



World Organisation Against Torture  
P.O. Box 21- 8, rue du Vieux Billard  
CH 1211 Geneva 8, Switzerland  
Phone: 0041/22 809 49 39 / Fax: 0041/22 809 49 29  
E-mail: [omct@omct.org](mailto:omct@omct.org) / Website: [www.omct.org](http://www.omct.org)

## POSITION PAPER OF THE WORLD ORGANISATION AGAINST TORTURE

2003 United Nations Commission on Human Rights  
59<sup>th</sup> session (March 17th to April 24<sup>th</sup>, 2003), Geneva

### Summary

The Primacy of Law challenged by the Ascendancy of War .....	2
The Right to Reparation.....	5
Impunity .....	6
Human Rights Defenders .....	7
Violence Against Women.....	9
Children .....	11
Economic, Social and Cultural Rights .....	14
Annexe I: Written Statement on Nigeria .....	17
Annexe II: Written Statement on the Democratic Republic of Congo.....	19

Geneva, January 31<sup>st</sup>, 2003

## **The Primacy of Law challenged by the Ascendancy of War**

The World Organisation Against Torture (OMCT), is deeply concerned about the continuing effects of the “war against terror” on the respect for the prohibition against torture and ill-treatment

Since the attack in the United States of America on September 11<sup>th</sup>, 2001, the war on terror seems to have taken priority over most other concerns at the domestic, regional, and international level. Subsequent to the attack, the adoption of new laws and norms, the revision of “old” “outdated” norms now allegedly incompatible with the “new” contingencies and demands of the war on terror, and numerous reforms are being pushed through at great speed at different levels.

At the domestic level many governments have either adopted new anti-terror legislation or modified pre-existing legislation in a manner that, in a number of cases, curtails certain individual rights and creates the conditions for the violation of fundamental rights such as the prohibition against torture and ill-treatment.

International organisations have either intensified efforts to apply pre-existing instruments and mechanisms to combat terrorism or created new ones. Concerning the European Union (EU) for example, a European arrest warrant, a common definition of terrorism and a list of terrorist organisations have been adopted, in addition to which, joint police investigation teams across the EU have been created as well as a special Europol anti-terrorism unit, and Eurojust, a co-ordinating body between Member States' law enforcement agencies. Furthermore, in 2002, the Organization of American States adopted a new Inter-American Convention Against Terrorism<sup>1</sup>.

At the United Nations, the Security Council created a Counter Terrorism Committee on 28 September 2001 and discussions on Draft Comprehensive Convention Against International Terrorism have continued<sup>2</sup>.

Although action to prevent and punish terrorist attacks is both understandable and desirable, the amount of commitment shown by governments in the campaign against terror sometimes contrasts greatly with their lack of action in the field of human rights. While statistics published by the High Commissioner in January of 2003 showed that there were 1 511 reports overdue to the six treaty bodies, the Counter Terrorism Committee reported in September of 2001 that, in the year since its creation, it had received 261 reports and had completed the first round with 159 Member States and 5 others. Only 17 Member States had failed to submit a report, 8 of which had not contacted the Committee<sup>3</sup>.

Furthermore, and of even greater concern, is the fact that in recent months, the western media has published articles not only alleging that certain types of torture and ill-treatment are currently being used on “terrorist suspects” by the United States, but also questioning the absolute nature of the prohibition of the use of torture and ill-treatment.

There have been serious allegations that techniques of interrogation that constitute torture are being used on al-Qaeda and Taliban captives in secret CIA interrogation centres, such as in the Bagram Air Base in Afghanistan and on the island of Diego Garcia, a British-owned

---

<sup>1</sup> Inter-American Convention Against Terrorism, AG/RES. 1840 (XXXII-0/02), adopted at the second plenary session held on June 3, 2002.

<sup>2</sup> Report of the Working Group, Sixth Committee, fifty-seventh session, A/C/6/57/L.9, 16 October 2002.

<sup>3</sup> See S/2002/1075, 25 September 2002, para. 6.

island in the Indian Ocean that the US leases. Terrorist suspects have reportedly been deported for questioning to countries with poor human rights records where security forces have a record for brutality and nations allied in the so-called "war against terror" have therefore been actively encouraged to engage in the use of torture and ill-treatment.

In light of this, OMCT has requested that the United Kingdom, in acknowledgement of its standing invitation to all of the Commission's mechanisms, grant the Special Rapporteur on Torture, the Working Group on Arbitrary Detention and all other relevant mechanisms access to the island of Diego Garcia.

In this context, OMCT has also expressed its hope that the United States of America will invite the Special Rapporteur on Torture, the Working Group on Arbitrary Detention and all of the Commission's other relevant mechanisms to visit its detention facilities at Guantanamo Bay, Bagram Air Force base in Afghanistan and any and all other detention centres under US jurisdiction, in order to dispel these allegations.

Moreover, regimes that in the past have frequently used the pretext of security and the fight against terror to repress political opposition and any criticism of their policies, seem to have been able to increase such activities in the absence of international condemnation of such acts.

OMCT would like to recall that the prohibition of torture is a norm which is not only present in both human rights and humanitarian law treaties but also which, under both types of instruments, cannot be derogated from or suffer any kind of limitation under any circumstance. Today, the prohibition of torture is regarded as *jus cogens* and, as such, constitutes a peremptory norm of general international law.<sup>4</sup> Norms of *jus cogens* cannot be altered by treaty or by a subsequent customary rule.

---

<sup>4</sup>See *the Prosecutor v. Anto Furundzija*, 10 December 1998, *Trial Chamber II case N° IT-95-17/1T*. See also the *General Comment No. 24* on "Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocol thereto, or in relation to declarations under Article 41 of the Covenant", issued on 4 Nov. 1994 by the *United Nations Human Rights Committee*, para. 10 ("the prohibition of torture has the status of a peremptory norm"). In 1986, the *United Nations Special Rapporteur*, P. Kooijmans, in his report to the *Commission on Human Rights*, took a similar view (E/CN. 4/1986/15, p. 1, para 3). That the international proscription of torture has turned into *jus cogens* has been among others held by U.S. courts in *Siderman de Blake v. Republic of Argentina*, 965 F. 2d 699 (9<sup>th</sup> Cir. 1992) Cert. Denied, *Republic of Argentina v. De Blake*, 507 U.S. 1017, 123L. Ed. 2d 444, 113 S. Ct. 1812 (1993); *Committee of U.S. Citizens Living in Nicaragua v. Reagan*, 859 F. 2d 929, 949 (D.C. Cir. 1988); *Xuncax et al. v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995); *Cabiri v. Assasie-Gyimah*, 921 F. Supp. 1189, 1196 (S.D.N.Y. 1996); and *In re Estate of Ferdinand E. Marcos*, 978 F. 2d 493 (9<sup>th</sup> Cir. 1992) Cert. Denied, *Marcos Manto v. Thajane*, 508 U.S. 972, 125L. Ed. 2d 661, 113 S. Ct. 2960 (1993). The House of Lords also considered the prohibition of torture to be part of *jus cogens* see *Regina v. Bartle and the Commissioner of Police for the Metropolis and other (Appellants), Ex-Parte Pinochet (Respondent) (On appeal from a Divisional Court of the Queen's Bench Division)*; *Regina v. Evans and Another and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet (On appeal from a Divisional Court of the Queen's Bench Division)*.

In light of these significant events and tendencies, which represent an undeniable threat to the system of international law as we know it, OMCT would like to urge the Commission:

- **to strengthen this year's resolution on torture by reaffirming the *jus cogens* status of the prohibition against torture in this years resolution on torture;**
- **to urge the relevant thematic mechanisms, in particular the Special Rapporteur on Torture and the Working Group on Arbitrary Detention, to pay special attention to all detention centres being used in the afore-mentioned context.**

## The Right to Reparation

It has been ten years now since the Commission on Human Rights first adopted a resolution in support of the drafting of the basic principles and guidelines concerning the right to restitution, compensation and rehabilitation<sup>5</sup>. The results of the work on this issue, which was first conducted by Professor van Boven and subsequently by Professor M. Cherif Bassiouni, are the *Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law*.

OMCT considers that the adoption of a universal instrument within the United Nations System that codifies existing norms and standards on the right to a remedy and reparations would be an event of crucial importance that is long overdue. Such an instrument would represent a fundamental contribution to the recognition of victims' right to an effective remedy and reparations. Furthermore, it would also constitute an important means for ensuring that States comply with their obligations under international law to guarantee such remedies when violations of international human rights and humanitarian law occur, and contribute to the prevention of such violations. The *Draft Basic Principles* constitute an excellent basis for such an instrument. It is worth noting, that although it has yet to be adopted, this draft has already become a reference for international jurisprudence.

In October of 2002, a Consultative Meeting was convened for interested member States, intergovernmental and non-governmental organisations, to discuss the present text of the draft principles<sup>6</sup>. The meeting led to significant progress on a number of issues and proved to be an excellent process through which the *Draft Principles* could be discussed and examined.

OMCT would thus like to urge the Commission on Human Rights:

- **to give priority to the finalisation of the *Draft Principles* and, with this objective in mind, authorize the holding of a new meeting with a view to the adoption of the resulting Principles without further delay.**

---

<sup>5</sup> Resolution 1993/17, Commission on Human Rights

<sup>6</sup> The meeting was held pursuant to Commission on Human Rights resolution 2002/44.

## Impunity

Impunity is one of the most important issues facing the international community and national governments in the pursuit of the respect for international human rights and humanitarian law. The creation of the International Criminal Court, though an event of enormous significance, will not solve the question of impunity. As is provided in the Statute of the Court itself, the vast majority of instances of serious violations of human rights and humanitarian law will continue to be addressed by the domestic courts and national governments. In this context, the adoption of general principles regarding the question of impunity is a matter of urgency. If adopted, such principles would represent an important tool in the struggle against impunity and would provide domestic governments with valuable guidelines on how to effectively implement their international obligations regarding this issue.

The set of principles on impunity presented by Mr. Joinet in his 1997 report to the Sub-Commission<sup>7</sup> are the result of a detailed examination of the many problems that lead to and are raised by impunity. The principles are an important complementary instrument to the many different advances that have taken place over the last decade, as they directly address the structures in society that lead to and ensure impunity, by striving to guarantee that full redress is provided to victims.

The present draft is a document that constitutes a significant contribution towards the adoption of a definitive text on the issue. However, a number of developments that have taken place since the text was presented in 1997 inevitably have had an impact on certain themes addressed in the text and should be taken into account.

Accordingly, OMCT considers that, in addition to the continuing attention being given to the question of impunity by the Commission's various mechanisms, the Commission on Human Rights should:

- **name an independent expert on the issue. The expert should be given a mandate to revise the present text with a view to facilitating its prompt adoption by the Commission on Human Rights.**

---

<sup>7</sup> Question of the impunity of perpetrators of human rights violations (civil and political); Final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, E/CN.4/Sub.2/1997/29, 26 June 1997.

## **Human Rights Defenders**

Since its inception, OMCT has devoted considerable effort towards promoting the creation of mechanisms, procedures and means of offering adequate protection to Human Rights Defenders around the world. Through the Observatory for the Protection of Human Rights Defenders, which was created in 1997 and operated in partnership with the International Federation of Human Rights (FIDH), it provides protection to Human Rights Defenders through a system of urgent appeals, judicial observation, solidarity and inquiry missions, and direct material and legal assistance for Human Rights Defenders at risk.

### **1. Context**

During the year 2002, the Observatory documented more than 400 cases of death threats, smear campaigns, physical abuse and acts of torture, reprisals against family members, bans on travel, confiscation of equipment, arbitrary arrest and detention used to deter human rights defenders in about 60 countries. While this repression is not new, OMCT observes that it is now part of a strategy to criminalise the human rights movement, as its capacity for action and mobilisation grows both nationally and internationally. Considerable efforts are still required to protect human rights defenders and in particular to disseminate information on the relevant protection instruments, such as the 1998 Declaration. At the time of the 5<sup>th</sup> Anniversary of this Declaration, States should be reminded of the legitimate work carried out by Human Rights Defenders and their commitment to support this work, especially in the new context of the international fight against terrorism, which has had visible consequences on Human Rights Defender's activities.

Indeed, since September 11<sup>th</sup> 2001, security has become the absolute priority and the – legitimate and necessary – fight against terrorism is increasingly diverted from its primary objective and used by governments to establish or strengthen their hold on power at the expense of their commitments on human rights. Consequently, those who dare to criticize regimes for their human rights abuses are more than ever under fire, as governments and government-sponsored private groups clamp down. Activists' appeals for the rule of law and their denunciations of violations are perceived as threats by an increasing number of governments, whose reaction is to repress such "unpatriotic troublemakers" who are tarnishing their country's image both nationally and internationally. This was pointed out by the Special Representative in her report to the 58<sup>th</sup> Session of the Human Rights Commission and we believe this issue should continue to be given special attention.

OMCT is also concerned by the strategies developed by the most repressive governments to control the information about them that contrasts with the positions they take on the international scene regarding globalization and freedom of communication. These facts highlight a paradox of the beginning of the 21<sup>st</sup> century: at the same time as an increasingly sophisticated global system of communication is developing, with the convening of the first World Summit on the Information Society in December 2003, governments are moving more energetically to control the means of communication and information about them, be it by restricting access to the Internet, blocking websites or arresting cyber-dissidents. Other more insidious reprisals have developed in recent years. States are increasingly organising smear campaigns against defenders in the official media to devalue the content of their information in the eyes of the population and the international community and thus cut them off from the support they need to continue their work. They also seek to tighten their control of communication media through legislation to restrict the freedom of the press, suspend NGOs, etc.

While these methods may appear less violent at first, they are part of the same strategy to suppress dissent. “Traditional” methods of repression are still employed, including assassinations and abductions, death threats, torture, arbitrary arrest and detention, and prohibitions on leaving the country.

## 2. Recommendations

OMCT is of the view that the Special Representative has played a vital role in drawing attention to the methods of repression used against human rights defenders and providing them with protection. Within her mandate, the special Representative should continue to pay special attention to limitations to freedom of association, impunity and the fight against terrorism, which can all have a negative impact on the work of human rights defenders, and to the situation of particularly targeted groups such as women defenders and defenders of indigenous communities.

In this light, OMCT urges the Commission:

- **to renew the mandate of the Special Representative and ensure that it is provided with adequate resources and that cooperation between the Special Representative and other thematic Rapporteurs as well as regional mechanisms for the protection of human rights defenders be encouraged;**
- **to strengthen its resolution on human rights defenders by reminding States that the measures adopted to fight against terrorism cannot justify disproportionate limitations to freedoms impairing the legitimate work of Human Rights Defenders (freedom of association, freedom of expression, freedom of movement);**
- **to encourage all national initiatives undertaken by States to give full implementation of the Declaration, through propagation and awareness-raising, through adoption of the declaration by national parliaments, through solidarity campaigns with defenders, and through mechanisms that provide safe heavens for those under threat;**
- **to ensure the propagation of the Declaration and promotion of its fulfilment and application through the inclusion in the United Nations plans and information or training programmes for state and government official or agents;**
- **to encourage the creation of a United Nations Special Fund for Human Rights Defenders similar to that which exists for the victims of torture, taking into consideration the existence of extreme situations of emergency faced by defenders, that would function as an emergency fund to provide protection for defenders.**



## 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 and 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. Because of violence women are deprived, either partially or totally, of the enjoyment of their human rights and fundamental freedoms.

### 1. Integrating the Human Rights of Women Throughout the United Nations System

Although mainstreaming of gender issues has gained momentum within the United Nations system, women continue to be isolated from the “mainstream” human rights treaty bodies. OMCT regularly submits reports on violence against women to these treaty bodies in an effort to draw attention to the particular forms of torture and ill treatment experienced by women.

Along these lines, OMCT urges the Commission:

- **to recognize the links between gender and torture and ill treatment by ensuring that the gendered causes and consequences of torture and ill treatment are fully integrated within the torture resolution and that torture and ill treatment are included in the resolution on violence against women.**

### 2. Special Rapporteur on Violence Against Women, its Causes and Consequences

OMCT is of the view that the Rapporteur has played a vital role in drawing attention to the different forms of violence suffered by women and girls within the family, in the community and at the hands of State officials. The Special Rapporteur was appointed in 1994 and, almost 10 years later, OMCT insists on the absolute necessity to renew her mandate.

In renewing the Rapporteur’s mandate, the Commission:

- **should ensure that the Rapporteur is provided with adequate resources and encourage continued cooperation between the Special Rapporteur and other thematic Rapporteurs, such as the Special Rapporteur on Torture and the Special Rapporteur on extrajudicial killings.**

### 3. Corporal and Capital Punishment

OMCT is gravely concerned by the recent increase in the number of women being sentenced to corporal and capital punishments, particularly by religious and ad hoc courts. These punishments are disproportionately applied to women, largely as a result of laws that criminalise adultery and sexual relations outside of marriage. These discriminatory laws are often used as mechanisms to circumscribe and control female sexuality. In addition, evidentiary requirements that provide that pregnancy constitutes irrefutable “evidence” of adultery or that give less weight to the testimony of women reinforce the gender

discrimination in the administration of justice which results in women being sentenced to corporal or capital punishment in far larger numbers than men.

OMCT recommends that the Commission:

- **request the Special Rapporteur on Torture to undertake a study of corporal and capital punishment and that the gender-specific aspects of these forms of torture and ill treatment be adequately addressed. To this end, OMCT encourages the Special Rapporteur on Torture to seek input from other thematic Special Rapporteurs, including the Special Rapporteur on Violence Against Women, its Causes and Consequences.**

#### 4. Trafficking in Women

Trafficking in women continues to be a serious problem across the world. Trying to escape poverty, discrimination and violence in their home countries, trafficked women are frequently subjected to torture and other forms of violence at the hands of traffickers and State agents such as police and border guards.

It is urgent that the Commission:

- **strengthens its resolution on trafficking and promotes the implementation of the Recommended Guidelines on Human Rights and Human Trafficking adopted by ECOSOC in July 2002. OMCT further urges the Commission to examine the relationship between increasingly restrictive avenues to legal immigration in many countries and the increase in trafficking in persons, particularly women.**

#### 5. Honour Crimes

Crimes against women and girls committed in the name of honour are a gender specific form of violence that is either approved or supported by States in many parts of the world. Although much attention has been paid to honour crimes in recent years, women continue to be subjected to these crimes by their fathers, husbands, brothers or other family members when they have been accused of acting in a way inconsistent with their socially prescribed role, usually with respect to their sexuality.

OMCT calls on the Commission:

- **to support initiatives to eliminate this form of violence against women by implementing the recommendations made by the Secretary General in his study of honour crimes along with the recommendations made by the Special Rapporteur on Violence Against Women, its Causes and Consequences in her 2002 report to the Commission.**

## Children

### 1. UN International Study on Violence Against Children

OMCT welcomes the nomination of the Secretary General Independent Expert to conduct the UN Study on Violence Against Children. OMCT strongly believes that this project is an important step towards reducing and ending torture and other forms of violence against children, and that it should include the development of strategies to effectively prevent and combat such violence.

The OMCT International Conference *Children, torture, and other forms of violence* held in Tampere (Finland) in November 2001, made specific recommendations on the scope of the study. This conference was attended by 183 participants from 73 countries representing a wide range of international and national non-governmental organizations (NGOs), as well as other organisations and observers from governments and intergovernmental organizations.

In light of the conclusions of the Tampere conference and in accordance with other members of the NGO Group for the Convention on the Rights of the Child, OMCT recommends to the Commission that:

- **the study be based on the Convention on the Rights of the Child and other relevant international standards; and its mandate and scope be in accordance with the Committee on the Rights of the Child's recommendations following its two general discussion days;**
- **the scope of the study extend, *inter alia*, to:**
  - i. **Physical and psychological violence in police custody and other places of detention**
  - ii. **Physical and psychological violence caused through the deprivation of liberty**
  - iii. **Physical and psychological violence in schools, orphanages or other institutions, both public and private**
  - iv. **Physical and psychological violence in the family**
  - v. **Physical and psychological violence in the workplace**
  - vi. **Physical and psychological violence against children living and working on the streets**
  - vii. **Physical and psychological violence that may be caused by the judicial process, before and during the trial**
  - viii. **Criminal sanctions, including the use of death penalty and life imprisonment, as well as other punishment that could amount to violence against children<sup>8</sup>**
- **a separate secretariat for the study led by the independent expert be established and sufficiently funded to carry out its task, including to facilitate the contributions of partners and provide a single focal point for experts and NGOs;**
- **the meaningful involvement of children in the study be facilitated through adequate support from a full member of the Secretariat team;**

---

<sup>8</sup> Tampere Declaration, art. 1, in *Children, Torture and other forms of Violence: Facing the Facts, Forging the Future*, 27 Novembre – 2December 2001, OMCT, p. 71.

- **clear avenues for NGO participation in the study through a formal advisory group be established, in order to draw on our considerable experience and knowledge relating to violence against children.**

## 2. Proposal for a UN Special Rapporteur on Violence Against Children

Whereas the UN International Study is planned to take place over the next two years, the current situation calls for immediate action. By almost unanimously ratifying the Convention on the Rights of the Child, States have already expressed a strong commitment to protect children from violence. However, this commitment was not followed by the creation of a thorough implementation system. While the monitoring role of the Committee on the Rights of the Child is of vital importance, its effectiveness is inherently limited, since it only covers the examination and discussion of State reports. Unlike some other UN Committees, the Committee on the Rights of the Child is not mandated to receive individual complaints or to lead in-depth investigations on specific situations. Other general human rights mechanisms do, of course, include children in their activities. However, their respective mandates are limited to certain rights and their reports often show that they rarely adopt a child-oriented perspective in practice. As a result, there is still no international mechanism empowered to globally and systematically address violence against children.

In consequence, OMCT deems that this vacuum should be filled as a matter of urgency by the Commission on Human Rights and restates the recommendation of its Tampere Declaration<sup>9</sup> to the Commission on Human Rights to:

- **appoint a Special Rapporteur on Violence against Children in order to, inter alia, solicit, receive and exchange information and communications, including individual complaints and on systematic violations, from all relevant sources, including from children themselves, on any form of violence or ill-treatment they may be subjected to, as well as its causes and consequences; to undertake investigations; and to take appropriate measures, including urgent actions. The Special Rapporteur should, as part of his or her work, interact with all relevant UN mechanisms, with relevant regional bodies and with national and international NGOs, and seek the views of children.**

## 3. Death penalty

The use of the death penalty for crimes committed by people younger than 18 years of age is prohibited under international human rights law, yet some countries still execute child offenders. Such executions are few compared to the total number of executions in the world. However, their significance goes beyond their number and calls into question the commitment of the executing States to respect international law.

Besides the USA, the other countries that still impose the death penalty on juveniles, such as Iran, Nigeria, Saudi Arabia or Sudan, are parties to the Convention on the Rights of the Child, which prohibits the imposition of this sentence in article 37. Furthermore, as was recently recalled by the Inter-American Commission on Human Rights, OMCT believes that the prohibition of the execution of offenders under the age of 18 years at the time of their

---

<sup>9</sup> Tampere Declaration, art. 1, in *Children, Torture and other forms of Violence: Facing the Facts, Forging the Future*, 27 November – 2December 2001, OMCT, p. 12.

crime is a norm of international customary law and also constitutes a norm of *jus cogens*.<sup>10</sup> As such, this prohibition is binding for all States.

Furthermore, OMCT would like to remind that, since children are in critical stages of their development, the imposition of the death penalty might have much more serious effects on them, particularly regarding the psychological effects, which they endure while awaiting execution and/or being at a high risk of being sentenced to death. Accordingly, OMCT urges the Commission to:

- **call upon all concerned States to immediately commute all death sentences imposed upon people who were below eighteen years of age when they committed their respective offences and to abolish this practice in countries where it is still provided for by law.**

#### 4. Corporal punishment, in particular amputation, stoning and flogging

OMCT is strongly concerned that the legislation of some countries, such as Iran, Saudi Arabia and Sudan, include provisions enabling children to be subjected to corporal punishment such as amputation, stoning and flogging. The infliction of this kind of sanction can lead not only to immediate physical and psychological damage, but also to developmental problems and diminished physical and psychological capacities over a lifetime.

In Sudan, for example, the Penal Code permits execution by stoning for adultery, even when the involved person is under the age of eighteen. Amputation can also be imposed as punishment for murder and armed robbery, even when the offenders are children.

OMCT believes that any case of amputation and stoning is a case of torture under any circumstance, and that flogging may amount to torture depending on its physical and mental effects and, in some cases, the sex, age and state of health of the victim, as well as the number of lashes inflicted. These practices fall at the extreme end of a range of prohibited punishments and result in devastating long-term trauma to a victim's physical and psychological integrity and development.

OMCT therefore requests the Commission to:

- **convey an unambiguous message to the international community that corporal punishment, in particular amputation, stoning and flogging are not lawful, even if permitted in domestic legislation, and are prohibited in all cases.**

---

<sup>10</sup> Inter-American Commission on Human Rights, Report no 62/02 (Merits), Case 12.285, Michael Domingues, United States, October 22, 2002.

## **Economic, Social and Cultural Rights**

In his 2000 interim report to the General Assembly, the U.N. Special Rapporteur on torture, Sir Nigel Rodley, observed that “the overwhelming majority of those subjected to torture and ill-treatment are ordinary common criminals from the lowest strata of society”.<sup>11</sup> In her 2000 report to the U.N. Human Rights Commission, the U.N. Independent Expert on human rights and extreme poverty, Ms. Anne-Marie Lizin, recognised this reality, underlying that extreme poverty often brings people into conflict with the law and that prison populations consist mainly of poor people.<sup>12</sup>

These assertions follow the observations made by the Special Rapporteur on torture in his country reports on Brazil, Kenya, Cameroon, Mexico, Venezuela and the Russian Federation. These reports acknowledged that a socio-economic situation characterised by widespread poverty and deep inequalities has not only an impact on one’s vulnerability to be subjected to torture but also on the emergence of conflict or criminality, which are often accompanied by State repression or State violence, including torture.<sup>13</sup> In this respect, he highlighted the role played by the implementation of trade-related agreements, macroeconomic structural adjustments, stringent economic pressure or economic instability.<sup>14</sup>

In relation with these observations, the Special Rapporteur concluded that “as long as national societies and the international community fail to address the problems of the poor, the marginalized and the vulnerable, they are contributing to a vicious circle of brutalisation in which any prospect for the eradication of torture is unsustainable”.<sup>15</sup>

This approach - taken into account by OMCT in its daily work since the end of the 1980s - stresses the need to adopt a holistic approach not only within the human rights system itself, but also with regard to the relation of this system with economic, trade and financial policies.

---

<sup>11</sup> U.N. Doc. A/55/290, Report by the Secretary General, incorporating Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, 11 August 2000, para 35

<sup>12</sup> U.N. Doc. E/CN.4/2000/53, 25 February 2000, Report submitted by Ms. A.-M. Lizin, independent expert, pursuant to Commission resolution 1999/26, paras 107-110

<sup>13</sup> U.N. Doc. E/CN.4/2001/66/Add.2, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit to Brazil, March 2001, § 9 ; U.N. Doc. E/CN.4/2000/9/Add.4, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit to Kenya, March 2000, § 17; U.N. Doc. E/CN.4/1997/7/Add.3, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit to Venezuela, December 1996, § 5; U.N. Doc. E/CN.4/1998/38/Add..2, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38, Addendum, Visit by the Special Rapporteur to Mexico, § 77; U.N. Doc. E/CN.4/1995/34/Add.1, Report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1994/37, visit by the Special Rapporteur to the Russian Federation, § 9; U.N. Doc. E/CN.4/2000/9/Add.2, Report of the Special Rapporteur, Sir Nigel Rodley, Visit to Cameroon, November 1999, § 21

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

## 1. A holistic approach within the human rights system: the indivisibility of all human rights and the question of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)

Despite the firm stand taken by the international community on the indivisibility, interdependence and interrelationship of all human rights, in reality civil and political rights often continue to be seen as entities that are separate from economic, social and cultural rights, both conceptually, practically and also in terms of priorities.

Such separation is notably reflected by the absence of an individual complaint mechanism, at the international level, regarding economic, social and cultural rights. While the Universal Declaration of Human Rights (UDHR) is governed by two separated covenants, it is worth noting that the one on civil and political rights is benefiting from a system of individual complaints for 17 years.

Economic, social and cultural rights are not aspirational goals or objectives to be achieved. Health, food, work, housing, education and social security are individual rights with corresponding State obligations to respect, protect and fulfil. Besides this intrinsic nature, strong evidence collected by different UN human rights mechanisms and by OMCT shows that economic, social and cultural rights also represent essential elements for the prevention of torture (see above).

While the adoption of a holistic approach, along with the practical recognition of the interdependence, indivisibility and interrelationship of all human rights goes well beyond the adoption of an Optional Protocol to the ICESCR, this step remains essential. In this respect, OMCT welcomes resolution 2002/24, in which the Commission decided to establish, at its 59<sup>th</sup> session, an open-ended working group with a view to considering options regarding the elaboration of an Optional Protocol to the ICESCR.

## 2. A holistic approach regarding the positioning of the human rights system with respect to economic, trade and financial policies

The Special Rapporteur on torture highlighted the role that implementation of trade-related agreements, macroeconomic structural adjustments, stringent economic pressure or economic instability can play in relation to the emergence of torture. In addition, different UN human rights mechanisms have addressed the potential impact that economic, trade and financial policies can have on the enjoyment of all human rights - civil and political as well as economic, social and cultural rights.<sup>16</sup>

However, and despite the reiteration by the international community of the fact that the promotion and protection of human rights is the first responsibility of governments, economic, trade and financial rationales often take precedence over the protection and defence of human rights. In this respect, while globalisation has brought about tremendous opportunities, it has also led to significant social dislocation and increasing disparities within and among countries, as some groups are simply not in a position to take advantage of this process and, as a consequence, face gradual marginalisation. With regard to OMCT's

---

<sup>16</sup> See UN. Doc. E/CN.4/SUB. 2/RES/2001/5, Globalisation and its impact on the full enjoyment of all human right; UN. Doc. E/CN.4/SUB., Intellectual Property and Human Rights; UN. Doc. E/CN.4/SUB.2/RES/2001/4, Liberalization of trade in services and human rights; UN Doc E/CN.4//SUB.2/2002/11, Human Rights, Trade and Investment

mandate, the process of globalisation is therefore liable to accentuate the socio-economic conditions under which torture, forced disappearances, summary executions and other forms of cruel, inhuman and degrading treatment are likely to occur.

The Commission on Human Rights is well placed to address this challenge, to reflect upon ways and means to guarantee the primacy of human rights, the principle of non-retrogression and the accountability of all actors, as well as to avoid the recourse to trade sanctions or negative conditionalities, in pursuing this objective.

Consequently, in light of the comments stated above, OMCT urges the Commission to:

- **establish an open-ended working group to design an optional protocol to the International Covenant on Economic, Social and Cultural Rights;**
- **requests the Special Rapporteurs, Special Representatives, Independent Experts and Working Groups to take into account, when necessary, the activities of transnational corporations (TNCs) and other business enterprises in their work;**
- **requests the Special Rapporteurs, Special Representatives, Independent Experts and Working Groups to take into account, when necessary, the impact of trade-related agreements in their work;**
- **requests the Office of the High Commissioner for Human Rights (OHCHR) to pursue its work on globalisation and human rights.**



## **Annexe I: Written Statement on Nigeria**

### **Item 9 of the Agenda The human rights situation in Nigeria**

After one of the fiercest dictatorships of its history, Nigeria witnessed the re-establishment of democracy on 29 May 1999 leading to great expectations among the population for the country's future. In his inaugural speech, President Olusegun Obasanjo promised that his government would not do "business as usual" and pledged to step on the toes of those responsible for human rights violations. He followed up on his pledge by freeing known political detainees, launching the trials of scores of people for their roles in high profile cases of human rights abuses under the military dictatorship and establishing the Human Rights Violations Investigation Commission (Oputa panel) to look into human rights violations committed by all previous military regimes in Nigeria. These actions were applauded in and outside Nigeria and were expected to return the country to international respectability and adherence to rule of law and due process. To its credit, the Obasanjo government also ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 28 June 2001.

However, the last three years of elected civilian government in Nigeria have witnessed an alarming spate of violence and gross human rights violations. Since 29 May 1999, when the present government was elected, over 50 separate outbreaks of ethno-religious violence had taken place in Nigeria, involving well-established cases of systematic extra-judicial executions and sundry violations of the integrity of the human person. These have resulted in the death of over 10,000 persons, the displacement of hundreds of thousands more, the reported rape of thousands of women and other associated violations. In all these cases Nigeria has repeatedly and consistently failed to abide by its obligations under the international and regional instruments to which it has voluntarily subscribed. Even more importantly, the government of Nigeria also failed to comply with its own domestic laws.<sup>17</sup>

The primacy of the law is a fundamental principle of any democratic system seeking to foster and promote human rights and fundamental freedoms. This entails inter alia an independent judiciary, a legal system guaranteeing equality before the law and the means of recourse enabling individual citizens to defend their rights. The failure to investigate these killings and associated violations and to bring the perpetrators to account and provide adequate remedies for the victims, has bred a culture and cycle of impunity and resulting resentment, which fuels the increasing viciousness of successive outbreaks of crises and risks plunging Nigeria into a situation of generalized insecurity and lawlessness.

This situation, in which many Nigerians now find themselves, presents a reversal of hope from the high expectations and promises that heralded the inauguration of the elected government of President Obasanjo.

As the nation prepares for the 2003 general elections, concerns for the safety and security of the population have increased. Given the experience of Nigeria's electoral history, the elections in 2003 also pose a heightened threat of outbreaks of inter-communal and religious violence as different political groups jostle for electoral advantage.

---

<sup>17</sup> OMCT and CLEEN, "Hope Betrayed. A Report on Impunity and State-Sponsored Violence in Nigeria", August 2002, pp. 200.

Consequently, in the light of the human rights situation in the country, the World Organisation against Torture (OMCT) urges the Commission on Human Rights:

- **to request the United Nations Special Rapporteurs on Summary, Arbitrary and Extra-Judicial Executions, Torture, Violence Against Women, Independence of Judges and Lawyers, and on Adequate Housing to undertake a joint investigation of violence, extra-judicial executions and related violations in Nigeria and to request the government of the Federal Republic of Nigeria to accede to such an investigation being conducted.**

## **Annexe II: Written Statement on the Democratic Republic of Congo**

### **Item 11 of the Agenda The human rights situation in the Democratic Republic of Congo: Administration of justice**

In the interim report submitted to the General Assembly of the UN in September 2002, the Special Rapporteur on the human rights situation in the Democratic Republic of Congo (DRC) called upon the government to take consistent measures to improve the administration of justice. After recalling that the independence of the courts is fundamental for the effective respect of human rights, the Rapporteur added that the Military Court (Cour d'ordre militaire) had to cease trying civilians<sup>18</sup>.

At several occasions, the World Organisation Against Torture (OMCT) expressed serious concern about the way in which the Military Court operates, and more specifically about its statutes, which contain provisions that are incompatible with human rights. The treatment given to the accused following the assassination of President Laurent Désiré Kabila is a clear example of the arbitrary nature of the administration of justice in the Democratic Republic of Congo.

Besides the fact that civilians are tried by this court, which is in violation of the principle whereby a military court can only try military staff that have committed military offences, and that the defendants, who have the right to be heard by an independent, impartial and competent court, are tried by on-duty military staff that have been nominated by the Head of State, the accused do not benefit from the right to appeal against the sentences that are handed down, since these decisions by the Military Court are irrevocable.

OMCT recalls that the abolition of the Military Court was one of the objectives of the National Action Plan adopted in 1999 by the Congolese government. Not only was this objective not met, but the Military Court continues to deliver verdicts that are incompatible with international standards.

Regarding this situation, OMCT also wishes to draw the attention of the Commission on Human Rights to the decision of the government of DRC, that was made public on September 23<sup>rd</sup> 2002, to put an end to the moratorium on the death penalty that had been in force since December 1999. This decision is particularly worrying, given that the moratorium was put in place as a consequence of the many death penalty cases in which sentences were imposed with prejudice by courts with very questionable legitimacy. These courts did not observe internationally recognised standards of a fair trial, notably the Military Court. It is relevant to recall that the decision to abandon the moratorium was taken when the State Prosecutor called on for the 115 persons that were accused of being involved in the assassination of former president Laurent-Désiré Kabila to be sentenced to death.

The decision to suspend the moratorium on the death penalty goes against numerous commitments taken by president Joseph Kabila towards the Congolese population and the international community, notably the ratification by the DRC of a number of international human rights instruments, the statement of intent concerning the abolition of death penalty of July 8<sup>th</sup> 1999 that was addressed to the UN Secretary General and the promise to abolish death penalty that is written into the Congolese Charter of Human and the People's Rights.

Consequently, OMCT calls upon the Commission to request that the Government of the Democratic Republic of Congo take concrete measures in order to:

---

<sup>18</sup> A/57/437, § 81.

- **re-establish and reform its judicial system in accordance with the relevant international conventions and standards, and especially to follow the commitments taken at the national and international level concerning the abolition of death penalty. In addition, the Government of the DRC should abolish the Military Court, a special court that does not observe the guarantees of a fair trial, in the shortest possible time.**