

Sharing Breakthroughs in Attaining Human Rights Recognition for Non-State Torture

The following text is from the email I sent to gearcampaign@gmail.com outlining the Concluding Observations of the Committee against Torture. This is what Linda and I call success when women's work helps other women and other communities!

My Text:

I share important conclusions of the Committee against Torture and Canada Session held last month regarding non-state torture as a form of violence suffered by women that can be important to others

My colleague, Linda MacDonald and I attended the Committee against Torture Canada session, being there to present the position of the Canadian Federation of University Women (CFUW) submission of the shadow report entitled *A Shadow Report: Canada Fails to Establish Non-State Actor Torture as a Specific and Distinct Criminal Human Rights Violation* linked here:

http://www2.ohchr.org/english/bodies/cat/docs/ngos/CFUW_Canada_CAT48.pdf The Committee against Torture General Comment No. 2 Implementation of article 2 by States Parties, in particular paragraph 18, was/is the fundamental position on which the CFUW Shadow Report was written and presented.

In our opinion a breakthrough occurred that ought to be important to addressing violence against women and gives support to CEDAW to uphold its General Recommendation 19, 7b, Violence against Women. The opinions of the Committee against Torture acknowledged that there are acts of violence that occur in the so-called private or domestic sphere perpetrated by non-state actors that amounts to torture and must be dealt with under the Convention against Torture.

I share below two paragraphs from the UN News & Media, May 22 Canada-Committee session based on the comments of the Committee experts and that of Chairperson Mr. Grossman

([http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/9B973CA427BFA0A8C1257A060033219D?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/9B973CA427BFA0A8C1257A060033219D?OpenDocument)):

Issues of assault towards children and violence against women were raised by an Expert, who said torture by non-State actors was an issue that sometimes seemed not to be taken as seriously as it should be. Such acts included severe violence against women and children, such as female genital mutilation, burning, cutting, imprisonment by families, whipping and severe sexual and psychological violence. Those acts may be performed in a non-State situation, but investigation, protection, prevention and redress were very important. In gravity those crimes shared aspects of the definition of torture, as well as its discriminatory effect, the Expert said, and torture by non-State actors should be taken up, in particular in terms of awareness-raising. Torture was not something that happened only to one gender: it happened to women and children as well.

CLAUDIO GROSSMAN, Committee Chairperson, noted the delegation's invitation for the Committee not to consider acts of domestic violence, but said unfortunately that was an invitation the Committee could not affect due to its obligations to the Convention; discriminatory treatment for women or men that could constitute torture was clearly listed in article 16. It was true, there were committees on the rights of child, prevention of discrimination against women and racial discrimination, and so on, but if the Committee was to do that it would end up only considering acts of torture that were committed against white males.

Concluding Observations of the Committee against Torture made to Canada June 1, 2012

(<http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CAN.CO.6.doc>) include the following significant points that address torture by non-state actors and that would apply to any State Party that does not legally acknowledge that non-state actors perpetrate torture in the so-called domestic or private sphere:

1. That there is an obligation to implement the Convention against Torture in full at the domestic level (para. 4).
2. That all provisions of the Convention need to be incorporated in the domestic legal order or domestic law, for example, the Committee is of the view that the incorporation of the Convention into Canadian law would not only be of a symbolic nature but that it would strengthen the protection of persons allowing them to invoke the provisions of the Convention directly before the courts. The Committee recommends that the State party incorporate all the provisions of the Convention into Canadian law in order to allow persons to invoke it directly in courts, to give prominence to the Convention as well as to raise awareness of its provisions among members of the judiciary and the public at large (art. 2, para. 8).
3. In particular reference to violence against women where Canada was of the opinion that violence against women did not belong under the Convention the Committee stated it regretted the statement by the Canadian delegation that the issues on violence against women fall more squarely within other bodies' mandate, the Committee recalled that the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in acts of torture or ill-treatment committed by non-State officials or private actors. (arts. 2...). The Committee states that the State party should strengthen its efforts to exercise due diligence to intervene to stop, sanction acts of torture or ill-treatment committed by non-State officials or private actors, and provide remedies to victims (para. 20).
4. In reference to data collection the Committee stated it regretted the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment ... [involving] domestic and sexual violence. The State party should compile statistical data relevant to the monitoring of the implementation of the Convention obligations at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, ... [involving] domestic and sexual violence as well as on means of redress, including compensation and rehabilitation, provided to the victims (para. 23).

The Committee against Torture Concluding Observations supports the need for States, including Canada, to operationalize the Convention not only in a gender-based due diligence framework but also to legally

include non-state torture in criminal codes if necessary. In the case of Canada the criminal code specifically only holds State actors accountable for acts of torture. Linda and I realize that Canada or any State does not have to comply with the recommendations of the Committee as the Committee has no legal authority over any State; however, since returning from Geneva we are seeing that the Concluding Observations of the Committee against Torture are already being brought into the courts in cases regarding three men who were imprisoned and tortured in another country based on defamatory information given about them by Canadian officials, this is according to a news article.

The next push will be moving forward to have acts that constitute torture perpetrated by non-state actors in the so-called private/domestic sphere recognized as a specific form of human rights violation that women/girls and others endure and therefore criminalized. But before we could proceed we needed to chance taking the reality to the Committee against Torture. It was a most stressful decision as we were so very concerned we might not be supported. Instead we found the opposite. It was as if some of the experts were waiting to see if an NGO would operationalize the Committee against Torture General Comment No. 2 Implementation of article 2 by States Parties, in particular paragraph 18. As we thanked the experts, Mr. Grossman said that not he but we had done all the work. After almost 20 years of grass root work and being listeners to the atrocities of torture that women mainly spoke of surviving, in our opinion, the Concluding Observations report is a big breakthrough in moving forward towards gaining legal empowerment for women or any citizen so harmed by having non-state torture recognized under the Convention against Torture which supports other human rights instruments with articles stating that no one shall be subjected to torture, such as the UDHR, article 5, the ICCPR, article 7, CEDAW, General Recommendation 19, 7 (b) and the Declaration on the Elimination of Violence against Women, article 3(h).

Respectfully submitted,

Jeanne Sarson

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Canada