

ADVOCATING FOR NEW/REFORMING LAW: THE CRIMINALIZATION OF TORTURE BY NON-STATE ACTORS IN CANADA

Below is our Written Response to this Call for Submissions on Developing Legislation put out by;

The Advocates for Human Rights is still accepting submissions for its work with UN Women to update the [Virtual Knowledge Centre to End Violence Against Women and Girls module on developing legislation](#). The Virtual Knowledge Center to End Violence Against Women and Girls (www.endvawnow.org) aims to “provide essential information and guidance for programming to address violence against women and girls.” The Advocates for Human Rights authored both the Legislation module and the Justice module in 2009 and 2011 respectively, and have now been invited to update the Legislation module.

We would like information on new laws, rules or regulations, programmes, or promising practices that address **domestic violence, sexual assault, sexual harassment, sex trafficking, maltreatment of widows, dowry-related violence, sexual harassment, harmful practices, FGM, forced and child marriage, "honour" crimes, advocating for new laws or reforming of existing laws, implementing new laws, or monitoring of laws** in your country. A promising practice is one that is achieving most of its progressive aims as documented through assessments. Most importantly, the practice demonstrates positive, measurable results or changes related to addressing the relevant area of violence against women and girls.

Please send your submissions to Mary O'Brien at mobrien@advrights.org by April 15, 2013. We also request that all submissions contain links to their hard copies or any relevant source. Your submissions and information will positively impact this important resource that is utilized by advocates and policymakers around the world.

Thank you in advance for your help with this important project!

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Submitted by Jeanne Sarson and Linda MacDonald

Sent to: Mary O'Brien at mobrien@advrights.org April 14, 2013.

Torture is a Fundamental Human Right Violation

The first step to ending impunity for a specific human rights crime requires the socio-legal admission that the specific form of gender-based violence is perpetrated. Torture, whether perpetrated by non-State or State actors, is accepted as a peremptory norm from which States may not derogate under any circumstances. It is imperative that States respect, fulfil, protect, and uphold their due diligence duties in this regard by ensuring that their legal system fully addresses the criminalization of torture violations whether perpetrated by State or non-State actors.

Torture is specifically and distinctly addressed in human rights instruments with articles expressing that no one should be subjected to torture. These are the:

- *Universal Declaration of Human Rights*, article 5;
- *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), General Recommendation 19, 7(b);
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT);
- *Declaration on the Elimination of Violence against Women*, article 3(h);
- *International Covenant on Civil and Political Rights* (ICCPR), article 7.

A socio-legal refusal to acknowledge the human right of women and girls not to be subjected to torture as these human right instruments declare and in whatever context torture occurs is fundamental gender-based discrimination. against women and girls; therefore we send our recommendation. .

Recommendation: We ask that torture by non-State actors be recognized for the human right violation it is as we note in the call for submissions that torture is not listed as one of the grave forms of violence inflicted against women and girls.

A Bit of Professional Background

As health professionals and human right defenders, we became specifically focussed in 1993 on the socio-legal invisibility of 'classic' torture by private individuals or non-State actors perpetrated in the 'so-called' domestic or private sphere. Our focus occurred

when a woman sought our support after disclosing that she was surviving classic torture victimization perpetrated by non-State actors which had been prolonged beginning in her earliest of childhood. Having no professional experience in helping women who have survived non-State torture victimization recover we reached out for help. We could find none, neither for the woman or ourselves. Refusing to abandon her we utilized our nursing backgrounds and studied the information that was available about classic torturing perpetrated by State actors globally; as well as the rehabilitation literature to develop a healing plan. Rehabilitation is a most painful process which increases without adequate support. For she, like other women who reveal their human rights victimization especially related to sexualized torture, when telling her story she re-experienced the torture pain, meaning she felt the non-State torturing was happening all over again. She called it “double torture”. We and she worked very diligently, she gained her right to life but not having Canadian law that held non-State torturers to legal account was and remains legally exclusionary and unjust.

Under section 269.1 of the *Criminal Code of Canada* only State actors can be held criminally responsible for acts of ‘classic’ torture in Canada. Thus, this woman—any woman or girl--had no access to justice for the human right crime of torture suffered. In Canada classic non-State torturing is legally invisibilized and misnamed as another human rights crime, such as an assault.

Research the nature of the problem and extent of the problem. Since 1993 Linda and I have had contact with over 3000 women mainly from industrialized countries. Besides Canada, we have been contacted by mainly women from Australia, New Zealand, Western Europe, the UK, and the U.S. as women have reached out to us via our website (www.nonstatetorture.org). Of these we have had extensive contact with over 30 individuals. Through these contacts it became obvious that we needed to ask the following question.

Gathering testimonials. Linda and I list testimonials in our published articles and presentations. For example, below is a Canadian woman’s testimonial that we included in one of our published articles:

I was called bitch, slut, whore and “piece of meat.” Stripped naked and raped – “broken in” – by three goons who, along with my husband, held me captive in a windowless room handcuffed to a radiator. Their laughter humiliated me as they tied me down spread-eagled for the men they sold my body to. Raped and tortured, their penises and semen suffocated me; I was choked or almost drowned when they held me underwater threatening to electrocute me in the tub. Pliers were used to twist my nipples, I was whipped with the looped wires of clothes hangers, ropes and electric cords; I was drugged, pulled around by my hair and forced to cut myself with razor blades for men’s sadistic pleasure. Guns threatened my life as they played Russian roulette with me. Starved, beaten with

a baseball bat, kicked, and left cold and dirty, I suffered five pregnancies and violent beatings forced abortions. They beat the soles of my feet and when I tried to rub the pain away they beat me more. My husband enjoyed sodomizing me with a Hermit 827 wine bottle causing me to hemorrhage and I saw my blood everywhere when I was ganged raped with a knife. Every time his torturing created terror in my eyes, he'd say, "Look at me bitch; I like to see the terror in your eyes." I never stopped fearing I was going to die. I escaped or maybe they let me escape thinking I'd die a Jane Doe on that cold November night.

(Sarson, J. & MacDonald, L. (2009, Winter). Defining torture by non-state actors in the Canadian private sphere. *First Light*, 29-33. <http://ccvt.org/wp-content/uploads/2011/08/firstlight2009.pdf>)

Following are several of our other articles and papers which include gathered testimonials. Please see our website for other such presentations and publications.

1. Torturing by Non-State Actors Invisibilized, A Patriarchal Divide and Spillover Violence from the Military Sphere into the Domestic Sphere. (2009 Winter). *Peace Studies Journal*, 2(2), 16-38. <http://issuu.com/icasonlinepublications/docs/psjvol2issue2/20>
2. *Spillover Torture from the Military/Warring Sphere into the Private Sphere: Making Visible a Silenced Human Rights Violation and Victimized Persons' 'Body Talk'*. <http://nonstatetorture.org/files/7713/3968/0690/SPILLOVERTORTURE.pdf>
3. [Canada: Torturers, Guns and Bullets](http://www.iansa-women.org/sites/default/files/newsviews/en-iansa-wn-bulletin22-web.pdf). (2010, April). Iansa Women's Network, *Bulletin*, 22. <http://www.iansa-women.org/sites/default/files/newsviews/en-iansa-wn-bulletin22-web.pdf>

Classic non-State torture; is it a worldwide form of unnamed violence against women and girls? The answer is "Yes". The media shows that torture by non-State actors needs to be considered a global human rights violation suffered by women and girls, for example:

Sahar Gul, a young girl who was kept locked in a basement toilet for six months, she had her fingernails pulled off, her fingers were broken, her hair was pulled out, she was burnt with a hot iron, and she was electric shocked among other violations all inflicted because she refused to be forced into 'prostitution' (For example see (<http://www.nytimes.com/2012/08/12/world/asia/wed-and-tortured-at-13-afghan-girl-finds-rare-justice.html?pagewanted=all>)).

Nour Miyati, an Indonesian domestic worker was allegedly tied up for a month, gangrene set in and when discovered and hospitalized her fingers and toes had

to be amputated, she was left without food, as well as suffered other injuries (Human Rights Watch. (2008, May 22). Saudi Arabia: Nour Miyati Denied Justice for Torture. (<http://www.hrw.org/news/2008/05/20/saudi-arabia-nour-miyati-denied-justice-torture>)

Maid "X" who was employed in the Middle East was beaten with iron bars and wooden sticks, she was burnt with a hot iron and heated knife, she was stripped naked, gang raped, and threatened with death (Harrison, F. (2003). Work is torture for Sri Lanka maids. *BBC News*.

http://news.bbc.co.uk/2/hi/south_asia/3204297.stm

These life-threatening ordeals illustrated to Linda and I that torture perpetrated by non-State actors is an invisibilized global form of violence that is inflicted against women and girls. Keeping it invisible when it is known to occur is fundamental gender-based discrimination and violates their human rights, their dignity and human worth.

Socio-legal Systematic and Policy Advocacy

Sharing our 20 years of professional expertise as members of the Canadian Federation of University Women (CFUW), an NGO with ECOSOC status, and as members of the International Relations Committee, we have been active in both national and internationally. Examples are:

National Advocacy to change law:

1. At the CFUW Annual General Meeting members voted into policy in August 2011 the Criminalization of Non-State Torture
http://www.fcfd.org/Portals/0/Advocacy/Policy%20Book%202011_Links.pdf
which calls on the Government of Canada to criminalize non-State torture, to exercise due diligence in respect to its policies and practices and to uphold its obligations under the *Convention against Torture and Other Cruel, Inhuman or Degrading or Treatment or Punishment* (CAT).
2. CFUW National President Susan Murphy sent a letter to the Canadian Government Human Rights Division advocating for the criminalization of non-State actor torture
[http://www.cfuw.org/Portals/0/Advocacy/report%20submitted%20to%20Heritage%20Canada%20August%202012%20\(2\).pdf](http://www.cfuw.org/Portals/0/Advocacy/report%20submitted%20to%20Heritage%20Canada%20August%202012%20(2).pdf)

Internationally in relation to Canadian law CFUW advocacy has included:

1. *A Shadow Report: Canada Fails to Establish Non-State Actor Torture as a Specific and Distinct Criminal Human Rights Violation* was submitted to the

Committee against Torture

http://www2.ohchr.org/english/bodies/cat/docs/ngos/CFUW_Canada_CAT48.pdf

2. This shadow report drew on the Committee's General Comment No. 2: Implementation of article 2 by States Parties, particularly paragraph 18, which addresses manifestations of gender-based torture perpetrated by State or non-State actors (CAT/C/GC/2, 2008, January 24; <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>)
3. Linda and I attended the Committee against Torture session when Canada presented its country report. The Committee's Concluding Observations stated that Canada had an obligation to incorporate all the provisions of the CAT into Canadian law in order to allow persons to invoke it directly in courts, to give prominence to the CAT, to raise awareness of its provisions among members of the judiciary and to the public at large. Regarding violence against women, although Canada was of the opinion that violence against women did not belong under the Convention the reminded Canada that State Parties bear responsibility and its officials should be considered as authors, complicit or otherwise responsible under the CAT for consenting to or acquiescing in acts of torture or ill-treatment committed by non-State or State actors. The Committee stated that Canada 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 (CAT/C/CAN/CO/6).
4. CFUW teamed up with the National Council of Women of Canada, another NGO, and submitted a Universal Periodic Report to the Office of the High Commissioner for Human Rights that included the recommendation to criminalize torture perpetrated by non-State actors
<http://www.cfuw.org/Portals/0/Advocacy/CFUW%20and%20NCWC%20Joint%20UPR%20Submission%20Final.pdf>

Internationally in relation to sharing with others and promoting the human right that non-State torture is a violation of women and girls' human rights that occurs globally;

1. The support for the legal recognition of torture by non-State actors gained at the Committee against Torture was distributed via GEAR entitled Sharing Breakthroughs (<http://nonstatetorture.org/files/3313/4141/8179/GEARSharingBreakthroughs.pdf>) and picked up by AWID and translated into Spanish
http://nonstatetorture.org/files/5113/4141/9259/jeanne_sarson_note_SP_ASC_2_90612_GEAR_note.pdf

2. CFUW submitted a written statement to the CSW 57th Session concerning non-State torture (E/CN.6/2013/NGO/10)
http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.6/2013/NGO/10
3. CFUW presented NGO CSW parallel events on non-State torture entitled “Genderizing the UN Convention against Torture (CAT) & Non-State Torture Victimization”. This year Felice Gaer from the Committee of Torture participated in her personal capacity,
http://nonstatetorture.org/files/9713/6140/7156/Poster_2013_CFUW_panel.pdf

In Conclusion

As health professionals and human right defenders with 20 years of grass root expertise researching, presenting, and writing, we have been listening to the detailed atrocities of mainly women disclosing classic torture victimization perpetrated by non-State actors in the private or domestic sphere, either in childhood or adulthood. We welcome this opportunity to present to you as briefly as possible some information on the advocacy that is occurring to urge Canada to amend its laws and of advocacy efforts to gain recognition for all women and girls of their human right not to be subjected to torture.