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Violence against Children in the Family

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Violence in the Family and OMCT's Mandate

As the main network for NGOs fighting against torture, OMCT could not ignore the increasing stream of reports on domestic violence transmitted by the OMCT-SOS-Torture network or fail to involve itself in the development of measures to put an end to this abuse.

OMCT argues that depending on the severity and the circumstances giving rise to State responsibility, violence perpetrated by private persons can constitute a form of torture or cruel, inhuman or degrading treatment or punishment under the International Covenant of Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman Treatment or Punishment. Indeed, in the past, human rights protection was interpreted narrowly and state inaction to prevent and punish violations was not viewed as a failure to protect human rights. However, international human rights law now increasingly recognises the fact that States can also be held responsible for acts by private persons when they fail to exercise due diligence to prevent, investigate, prosecute and punish these human rights violations. This trend is reflected in the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women.

Furthermore, one can argue that a State's passive attitude or even tolerance regarding human rights violations by private actors can be considered as "consent or acquiescence of a public official or other person acting in an official capacity", which is one of the four critical elements of the definition of torture laid down in article 1 of the Convention against Torture. Thus, a State's failure to exercise due diligence in preventing, investigating, prosecuting and punishing violence against children at the hands of private actors can result in a finding that the State is responsible for torture, and, when less severe, ill-treatment.

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1. Introduction

As a unit, the family is traditionally associated with warmth, security, and safety: a shelter, where peace and harmony are predominant. In reality, however, much of the violence against children takes place in the family. For the purposes of this report, the term family will be defined widely so as to include extended families, polygamous systems and non-traditional family units.

Violence against children in the family takes various forms and dimensions. Forms of violence children from which children suffer include, child-battering, incest, and the sale of children by their parents for prostitution or bonded labour. It is important to note that violence against children in the domestic sphere is not always perpetrated by a relative, for example, in the case of acts of violence against children committed by domestic workers or friends visiting the house.

Under international law, including under the Convention on the Rights of the Child, it is the duty of all States to protect the physical and psychological integrity of children in all spheres of life, including in the domestic sphere, and to ensure that there is no impunity for the perpetrators of violence against children. However, because of the gaps in legal and social structures and gaps that exist in many societies today, violence occurring in the domestic sphere is often not treated by the authorities as a serious crime, but is instead regarded as a private matter.

In this report, OMCT describes different forms of family-based violence directed at children. The country situations provided serve as an illustration of the forms and the amplitude of the violence. The choice of countries documented in this report is primarily based on the replies received to OMCT's questionnaire on violence against women, circulated in 1998, which, along with additional reliable information, were used as the basis for a worldwide report on the different forms of violence against women published by OMCT in 1999.¹ Thus, the selection of countries does not imply that violence against girls occurs more frequently or that States are less likely to take measures to prevent and punish violence against girls, but merely reflects the available information.

As a result of the fact that much of the information presented in this report is based on the above-mentioned research, much of the violence in this report concerns violence against girls. Certain forms of violence in the family are specifically directed against girls or affect girls disproportionately. Even before birth, in cultures where there is a preference for sons, female foetuses are targeted by the violent discriminatory practices of sex-selective abortion and female infanticide. During childhood, enforced malnutrition, unequal access to medical care, sexual violence, female genital mutilation, early-childhood marriage and "honour" crimes are all forms of violence inflicted on girls. When married at an early age, girls often suffer from beatings and psychological violence perpetrated by their husbands, marital rape, and harmful traditional practices such as dowry and bride-price related violence.

This document is limited by the amount of information that was available to OMCT on violence against boys in the family. Although boys as a group have privileges and benefits over girls, boys are also a heterogeneous population: some are sexually or physically abused in their homes; some are expelled from their homes due to sexual exploitation or homosexual activity; some are fathers and some are partners or husbands of adolescent girls; some are living in the streets; others are involved in prostitution.

¹ Carin Benninger-Budel and Anne-Laurence Lacroix, *Violence against Women: A Report*, 1999.

2. Physical violence in the home including corporal punishment

While girls are more likely than boys to be the victims of sexual abuse, a number of studies suggest that boys are more likely than girls to be victims of other forms of physical violence in their homes. In **Jordan**, boys are physically abused in the home more frequently than girls and are more likely to be victims of violence resulting in injuries, while girls are more likely to be the victims of verbal abuse.² Of officially reported cases of child abuse in Jordan, males under the age of 19 were seven times more likely to be the victims of physical violence resulting in injuries than girls.³

In **Brazil**, 61% of boys aged 11-17 reported having been victims of physical violence perpetrated by their parents, as compared with 47 percent of girls.⁴

In the **Netherlands**, a study on the extent and nature of domestic violence was set up by the Ministry of Justice.⁵ A randomly-selected group of 516 men and 489 women aged between 18 and 70 were questioned about their experiences with domestic violence. The interviews were held from mid-May to mid-July 1997.

The study reveals that the percentage of victims of physical violence in their childhood, aged 0 to 10 years, increases with age from around 4% to 11%. This means that 1 out of 9 children between the ages of 5 and 10 are victims of some form of physical violence. Children in their teens are even more frequently victims of physical violence in their homes; 1 in every 5 teenage children is a victim of physical abuse. According to the study, the high level of violence during childhood is not a result of the so-called "educative spank". In particular, victims of the most intense forms of domestic violence were under the age of 18 when the violence started. The study also reveals that between the ages of 10 and 20, more boys than girls are victims of physical violence. In this age group, one in every four boys is the victim of physical violence versus one in seven girls.⁶

Although not specifically banned as such in the Convention on the Rights of the Child, article 19 of the CRC clearly bans all forms of violence against children and other articles are also relevant to the prohibition of corporal punishment within the family. Furthermore, the CRC Committee, when considering country reports, has consistently stated that legal and social acceptance of physical punishment of children, in the home and in institutions, is not compatible with the Convention. Since 1993, in its recommendations following examination of reports from various States Parties to the Convention, the Committee has recommended the prohibition of physical punishment in the family and institutions, and has stressed the need for the development of education campaigns to encourage positive, non-violent child-rearing and education.

Nevertheless, corporal punishment is in many countries a form of accepted violence against children and, in some States corporal punishment of children is recognized by law as a right that parents enjoy.

In **Ethiopia**, for example, throughout the Penal Code, the use of corporal punishment is referred to as a right. For example, article 64 of the Penal Code creates an exception for: '(b) acts reasonably done in exercising the right of

² UNICEF, *Knowledge, attitudes and practices of basic life skills among Jordanian parents and Youth: a national study*, quoted in, World Health Organisation, Doc. WHO/FCH/CAH/00.7, Department of Child and Adolescent Health and Development, "What about Boys", 2000, p. 46.

³ UNICEF, *The Situation of Jordanian Children and Women; a rights-based analysis*, quoted in *ibid*, p. 46.

⁴ Gonvalves de Assis S., *Crece sem violencia: um desafio para educadores*, quoted in *ibid*. p. 46.

⁵ Dutch Ministry of Justice, Dienst Preventie, Jeugdbescherming en Reclasseurij, *Huiselijk Geweld*, 1997.

⁶ *Ibid*, p. 52-54.

correction or discipline'. Furthermore, article 548, part 1 of the Penal Code sets further limitations on the protection of children from corporal punishment by defining corporal punishment as a crime of a not very serious nature. The article reads 'Whosoever (...) deliberately neglects, ill-treats, over-tasks or beats him in such a way as *to affect or gravely endanger his physical or mental development or his health*, is punishable with simple imprisonment for not less than one month' (emphasis added). Clearly, a punishment which results in grave damage to the physical and psychological integrity of a child, as article 548 foresees, is an extremely serious crime. However, the Ethiopian Penal Code foresees a punishment of simple imprisonment, which, as set up in article 105 of the Penal Code, appears to be imposed for crimes of a not very serious nature.

In addition, article 548 is further weakened by a number of exceptions. Part 2 of Article 548 states: 'the right to administer lawful and reasonable chastisement is not subject to these provisions'. Thus, in conclusion, acts reasonably done in exercising the right of correction or discipline (art. 64) which gravely endanger physical or mental development or health (art. 548) can be regarded as lawful and reasonable chastisement (art. 548) in the state of Ethiopia. By consequence, the perpetrator of such a crime would not appear to be subject to any sanction.

In **Kenya**, the Children and Young Persons Act contains provisions regulating the protection and discipline of children. Section 23 of the Act empowers a person having care or control of a child, such as a parent or a teacher, to administer reasonable punishment to the child. However, it is illegal for any person in whose care and custody a child has been left to willfully assault, ill-treat, neglect, abandon, or expose the child to suffering or injury to health.

Boys' higher rates of victimisation by physical abuse in the home is according to various studies connected to subsequent participation in violence.⁷

3. Psychological Violence

According to the above-mentioned Dutch study, psychological violence in the family is more often directed against young people than against older people. Most victims of psychological violence in the domestic sphere are between the ages of 10 and 25. 13% of young people aged between 15 and 20 are the victims of psychological domestic violence. Girls, in particular, are more frequently victims of psychological violence. Between the ages of 15 and 20, one in seven girls becomes a victim of psychological violence in the domestic sphere versus one in ten boys.⁸

4. Sexual violence in the home including incest

As sexual abuse of children occurring within the family mostly perpetrated by a father, stepfather, grandfather, uncle, brother or other male in a position of family trust, is such a sensitive issue, there are few population-based studies from which its prevalence can be estimated. However, the above-mentioned study in the **Netherlands** showed that 45% of the victims of domestic sexual violence are under 18. Between the ages of 10 to 25, more than 7% of the respondents were victims of a form of sexual violence in the domestic sphere.

⁷ World Health Organisation, see note 2, p. 42-43.

⁸ Dutch Ministerie van Justitie, Dienst Preventie, Jeugdbescherming en Reclassering, see note 5, p. 54.

Especially between the age of 10 and 25 years, girls are more often victims of incest than boys.⁹

For social and biological reasons, incest is widely viewed as unacceptable. Most countries throughout the world have made it a criminal offence reflecting the taboo that surrounds incest. But precisely because of this taboo, families in which incest occurs keep it secret, making it one of the most invisible forms of domestic violence. Moreover, the laws making incest a crime often sacrifice the rights of the child as result of secrecy, court proceedings which require forensic evidence of incest, evidentiary procedures such as the fact that a wife cannot testify against her husband and the thought that a child victim may be cross-examined at length, so that cases are dropped and not brought to court. It is therefore crucial in order to protect the rights of the child that mechanisms are established to identify incest and prosecute perpetrators.

A particular difference between sexual abuse of adults and children is that the identification, reporting and the decision-making in the case of children lies not so much with the child victims, but much more with persons concerned about the child. An extra complication arises from the fact that the legal representatives of the child victim (parents, guardians, care givers) are frequently the perpetrators of the sexual abuse. In the case of children, it is extremely important that the right of the child, enshrined in article 12 of the CRC, to be heard in any judicial and administrative proceedings affecting the child be respected and that the views of the child are accorded due weight.

In **Zimbabwe**, according to various reliable sources, the phenomenon of child abuse including incest is increasing. Furthermore, according to the Catholic Commission for Justice and Peace in Zimbabwe, traditional healers are contributing to this phenomenon, as they reportedly encourage men to sleep with virgins in order to get rid of the HIV virus and to sleep with their daughters if they want to be successful in business.

In **Namibia**, there is a custom in some communities whereby an uncle is perceived as having a clear right to have sexual intercourse with his niece. This is not considered as a crime by the community or by the women themselves as they are educated in this custom and therefore generally agree to such sexual relations. Similarly, in some communities, an uncle is given permission to acquaint a niece, who has just reached sexual maturity, with the facts about sexual relations by having intercourse with her.¹⁰

The new Anti Rape Act of 1997 of the **Philippines**, explicitly provides for the punishment of incest by stating that "when the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim, the death penalty shall be imposed. It is feared, however, that the imposition of the death penalty for cases of incest may function as a deterrent against children filing complaints.

In **Colombia**, incest committed against children by parents, relatives, brothers or sisters, shall be punished with 6 months to 4 years prison. Article 259 provides that the same punishment applies to incest against adopted children by their parents. According to article 267 of the Criminal Code, cases of incest will be judged only upon complaint by the injured party. Except in such cases as especially provided for in the Criminal Code, this type of complaint may only be

⁹ Ibid.

¹⁰ D. Hubbard, *A Critical Discussion of the Law on Rape in Namibia*, 1991, p. 20.

presented by the victim as provided for in article 33 of the updated Code of Criminal Procedure 1998. When the victim is not legally competent, the complaint must be presented by a legal representative. If the victim does not have a legal representative, the complaint may be presented by the Public Attorney in charge of family affairs, who may also be the people's defender (Ombudsman, as established by the Constitution). When the legal representative is at the same time the offender, the victim may present the claim by him/herself (article 30 of the Criminal Procedure Code).

This is an important exception concerning legal capacity of children, as it provides children with a means of representing themselves in cases of criminal action against their parents or legal representatives. However, in cases where a child victim is too young to understand his/her position and to identify the mechanisms where to report the sexual abuse, it will be important to allow third persons who have identified the incest to bring a complaint.

According to article 32 of the Code of Criminal Procedure, a complaint may be filed within the year following the date of the act. However, this term of limitation should be longer as children are particularly vulnerable due to their dependency on the offender and other family members and often only feel able to bring charges against the offender after several years.

Article 381 of the Criminal Code of **Venezuela** is the only article of the Code in which the notion of incest is explicitly mentioned. The article provides that incest is punishable by 3 to 6 years prison but only in cases where the incest becomes a "public scandal." Does this then mean that non-scandalous incest is irrelevant to the law? If the answer is yes, then criminal law does not protect victims of incest from sexual assault but rather society from a scandal.

5. Wife Battering

Girls, when married before the age of 18, are at greater risk of physical and psychological violence perpetrated by their husbands or other members of their extended families. It should be noted that wife battering at home constitutes by far the most common form of violence against women and girls and is a significant cause of injury. Wife battering remains hidden, it is not the type of act that dominates headlines as it happens behind closed doors and victims fear speaking out.

Wife battering includes various methods of physical violence. Survivors of battering report violence such as slapping, punching, kicking, beating with fists or objects, biting, strangling, burning, throwing acid, raping with body parts or objects, stabbing and shooting. In the most extreme cases, woman victims are murdered or die as a result of their injuries.

As mentioned above, wife-battering is often the result of the general view that a woman is subordinate to and the property of a husband or intimate partner. This attitude is reinforced in some societies by practices such as demanding a bride price, which leads the husband and his family to believe that they have bought a wife or daughter-in-law and that she is therefore their property. Other unequal structures in the family, such as discriminatory laws with regard to land ownership, marriage and divorce, place women in a position of dependence on a man and assume that she will fulfil certain roles.

Specific legislation regarding domestic violence is a modern phenomenon. However, in certain countries, wife battering is still not considered as a crime and

no legal sanctions exist against perpetrators. In other countries, domestic violence is frequently dealt with under laws that regulate "ordinary" cases of criminal assault. But these laws ignore the fact that the violence takes place in the family, between persons who are emotionally and financially involved with each other. Therefore, special laws are drafted, with specific remedies and procedures that meet the circumstances and special needs posed by violence between domestic inmates. These laws may deal with issues such as quasi-criminal remedies, civil law remedies, and the question of whether domestic violence is a complaint offence or a public offence.

Even in cases where countries have "criminalised" wife battering, much still depends on the role and the power of the police. In most jurisdictions, the power of the police to enter the private premises of the individual is limited, and although respect for privacy acts as an important guarantee which protects the lives of ordinary women and men from arbitrary state interference, it allows violence to occur. Moreover, in many cases of domestic violence, immediate release of the offender on bail may be dangerous for the victim and, certainly, release without prior warning to the victim may have serious consequences.

Police and other state authorities should be aware of the fact that domestic violence is a serious issue which is neither a part of normal family life nor a private matter. Furthermore, importance should be given to community support services such as hospitals and shelters that provide battered women with a safe haven and a place to go.

According to the national statistics from the **Egyptian** Demographic and Health Survey (1996), out of a sample of 14,000 married women, of the women reporting having been beaten, 32% were beaten during pregnancy, with younger pregnant women experiencing this more frequently than older women (41% of women aged 15-19 compared to 26% of women aged 40-49).¹¹ This indicates the vulnerable status of younger married women within the family.

6. Marital Rape

Girls, when married before the age of 18, can be at risk of marital rape. Physical violence by a partner may include rape and other forms of sexual violence. Surveys in a number of countries show that from 10% to 15% of women report that they have been forced to have sex by their intimate partner.¹² Among women who experience physical violence from their partners, figures are higher; an average of 50-60%.¹³ In many societies, however, women do not define forced sex as rape if they are married to or living with the abuser. Although some countries have recognised marital rape as a criminal offence, others still argue that husbands have a legal right to have sexual access to their wives. But when rape or other forms of sexual violence against a women or a girl committed by her husband are not recognised as a crime, the marital relationship acts as a cover for violence in the home.

In **Nigeria**, under both customary law and section 357 of the Criminal Code Act (Cap 77 Laws of Federation 1990), a husband cannot be punished for raping his wife since the law allows him to have sexual intercourse with her without her

¹¹ Quoted in Alternative NGO Report by Al-Nadim Centre for the Rehabilitation of Victims of Violence, the Hisham Mubarak Law Centre, and the New Woman Resource Centre, *Implementation of the International Covenant on Economic, Social and Cultural Rights*, April 2000, p. 22.

¹² Lori L. Heise, Jacqueline Pitanguy and Adrienne Gramain, *Violence against Women, The Hidden Health Burden*, World Bank Discussion Paper, 255, pp. 6-10.

¹³ Ibid.

consent. As it is believed that the essence of contracting a marriage is to have sexual intercourse whenever needed, the question of marital rape is treated as a non-issue.¹⁴ Moreover, cultural inhibitions and taboos about sexual activities restrain most victims from acknowledging and reporting incidents even informally.

In **Egypt**, a husband who forces his wife to have sexual intercourse is not considered by the law to have committed a criminal offence, "because the woman is legally obliged due to the marriage contract to obey her husband and to follow him to his bed each time he asks her, and she can only refuse for a legally valid reason."¹⁵

A study conducted by the New Women Research Centre and El-Nadim Centre has found that 93% of the women in the sample considered intercourse under such conditions as rape. However, 46% of the men in the sample said that they were entitled to force their wives to have intercourse.¹⁶

In **Pakistan**, rape within marriage is not recognised as a crime. The 1979 *Hudood* Ordinances abolished punishment for raping one's wife. The marriage contract is now interpreted as having given the husband an absolute unqualified right over his wife's body as far as sexual intercourse is concerned.¹⁷

Although article 177 of the Penal Code provides no spousal rape exception for rape, marital rape is rarely recognised as a punishable crime in **Japan**. A 1985 Tokyo district court decision denied a woman's request for divorce on grounds of the husband having used physical force to have sex with her, ruling, "It is no way illegal for a husband to demand sexual intercourse from a wife, nor does a wife have any rights to deny such request."¹⁸ In a 1986 divorce case, a Tokyo Court denied a wife a divorce which she sought on grounds that her husband had frequently raped her, ruling that the husband had a right to force sexual intercourse and that the wife was at fault for not assuming her "legal duty" as a wife.¹⁹

In **Germany**, in 1997, a law regulating marital rape was finally adopted by Parliament. Before the adoption of this law, rape perpetrated by the husband was not considered to be a crime. In several towns in the country, voluntary organisations with funding from local and state governments founded so-called "Frauenhaeuser" where women, with their children, can find refuge if they have been raped by their partners/husbands.

7. Forced Labour including Prostitution

Violence in the form of prostitution or other types of commercial exploitation, by parents (and by male partners in the case of marriage) occurs in many settings.

¹⁴ Theresa U. Akumadu, The Women's Rights Project, Civil Liberties Organisation, *Beast of Burden. A Study of Women's Legal Status and Reproductive Rights in Nigeria*, April 1998, pp. 93-94.

¹⁵ Sami a. Aldeeb Abu-Sahlieh, *L'Ethique sexuelle en droit musulman et arabe, cas de l'Egypte, passé, présent et avenir*, unpublished text.

¹⁶ El-Nadim Centre and New Women Research Centre, 1994, quoted in Nemat Guenena and Nadia Wassef, *Unfulfilled Promises, Women's Rights in Egypt*, Population Council, 1999, p. 37.

¹⁷ Simorgh Collective and Hussein, S., *Rape in Pakistan*, 1990, quoted in Women, Law & Development, International, "State Responses to Rape, Current Status and Needed Improvements", 1997, p. 33.

¹⁸ Mieko Yoshima, *Domestic Violence in Japan: Research, Program Developments, and Emergency Movement, Battered Women and their Families*, 2nd Edition, 1998, p. 422, quoted in Equality Now, Report on Japan to the Human Rights Committee, 64th session, October 1998, p. 2.

¹⁹ Yukiko Tsunoda, *Sexual Harassment and Domestic Violence in Japan*, 1997, p. 5, quoted in Equality Now, Ibid.

Many factors can conspire to push children into exploitative and abusive situations. Families are often deceived by the promise of job opportunities or money. Sometimes, girls and boys are sent away from home to work for another family as domestic workers but become the victims of physical and sexual abuse.

In Africa, children aged between 8 and 17, generally girls coming from rural areas, are hired out or sold by their families who are unable to support them. Their fate thereafter depends on the conditions offered by their employer or "buyer". The nature and work conditions with which these children are confronted are often similar to forced labour.

In West Africa, from **Senegal** to **Nigeria**, tens of thousands of children of destitute families are reported to be given up to child traffickers who then sell them to well-to-do families where they become domestics. Generally denied any right to education, these children – who at times are made to work up to 14 hours a day - are often victims of insults, abuse, ill-treatment and particularly of sexual violence, including rape, where female children are concerned.²⁰

As far as **Nigeria** is concerned, the problem is much greater since it has become an industry. Professional placement agents - hired by families who cover their fees, the price paid to the parents and bribes to officials if necessary - comb the countryside and bring children to the cities.²¹

In **the Ivory Coast**, girls aged 7 or 8 are recruited by "aunties" in town to be hired as servants. Faced with economic difficulties and promises of a better future, these girls are sometimes hired out for several years or rented on a daily basis by their parents. When they reach adolescence, the girls are often sent away by the mistress of the house who may fear that they will seduce her husband.²²

Commercial exploitation of women by their relatives in Asia has been widely reported. For example, Tamang girls from hill districts in **Nepal**, where the flesh trade has become an almost traditional source of income, are sold or tricked by their husbands or relatives into being trafficked to India for prostitution.²³ Many of the girls are forced to have unprotected sex. Based on studies carried out in Mumbai, 65% of the sex workers are HIV positive. Girls who manage to escape from the sex trade are often not accepted into their communities and in order to survive, they are forced to go underground where they continue selling sex.²⁴

Debt bondage is a serious problem in certain regions in **Thailand**. Poverty has given rise to the phenomenon of debt bondage. For many families, debt bondage seems one of the very few options for survival. Besides poverty, lack of education and consumerism are cited as the main factors causing the increase in debt bondage in the region. Moreover, cultural and social values are important contributing factors to the phenomenon of trafficking. In some regions it is believed that it is the daughters' duty to sacrifice herself for the well-being of her family. While education is not seen as very necessary for girls, boys receive as much education as the parents can afford. Their gratitude is shown by being

²⁰ Pierre Hazan, *Les abus envers les enfants domestiques, exploités et violentés, font réagir le Bénin*, in *Le Temps*, 15 March 1999, p. 7.

²¹ *Ibid.*

²² *Femina*, no. 46, 15 November 98, pp. 14-16.

²³ Human Rights Watch, *Rape for Profit, Trafficking of Nepali Girls and Women to India's Brothels*, 1995, p.15.

²⁴ Anu Radha Koirala, Maiti Nepal, *Trafficking in Children - A Nepalese Perspective*, Background Document to the UN Working Group on Contemporary Forms of Slavery, 23rd Session, 1998.

ordained as a monk for a period of three months. They are not subjected to the same harsh conditions as their female siblings.

The main targets of the traffickers seem to be young women and girls from the poor rural areas of North and Northeast Thailand. This includes offspring of minority hill tribe villagers. Traffickers approach the family, offering an amount of money in exchange for the female child's "labour", which, it is claimed, will be carried out in a restaurant, factory, etc. Parents then sign a loan contract for the money given. The daughter has to "work" for a specified time in order to pay back the debt. In some cases when the daughter is rescued and sent back home, the trafficker will come and send her to another place.²⁵

Section 317 of the Thai Penal Code could provide a protection for children against debt bondage. It reads: "Whoever, without reasonable cause takes away a child not yet over 15 years of age from the parent, guardian or person looking after such child, shall punished with imprisonment of three to fifteen years and fine from six thousand to thirty thousand Baht. Whoever dishonestly buys, disposes or accepts such child to taken away according to the paragraph shall be liable to the same punishment as the person who takes the child away. If the offence of this section has committed for lude or indecent purposes, the offender shall be punished with imprisonment of five to twenty years and a fine from ten thousand to forty thousand baht."²⁶

Due to its illegal purpose, the "contract" is void and would consequently be rejected in a court of law. However, because of their ignorance of the law, the costs of hiring an attorney and the legal fees involved, parents would be hard pushed to establish this fact, let alone fight a civil case. Even so, more often than not, inaction stems from the belief that the family is indeed indebted to the trafficker. The very abusive aspect of trafficking, a combination of debt bondage and illegal confinement, more often than not, goes unpunished.

In **Iran**, on 14 December 1992, the Secretary General of Imam Khomeini's Relief Committee stated that: "(...) the deprived people living in Khorassan's northern areas sell their young daughters for up to 10.000 tomans. The buyers of these girls (...) take them there [Gonbad area] to work in the farms and workshops."

8. Violence against Domestic Workers

Abuse of domestic workers is a tremendous problem world wide. However, as with other forms of domestic violence, it often goes unreported and unpunished.

Isolation from one's community and family, sexism, racism and classism are important factors that intensify the conditions that lead to widespread violence against domestic workers and abuse at the hands of their employers within the space that is both their home and workplace. The children tolerate abuses from their employers because they are poor and afraid. They fear losing their jobs and they are scared that no one will believe their story.

Domestic servants in irregular situations, and whose migration has been facilitated by traffickers, are particularly vulnerable to domestic exploitation and violence. In a large number of cases, they are subjected to long working hours with often heavy labour, denied time off, and deprived of food. Their wages may be withheld and/or their payments delayed and domestic servants may also be

²⁵ Wanchai Roujanavong, *Thailand the Situation of Trafficking in Women*, 1997.

²⁶ The Act Promulgating the Penal Code, B.E. 2530.

fired without cause. As these workers often have no legal immigration or employment documents and are not registered with the authorities, they live in constant fear of state reprisals.

In **Bangladesh**, a large number of children are working, including in rural areas, as domestic servants. There is great concern over these children since many work under conditions that have been likened to servitude.²⁷ They are often vulnerable to sexual abuse and exploitation, and other physical abuse, sometimes resulting into death.

In **Bolivia**, according to article 291 of the Criminal Code, slavery or any analogous state, shall be punished with 2 to 8 years prison. However, certain practices resemble closely resembling slavery such as the precarious conditions of home workers and particularly housemaids have largely been ignored.

The "Federation of Housemaids" in Bolivia has denounced the persistence of a medieval practice: the right of the landlord to sexually abuse the virgins living in his domain [derecho de "pernada"]. Today, in Bolivia, housemaids are the object of sexual abuse by their employers. As a result of such abuses these young girls and women sometimes become pregnant and are forced to get an abortion or are simply fired.

Labour Unions and local NGOs are promoting legal reform and other positive actions in order to improve women's rights. For example, in 1995, the Syndicate of Housemaids presented a draft law that establishes the need for a formal work contract with a salary equivalent to the national minimum wage, a maximum working schedule of 10 hours and the right to education and paid vacation.

9. Traditional and Customary Practices affecting the Physical and Psychological Integrity of Girls

Traditional and customary practices reflect values and beliefs held by members of a community, often throughout many generations. Although some customs and traditions promote and protect girls and women's rights, certain practices, particularly those linked to deeply rooted power inequities in a community, are the cause of violence against women and girls.

Among such practices are: female genital mutilation, dowry violence, early marriages and childhood pregnancy, bride/widow burning or other widowhood practices, honour killings and virginity testing; all affect the health of or, in the worst cases, lead to death of women and girls. These harmful traditional and customary practices should be considered as a human rights violation which cannot be ignored or justified on the grounds of tradition or culture. Similarly, several international human rights instruments such as the Convention on the Elimination of All Forms of Discrimination against Women under article 5 (a), the Convention on the Rights of the Child, as well as the Beijing Declaration and Platform for Action call on States not to invoke any custom, tradition or religious consideration to avoid their obligations with respect to the elimination of all forms of violence against women and girls.

The Beijing Declaration and Platform for Action also makes strong recommendations for governments on this issue. It requests Governments to enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, female infanticide,

²⁷ Committee on the Rights of the Child, U.N. Doc. CRC/C/15/Add.74.

prenatal sex selection and dowry-related violence, and to give vigorous support to the efforts of non-governmental and community organisations to eliminate such practices. Furthermore, governments are called upon to adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women, and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles by either of the sexes.

9.1. Dowry and bride price-related violence

In some countries, weddings are preceded by the payment of an agreed-upon dowry by the bride's family. Failure to pay the dowry can lead to violence against girls and women by their families in-law. The violence may range from verbal to psychological and physical abuse, starvation and in certain communities to burning alive by the husband and/or his family members.

In other cultures, the family of the man has to pay a bride price to the woman and/or her family he wants to marry. This custom often results in violence against women in the home as the custom leads a man to believe that he has bought his wife and thus his conduct towards her may not be questioned.

In Africa, the bride price – also called lobola, mahr - is an institution deeply rooted in the cultural consciousness. Be it in **Egypt**, in **Zimbabwe**, in **Nigeria** or in **Sudan**, this practice contributes to reinforce the already subordinate status of women.

In **Zimbabwe**, lobola, a bride price paid by the man, is a common practice and an important contributing factor to widespread domestic violence. Before the Legal Age of Majority Act came into force, lobola was required for the conclusion of a marriage under customary law. This practice was primarily perceived as a token cementing a marriage and as a symbol of unity. Currently, however, lobola has become commercialised and exorbitant payments are now requested.²⁸ This has led men to regard their wives as property since lobola is paid to in-laws for the wife in question. Thus, in exchange for lobola, the husband and his family feel entitled to the physical labour of the wife.

In **Nigeria**, in the event of the marriage being dissolved, the woman continues to belong to her spouse as long as the amount he paid for "his purchase" has not been reimbursed.²⁹

In **India** and **Bangladesh**, a dowry is a payment from the bride or her family to the groom and his family. This practice has grown in the near past even though it is not a part of the Muslim marriage contract. Dowry is now an economic compulsion as parents know they cannot get their daughters married without paying dowry to the prospective groom. If the girl's family fail to fulfil these commitments the marriage negotiations may be broken off which causes disgrace to the bride and her family. But also after marriage the bride can be abused and tortured for full payment of dowry or with new demands, leading in extreme cases to suicide or homicide.

Although **India** has formally abolished the institution of dowry, more than 5,000 women are killed each year because their in-laws consider their dowries inadequate.³⁰ The State allegedly undertakes very few prosecutions, even though

²⁸ Musasa Project, Musasa News, vol. 7, no 1, May 1997.

²⁹ Theresa U. Akumada, see note 14, p. 34.

³⁰ UNICEF, <<http://www.unicef.org/facts/women.htm>>.

the law requires a special inquiry into suspicious deaths of women who have been married for less than seven years.

In **Iran**, dowry (mahr) is promised by the husband to the wife and basically constitutes a price paid for sexual possession of her body. Article 1085 of the Civil Code provides that "A wife can refuse her duties towards her husband until the mahr is handed over to her – on the condition that the mahr is halal (legitimate from a religious angle.)

9.2. Crimes 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.

In **Bangladesh**, every month about 20 persons reportedly become victims of acid attacks. Most of them are women and girls. When acid is thrown on a person, the results are horrific. Sulfuric acid melts away skin and muscle, and sometimes even dissolves the bone. When acid attacks the eyes, women become blind. Reported reasons for acid attacks include refusal of an offer of marriage, dowry disputes, domestic violence and arguments over property. OMCT notes that Bangladesh is not lacking laws that attempt to protect Bangladeshi women. However, there is reportedly a lack of commitment by the judiciary and law enforcement officials to apply these laws and criminal processes are slow.

In **Turkey**, the term family honour, in fact refers to an entire social code of behaviour imposed upon women and girls in order to keep them in an inferior position and preserve male supremacy. Taking place on a large scale, the murder of women for the sake of family honour is actually just the tip of iceberg of an entire social institution based upon this code. The whole system assumes that the man's honour resides within the body of his sister, daughter, mother, or wife.³¹ Social norms encourage families to act in defence of their "honour" and legal norms protect their ability to do so.

The task of "honour" killing is delegated in a strategic manner to minor male members of the "disobedient and disgraceful" woman's family as they can benefit in criminal proceedings from the mitigating circumstances of young age.

9.3. Violence against Girls due to Son Preference

In many societies, a higher value is placed on sons. During their entire life cycle, women can be affected by this practice. From its most extreme forms of foetal and after birth female infanticide to practices which are discriminatory against girls such as: neglect of girls, gender-difference in nutrition, a disproportional division of work in the house for girls, and less access to education for girls than their brothers. According to UNICEF, if the gender gap in primary education has begun to close throughout the world in recent decades, it is not the case with

³¹ Campaign Against Honour Killings in Turkey, <http://www.gn.apc.org/honour_killings>

secondary education. In more than 40 countries worldwide, fewer than 25% of girls are enrolled in secondary school.³²

Discriminatory feeding practices and inequitable access to health care shortens the lives of girls and women in some regions of the world.³³ Roughly 60 million women who should be alive today are not as a result of a spectrum of violence that includes sex selection before and after birth, and the enormous toll - often avoidable - of maternal mortality: approximately 585,000 women die in childbirth each year.³⁴ Furthermore, son preference also seems to be instrumental in promoting the practice of early marriage as will be discussed below, which may prove equally detrimental to the physical and psychological health of young women.

Economic, social and cultural factors have an important influence on son preference. For example, the economic role and independence of women is closely related to the status and power of women in both the family and society. Employment outside the home and owning assets can both be important for women's economic independence and powers; these factors may have far-reaching effects on the division of benefits and chores within the family. The prevalence of outside employment of women is, however, strongly influenced by culture, including religion. Besides gainful employment, women's education and their economic rights, including property rights, may also be crucial variables in the social status of women. Furthermore, strong measures to control the size of the family may have an important impact in the framework of cultures where there is a preference for boys.

Due to destitution and traditions which continue to favour preferential treatment of boys, who are seen as the providers and support of potential families, girls are often more vulnerable in terms of malnutrition and ill-health than boys. Access to education is another area of discrimination in favour of male children in Africa, which is prejudicial to their female counterparts. It is not so much that this directly places the lives of girls in danger, but rather that they are deprived of literacy, which is an indispensable means of protecting themselves against possible violence in later life. In sub-Saharan Africa, although secondary enrolment is low for both boys and girls, with respective rates of just 27 % and 22 %, girls are still behind.³⁵

In **Nigeria**, the birth of a girl is generally a disappointment. In the Igbo culture, the names given to girls at birth are generally quite revealing: Nwanyabuiife (a girl or woman is something), Nkechinyere (I accept whatever it pleased God to give me) are female names, while Afamefuna (I am or I have a successor) is a masculine name.³⁶

Son preference is more marked in Asian societies and is historically rooted in the patriarchal system. Its consequences can be anything from foetal, ante-natal genetic testing to select sons before birth, which has become a booming business in Asia,³⁷ to female infanticide or neglect of girls in terms of nutrition, basic health care and education. The worst disparity in secondary school enrolment is to be found in South Asia, where 52% of boys but only 33% of girls enrol.³⁸

³² UNICEF, *The Progress of Nations*, 1998, p. 26.

³³ UNICEF, <<http://www.unicef.org/facts/women.htm>>.

³⁴ Ibid.

³⁵ UNICEF, see note 32.

³⁶ Theresa U. Akumadu, see note 14, p. 140.

³⁷ UNICEF, <<http://www.unicef.org/facts/women.htm>>.

³⁸ UNICEF, see note 32.

Many factors are responsible for son preference in South-Asian countries such as **Bangladesh, Pakistan** and **India** including: sons are often the only source of security for parents in their old age, in particular in cases where women have little economic independence or cannot inherit property; daughters are more expensive to marry off than sons owing to the dowry system; women have few opportunities to earn income and to invest household resources in female children. As a Telugu proverb in India says, "bringing up a girl is like watering a plant in someone else's courtyard."³⁹

Despite the fact that in 1994, the government of India issued the Regulation and Prevention of Misuse Act, which effectively prevents the results of pre-natal procedures which reveal the sex of the foetus from being used as a reason for female foeticide, ante-natal genetic testing to select sons before birth has become a booming business, especially in the northern regions. Illegal tests are available and more female foetuses are aborted than male foetuses. For women who do not have access to abortion, female infanticide is used as an alternative.

The disadvantages of daughters to a family has led to a strong cultural and traditional bias in favour of male children and accompanying discrimination against daughters, and finally to the deaths of countless women. Given the number of men in India, there should be 30 million more women.⁴⁰ It has been calculated that today in India, in the age-group of 15 to 35 years, there is a surplus of 12 to 13 million men. It has been estimated that the surplus of men will be 28 to 32 million in 20 years.⁴¹ Moreover, it has been calculated that there are only 800 women for 1000 men in Uttar Pradesh, Rajasthan, and Bihar, and only 600 women for 1000 men in Haryana.⁴²

However, the state of Kerala does not have a deficit of women. In this context it is interesting to note that in some parts of Kerala, property is usually inherited through the family's female line. Moreover, what is also exceptional in Kerala is the high literacy rate, especially for women.

The "One Child Per Couple Policy" launched in 1979 in **China** combined with traditional attitudes and practices, threatens the survival, health and status of many women and girls. Girls face threats to their survival including sex selective abortion, infanticide, neglect and abandonment. Although these practices are officially banned, in practice they continue. Children born "out of plan" may not have an official legal identity: they are not eligible for services such as public education and medical care. Many of these illegal children are girls. In September 1997, the World Health Organisation (WHO) reported that the sex ratio is at 117 boys to 100 girls.

9.4. Early marriages

Early marriages, especially without the consent of the girl, cause or constitute a form of violence against women. Marriage in adolescence remains most common in traditional societies, although the average age of marriage has been rising. The legal minimum age of marriage is usually lower for females than for males. In many countries, the minimum legal age for marriage with parental consent is considerably lower than without it; more than 50 countries allow marriage at 16 or below with parental consent.

³⁹ Department of Public Information, United Nations, *The Advancement of Women*, 1995, p. 65.

⁴⁰ See Roxanna Carillo, *Battered Dreams, Violence against Women as an Obstacle for Development*, New York, 1992.

⁴¹ Valerie Hudson and Andrea den Boer, *Bare Branches: Causes and Consequences of the Masculinisation of Asia's Sex Ratio*, 2000, quoted in Anna Lietti, "Le Temps", 20 November 1999.

⁴² Femina, Nr 50, 12 December 1999.

Early marriage is promoted for several reasons such as to guarantee a woman's virginity, relieve her family of the burden of a mouth to feed and ensure a long cycle of fertility to produce a number of sons. Yet, early marriage leads to early childhood/teenage pregnancy. According to UNICEF, girls aged 15 to 19 give birth to 15 millions babies a year. Childbearing during early or middle adolescence, before girls are biologically and psychologically mature, is associated with adverse health outcomes for both the mother and child. In Bangladesh, for example, in comparison with women aged 20-24, maternal mortality was five times as high for those aged 10-14 and twice as high for those 15-19.⁴³ In Cuba, although the numbers of death were low, the mortality ratio for 10-14 years old compared to 15-19 years old was nearly double, and in Puerto Rico almost 5 times higher.⁴⁴ Moreover, infants may be premature, or of low birth weight, or be small for gestational age.⁴⁵ Early marriage and child-bearing also adversely affect the education and employment opportunities of girls and, as a result, their economic participation rate. Early marriage also deprives girls of their right to consent to marriage or to choose their own partner as enshrined in article 16b of the Convention on the Elimination of Discrimination Against Women.

The Beijing Platform for Action addressed the problems of early pregnancy associated with child marriage, urging Governments "to enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age of marriage and raise the minimum age for marriage where necessary."⁴⁶

Egyptian law stipulates that the legal age for marriage is 16 for girls and 18 for boys. OMCT fears that the age difference in this law encourages the completion of education for boys at the age of 18, while curtailing that of girls, implying that it is of secondary importance.

Moreover, this law is rarely enforced and marriage of even younger girls is common. A study conducted by the Minister of Health of Upper Egypt revealed that 44% of rural women married between 1989 and 1993 were under 16 years old at the time of their marriage.⁴⁷ Traditional, religious and economic motives dictate such marriages. Through the practice of the *mahr* or bride price, some families see early marriages as a means of improving their financial situation.

In the **Democratic Republic of Congo**, the minimum age for marriage is 15 years for girls and 18 for boys. In the rural areas, however, early marriages involving girls under the age of 14 are celebrated. These girls are given to chiefs who may already have several wives in exchange for access to political and/or socio-economic power. As for the Yansis peoples, they practice, mainly in the Bandundu, a different form of forced marriage - marriage by predestination (*kitwil*) - under which a girl is automatically the wife of her grandfather who can then give her to one of his nephews, whether married or single.⁴⁸

In **Pakistan**, the Child Marriage Restraint Act of 1929 forbids child marriage: below 16 for girls; below 18 for boys. In cases of violation of this Act, the law

⁴³ World Health Organisation, Doc. WHO/FMF/MSM/92.13, 2nd edition, Maternal Health and Safe Motherhood Programme, Division of Family Health, *Abortion: A tabulation of available data on the frequency and mortality of unsafe abortions*, WHO Geneva, 1993.

⁴⁴ UN Department of International Economic and Social Affairs, *Adolescent Reproductive Behaviour: Evidence from Developing Countries*, vol. 2, ST/ESA/SER.A/Add.1, UN.NY, 1989.

⁴⁵ World Health Organisation, WHO Doc. WHO/FRH/WHO/97.8, *Violence Against Women*.

⁴⁶ U.N. Doc. A/CONF.177/20, Annex II, para. 274.

⁴⁷ Laila Shukry Al-Hamamsy, *Early Marriage and Reproduction in Two Egyptian Villages*, Paper for the Population Council/UNFPA, Cairo, 1994, quoted in: Marlyn Tadros, see note 21, pp. 14 -15.

⁴⁸ Odette Bolie Nonkwa Mubiala, *Evaluation de l'état d'application de la Convention sur l'élimination de toutes les formes de discrimination à l'égard de la femme au Zaïre*, Public Health and Family Ministry, June 1996, p. 24.

accepts the marriage contracted by the parent/guardian of a minor as legally valid, however, the girl or boy can seek dissolution of the marriage. A girl can exercise this option when attained the age of 16 but before she is 18, provided that the marriage is not consummated.

In most regions of Pakistan, girls are married off by their parents before the age of 16, sometimes as early as the age of puberty. In Sindh and Baluchistan, engagements are often decided before the birth of a girl. In practice, it is often virtually impossible for a girl to break the engagement since it will be extremely difficult for her to marry someone else.⁴⁹

9.5. Female Genital Mutilation

The World Health Organisation estimates that around the world there are between 100 and 132 million girls and women who have undergone genital mutilation (excision and infibulation) - or, depending on the culture, partial or total removal of the clitoris and other external genital organs.⁵⁰ Female genital mutilation (FGM) takes place in 28 African countries, in certain regions in Asia and the Middle East), as well as in certain immigrant communities in North America, Europe and Australia.

The following reasons have been given to justify FGM: custom and tradition; religious demand; purification; family honour; hygiene (cleanliness); aesthetic reasons; protection of virginity and prevention of promiscuity; increasing sexual pleasure for the husband; giving a sense of belonging to a group; enhancing fertility; and increasing matrimonial opportunities.⁵¹ It is important to note that FGM is not required by any religion.

These practices are incredibly violent, performed as they are without anaesthetic, provoking serious psychological trauma combined with great anguish and suffering. In addition, they have a terrible effect on the child or young girl's state of health, both at the time and in the future. Apart from potentially fatal haemorrhages, the risk of tetanus or septicaemia from the very basic instruments used, neighbouring organs are often damaged due to the girl's agitation. Infibulation itself results in serious obstetric complications during menstruation, sexual intercourse and childbirth.

In Africa, most of these mutilations are practised in western and eastern countries. In several countries, including Djibouti, Ethiopia, Eritrea, Sierra Leone, Somalia and large areas of and the Sudan, virtually all women are subjected to this practice.

In **Sudan**, where infibulation is the most common type of circumcision, FGM is performed on girls between 5 and 12 years of age and is still a dominant custom, especially in the north, where an estimated 90 % or more of females have been subjected to FGM. FGM is connected to the virginity of the female; if his wife is uncircumcised, the husband has the right to divorce her. No form of FGM is illegal under the Sudanese Criminal Code. Although doctors and midwives are forbidden by the Health Law from performing infibulation, it seems that no one has ever been arrested or prosecuted for violating this law. However, a larger number of urban and educated families, in a compromise with tradition, are adopting the least severe form of FGM, suna, as an alternative to infibulation.

⁴⁹ Shirkat Gah and Women Living under Muslim Laws, *Women, Law, and Society: An Action Manual for NGOs*, 1996, p. 28.

⁵⁰ WHO, Female Genital Mutilation: Information Pack, <www.who.ch>, p.4.

⁵¹ Ibid., p. 3.

In **Nigeria**, FGM is practised extensively in all parts of the country and among all religious groups. Current estimates place the prevalence of FGM between 60 and 90 %. The age of mutilation varies from 3 months to 17 years or just prior to the first pregnancy. Perceived of as a private act, any state interference is considered as a violation of the right to privacy. Among the reasons advanced for the practice are: to curtail sexual promiscuity (48 %), to make for easy and safe delivery of babies (25 %), to make for female cleanliness (17 %), and to make for the bearing of healthy children (6 %).⁵² Although the government has publicly opposed FGM, no explicit law prohibits this practice. In February 1997, the Minister of Health announced the establishment of a 25-person committee to study the issue.⁵³

In **Egypt**, the State Council, the country's highest administrative court, outlawed female genital mutilation (FGM) on 28 December 1997, reversing a lower court ruling of summer 1997 which overturned the Health Ministry's ban on the practice. The State Council said: "circumcision of girls is not an individual right under Islamic law because there is nothing in the Koran which authorises it and nothing in the Sunna" - traditional accounts of how the Prophet Mohammed lived his life. The court ruled: "henceforth, it is illegal for anyone to carry out circumcision operations, even if the girl or her parents agree to it." Offenders may be sentenced to up to three years in prison.

According to reports the percentage of women who are victims of FGM remains alarmingly high: WHO statistics for 1995 showed and estimated 97% prevalence of FGM⁵⁴ and another survey published on the WHO web site found that 80% of the female population are victims of FGM.⁵⁵ Female genital mutilation is practised throughout the country by Muslims and Christians. In Egypt, the common procedure involves subtotal clitoridectomy: the clitoris is held between the thumb and index finger, pulled out and amputated with one stroke of a sharp object: In areas of southern Egypt closer to Sudan the most extreme form of FGM, (known as infibulation), is widely practiced. Infibulation involves the complete removal of the clitoris and labia minora, together with the inner surface of the labia majora. The raw edges of the labia majora are brought together to fuse, using thorns, poultices or stitching to hold them in place, and the legs are tied together for two to six weeks. The healed scar creates a hood of skin which covers the urethra and part or most of the vagina, and which acts as a physical barrier to intercourse. A small opening is left at the back to allow for the flow of urine and menstrual blood. The opening is surrounded by skin and scar tissue and is usually 2-3 cm in diameter but may be as small as the head of a matchstick.⁵⁶

The adoption of laws against the practice of female genital mutilation is fundamental. However, these laws will only be effective if they are supported by an increased awareness of and involvement by society in this issue through education campaigns.

A form of female genital mutilation is practised in some parts of **Indonesia**. Usually, a small section of the tip of the clitoris is cut or a small incision is made with the purpose of drawing a few drops of blood. Total removal of the clitoris is not the objective of the practice, although it does occur if the procedure is

⁵² Theresa U. Akumadu, see note 14, p. 57.

⁵³ U.N. Doc. E/CN.4/1998/62, para. 76.

⁵⁴ World Health Organisation, "Female Genital Mutilation: An Overview", 1998, available at <http://www.who.int/dsa/cat98/fgmbook.htm#46>.

⁵⁵ World Health Organisation, "Female Genital Mutilation: Information Pack", available at: [http://www.who.int/frh-whd/FGM/infopack/English/fgm_infopack.htm# Prevalence and Distribution](http://www.who.int/frh-whd/FGM/infopack/English/fgm_infopack.htm#Prevalence%20and%20Distribution).

⁵⁶ World Health Organisation, "Female Genital Mutilation: An Overview", 1998, available at: <http://www.who.int/dsa/cat98/fgmbook.htm#Africa>.

inappropriately performed. This form of female genital mutilation takes place within the first year after birth, often on the 40th day. However, it can be performed up until the age of seven. A more serious form of FGM which involves the removal of the tip of the clitoris is reportedly still practised in Madura and South Sulawesi. Since FGM is not regulated, and no formal position has been taken by religious leaders, the method used is often decided by the individual practitioner.

9.6. Virginit

Women's sexuality as a reflection of the family honour is also manifested in the practice of virginity testing. Due to the belief that the reputation of the family is closely connected to the sexual behaviour of female family members, it is considered to be both the right and the responsibility of the family to subject their daughters to virginity testing. Another issue is the amount of money which has to be given to the family of the bride by the groom's family, and "marriages through mediation of go-betweens."⁵⁷

In **Turkey**, despite the governmental decree, announced in January 1999, which provides that virginity tests may only be conducted following judicial approval and should only be used to gather evidence for criminal investigations, forced virginity testing by family members continues to be widespread. According to information received, in many "honour killing" trials, the virginity of the victim is tested by forensic scientists. The virginity of the victim is reportedly taken into account during trial and sentencing.

Moreover, the Turkish State itself is reportedly also involved in forcible virginity control exams. Young girls and women in detention facilities and schools are often subjected to virginity tests by state officers.⁵⁸

The maintenance of female virginity has traditionally been equated with family honour, and continues to be one of the greatest causes of violence against women. Coercive virginity tests are degrading, discriminatory and unsafe and constitute a violation by State authorities of the bodily integrity, person and dignity of women in Turkey.

A problem closely related to the maintenance of female virginity and family honour is the high rate of suicide among young girls in Turkey. Girls commit suicide in large numbers because they have lost their virginity or because they have been forced into marriage or sent away to special re-education establishments.

According to information received, the number of female suicides is rapidly increasing in towns in Southeastern Anatolia, especially in Batman. During the first eight months of the year 2000, the number of recorded suicides were double the country average, with a rate of 6.42 for every 1,000 members of the population. Moreover, 80.8% of the people committing suicide in Batman were women and the majority of these were aged between 13 and 24 years.

In **South Africa**, Virginity testing is yet another traditional practice in violation of human rights which is becoming more prevalent today.⁵⁹ Multiple teenage girls lie down in a row in front of large crowds and have female examiners probe them for

⁵⁷ Information received from the Human Rights Foundation of Turkey.

⁵⁸ Ibid.

⁵⁹ Gisèle Wulfsohn, *Virginity Testing: The Girls Who Have to Prove They Are Pure*, in Marie Claire, UK Edition, Oct. 1998, p. 46-50.

intact hymens.⁶⁰ However, not only is the physical process degrading for the girls, but the importance that is placed on the virginity diminishes a girl's self-worth and perpetuates the inferior status of girls based on their sex. It violates a girl's right to dignity and privacy.

10. Recommendations

OMCT believes that different forms of violence against children are very seldom sporadic and isolated acts. Rather, they have often proved to form part of a systemic phenomenon, where violence is widespread within the family, the community and within state institutions. There is so much in common between the strategies for challenging different forms of violence that separating them out would lead to inefficient results. Furthermore, OMCT believes that all states have the duty, and therefore the responsibility, to protect children from any form of violence, including violence at home which is neither a part of normal family life nor a private matter. This is even more so for the states parties to the Convention on the Rights of the Child. Thus, a state's failure to exercise due diligence in preventing, investigating, prosecuting and punishing violence against children at the hands of private actors can result in a finding that the State is responsible for torture, and, when less severe, ill-treatment. OMCT therefore recommends that the Committee combine the recommendations of the discussion day on State violence against children with those that will be adopted after the discussion day on violence within the family and school so as to develop a comprehensive set of international standards on violence against children.

OMCT calls on the Committee on the Rights of the Child to recommend the following actions on the international and national levels:

International Level

The Study on violence against children, that the Committee recommended after the discussion day on "State violence against children" should address violence within the family where "family" would be defined as to include extended families, polygamous systems and non-traditional family units. There is a need for more attention to boys as victims and witnesses of violence and to violence against domestic workers.

OMCT would recommend that the Committee consider adopting a general comment on article 37.

OMCT encourages and supports the mainstreaming of children's rights within existing treaty bodies and special procedures. Nevertheless, OMCT would strongly encourage the Committee to recommend to the Commission on Human Rights to appoint a Special Rapporteur on Violence against Children, who would address different forms of violence against children in a systematic and comprehensive manner and from a child rights perspective, taking into account the particular vulnerability and evolving capacities of children.

National Level

1. Ratification and Implementation of International Instruments Protecting Children From Violence

The Committee should call on all governments to ratify without reservations the

⁶⁰ Ibid.

international instruments which provide for the protection of the human rights of children, including: the Convention on the Rights of the Child, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights.

Where States have already ratified these international instruments, the Committee should recommend that they withdraw all reservations. This is particularly important with regard to the Convention on the Elimination of All Forms of Discrimination Against Women as, although this convention is one of the most widely-ratified United Nations instruments, it is also the instrument with the greatest number reservations: over 45 of the 163 states parties to the Convention have made a total of almost a hundred reservations to its terms. Many of these reservations challenge the human rights of women and girls and could be regarded as incompatible with the overall object and purpose of the Convention;

The Committee should call on governments to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, the First Optional Protocol to the International Covenant on Civil and Political Rights, the Convention against Torture expressly recognising their will to be bound by article 22 and the International Convention on the Elimination of All Forms of Racial Discrimination by expressly recognising that they are bound by article 14 recognising the competence of the Treaty Body to receive and consider communications.

The Committee should recommend that governments comply with the reporting requirements under international human rights instruments, and the inclusion of age and gender-specific and gender-disaggregated information and data.

2. Enactment of Specific legislation that prohibits and punishes all forms of violence against children, including corporal punishment

Under certain domestic legislation, children lack the possibility to protect their human rights. This situation reflects upon and perpetuates their subordinate position in society. The Committee should recommend that governments:

enact legislation on domestic violence along the lines of the guidelines established by the Special Rapporteur on Violence against Women in her report to the fifty-second session of the United Nations Commission on Human Rights (United Nations document E/CN.4/1996/53, Add.2);

ensure that family and personal laws are fair and provide for the equal protection of children and adults within the family;

eliminate discriminatory provisions affecting women's and girls' equal enjoyment of their human rights;

enact legislation which makes reporting of violence against children mandatory especially for family members, teachers, social workers, neighbours;

enact legislation providing for court orders protecting child victims against further violence;

pass and enforce a minimum legal age for marriages which respect the principles of non-discrimination, including on the basis of gender, and of best interests of the child;

establish a complaint system aimed at and accessible to child victims of any form of violence, abuse, including sexual abuse, neglect, maltreatment or exploitation, even while in care of their parents;

establish child-sensitive mechanisms to identify incest and prosecute perpetrators taking into account the best interests of the child;

enact laws concerning rape that provide for (1) a broad, gender-neutral definition for rape that protects the victim against all forms of sexual abuse; (2) a focus on the perpetrator by making the presence of constraint and not the absence of consent the central issue and (3) penalties proportionate to the gravity of the offence. Moreover, evidentiary rules such as the corroboration requirement, should be repealed;

enact legislation which recognises marital rape as a criminal offence;

abolish "protective custody" and provide for measures of alternative care and placement for child victims of violence. States should work towards the abolition of laws and regulations that provide powers of detention, arrest, investigation and interrogations creating situations of double victimisation;

3. Elimination of Traditional and Customary Practices Affecting the Physical and Psychological integrity of Girls

Traditional and customary practices form in many cases the cause of violence against girls. Among such practices are: female genital mutilation, dowry violence, early marriages and childhood pregnancy, bride/widow burning or other widowhood practices, crimes committed in the name of honour, virginity testing and son preference; all affect the physical and psychological integrity or in the worst case lead to death of girls. These harmful traditional and customary practices should be considered as a human rights violations which cannot be ignored or justified on the grounds of tradition or culture.

The Committee should urge governments:

to explicitly condemn and punish violence against girls resulting from custom, tradition or religion;

to initiate national plans of action involving law, education and the media, to heighten public awareness of the grave consequences that certain traditional and customary practices may have on women and girls.

4. Education, Training and Support Services

Research reveals that there seems to be a lack of specialised training for law enforcement authorities as well as medical and legal professionals, and of the establishment of community support services for victims, including access to information and shelters. The Committee should recommend states to:

ensure specialised programmes for awareness-raising and training of enforcement officers, judges, prosecutors, teachers and all those responsible for children with regard to violence against children and the special problems linked to the age-specific nature of the crime in the investigations and prosecution;

provide for free legal counselling, which is usually too costly for women and children (in some cases, even police or other administrative or bureaucratic instances require complaints to be signed by a lawyer making justice and any type of administrative remedy out of reach for poor women and children);

establish special services for victims of violence where they can benefit from professional assistance (psychologists, psychiatrists, doctors, lawyers, marriage counsellors, etc.);

ensure that children enjoy the right to sexual and reproductive health as a human right;

ensure that all educational institutions and programmes, whether formal or informal, include specific curricula which will promote positive, non-violent ways of behaviour, with the active participation of children.