabouts of their disappeared relatives. These protests took place in March 2003 in Grozny, for two days from June 28-30 just outside of Grozny and on August 19, 2003 in Grozny. When women file cases to

find their disappeared relatives, they face enormous obstacles in receiving any information as the various government institutions merely pass the blame between each other, with no one actually conducting a transparent investigation. Frequently, investigations are suspended with the authorities claiming that the perpetrators were unidentifiable. Although the new Penal Code in Russia allows for the prosecution of authorities for failing to properly investigate a case, the necessary evidence to file such a case is often "classified," thus leaving no real possibility of holding prosecutors accountable for their inadequacy.[79] In some cases, when the body of their relative is found, women are forced to pay in order to get the body back from the authorities.[80]

The psychological trauma and hardships suffered by women on account of the fact that their male relatives have disappeared cannot be underestimated. The Secretary General's report on Women, Peace and Security recognized that "the 'disappearance' of male relatives affects women's status in their societies and traumatizes women who cannot find closure as long as they are hoping for the return of their relatives."[81]

When a woman's husband is disappeared or killed, she receives no public support in the form of pensions. Children are entitled to an allocation when their father is killed, and oftentimes the entire family becomes dependent on this money, but such allocation is dependent on the presence of a death certificate. In cases where the husband is disappeared, families are often reluctant to apply for a death certificate because it gives the police a justification to cease the search for their relative.

Interviews conducted, as well as numerous reports, reveal that Russian troops have been responsible for the rapes of many women during the course of the two conflicts in Chechnya. Women are particularly vulnerable to such sexual violence during "cleansing" operations of private homes. As many men are no longer in the homes (having fled the perpetual dangers of arbitrary arrest, detention and torture, as well as to join the combatants in the mountains), women are often alone in the home when soldiers enter. Cases have also been reported of women being raped in front of their husbands and other male relatives or women being raped while being forced to watch their relatives being attacked in other ways. In addition, women are also vulnerable to rape at checkpoints and in detention centers.

The case of Iman, which occurred on July 27, 2002, is illustrative of the horrors that women face. On July 26, 2002, Iman's husband had helped his neighbor to repair a car, which, unbeknownst to the husband, belonged to a Chechen fighter. The next day, Russian soldiers entered the home of Iman and her husband and proceeded to torture Iman's husband as well as her 11 month old daughter, and then took her husband away. On the following day, the soldiers returned to Iman's house.

> *"They took Iman into the bedroom, demanding that she confess to being a Chechen fighter. They pinned her to the wall, cutting off her breath. They brutally kicked and beat her with a kalashnikov butt. They tried to rape her, but she put up such a fight that they pulled out a syringe filled with green liquid, which they said would kill her, and then injected her with it. Iman felt a sharp burning sensation and an intense pain before she lost consciousness. She awoke naked, lying on the bed, completely numb and as if paralysed. The soldiers left after repeating that it would make her suffer a long while, and that if she ever spoke about what happened, they would kill both her and her daughter."*[82]

It is extremely difficult for women to report these crimes given cultural obstacles which dissuade them from admitting that they have been involved in any sexual activity, forced or not. Such an admission, under traditional viewpoints, makes a woman unmarriageable, or if she is already married, such an admission may make her vulnerable to divorce or to further violence. One interviewee acknowledged that the subject of violence against women, including rape, is a completely taboo subject and it is impossible for women to talk about it.[83] As another Chechen woman has explained:

> *"If they [raped women] come home, they would be better off shooting themselves. If anyone laid a hand on them they'd be written off for good here in Chechnya. It's a kind of law. A sullied daughter is worse than a dead one to her father. It's a terrible disgrace. She'll never get married and no one will say a kind word to her, even though it's not her own fault she was dishonoured."*[84]

Furthermore, when women attempt to file complaints about these crimes, the police reportedly will not investigate the case.[85]

In one case, reported to OMCT during the seminar and highly covered by the local and international media, a Russian colonel, Yuri D. Budanov, was charged with murdering a 18 year old Chechen girl, Kheda Kungaeva. The evidence of the case showed that Ms. Kungaeva had also been raped before being strangled to death. Budanov was arrested in March 2000 (two days after the murder) and he admitted murdering Kungaeva but denied having raped her. The trial began in February 2001 with Budanov being charged only with murder and not with rape. The trial was postponed several times while Budanov underwent psychiatric examinations, eventually resulting in a psychiatric institution claiming that he was insane at the time of the murder and thus could not be held criminally accountable for his actions. As such, he has been transferred to a psychiatric institution rather than a prison.[86] No one has been charged for the rape of Kungaeva.

Reports from the Russian-Chechen Friendship Society also show that many women, similar to men, have been disappeared, arbitrarily detained, tortured and summarily executed in Chechnya. For example, it is reported that on the night of August 1, 2003 in Achkhoy-Martan District, federal forces abducted Luisa Katsaeva. Until now, the whereabouts of Ms. Katsaeva remain unknown.[87] Other women who had disappeared have been found among the dead bodies in mass graves. One example is three women who were arrested in Grozny on June 3, 2000—Nura Luluevaya Saidalievna, and her two cousins Raisa and Markha Gakaev. Reports indicate that these three women were detained by men in camouflage uniforms along with a man, Zavala Tazurkaev, who had tried to help them when he heard their screaming. The bodies of all four detainees were identified in a mass grave found in February 2001 near Khankala.[88] Testimonies collected indicate that it is usually the most beautiful women and girls who disappear.

> *In another case, the wife of Abubakar Amiroff disappeared and was eventually killed in 2000 by Russian police. On January 11, 2000, she had gone to Grozny to collect some children's clothes. She was nine months pregnant and she was detained at a checkpoint on her way to Grozny. Her*

> *husband searched for her for four months, and then she was found in the basement of small house in Grozny, where she had been killed by three bullets, one in the back of her head and two in her chest. There was also a deep cut running across her abdomen. All efforts by her husband to investigate and find justice on this case have been thwarted by threats and violence against him.*[89]

Additionally, in recent months, in an effort to find female suicide bombers, women are at greater risk of being detained and thus, potentially vulnerable to violence while in detention. After the suicide bombings in Tushino, allegedly committed by women terrorists, the government reportedly issued Order No. 12/309 on July 9, 2003, known as operation "Fatima," whereby police were instructed to detain all women wearing the traditional Muslim headscarves.[90] As part of this new operation, according to testimonies, women are strip searched at checkpoints. Although women guards are supposed to conduct these searches, oftentimes male guards are present. People from Chechnya are outraged by this practice because, in their culture, making a woman undress is a severe form of humiliation. With regard to searches, it is also reported that pregnant women are vulnerable to being searched at checkpoints because the soldiers want to verify that the women are actually pregnant and not hiding explosives.[91]

One case resulting from operation "Fatima" is the disappearance of Ayshat Saydulayeva. According to reports, Ms. Saydulayeva was arrested in her home village in the Urus-Martan District, being accused of having contacts with guerrillas based on the allegation that she had photos of herself with members of the Chechen resistance. She has not been seen since her arrest and her whereabouts are unknown.[92] Another recent case concerned a woman who had received a letter from a friend, who was one of the women who participated in the Moscow hostage taking, previous to that attack. According to the report, members of the FSB arrested the recipient of the letter and detained her for four days. When she was released, they warned her that if a terrorist attack happens, she will be the first suspect.[93]

Women are also targeted because of their relationship to fighters on either side of the conflict. For instance, the body of Mrs. Tsagareva, sister of a

Chechen commander, Mr. Magomed Tsagarev, was found in February 2003 in a town near Urus-Martan. Local residents reported that a car drove into the forest, an explosion was heard and then the car drove away in an unknown direction—the body was found at the scene of the explosion.[94] On another occasion, the wife and daughter of a policeman who worked for the Chechen Ministry of Interior were killed. A commander of a Chechen rebel group claimed responsibility for this murder, as revenge for the policeman's collaboration with Russian forces.[95] It has also been reported that women's links to fighters may hinder their access to public support. For example, one testimony asserted that a woman was unable to claim the full pension for her children because the authorities labelled her dead husband as a fighter.[96]

7. Conclusions and Recommendations

Although Russia has enacted many laws and established several mechanisms which purport to guarantee equal rights between women and men, discrimination against women is still widespread in this country. Frequently, such discrimination manifests itself as violence.

With respect to discrimination, the Russian Federation should make more efforts to implement existing laws guaranteeing equality. Furthermore, a definition of sex discrimination should be developed and a mechanism should be established to pursue claims of sex discrimination against either individuals or institutions. Discrimination against women in Russia severely hinders women's access to employment and politics, thus OMCT recommends that the Russian Federation consider instituting affirmative action policies to guarantee women's equal opportunities in these fields. Additionally, educational programs should aim to combat negative stereotypes that make women vulnerable to discrimination and/or violence.

OMCT is gravely concerned about the widespread nature of domestic violence in Russia and urges the government to enact legislation specifically criminalizing such violence. OMCT would recommend that effective measures be taken with respect to the enactment of legislation on domestic violence along the lines of the guidelines submitted by the United Nations Special Rapporteur on violence against women to the fifty-second session of the United Nations Commission on Human Rights (U.N. doc.

E/CN/.4/1996/53, Add.2). The measures that the government should envisage incorporating within domestic violence legislation should include; the establishment of a system for the enforcement of *ex-parte* restraining and protective orders that would have the effect of ensuring that the perpetrator could not approach the victim or other witnesses and that the perpetrator be obliged to vacate the family home; as well as provisions on the rights of victims to receive appropriate legal, medical and other assistance including alternative shelter and reparations.

It is urgent that police and judiciary officials receive appropriate gender-sensitive training for addressing cases of domestic violence. The government should also institute awareness raising campaigns to take this violence out of the private sphere and place it in the public eye.

OMCT further recommends that the government explicitly criminalize marital rape.

OMCT is concerned that despite the legal ban on polygamy, the practice continues in some areas of Russia. Efforts should be made to work with women from the areas where polygamy is common in order to raise awareness about the dangers it presents for women and ensure that all citizens are aware that it is not legal.

OMCT is deeply troubled that rape victims are continually blamed for having provoked the violence they suffered and insists that police and judiciary officials receive training on how to respond to rape cases. In cases where such officials subject victims of violence to further violence, it is essential, as with all rape cases, that the case is investigated, prosecuted, and punished with due diligence. Also, protection programs should be developed for women victims of rape who file complaints so that they do not suffer further violence at the hands of the rapist or other persons.

Trafficking is an enormous problem in Russia. OMCT commends Russia for taking steps to develop new legislation against trafficking and recommends that in the drafting of such legislation, protection of the victim and prosecution of the trafficker are emphasized. Additionally, recognizing that women's vulnerability to trafficking stems from their lower socio-economic status, it is imperative that the government make efforts to address women's lack of job opportunities and poverty. It is urgent that more shelters and support centers be set up for victims of trafficking who

have been deported back to Russia in order to rehabilitate such victims and offer protection in cases where women decide to file complaints.

The common nature of sexual harassment in Russia is deeply concerning to OMCT. Reports that women must agree to conditions which demand them to submit to the sexual desires of their superiors are clear violations of women's rights. A strong law forbidding sexual harassment and establishing a cause of action for such acts is imperatively needed.

The situation of women prisoners is also troubling. OMCT insists on the obligation of the Russian Federation to investigate, prosecute and punish all cases of ill treatment and torture. Also, the detention conditions in Russia, which are horrendous, must be improved.

Government harassment and violence against women human rights defenders is extremely problematic in Russia and OMCT urges the government to cease such activities and guarantee the full enjoyment of all human rights to these persons as guaranteed in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/53/144.

Women in Chechnya are victims of multiple forms of violence, often perpetrated by Russian state agents. OMCT insists on the need to guarantee access to justice for all citizens of Chechnya, particularly women searching for disappeared relatives. Additionally, appropriate social services should be given to widows of the two wars in Chechnya. OMCT calls on the Russian government to ensure that all cases of violence against women perpetrated by Russian forces, including rape, torture, ill treatment, and disappearances be investigated with due diligence and the perpetrators be brought before an impartial and fair tribunal. With the new policy established by Operation Fatima, OMCT is extremely disturbed by the practice of male guards strip searching females and insists that only female guards carry out this function. Also, the government must guarantee that when women are detained under this operation it is for a legitimate reason and that women are not subjected to further violence while in detention.

Finally, OMCT would insist upon the need for the Government to fully implement all of the provisions of the Convention for the Elimination of

All Forms of Discrimination Against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials.

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Committee on Economic, Social and Cultural Rights

Thirty-first session – 10-28 November 2003

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

Concluding observations of the Committee on Economic, Social and Cultural Rights: Russian Federation

1. The Committee on Economic, Social and Cultural Rights considered the fourth periodic report of the Russian Federation on the implementation of the International Covenant on Economic, Social and Cultural Rights (see E/C.12/4/Add.10) at its 41st to 43rd meetings, held on 17 and 18 November 2003 (see E/C.12/2003/SR.41-43), and adopted, at its 56th meeting, held on 28 November 2003 (see E/C.12/2003/SR.56), the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of the State party, which was prepared in general conformity with the Committee's guidelines. It also appreciates the comprehensive written replies to the list of issues as well as the additional written information provided during the dialogue.

3. The Committee welcomes the frank and constructive dialogue with the high-level delegation of the State party.

B. Positive aspects

4. The Committee notes with appreciation that the Constitutional Court continues to apply the Covenant in its rulings.

5. The Committee welcomes the State party's commentary on an optional protocol to the Covenant in which it restates its support for a complaints procedure.

6. The Committee welcomes the adoption of the Federal Act entitled "Political Parties" which contains provisions aiming at enhancing women's participation in political life.

7. The Committee welcomes the new Labour Code of 2001, which introduces further protection against forced labour and discrimination in the field of labour and employment.

8. The Committee welcomes the State party's ratification on 25 March 2003 of the International Labour Organization Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

C. Factors and difficulties impeding the implementation of the Covenant

9. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in the Russian Federation.

D. Principal subjects of concern

10. The Committee is deeply concerned about the poor living conditions in the Republic of Chechnya and notes with regret that sufficient information was not provided on this problem in the State party's report. While acknowledging the difficulties posed by the ongoing military operations, the Committee is concerned about the problems faced by people in the Republic of Chechnya with regard to the provision of basic services, including health care and education.

11. The Committee is concerned about the precarious situation of indigenous communities in the State party, affecting their right to self-determination under article 1 of the Covenant. The Committee notes that the Law of 2001 On Territories of Traditional Nature Use of Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation, which provides for the demarcation of indigenous territories and protection of indigenous land rights, has still not been implemented.

12. The Committee is concerned about reports of cases where the lack of registration of place of residence and other identity documents in practice places limitations on the enjoyment of rights, including work, social security, health services and education. The Committee is also concerned about reports that some groups of people, including the homeless and the Roma, face particular difficulties in obtaining personal identification documents, including registration of residence.

13. The Committee notes the statement of the State party's delegation that any former citizen of the Soviet Union living in the country can exchange their old Soviet passports for new Russian Federation ones without any difficulty. However, the Committee is concerned about reports that registration and recognition of citizenship have been denied to some groups, particularly the Mesketians living in Krasnodar Krai.

14. The Committee remains concerned about gender inequality in the State party, particularly with regard to discrimination in employment, in the family and in political representation.

15. The Committee remains concerned about the relatively high rates of unemployment in the State party, particularly among young people, women, people of pre-pensionable age and persons with disabilities. It also notes with concern the significant regional disparities, with unemployment rates ranging from 32.4 to 56.5 per cent in the nine worst affected regions.

16. The Committee notes with concern that the employment of persons with disabilities has significantly decreased in recent years. The Committee regrets that two important tax benefits, which served as incentives for hiring persons with disabilities and which were com-

mended by the Committee in its previous concluding observations, have been removed.

17. The Committee notes with concern that the informal economy in the State party has grown considerably and that illegal migration of labour is widespread, which means that a large number of people work without legal and social protection.

18. The Committee remains concerned about the low level of wages in the State party, with an estimated 32.8 per cent of workers earning wages equal to or below the subsistence level. The Committee notes that the situation is aggravated by the persistent problem of wage arrears. The low level of the minimum wage is also a cause of concern since it remains well below the minimum subsistence level and is inadequate to provide workers with a decent living for themselves and their families (articles 7 and 11 of the Covenant).

19. The Committee remains concerned about the high incidence of serious accidents in the workplace in the State party.

20. The Committee is concerned about the difference in wages between men and women as well as about working conditions for women. It is also concerned about sexual harassment of women in the workplace.

21. The Committee is concerned that the Labour Code may impose undue restrictions on the right to strike, by requiring a quorum of two thirds of the total number of workers and the agreement of at least half of the workers present at the meeting to call a strike.

22. The Committee remains concerned about the inadequate amounts paid in pensions and social benefits, while noting that the problem of arrears has been addressed.

23. The Committee is very concerned about the high incidence of trafficking in persons in the State party and about the lack of reliable statistics on the number of people trafficked and of information on cases where persons have been prosecuted under existing anti-trafficking legislation.

24. The Committee remains concerned about the high incidence of domestic violence and the fact that victims of domestic violence are not adequately protected under existing legislation.

25. The Committee is concerned that income disparities, which have further increased in the reporting period, affect the standard of living of a considerable part of Russian society, and that, despite economic recovery in the last years, the level of poverty in the State party has still not been brought down to the pre-1998 level. The Committee is also deeply concerned that, according to the most recent figures (2002), an estimated 35.8 million people, or 25 per cent of the population, live on an income below the minimum subsistence level.

26. The Committee remains concerned about the problem of street children in the major cities of the State party. The Committee is also deeply concerned about the growing number of orphaned children and children deprived of parental care.

27. The Committee notes with concern that homelessness is a growing problem in the State party.

28. The Committee is concerned about delays in the payment of compensation for houses destroyed during military operations in Chechnya.

29. The Committee is concerned about reports indicating maltreatment of conscripts in the armed forces as well as their sub-standard living conditions and lack of access to adequate food and health care.

30. The Committee is concerned about the precarious situation of more than 100,000 internally displaced persons from Chechnya living in Ingushetia. The Committee emphasizes in this respect its view that the closing down of tent camps without provision of alternative lodging would be in contravention of the Covenant.

31. The Committee is concerned about the general deterioration of the level of availability and accessibility of health care in the State party. The Committee also notes with concern that hospitals and clinics in poor regions often do not stock all essential drugs, and that, despite the constitutional guarantee of free medical care, many health clinics charge fees for their services and request patients to purchase medicaments. Furthermore, the Committee is concerned about the poor health status of northern indigenous peoples, the life expectancy of whom is estimated to be 15-20 years lower than the national average.

32. The Committee notes that the State party lacks federal legislation on the rights of patients concerning, inter alia, professional ethics and redress for medical errors.

33. The Committee remains concerned about the high incidence of tuberculosis in the State party, particularly in prisons, in the Republic of Chechnya and in the regions of the Far North, in particular among indigenous communities.

34. The Committee notes with concern the sharp increase in the HIV-infection rate during the last three years, the increasing incidence of HIV contracted through heterosexual contacts, and the increasing number of children born of HIV-positive mothers.

35. The Committee is concerned about the high levels of infant and maternal mortality in the State party. It also notes with concern that unsafe abortion remains a main cause of maternal mortality.

36. The Committee remains concerned about the spread of drug addiction in the State party.

37. The Committee remains concerned about reports that a sizeable number of children, due to migration, homelessness and neglect, do not attend school.

E. Suggestions and recommendations

38. The Committee urges the State party to allocate sufficient funds to reinstate basic services, including the health and education infrastructure, in the Republic of Chechnya.

39. The Committee, recalling the right to self-determination enshrined in article 1 of the Covenant, urges the State party to intensify its efforts to improve the situation of the indigenous peoples and to ensure that they are not deprived of their means of subsistence. The Committee also encourages the State party to ensure the effective implementation of the Law on Territories and Traditional Nature Use.

40. The Committee urges the State party to ensure that the lack of residence registration and other personal identity documents do not

become an obstacle to the enjoyment of economic, social and cultural rights.

41. The Committee urges the State party to take effective measures to ensure that no one will be deprived of their legal status and enjoyment of rights as a consequence of the expiry of Soviet passports on 31 December 2003. The Committee also calls upon the State party to ensure that the authorities in Krasnodar Krai legalize the residence of Mesketians and members of other ethnic groups who have reportedly been denied registration.

42. The Committee recommends that the State party strengthen its efforts to promote gender equality and encourages the adoption of the draft federal law "On State Guarantees of Equal Rights and Freedoms, and Equal Opportunities, for Men and Women in the Russian Federation" currently before the Duma.

43. The Committee urges the State party to ensure that programmes to promote employment are targeted to the regions and groups that are most affected.

44. The Committee recommends that the State party take effective measures to promote the integration of persons with disabilities into the labour market, including by strengthening the system of job quotas for them, or by providing penalty payments for non-employment.

45. The Committee recommends that the State party strengthen its efforts to protect the human rights of workers in the informal labour market with a view to creating the conditions for unimpeded implementation of migrants' rights, and protecting migrants' legal rights and interests (E/C.12/4/Add.10, para. 69). The Committee also encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

46. The Committee urges the State party to take effective measures to raise wages, prevent wage arrears, and ensure the implementation of article 133 of the Labour Code, which, in line with the Covenant, stipulates that the minimum wage must not be lower than the worker's minimum subsistence level.

47. The Committee urges the State party to ensure that adequate funds are allocated for the prevention of accidents in the workplace and to strengthen the resources and powers of the labour inspectorate so as to ensure that sanctions are imposed on employers who fail to observe safety regulations.

48. The Committee recommends that the State party undertake effective measures, including through affirmative action, to improve the working conditions for women and to ensure equal pay for work of equal value. The Committee also recommends that the State party enact legislation criminalizing sexual harassment in the workplace.

49. The Committee encourages the State party to revise section 410 of the Labour Code so as to lower the quorum required for a strike ballot.

50. The Committee urges the State party to ensure that under the new pensions system, introduced by Federal Act of 1 January 2002, the basic component of pensions is raised to the minimum subsistence level. In view of the fact that the realization of this goal may take time, owing to limited resources, the Committee urges the State party to give priority to raising the minimum pension levels and to ensuring that social benefits are targeted to the families most in need.

51. The Committee calls upon the State party to ensure effective implementation of existing anti-trafficking legislation. It also encourages the State party to proceed with the adoption of proposed legislative amendments and of the draft act "On Counteracting the Trafficking of People" which aim at providing more effective protection for victims and ensuring the prosecution of traffickers. Moreover, the State party should ensure the availability of accessible crisis centres where victims of trafficking can receive assistance.

52. The Committee calls upon the State party to intensify its efforts to combat domestic violence by enacting specific legislation criminalizing domestic violence and providing training for law enforcement personnel and judges regarding the serious and criminal nature of domestic violence. Moreover, the Committee urges the State party to ensure the availability and accessibility of crisis centres where victims of domestic violence can find safe lodging and counselling.

53. The Committee urges the State party, in order to fulfil its Covenant obligations under article 11, to ensure that the increase in available funds in the State budget is also used to promote an adequate standard of living for all, including through a comprehensive national strategy to combat poverty. The Committee requests the State party to provide, in its next periodic report, updated statistical information on a comparative basis on the results of the efforts undertaken to reduce the number of people living below the subsistence minimum to 28-30 million by 2006.

54. The Committee urges the State party to further strengthen measures to prevent child neglect and to ensure adequate assistance and social rehabilitation for neglected or abandoned children. The State party should take effective measures to deal with the root causes of neglect and abandonment, particularly by increasing assistance rendered to families with children, including by increasing the levels of family benefits.

55. The Committee urges the State party to strengthen its efforts to address the problem of homelessness, including by ensuring that adequate resources are set aside for the provision of social housing, with priority given to the most disadvantaged and vulnerable groups. The Committee also encourages the State party to undertake a study into the problem of homelessness so that it may acquire a more accurate picture of the scope of the problem and of its root causes.

56. The Committee calls upon the State party to guarantee that timely and adequate compensation is duly provided to all persons whose property has been destroyed during the military operations in Chechnya.

57. The Committee calls upon the State party to ensure that mechanisms are in place to ensure the enjoyment of basic rights of conscripts, including their access to adequate food and health care.

58. The Committee reminds the State party of its obligation under the Covenant to ensure the provision of adequate temporary housing for those people who fear that Chechnya is too insecure for them to return.

59. The Committee calls upon the State party to ensure that the ongoing reform of the health sector will improve the quality of and equitable

access to health services in all regions of the country. The State party should also take effective measures to improve the health status of indigenous peoples in the regions of the Far North.

60. The Committee recommends that the State party address the matter of patients' rights and report back to the Committee on this issue in its next periodic report.

61. The Committee recommends that the State party intensify its efforts to combat tuberculosis, under the special federal programme "Urgent measures to tackle tuberculosis in Russia for the period 1998-2004", including by ensuring the availability of medicines and adequate sanitary conditions in prisons, and by taking special measures to combat the epidemic in the worst affected regions.

62. The Committee, in line with its general comment No. 14 (2000) on the right to the highest attainable standard of health, calls upon the State party to take urgent measures to stop the spread of HIV/AIDS. The State party should ensure that all persons know about the disease and how to protect themselves, including through sex education in schools, and that methods of protection are available at affordable prices. Moreover, awareness-raising campaigns should aim at preventing discrimination against HIV-positive people.

63. The Committee urges the State party to reinforce its efforts to reduce infant and maternal mortality. The State party should promote awareness of safe contraceptive methods and ensure that abortions are carried out under adequate medical and sanitary conditions.

64. The Committee recommends that the State party ensure the effective implementation of programmes to prevent and combat drug abuse, targeted at young people and the worst affected regions of the country, and to report back to the Committee on this issue in its next periodic report.

65. The Committee recommends that the State party reinforce its efforts under the federal programme "Youth of Russia (2001-2005)" to ensure that no child is deprived of the right to education. The Committee notes that a statistical survey of the number of children who do not attend school was introduced in 2003 and it requests the

State party to provide in its next periodic report disaggregated data on a comparative basis on enrolment and dropout rates among boys and girls and vulnerable groups. It refers the State party to its general comment No. 13 (1999) for guidance on how to prepare the information on the right to education in the next report.

66. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society and to inform the Committee on all steps taken to implement them in its next periodic report. It also encourages the State party to engage non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

67. Finally, the Committee requests the State party to submit its fifth periodic report by 30 June 2008.

Violence against Women in Turkey

A Report to the Committee against Torture

Contents

1. Preliminary Remarks

The submission of information specifically relating to violence against women to the United Nations Committee against Torture forms part of OMCT's Violence against Women Programme which focuses on integrating a gender perspective into the work of the five "mainstream" United Nations human rights treaty monitoring bodies.

The consolidated second, third and fourth report submitted by Turkey to the Committee against Torture in accordance with article 19(1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, covering the period from 24 April to 31 August 2001, describes in great detail the legal system and its reform with the aim of eradicating torture with regard to the implementation of the Convention against Torture. However, no details are provided by the government on the implementation of the Convention in practice, nor does the report provide gender disaggregated information concerning torture and other forms of violence against women. OMCT regrets the lack of information provided as, in reality, violence against women at the hands of state agents as well as private individuals appears to be widespread. United Nations experts, the Council of Europe and numerous international and Turkish NGOs have recently reported on the continuing violations of human rights and increasingly sophisticated methods of torture in Turkey.

In light of the lack of information on gender-based torture and other forms of violence against women in the government report, this report will examine the effects of gender on the form that human rights abuses in Turkey take, the circumstances in which the abuse occurs, the consequences of those abuses, and the accessibility of remedies. The report begins with a discussion of discriminatory legal provisions. The report places particular emphasis on domestic violence, crimes committed against women and girls in the name of honour, virginity testing, forced marriages, the high rate of suicide among girls, prostitution and trafficking of women, as well as rape and other forms of sexual violence committed by state officials against women.

1.1 Turkey's International Obligations

Turkey ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, the Convention

against Torture) on 2 August 1988. Upon ratification Turkey recognized the competence of the Committee against Torture to receive and process individual communications under articles 21 and 22 of the Convention against Torture.

Turkey is a State Party to the Convention on the Elimination of All Forms of Discrimination against Women. In General Recommendation 19, the Committee on the Elimination of Discrimination against Women concluded that gender-based violence, including torture, is a form of discrimination against women as defined under article 1 of the Convention on the Elimination of All Forms of Discrimination against Women. Turkey ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 29 October 2002. Additionally, Turkey ratified the Convention on the Rights of the Child in 9 September 1994.

On 15 August 2000, Turkey signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, neither Convention has yet been ratified. Under article 90 of the Turkish Constitution, international treaties duly ratified, have the force of law, and can be invoked in Turkish courts.

At the regional level, Turkey is a member of the Council of Europe, ratified the European Convention on Human Rights in 1954, and is seeking membership in the European Union. In order to fulfil the commitments incumbent on members of the Council of Europe and to satisfy the membership criteria for accession to the European Union, Turkey has ratified a number of regional human rights treaties including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. On January 15, 2003, Turkey signed Protocol No. 6 to the European Convention on Human Rights prohibiting capital punishment in peacetime.

At the national level, Article 17 of the Turkish Constitution prohibits "torture and ill-treatment incompatible with human dignity." Article 243 of Turkey's Penal Code criminalizes torture, cruel, inhuman or degrading treatment by state officials. On November 22, 2001 the Turkish legislature passed comprehensive legislative bill designed to promote gender equality in civil legislation.

1.2 General Observations

Turkey is a constitutional republic with a unicameral multiparty Parliament of 550 members, elected directly for five-year terms. The Prime Minister is nominated by the President from amongst the members of parliament. The President has substantial powers including the power to appoint members of the Constitutional Court and the Chief of the General Staff. The constitution provides for the separation of powers between the legislature, executive and judiciary. The military considers itself the guardian of the secular order of the state exercises significant influence in Turkish political life, notably through the joint civilian-military National Security Council (MGK) which meets monthly.

In the recent elections of November 3, 2002, the Justice and Development Party (AKP) won an overwhelming majority of the seats in the parliament sweeping aside the incumbent political establishment including former Prime Minister Bulent Ecevit's party which received a mere 1% of the popular vote. The AKP is led by Recep Erdogan, a pro-Islamist former mayor of Istanbul, who, because of a 1998 criminal conviction for having recited a poem deemed to have been "incitement" to religious rebellion, is not allowed to represent his party in the government. In the run up to the elections, the AKP campaigned on a moderate political platform which included promoting democracy, Turkey's bid for EU membership and Turkey's IMF backed economic reform programme.[1] The military and the judiciary remain suspicious of the AKP because of its pro-Islamist leanings.

On August 3, 2002, the Turkish parliament introduced the EU Adaptation Law, a substantial political reform package designed to meet EU criteria in the field of human rights. The adaptation legislation included provisions abolishing the death penalty in peacetime but retaining it in times of war or imminent threat of war. An amendment to Penal Code Article 159 also allows for greater freedom of speech rights, and an amendment to the broadcasting law permits broadcasts in "different languages and dialects which are traditionally used by Turkish citizens in their daily lives." Additionally, a draft law was issued by the Ministry of Justice in October 2002, seeking to prevent the continuing practice torture of detainees by the police forces by granting detainees, arrested for non-political criminal offences, immediate access to a lawyer.

The European Commission, in its *Regular Report on Turkey's Progress towards Accession* welcomed the legal reform efforts but remained critical of Turkey's performance specifically noting that torture in detention continued, that the military continued to exercise disproportionate influence on Turkish political life and that it was still uncertain whether freedom of expression would be respected in practice.[2] At the European Union summit in December 2002 the EU postponed its decision on a start date for membership negotiations until 2004 arguing that Turkey needed to make further progress in the area of human rights.

2. Status of Women in Turkey

2.1 Legal Status of Women in Turkey

The Constitution of Turkey provides, in Article 10, for equality before the law of men and women without discrimination. The Article reads: "All individuals are equal without any discrimination before the law, irrespective of language, race, colour, *sex*, political opinion, philosophical belief, religion and sect, or any other such considerations" (emphasis added). However, there is no legislation in Turkey which punishes discrimination on the basis of sex.

Article 41 of the Constitution was amended in 2001 to provide for the equality of spouses in marriage. The Constitution now provides that "The family is the foundation of Turkish society *and is based on equality between spouses*." [Emphasis added] This constitutional amendment constitutes the foundation for several important changes in the Civil Code relating to family life which are further discussed below. Article 41 also provides for the protection of the family, especially of the mother and children: "The State shall take the necessary measures and establish the necessary organization to ensure the peace and welfare of the family, especially the protection of the mother and children, and for family planning education and its application." With regard to education, article 42 of the Constitution states: "Primary education is compulsory for all citizens of both sexes and is free of charge in state schools."

OMCT welcomes the efforts of the Turkish legislature to promote gender equality in civil legislation through the sweeping reforms of the Turkish

Civil Code which came into effect on January 1, 2002. Prior to the reforms of 2002, the Turkish civil code had seen few changes since its adoption in 1926 modeled on the Swiss Civil Code of that time. Since the 1950s, women's rights groups in Turkey have struggled to reform the code and have argued that women's legally subordinate position in the family has contributed to continuing and serious violations of women's human rights.[3] In 1994, a government commission was formed to prepare a draft of the new civil code and many women's groups began an intense lobbying effort to push through the reforms. In 2001, the entire reform process was almost derailed by the Nationalists and Islamists in parliament who objected to a measure giving women equal division of marital assets in case of divorce. The religious conservatives and Nationalists argued that the equal division of property acquired during marriage would "change the family from a matrimonial union to corporation, destroy love and affection in the family and increase the rate of divorce and consequently ruin Turkish society."[4] Thanks to the efforts of more than 126 women's groups, the objections of the Islamists and Nationalists were surmounted and the reforms were passed in the form of 1030 new articles covering important amendments to family law.

Under the old civil code the husband enjoyed a position of absolute legal supremacy in the family, with the legally sanctioned authority to make choices over domicile, children, and property. This approach has been abandoned in favor of one that defines the family as a union based on equal partnership. This new concept is also reflected in the language of the new Civil Code. The terms "wife" and "husband" have been replaced by the term "spouse(s)." Moreover, the language of the Code has been considerably simplified and out-of-date legalistic terminology has been replaced with comprehensible, modern terms, making the law more accessible to everyone. Several noteworthy changes to the Code reflect the new approach to gender equality: 1) The husband is no longer the head of the family; spouses are equal partners, jointly running the matrimonial union with equal decision-making powers; 2) Spouses have equal rights over the family abode; 3) Spouses have equal rights over property acquired during marriage; 4) Spouses have equal representative powers; 5) The concept of "illegitimacy" formerly used to designate children born out of wedlock has been abolished; custody of children born outside marriage lies with the mother.[5] The new Civil Code has also raised the legal minimum age for marriage to 18 (it was formerly 15 for women and 17 for men), gives

the same inheritance rights to children born outside the marriage, gives single parents the right to adopt children, and gives women the right to retain their maiden names when hyphenated with that of their spouses.

While the reform of the Turkish Civil Code constitutes a step forward in terms of establishing gender equality in Turkey it is nevertheless evident that reforms in the legal domain alone are not sufficient to prevent gender discrimination and violations of women's rights. In Turkey, women's lives continue to be shaped by a multiplicity of traditional practices which violate existing laws, including early and forced marriages, polygamous marriages, honour crimes, virginity testing and restrictions on women's freedom of movement. In the eastern and south-eastern regions of Turkey 16.3% of women living in the region were married under age 15.[6] One in ten women live in polygamous marriages, although the practice of polygamy was banned already under the Civil Code of 1926.[7] More than half of the women (50.8%) in that region were married without their consent although consent of both parties is a precondition for marriage under Turkish law.[8] Violations of the new code are not limited to the rural south east of Turkey. In January 2001, shortly after the new code went into effect the Turkish media published a story of a "school in the Europeanized west of the country where more than 20 girls aged between 10 and 13 had been married off in exchange for a bride price."[9] It is thus evident that the Turkish government must take further proactive steps to insure that the provisions of the new code are enforced and respected by the authorities and that violations of the code are effectively prosecuted.

OMCT also notes with concern that the Turkish Penal Code still contains several discriminatory articles - in particular regarding rape. These articles will be discussed in more depth in section 3.

2.2 Social, Economic and Political Status of Women in Turkey

Societal discrimination and traditional notions of women's role in the family adversely affect the ability of women to take advantage of educational and employment opportunities and, as a result, their rate of economic, social and political participation is low. Turkey is currently experiencing its worst recession since the Second World War[10] with slowing economic growth, rising unemployment rates, now at almost 10%,[11]

rapid urbanization and persisting regional economic disparities. Because of women's low status in Turkey, they are particularly affected by these factors.

Although women continue to improve their professional standing particularly in urban areas they still lag far behind men. Women make up only 36% of all professional and technical workers, and only 9% of all legislators, senior officials and managers.[12] The ratio of estimated female to male earned income is 0.46[13] and more than 90% of all property in Turkey is owned by men. A large percentage of women in rural areas are employed in the agricultural, trade, and tourist (hotel, restaurant) sectors where they work as unpaid family help.[14] Despite efforts made by the Turkish government to allow more girls to continue their education through the 8-year compulsory education requirement (implemented in 1998), in rural areas traditional family values place an emphasis on the education of boys rather than girls. Thus the literacy rate for women in rural areas can be as low as 50%.[15] The overall female adult literacy rate is also significantly lower than that of men, 76.5% versus 93.5% respectively.[16] The persistent practice of early marriage in rural areas also restricts women's educational and economic opportunities.

Turkey's rapid urbanization is also affecting women on a number of levels. Turkey is one of the most rapidly urbanizing countries in the region. In 1975, 41.6% of the population in Turkey lived in urban centers. In 2000, more than 65% of Turkey's population was urbanized, and UNDP predicts that at the current rate, close to 80% will be living in cities by 2015.[17] This demographic trend has resulted in a clash between traditional rural values and more modern urban lifestyles, which has affected young women in particular. As young women in cities are increasingly more educated, more exposed to the outside world and demanding more of the freedoms associated with urban life, they are also increasingly in conflict with the older generation of their parents. This has led to a rapid rise in suicides among urban and rural women as well as murders, beatings and other forms of domestic violence.[18]

Although there are no legal restrictions on political activity by women, female participation in political life remains very limited. In former Prime Minister Bulent Ecevit's government there were no female ministers in his 35-member cabinet, and only 4.2% of parliamentarians were women.

Currently, there is one woman in the government and only 24 women out of 550 people (4.4%) in parliament.

As a social group, women in Turkey are isolated from political and economic decision-making. OMCT is deeply concerned by the lack of opportunity for Turkish women to make decisions in the political, economic and cultural contexts as this has serious implications for the advancement of women and the full enjoyment of their fundamental rights. Specifically, the unequal gender power relations created by discrimination in education, employment and in political life renders women vulnerable to violence, both in the domestic and the community sphere.

3. Violence Against Women in the Family

3.1 Domestic Violence

Domestic violence is a grave problem in Turkey with as many as 90% of Turkish women experiencing violence at the hands of their husbands and boyfriends.[19] This violence within the home takes both physical and psychological forms. Many women report that their husbands beat them on their wedding night.[20] Although the problem of domestic violence is extensive in Turkey, there is no comprehensive legislation concerning domestic violence.[21]

Very few women report domestic violence to the authorities. The few women who do go to the authorities claim that the police are not gender sensitive and attempt to find a compromise between the husband and wife rather than treating the violence as a crime.[22] OMCT is currently assisting a victim of domestic from the region of Diyarbakir who tried to file a complaint with the police. However, they refused to register the complaint, instead, they have beaten the woman.

Additionally, when a complaint is successfully filed, the punishments are often weak, sometimes as little as a week in prison, if there is any punishment at all.[23] Within such a system, most women prefer to stay silent than to report the crime to the police and risk retaliation by their husbands, or other members of the family, since the police will not likely take protective measures for the victim.

A new law passed in 1998 strengthens protection orders for domestic violence victims, allowing a variety of measures to be taken, including, ordering the perpetrator "not to use violence or threatening behavior against the other spouse or children . . . , to leave the abode shared with the spouse or children and not to approach the abode . . . or their places of work, not to damage the property of the spouse or children . . . , not to cause distress to the spouse or children . . . using means of communication, to surrender a weapon or other similar instruments to the police, [and] not to arrive at the shared abode while under the influence of alcohol or other intoxicating substances . . . ."[24] Although this represents a step in the right direction, the application of this law has been unworkable given the prevailing attitudes of law enforcement officers.[25]

The shelters that exist in Turkey are widely utilized by abused women, indicating the necessity for such mechanisms. Sadly, several shelters have closed in past years due to lack of funding.[26] In many regions there are no shelters at all.

3.2 Marital Rape

OMCT notes with concern that there are no specific provisions making marital rape a crime in Turkey.

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

3.3.1 Bride Price, Arranged and Forced Marriages and Polygamy

In Eastern Turkey, according to a study by Women for Women's Human Rights (WWHR) interviewing 599 women in the region, the payment of bride prices is a widespread practice.[27] According to this tradition, a husband or his family has to pay the family of the bride a certain sum in order to complete the marriage of the two. The majority of women interviewed in the study (61%) said that their husbands had paid a bride price to complete the marriage.[28] Interestingly, over three-quarters of the women interviewed indicated that they were against the practice of paying a bride price, mostly because they felt that the practice treated women as though they were property.[29]

Although the law in Turkey provides that the consent of both the man and the woman is required before a marriage can be concluded, the WWHR study in Eastern Turkey revealed that most women in that region had no choice in who they married. About 60% of all marriages in Eastern Turkey are arranged by the family, and even where the couple arranges the marriage on their own, it is often conditioned on obtaining the family's consent.[30] The study also reports that just over half of the women interviewed were married without their consent and just less than half were not consulted at all about their future spouse. This tradition of arranged marriages appears to be changing as many young women and mothers of young women agree that a woman should be able to choose her own spouse.[31]

The study also revealed that 1 in 10 women live in polygamous marriages. Because polygamy is forbidden by law in Turkey since 1926, women in polygamous unions are subject to gross inequalities as only one woman can have a civil marriage and the rights that accompany a civil marriage. All other wives are relegated to religious marriages, which grant them fewer rights.[32]

Practices such as bride-price, arranged and forced marriages, and polygamy deny women respect as independent human beings. Such practices also limit the power that women have to direct their own lives because their husband or their family controls them and there is much societal pressure for women to obey their husbands and their parents. Such lack of power can make women vulnerable to violence. In such an atmosphere, it is difficult for women to find a space where they are empowered to speak out against practices that treat them as property, limit their decision-making capacity, or otherwise restrict their ability to take advantage of the rights accorded to them by law in Turkey.

3.3.2 Crimes against Women Committed in the Name of Honour

Some of the most serious violations of human rights which specifically target women are crimes committed in the name of "honour." "Honour crimes" are particularly prevalent in, but not limited to, the Eastern and South-eastern regions of Turkey but they have also been reported in the major Turkish cities, including Istanbul and Izmir and also in Turkish immigrant communities in other countries.[33] The killing of women and

girls occurs when a woman allegedly steps outside her socially prescribed role, especially, but not only, with regard to her sexuality and to her interaction with men outside her family. The killing is usually committed by a male member of the family, frequently a minor, and the punishment is typically minimal if any, because Turkish law enforcement authorities generally condone this practice.

Accurate statistics on the number of "honour crimes" committed in Turkey do not exist, in part because such crimes are not systematically prosecuted by the authorities and thus go unreported. Also, police records in Turkey do not break down homicides into specific types. Nevertheless, women's rights groups estimate that at least 200 girls and women are murdered each year by their families, although they say that the real numbers may be much greater.[34]

The practice of "honour killings" and its persistence is a subject of increasing international concern and has received the attention of United Nations experts and civil society. The U.N. General Assembly addressed the issue of "honour crimes" in its resolutions 55/68 and 55/111. In resolution 55/66, the General Assembly expressed deep concern at the persistence of various forms of violence against women and crimes against women in all parts of the world, including crimes committed in the name of "honour," and reaffirmed that violence against women both violated and impaired or nullified the enjoyment by women of their human rights and fundamental freedoms. In resolution 55/111, the General Assembly called upon governments to investigate promptly and thoroughly crimes committed in the name of passion or in the name of "honour," to bring those responsible to justice before an independent and impartial judiciary, and to ensure that such killings were neither condoned nor sanctioned by government officials or personnel. In this context it is worth noting that Turkey has officially demonstrated its support for the efforts of the United Nations in eliminating the practice of "honour crimes" by voting in favor of both General Assembly resolutions.

On July 2, 2002, the Secretary-General of the U.N. reported to the General Assembly on measures taken by Member States and activities within the United Nations system on working towards the elimination of honour crimes.[35] In his report, the Secretary General noted that several U.N. Human Rights treaty bodies, notably the Committee on the

Elimination of Discrimination Against Women and the Committee on the Rights of the Child, had expressed concern that the Turkish Penal Code contains provisions which discriminate against women and which provide loopholes for perpetrators of "honour crimes."[36] Additionally, he noted that that the Human Rights Committee, in adopting general comment 28 on article 3 of the International Covenant on Civil and Political Rights, stated that "honour crimes" which remain unpunished constitute a serious violation of the Covenant, and that laws which imposed more severe penalties on women than men for adultery or other offences also violated the requirement of equal treatment.[37]

The Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on extrajudicial, summary, or arbitrary executions have both reported on the continuing occurrence of "honour crimes" in Turkey today.[38] Specifically, the Special Rapporteur on extrajudicial, summary and arbitrary executions, noted with great concern in her report on her mission to Turkey, that the incidence of crimes committed in the name of "honour" are underreported and rarely prosecuted. She states that "[r]eports from women's rights groups confirm that only a few cases [of honour killings] come to light, as the local authorities and society in general *condone the crime*. A large number of cases go unreported and the few that are reported hardly ever reach the trial stage. The exceptional cases brought to trial and ending in convictions receive a token punishment." (emphasis supplied)

The concept of "honour" forms part of an entire system based on a code of behaviour imposed on women and girls. In this system, a man's honour is understood to be his reputation as a member of the community (seref) or as determined by the chastity of his female family members (namus). A threat to the namus encourages the man to act in defence of their "honour." When namus has been lost by unchaste conduct, it can only be restored by killing its offender. Cultural and legal norms protect men's ability to do so. Husbands, fathers or brothers have gone unpunished after murdering their wives, daughters or sisters in order to defend the "honour" of the family or their own "honour." Alarmingly, the Special Rapporteur on extrajudicial, summary or arbitrary executions notes that the practice of "honour killings" is so culturally entrenched in Turkey that apart from some women's rights organizations, all other human rights

NGOs she spoke with did not consider "honour killings" to be a human rights concern but rather a "social issue."[39]

The Turkish government has taken some steps to address the needs of women in danger of being victimized by these practices. There are a few government-run women's shelters in the urban centers, however, and according to the Special Rapporteur on violence against women, these shelters are insufficient and ineffective in guaranteeing the right to life of threatened women.[40] According to information received by OMCT, in most cases when a potential victim tries to take refuge with the police, instead of sending her to a women's shelter, or taking other protective measures, they reportedly hand her over to the family, requiring only that the family guarantee not to harm the girl or woman. Family members who threaten the lives of their female relatives are neither arrested nor prosecuted for making such threats.

The Penal Code is inadequate to protect women and girls from "honour" crimes. In fact, OMCT is concerned that the structure of the Turkish Penal Code perpetuates the idea that a woman's sexuality should be controlled by her family.

Although Turkey's criminal laws do not explicitly provide for an "honour defence," several provisions of national law contain defences that have been used in order for perpetrators of the so-called "honour killings" to receive reduced sentences.

Article 462 of the current Penal Code provides that as regards perpetrators who commit offences [homicide and battery] against the wife, husband, sister or offspring, at the time the victim is caught while engaged in the act of adultery or illegal sexual intercourse, or while the victim was about to commit adultery or about to engage in illegal sexual intercourse, or while the victim was in a situation showing, free from any doubt, that he or she has just completed the act of adultery or illegal intercourse; or against another person caught participating in such acts with the aforesaid relatives, or against both, the punishment prescribed for the offence shall be reduced to one-eighth and heavy imprisonment shall be commuted to imprisonment. Although this article can result in the justification of "honour killings," reports indicate that it is, in reality, rarely used as a defense.[41] Article 51 of the Penal Code is more frequently used in trials for "honour" crimes than article 462 of the Penal Code. Article 51 of the

Penal Code provides that "If a person commits a crime in the heat of anger or under influence of strong grief caused by an unjust provocation, he shall be punished in case the punishment of death is prescribed for the offence, by heavy life imprisonment; and if heavy life imprisonment is prescribed for the offence, by heavy imprisonment for twenty-four years. In other cases the punishment prescribed for the offence shall be reduced by one-fourth. Where provocation is grievous and severe, heavy imprisonment for twenty-four years shall be given instead of punishment by death, and heavy imprisonment for not less than fifteen years shall be given instead of heavy imprisonment. Other punishments shall be reduced by one-half to two-thirds."

Although the word "honour" is not mentioned in this article, it has been successfully used as a mitigating factor in "honour" crimes cases tried in Turkey. Judicial practice in the regions most affected by the practice of "honour killings" shows an implicit acceptance of an "honour" defence and judges often use their discretion to allow culture and tradition to serve as a mitigating factors. Because of the general social acceptance of honour as an extremely important element of Turkish culture, sentence reductions for the perpetrators of crimes committed in the name of honour are rarely challenged.

Article 453 provides for a reduction of punishment for the murder of a newborn child by the mother or a first-degree relative if the murder was committed in the name of honour.

OMCT welcomes a recent court decision (Kahramanmara Agir Ceza Mahkemesi 2002/375 E., 2003/87) on 27 February 2003. Articles 449 and 450, which provide for higher penalties for murders in the family, were applied in the "honour killings" case of Kahramanmara. The perpetrator was sentenced to life time imprisonment. OMCT hopes that this example will be followed in the future and that it does not remain an exception.

OMCT notes that other manifestations of the concept of "honour" are the practice of virginity testing, as described below, and forced marriages. Moreover, the fact that the Turkish Criminal Code defines sexual violence against women as "Felonies against public decency and family order," as opposed to other violence against a person, which is defined as "Felonies against Individuals" is based on the notion of "honour." OMCT notes with

concern that the concept of "honour" silences women who have been the victim of sexual violence.

3.3.3 Virginity Testing

Women's sexuality as a reflection of family honour is also manifested in the practice of virginity testing. Due to beliefs that the reputation of the family is closely connected to the sexual behaviour of female family members, it is considered to be both the right and the responsibility of the family to subject their daughters to virginity testing. Another issue is the amount of money which has to be given to the family of the bride by the groom's family, and "marriages through mediation of go-betweens."[42]

In 1999, a governmental decree was passed to differentiate virginity exams from vaginal or anal exams required by law, as with allegations of rape and sexual conduct with minors. In such cases, a judge may order an examination as essential to the case but written approval from the office of the prosecutor must accompany the order.[43] This statute makes clear that virginity testing should not be used "for reasons of disciplinary punishment, against [the woman's] consent or in a manner which will hurt or torment [the woman]."[44] However, forced virginity testing by family members continues to be widespread and endorsed by government officials. Women are frequently taken to the hospital for a virginity test by parents who suspect that the woman has lost her virginity, or by husbands who, on the wedding night, suspect that their new wife is not a virgin.[45] Although the doctors must ask for the woman's consent before performing the exam, women have little choice but to consent given the circumstances and the social pressure to obey their husband and parents.

In July 2001 Turkey's Minister of Health, Osman Durmus, announced that nursing and midwife students would have to pass a virginity exam before being admitted to their studies. Any student who was not a virgin would not be accepted.

According to information received, in many "honour killing" trials, the virginity of the victim is tested by forensic scientists. The virginity of the victim is reportedly taken into account during trial and sentencing.

Moreover, the Turkish State itself is reportedly also involved in forcible

virginity control exams. Young girls and women in detention facilities continue to be subjected to virginity tests by state officers as a means of humiliation.[46]

The maintenance of female virginity has traditionally been equated with "family honour," and continues to be one of the greatest causes of violence against women. Coercive virginity tests are a form of degrading treatment, which are both discriminatory and unsafe, and constitute a violation by State authorities of the bodily integrity, person and dignity of women in Turkey.

A problem closely related to the maintenance of female virginity and family honour is the high rate of suicide among young girls in Turkey. Girls commit suicide in large numbers because they have lost their virginity or because they have been forced into marriage or sent away to special re-education establishments.[47] Oftentimes, a woman who has somehow violated the family "honour" is given the choice of committing suicide, rather than being killed by a family member, and usually women choose this option.[48]

4. Violence in the Community

4.1 Rape and other Forms of Sexual Violence

As mentioned above, articles 414-424 of the Turkish Criminal Code deal with crimes of sexual assault, entitled "Felonies Against Public Decency and Family Order." The title of this section of the Code demonstrates that the approach taken by State authorities to the investigation and the prosecution of sexual violence does not stress the violation of the physical and psychological integrity of victim, but rather the harm suffered by the family and the community.

Article 414 states that "whosoever rapes a minor under the age of 15 shall be sentenced to a minimum of five years imprisonment." If force, violence, threats or abuse of minors is involved then the minimum sentence is 10 years' imprisonment. According to article 415, "Those who commit an act or action against the honour and chastity of a child who has not completed the age of 15 shall be imprisoned from two to four years and if

this act and action shall be executed under the conditions specified in the second paragraph of the above article, the imprisonment period shall be 3 to 5 years." Article 416 provides that sexual intercourse with a person between 15 and 18 years, even if consensual, constitutes a crime and carries a punishment of from six months to three years imprisonment. According to article 417, "If the acts and actions specified in the above articles are committed by more than one person or committed by one of the brothers, family members, parents, guardians, teachers, trainers or servants or those to whom the child is left, the penalty foreseen by the law shall be increased by half."

The Turkish Criminal Code defines rape of a virgin aged 15 or over with a promise of marriage as a crime under article 423(1) providing that anyone taking the virginity of a girl above 15 years of age with the promise of marrying her shall be sentenced to between 6 months and 2 years of imprisonment. If the man marries the woman, the case and the punishment are deferred. However, if the couple divorce within five years and proceedings are initiated and the husband is found guilty, the aforementioned punishment is implemented. The crime is only punishable if the victim was a virgin at the time of the rape.

OMCT is very concerned by the fact that sex crimes committed against non-virgins are perceived to be a less serious offence than those committed against virgins. Moreover, OMCT is gravely concerned by the fact that there shall be no punishment in cases of rape when the perpetrator marries the victim. This provision may lead to a woman being pressured into marrying her rapist in order to preserve her family's "honour," thus punishing the victim while the perpetrator is acquitted.

Moreover, according to article 434 of the Turkish Criminal Code, if a group of men abduct, rape, and commit sexual offences against a minor, they commit a crime. However, if one of the men who commit this crime marries the victim, charges against all of them are dropped.

As the Turkish Penal Code currently stands, the definition of rape has been interpreted by Turkish Supreme Court of Appeals as penetration of the vagina by the penis, or as anal rape of a man or woman by the penis.[49] This definition of rape is very limited as, for example, rape with an object and forced oral sex are not considered rape and provide for a lesser punishment.

4.2 Prostitution of and Trafficking in Girls

According to the Directorate General on the Status and Problems of Women,[50] women and girls in Turkey enter into prostitution due to low wages or sexual harassment in previous jobs, and choose prostitution because it guarantees them economic security. One third were forced into prostitution by husbands and boyfriends.[51]

Prostitutes are required to register and undergo regular medical examinations. Only single, Turkish women over the age of 18 may register and registered women cannot marry while registered.[52] However, most women prostitutes work outside the official system. Unregistered prostitutes are reportedly at the mercy of the police, facing violence and sexual abuse as well as arbitrary detention in police stations.[53]

During the past decade, Turkey has become a major destination and transit country for trafficking in women and girls for the purposes of prostitution. According to the International Organization for Migration (IOM) and domestic NGOs, most trafficked women and girls in the country are from Albania, Bulgaria, Moldova, Romania, and the Ukraine. According to the IOM, arrests (and in most cases, deportation) of nationals from Moldova, Romania, and Ukraine rose from 6,000 in 1998 to approximately 11,000 in 1999.[54]

Many girls and women come to Turkey believing that they will be legitimately employed as models, entertainers or translators. Once these women and girls arrive in Turkey, they find themselves in debt bondage to their traffickers. Women who attempt to escape are at risk of being beaten, gang-raped, or killed.

The Turkish government does not generally provide protection or social services to victims of trafficking. Victims of trafficking are eligible to use only one of the eight government run battered-women's shelters and in practice, trafficked women are unable to avail themselves of even the minimal protection offered by this one shelter.[55] Moreover, the government's strategy to deal with trafficking is limited to tightening immigration controls including restricting the avenues to attainment of Turkish citizenship through marriage[56] and deportation of any foreigner linked to commercial sex-work[57] without screening to identify trafficked persons.[58]

Turkey has signed but not ratified the Trafficking Protocol supplementing the Convention Against Transnational Organized Crime. The reform legislation of August added criminal code provisions that imposes heavy prison sentences for the smuggling or trafficking of persons.

However, OMCT is extremely concerned by the fact that Turkey does not provide adequate protection, assistance, education or rehabilitation to victims of trafficking. Victims of trafficking are treated as criminals by the Turkish authorities and are often summarily deported to their country of origin.

OMCT believes that by returning women without making a thorough inquiry into the risk of torture that they may face upon their return, Turkey is violating the principle of *non-refoulement,* enshrined in article 3 of the Convention against Torture as well as in other instruments such as the 1951 Convention relating to the Status of Refugees, to which Turkey is a State party. According to article 3 of the Convention against Torture, no State party shall expel, return ('*refouler*') or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Before deciding to expel anyone, Turkey has the duty to take into account the human rights situation and the effective state protection against persecution in the state of return in relation to the risk that the individual concerned might face in this context.

5. Violence Perpetrated by the State

5.1 Turkey's Legal Framework

Article 17 of the Turkish Constitution states that: "No one shall be subjected to torture or ill treatment; no one shall be subjected to penalty or treatment incompatible with human dignity." Until quite recently, the Turkish Penal Code provided a very narrow definition of torture, limiting it to acts carried out by civil servants for the purpose of extracting confessions of the criminally accused. The Convention against Torture obliges States parties to prohibit torture regardless of the purpose. On August 26, 1999, the Turkish legislature passed Law No 4449 which broadened the

definition of torture in Article 243 to include acts of torture by civil servants and public employees carried out for any purpose and increased the penalty for torture from the previous maximum of 5 years to 8 years imprisonment. Article 243 now reads: "A civil servant or other public employee who resorts to torture or cruel, inhuman or degrading treatment in order to make a person confess a crime, to prevent a victim, plaintiff, somebody participating in a trial or a witness from reporting incidents, to prevent them from filing a formal complaint or because they filed a formal complaint or for any other reason, shall be sentenced to a heavy prison penalty of up to eight years and permanent or temporary disqualification from service." Law No. 4449 also increased the punishment for ill-treatment; Article 245 of the Penal Code now provides that "those authorized to use force and all police officers who, while performing their duty or executing their superiour's orders, threaten or treat badly or cause bodily injury to a person or who actually beat or wound a person in circumstances other than prescribed by laws and regulations, shall be punished by imprisonment for three months to five years and shall be temporarily disqualified from the civil service."

Article 15 of the Convention against Torture imposes an obligation on States parties to "ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." Under Article 238(2) of the Criminal Procedure Law, statements of suspects obtained by means of torture or other ill-treatment at police stations or at the offices of the prosecutors cannot be used as evidence in trials. In 1992, the Turkish Code of Criminal Procedure was amended to provide that torture and ill-treatment constituted "prohibited interrogation methods."[59]

In an effort to satisfy EU human rights criteria for accession, Turkey adopted constitutional amendments on October 4, 2001 and three legislative reform packages in February, March and August 2002, Acts No. 4744, 4748 and 4771, addressing several human rights issues including capital punishment, pre-trial detention, access to counsel and notification of next of kin when someone is placed in custody. With regards to the prevention of torture, the constitutional amendments of October 2001 included an amendment to Article 19(5) reducing the maximum period of police custody for collective offences to 4 days from a previous maximum of 7

days. The amendment provides for an exception to the 4-day rule in cases of offences falling under the jurisdiction of State Security Courts in regions under a state of emergency. In these cases the period of police custody can be extended to 7 days, whereas the previous rule allowed for a 10 day extension. The amendment imposes an obligation on a judge to hold a hearing before extending the period of custody. In this context it is worth noting that police custody refers to the period immediately following arrest of a suspect when s/he is detained at a police station but before s/he has been brought before a judge for a judicial determination respecting his/her custody status. Normally at the initial hearing the judge will make a determination as to whether to release the detainee or extend the custody period. In the latter case the detainee is transferred from the police station to a prison. The constitutional amendment to Article 19(5) shortening the period of police custody is significant because it is in this initial phase of custody when most instances of torture occur.

Amendments to Article 16 of the Law on the Establishment and Trial Procedures of the State Security Courts have improved access to counsel for detainees suspected of collective offenses falling under the jurisdiction of State Security Courts. The amendments mandate that access to counsel must be provided after 48 hours of detention whereas the previous law allowed for incommunicado detention for up to 4 days. Persons detained for common criminal offences continue to have the right to immediate access to counsel. The right to be assisted by counsel is, however, waivable for all detainees. An amendment to Article 19(6) of the constitution provides that the next of kin of a detained person shall be notified "without delay" of the detention of their relative. This amendment removes prior language of Article 19(6) which provided broad exceptions to the rights of notification.

Other efforts have been made by the Turkish government to prevent torture and ill-treatment. In May 2002, a regulation was adopted forbidding the blindfolding of detainees in police custody. In June 2002, in response to criticisms by the European Committee for the Prevention of Torture, the Director General for Security issued a circular prohibiting the projection of light into the face of suspects during interrogation and providing that interrogation rooms may no longer be painted black. The circular also called on all officials to be vigilant against torture. In August 2002, the legislature provided for the possibility of retrial for criminal and civil

cases to comply with the rulings of the European Court of Human Rights (ECtHR). This law, however, was formulated to apply only to cases filed with the ECtHR after August 2003. The legislature also amended Article 13 of the Civil Servants Law rendering public officials found guilty of torture or ill-treatment personally liable to pay compensation set by the judgments of the ECtHR.[60]

The Turkish Government has instituted training programmes for law enforcement agencies and the judiciary to enhance awareness of and respect for human rights among its civil servants. The curriculum of police officers has been extended from 9 months to 2 years and courses on human rights have been included in the programme. The rulings of the ECtHR are translated and published in the Police Academy magazine, and the country findings of the European Committee for the Prevention of Torture continue to be made public by the Turkish authorities. In December 2001, in an effort to strengthen its human rights monitoring and reporting mechanisms the Turkish government set up the High Human Rights Board consisting of representatives from the Ministries of the Interior, Justice and Human Rights Boards in several provinces.

5.2 Comments on the Legal Framework and its Implementation in Practice

Following his visit to Turkey in November 1998, the UN Special Rapporteur on Torture reported that despite the efforts of the Government, torture persists in Turkey on a widespread scale.[61] Recent reports of the Special Rapporteur on Torture, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the European Committee for the Prevention of Torture, and numerous Turkish and international NGOs have confirmed the widespread and continuing use of torture in Turkey.[62] Indeed, Turkey's consistently poor human rights record was one of the main reasons it failed to secure a start date during the EU summit meeting in December 2002 for accession talks to begin.

OMCT welcomes the legal reforms described above but remains extremely concerned about the continuing systematic use of torture in Turkey and the lack of good faith and due diligence on the part of Turkish law enforcement authorities in the implementation of these reforms. The

Turkish government must do much more in terms of monitoring compliance and training its civil servants. Moreover, some of the Constitutional and statutory amendments do not go far enough in protecting persons from torture, while still others contain implementing provisions which are ambiguous and perpetuate proscribed practices. OMCT also notes with concern that public officials, including prosecutors and police officers are reported to be unaware of recent legal changes and continue to operate under the old rules.

It is of grave concern that Turkish law still does not guarantee immediate access to counsel for detainees under the jurisdiction of the State Security Courts. Over the past few years, United Nations experts, the European Committee for the Prevention of Torture and others have repeatedly called on Turkey to abolish incommunicado detention at police stations as the single most important step in eradicating torture in Turkey. As described above, the current law still allows for the detention of persons at police stations and gendarmeries for two days without access to lawyers. It is during this period of incommunicado detention that police most frequently torture and mistreat persons in their custody. Moreover the denial of access to counsel for detainees under the jurisdiction of the State Security Courts is reported to have a "knock-on" effect for other detainees, i.e. those arrested for common criminal offences who are also frequently denied their rights to legal assistance.[63] Police officers are reported to threaten these detainees with additional charges for political offences if they attempt to assert their right to assistance of counsel.[64] In many police stations access to counsel is routinely delayed until detainees have given a formal statement, and prosecutors and courts still rely heavily on uncorroborated confessions and "statements" in the prosecution and adjudication of guilt in criminal cases.[65]

In its report on its visit to Turkey from 21 to 27 of March 2002, the CPT confirmed that access to counsel remained a significant problem particularly in the provinces. In Diyarbakir province "countless prisoners interviewed claimed that they had been denied access to a lawyer."[66] The fact that the right to assistance of counsel is waivable under Turkish law further exacerbates the problem of incommunicado detention by exposing detainees to the risk of being compelled to waive their rights under duress. The CPT noted in the above report that "practically every person detained over the last nine months in the Anti-Terror Department and the Narcotics

Section at Diyarbakir Police Headquarters (and this amounts to hundreds of persons) was recorded as having waived their rights of access to a lawyer." The CPT concluded that such a collective waiver was in their eyes "scarcely credible."[67]

Turkish authorities still have recourse to Article 3(c) of Legislative Decree No. 430 which allows them to remand prisoners, whose statements are needed in the investigation of crimes, to the custody of the police and gendarmeries for renewable periods of up to 10 days. During periods of remanded custody in police stations, detainees are denied access to an attorney and contact with family. Under the authority granted by this decree, prisoners are said to have been held for up to 40 days at police stations where they were subjected to torture and mistreatment.[68]

As previously mentioned, pursuant to the October 2001 amendment of Article 19(6) the Constitution now requires in unambiguous terms that next of kin be notified without delay when a relative is detained: "Notification of the situation of the person arrested or detained shall be made to the next of kin without delay." This constitutional requirement was implemented in February 2002 through a statutory amendment to Article 128 of the Code of Criminal Procedure. The new language of Article 128 reads: "A relative of the person apprehended or a person designated by him shall be informed without delay, *by decision of the prosecutor,* of the person's apprehension and of the order to extend the custody period." [emphasis supplied] The implementing legislation thus appears to eviscerate the Constitutional requirement of immediate notification by imposing an additional deliberative procedure, i.e. the *decision of the prosecutor*, rather than requiring automatic notification by the arresting authorities. Related to the notification requirement is the issue of recording deprivation of liberty. The Regulations on Apprehension, Police Custody and Taking Statements governs procedures at Turkish police stations and gendarmeries for recording the fact of someone's detention. The trigger for making an entry into a police station log book however, appears to be the fact of placing someone in a cell, rather than the fact of detaining someone at a police station.[69] This rule (Article 11 of the Regulations) implies that a detainee's sojourn at a police station will go unrecorded to the extent that he is not placed in a cell, and indeed, may not be recorded at all if he is released without having first been placed in

a cell. Unreported detention deprives detainees of access to counsel, contact with family and the outside world and exposes them to a heightened risk of torture and ill-treatment. Additionally, it impedes the investigation of allegations of abuse since it leaves no official record that detention actually occurred. Unreported detention also contravenes the UN Standard Minimum Rules for the Treatment Prisoners which require the immediate recording of detention.

Impunity for serious human rights abuses including torture and ill-treatment remains a grave problem in Turkey.[70] In an effort to address this problem the Turkish legislature, on 2 December 1999, reformed the Law on Accountability of Civil Servants and other Public Employees. The old law dating back to the Ottoman period was designed to provide certain immunities to civil servants acting in their official capacity by granting local administrative boards, appointed by provincial governors, the authority to decide whether to prosecute a member of the security forces.[71] The present law unfortunately does not go far enough in curbing impunity and according to UN and Council of Europe experts it continues to perpetuate the "institutional impunity extended to security forces or public employees in cases of crimes committed in connection with their duties."[72] Notably, the new law does not get rid of the requirement that prosecutors must get permission from a government official outside the prosecutor's office before being able to proceed against a civil servant. Rather, echoing the former Ottoman version, the new law still requires prosecutors to seek the permission of the government office whose employee it seeks to investigate. Once the prosecutor notifies the government office, it is up to a senior officer of that office to decide whether the accused employee is to be investigated. In cases where authorization to investigate is granted, the prosecutor has the discretion either drop the case or proceed to trial. The law *places no time limit* on the prosecutor to reach a decision on whether to prosecute the case if authorization by the government official is granted. The fact that this new law remains ineffective in addressing official impunity for acts of torture is confirmed by recent reports that it has been used specifically to block prosecutions of civil servants.[73] According to Amnesty International, between the beginning of 1999 and middle of 2000, the governor of Diyarbakir did not give permission to investigate or prosecute a single allegation of torture under either the old or the new version of the law.[74]

Turkish authorities are not making good faith efforts to curb human rights violations using existing legal deterrents. Indeed, figures show that allegations of torture are rarely investigated or prosecuted.[75] The Turkish Parliamentary Human Rights Commission is reported to have forwarded 451 complaints of torture to prosecutors' offices around the country but received responses in only 69 cases, only one of which resulted in a trial.[76] In addition, courts have shown extreme reluctance to compel the appearance of public servants, such as police officers and gendarmes for trial and consequently, the few cases that are prosecuted are subject to lengthy delays and frequently dismissed for exceeding the statute of limitations.[77] During the lengthy pendancy of proceedings suspects are rarely suspended from service in the police force or gendarmerie, but rather are allowed to continue exercising their duties and in some cases even promoted.[78]

Despite the enhanced maximum sentences for the crimes of torture (Article 243) and ill-treatment (Article 245) described above, most prosecutions result in sentences at the lower end of the sentencing scale which, incidentally, remained unchanged by the recent legislative amendments, and therefore involve light sentences which are frequently suspended or converted into fines.[79] Moreover, figures show that most cases are prosecuted under Article 245 for ill-treatment rather than Article 243 relating to torture which carries more severe penalties.[80] These prosecutorial practices appear to contravene the clear intent of the legislature which was to enhance the deterrent effect of the law.

Additionally, lawyers, human rights advocates and victims of torture are frequently subjected to intimidation and harassment by the Turkish authorities who try to prevent them from seeking redress for rights violations. Recent changes to the Law on Associations have not succeeded in preventing official harassment of Turkish human rights NGOs because the law still imposes cumbersome and restrictive obligations relating to the registration and reporting of NGO activities, exposing them to the risk of frivolous and persecutory law suits. For instance, the Istanbul branch of the Human Rights Association is currently facing 64 law suits more than half of which were brought under the Law on Associations.[81] Other legislation used to investigate and prosecute rights groups for legitimate activities include the Anti-Terror Law, the Law on Demonstrations and provisions of the criminal code.

Women's rights groups are especially at risk of persecutory prosecutions. Eren Keskin, a prominent human rights activist who founded the Legal Aid Project of the Human Rights Association, to assist women who have been raped or sexually abused in police custody is facing 86 lawsuits relating to her human rights activities. Among other things she has been charged with "insulting the state security forces" for publicizing her clients' claims of sexual torture by the police. Following a speech given in Germany on 16 March 2003 on the subject of sexual assaults against women in prison, a journalist, Mr. Altayli stated in a radio broadcast on 8 April that he would gladly assault Ms Keskin sexually at the first opportunity.[82]

OMCT is especially alarmed by reports that Turkish authorities are increasingly using sophisticated methods of torture designed to evade detection by forensic medical examination and other investigative techniques.[83] Turkish authorities continue to intimidate both detainees and medical health professionals not to report evidence of torture and medical examinations of detainees do not always occur outside the presence of law enforcement officials as mandated by regulation. The situation in the eastern part of the country appears to be especially poor. The CPT received numerous reports of detainees who were warned not to report mistreatment to examining physicians and it appears that the presence of law enforcement officials during medical exams is routine.[84]

In part because of the *de jure* and *de facto* obstacles to legal redress faced by victims of torture in Turkey, Turkish citizens are continuing to seek redress for rights violations at the European Court for Human Rights. Between October 1, 2001 and June 30, 2002, 1874 applications were filed against Turkey of which 246 were made under Article 3 of the ECHR relating to the prohibition of torture.[85] However, the Turkish government has consistently failed to execute the judgments of the ECtHR thus perpetuating the perception that law enforcement officials are immune from prosecution for rights violations. The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated that evidence shows that "State agents [in Turkey] have been able to continue to commit grave human rights human rights violations, including extrajudicial executions, with the knowledge that their crimes would not result in investigation or criminal prosecution. This systematic impunity has led to an atmosphere of fear among the population and undermined the citizen's trust in the law enforcement agencies and the justice system."[86]

5.3 Gender-based Torture and other Forms of Cruel, Inhuman, or Degrading Treatment

Women in Turkey are particularly at risk of being subjected to sexual torture. Forms of torture inflicted upon women include electro-shocks to the genitals, standing for long periods of time, being forced to strip and stand naked in front of male guards, forced virginity tests, beatings targeting the genitals and breasts, use of high-pressure water hoses, and sexual abuse including rape and threats of rape. Moreover, threats of rape are often compounded by police taunts that rape will deprive women of their virginity and their honour.

These kinds of torture and ill-treatment of women are part of the broader context of widespread and systematic use of torture or other cruel, inhuman or degrading treatment or punishment by the police and gendarmes in Turkey. Those suspected of holding political beliefs that are unacceptable to the government or military and Kurdish women are more likely to be subjected to arbitrary arrest and detention, and subsequently subjected to torture or cruel, inhuman or degrading treatment or punishment.

OMCT is concerned that discrimination against women and discrimination against the Kurdish people in Turkey contributes the high risk of violence against Kurdish women by the State. Many cases of rape and other forms of sexual violence in custody and by village guards in Kurdish areas have gone unpunished. One of the reasons for this impunity is that the State assumes protection for its own officials and does not investigate or adequately punish acts of violence committed by officials. Another reason is that women and girls frequently do not file complaints of rape and other forms of sexual violence out of shame and fear. Due to the fact that in Turkey a woman's sexuality is a reflection of the family honour, if a woman is not chaste then she may be viewed as a burden in the family, not accepted, subjected to forced marriage, or even killed. Thus, while all victims of torture are confronted with major obstacles when attempting to lodge a complaint or to seek redress, when rape or another form of sexual violence constitute the method of torture, it is even more likely that the victim will not complain out of fear and shame, thus leading to the negation of this violence and to the impunity of the torturer.

Cases of Violence at the Hands of State Agents[87]

Yüksel Zengin, Gülbahar Topdemir, and Leyla Narin

Yüksel Zengin, Gülbahar Topdemir, and Leyla Narin reported to the Human Rights Association Diyarbakır Branch that they were tortured in detention. Ms Zengin reported that she was taken to an outdoor place where she was beaten by the police. Ms Topdemir reported that she was threatened with rape and beaten. She also complained that she was forced to listen music with high volume under detention. Ms Narin reported that her eyes were bowed, her throat was squeezed and she was electrocuted while she was detained.

Fahriye Kaya, Ibrahim Kaya ve Yasar Simsek

On 16 January 2002 in the Silvan District of the Diyarbakir province, Ms Fahriye Kaya, who was detained following a house raid resulting in the deaths of two persons, reported to the Diyarbakır Branch of the Human Rights Association that she was threatened with rape and beaten while in detention. She also said that her eyes were bowed during detention. She still remains in prison.

Pelin Çalıskan

A representative of a journal called Atilim, Ms Pelin Çalıskan was detained on 3 March 2002 in Bursa and she reported that she was tortured both physically and psychologically.

M.I.

M.I. who was detained on 7 March 2002 in Diyarbakır reported to the Diyarbakır Branch of the Human Rights Association that she was subject to violence during detention: She stated: *After being taken in custody in the District I was brought to the Directorate for Security in Diyarbakır and put in a cell. After one hour, I was taken to the interrogation room blindfolded. In the interrogation room, they were hitting my head. They were threatening me by saying that "let's undress her and show to the Commander, let's rape her then she should not be able to get married." I*

was subject to this sort of treatment during four days. I was forced to sign a paper while blindfolded. I was to faint. On the fourth day, I was taken to the Emergency Service of the State Hospital in Diyarbakir. I was later taken to the prosecutor's office and was released."

E.A.

Ms E.A. who was detained on 10 April 2002 and released on 12 April 2002 reported the following to the Diyarbakır Branch of the Human Rights Association: "*As soon as I was detained, I was taken to the Health Centre. A nurse searched on me. When I told her that I have faint problems she took the note. From the health centre I was taken to the Gendarmerie station in Ba?ıvar. Four gendarmerie personnel took my statement. During the interrogation they were continuously swearing, and threatening me with torture. I was at the same time being hit systematically. Later, I was taken to a cell. They have not provided any meal. I was referred to the prosecutor's office on 12 April and I was released.*

H.T.

Ms H.T., who was arrested on the grounds of being member of the PKK, reported to the Legal Aid Office of Sexual Abuse and Rape Project that she was subject to torture during four days of detention. She reported that she was undressed, blindfolded, her vagina was watered. She also added that she was forced to sit on feces in the toilet. She was also sexually abused with hands.

Gülden Sönmez and Sevim Aniktar,

Two women lawyers who are members of the Istanbul Bar Association, Gulden Sonmez and Sevim Anitkar, were subject to attacks and maltreatment by the prison manager and guardians in Metris Prison in ?stanbul. It was reported that these two lawyers went to the Prison to see their clients who were tortured in police detention before being sent to prison. After identifying that their clients were tortured, they asked the Prison management to refer them to the Forensic Medicine Department to get the report on the torture. Upon their request, the Prison manager and guardians attacked and hit them.

6. Conclusions and Recommendations

OMCT welcomes Turkey's ratification of major international and regional human rights treaties, including mechanisms that facilitate individual complaints procedures. OMCT is also encouraged by the passage of new laws in Turkey aimed at meeting the human rights requirements for membership in the European Union, including laws specifically designed to improve the status of women. In particular, the Constitution and the Civil Code provides for equality between women and men. However, the Penal Code still contains discriminatory provisions against women.

OMCT is deeply concerned by the lack of opportunity for Turkish women to make decisions in the political, economic and cultural contexts as this has serious implications for the advancement of women and the full enjoyment of their fundamental rights. Specifically, the unequal gender power relations created by discrimination in education, employment and in political life renders women vulnerable to violence, both in the domestic and the community sphere. OMCT would recommend that the government take extensive steps to promote equality of women and men through education and awareness raising campaigns. OMCT further suggests that affirmative action programs be instituted in both political and organizational settings to ensure women's participation at political and economic levels.

Despite the many new laws that have been passed, the government has not fully lived up to its obligation to enforce the laws that protect women's rights, particularly with regard to laws concerning traditional practices such as polygamy, forced marriage, honour crimes, and virginity testing. As effective implementation of laws is central to any effort to promote and protect women's rights, OMCT would urge the government of Turkey to raise awareness about existing laws protecting women's rights and the harms associated with these traditional practices, institute mechanisms to encourage women to report violations of their rights, establish protections for women who report violations of their rights, and train police and judicial personnel, and any other government official having contact with women whose rights have been abused, to handle cases of violations of women's rights with gender sensitivity.

OMCT is particularly troubled by the widespread problem of domestic violence in Turkey, with as many as 90% of women being subjected to violence at the hands of their husbands and boyfriends. In order to effectively combat domestic violence, the government of Turkey must develop and pass a comprehensive law addressing the problem. Such a law should include criminal penalties for men who beat their wives and girlfriends, protections for women who report domestic violence (such as shelters and other social services), establishment of gender sensitive interrogation techniques, training of police officers about the particularities of domestic violence cases, active recruitment of female police officers to handle domestic violence cases, rules protecting women who testify, minimum penalties for persons found guilty of domestic violence, and wide distribution of the law to the women and men of Turkey to ensure that they are aware of their rights.

OMCT is deeply concerned that marital rape is not a specific crime in Turkey and insists that the government of Turkey should specifically criminalize the act of rape within marriage.

The correlation between a woman's sexuality and her family's honour creates a climate of social acceptance for extreme and violent measures taken in order to control the sexual behaviour of women and girls. The most concrete manifestations of this restrictive social code are crimes committed in the name of honour and practices such as virginity testing and forced marriages. Related to these practices is the extremely high rate of suicide among girls and women who justifiably fear retribution as a result of having transgressed social mores or who feel that they have no other choice if they wish to escape from a situation of forced marriage.

OMCT notes that the structure of the Turkish Criminal Code places women's sexuality under the control of the family. While other forms of violence are considered under the title "Felonies against individuals," rape and other forms of sexual violence are classified as "Felonies Against Public Decency and Family Order." Moreover, in this section, several articles refer to the virginity of victims as a constitutive element of the crime.

Although the Turkish Criminal Code does not explicitly provide for a defence based on honour, several provisions of the Code contain defences that are regularly used in order for the perpetrators of crimes committed in the name of honour to receive reduced sentences. Due to the general

acceptance of honour-related crimes by Turkish society, honour is often used by judges as a mitigating factor.

In order to fulfil its duty to exercise "due diligence" in the prevention, investigation and punishment of violence against women and girls and to eradicate crimes committed in the name of honour and practices such a virginity testing and forced marriages, OMCT would urge the government of Turkey to repeal all laws that provide reduced sentences for crimes committed in the name of honour, to enforce existing laws on incitement and assistance to commit murder and persuasion to commit suicide, and to amend all provisions in the criminal code which require the virginity of a victim as an essential element of the crime. Virginity testing should be prohibited, both in private and public establishments. The government must address attitudes that justify honour killings through education and awareness raising campaigns, including comprehensive cultural training for all law enforcement, prosecution and judicial officers in order to encourage recognition of this serious crime.

Although OMCT welcomes the reform legislation of August, which added criminal code provisions that imposes heavy prison sentences for the smuggling or trafficking of persons, OMCT is extremely concerned by the fact that Turkey does not provide adequate protection, assistance, education or rehabilitation to victims of trafficking. Victims of trafficking are treated as criminals by the Turkish authorities and are often summarily deported to their country of origin. OMCT is concerned that such a working method violates the principle of *refoulement* as no inquiry is made into the situation facing women on their return to their country of origin. OMCT recommends that Turkey urgently pass a law to specifically address trafficking in women and provide services to protect and rehabilitate women victims of trafficking.

OMCT welcomes the many legal reforms that Turkey has instituted with regard to state sponsored torture. Nevertheless, reports indicating that torture persists, that detainees do not have effective access to counsel, that family members of detainees are only notified at the discretion of the prosecution, that detainees are not always registered immediately upon arrival at the detention center, and that perpetrators of torture enjoy impunity, remain causes of concern for OMCT. The reformed laws must be followed by the political will to enforce them in a strict manner in

order to combat these problems. Additionally, loopholes in the reformed laws that allow these practices, which make detainees vulnerable to torture, to continue must be immediately addressed and amended.

OMCT is concerned about the high level of intimidation of human rights defenders and OMCT calls upon the Turkish government to prevent and punish such harassment in all instances.

OMCT is very concerned about the high incidence of torture and ill-treatment of women at the hands of law enforcement officials in Turkey. In particular Kurdish women and women who voice political beliefs unacceptable for the government and military are at risk of violence at the hands of agents of the State. State violence often has a sexual nature. Reports demonstrate that women who are victims of torture and ill treatment are often threatened with rape, raped, virginity tested, or otherwise sexually abused. OMCT would insist that the Government demonstrate its opposition to sexual violence and recognize publicly that sexual violence in custody is a form of torture or other inhuman or degrading treatment or punishment. Stripping of detainees during questioning should also be ended.

Of further great concern is the fact that the perpetrators of these acts of violence against women reportedly enjoy impunity. OMCT would call upon the Government to ensure that all acts of torture and ill treatment of women in detention are appropriately investigated, prosecuted and punished and the victims provided with adequate reparations.

OMCT would recommend that the Government adopt measures to ensure that all law enforcement personnel are aware of the provisions of human rights law in relation to the protection of women against violence. In addition, OMCT would like to suggest that greater efforts are made to ensure that at least one female law enforcement official is present during the interrogation of women suspects and that women are always housed in separate detention facilities and supervised by female wardens. It should be forbidden to male officers to strip-search female detainees.

Finally, OMCT would insist upon the need for the Government to fully implement all of the provisions of the standards and recommendations of the Committee against Torture, the Special Rapporteur on Torture, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,

the European Committee on the Prevention of Torture, the Convention for the Elimination of All Forms of Discrimination Against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials.

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Committee against Torture

Thirtieth session – 28 April- 17 May 2003

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

Concluding observations by the Committee Against Torture: Turkey

1. The Committee considered the second periodic report of Turkey (CAT/C/20/Add.8) at its 545th and 548th meetings, held on 2 and 5 May 2003 (CAT/C/SR. 545 and 548) and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the second periodic report of the Government of Turkey, which outlines the new measures and developments relating to the implementation of the Convention that have taken place in the State party since its submission of the initial report in 1990. It also welcomes the updated and detailed information as well as the extensive responses provided by the representatives of the State party.

3. The Committee nevertheless regrets the long delay in the presentation of the report, which was overdue by eight years.

B. Positive aspects

4. The Committee welcomes the following positive aspects:

   (a) The abolition of the death penalty for peacetime offences;

(b) The lifting of the long standing state of emergency;

(c) The Constitutional and legal reforms intended to strengthen the rule of law and align the legislation with the Convention. Such reforms include the reduction of periods of detention in police custody; the elimination of the requirement of administrative permission to prosecute a civil servant or public official; and the diminution of the number of crimes under the jurisdiction of State Security Courts.

(d) The inclusion in domestic legislation of the principle that evidence obtained through torture shall not be invoked as evidence in any proceedings;

(e) The establishment of Prison Monitoring Boards, which include the participation of members of non-governmental organizations in their individual capacity, with the mandate to carry out inspections in penal institutions;

(f) The bill submitted to Parliament concerning the establishment of the Ombudsman institution;

(g) That visits of monitoring bodies such as the Rapporteurs of the UN Commission on Human Rights have been accepted by the State party in a spirit of cooperation, and that the reports adopted by the European Committee for the Prevention of Torture have been made public by the State party.

C. Subjects of concern

5. The Committee expresses concern about the following:

(a) Numerous and consistent allegations that torture and other cruel, inhuman or degrading treatment of detainees held in police custody is apparently still widespread in Turkey;

(b) Safeguards concerning the registration of detainees by the police are allegedly not always complied with;

(c) Allegations of lack of prompt and adequate access of persons in police custody to legal and medical assistance, as well as notification to family members;

(d) Allegations that despite the number of complaints, prosecution and punishment of members of security forces for torture and ill-treatment are rare, proceedings are exceedingly long, sentences are not commensurate with the gravity of the crime, and officers accused of torture are rarely suspended from duty during the investigation;

(e) The importance given to confessions in criminal proceedings and the reliance of the police and the judiciary on confessions to secure convictions;

(f)The alarming problems in prisons as a result of the introduction of the so-called "F-type prisons" which have led to hunger strikes causing the death of more than sixty inmates;

(g) The State party's failure to execute judgments of the European Court of Human Rights, where the payments of just compensation ordered by the Court have not been fully complied with.

6. The Committee is also concerned about:

(a) Lack of training of medical personnel dealing with detainees on matters related to the prohibition of torture;

(b) Allegations according to which the expulsion of illegal aliens to their country of origin or neighboring countries is often accompanied by ill-treatment, without taking into consideration the safeguards contained in article 3 of the Convention;

(c) The continuing reports of harassment and persecution of human rights advocates and non-governmental organizations.

D. Recommendations

7. The Committee recommends that the State party should:

(a) Ensure that the full benefits of the safeguards against ill-treatment and torture of detainees, including those held for offences under the jurisdiction of State Security Courts, be available in practice, particularly by guaranteeing their right to medical and legal assistance and to contact with their family;

(b) Establish measures to guarantee that prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment are carried out, and ensure an efficient and transparent complaint system in this connection;

(c) Repeal the statute of limitations for crimes involving torture; expedite the trials and appeals of public officials indicted for torture or ill-treatment; and ensure that members of the security forces under investigation or trial for torture or ill-treatment be suspended from duty during the investigation and dismissed if convicted;

(d) Ensure that ongoing inspections of prisons and places of detention by judges, prosecutors or other independent bodies (such as Prison Monitoring Boards), continue to take place at regular intervals, and that appropriate action is taken upon their inspection reports and recommendations by the responsible authorities;

(e) Guarantee that detention records of detainees in police custody are properly kept from the outset of the custody period, including the period when they are removed from their cells, and that such records are made accessible to their families and lawyers;

(f) Solve the current problem in prisons generated as a result of the introduction of "F-type prisons" by implementing the recommendations of the European Committee for the Prevention of Torture and by entering into serious dialogue with those inmates continuing hunger strikes.

(g) Review the current legislation and practice in order to ensure that the expulsion of irregular aliens is performed within the legal guarantees required by international human rights standards, including the Convention;

(h) Ensure that fair and adequate compensation, that includes financial indemnification, rehabilitation, and medical and psychological treatment, is provided to the victims of torture and ill-treatment;

(i) Ensure that human rights defenders and non-governmental organizations, together with their premises and archives, are respected;

(j) Include the prevention of torture in the Human Rights Education

Programme of Turkey (1998-2007) and ensure that all the new developments in legislation are made widely known to all public authorities.

(k) Intensify training of medical personnel with regards to the obligations set out in the Convention, in particular on the detection of signs of torture or ill-treatment and the preparation of forensic reports in accordance with the Istanbul Protocol;

(l) Provide in the next periodic report detailed statistical data, disaggregated by crimes, regions, ethnicity and gender, of complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions, and penal and disciplinary sentences;

(m) Provide in the next periodic report information on the implementation of the "Return to Village Programme" regarding internally displaced persons;

(n) Widely disseminate the Committee's conclusions and recommendations in the State party in all appropriate languages.

8. The State party is invited to submit its next periodic report, which will be considered as the third, by 31 August 2005.

Violence against Minority Women in the United Kingdom

A Report to the Committee on the Elimination of Racial Discrimination

Contents

1. Preliminary Observations

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

The need to integrate the human rights of women into the work of the human rights treaty bodies was stressed at the 1993 Vienna World Conference on Human Rights[1] and reiterated in the Beijing Platform for Action adopted in 1995 by the Fourth World Conference on Women.[2] The Beijing Platform for Action states that women belonging to minority groups and women in situations of armed conflict are especially vulnerable to violence and highlights the fact that women from racial or ethnic minorities often face multiple forms of discrimination.[3]

At its 56th Session in March 2000, the Committee on the Elimination of Racial Discrimination adopted General Recommendation 25 concerning the gender-related dimensions of racial discrimination.[4] The General Recommendation draws attention to the fact that women and men are not always affected equally or in the same way by racial discrimination and notes that "certain forms of racial discrimination may be directed towards women specifically because of their gender." The General Recommendation and the Reporting Guidelines issued by the Committee on the Elimination of Racial Discrimination call upon States to provide specific information and disaggregated statistical data concerning the gender-related dimensions of racial discrimination.

The Final Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance notes that victims of racism, racial discrimination and xenophobia "can suffer multiple or aggravated forms of discrimination based on other related grounds such as sex…" and that "…racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration

in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights." The World Conference recognized "the need to integrate a gender perspective into relevant policies, strategies and programmes of action against racism, racial discrimination, xenophobia and related intolerance in order to address multiple forms of discrimination" as well as the need to "develop a more systematic and consistent approach to evaluating and monitoring racial discrimination against women."[5]

1.1 Applicable International, Regional, and National Law

The United Kingdom ratified the Convention on the Elimination of All Forms of Racial Discrimination on March 7, 1969. However, the United Kingdom has not recognized the competence of the Committee on the Elimination of Racial Discrimination to hear individual complaints under Article 14 of the Convention. In addition, the United Kingdom has ratified the following international human rights treaties: the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). The United Kingdom has not ratified the first Optional Protocol to the ICCPR but has ratified the second Optional Protocol to that treaty. Furthermore, the United Kingdom has not ratified the Optional Protocol to CEDAW and has signed but not ratified the two Optional Protocols to the CRC. Finally, the United Kingdom has signed but not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime.

The treaty establishing the European Communities, to which the United Kingdom is a party, provides in Article 13 that the European Council may, in coordination with the Commission and the Parliament, take action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. As a result, Council Directive 2000/43/EC addresses the implementation in Member States of the principles of equal treatment between persons irrespective of racial or ethnic origin and specifically recognizes the need to "promote equality between

men and women, especially since women are often the victims of multiple discrimination."[6] Additionally, the United Kingdom is party to the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, which entered into force on September 3, 1953.

At the national level, the United Kingdom has developed legislation to combat discrimination based on race and sex, such as the Race Relations Act 1976 (amended in 2000), the Race Relations (Northern Ireland) Order 1997, the Fair Employment Act 1976 (amended in 1989), the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination Act 1975 and the Sex Discrimination (Northern Ireland) Order 1976. The Race Relations Act 1976 covers discrimination in a broad variety of fields and it established the Commission for Racial Equality (CRE).[7] The CRE is under a duty to work towards the elimination of racial discrimination, promote equal opportunity and good relations between people from different races and monitor the working of the Race Relations Act, proposing amendments when necessary.[8]

The government of the United Kingdom, in 1997, appointed two Ministers for Women, who are supported by a Women's Unit, which functions to promote women's rights.[9]

1.2 Race, gender and violence

OMCT notes that in its Concluding Observations, the Committee on the Elimination of Discrimination Against Women expressed concern at discrimination against ethnic minority women in the United Kingdom and urged the United Kingdom to take measures to address both direct and indirect discrimination against this marginalized group.[10] OMCT regrets that the United Kingdom does not address the gender-related dimensions of racial discrimination nor does it discuss the connection between racial discrimination, torture and other forms of ill treatment in its combined sixteenth and seventeenth report to the Committee on the Elimination of Racial Discrimination (UN Doc. CERD/C/430/Add.3).

For this reason, and as part of the goal of gender integration described in the introduction to this report, OMCT's women's programme has chosen to focus on the linkage between violence against women in the United

Kingdom and racial discrimination. The report begins with a general overview of the situation in relation to violence and racial discrimination in the United Kingdom and then specifically addresses violence against minority women. The report concludes with a series of recommendations for future action.

2. General Observations on Racial Discrimination in the United Kingdom

Although the law in the United Kingdom is extensive in prohibiting racial discrimination, discrimination on the basis of race and ethnic origin persists. In the 2001 census, the categories of ethnic groups included: White (British, Irish, or any other White background), Mixed (White and Black Caribbean, White and Black African, White and Asian, or Any other Mixed Background), Asian and Asian British (Indian, Pakistani, Bangladeshi, and Any other Asian Background), Black or Black British (Caribbean, African, or Any other Black Background), and Chinese or other ethnic group. According to the census, 7.9% of people identified themselves as belonging to categories other than White and of that percentage, 50.2% were from South Asia, 24.8% categorized themselves as Black or Black British, and 5.3% identified themselves as Chinese.[11] The census did not distinguish between asylum and non-asylum seekers and OMCT notes that persons applying for asylum in the United Kingdom also face particular obstacles because of their minority status.

The existence of several different minority ethnic groups in the UK prevent broad generalizations concerning discrimination experienced by minorities,[12] but nevertheless, each minority group appears to suffer from certain disadvantages. For example, in employment, in 2001, 5% of White men were unemployed while minority men were unemployed at higher rates: Black African (13%), Black Caribbean (9%), Indian (7%), Pakistani (16%), and Bangladeshi (20%).[13] Employment of minority women varies greatly between ethnic groups with Black African and Black Caribbean women displaying high levels of employment, while Pakistani and Bangladeshi women are less active in the labour market.[14] Additionally, evidence suggests that Black, Bangladeshi and Pakistani students display declining levels of school achievement as their education progresses,

despite entering school with the same capacities as their fellow students.[15] People from minority groups also generally live in more deprived areas of the United Kingdom, in particular more than 50% of Pakistani and Bangladeshi households reside in the bottom 10% of deprived areas and over 33% of Black Caribbean households live in these areas. Ethnic minorities are also more likely to be homeless, with 49% of homeless people in London being people from ethnic minorities between June and September 2000.[16]

Health is another serious area of concern regarding discrimination against ethnic minorities. Strong links between poverty and poor health mean that people from ethnic minorities have greater obstacles accessing health services and receiving treatment.[17]

With regard to policing, Black people are eight times more likely to be stopped and searched than White people and Black people are four times more likely than White people to be arrested for a notifiable offense.[18] Along these lines, an opinion poll showed that a third of people thought police officers discriminated on racial grounds and 18% of Black and 15% of Asian persons claimed that they had experienced racism in their dealings with the police or the criminal justice system.[19] Furthermore, people from ethnic minorities are more concerned about being victims of crime than White people. Specifically, Black and Asian people reported being twice as worried about being physically attached and three times as worried about being insulted or harassed.[20]

Discrimination also exists against asylum seekers, often justified by politicians, such as the Home Secretary, who has characterized asylum seekers as "flooding" the United Kingdom.[21] Although immigration laws purport to apply the anti-discrimination principle, it is permissible for immigration officials to discriminate on the basis of nationality or ethnic or national origin when it is authorized by a Minister. Although discrimination on the basis of nationality is necessary in immigration law to differentiate between nationals and non-nationals of the concerned State, the allowance of discrimination on the basis of ethnic and national origin as well presents an overly broad provision which has been characterized as racial discrimination.[22] One example of how this provision can be used inappropriately is demonstrated in a Ministerial authorization which allowed discrimination in immigration decisions with regard to certain enumerated

ethnic and national groups, which included Tamils, Kurds, Greeks, Roma, Somalis, Albanians, Afghans, and ethnic Chinese presenting a Japanese or Malaysian passport.[23] This authorization was challenged as legitimizing racial discrimination and days before the case was to be heard in court, the authorization was revoked by the Home Office.[24]

Between April 2001 and March 2002, reports of racially motivated crimes rose by 20%, with 3,728 cases of racially aggravated crimes being submitted by the police to the Criminal Prosecution Service. Of those cases, 72% were prosecuted and of the cases that were prosecuted, 80% led to a conviction.[25] One report indicates that children who belong to ethnic minorities are more likely to be the victims of violence and bullying than white children and that most perpetrators of racially motivated violence are children and young people.[26] Additionally, there have been several reports of racially motivated attacks against asylum seekers.[27]

3. Violence Against Minority Women in the Family

3.1 Domestic Violence

Although some research has found that women from ethnic minorities are not more likely to be victims of domestic violence, there are potential differences in how women from ethnic minorities respond to such violence – e.g., whether they seek help from the police, community, etc., and how they are treated by persons offering services and protection for domestic violence victims. For example, one study revealed that half of Asian, African Caribbean and Arab women involved in the study waited up to five years before seeking help for domestic violence.[28]

With respect to Asian women in particular, domestic violence is severely under-reported.[29] Additionally, it has been reported that Asian women are more likely to suffer abuse by multiple family members in the home, not just their husbands. One specialist shelter for minority women has indicated that about half of the clients referred to them were fleeing family abuse, as opposed to those fleeing from abuse inflicted by partners or husbands.[30] It is important to recognize that some of the most violent behavior towards women on the part of family members is committed by other women, in particular by mothers-in-law.[31]

Another report indicates that many Asian women commit, or attempt to commit, suicide rather than seek help when they are victims of domestic violence. Indeed, studies have indicated that young women from Bangladesh, Pakistan, India and East Africa, both those born in the UK and outside the UK, commit suicide at higher rates than the general population.[32] Some of the reasons given by survivors for attempting suicide or committing self harm include: sexual and physical abuse, domestic violence, immigration issues, forced marriages, and racism.[33]

Minority women may face discrimination or other obstacles in accessing support services when they are victims of domestic violence. First, stereotypes of minority communities serve to normalize the violence (e.g., the notion that Irish violence in the family stems from alcohol abuse) or disbelieve the victim (e.g., the notion that violence does not exist in the supportive networks of South Asian or Jewish communities), among other deleterious effects.[34]

Additionally, some service providers, exhibit direct racial discrimination when handling cases of domestic violence. This discrimination sometimes manifests itself through a focus on other criminal infractions instead of ensuring protection for the victim. For example, immigrant women report that sometimes their uncertain immigration status seems more important to the police than protection from violence.[35] Similarly, according to one account, the police responded to an African-Caribbean woman who requested intervention from the police to protect her from domestic violence by checking the criminal record of the perpetrator.[36]

The opposite phenomenon is also problematic, where service providers and government officials refuse to denounce violence against women in certain communities for fear of appearing racist.[37] One service provider has said "The fear of racism, the fear of seeming racist, actually makes … [services] respond in favor of abuse rather than looking at the women's situation and is she safe to go back."[38] This non-intervention is sometimes characterized as "respect" for culture, but it has the effect of silencing this crime even more than is already the case.

Women from minority communities may also be hesitant to contact the police out of anticipation of racist attitudes.[39] For example, given that, as mentioned above, Black people are more likely to be stopped and arrested by the police than White people, Black women may not see the police as

offering a place of safety. In a related manner, women from communities that have traditionally been discriminated against may be reluctant to report domestic violence to the police for fear of reinforcing negative attitudes towards their community.[40]

Lack of English-speaking ability is another difficulty for some ethnic minority women, including immigrant women, in escaping violent home environments. They are unable to read information about services available to them, such as shelters and hotlines. Interpreters are also rarely present at police stations and hospitals to assist women in making complaints and receiving medical help.[41] Furthermore, sometimes a husband or other family member acts as interpreter but, in fact, misrepresents the situation by, for example, asserting that the injuries that the woman has sustained were the result of an accident.[42] Thus, where an interpreter is needed, it is important to ensure that victim is comfortable telling her story to that person and that that person has no conflict of interest. The interpreter needs to be a professional, preferably, a woman, and ideally the interpreter should not be a family member.

Immigrant women victims of domestic violence face particular obstacles in accessing services. First, as mentioned above, for women who do not speak English adequately, language will be a serious concern. Also, women with insecure immigration status often have no recourse to public funds. Unfortunately, because of a lack of resources, many shelters must ask the women who board there for rent and immigrant women are often turned away because they have no way to pay the necessary fees.[43]

Women who arrive in the United Kingdom to join their husbands are subject to a one year probationary period (soon to be raised to two years). If they leave their husband during this year, they will be deported. OMCT is pleased to note that the government has recently instituted a "domestic violence concession," which provides that victims of domestic violence may apply for indefinite leave to remain, provided they can prove that they are a legitimate victim. Current permissible forms of proof include a criminal conviction against the husband, police caution or an injunction, or any two of the following: a police report, a letter from a general practitioner doctor, hospital doctor or social worker, an undertaking given to the Court by the abuser, or a report from a shelter caseworker. However, with the anticipated lengthening of the probationary period to two years, many

immigrant women, who are unaware of the "domestic violence concession," are in danger of remaining in violent relationships for fear of being deported.[44]

Domestic violence accounts for 25% of all violent crime in the United Kingdom[45] and incidents of domestic violence have constituted the largest increase in violent crime since 1981.[46] Statistics indicate that about 1 in 4 women will experience domestic violence in their lifetime, while 1 in 10 women will be the victim of domestic violence each year.[47] About half of all murders of women in the United Kingdom are committed by the partners of the victims (present or ex spouses, co-habitants or lovers).[48] Domestic violence is a vastly underreported crime because of the very sensitive nature of the violation. There are many shelters for domestic violence victims in the United Kingdom, but still, there are not enough to accommodate the number of victims.[49]

Although the United Kingdom has initiated broad policies to combat domestic violence, it appears that there exists no specific comprehensive legislation addressing this crime.[50] In 1994, an Interdepartmental Working Party on Domestic Violence was established to coordinate a national and local response to this problem, in particular by improving victim's services, encouraging coordination at the local level, and initiating public awareness campaigns. This Working Party was replaced in 1999 by the Interdepartmental Group on Violence Against Women and Domestic Violence. Besides these groups, the government has also commissioned studies on the prevalence of domestic violence as well as best practices for its elimination. Some police departments have set up Domestic Violence Units to specifically handle complaints of domestic violence. Furthermore, the Family Law Act 1996 provides a remedy to those who have suffered or are suffering domestic violence to apply for a "non-molestation order" (personal protection order). The Protection from Harassment Act 1997 provides both a civil and criminal remedy in applying for a restraining order. With respect to family proceedings, civil protection is limited. Besides these civil remedies, it appears that under criminal law, domestic violence in the majority of cases is treated under general 'common' assault provisions.

The Home Office produced a consultation paper in June 2003, which invites discussion on a wide variety of topics concerning domestic vio-

lence, including: education and awareness raising, access to information for victims, protection for victims of and witnesses to domestic violence, operation of the homicide law in relation to domestic violence, and safe accommodation and support systems available to victims. OMCT sincerely hopes that the government will give serious consideration to the results of this consultation with a view to creating comprehensive legislation to address domestic violence.

3.2 Marital Rape

Considering that minority women are subject to widespread violence in the family, marital rape is another potential form of violence. Although this crime, like violence against women generally, is seriously underreported, studies indicate that husbands and partners are the most common perpetrators of rape in the United Kingdom.[51] Under the laws of the United Kingdom, marital rape is a crime.[52]

3.3 Forced Marriages

The problem of forced marriages has also been identified as a serious concern in the United Kingdom, with as many as 200 cases being reported to the Foreign & Commonwealth Office each year and many incidences of this crime remaining unreported.[53] One report gives an estimate of 1000 forced marriages a year, with the observation that even with this higher estimate, many incidents are never reported.[54]

Such marriages often involve abduction of a young girl as well as marrying her without her consent. In most circumstances, forced marriages involve girls from South Asia who are sent to their country of origin, supposedly for vacation or to visit relatives, and then taken to her family's home where she is informed that she is to be married. Often the girl is not allowed to leave the home or to have contact with non-family members. Additionally, if the girl has spent the majority of her life in the United Kingdom, she faces difficulties in communicating in the local language in order to protect her rights.[55] Forced marriages also occur without either of the "spouses" crossing international borders, or with the husband arriving in the United Kingdom to be married.[56] Women who are forced into marriage are often abused by their husbands and other family members.

The restrictions on the girl's freedom of movement and her potential lack of knowledge of the local language make it very difficult for her to give instructions about where she is or to contact local consular offices or local organizations that may be able to help her. Also, because of the familial nature of this crime, some girls are hesitant to offer evidence incriminating their family members, a situation that perpetuates the culture of silence surrounding several types of family violence.[57]

Reports indicate that women who seek protection from forced marriages have faced a lack of action by the authorities. Police allegedly fail to take action to prevent or investigate forced marriages because of ignorance regarding the issue, gender discrimination, or the perception that the issue is a private family matter.[58] Additionally, friends and boyfriends of girls who have been sent away to be forcibly married face difficulties in obtaining assistance from the authorities.[59] The government established a Working Group on Forced Marriage in 2000[60] and there appears to have been some efforts on the part of the government to raise awareness among police officers of the problem of forced marriages.[61] However, it has been observed that the government dialogue on forced marriages has mainly concerned community leaders, who are most often male and conservative, that the government has shown hesitancy in taking action and publicly denouncing the problem for fear of creating racial tensions, and that there has been an overall lack of progress on this issue.[62]

3.4 Crimes Committed in the name of Honour

Asian women are also potential victims of crimes committed in the name of honour when they act in a way that is inconsistent with cultural norms regarding women's sexuality. One report indicates that within the last 5 years, there have been at least 20 cases of killings in the name of honour in the United Kingdom.[63] Crimes committed in the name of honour are committed when a woman allegedly steps out of her prescribed social role, particularly with regard to her sexuality. The concept of family honour is central among some minority communities in the United Kingdom and the consequences of this concept can be grave for the women of these communities, rising to the level of murder in some instances. One illustrative case happened when a British-born Pakistani girl was forcibly married at age 16 to an older man, and then at age 19 became pregnant by her

childhood sweetheart. When she refused to get an abortion and insisted on a divorce from her older husband, she was invited to a family dinner where she was strangled by her brother while her mother held her down.[64] This is only one of many cases where minority ethnic women have been killed in the name of honour in the United Kingdom. It is difficult for police to act on these cases as this violence is rarely reported. Also, as with forced marriages, there is allegedly some hesitation on the part of the government in addressing this because of their fear of appearing culturally insensitive.[65]

It is important to note that the concept of honour is also linked to the high rate of suicide amongst South Asian women in the United Kingdom. In an effort to preserve family honour, some women will kill themselves, rather than disgrace the family by leaving a violent marital relationship.

4. Violence Against Minority Women in the Community

4.1 Rape

Minority women may also experience the violence of rape differently than women from dominant communities. Indeed, a survey of women asylum seekers concerning how safe they feel in the United Kingdom revealed that almost half of the women were unaware that there were free services available to rape victims.[66] Therefore, efforts should be made to specifically reach out to marginalized women in order to ensure that they are receiving adequate support services and police response when they have been raped.

A government report on violence against women notes that reported incidents of rape have increased by 165% over the last decade while the conviction rate has decreased from 24% to 9%.[67] In the past year, reports of rape have increased by 27%.[68] The British Crime Survey indicates that reports of sexual violence constitute 5% of police recorded violence generally (with 9,008 rapes being reported in the previous year). The same survey revealed that about a quarter of all women feel "very worried" about being raped.[69] Other sources indicate that the number of women victims of rape could be as high as 1 in every 4 women and that over 90%

of these victims never report the crime.[70] Sexual Assault Referral Centres reportedly offer the best support for rape victims, but there are only 7 such centres throughout the country. At local police stations, support for rape victims is not consistently positive, with inexperienced or insensitive officers often handling cases.[71]

In the United Kingdom, a rape is committed when a man has sexual intercourse with someone who does not consent to such intercourse. This definition includes both females and males as potential victims and it includes sex between spouses without consent.[72]

4.2 Trafficking

It is also necessary to address the specific needs of trafficking victims when discussing violence against minority women. One report has recorded the number of trafficking victims in the UK over the past five years known to the police as 271, all of whom were foreigners. However, the report also indicates that the true number of trafficking victims in the United Kingdom is much higher, recognizing the use of the United Kingdom as a transit country and the high proportion of foreign women working in the sex industry in the United Kingdom. Taking into account of variety of factors, the report estimates that the number of trafficking victims in the United Kingdom each year is as high as 1420.[73] Women victims of trafficking reportedly come from South East Asia (Thailand, Philippines, Malaysia, Hong Kong, and Singapore), Central/Eastern Europe (Lithuania, Hungary, Ukraine, and Belarus), Africa (Nigeria, Ghana, Kenya, and Uganda) and Brazil.[74]

Typically, victims are lured to the UK from foreign countries relying on false promises of a job or other forms of security and when they arrive, their passports and other papers are confiscated and they are forced to work as prostitutes to pay off the cost of the voyage. Throughout this process, victims are subjected to severe forms of physical and psychological violence.

Trafficking victims are unlikely to come forward to the police because of an intense fear of the authorities instilled in them by the traffickers. Also, their lack of identification papers and subjection to mental coercion leaves

them virtually imprisoned by the traffickers. Furthermore, the police are unlikely to detect trafficking victims because most police forces tolerate "off street prostitution," which is where most trafficking victims end up.[75] Thus, most police discovery of trafficking victims is accidental rather than as a result of an investigation.[76]

It is reported that most trafficking victims are treated as illegal immigrants, rather than as victims of a crime. They are often sent back to their country within 24 hours of being discovered, where they are at risk of being abducted by the same traffickers and brought back to the UK. With no effective witness protection programme in place, it is difficult for trafficking victims to ever feel safe in cooperating with the police.[77] Additionally, little is done to prosecute traffickers as such prosecutions require testimony from the victim and few victims are granted residency permits to remain in the UK for the purpose of giving evidence.[78]

The government has not yet enacted any specific legislation criminalizing trafficking in persons and prosecutions instead rely on a variety of laws within the Sexual Offences Act 1956 and abduction offences. Commentators note that these laws do not take into account the particularities of the crime of trafficking and urgently require modernization.[79] In particular, it is difficult to prove the crime of trafficking because it must be shown that the accused facilitated the entry of an illegal immigrant "for gain," and oftentimes the proof of gain, namely the assets, is in another country.[80] It has also been noted that the punishments for human trafficking are too low and not in proportion with the severity of the crime: for example, a person trafficking cocaine would be punished to between eight and fifteen years in prison while a trafficker in humans has a maximum sentence of 7 years in prison.[81] In light of these problems with the current legislative framework, OMCT welcomes the current draft bill being considered by the government to update and amend the Sexual Offences Act, in order to specifically recognize and punish trafficking as a crime.

However, OMCT is concerned at a pilot scheme launched by the Home Office on March 10, 2003 which proclaims that it will help trafficking victims by providing them with sanctuary, but only if they have been working as a prostitute and only if they have been exploited on UK soil. Thus, victims trafficked for reasons other than prostitution and victims of

trafficking who are discovered upon entry to the UK, or who are in transit to another country, are not eligible for sanctuary.[82] For those who are temporarily eligible for sanctuary, they have four weeks to decide whether to cooperate with the police and then, if they agree to give evidence, they are allowed to remain for another 6-12 weeks while the evidence they have given is "assessed." However, it is not clear whether victims who have agreed to cooperate will be granted a temporary residency permit after these initial 16 weeks. One NGO notes that this is contrary to period of reflection which is recommended as a minimum standard in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.[83]

5. Women Asylum Seekers

In the United Kingdom, there is a "dispersal" policy with regard to asylum seekers, which means that they are sent to various regions of the country with provision of support for food and other necessities through a voucher system. This system is coordinated by the National Asylum Support Service (NASS). When a person applies for asylum, they are first provided with emergency accommodation, and then, if their claim is accepted by the NASS, they are "dispersed" to the various regions of the United Kingdom. One report indicates that women asylum seekers who have been dispersed are often placed in accommodation where men and women are mixed. Women from cultures that traditionally separate men and women are made very uncomfortable by these arrangements. This is particularly problematic for pregnant women, who, in some cultures, are not supposed to be seen by men who are not family members. This mixed-sex environment has created a situation where many women do not feel safe in their accommodation.[84] Many women (84%) interviewed for the abovementioned report also report that they do not go out at night for fear of being attacked or harassed and 28% of the women had experienced physical or verbal abuse directed against themselves or their family members.[85] For example, on March 15, 2003, a newspaper reported that a woman asylum seeker and her five children had their home attacked at 11:00 pm as stones were thrown through the windows of the house. They had experienced a similar attack in September 2002.[86]

6. Violence Against Minority Women Perpetrated by the State

Women prisoners are an increasing proportion of the prison population in the United Kingdom, with the number of women prisoners having risen 155% between 1993 and 2000 (as compared to a 42% increase in the number of male prisoners). It has been noted that "women's offending is often linked to social exclusion and women committing crimes are usually those experiencing economic and social deprivation."[87] In this context, it is interesting to note that women from ethnic minorities represent a disproportionate percentage of the women's prison population.[88] The Committee on the Elimination of Discrimination Against Women noted in 1999 its concern about the proportion of minority women in prison and the potential links between the crimes they have committed and their situation of poverty.

Additionally, it is reported that many women prisoners are survivors of domestic violence and child abuse and that few services are offered to assist women in handling histories of abuse.[89] Women prisoners are also infected with HIV/AIDS at rates 13 times higher than the general population.[90]

Drug testing in women's prisons has been characterized as degrading treatment by one report which describes that women must urinate in front of a prison officer.[91] There have also been hundreds of complaints filed for sexual harassment, which are being investigated. One prison officer was suspended in 1998 after having been accused of rape and three cases of harassment of the detainees. Another officer was fired for having bribed a prisoner with food and cigarettes to make her take off her clothes while he watched and masturbated.[92]

Additionally, according to a report resulting from an inspection of detention centers in the United Kingdom, in one detention center, Haslar, only 10% of the detainees felt safe and the inspection team could not conclude that the detention center provided a safe environment. The inspection team at this detention center also could not conclude that detainees were treated with respect.[93]

7. Conclusions and Recommendations

Although the United Kingdom has much legislation attempting to address both racial discrimination and gender discrimination, these forms of discrimination persist and are particularly manifest when violence against minority women is examined. The policies and action plans of the government are important steps in eliminating discrimination against minorities and discrimination against women, but more firm efforts must be taken to ensure that violence against minority women is investigated, prosecuted and punished, in accordance with international human rights standards.

OMCT is concerned by the marginalized position of many people from ethnic minorities in the United Kingdom. The reasons behind this marginalization must be investigated and strategies to improve the situation of minority people in both their public and private lives should be initiated. Such measures should include efforts to diversify the police force and raise awareness about institutional discrimination. These initiatives should further endeavor to decrease unemployment among ethnic minorities and improve their living conditions. Also, particular attention should be paid to ensuring that children from ethnic minorities are able to achieve their full potential in school.

With respect to asylum seekers, OMCT is troubled by the severe discrimination and xenophobia experienced by this group and recommends that the government undertake sincere efforts to raise awareness among the public in order to eliminate these discriminatory views. OMCT is particularly worried about reports of violence against asylum seekers and reiterates the government's obligation to protect asylum seekers on their territory from such violence.

The lack of specific comprehensive domestic violence legislation in the United Kingdom is a subject of concern to OMCT. Such legislation is necessary to ensure that the crime of domestic violence is investigated, prosecuted and punished with due diligence.

OMCT is also gravely concerned about the low rates of reporting domestic violence among minority ethnic women and specifically the high rate of suicide among Asian women. Such trends necessitate outreach efforts to minority women victims of domestic violence in order to ensure that these women know that such violence is criminal in the United Kingdom,

that they should report such violence, and that they will receive culturally sensitive support services.

OMCT is also particularly worried about immigrant women victims of domestic violence as they face additional obstacles in escaping abusive relationships. With regard to English speaking ability, the government should ensure that all information on services for domestic violence victims is available in multiple languages, particularly those languages that most immigrant women speak. Efforts should also be made to assist immigrant women in learning English at low cost.

Additionally, immigrant women face serious difficulties in accessing shelter when they have left an abusive home since they often have little or no recourse to public funds because of their uncertain immigration status. OMCT urgently recommends that the government of the United Kingdom consider making public funds available to immigrant women victims of domestic violence in order that they may find safe shelter.

Furthermore, while OMCT welcomes the "domestic violence concession" to the probationary period that many immigrant women are subjected to, it is recommended that information concerning the concession and how to exercise it be targeted at immigrant women, especially taking into account the plans to lengthen the probationary period to two years.

OMCT is concerned about reports that police sometimes treat immigrant women as criminals, focusing on their uncertain or illegal immigration status, rather than the fact that they are victims of violence. Therefore, OMCT urges the government to institute trainings for police officers on specific forms of violence against women, how immigration status can worsen this violence and culturally sensitive approaches to protecting immigrant women from such violence.

Indications that forced marriages are occurring in the United Kingdom and that UK citizens are being sent abroad for such purposes are very concerning to OMCT and the government is strongly urged to address this problem with vigilance. Such efforts to ensure that women and girls are not forcibly married should include cooperation with the country where the girl is sent and effective responses for concerned family and friends when a girl has disappeared and they are fearful that she will be forced to marry.

OMCT is also deeply troubled by reports of killings in the name of honour. The government must take definitive steps to combat cultural practices, such as killings in the name of honour, that constitute violence against women and not shrink from such efforts behind the guise of cultural relativism.

The increase in reported rapes over the past year highlights the need for more attention to this form of violence against women. OMCT encourages the government to build upon best practices, for example by establishing more Sexual Assault Referral Centres and creating a 24 hour hotline for rape victims. Additionally, it is important that women asylum seekers are aware of services available for rape victims, and that these services, such as counseling, may be necessary for victims even where the rape did not occur within UK borders.

OMCT notes that there is no comprehensive trafficking legislation in the United Kingdom. While OMCT welcomes current efforts to reform the Sexual Offences Act, it insists on the need for comprehensive provisions on trafficking. One important step in combating trafficking would be the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime. OMCT would also urge the government to consider using the Recommended Principles and Guidelines on Human Rights and Human Trafficking (UN Doc. E/2002/68/Add.1) as adopted by the Economic and Social Council in July 2002 as the basis for the development of a comprehensive legislative and policy response to the issue.

The government should develop appropriate services to support and assist trafficked women and girls and additional support should be provided to non-governmental organisations working with women and girls who have been trafficked. Further, police forces must adopt a proactive approach to trafficking, actively investigating suspicious prostitution operations, and not only relying on happenstance information to discover such crimes.

The United Kingdom dispersal policy with regard to asylum seekers often means that women and men have to share accommodation, a situation that is very uncomfortable for women of some cultures and results in many women not feeling safe. OMCT recommends that the government adopt a more culturally sensitive approach to women asylum seekers and make

more efforts to ensure not only that they are actually safe, but that an atmosphere of safety is created and felt by the asylum seekers. Furthermore, information regarding services for victims of violence should be provided to women asylum seekers as oftentimes they have fled situations of conflict and have experienced violence.

OMCT is equally concerned about reports of violence against women in prison and the fact that minority ethnic women represent a disproportionate part of the women's prison population. OMCT notes that the presence of minority ethnic women in prison is potentially linked to their marginalized status in society and encourages the government to investigate such links. Further, OMCT insists on the absolute necessity of investigating all allegations of violence against women prisoners and holding the responsible persons accountable.

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

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3 *Ibid.*, para. 48.

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11 ENAR, *Ibid.*, p. 6.

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Committee on the Elimination of Racial Discrimination

Sixty-third session – 4-22 August 2003

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

Concluding observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland

1. The Committee considered the sixteenth and seventeenth periodic reports of the United Kingdom of Great Britain and Northern Ireland (CERD/C/430/Add.3), which were due on 6 April 2000 and 2002 respectively, submitted as one document, at its 1588th and 1589th meetings (CERD/C/SR.1588 and 1589), held on 6 and 7 August 2003. At its 1607th meeting, (CERD/C/SR.1607), held on 20 August 2003, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the detailed report submitted by the State party and expresses its appreciation for the constructive responses of the delegation to the questions asked during the consideration of the report. Furthermore, the Committee welcomes the fact that non-governmental organizations were consulted in the preparation of the report.

3. While the Committee notes with appreciation that the State party addressed most of the concerns and recommendations raised in the Committee's previous concluding observations (CERD/C/304/

Add.102), it observes that the report does not fully conform to the Committee's reporting guidelines.

B. Positive aspects

4. The Committee welcomes the Race Relations Amendment Act of 2000, which strengthens the 1976 Race Relations Act by outlawing discrimination in all public authority functions, including the police, as well as the Race Relations Act (Amendment) Regulations of 2003, which widen the definition of indirect discrimination and shift the burden of proof from the victim to the alleged offender.

5. The Committee commends the State party's efforts to address more stringently the issue of incitement to racial hatred, including the introduction of a mechanism whereby the Metropolitan Police will provide a central advice point for all forces in England and Wales in relation to possible offences of incitement to racial hatred, as well as the increase in the maximum penalty for incitement to racial hatred from two to seven years' imprisonment under the Anti-Terrorism, Crime and Security Act 2001.

6. The Committee welcomes the Police Reform Act, which includes provisions to create a new and more effective police complaints system in England and Wales; the establishment of the Police Ombudsman for Northern Ireland; and the consultations in Scotland on enhancing the independence of the Police Complaints System.

7. The Committee welcomes the establishment of a Community Cohesion Unit within the Home Office, tasked with carrying forward the Government's programme to encourage the building and strengthening of cohesive communities.

8. The Committee welcomes the establishment of the National Asylum Support Service in 2000 as an important step in providing support to eligible asylum-seekers and ensuring that they can access necessary services.

9. The Committee commends the State party's efforts to prepare a National Plan of Action against Racism, in consultation with non-

governmental organizations, in pursuance of the recommendations of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

10. The Committee takes note with satisfaction that St. Helena, the British Virgin Islands and the Cayman Islands will include a specific prohibition of racial and other discrimination as well as the necessary enforcement machinery in their Constitutions.

C. Concerns and recommendations

11. The Committee takes note of the State party's position regarding the non-inclusion of the full substance of the Convention within the State party's domestic legal order and that there is no obligation for States parties to make the Convention itself part of their domestic legal order. It is concerned that the State party's courts will not give legal effect to the provisions of the Convention unless the Convention is expressly incorporated into its domestic law or the State party adopts necessary provisions in its legislation.

    The Committee recommends that the State party review its legislation in order to give full effect to the provisions of the Convention in its domestic legal order.

12. The Committee also reiterates its concern over the fact that the State party continues to uphold its restrictive interpretation of the provisions of article 4 of the Convention. It recalls that such interpretation is in conflict with the State party's obligations under article 4 (b) of the Convention and draws the State party's attention to the Committee's general recommendation XV according to which the provisions of article 4 are of a mandatory character

    In the light of the State party's recognition that the right to freedom of expression and opinion are not absolute rights, and in the light of statements by some public officials and media reports that may adversely influence racial harmony, the Committee recommends that the State party reconsider its interpretation of article 4.

13. The Committee is concerned about the increasing racial prejudice against ethnic minorities, asylum-seekers and immigrants reflected in the media and the reported lack of effectiveness of the Press Complaints Commission in dealing with this issue.

    The Committee recommends that the State party consider further how the Press Complaints Commission can be made more effective and can be further empowered to consider complaints received from the Commission for Racial Equality as well as other groups or organizations working in the field of race relations.

    The Committee further recommends that the State party include in its next report more detailed information on the number of complaints of racial offences received as well as the outcome of such cases brought before the courts.

14. The Committee remains concerned at reports of attacks on asylum-seekers. In this regard, the Committee notes with concern that antagonism towards asylum-seekers has helped to sustain support for extremist political opinions.

    The Committee recommends that the State party adopt further measures and intensify its efforts to counter racial tensions generated through asylum issues, inter alia by developing public education programmes and promoting positive images of ethnic minorities, asylum-seekers and immigrants, as well as measures making the asylum procedures more equitable, efficient and unbiased.

15. While noting the rapid implementation in domestic law of the European Race Directive, the Committee is concerned that, unlike the Race Relations Act, the amending regulation does not cover discrimination on grounds of colour or nationality. The Committee is therefore concerned that the emerging situation may lead to inconsistencies in discrimination laws and differential levels of protection according to the categorization of discrimination (i.e. race, ethnic origin, colour, nationality, etc.), and create difficulties for the general public as well as law enforcement agencies.

    The Committee recommends that the State party extend the amending regulations to cover discrimination on the grounds of colour and

nationality. In this context, the Committee also recommends that the State party consider introducing a single comprehensive law, consolidating primary and secondary legislations, to provide for the same protection from all forms of racial discrimination, enshrined in article 1 of the Convention.

16. The Committee is concerned about the application of section 19 D of the Race Relations Amendment Act of 2000, which makes it lawful for immigration officers to "discriminate" on the basis of nationality or ethnic origin provided that it is authorized by a minister. This would be incompatible with the very principle of non-discrimination.

    The Committee recommends that the State party consider re-formulating or repealing section 19 D of the Race Relations Amendment Act in order to ensure full compliance with the Convention.

17. The Committee is deeply concerned about provisions of the Anti-Terrorism Crime and Security Act which provide for the indefinite detention without charge or trial, pending deportation, of non-nationals of the United Kingdom who are suspected of terrorism-related activities.

    While acknowledging the State party's national security concerns, the Committee recommends that the State party seek to balance those concerns with the protection of human rights and its international legal obligations. In this regard, the Committee draws the State party's attention to its statement of 8 March 2002 in which it underlines the obligation of States to "ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin".

18. While the Committee welcomes the initiatives taken for further reforms within the police force, including enhanced representation of ethnic minorities, it recalls its previous concerns about the disproportionately high incidence of deaths in custody of members of ethnic or racial minority groups.

    The Committee invites the State party to submit in its next periodic report detailed information on the new police complaints system; the new Police Complaints Commission (IPCC) which will be fully

operational from April 2004; the number of complaints involving racial discrimination referred to IPCC, including deaths in custody; and the outcome of these complaints as well as the disciplinary measures taken in each case. It also encourages the State party to adopt measures conducive to integrating the different ethnic and racial representation within the police force.

19. The Committee is concerned that a disproportionately high number of "stops and searches" are carried out by the police against members of ethnic or racial minorities.

    The Committee encourages the State party to implement effectively its decision to ensure that all "stops and searches" are recorded and to give a copy of the record form to the person concerned. The Committee invites the State party to address this issue in more detail in its next periodic report.

20. The Committee notes that the State party recognizes the "intersectionality" of racial and religious discrimination, as illustrated by the prohibition of discrimination on ethnic grounds against such communities as Jews and Sikhs, and recommends that religious discrimination against other immigrant religious minorities be likewise prohibited.

21. The Committee is concerned about reported cases of "Islamophobia" following the 11 September attacks. Furthermore, while the Committee takes note that the State party's criminal legislation includes offences where religious motives are an aggravating factor, it regrets that incitement to racially motivated religious hatred is not outlawed.

    The Committee recommends that the State party give early consideration to the extension of the crime of incitement to racial hatred to cover offences motivated by religious hatred against immigrant communities.

22. While reiterating its satisfaction in connection with the enactment of the Human Rights Act of 1998, the Committee notes that no central body has been established to implement the Act. The Committee considers that the absence of such a body may undermine the effectiveness of the Act.

The Committee refers to the earlier commitment of the State party to consider establishing a Human Rights Commission in order to enforce the Act and the possibility of granting such a commission comprehensive competence to review complaints of human rights violations, and recommends an early decision in this regard.

23. The Committee expresses concern about the discrimination faced by Roma/Gypsies/Travellers that is reflected, inter alia, in their higher child mortality rate, exclusion from schools, shorter life expectancy, poor housing conditions, lack of available camping sites, high unemployment rate and limited access to health services.

    The Committee draws the attention of the State party to its general recommendation XXVII on discrimination against Roma and recommends that the State party develop further appropriate modalities of communication and dialogue between Roma/Gypsy/Traveller communities and central authorities. It also recommends that the State party adopt national strategies and programmes with a view to improving the situation of the Roma/Gypsies/Travellers against discrimination by State bodies, persons or organizations.

24. The Committee reiterates its concern that besides the Roma/Gypsy/Traveller populations, certain other minority groups or individuals belonging to them experience discrimination in the areas of employment, education, housing and health.

    The Committee urges the State party to continue taking affirmative measures in accordance with article 2, paragraph 2, of the Convention to ensure equal opportunities for full enjoyment of their economic, social and cultural rights. Moreover, the Committee encourages the State party to submit in its next periodic report more detailed information on achievements under the State party's programmes aimed at narrowing the employment gap and improving housing conditions among different ethnic groups.

25. The Committee recalls its general recommendation XXIX, in which the Committee condemns descent-based discrimination, such as discrimination on the basis of caste and analogous systems of inherited status, as a violation of the Convention, and recommends that a prohibition against such discrimination be included in domestic legislation.

The Committee would welcome information on this issue in the next periodic report.

26. The Committee regrets that no information on the implementation of the Convention in the British Indian Ocean Territory was provided in the State party's report.

    The Committee looks forward to receiving in its next periodic report information on the measures taken by the State party to ensure the adequate development and protection of the Ilois for the purpose of guaranteeing their full and equal enjoyment of human rights and fundamental freedoms in accordance with article 2, paragraph 2, of the Convention.

27. The Committee encourages the State party to continue to consult with organizations of civil society working in the area of combating racial discrimination and during the preparation of the next periodic report.

28. The Committee notes that the State party is currently reviewing the possibility of making the optional declaration provided for in article 14 of the Convention and invites the State party to give high priority to such a review and to give favourable consideration to making this declaration.

29. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, and that it include in its next periodic report updated information on the action plan that it is in the process of drafting in order to implement the Durban Declaration and Programme of Action at national level.

30. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized.

31. The Committee recommends that the State party submit a combined eighteenth and nineteenth periodic report, due on 6 April 2006, and that the report address all points raised in the present concluding observations.

This publication forms part of OMCT's Violence against Women Programme, which focuses on integrating a gender perspective into the work of the United Nations human rights treaty monitoring bodies.
It compiles ten alternative country reports on violence against women which OMCT submitted in the year 2003 to the following five United Nations human rights treaty monitoring bodies: three country reports to the Committee against Torture on Cameroon, Colombia and Turkey; two country reports to the Human Rights Committee on Estonia and Mali; two country reports to the Committee on Economic, Social and Cultural Rights on Brazil and Russia; two country reports to the Committee on the Rights of the Child on Bangladesh and Eritrea; and one country report to the Committee on the Elimination of Racial Discrimination on the United Kingdom.

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