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HUMAN RIGHTS AND MEASURES PROPOSED AND/OR ADOPTED IN THE FIGHT AGAINST TERRORISM

1. General Observations

Following the attacks of September 11, governments throughout the world have adopted or are considering the adoption of a number of legislative and practical measures with a view to guaranteeing security and/or eliminating already existing or perceived security threats in their countries. These measures have been wide-ranging and vary greatly in content. However, some may seriously affect a number existing human rights obligations and standards. New legislation has often been adopted quickly, sometimes with a minimum of debate and consideration of possible consequences. In the case of some countries the adoption of special measures to combat terrorism was already envisaged independently of the September 11 attacks. In a number of cases, the attacks merely provided a pretext for governments to push through the adoption of repressive legislation and measures already on the agenda.

Issues of concern include: 1) general authorizations to suspend or limit basic judicial guarantees of persons in detention suspected of engagement in or links to terrorism or terrorist activities, including the possibility of denying persons the right to a trial by placing them indefinitely in administrative detention 2) the curtailment of certain rights essential to ensure a fair trial; 3) vague or broad definitions of terrorist or terrorism which could lead to wide discretionary powers by public officials in the evaluation and application of restrictive measures; 4) targeting of foreign nationals, including severely limiting the possibility of persons at risk to seek asylum.

2. Anti-Terrorist Legislation

2.1. Legislation adopted in the aftermath of September 11

In the **United States**, on 13 November President Bush signed **Military Order: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism** authorizing the creation of military commissions to try “any individual who is not a United States citizen” suspected of involvement in international terrorism or of aiding terrorists. These commissions would be the equivalent of military tribunals and would be authorized to impose the death penalty. The Order stipulates that the President will determine when an individual should fall under the commission’s jurisdiction based on whether he has “reason to believe” that a person has committed or aided the commission of acts of terrorism affecting the United States.¹ Following a presidential determination the Secretary of Defence is authorized to detain and try a person. The Secretary of Defence would also establish the rules for the conduct of proceedings and would decide on the applicable standard of proof. The presumption of innocence is not expressly guaranteed. Trials could be secret. No independent judicial organ of appeal is provided for, even in cases where the death penalty is imposed. The only appeal possible would be to the initiators of the proceedings, the President or the Secretary of Defence, who can review and take a final decision on a case.

¹ See Section 1 Findings “(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.”

Section 2 (a) reads: “The term “individual subject to this order” shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:

(1) there is reason to believe that such individual, at the relevant times, (i) is or was a member of the organization known as al Qaida; (ii) has engaged in, aided or abetted, or conspired to commit, act of international terrorism, or acts in preparation therefore, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy, or; (iii) has knowingly harboured one or more individuals described in subparagraphs (i) or (ii) of subsection 2 (a)(1) of this order; and (2) it is in the interest of the United States that such an individual be subject to this order.”

The order is clearly discriminatory, inappropriately grants the executive enormous powers which should be in exclusive domain of the judiciary and does not provide a minimum of guarantees to ensure the right to a fair trial. Its application could ultimately result in violations of the right to life.

On October 26 President Bush signed into law the “**Uniting and Strengthening of America By Providing Appropriate Tools Required To Intercept and Obstruct Terrorism**” (H.R. 3162) known as the **US Patriot Act**. In addition to widely expanding the powers of surveillance of federal agencies, this law could allow the indefinite detention of foreign nationals. Under the Patriot Act, a person certified by the Attorney General as a suspected terrorist or threat to security should be charged within 7 days with either a criminal offence **or** an immigration violation. Thus persons found to be in violation of immigration law and considered to be non-deportable could potentially, on the Attorney General’s finding of “reasonable grounds to believe” they are involved in terrorist activity or activity that poses a threat to national security, be held in detention indefinitely. Those considered to be deportable can be expelled with little or no judicial review. Furthermore, the US Patriot Act also allows for the detention and deportation of individuals who provide assistance to groups even if these were not designated, at the time, as terrorist organizations. In such cases, the burden of proof is shifted to the foreign national who must prove that s/he did not know and reasonably should not have known that s/he was providing support to terrorist activity.

In addition, in the wake of the attacks of September 11 over 1, 200 persons were detained in the United States. These detentions were carried out in great secrecy and the government refused to provide basic information, including the names of detainees and where they are being held. Partial data regarding persons in detention was only released in late November and early December.

On 6 December 2001, during a Senate hearing the Attorney General confirmed that criminal charges had been brought against 110 persons, 60 of whom were in jail. The names of the majority of those charged was revealed. The Attorney General also informed that 563 persons were being detained on immigration charges though their names was not disclosed. It should be noted that the information available leaves over 500 persons in detention unaccounted for.

On 5 December 2001 a group of 16 civil liberties and human rights organizations, including OMCT-USA, the American Civil Liberties Union, Amnesty International-USA and Human Rights Watch filed a lawsuit requesting the disclosure of basic information about those individual’s arrested. The plaintiffs requested that the following information be disclosed: 1) disclosure of the identities of each person detained, where they are being held, the circumstances of their detention and any charges brought against them; 2) the identity of any lawyers representing these individuals; 3) the identities of any courts involved in orders sealing any proceedings in connection with those detained; 4) any policy directives or guidance issued to officials about making public statements or disclosures about those detained.

In the **United Kingdom**, on 13 November 2001, the government issued an order derogating from Article 5 (1) of the European Convention of Human Rights which guarantees the right to liberty and security of the person. On that same date the government also issued a “Anti-terrorism, Crime and Security Bill”. The new legislation was passed on December 13 after number of modifications were made.

Derogation from article 5(1) was proposed in order to allow for the indefinite detention of persons considered to constitute a security threat but who the authorities do not believe they can successfully prosecute and who cannot be deported or removed because of concerns that they might be at risk of grave human rights violations.

The Anti-terrorism Bill grants the Home Secretary the power to issue a certificate to detain persons s/he believes may be an international terrorist for an initial period of 15 months, renewable. Evidence supporting such a belief may be kept confidential even from detainees and their lawyers. The final version of the law provides for the right of persons detained without trial to appeal, though not to a court of law but to a special immigration appeals

commission. However, access to judicial review is restricted to questions of law. The law should be reviewed after 2 years.

In **India**, Parliament is currently debating a **Prevention of Terrorism Bill (POTB)**. This bill is the amended version of the Prevention of Terrorism Ordinance approved by the Cabinet on 16 October 2001. This legislation is viewed by many as a new version of the earlier Terrorist and Disruptive Activities Act (TADA) enacted in 1985 and lapsed in 1995. The TADA was widely criticized for its wide misuse against minorities and political opponents. As a result of the application of the TADA tens of thousands persons were detained and many were tortured or suffered other serious human rights violations. Many of the persons detained under TADA are still being held in prison.

The proposed legislation, did not provide for possibility of challenging the evidence cited by the prosecution, persons detained under that law would likely to remain in prison indefinitely as occurred in the application of the earlier law known as TADA. The proposed text allowed for the detention of persons without charge for up to 180 days. In addition, the proposed law would criminalize failure to report to the authorities any suspicious activity, which could potentially lead to numerous arbitrary arrests. The law would also shift the burden of proof to the accused in cases of persons found to be illegally in possession of a weapon in a notified area and allows for withholding the identity of witnesses. New powers would be granted to the police, allowing for confessions made before a police officer be admissible during trial. Finally, similarly to rules applied in colonial times, the new law would establish that bail cannot be granted unless a court is satisfied that there are grounds to believe that an accused is not guilty.

Other countries which have adopted or are considering the adoption of new legislation in the wake of September 11 include: **Canada** where parliament is considering Bill C36 known as the Anti-Terrorism Act; **France** which on 15 November 2001 adopted a series of amendments to existing legislation which gives police expanded powers to search private cars, conduct bodily searches and monitor communications- existing "anti-terror" law were already an issue of concern as persons suspected of terrorist activity were granted restricted rights and could be held up to 72 hours without being allowed access to a lawyer; **Japan** which passed on October 29, 2001 the Anti-Terrorism Special Measures Bill; **Nepal** which on 26 November 2001 adopted the Terrorist and Destructive Activities (Prevention and Control) ordinance which defines terrorism and a number of related acts, and declared a state of emergency on the same date; **South Africa** which is considering anti-terrorist legislation to replace an apartheid era anti-terror act.

In addition, the **European Union** has moved to propose legislation intended to set up a common definition of terrorism, penalties and sanctions and extradition procedures as well as a European search and arrest warrant which would permit police forces to apprehend suspects in all 15 member states and would supplant the current system of extradition between member states. These measures were expected to be examined by member states' parliaments by the end of 2001.

2.2. Legislation adopted independently of September 11

Finally, independently of the September 11 attacks, **Colombia** adopted on 13 August 2001 **Law 684 on National Security and Defence**. This law: imposes severe restrictions on the possibility of the Procuraduría General of initiating investigations; in some cases gives the armed forces investigative role into cases of violations which could lead to cover up of human rights violations; and suppresses the time limitation to transfer person captured *in flagrante* to the judicial authority. The law would also allow for the President to designate certain areas as "Theatres of Operations" (Teatros de Operaciones) where special control measures should be established. The case of Colombia could be said to be a good example of the many dangers involved in actions taken to combat armed groups. In its press release of 13 December 2001 on its on-site visit to Colombia the Inter-American Commission on Human Rights expressed its concern over the law and observed that, if implemented, the law would undermine the principles of the independence of the judiciary and division between the executive and the judiciary, and would sanction the supremacy of military authority over civil authority.

Examples of the misuse of security laws abound in Asia where a number of countries have long maintained stringent legislation to combat certain groups which frequently has been applied to silence dissent. **Malaysia's** 1960 Internal Security Act known as **ISA** is a legacy of colonial times. The law permits the detention of persons without a trial indefinitely. ISA detainees can be held for an initial period of 60 days without access to a lawyer and then for up to 2 years without trial, with the possibility of indefinite renewal. In addition, in 1989 an amendment to ISA was adopted denying *habeas corpus* to detainees. ISA is applied with great frequency and in this year alone OMCT has launched 18 urgent action appeals concerning 123 persons detained under ISA.

Singapore also has an **Internal Security Act (ISA)** which allows for detention without charge of any person deemed to be a threat to security or the economic life of the state for a period of two years, renewable. A 1989 amendment also denies the possibility of judicial review of the legality of detentions under ISA.

Sri Lanka's Prevention of Terrorism Act was adopted in 1997. Under this law persons may be detained without trial for 3 months renewable for 18 months. Confessions obtained through a variety of means including torture are common in PTA cases as it is the accused who bear the burden of proof when alleging that confessions were obtained through torture. This law has often been applied in combination with Emergency Regulations-ER.

3. Legal Considerations and Conclusions

A number of the "anti-terror" measures adopted must be considered to constitute, in effect, a suspension or a limitation of rights guaranteed by human rights treaties. However, it should be recalled that the suspension of all rights guaranteed under international human rights and humanitarian law is never admitted by the relevant treaties. Moreover, human rights treaties stipulate that such suspensions must conform to certain procedures and are subject to a measure of control regarding their necessity, proportionality, and their effect on a number of crucial rights.

Although most of the general human rights conventions recognize the possibility of the suspension of their application in states of emergency, international treaties which protect human rights and humanitarian law do not authorize, under any circumstance the suspension of certain rights, such as the right to be free from torture or the right to life, known as non-derogable rights. International humanitarian law guarantees, in addition, certain elements of the right to a fair trial even during armed conflict. A number of important judicial guarantees cannot, therefore, be suspended even in a state of war.

All of the countries mentioned above have ratified the *United Nations Covenant on Civil and Political Rights*. The Covenant, in the same manner as other human rights treaties such as the *European Convention of Human Rights* and the *American Convention on Human Rights* clearly establishes under which conditions its provisions may be suspended. Article 4 of the Covenant determines that states parties may derogate from the treaties provisions "(I)n time of public emergency which threatens the nationto the extent strictly required by the exigencies of the situation...provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

It is important to recall that on 31 August 2001, the Human Rights Committee adopted General Comment N° 29 on States of Emergency which sets forth, in detail, states parties' obligations when invoking article 4 of the Covenant in order to suspend the application of certain provisions of the treaty during states of emergency.

In this document the Committee stated:

"8. According to article 4, paragraph 1, one of the conditions for the justifiability of any derogation from the Covenant is that the measure taken do not involve

discrimination based solely on the ground of race, colour, sex, language, religion or social origin. Even though article 26 or the other Covenant provisions related to non-discrimination ...have not been listed among the non-derogable provisions in article 4, paragraph 2, there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances. In particular, this provision of article 4, paragraph 1 must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant... **emphasis added**)

11States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, **through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence. (emphasis added)**

15.....The provisions of the Covenant relating to procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights. Thus, for example, as article 6 of the Covenant is non-derogable in its entirety, **any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of articles 14 and 15. (emphasis added)**

16.....The Committee is of the opinion that **the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency.** Only a court of law may try and convict a person for a criminal offence. **The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay of the legality of detention, must not be diminished by a state party's decision to derogate from the Covenant."** **(emphasis added)**

The Committee also stressed that derogations must be exceptional and temporary, that the situation must amount to a public emergency which threatens the life of the nation and that, in order to derogate from the Covenant, a State party must officially proclaim a state of emergency (para 2).

In addition, the Committee re-affirmed the obligation to limit derogations to those strictly required by the exigencies of the situations specifying that concrete measures adopted should also be shown to be required by the exigencies of the situation. The Committee observed that the obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to both to the possibility of derogating from the Covenant and to limitation powers allowed in normal times under certain provisions of the Covenant. (para. 4)

It should be noted that a number of the measures described above may not constitute actual suspensions of the various existing human rights obligations and standards. However, several of the adopted measures would impose serious limitations on rights and guarantees traditionally available in the countries in question. Such guarantees are usually the result of each country's past experiences and correspond to what was perceived as necessary for the protection of the individual in those countries. Governments adopting such limitations should seriously consider the consequences which the implementation of such measures may have on the protection of human rights bearing also in mind, in such cases, the principles of necessity and proportionality.

One of a government's first duties is to ensure the security of its citizens. However, it has long been recognized by states which strive to uphold the rule of law that these objectives must be accomplished without sacrificing individuals' basic rights. Governments which in the past have adopted measures curtailing individual rights so as to ensure aims such as national security have too often been responsible for widespread and serious human rights abuses. Measures

that are ultimately designed to combat certain groups often encourage disregard for individual rights and the neglect of adequate investigation and prosecution of individual suspects and therefore should be applied with extreme caution. Legal guarantees that have been developed and adopted so as to protect the innocent from prosecution and all persons from abuse and serious human rights violations such as torture should not be lightly waived aside as if suddenly unnecessary or irrelevant.

A number of international human rights bodies and mechanisms have already expressed their concern over new legislation. Notably, on 10 December 2001, 17 independent experts of the thematic mechanisms signed a document stating their preoccupation over recent measures and recalling certain rights and principles.

4. Accountability of armed groups

Another issue of concern for the OMCT is the issue of accountability under international law for the human rights abuses perpetrated by armed groups.

Today, the greatest number of armed conflicts is internal, involving one or more armed groups. In 2000 alone, violent conflicts took place in at least 25 countries. Of these conflicts, only two were taking place between States.²

As numerous reports from human rights NGOs have made clear, a crucial feature of these internal conflicts is the widespread violation of humanitarian and human rights law perpetrated by the parties involved: ethnic cleansing, deportation and forced displacement of populations, killing and massacres of civilians, abuses against women, recruitment of children as soldiers, indiscriminate and disproportionate use of certain weapons such as antipersonnel landmines, torturing of captured soldiers and civilians suspected of collaborating, detaining prisoners in inhuman or degrading conditions, mutilation, hostage-taking, etc. The list is not exhaustive. Armed groups are certainly not accountable for all of these crimes but their presence among civilians plays a definite role in blurring the dividing line between combatants and non-combatants, the basic concept on which humanitarian protection rests. Historically, governments have been the traditional focus of human rights advocacy. Increasingly, however, those defending human rights have recognised that actors other than governments, such as armed groups, are also responsible for serious abuses of human rights and international humanitarian law. Among other NGOs, the OMCT has begun to report on and campaign against more actively the abuses committed by armed groups in countries like Afghanistan, Burundi, Colombia, Democratic Republic of Congo, India and Sierra Leone to give just a few examples.

Despite the increased importance of armed groups in today's conflicts, international law offers only limited provisions for holding them accountable, whereas a collection of legal instruments have been developed to supply State actors with a comprehensive framework. Human rights law is *de jure* applicable only to State entities, and international humanitarian law offers only general principles of protection under common Article 3 of the four Geneva Convention and some rules of engagement in Additional Protocol II. One of the main problem is that, at least for Protocol II, the rules only apply in internal conflicts that reach a certain threshold of intensity. As a result, the laws of war only apply in a very few cases, the conditions for their application being often not met in minor conflicts. Additionally, because they do not participate in the making of the international law and there is no mechanism by which they can accede to it, armed groups may feel not be bound by the obligations contracted by the governments they are fighting against. One can also legitimately question the practical relevance of the current international regime where States, such as Colombia, does not control the whole territory or, such as Somalia, have collapsed, and are therefore not able to enforce their obligations.

In recognition of these problems, the OMCT welcomes the significant progress made in the framework of the International Criminal Tribunal for the former Yugoslavia and Rwanda as

² See the SIPRI Yearbook 2001, *Armaments, Disarmament and International Security*, Oxford University Press, 2001.

well as of the Rome Statute of the International Criminal Court to the development and clarification of the rules and principles of international law relevant to the acts of armed groups.

OMCT has been following with great interest the initiative taken in recent years to introduce Fundamental Standards for Humanity. These rules, based on the fundamental principles of human rights and international law, should apply to all non-state actors. As OMCT has already had occasion to mention, it would be appropriate to ensure that these rules are not used to justify a lowering of obligations that States have already subscribed to. The current tendency in international law and human rights is to extend protection to any act committed, not only by agents of the State, but also by non-State agents. This development should not lead, under the pretext of a false equilibrium, to a calling into question by certain States of their obligations both under *jus cogens* and their commitments within the framework of international instruments.

On the other hand, as OMCT has already had occasion to comment, armed groups are not the only non-State actors guilty of human rights abuses. Documents presented hitherto in the context of the creation of Fundamental Standards of Humanity do not appear to have paid sufficient attention to other non-State actors, in particular economic entities.

The OMCT supports actively the new non-governmental initiative named Geneva Call. Geneva Call grew out of the mine ban movement to engage armed groups in adhering to humanitarian norms, starting with the total ban on anti-personnel mines, and to provide a mechanism to hold them accountable for their commitments. Its creation arose from the need to address the involvement of armed groups in the landmine problem, and also to fill a gap in the international regime whereby armed groups, by definition, cannot enter into or adhere to treaties such as the Ottawa Treaty. Since its launch in March 2000, Geneva Call has been approaching armed groups in a number of countries to raise their awareness of the landmine problem and seek their commitment to a ban. To facilitate this process, it provides a mechanism whereby armed groups can sign a "Deed of Commitment" or deposit their own mine ban declarations. The custodian for these deeds is Government of the Republic and Canton of Geneva.

OMCT would like to urge the Commission:

- *to recommend to the relevant thematic mechanisms, in particular the Working Group on Arbitrary Detention, the Special Rapporteur on Torture and the Special Rapporteur on Human Rights Defenders, to continue to monitor the situation in countries concerned and to include, when appropriate, a the section in their annual reports on anti-terror measures/legislation adopted and their application;*
- *to urge states parties to the various United Nations human rights treaties to inform the corresponding treaty bodies, in particular the Human Rights Committee and the Committee Against Torture, of any measures adopted which may have a bearing on manner in which their international human rights obligations are implemented;*
- *to pursue the development of Fundamental Standards of Humanity through reflection and analysis on non State actors other than armed groups responsible for gross human rights violations and to make proposals for control mechanisms applicable to non State actors.*

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, 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 the evacuation of Human Rights Defenders at risk.

1. Human Rights Defenders targeted in the fight against terrorism

In a press release issued on Human Rights Day, dated 10th December 2001, seventeen UN Special Rapporteurs joined forces to express their deep concern over the adoption or contemplation of anti-terrorist and national security legislation and other measures that may infringe upon the enjoyment of human rights and fundamental freedoms for all. They deplored human rights violations and measures that particularly target groups such as Human Rights Defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media. Concerned authorities have already been requested to take appropriate action to guarantee respect for human rights and fundamental freedoms in a number of individual cases brought to the attention of relevant independent experts.

Indeed, in addition to concerns raised in the chapter devoted to anti-terrorist measures, the International Secretariat has received alarming information from grassroots organizations in all parts of the world, in particular: South Asia, Eastern Europe and Africa. It is clear from OMCT's perspective that the burden of concern over national security and the fight against terrorism should not fall on Human Rights Defenders. This situation needs to be addressed further in order to measure the impact of these events on the work of Human Rights Defenders in terms of their role in society, the financing of their organizations, etc. This new situation exacerbates the already difficult situation that Human Rights Defenders have had to face throughout 2001 and reinforces the need to find means for their better protection.

2. Methods for silencing Human Rights Defenders

The information received by the Observatory shows that the strategies of repression established to silence Human Rights Defenders are increasingly complex and sophisticated. This year again, all defenders' rights have been violated in the attempt made by States to neutralise their activities. OMCT has chosen to focus on three major issues: the absence of freedom of association in some countries which does not allow for independent information, the levels of impunity which put the lives of Human Rights Defenders and their work at high risk, judicial proceedings and smear campaigns that deprive Human Rights Defenders of the possibility of carrying on their work.

2.1. Restriction on the freedom of association

In some countries, all of which raised an interpretative declaration after the 1998 Declaration on Human Rights Defenders was adopted, freedom of association is almost non-existent and the authorities simply ignore the Declaration and other Human Rights commitments. This is particularly the case in countries such as **China, the People's Republic of Korea, Myanmar, Libya or Saudi Arabia** where human rights organizations are not allowed to operate freely and transmit information to the outside world. The telephone lines, Internet and postal communications of those who are considered to be a threat to political stability and public order are under constant surveillance. The efforts to form independent trade unions or to strike for better working conditions are suppressed. Consequently, the records available are limited and incomplete, although arbitrary detention, long prison sentences after unfair trials and torture and ill treatment of prisoners are known to be widespread. Denouncing human rights violations can often only be done from the outside, resulting in difficulty for the verification of the information and impairment of rapid alert. OMCT considers that there is a

need for a better strategy concerning these countries and that UN bodies have a responsibility in this regard.

In other parts of the world, the authorities tend to oscillate between periods of tolerance vis-à-vis the Human Rights movement and periods of greater repression, thus creating a climate of insecurity for Human Rights Defenders. This has been the case again this year, particularly in **Egypt**, where the problem of financing of organizations has continued to be of concern and a serious impairment of freedom of association, in **Syria** or in **Sudan**. OMCT takes this occasion to congratulate the Special Rapporteur on the situation of human rights in the Sudan for his work in this particularly difficult country situation. In these countries, Human Rights Defenders are often seen as enemies and as agents of foreign states and their freedom is very limited. Special attention must be devoted to monitoring further developments and to orient States towards greater tolerance of the Human Rights movement.

2.2. Impunity as a major burden on Human Rights Defenders' activities

For Human Rights Defenders, denouncing human rights violations and seeking redress depends on the degree of security they enjoy. When working in a context where impunity reigns they run greater risks. Although States have an obligation to identify and punish those responsible for human rights violations and to provide the victims with adequate reparation, too often, they fail to investigate cases of assault, intimidation or threats against Human Rights Defenders and to punish the perpetrators. This is particularly the case with respect to extrajudicial killings and death threats in **Colombia**, **Mexico** or **Brazil**. Defenders in countries such as **Guatemala**, **Argentina**, **Russia** or **Chad** have been specifically targeted because they protest against impunity for past violations. Human Rights Defenders are also being targeted increasingly by non-State entities, linked either directly or indirectly to the State or private groups benefiting from the inertia of the State. Governments hide behind the lack of resources or lack of control to justify their behaviour, which can only be explained by the absence of political will. It is OMCT's view that without tackling the problem of impunity high levels of Human Rights violations will continue to prevail.

2.3. Judicial proceedings and smear campaigns: Human Rights Defenders discredited

Several countries have continued to use judicial proceedings as a tool to impair Human Rights Defenders' activities. Such proceedings, justified by States on the basis of their national security legislation or their law on freedom of association, often incompatible with their international commitments, are aimed at depriving Human Rights Defenders of their liberty, the possibility of practising their profession, their freedom of association, as well as their freedom of expression and assembly. They are always at risk of being condemned to long prison terms, thus calling for them to exercise "prudence". The accumulation of proceedings is a pattern that we have been able to observe in countries such as **Iran**, **Turkey**, **Kyrgyzstan** or **Tunisia**. Individuals are accused of spreading false information, conspiracy, supporting an armed or terrorist group, drug trafficking, or threatening national interests or public order. Such accusations hurt the reputation of Human Rights Defenders and puts them at an even higher risk. They also face obstacles in their work and in their right to freedom of movement when wishing to travel abroad or sometimes even within their own countries. State controlled media are used as a tool to launch smear campaigns on corruption or other grounds. Human Rights organizations are prevented from carrying out their work because of judicial or administrative obstacles in their registration, or raids during which material is confiscated. In some cases, the only solution available for the Human Rights Defenders is to leave the country. The Observatory, together with the OMCT Urgent Assistance Programme to Victims of Torture, has managed to help some of them with legal and material assistance. However, efforts have to be made by the States to provide asylum for these individuals who are facing extreme risks. There is also a need for the creation of an emergency fund, which could be based on the model of United Nations Voluntary Fund for Victims of Torture, in order to be able to react more quickly in cases of urgent evacuation.

3. International and regional response to the concern over Human Rights Defenders

Over the years, OMCT has noted with pleasure the mobilization of various United Nations bodies for the situation of Human Rights Defenders, in particular through the resolutions adopted by the Commission on Human Rights and the adoption of the Declaration on Human Rights Defenders in 1998. The work carried out by the Sub Commission and the commitment of the Office of the High Commissioner for Human Rights have also been a determining factor in increasing concern over this issue. The appointment of a Special Representative in the year 2000 constituted a major achievement and OMCT is fully committed to supporting the efforts of the Special Representative in the fulfilment of her mandate. OMCT would like to take this occasion to congratulate Mrs. Hina Jilani and her office for the work accomplished during this year and the spirit of collaboration that has been established with the NGO community. Mrs Hina Jilani has made considerable efforts to meet with Human Rights Defenders in different parts of the world and hear their assessment from the ground, thus linking national, regional and international levels.

During the current year, the OMCT has continued to promote the creation of Human Rights Defender mechanisms at the regional level.

In the Americas, OMCT notes with satisfaction the progress made towards the adoption of a special mechanism and in particular OAS resolution AG/RES. 1818 of 5 June 2001 and the creation of a Human Rights Defenders' Unit at the Interamerican Commission of Human Rights announced on 7 December 2001. This unit was created following an audience with Mrs Hina Jilani in Washington and OMCT hopes that a working relationship between this unit and her office will be established. OMCT also has great hopes that in 2002 a Special Rapporteur on Human Rights Defenders will be appointed as demanded by many national, regional and international organizations, including OMCT. In Africa, some progress has been made in the promotion of a regional mechanism but much remains to be done. OMCT, through the Observatory, reiterated its request for such a mechanism last October in Gambia during the Commission on Human and Peoples' Rights and sees the current developments under way at the American level as an encouragement to others to take this important step in the recognition of the role of Human Rights Defenders and finding better ways of protecting them. The Observatory has also taken steps to promote such a mechanism within the Organization for Security and Co-operation in Europe (OSCE), as a follow-up to a meeting which took place in October 2001 on Human Rights Defenders and Advocacy.

During the year 2001, OMCT has observed that Human Rights Defenders continue to face repression in many countries despite commitment by the States and the international community. Thus, considerable efforts are still required to disseminate information on the relevant instruments, in particular the 1998 Declaration, and to remind States of their commitment, especially in the new context created by the impact of the terrorist attacks of September 2001 and its consequences on Human Rights Defender's activities.

OMCT believes that it is of crucial importance that the Commission should ask the Secretary General and the Office of the High Commissioner for Human Rights to provide the Special Representative with all necessary assistance, in particular the appropriate financial, human and technical resources, to be able her to carry out missions and follow up on cases presented by her Office; to ensure that in each case the recommendations put forward by the Special Representative are dealt with within the framework of technical assistance to governments; and to promote awareness of the Declaration by disseminating it through appropriate information channels, including certain Internet sites, integrating it within the syllabus of various training programmes which are held, promoted and supported.

With this in mind, OMCT considers it imperative for the Commission to demand that all States, and particularly those where especially serious situations exist, comply with their commitment to implement the Declaration on Human Rights Defenders and to adopt appropriate measures to ensure at least the following:

- *adequate guarantees for Human Rights Defenders and their organizations with regard to the free development of their activities, in accordance with the provisions of the Declaration and the terms of the various international legal instruments on human rights, the resolutions and general or specific recommendations of the various supervisory bodies or mechanisms on both international and regional levels;*
- *sincere and objective cooperation with the Special Representative, and with other mechanisms, foregoing any reserves placed on evaluation methods, including the carrying out of In situ visits, in accordance with the terms of reference, and by providing appropriate, sufficient and credible information requested from them, in particular for the follow-up of communications sent to them on specific cases;*
- *propagation of the Declaration and awareness-raising of it; promotion of its fulfilment and application by including it in the plans and information or training programmes for state and government officials or agents.*
- *setting up appropriate programmes to welcome human rights advocates who are under serious threat in their own country, within their own territory, and grant them a safe haven. In this regard, OMCT encourages the creation of a United Nations Special Fund for Human Rights Defenders, similar to that which exists for the victims of torture, that would function as an emergency fund to provide protection for defenders who need to flee their own countries because of repression.*
- *appropriate means to reinforce the creation of organizations in countries where freedom of association is almost inexistent, thus seriously impairing the work of Human Rights 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.

The many forms of violence which women are subjected to include battering, marital rape, sexual abuse of female children in the household, dowry and bride-price related violence, crimes committed in the name of honour, son preference, female genital mutilation, virginity testing, and other practices harmful to women, rape and other forms of sexual violence, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women, exploitation of prostitution of women, violence against migrant women workers, and violence perpetrated or condoned by the state. Moreover, some groups of women such as women in custody, family members of political opponents, women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural and remote areas, girls, women with disabilities, elderly women and women in situations of armed conflict are especially vulnerable to violence.

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

Although the Convention on the Elimination of All Forms of Discrimination against Women has been a very important instrument for the protection and the promotion of the human rights of women, it has in the meantime tended to isolate women from the “mainstream” human rights treaty bodies which monitor the implementation by States parties of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination. Therefore, OMCT regularly submits reports on violence against women to the “mainstream” human rights treaty bodies, in particular the to the Committee against Torture, as well as to the Special Rapporteur on torture and the Special Rapporteur on extra-judicial, summary or arbitrary executions.

OMCT welcomes the fact that the Committee against Torture has begun to consider gender specific forms of torture and ill-treatment, including trafficking in women, domestic violence and rape.³ This is a particularly important breakthrough as violence against women at the hands of private individuals has traditionally been considered as falling outside the scope of the Convention. Despite this recent progress, OMCT remains gravely concerned about the fact that torture and other forms of violence against women continues to be widespread and has still not yet received the full attention it requires.

2. Torture and Ill-treatment of Women by State Officials

Perpetrators of torture and ill-treatment of women - because of the gender-specificity and its sexualisation of the violence - often escape punishment. Although, men are also subjected to sexual violence, these forms of state violence are more consistently perpetrated against women. The low status of women in many societies and the widespread impunity for crimes

³ Georgia: U.N. Doc. CAT/C/XXVI/Concl.1/Rev.2 and Greece U.N. Doc. CAT/C/XXVI/Concl.2/Rev.1, Zambia: U.N. Doc. CAT/C/XXVII/Concl.4, Ukraine: CAT/C/XXVII/Concl.2, Indonesia: U.N. Doc. CAT/C/XXVII/Concl.3. OMCT submitted during the year 2001 six 6 reports on violence against women to the Committee against Torture on Georgia, Bolivia, Zambia, Ukraine, Indonesia and Israel. These reports examine from a legal and factual point of view, violence against women in the domestic sphere, in the community and by state officials.

of violence against women lead male law-enforcement officers to believe that they can commit rape and other acts of torture against women in their custody without incurring any punishment.

While victims of torture face generally major obstacles when dealing with remedies and reparation, when rape or another form of sexual violence constitute a method of torture, it is more likely that the victim will not complain out of fear and shame, thus leading to the negation of this violence and the impunity of the torturer. Moreover, the law underpins impunity in certain countries, such as **Pakistan**, where female victims of rape run the risk, due to its evidential requirements, of being charged with adultery or fornication.

OMCT is particularly concerned about violence and ill-treatment of women in detention. The already vulnerable position of the prisoner is compounded by gender, and places women in detention in particular danger. A clear contributing factor to sexual violence against women in detention is that in many states (despite the recommendations of article 53 of the United Nations Standard Minimum Rules for the Treatment of Prisoners) male correctional staff are allowed to supervise female inmates, to undertake body searches, and to be present where female inmates are naked. Another underlying source of sexual violence is the lack of separation between men and women inmates (a violation of article 8 of the Standard Minimum Rules).

OMCT is concerned with the numerous cases received concerning state violence against women and girls in **Turkey**.⁴ The investigation, prosecution and punishment of members of the police and security forces accused of torture or mistreatment appears to be rare, despite the large number of allegations of torture. This has led to a climate of impunity, which is a major factor in the continued systematic practice of torture in Turkey. Moreover, when women and girls have been the victims of sexual violence, they often do not complain 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 on the family, ostracized, subjected to forced marriage, or even killed.

OMCT would like to draw the attention of the Commission again to the morning of 19 December 2000, when over 10,00 members of the Turkish security forces conducted an operation in 20 prisons across Turkey in order to halt the widespread hunger strikes and "death fasts" of political prisoners protesting against the introduction of F-type prisons. Six of the 27 women in female dormitory C at the Istanbul Prison and Detention House (Bayrampasa) died and many of the others suffered burns and/or other injuries. Although the women in dormitory C allegedly did not offer violent resistance, an official Turkish forensic experts report confirms that chemical gases were used against the women and that they were shot at from time to time. Conclusions from the forensic pathology report show that traces of inflammable solvents were discovered on the skin and clothes of the dead female prisoners. It has been reported that that no fire was started in the dormitories. Autopsy reports reveal that traces of organic solvents such as xylene, methanol and toluene were found on the corpses and further conclude that one inmate died from carbon poisoning. OMCT notes that the Eyüp Chief Public Prosecutor's office is currently conducting an investigation into this matter, however, given the responses of the Turkish government to the Report of the European Committee for the Prevention of Torture (CPT) of 13 December 2001 on its visits to Turkey, OMCT is concerned that the inquiry into the methods used by the security forces during the intervention against the women in dormitory C and into the exact causes of deaths and injuries will lack impartiality and objectivity.⁵

⁴ OMCT, Rights of the Child, report prepared for the Committee on the Rights of the Child, 2001 and OMCT Urgent Appeal on Violence against Women in Turkey, Case TUR 270901VAW:

⁵ OMCT was part of a fact-finding mission to Istanbul and Ankara on 5-11 May 2001, together with the Euro-Mediterranean Human Rights Network, Kurdish Human Rights Project, and Tunisian League for Human Rights. An Observer Mission Report has been published.

3. Crimes against Women Committed in the Name of Honour

Crimes against women and girls committed in the name of honour are a gender specific form of violence which is either approved or supported by States in many parts of the world, including: **Argentina, Bangladesh, Brazil, Ecuador, Egypt, Guatemala, Iran, Jordan, Pakistan, Palestinian Autonomous Areas, Peru, Texas/USA, Turkey and Venezuela.** 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”. The killing or mutilation 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.⁶

OMCT welcomes the fact that in its resolution A/Res/55/66, the General Assembly requested the Secretary General to submit to the General Assembly at its fifty-seventh session a report on the subject of the elimination of crimes against women committed in the name of honour, including on initiatives taken by states to work on the elimination of the crimes in question.

In order to work towards the prevention and elimination of violence against women OMCT urges the Commission to:

- *equally protect men and women from torture, in the context of the integration of a gender perspective throughout the United Nations system, further integrates a gender perspective into its work on torture and other related violence and that it insists that, in particular, the Committee against Torture and the Special Rapporteur on Torture "gender" the victim, the form, the circumstances, the consequences of the torture as well as the availability of remedies and reparation;*
- *request that States commit themselves to the integration of gender perspectives, the incorporation of gender analyses and the provision of gender-disaggregated data in their periodical reports to the relevant mainstream human rights treaty bodies;*
- *urge States to take measures to ensure that women in detention are held separately from men and are attended and supervised by women officers in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners;*
- *urge States to ensure that torture and other cruel, inhuman or degrading treatment of women are prevented, investigated, prosecuted, punished and compensated with due diligence;*
- *support the report on the subject of the elimination of crimes against women committed in the name of honour and to request states to co-operate fully with the Division on the Advancement of Women which is in charge of the study for the report;*
- *explicitly condemn crimes committed in the name of honour and to urge states to exercise due diligence to prevent and investigate crimes committed in the name of honour and to punish the perpetrators;*

⁶ During the Commission on Human Rights of 2001, OMCT organised a panel on crimes committed against women in the name of honour. Moreover on this subject, see also OMCT's reports on: Violence against Women in Egypt submitted to the Committee on the Elimination of Discrimination against Women in 2001; Violence against Women in Israel submitted to the Committee against Torture; and Violence against Girls in Turkey submitted to Committee on the Rights of the Child.

- *call upon those states which are not parties to the Convention on the Elimination of All forms of Discrimination against Women to ratify or accede to it, and to appeal to those states who have made reservations to the Convention to repeal all reservations and to implement fully the obligations under the Convention, taking into account General Recommendation No. 19 on violence against women adopted by the Committee;*
- *urge states to become a party to the Optional Protocol Convention on the Elimination of All forms of Discrimination against Women as it represents a significant contribution on the road towards the elimination of violence against women;*
- *call upon states to ratify the Statute of the International Criminal Court in order to give it effect as it marks a significant step in the quest to hold perpetrators of gender-based crimes individually accountable at the international level.*

CHILDREN

During the year 2001, OMCT decided to put emphasis on the problem of violence against children. For this purpose it organized an international conference in Tampere, Finland, which adopted a Declaration recommending, among other things, that the UN Commission on Human Rights appoint a Special Rapporteur on Violence against Children (see Recommendation no 1). The full text of the Declaration is as follows:

The World Organisation Against Torture's (OMCT) International Conference on Children, Torture and Other Forms of Violence

The Tampere Declaration

The "International Conference on Children, Torture and Other forms of Violence: Facing the Facts, Forging the Future" brought together 183 participants from 73 countries in all regions, representing a wide range of international and national NGOs, other organizations and observers from governments and international governmental organizations,

We reaffirm our commitment to continue our struggle to eliminate all forms of violence and torture against children and to create a world that protects and fulfills all rights of children.

Violence against children (all persons under 18), both girls and boys, encompasses all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and includes, inter alia, sexual abuse, harmful traditional practices, trafficking, exploitation, bullying in schools and corporal punishment.

Violence against children demands immediate and effective action because of their inherent vulnerability. Violence kills and maims millions of children globally, and inhibits and undermines every aspect of a child's development.

Violence is perpetrated against children in both private and public settings – their families, communities, detention centers, schools and other institutions – by parents, carers, educators, employers, peers, armed groups, and state officials of all kinds. Whatever the setting, the state has ultimate responsibility for deterring violence and providing effective protection and remedies, including early assistance and support to children after trauma.

Preventing and eliminating violence against children has huge potential for creating a society free of violence and favourable to a culture of human rights.

We the participants present –

Concerned that in many countries and regions there is still widespread social and cultural acceptance of violence against children and that widespread impunity allows such violence to continue,

Concerned about structural causes of violence against children including the denial of social, economic and cultural rights, which is exacerbated by globalization and resulting in increased poverty and inequality,

Recognize that the Convention on the Rights of the Child and other international standards affirm children's status as holders of human rights. These include the right to respect for human dignity and physical and psychological integrity and to equal protection under the law, without any form of discrimination.

Recognize the special competence and abilities of children and affirm that all children have the right to be active participants in identifying, preventing and addressing all forms of violence suffered by them,

Note the necessity to strengthen existing mechanisms to address violence, establish new mechanisms, provide them with adequate and sustainable funding, and take greater efforts to mainstream children's rights across international, regional and national systems,

Welcome the strong advocacy by the Committee on the Rights of the Child for protection of children from all forms of violence, through its reporting process, general discussion days and other activities,

Welcome the request of the General Assembly that the Secretary-General conduct an in-depth international study on the issue of violence against children, as recommended by the Committee on the Rights of the Child.

We the participants present,

Agree on the following recommendations and urge that every effort is made to ensure they are widely known, respected and implemented.

We recommend:

To the United Nations and UN-related bodies:

1. That the UN Commission on Human Rights 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, 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.
2. That the UN Secretary-General appoint an internationally-respected independent expert to head a well-qualified team to conduct the in-depth international study on violence against children requested by the UN General Assembly, and that the study be conducted in line with the recommendations set out by the Committee on the Rights of the Child, consulting all relevant sources including children;
3. That the Committee on the Rights of the Child produce General Comments on the provisions relating to children and violence in the Convention on the Rights of the Child, in particular articles 19 and 37⁷, taking into account the special vulnerability of children to torture and other forms of violence, and that violence may affect different children in diverse ways, depending on factors including age, sex, and disability, and underlining states parties' obligations to prevent and remedy such violations;
4. That UN agencies and related bodies support the preparation and implementation of the international study on violence against children by providing staff, logistical and other support;
5. That the UN Mechanisms should mainstream the rights of the child within the scope of their activities;

⁷ Regarding the interpretation of article 37 of the Convention on the Rights of the Child, the participants at the Conference agreed that since there is no uniformity in the interpretation of the criteria of torture, there is no obligation on the Committee on the Rights of the Child to interpret the provisions of article 37 in a way which parallels the approaches of the adult-centered human rights bodies.

6. That the Office of the High Commissioner on Human Rights organize with urgency a special workshop for existing UN mechanisms to address ways to more effectively address violence against children within their work, as recommended by the Committee on the Rights of the Child during its 28th session, and to enhance coordination amongst themselves;
7. That the UN Commission on Human Rights consider issues of violence against children as part of all relevant resolutions, in addition to the resolution on the rights of the child;
8. That the UN General Assembly Special Session on Children make a firm commitment to end all violence against children, with attention to the particular situation of girls, and adopt a clear plan of action to eliminate such violence, in accordance with the Convention on the Rights of the Child and other international human rights instruments and implement the plan within the same decade;
9. That resources available to the Committee on the Rights of the Child and relevant special mechanisms be increased to enable them to more effectively carry out their work.

To States, that they:

10. Ratify and fully and systematically implement all international and regional human rights and humanitarian instruments relevant to violence against children in all areas under their jurisdiction, and incorporate the same within domestic legislation;
11. Review, enact and amend as necessary all laws to prevent and prohibit torture and all forms of violence against children;
12. Take immediate measures to reform and to ensure the practical implementation of domestic laws and mechanisms, so as to ensure that child victims obtain justice and redress;
13. Provide adequate reparation, rehabilitation and reintegration of child victims in accordance with international and regional instruments, taking into account the differing circumstances and needs of child victims;
14. Establish or enhance effective monitoring bodies for the implementation of domestic legislation;
15. Cooperate with all international monitoring and fact-finding missions;
16. Implement the recommendations of the Committee on the Rights of the Child and other treaty bodies in their concluding observations to periodic reports;
17. Identify all forms of violence against children and develop a national plan of action to end all forms of violence against children, in collaboration with civil society, including children;
18. Establish and strengthen juvenile justice systems that eliminate violence and meet international standards;
19. Implement international human rights instruments concerning child slavery, child labour, trafficking in children, abduction, as well as humanitarian instruments protecting children in armed conflicts;
20. Conduct research and studies and implement training programmes for all government officials in collaboration with civil society bodies, including NGOs;

21. Take all necessary measures to create an environment conducive to prevent violence against children through, inter alia, institutions, media, and education;
22. Eradicate all customary and traditional practices that constitute violence against children, are detrimental to the child's development or perpetuate violence against children, with special attention to girls;
23. Address structural causes of violence against children, inter alia, by allocating sufficient resources to ensure adequate nutrition, shelter, education and health care;
24. Promote and support community-based and local mechanisms for combating violence against children;
25. Empower children for effective participation in prevention and protection against violence through provision of resources at all levels;
26. Cooperate with other states to prevent and eradicate all forms of violence against children, including by providing resources and technical cooperation;
27. Allocate adequate resources to ensure the effective functioning of UN mechanisms dealing with children and the successful completion of the in-depth UN study on violence against children.

Adopted in Tampere, Finland, the 30th day of November, 2001.

RACISM

In the aftermath of 11 September and the international response to terrorism, the anti-discrimination agenda to be implemented within the **follow-up process of the World Conference Against Racism, Racial Discrimination, Xenophobia and related Intolerance** is even more crucial. OMCT has consistently emphasized the need for an effective follow-up of the World Conference Against Racism, and will continue to call on all governments, on the occasion of the Commission on Human Rights, to implement national action plans to combat racism and to ensure that the Durban outcomes, including specific measures relating to criminal and judicial system, are fully integrated in the WCAR Declaration and Programme of Action to be implemented.

Particularly vulnerable groups are disproportionately subjected to torture throughout the world on the basis of race, ethnicity and other forms of prejudice⁸. In this context, OMCT recommends that the CHR call on States to provide specific groups, including non-citizens, such as migrants, asylum seekers and refugees, with legal assistance in the event of torture, ill-treatment or any kind of violence perpetrated on the basis of racism, racial discrimination and related intolerance, as recommended by the Programme Of Action of the Durban WCAR in compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment.

Furthermore, racism and racial discrimination occur in multiple forms and at all stages within criminal justice and detention systems, and lead to serious violations of fundamental human rights. The various reports of the Treaty Bodies and Charter based mechanisms within the UN on a country-by-country basis regularly detail the extent of the problem.

Recalling that a 1990 study by the United States General Accounting Office that reviewed 28 comprehensive studies containing empirical data on death penalty sentencing concluded that there was a "pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty in **United States**", OMCT recalls the urgent need to act in an appropriate manner to monitor the overwhelming evidence of the racially discriminatory use of the death penalty.

Racial discrimination begins at the first stage of the criminal justice system with unequal treatment by law enforcement officers. For example, a 1998 **British** government study of police stop-and-search patterns in England and Wales found that blacks were 7.5 times more likely to be stopped and searched than whites. Aboriginal people in **Australia** are 9.2 times more likely to be arrested, 23.7 times more likely to be imprisoned as adults, and 48 times more likely to be jailed as juveniles than non-Aborigines. In other words, more than 25% of the prison population is indigenous though they comprise approximately 1% of the total population.

OMCT remains concerned at the situation of victims who continue to suffer from extreme forms of segregation, violence and exploitation because of their low-caste and outcaste status or because of other forms of discrimination based on work and descent. In this context, many Treaty body mechanisms confirmed that caste based discrimination is a form of racial discrimination. As an example of the discriminatory policy in **India**, OMCT notes that, in June of 2000, police in India turned their backs and left a Dalit village in Bihar State as an upper-caste mob slaughtered 34 lower-caste men, women and children. Strongly deploring the deletion of this vital issue from the WCAR documents, due to a lack of discussion, OMCT stresses the urgent need for the Commission on Human Rights to meaningfully readdress the extent of this vast and global serious form of discrimination suffered by Dalits.

OMCT also expresses its concern at the situation of the Buraku people in **Japan** and stresses the need to undertake a survey to ascertain the nature and extent of the discrimination they continue to face despite the enactment of temporary "Special measures" by the Government

⁸ See OMCT contribution to the World Conference Against Racism : "Racism and Torture : from national preference to inter-ethnic violence" August 2001.

of Japan and any necessary legal, administrative and other measures to eradicate such discrimination.

In **Romania**, and **Hungary** in particular, Roma are the victims of an unchecked wave of violence at the hands of racist skinheads as well as law enforcement authorities. On the basis of the General Recommendation XXVII related to Discrimination Against Roma adopted by the CERD on August 16, 2000, OMCT recommends that the Commission urge States to ensure protection of the security and integrity of Roma, without any discrimination, by adopting measures for preventing racially motivated acts of violence against them, to take measures to prevent the use of illegal force by the police against Roma, in particular in connection with arrest and detention, to ensure prompt action by the police, prosecutors and the judiciary in investigating and punishing such acts, and to ensure that prosecutors, be they public officials or other persons, do not enjoy any degree of impunity⁹.

OMCT is also deeply concerned at the excessive measures taken to suppress or restrict individual rights including increasing violations by States of core principles, including the cornerstone principle of non-refoulement enshrined in the 1951 Refugee Convention and the Convention Against Torture and the principle of non-discrimination, enshrined in both those international instruments together with the International Convention on the Elimination of All Forms of Racial Discrimination. OMCT recalls that existing U.N. Treaty body mechanisms, including the CAT, the HRC, the CERD and the CRC have criticized many western host countries in recent years for their treatment of refugees and asylum seekers, in terms of entry policies, asylum determination procedures, and all treatment. In contradiction with international human rights law and refugee law, the entry policies of some countries discriminate against refugees of particular nationalities or ethnic groups thus creating for them a higher risk of refoulement, explicitly prohibited by article 33 of the 1951 Refugee Convention and article 3 of the Convention Against Torture, but also constituting a well-established principle of customary international law. As an example of discriminatory policies, the **United Kingdom** and **Czech Republic** agreed last July 2001 to post British immigration officers at airports in the Czech Republic to prevent those with “unfounded” asylum claims from boarding flights to the U.K. During the first ten days of implementation of the policy, the majority of the ninety people prevented from boarding planes to the UK were Roma. Although the policy was suspended in August following international pressure, OMCT remains deeply concerned by the risk of refoulement of such a policy, constituting discrimination on grounds of race and country of origin, in violation of Article 3 of the Refugee Convention.

Whilst not denying manifestations of racism and racial discrimination, as defined in Article 1 of the ICERD, which know no national borders, OMCT strongly rejects any doctrine of superiority based on racial difference as “scientifically false, morally reprehensible, socially unjust and dangerous” along with theories or doctrines which attempt to determine the existence of separate human races, as well as any implicit acceptance of such theories or doctrines which could emerge from the use of the terms “race” or “racial” in international human rights instruments.

Given the outcome of the World Conference Against Racism regarding the urgent need to implement measures to eliminate well-established racial discrimination throughout the entire criminal justice system, OMCT calls upon the Commission on Human Rights to:

- *urge States to fully cooperate with the Anti-Discrimination Unit and every relevant mechanism set up within the framework of the follow-up of the implementation of the provisions of the Declaration and the Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance;*
- *urge all countries to collect disaggregated data on the basis of race, ethnicity, age and gender on all aspects of the criminal justice system;*

⁹ See OMCT Report on the implementation of the International Covenant on Civil and Political Rights by the Czech Republic for the Human Rights Committee: “The Roma in the Czech Republic: Discrimination, Violence and Violations of Economic, Social and Cultural Rights”, Written by Nathalie Mivelaz, July 2001

- *urge States to undertake all necessary measures, in the light of the conclusions and suggestions of the Sub-Commission Working Paper on Racism within the administration of Justice, on the analysis of the element of institutional mechanisms of discrimination within the administration of justice¹⁰;*
- *ensure that the issue of racism within criminal justice, prison, detention systems and law enforcement agencies, with a particular attention the gender based discrimination, be adequately addressed in the Resolution on Racism, Racial discrimination, xenophobia and related intolerance of the Commission on Human Rights;*
- *recommend that all relevant UN Treaties monitoring bodies and Charter based bodies, and in particular the Special Rapporteur on Racism and the Special Rapporteur on Torture pay a particular attention to these particularly grave and sensitive issues and to conduct any specific necessary study in order to evaluate the seriousness and extent of the phenomenon of racism within the administration of justice;*
- *urge States that have not already done so to become a party to the International Convention on the Elimination of All Forms of Racial Discrimination, without making limiting reservations and make a specific declaration under Article 14 of the Convention which allows individuals or groups to submit communications to the Committee on the Elimination of Racial Discrimination.*

¹⁰ See E/CN.4/Sub.2/2001/7, Report of the Sessional working group on the administration of justice's requesting Ms. Zerrougui to prepare her final working paper on discrimination in the criminal justice system

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. Globalisation and Human Rights

Considerations of a socio-economic nature form an integral part of the fight against torture, summary executions, forced disappearances and all other forms of cruel, inhuman or degrading treatment or punishment. The eradication of these violations cannot be achieved without the realisation of a socio-economic climate in which every individual can fully enjoy economic, social and cultural rights.¹¹ In other words, it is not enough to denounce violent situations when they occur, but it is important to contribute to the development of an environment within which the sources of these phenomena are significantly reduced.¹²

While the process of economic and financial globalisation makes it clearer than ever that socio-economic conditions have to be addressed in order to guarantee full, effective and sustainable protection against torture, it is also necessary to take into account the increased complexity of the situation which results from the different types of actors involved in human rights violations. While legal responsibility continues to rest upon States, other factors such as the implementation of trade agreements, the policies and programmes of International Financial Institutions (IFIs) and the activities of transnational corporations (TNCs) impact directly on the enjoyment of human rights in a given country, or have an influence on a State's ability or willingness to abide by its human rights obligations. The human rights system itself is not immune from these developments, highlighting an urgent need to guarantee that it does not get marginalized in the process.¹³

1.1. Trade Agreements and Human Rights

While the primacy of human rights obligations over trade agreements has been reiterated on several occasions, two parallel regimes continue to develop, with a risk of marginalisation of human rights principles, instruments and mechanisms.¹⁴ The contradiction between a trade system matching economic integration with liberalisation, and a human rights system calling for regulations, justice and non-discrimination are likely to increase and jeopardise the potential that economic integration can represent for the improvement of living standards and the reduction of socio-economic imbalances.

During its 53rd Session, the Sub-Commission for the Promotion and Protection of Human Rights recognised the actual or potential conflicts between the implementation of trade-related agreements -such as the TRIPS Agreement and the GATS Agreement- and the enjoyment of economic, social and cultural rights, and requested the Office of the High Commissioner for Human Rights to seek observer status by the World Trade Organisation (WTO).¹⁵

The outcomes of the fourth Ministerial Conference of the WTO, and in particular the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health do not diminish the pressing need to fully integrate human rights in the negotiations, implementation of and follow-up to the Uruguay Round Agreements.¹⁶ The forthcoming assessment of the relationship between the TRIPS Agreement and, among others, the Convention on Biological

¹¹ See OMCT, *Torture and Violations of Economic, Social and Cultural Rights: Appraisal of the Link and Relevance to the Work of the Committee Against Torture (CAT)*, October 2001

¹² See Eric Sottas (OMCT), *The Least Developed Countries: Development and Human Rights*, 1990; OMCT, *Democracy, Development and Human Rights*, Manila, 1991; OMCT, *Africa, A New Lease of Life: Towards economic policies for the prevention of serious human rights violations*, Kenya, 1993; OMCT, *La Promotion et la Protection des Droits de l'Homme à l'Heure des Ajustements Structurels*, Ouagadougou, 1994

¹³ See OMCT, *Harnessing Trade to Human Rights: The Challenges for the Doha Ministerial Conference*, October 2001

¹⁴ See for example U.N. Doc. E/CN.4/SUB.2/RES/2001/5

¹⁵ U.N. Doc. E/CN.4/SUB.2/RES/2001/21; U.N. Doc. E/CN.4/SUB.2/RES/2001/4

¹⁶ WTO Doha Ministerial Declaration, adopted 14 November 2001; WTO Declaration on the TRIPS Agreement and Public Health, adopted 14 November 2001

Diversity, the protection of traditional knowledge and any other issue raised by WTO Members, as well as the forthcoming assessment of liberalisation of trade in services represent crucial events in which the human rights community must be involved.¹⁷ These have also to be seen as also initial steps towards the integration of human rights in the WTO.

1.2. International Financial Institutions and Human Rights

While OMCT does not take a position concerning the merits of economic restructuring as such, programmes and projects driven and implemented by the World Bank and the International Monetary Fund (IMF) continue to have negative impacts on the enjoyment of all human rights. While OMCT welcomes the participation of both institutions in discussions held at the Sub-Commission and at the Committee on Economic, Social and Cultural Rights, their ongoing refusal to take into account human rights in the formulation and implementation of their programmes remains extremely worrying.

In the Dewas District of Madhya Pradesh State, **India**, repression against the Adivasis (tribal people) by the police, the Forest Department and by the Special Armed Forces started in 1995, when a project aimed at reforming and liberalising the forestry sector was launched by the World Bank. While the project has certainly not created the tensions between the Adivasis and the authorities and timber companies, its implementation has exacerbated existing conflicts and has led to an increased precarisation of the Adivasis in terms of their access to the forest and the forest's resources, of their participation in the management of the forest and also in term of their vulnerability regarding State's repression. Today, timber companies, in collaboration with the authorities, control the management of the forest. From March to April 2001, officials working for the Forest Department, the police and the Special Armed Forces have perpetrated violent attacks against Adivasis. These include the destruction of houses, assaulting of people, mistreating of women and firing at a peaceful assembly, injuring and killing individuals.¹⁸

In **Zambia**, while the implementation, since 1991, of macroeconomic reforms under the auspice of the World Bank and the IMF have brought some positive developments such as the reduction of inflation and the fiscal deficit, they have also left most of the rural and urban population with precarious livelihood and inadequate income to meet their basic needs. A report released by OMCT in October 2001 highlights the detrimental effects of these reforms on the right to work, the right to education, the right to health and the right to food. The report also show how a cycle of violence and repression, including the use of torture and extra-judicial executions, can emerge out of a destitute socio-economic situation driven, among other elements, by the implementation of structural adjustment programmes.¹⁹

1.3. Transnational Corporations and Human Rights

The crucial need to address the impact of the activities of TNCs on human rights has already been acknowledged by the international community through the elaboration of several mechanisms aimed at tackling this matter.²⁰ In this regard, OMCT welcomes the work of the Sub-Commission's working-group on the working methods of TNCs, as well as recent initiatives by the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee against Torture (CAT).²¹ For instance, on the basis of information provided by

¹⁷ WTO Doha Ministerial Declaration, adopted 14 November 2001, para 19; World Trade Organisation-Council for Trade in Services, S/CSS/WII4, 9 October 2001

¹⁸ For further information on this case, see OMCT Urgent Appeal-Economic, Social and Cultural Rights Concern, Case IND 170401. ESCRC, 17 April 2001

¹⁹ OMCT, *Zambia: Violations of Economic, Social and Cultural Rights, Violence and the Protection Against Torture*, October 2001

²⁰ See the United Nations Global Compact, the ILO Tripartite Declaration on Multinational Corporations and the Working Group of the Sub-Commission for the Protection and Promotion of Human Rights on the Working Methods of Transnational Corporations

²¹ U.N. Doc. E/C.12/1/Add.57, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Honduras*, 21 May 2001, paras 15, 36; U.N. Doc. CAT/C/XXVII/Concl.3, *Conclusions and Recommendations of the Committee Against Torture: Indonesia (Unedited Version)*, 22 November 2001, para 7(e)

OMCT, the CAT, in its 27th Session (November 2001), expressed its concern that “allegations that human rights abuses related to the Convention are sometimes committed by military personnel employed by businesses in Indonesia to protect their premises and to avoid labour disputes”.²² Despite these different attempts, violations of human rights involving TNCs continue to occur in several countries, stressing the need to improve the existing approach, to reflect on new strategies, and to address this matter on a case-by-case basis.

In **Colombia**, several TNCs have been accused of complicity with paramilitary groups in order to eliminate opposition to the implementation of their projects, or to curb trade unionists asserting their labour rights. The Oil Company OXYCOL and the enterprise Urrà S.A., which operate respectively within the indigenous territories of the Uwa’s and the Embera, have been resorting to the services of paramilitary groups against opponents to their projects, using such methods as torture, threats, kidnapping and forced disappearances. On July 2nd 2001, the Embera Katio indigenous leader Kimy Domico Pernia, who had been campaigning against the hydroelectric project of the enterprise Urrà S.A., was kidnapped by a paramilitary group and has not reappeared since that date. Similarly, the Coco-Cola group has been repeatedly accused of using paramilitary groups to murder, torture, kidnap and threaten union leaders of SINALTRAINAL, the Colombian union representing workers at Coca-Cola’s Colombian plant.

Since January 2001, the population of the municipality of Gualaco in the department of Olancho, **Honduras**, has been facing regular threats and harassment by some security guards of the Company *Energisa*, in an attempt to curb the population’s opposition to the construction of a dam. On June 30th 2001, the community leader Carlos Roberto Flores, who was deeply involved in the struggle to stop the implementation of *Energisa*’s hydroelectric project, was shot in the presence of his family by six security guards of the company.²³

The oil company Exxon Mobil currently faces a suit before a US Court under the *Alien Tort Claim Act* for cases of torture at the hands of Indonesian security forces paid by the company to guard its premises in Aceh, **Indonesia**.²⁴ A report released by OMCT in October 2001, also shows how the management of the Shangrila Hotel, belonging to an international consortium, called on the police to crush demonstrations led by their unionised workers demanding respect for their labour rights. In one of these assaults, in March 2001, five police units injured twenty workers.²⁵

In **Peru**, an opponent to the implementation of a mining project of the Canadian Company Manhattan Minerals in the San Lorenzo and Tambogrande valley of the Piura Department was assassinated on March 31st 2001. The implementation of the mining project in itself means the displacement of around 20’000 individuals and the diversion of limited water resources from agriculture, in a region where the water supply is already scarce and insufficient to meet agricultural needs.²⁶

2. Violations of Economic, Social and Cultural Rights and the Optional Protocol to the Covenant on Economic, Social and Cultural Rights

The adoption of an Optional Protocol, providing for a system of individual complaints, constitutes an essential step towards the true recognition of economic, social and cultural rights as human rights, and the development of a coherent and comprehensive jurisprudence that will clarify the content and scope of the rights, as well as States’ responsibility in their promotion and protection.²⁷ This requirement is also essential as violations of economic,

²² U.N. Doc. CAT/C/XXVII/Concl.3, Conclusions and Recommendations of the Committee Against Torture (Unedited Version), 22 November 2001, para 7(e)

²³ OMCT Urgent Appeal-Economic, Social and Cultural Rights Concern, Case HND 230701. ESCRC, 23 July 2001

²⁴ OMCT, *Indonesia: The Protection Against Torture, Violence and Economic, Social and Cultural Rights*, October 2001

²⁵ *Ibid.*

²⁶ OMCT Urgent Appeal-Economic, Social and Cultural Rights Concern, Case PER 190401. ESCRC, 19 April 2001

²⁷ See U.N. Doc. E/CN.4/SUB.2/RES/2001/6

social and cultural rights are widespread and victims are often left with no remedies, restitution, compensation and rehabilitation.

Since September 2000, the beginning of the so called Al-Aqsa Intifada, human rights violations have increased and have reached an unprecedented level of severity in **Israel** and the **Occupied Palestinian Territories**. Among other violations of human rights and humanitarian law perpetrated by Israel, OMCT has repeatedly monitored and denounced the use of torture by the Israeli Security Services during the interrogation of Palestinian detainees, the policy of selective assassination and extra-judicial killings, as well as recourse to collective punishments such as the closure of the Occupied Palestinian Territories and the destruction of houses and agricultural land. Two reports released by OMCT in April and November 2001 highlight the impact of such policies on the enjoyment of economic, social and cultural rights of the Palestinian population.²⁸

The **Roma population** continues, throughout Europe, to face severe discrimination with regard to their enjoyment of economic, social and cultural rights, as well as acts of violence perpetrated by the police or by private individuals. (See section on Racism) In **Greece**, virtually all the Roma are marginally covered by the social security system, while many of their settlements do not have electricity, running water or sewage facilities. Few Roma children attend school, and the distance of the settlements from education facilities often results in important dropout rates. Throughout the year 2001, OMCT has documented several cases of demolition of Roma houses by Greek Municipal authorities.²⁹ For instance, on September 13th 2001, 6 homes were demolished and others damaged by the municipal authorities in a Roma settlement in Aspropyros, echoing similar demolitions that also took place in Aspropyros in July 2000, in the presence of the Mayor and the police. While the Greek Ombudsman found the action of July 2000 illegal, no investigation has been carried out, those responsible have not been brought to justice and the victims have not been compensated. In addition, the Roma population is regularly subjected to acts of torture and other cruel, inhuman or degrading treatment by the police, including beatings, punching, slapping in the face, stepping on naked feet with boots and racial insults.³⁰ Even when faced with convincing evidence of the guilt of the perpetrators of such acts, police and judicial authorities do not sanction them, feeding a climate of impunity that helps perpetuate such behavior.

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

- *request that an expert consultation be convened on economic globalisation and human rights under the auspices of the United Nations High Commissioner for Human Rights, as recommended by the Resolution 2001/5 of the Sub-Commission on the Promotion and Protection of Human Rights;*
- *request the Members of the Commission, which are also members of the WTO, to examine ways and means -including the granting of consultative status with the WTO to United Nations specialised agencies – to guarantee that human rights are fully taken into account within the WTO framework, including in the forthcoming assessments to be conducted on the TRIPS and GATS;*
- *request the Special Rapporteurs and the Special Representatives as well as the UN treaty-bodies to take into account, when necessary, the activities of TNCs in their work;*

²⁸ OMCT, *Israel and the Occupied Territories: Restrictions of Movement and Violations of Economic, Social and Cultural Rights*, April 2001; LAW, OMCT and PCATI, *The Policy of Closure, House Demolitions and Destruction of Agricultural Land as Violations of the Convention Against Torture*, November 2001

²⁹ OMCT Urgent Appeal-Economic, Social and Cultural Rights Concern, Case GRE 200901. ESCRC, 20 September 2001; OMCT Urgent Appeal-Economic, Social and Cultural Rights Concern, Case310801.ESCRC, 31 August 2001

³⁰ OMCT Urgent Appeal, Case GRE 130701, 13 July 2001; OMCT Urgent Appeal, Case GRE 190901, 19 September 2001

- *establish, following the examination of the report presented by the Independent Expert, an open-ended working group entrusted with the further study of a draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.*

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