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Dear Friends,

OMCT and the Quaker Office at the UN are planning to lobby at the forthcoming UN Human Rights Commission for better protection of children from certain forms of violence. (The full text of the initial lobby document submitted as a written statement follows). It is a chance to move for greater protection of children and we would welcome your support. If you are interested let us know if you would be prepared to add your organisations name to support the proposition.

All the best

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COMMISSION ON HUMAN RIGHTS

Fifty-Third Session
Item 21 of the Provisional Agenda

Rights of the Child

Joint written statement submitted by Friends World Committee for Consultation (Quakers) and Organisation Mondiale contre la Torture (SOS-Torture) non-governmental organisations in consultative status with ECOSOC [Special Consultative Status and Roster respectively].

"When subjected to state torture...political activists have coping mechanisms that.....children who are tortured because they happen to be in the wrong place or belong to the wrong ethnic group, or both....obviously do not have" MD Reynes

In general, definitions of and protection from torture and other forms of ill-treatment at both the international and national levels have been interpreted with reference to adults rather than from a children's perspective. The adoption and wide ratification of the Convention on the Rights of the Child is beginning to change attitudes in some respects: Unfortunately, there is still a tendency for children in high risk situations - including child soldiers, children in conflict with the law, in detention, in situations of armed conflict and states of emergency - to be treated as if they were adults. However such "equal treatment" may impact differently on children simply because they are children. In the words of the Special Rapporteur against Torture:

"Children are necessarily more vulnerable...and, because they are in the critical stages of physical and psychological development, may suffer graver consequences than similarly treated adults".

1995 Special Rapporteur against Torture's Report to the UN Commission on Human Rights.

Some of the particular problems identified by the above-named non-governmental organisations as needing further study are:

1. Under civilian legal regimes, special provision is normally made at all stages in the legal process to take account of the age of the child. However, in situations of armed conflict or internal disturbances, often emergency or anti-terrorism legislation is introduced which takes no account of age. Thus when the problems of due process, fair trial and the need for protection against torture or ill-treatment are at their greatest, the legal protections are in fact being weakened.
2. When faced with armed conflicts or internal disturbances in which children are involved as participants, there is a tendency for governments to lower the age of criminal responsibility. Yet at these times, children are often being forced or pressured into involvement.

There is a need for careful consideration of the issues, including at what age a child should be held responsible for their acts; whether or

when this responsibility should be treated as a criminal one; and what kind of proceedings and disposition are appropriate.

3. In some countries children are legally or illegally recruited into the armed forces where they are subjected to military law, punishment and discipline which take no account of age. The applicability of these (including in military schools) and their impact on children also merits consideration.

4. The legal definition of torture: Article 37(a) of the Convention on the Rights of the Child (CRC) contains an obligation to protect children from torture but the Convention provides no definition. Other treaties do provide definitions but the restrictive nature of the existing definitions, and the way they have been interpreted, raise questions about their appropriateness when applied in relation to children. Amongst the issues are:

(a) Degree of Pain: The Convention against Torture (CAT) considers only severe pain or suffering as components of torture. This leaves a margin of interpretation: punishment which would be considered as light for an adult, may result in far more serious physical and psychological damage for children. Prison sentences or periods of solitary confinement could provoke in a child suffering of a very different level than that of an adults. Moreover, even though corporal punishment for adults is generally prohibited, corporal punishment for children is still predominantly accepted. Children should be offered more not less protection than adults. The assessment of the degree of suffering currently appears to take no account of the age of the child.

(b) The Intention of those Responsible: The Convention against Torture considers that pain or suffering must be inflicted intentionally for the act to be considered as torture. With children, this concept would appear to be too restrictive. For example, children are often exposed to the threat of violence when detained with adults. The staff of such detention centres must be aware of the grave danger to which minors are exposed. Whilst the international system takes into account intention, it seems fundamental that particularly in the case of children the degree of negligence is also considered.

=A9 The Perpetrator: The Convention against Torture considers that torture or other ill-treatment applies only when "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." (Article 1

CAT) However, contrary to an adult, who is autonomous, a minor is legally under the authority of his/her parents or guardian. Thus the question arises as to whether beatings administered by staff in educational institutions which result in an acute state of stress or suffering should not also be considered as torture when the violence is inflicted for punitive rather than pedagogical ends. The intention of the authors also needs to be considered from the perspective of the child: whilst the author may consider the intention of the violence is to educate, the child may feel that he or she has been punished.

(d) Discipline and Legal Punishment: The current interpretation of international law by the Committee against Torture stresses that lawful punishments should not be considered only at the national level. If a national law authorises a punishment prohibited by an international instrument the sanction cannot be considered as lawful.

However, in the case of children, the prohibition of sanctions at the international level are written in very general language which give insufficient clarity and guidance. While the definition of torture excludes suffering resulting from lawful punishment, the latter must be proportionate to the crime committed and the age of person being sanctioned. Different judicial systems present an extremely diverse choice of punishments.

5. Prosecution of alleged perpetrators of torture: in principle, torture is a crime which must be prosecuted ex officio, as is stipulated by the Convention against Torture. However, this principle is largely un-implemented. Even where the mechanisms exist, most child victims do not file a complaint. The reasons include lack of awareness of procedures complexity of procedures and/or fear of reprisals.

The above-named non-governmental organisations believe that a thorough study of these subjects would make a significant contribution to the understanding of these issues, and would assist the human rights Treaty Bodies and national governments in their implementation of human rights standards. They therefore urge the Commission on Human Rights to request the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities to undertake a study of the application of international human rights standards to the situation of children at risk of torture and other forms of ill-treatment taking account of the fact that the persons concerned are children and the particular problems noted above.

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