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**UN HUMAN RIGHTS COUNCIL
14th session (31st May – 18th June 2010)**

COMPILATION OF OMCT INTERVENTIONS

- **Item 3: Interactive Dialogue with the Special Rapporteur on the Independence of Judges and Lawyers** *page 2*
- **Item 3: Interactive Dialogue with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on arbitrary detention and the Working Group on Enforced or Involuntary Disappearances** *page 3*
- **Item 3: Interactive Dialogue with the Special Rapporteur on Violence against Women (not delivered)** *page 4*
- **Items 2 and 3: HC/SG thematic reports (A/HRC/14/34; A/HRC/14/35)** *page 5*
- **Point 5: Organismes et mécanismes de protection des droits de l'Homme** *page 6*
- **Tema 6: Examen Periódico Universal - Nicaragua** *page 7*

Human Rights Council

14th Session, 31 May – 18 June 2010

Item 3: Interactive Dialogue with the Special Rapporteur on the Independence of Judges and Lawyers

Oral statement delivered by the World Organisation Against Torture (OMCT), a non-governmental organisation with general consultative status

Thank you, Mr. President.

OMCT welcomes the report of the Special Rapporteur on the Independence of Judges and Lawyers to this Council.

Ms. Special Rapporteur, as you pointed out, several obstacles, including threats and judicial harassment, can prevent judges and lawyers fulfilling their role in the implementation of international human rights standards at the domestic level. The case of **Venezuelan** Judge Maria Lourdes Afiuni, who continues to be arbitrarily detained in poor conditions of detention, is an alarming example. OMCT has been informed that since her detention alongside inmates convicted by her, she has been subjected to several death threats and killing attempts. OMCT recalls that Judge Afiuni was immediately arrested after having ordered to substitute the preventive detention of a detainee, whose detention was earlier declared arbitrary by the United Nations Working Group on Arbitrary Detention, for a conditional release pending trial. She is now facing criminal charges. Despite several appeals, including by your mandate, the Government of Venezuela has failed to respond to calls for her immediate release, which only manifests the Government's disregard of international human rights mechanisms and their recommendations.

The case of Judge Baltasar Garzón, in **Spain**, who is facing criminal charges for trying to fulfil the obligation of the Spanish State to investigate crimes against humanity committed during Franco's dictatorship, is also of great concern.

As mentioned in your report, an effective and independent judiciary is one of the key institutions in the promotion of the rule of law. It is indeed fundamental for the effective protection of human rights, including the right not be subjected to torture and ill-treatment. However, in many countries around the world, this is yet to be guaranteed by the State.

For example, in **Tunisia**, the lack of independence of the judiciary and prosecuting authorities explain why law enforcement officials enjoy impunity in cases of torture and ill-treatment. While your visit to the country is more than needed, OMCT notes with grave concern that the request has been pending for 13 years now. Ms. de Albuquerque e Silva, will you be re-iterating the above request for visit?

Finally, OMCT welcomes the report on your mission to **Colombia**, which was carried out in December 2009. In this respect, OMCT expresses its serious concern about the ongoing climate of insecurity in which judges, including of the Supreme Court, lawyers and, in general, other members of the legal profession, who have been victims of attacks, illegal phone and email tapping as well as surveillance by the Administrative Department of Security (DAS), carry out their work. Therefore, OMCT attaches particular importance to the recommendations you have formulated and urges Colombia to promptly and effectively implement them.

Thank you.

Contact:

World Organisation Against Torture (OMCT)

Human Rights Council
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Association for the Prevention of Torture (APT)
International Federation of Action by Christians for the Abolition of Torture (FIACAT)
World Organisation Against Torture (OMCT)
International Rehabilitation Council for Torture Victims

The **APT, FIACAT, OMCT** and **IRCT** welcome this Joint Study on Secret Detention, which has had difficult passage through the Council.

It deals with a subject of such fundamental importance that it must not be ignored by any of us – and particularly not by Members of the Human Rights Council, who are duty bound to react when such a widespread practice threatens the very principles and objectives of the UN Charter and the Universal Declaration on which this Council was founded.

As the study emphasizes, secret detention facilitates, and may even amount to, torture and other ill-treatment, which are absolutely prohibited under international law.

No national security exigencies can ever justify the violation of such fundamental human rights norms.

We strongly urge member States to fully implement the recommendations contained in the study with the view to ending the practice of secret detention and drawing a line under an era of shameful disrespect for human rights.

Our question to the authors of the report is: Don't you think it would be appropriate for the Council to pass a resolution calling on States to investigate the revelations in this report without delay, and deliver justice to all those involved in this illegal practice? Given the violations documented here, to do any less would fail to respect the mandate of the Human Rights Council, and thus jeopardise its credibility.

Thank you.

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Human Rights Council

14th Session, 31 May – 18 June 2010

Item 3: Interactive Dialogue with the Special Rapporteur on Violence against Women

Oral statement delivered by the World Organisation Against Torture (OMCT), a non-governmental organisation with general consultative status (*not delivered*)

Thank you, Mr. President.

Ms. Special Rapporteur,

In 1996, the World Organisation Against Torture (OMCT), a network of 297 organisations spread across 92 countries fighting against torture, summary executions, forced disappearances, and all other forms of cruel, inhuman or degrading treatment, created a separate programme on Violence against Women among its activities. The programme was born out of a growing recognition that women have been denied equal protection against torture under both international and national law and the widespread impunity for the perpetrators of torture and other cruel, inhuman or degrading treatment or punishment committed against women.

Gender often shapes the form that torture takes, the circumstances in which it occurs, its consequences, and the availability of and access to remedies for its victims. In light of the fact that women may experience torture and other cruel, inhuman and degrading treatment or punishment in gender-specific ways or for reasons that are related to gender, OMCT believes that it is essential that these specificities are acknowledged and integrated into all the relevant human rights mechanisms, gender and non-gender specific. For this reason OMCT would like to congratulate you with the discussion in your first thematic report on reparations to women that have been subjected to violence as it is a great contribution to the interpretation of a human right which often does not offer the same guarantees for women as it does for men.

OMCT would like to ask you the following question.

Do you believe that a minimum due diligence standard should be established with regard to the provision of adequate reparations for acts of violence against women or can it only be determined and applied on a case-by-case basis? We are in particular asking you this question since your report does not offer specific examples of best practices regarding gender aspects of reparation.

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UN Human Rights Council

14th session, 31 May-18 June 2010

Agenda items 2 and 3: HC/SG thematic reports

Report of the Secretary-General on human rights in the administration of justice, including juvenile justice (A/HRC/14/34) / Report of the High Commissioner for Human Rights on human rights in the administration of justice, including juvenile justice (A/HRC/14/35)

Joint Oral Statement delivered by the World Organisation Against Torture (OMCT) and Defence for Children International (DCI), two international non-governmental organisations with special consultative status

I thank you Mr Chairman.

OMCT and DCI welcome the reports of the Secretary-General and the High Commissioner on Human Rights on the administration of justice, including juvenile justice. We find them very informative although we regret the limited number of States (only eight, and none from Africa and Asia) that replied on time to the *note verbale* sent by OHCHR to all member and observer states.

OMCT and DCI are NGO members of the Interagency Panel on Juvenile Justice quoted in the Secretary-General's report. In this framework and on their own, OMCT and DCI carry out various activities towards the protection of the human rights of children in conflict with the law. In this regard, we would like to point out a number of concerns relating to the detention of children. Despite a growing number of States that have adopted legislation in conformity with international standards on juvenile justice, OMCT together with members of its SOS-Torture network, and DCI with its sections have observed a large misuse of child detention by law enforcement officials and conditions of detention that may amount to cruel, inhuman and degrading treatment and even torture in some countries.

As it is clearly stated in the report of the Secretary-General, OMCT and DCI observe that detention is not used as a measure of last resort and for the shortest appropriate period of time as Article 37 of the Convention on the Rights of the Child prescribes. In the same vein, diversion, alternatives to detention and social reintegration remain rarely applied.

Numerous alternative reports, urgent appeals and fact-finding missions by OMCT and DCI show that children are often detained in appalling conditions that violate their dignity and development. Beyond overcrowding, lack of separation of child and adult detainees, unsanitary facilities and absence of educational activities, OMCT and DCI are seriously concerned about the excessive force that is often used against children during arrest, police custody, and pre- and post-trial detention.

OMCT and DCI call upon the Human Rights Council to effectively seize upon the question of juvenile justice. In particular, we would like for this issue to be addressed more comprehensively in the framework of the UPR. Moreover, it would also be relevant to find a way to make complementary the resolutions of the Council and of the General Assembly (GA). For example, while the GA could adopt a more general resolution, the Council resolution could include thematic issues relating to human rights in the administration of justice, including juvenile justice. In this regard, OMCT and DCI would like to suggest that the Council focus its next resolution on the detention of children.

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Intervention orale délivrée par l'Organisation Mondiale Contre la Torture (OMCT), une organisation non gouvernementale avec statut consultatif

Merci, Monsieur le Président.

L'OMCT souhaite, par la présente, renouveler son plein soutien au travail des Procédures Spéciales et, par la même occasion, réitérer sa vive préoccupation face aux attaques, à l'absence de collaboration et autres interférences à l'encontre de celles-ci de la part de certains Etats.

En effet, plusieurs détenteurs de mandat ont récemment souligné, dans leur rapport, le manque répété de coopération de certains Etats avec leur mandat, y compris par l'absence de réponse aux communications envoyées ou à des demandes de visite. Ceci est particulièrement préoccupant lorsque, dans le pays en question, des violations graves des droits de l'Homme sont commises. L'absence de coopération des Etats avec ces mécanismes sape le travail et l'effectivité du Conseil des droits de l'Homme. Dans cette même perspective, il est préoccupant de lire qu'aucune recommandation ou conclusion formulée par le Rapporteur Spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants concernant un pays n'a fait l'objet d'une résolution ou recommandation spécifique du Conseil (HRC A/HRC/13/39).

L'OMCT rappelle que les Procédures Spéciales sont un élément inhérent et fondamental du fonctionnement du Conseil; dès lors, leur indépendance et leur autonomie doivent être pleinement garanties et respectées pour permettre au Conseil de mener ses tâches à bien. Si tel ne devait pas être le cas, le Conseil perdrait de sa crédibilité.

Cette indépendance et cette autonomie des Procédures Spéciales supposent que les détenteurs de mandat aient – dans le cadre fixé par ledit mandat – toute latitude de prendre les initiatives nécessaires correspondant aux objectifs qui ont été fixés.

Nous sommes dès lors choqués par les tentatives de certains Etats de remettre en cause les initiatives prises par des rapporteurs ou des groupes de travail qui se situent dans le strict cadre des mandats des Procédures Spéciales. Dans la mesure où la réaction des Etats est souvent extrêmement pauvre et décevante, on s'attend à ce que les Procédures Spéciales jouent un rôle proactif dans la recherche des causes des violations ainsi que dans la recherche de nouvelles voies pour agir efficacement.

Merci, Monsieur le Président.

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Intervención Oral por la Organización Mundial contra la Tortura (OMCT), la Federación Internacional de los Derechos Humanos (FIDH), organizaciones no-gubernamentales con estatus consultivo ante el ECOSOC, y su organización miembro en Nicaragua, el Centro Nicaragüense de Derechos Humanos (CENIDH)

Gracias Señor Presidente.

La OMCT, la FIDH y su organización miembro, el Centro Nicaragüense de Derechos Humanos (CENIDH), agradecemos las recomendaciones formuladas a Nicaragua por los Estados participantes en el Examen Periódico Universal (EPU) y saludamos que el Estado haya aceptado mas de la mitad de las mismas. Sin embargo, aprovechamos la oportunidad para expresar nuestra preocupación porque luego de la sesión de febrero, el Estado en general no ha mostrado un cambio de actitud para implementar las recomendaciones aceptadas en el proceso del Examen aludido.

Por el contrario, como ejemplo citamos, que los mecanismos y procedimientos poco transparentes que condujeron al fraude electoral de 2008, permanecieron para las elecciones regionales de 2010 y amenazan la legitimidad de los comicios generales del 2011. Un decreto promulgado el 9 de enero de 2010 por el Presidente de la República, en contradicción con las normas constitucionales, pretende mantener en sus cargos a los Ex Magistrados del Consejo Supremo Electoral cuyo periodo ya venció. Este decreto ha provocado una crisis de legitimidad afectando también de manera grave la independencia del Poder Judicial, lo que tiene como consecuencia el debilitamiento del Estado de Derecho que supone la separación de poderes y el respeto a los derechos humanos.

Nos adherimos a aquellas recomendaciones del Informe del Grupo de Trabajo del EPU, en las que se exhorta a Nicaragua, a respetar el Estado de Derecho, incluyendo la actual Constitución que prohíbe la reelección presidencial continua.

A pesar de que el riesgo para la labor de los defensores y defensoras de derechos humanos, incluyendo los periodistas, quedó evidenciado en las recomendaciones hechas durante el EPU, el Estado continúa descalificando y obstaculizando la labor de los mismos, propiciando la impunidad y alentando nuevas agresiones y amenazas contra ellos.

La violencia contra la mujer en todas sus formas continúa, como quedó evidenciado en los malos tratos sufridos recientemente por las privadas de libertad del Centro Penitenciario “La Esperanza”¹, en desconocimiento a las recomendaciones sobre esta materia del Informe. Enfáticamente queremos señalar que el Estado continúa negándose a permitir el aborto terapéutico procediendo en contra de las recomendaciones de cuatro Órganos de Tratados de Naciones Unidas y de más de treinta recomendaciones formuladas en el Informe del Grupo de Trabajo.

Finamente, lamentamos que el Estado de Nicaragua, al proporcionar información alejada de la realidad, también en esta sesión, esté desaprovechando una oportunidad de mejorar la situación de los derechos humanos en el país. Esperamos que el Estado rectifique su actitud mostrándose

La Señora Isolda Herrera Carcamo, quien se encontraba detenida en el Centro Penitenciario “La Esperanza”, denunció ante el CENIDH que el 05 de abril todas las internas fueron formadas en una fila e ingresadas en grupos de seis en seis para una revisión corporal que incluyó ser desnudadas por completo y delante de otras seis funcionarias realizar tres sentadillas y luego sometidas a una inspección vaginal. Posteriormente fueron trasladadas al consultorio donde la doctora realizó la inspección vaginal, que fue interrumpida luego que pasó el primer grupo de internas, por la resistencia que éstas opusieron.

dispuesto a aceptar y cumplir todas las recomendaciones, y desde el CENIDH, estamos comprometidos a contribuir a la implementación de las mismas.

Gracias, Sr. Presidente.

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