

What is Non-State Actor Torture?

Non-state actor torture is a heinous form of interpersonal violence; it occurs when someone is tortured by a parent, spouse, guardian, stranger, organized gang, or other groups/organizations not affiliated with the state, in the private sphere (e.g. in homes, cottages, warehouses, etc).

Background

The 1993 report of the Canadian Panel on Violence Against Women first established that women are being tortured in the private sphere by non-state actors. However, since torture by non-state actors is not criminalized as a specific offence in Canada, no statistics on its occurrence have ever been collected through existing data collection tools, such as the Uniform Crime Reporting (UCR) Survey or the General Survey (GSS) on victimization.

Protection from torture is a non-degradable human right - the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Universal Declaration of Human Rights, and the Convention of the Elimination of Discrimination Against Women, among other conventions and agreements have all reinforced that no one shall be subjected to torture irrespective of who the torturer was/is. Despite being a signatory to these conventions and agreements, Canada has not taken appropriate steps to prevent non-state actor torture, or ensure that victims have access to adequate services and truthful justice (i.e. laws specifying that torture by private individuals and organizations is a distinct criminal offence).

In 2010, the **UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment** stated the following:

- a) **Acquiescence:** a state must neither fail to act nor may it act with indifference to torture perpetrated by State or non-state persons. Such a failure to act suggests tacit agreement, permission or 'acquiescence' to the infliction of acts of torture;
- b) A state is required to uphold its international due diligence obligations to respect, prevent and protect its citizens from torture inflicted by State actors or by non-state actors (private persons) in the private sphere;
- c) **A state is obliged to protect** all citizens from torture whether by state or non-state actors (in the private sphere). Domestic laws must provide adequate protection against torture, whether by State or non-state actors. In Canada. "Domestic criminal law must cover all possible cases falling under the definition of torture";
- d) **A deficient legal framework:** occurs when other existing legal provisions already in the Criminal Code, are used to misname crimes. Failure to name the actual crime minimizes and trivializes torture crimes. Torture is one of the worst and most destructive of all human rights violations;
- e) **Culture of impunity:** when there is no law against a crime, in this case torture, the perpetrator/s is not held accountable for the offence. This creates impunity. The absence of a specific law enables the criminal.

Recommendations*

The Government of Canada is encouraged to:

1. Amend, immediately, the *Criminal Code of Canada* to include torture committed by private individuals and organizations, (non-state actors) as a specific and distinct criminal offence;
2. Exercise due diligence by initiating into Canadian policies and practices without delay, all appropriate measures to ensure that no person is subjected to torture by non-state actors;
3. Respect the priority of gender-sensitive frameworks on the United Nations agendas, given that women and girls are disproportionately affected by extreme forms of violence; and
4. Uphold Canada's commitments to United Nations human rights instruments to which Canada is a signatory.

*These recommendations are based on policy adopted at CFUW's 2011 Annual General Meeting