

Eliminate Torture in the Private Sphere

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Sponsored by the non-governmental organizations, the International Federation of University Women (IFUW) and the Vienna NGO Committee on the Status of Women

Abstract: **Section 1**, calls on the members of the Commission on Crime Prevention and Criminal Justice (CCPCJ) to direct whatever interventions that are at their disposal towards identifying and eliminating torture perpetrated by non-State actors in the private sphere. Non-State torture is a fundamental violation of article 5 of the Universal Declaration of Human Rights that declares, “no one shall be subjected to torture” and from which States parties must not derogate. A framework outlining evolving categories of gendered non-State torture victimization is included as an appendix. **Section 2**, discusses United Nations interventions that have not removed the normative culture that has invisibilized and subsumed gendered non-State torture victimization perpetrated in the private sphere as a lesser human right violation. This has promoted women’s and girls’ human right inequality, most commonly leaving them without legal recourse at multi-levels—from national, to global, and at the United Nations level—in their efforts to truth-tell as a means of restoring their human dignity.

ELIMINATE TORTURE IN THE PRIVATE SPHERE

SECTION 1: A CALL FOR IMMEDIATE ACTION

“Eliminate Torture in the Private Sphere” is the title of the side-event which Ilona Graenitz, Chairperson of the Vienna NGO Committee on the Status of Women will open, moderate, and close. We present our 22 years of work dedicated to grass root support of mainly women who Self-report surviving torture perpetrated within intimate relationships. Generally torture victimization began when they were infants or shortly thereafter, and continued into their young adulthood when escaping became possible. Parent(s), extended family members, guardians, and like-minded others, groups, or rings were the perpetrators. Sexualized torture is their ultimate sadistic pleasure. The family-based organized non-State torture crimes meant the women as very tiny children were also trafficked, exploited into crime scene ‘pornography’, and for some forcibly ‘prostituted’ into their adult years. When exited, if women’s whereabouts are known, women speak of enduring years of chronic stalking, harassments, and episodic assaults. Elizabeth Gordon, artist and feminist activist, will join us to present her testimony of survival and healing from the crime of non-State torture (NST), human trafficking and exploitation she was subjected to from childhood.

The panel presentation shares insights into this population of organized non-State torturers. It shares the common forms of tortures they inflict and the tactics utilized by them to intentionally and purposefully attempt to destroy a woman’s relationship with her-Self, beginning when she was a tiny infant—to destroy the realization that she is human—that she is a person—and that she has human rights. Elizabeth Gordon’s testimony reveals the destructive reality she survived; other women’s drawings are also shared to give visual evidence—to show—the torturers expressions of destructive domination, power and control, and sadistic pleasures. Financial and other gains were derived from their family-based organized crimes. These complex organized crimes inflicted against women and girls of all ages must be globally understood to prevent its occurrence, to increase the safety for those so tortured, to provide them with the ability to seek justice and redress, and to heal by gaining access to trauma non-State torture informed care. Reducing the impunity of non-State torturers requires being specifically named as torture, formulating prosecution and punishment for the crime of non-State torture committed including a human right instrument that is legally binding.

***WE CALL FOR THE CONCERTED EFFORTS* of the Commission on Crime Prevention and Criminal Justice (CCPCJ) to take whatever interventions necessary that will promote the acknowledgement and the elimination of non-State torture as a human right violation that occurs in the private sphere because it is a violation of the Universal Declaration of Human Rights article 5—the human**

right to be protected from torture. Such protection is an unconditional human right from which States may not derogate; however, non-State torture of women and girls of all ages in the private sphere has been an invisibilized human right violation. We ask the Commission to contribute their upmost efforts to prevent this ongoing gendered human right inequality, to end impunity enjoyed by non-State torturers, and to enable truth-telling and justice to be sought via prosecution and punishment as explained in the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World.

SECTION 2: SEEKING GENDERED HUMAN RIGHTS EQUALITY

This section illustrates interventions taken—from the United Nations to NGOs—that have not removed the normative culture that has permitted the gendered human right criminal violation of non-State torture to be invisibilized and subsumed as a lesser violation. This invisibilization has and will continue to promote women’s and girls’ human right inequality at multi-levels. Beginning at the United Nations level women and girls of all ages are without a legally binding human right instrument to draw on in their efforts to seek justice and truth-tell as a means of restoring their human dignity. At a global level torture by non-State actors has not been upheld as a non-derogable human right that belongs to women and girls of all ages and from which States parties must not derogate. At the national level States parties can be and are without law that acknowledges the equal rights of women and girls of all ages to be protected from torture regardless of who the torturer is—non-State or State. We acknowledge that when the human right of women and girls not to be subjected to non-State torture is upheld this will also benefit men and boys so tortured. We conclude this section by offering additional suggestions that can also promote the equal human right of women and girls of all ages not to be subjected to non-State torture in the private sphere.

Therefore;

Recalling the opening words of the 1945 Charter of the United Nations which are, “We the peoples of the United Nations . . . reaffirm . . . fundamental human rights . . . [and] the equal rights of men and women”,

Noting further the United Nations Charter states, “human rights and fundamental freedoms for all without distinction as to . . . sex . . .” are repeated in Articles 1(3), 13(b), 55, 68, 76(c),

Keeping in mind the Universal Declaration of Human Rights acknowledges “the inherent dignity” and the fundamental human right equality of women and men,

Noting article 2 of the Universal Declaration of Human Rights states, “everyone is entitled to all the rights and freedoms, set forth in this Declaration, without distinction of any kind”, therefore, article 5 which stipulates in unequivocal terms that, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, must apply equally to women and girls as to men and boys, notwithstanding whether the torture is perpetrated by non-State or State actors,

Fully aware that the principle of non-discrimination applies to article 5 of the Universal Declaration of Human Rights and to other specific articles of United Nations human rights instruments that promote protection from torture, such as:

- (a) Article 7 of the International Covenant on Civil and Political Rights which states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, and
- (b) Article 3(h) of the Declaration on the Elimination of Violence against Women, which repeats that no one shall be subjected to torture,

Deeply disturbed that although the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment repeats the inalienable equality and non-discriminatory rights of all members of the human family as stated in the United Nations Charter, specifically noting article 5 of the Universal Declaration of Human Rights, and article 7 of the International Covenant on Civil and Political Rights, and declares the desire “to make more effective the struggle against torture . . . throughout the world”, this non-derogable human right has not and continues not to be universally and equally upheld in relation to manifestations of non-State torture perpetrated in the private sphere against women and girls of all ages,

Deeply convinced that the non-derogable human right of women and girls of all ages not to be subjected to torture was negated by the discriminatory language in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which refers only to males--mentioning, “he”, “him”, and “his” 21 times,

Noting with deep concern that despite the human right equality of women and girls of all ages to be protected from torture the following statements have not resulted in States parties efforts to acknowledge, identify, and eliminate gender based non-State torture violations perpetrated in the private sphere, statements such as:

- (a) The 2008 report of Manfred Nowak, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in which he stated that it is a State’s duty to prevent torture in the private sphere, and when some manifestations of woman’s non-State torture victimization is compared to classic State torture this would expose that similar atrocities are inflicted by non-State

- actors;¹ classic torture is terminology frequently used to refer to State torture tactics, these are also torture tactics of non-State actors, examples being electric shocking, water torture such as forcing a woman's or girl's face underwater, suffocation tortures, sexualized tortures, deprivations related to nourishment, exposure to excessive heat, cold, light or darkness; being confined and isolated; immobilization tortures such as being tied down or forced to stand in one position for prolonged periods; being hung, brutally beaten, burnt, cut, whipped, and joints dislocated; humiliations and degradations resulting from forced nakedness or being denied bathroom facilities, horrifications, terrorization, and dehumanization,
- (b) The 1996 report of Radhika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences, whereby, depending on the severity and the circumstances, she stated some gendered domestic violence can constitute torture by private individuals or non-State actors,²
- (c) The report of Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences, which stated that violence against women and girls must be prevented and eliminated in both public and private spheres, that women's and girls' human right to equality and non-discrimination must be upheld as due diligence obligations of States parties,³ this must apply to the right of women and girls not to be subjected to torture in private and public spheres,
- (d) Special Rapporteur Yakin Ertürk's report, 15 Years of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences which declares the need to distinguish discriminatory practices from deadly practices,⁴ for example, distinguishing discriminatory practices such as ensuring girls have the equal right to education as boys from deadly practices such as acknowledging that gender based classic non-State torture is inflicted in the private sphere and does not only occur in the public sphere perpetrated by State actors,

Deeply regretting that efforts to remedy this long-standing gendered human right inequality with the following resolutions has generally not altered women's and girls' access to States parties law that specifically acknowledges and legally prohibits torture by non-State actors, resolutions such as:

- (a) The Human Rights Council resolution 8/8 on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which called for the Special Rapporteur and States parties to integrate a gender perspective into

¹ A/HRC/7/3.

² E/CN.4/1996/53.

³ A/69/368.

⁴ <http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

their work with attention given to violence against women that manifest as torture, noting torture perpetrated by non-State actors,

- (b) General Assembly resolution 65/205, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that called upon all States to adopt a gender-sensitive framework in relation to the Convention, that all acts of torture be specifically criminalized “under domestic law”, and encouraged the Special Rapporteur to include in reports information about children and gender-based manifestations of torture and other cruel, inhuman or degrading treatment or punishment when recommending proposals on prevention and investigation,⁵

Noting with deep concern that General Comments of the Committee against Torture are considered “soft law” thus not legally binding on States parties, for example, General Comment No. 2 Implementation of article 2 by States parties which defines torture as a specific non-derogable human right violation having attained the legal status of *jus cogens*, differentiating it from all other crimes such as assault, noting that women and girls suffer manifestations of torture “differently because of social sex/gender discrimination”,⁶ soft law means women and girls of all ages are denied human right equality and access to justice at multi-levels, because although States are aware torture by non-State or private actors occurs and can be complicit or acquiescing in such impermissible acts under the Convention the consequence of soft law does not legally bind States parties to practice due diligence duties—to prevent, protect, prosecute, punish, and provide non-State torture informed redress,

Noting further with deep concern is that General Recommendation 19, 7(b) by the Committee on the Convention on the Elimination of All Forms of Discrimination against Women declares that, “no one shall be subjected to torture”, is also “soft law” thus not legally binding on States parties, consequently States parties can ignore Committee reports asking States parties to incorporate the criminalization of non-State torture into national law consequently non-State torture victimization remains invisibilized,

Bearing in mind that although various historical, traditional, cultural, and religious backgrounds exist nationally and regionally, all States, regardless of such particularities, have the duty to promote and protect the human rights and fundamental freedoms of equality and non-discrimination between women and men and girls and boys, including the human right not to be subjected to torture by non-State actors,

⁵ A/RES/65/205.

⁶ CAT/C/GC/2.

Referring to the Agreed conclusions on the elimination of all forms of discrimination and violence against the girl child of the 51st Session of the Commission on the Status of Women that condemned torture of the girl child by non-State and State actors,

Deeply conscious that non-State actors perpetrate classic non-State torture in the commission of national and global criminal human right violations, such as the sexualized human trafficking of women and girls which the Committee on Torture has acknowledged can constitute a form of gendered non-State torture violation;⁷ and further deeply disturbed by the existing demand and perpetration of sexualized torture by non-State actors against women and girls of all ages from infancy onwards,⁸ and considering “the necessity of respecting and protecting human rights and fundamental freedoms in the prevention of crime and the administration of, and access to, justice, including criminal justice . . . [with] deep concern about the pervasiveness of violence against women [and girls] in all its different forms and manifestations worldwide, and [the need to] urge States to enhance efforts to prevent, prosecute and punish violence against women [and girls] . . . [and] recognize the importance of adopting appropriate legislation and policies to prevent victimization, including revictimization . . . and to provide protection and assistance to victims . . . acknowledge the need for Member States to ensure effective gender equality in crime prevention, access to justice and the protection offered by the criminal justice system”, as identified in the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World;⁹ supported by the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the global legally binding Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the Convention on the Rights of the Child,

Deploring the sexualized torture being inflicted against children which Special Rapporteur on the sale of children, child prostitution and child pornography Najat M’jid Maalla included in her 2009 report to the United Nations General Assembly,¹⁰ and is ever increasing as identified in reports from child protection agencies in the U.K. and Canada, for example, the Canadian Centre for Child Protection in a media conversation stated of the 15,000 images of crime scene child pornography, newborns and children

⁷ CAT/C/GC/2.

⁸ See Brief Pimps & Johns: In-house Sexualized Torture of Prostituted Women and Girls is always potentially Life-threatening http://www.parl.gc.ca/Content/SEN/Committee/412/lcjc/Briefs/C-36/SM_C-36_brief_JeanneSarson-LindaMacDonald_E.pdf; Brief to the Standing Committee for Justice and Human Rights <http://nonstatetorture.org/files/1614/0555/9142/BriefJusticeHRcommittee.pdf>; CPAC video <http://www.cpac.ca/en/jwplayer/?params=ZXA9MzQxNjc1ODMmcD1odHRwJTNTBJTJGJTJGd3d3LmNwYWMuY2EIMkZ3cC1jb250ZW>.

⁹ Resolution 65/230, annex.

¹⁰ A/HRC/12/23.

up to age 8 accounted for half of images with 73 percent depicting sexualized “torture” and “bondage” with family and friends being the overwhelming perpetrators.¹¹ The 2013 annual report of Internet Watch Foundation in the U.K. revealed of 13,182 websites that contained sexualized violations of children, 81 percent of the children were under the age of 10 and within these 3 percent were aged two and under, and 51 percent of the sexualized violence included “sexual torture” or “rape”. Girls were predominately victimized—76 percent to that of 10 percent of boys, with 9 percent being of both genders. And 24 percent of the crime scene images were being sold commercially.¹²

Taking into consideration that psychological violence, including that perpetrated by non-State actors, seriously impairs a person’s psychological integrity as do other forms of violence as noted in article 33 of the Istanbul Convention,¹³

Recalling the oral statement of the non-governmental organization, the Canadian Federation of University Women (CFUW), entitled, Women must have the Non-derogable Human Right to be Free from Torture Perpetrated by Non-State Actors in the Domestic/Private Sphere, delivered by the International Federation of University Women (IFUW) at the 20th Session of the Human Rights Council,¹⁴

Referring to the written statement submitted by the non-governmental organization, the Canadian Federation of University Women (CFUW), emphasizing that naming, defining, and specifically criminalizing non-State torture alerts everyone—the criminal justice system and police, support and educational services, perpetrators, victims, and the public—of the specific gravity of non-State torture as a specific human right violation and a violation of women’s and girls’ equality,¹⁵

Having adopted at the Geneva NGO Forum – Beijing+20 UN ECE Regional Review, November 3, 2014, a Declaration and Recommendations report which says, “ensure national laws criminalize non-State torture perpetrated by non-State actors and hold perpetrators accountable for gender-based non-State torture crimes”,¹⁶

¹¹ Cribb, R. (2015, April 26). Inside Canada’s saddest room – working to curb the trade in child porn. <http://www.thestar.com/news/insight/2015/04/26/inside-canadas-saddest-room-working-to-curb-the-trade-in-child-porn.html>

¹² https://www.iwf.org.uk/assets/media/annual-reports/annual_report_2013.pdf.pdf

¹³ <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>

¹⁴ <http://www.unmultimedia.org/tv/webcast/2012/06/ifuw-clustered-id-on-discrimination-and-migrants-contd-11th-meeting.html>

¹⁵ E/CN.6/2013/NGO/10.

¹⁶ <http://beijing20.ngocsw-geneva.ch/wordpress/wp-content/uploads/2015/03/Geneva-NGO-Forum-Beijing-20-Outcome-document.pdf> (p. 5).

Taking note of the Political Declaration on the occasion of the twentieth anniversary of the Fourth World Conference on Women and its commitment to tackle the challenges of the 12 critical areas of concern including the elimination of all forms of violence against women and girls as stated in the Beijing Platform for Action and the emerging Sustainable Development Goals of achieving human rights, gender equality, and in particular goal 5 which calls for the elimination of all forms of violence against women and girls of all ages in the public and private spheres,¹⁷

Noting with deep concern that manifestations of gender based non-State torture perpetrated against women and girls of all ages in the domestic or private sphere has been and continues to be generally invisibilized in law, in interventions of policies and practices, thus fails to uphold their human right not to be subjected to torture by non-State actors, thereby delaying the potential for the restoration of dignity of victimized women and girls of all ages,

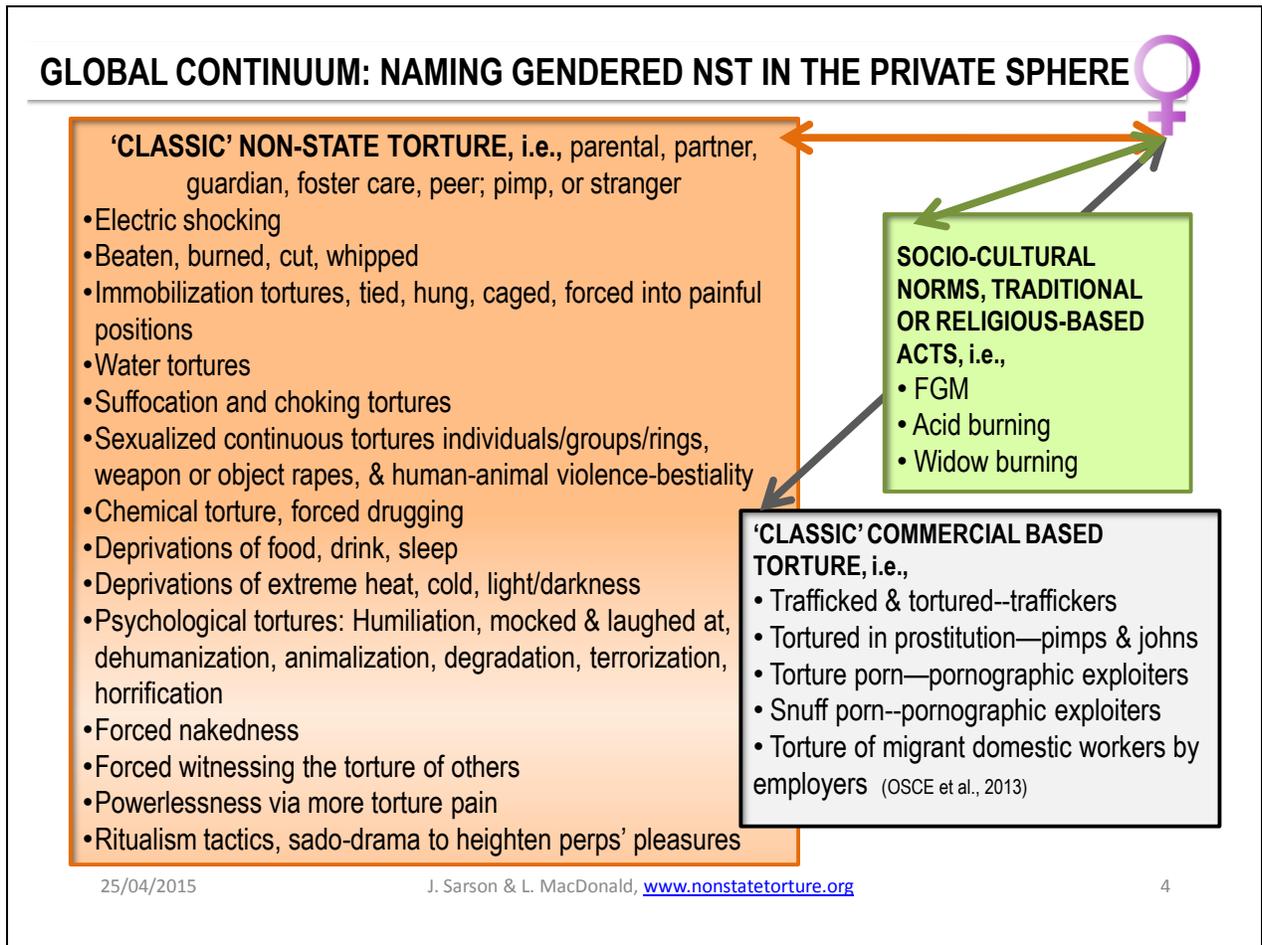
1. *Calls on* the Commission on Crime Prevention and Criminal Justice to take immediate interventions to acknowledge and work for the elimination of torture perpetrated by non-State actors in the private sphere because being protected from torture perpetrated by non-State actors is a non-derogable human right that belongs equally to women and girls of all ages;
2. *Recommends* that States parties that do not have a law that addresses torture by non-State actors introduce such legislation; this is supported by the campaign to end all forms of violence against women and girls of the United Nations Secretary-General Ban Ki-moon, which calls for States parties to have national laws in place that address and punish all forms of gender based violence; therefore, criminalizing non-State torture suffered by women and girls of all ages will work towards eliminating non-State torture victimization;
3. *Further recommends* that States parties with a law that solely addresses torture perpetrated by State actors take appropriate measures to modify such a law so as to equally criminally abolish torture perpetrated by non-State actors in the private sphere;
4. *Invites* Governments, agencies and organizations of the United Nations system, and intergovernmental and non-governmental organizations, to place into action the United Nations Declaration on Human Rights Education and Training, disseminating the Universal Declaration of Human Rights as recommended in the Declaration;

¹⁷<https://docs.google.com/gview?url=http://sustainabledevelopment.un.org/content/documents/1579SDGs%20Proposal.pdf&embedded=true>

5. *Reaffirming* also that every individual and every organ of society shall strive by educating and teaching respect for the universality of human rights, fundamental freedoms, and non-discrimination of the Universal Declaration of Human Rights, including that article 5 of the Universal Declaration of Human Rights applies equally to women and girls of all ages—to all persons—even when the torturer is a non-State actor.

APPENDIX: A GLOBAL FRAMEWORK OF CATEGORIES OF NON-STATE TORTURE IN THE PRIVATE SPHERE

The following figure presents a framework outlining evolving categories of gendered non-State torture. It represents our developing work of 22 years focussed on exposing its invisibilization. The framework reflects the growing awareness that for decades there has been a global failure to uphold the equality human rights of women and girls—article 2—and the human right not to be subjected to torture as declared by article 5 of the Universal Declaration of Human Rights.



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