

## OUR CEDAW EXPERIENCE

### IWRAW “From Global to Local”, CEDAW and Non-State Torture: Our Canadian Experience

Jeanne Sarson and Linda MacDonald © 2011

It was October 2008, in Geneva, Switzerland when we made our first person-to-person contact with [International Women's Rights Action Watch Asia Pacific](#) (IWRAW) members. Sponsored to attend their “From Global to Local” international programme that accompanied the United Nations 42nd Session of the Committee of the *Convention on the Elimination of All Forms of Discrimination Against*



Figure 1: IWRAW "From Global to Local" workshop

*Women* (CEDAW), gave us the privilege to work with and listen to the voices of activist women. We heard of women’s transformative and sometimes dangerous work to gain human rights equality for the women/girls of their respective countries. Along with the IWRAW women, the “From Global to Local” workshop provided the mentoring environment for women from Portugal, Ecuador, Kyrgyzstan, Mongolia, Cameroon, Madagascar, Slovenia, El

Salvador, Belgium, Uruguay, Myanmar and our country Canada to sit together, as in this picture, and develop skills together (Figure 1). We were able to share our work focussed on non-state torture of women and girls, and learn from each other and support each other through the successes, and in times when tears flowed, support each other through the hurts and disappointments of realizing that harmful biases existed and were expressed by some CEDAW Committee experts.

#### A Canadian Perspective

Sharon McIvor, read a Canadian statement, under the auspices of the Canadian Feminist Alliance For International Action (FAFIA), which encompassed many troubling situations confronting the human rights of Canadian women and girls. From this oral presentation we extract the following paragraph:

Law enforcement agencies and Canada’s justice system continue to be inadequately responsive to violence against women. Most incidents of male violence are unreported or inadequately investigated. Girls are often returned to homes where they have been sexually abused and the abusers not dealt with. Women, who have called the police for protection and have restraining orders against violent partners, have nonetheless been murdered. Recommendations made after inquest and inquiries have not led to an improvement in police responsiveness. There are not enough shelters for women who are victims of violence, particularly in rural and northern communities. ***Extreme violence against women that takes the form of torture by non-state actors is not adequately defined or punished in Canada’s criminal law*** [emphasis added] (Geneva, October 20, 2008).

Although this Canadian situation regarding violence against women and girls as described has not improved, we have emphasized the last sentence because, as human right defenders our efforts have been focused, since 1993, to have torture inflicted by non-state actors distinctly and specifically defined and criminalized in the *Criminal Code of Canada*. Presently, Canadian law only criminalizes torture inflicted by State actors, whereas, the same acts of torture inflicted by non-state actors such as a spouse, a parent(s), other family members, guardians, pedophiles or human traffickers are invisibilized. Acts of non-state torture are being misnamed as another or lesser crime such as an assault of some kind. As a result a Canadian discriminatory socio-legal culture has developed regarding the application of torture law at various levels, such as:

- a) If, for example, the torturer is a military person who tortures a prisoner while on the job this person will be held accountable for acts of torture. If this military torturer goes home, and may or may not be in uniform, and commits the same acts of torture against a spouse or child, this military person will not be held accountable for inflicting acts of torture. Because the military person, when in the home, is considered to be a non-state actor and non-state torturing is not specifically criminalized in Canada.
- b) Examining this scenario further, under present Canadian law the first victim—the prisoner—has the legal right to name and seek justice for suffering torture; the second victim—the spouse or child—does not, even though they have endured the same acts of torture as shown in figure 2.[1, 2]

Figure 2: Acts accepted as torture when inflicted by State Actors in Canada		Similar Acts inflicted by Non-State Actors not accepted as torture in Canada
<ul style="list-style-type: none"> <li>• Electric shocking</li> <li>• Beaten, burned, cut</li> <li>• Immobilization tortures, tied, hung, caged</li> <li>• Water tortures</li> <li>• Suffocation/choking tortures</li> <li>• Sexualized tortures: Rapes, gang rapes, repetitive raping, hand/object rapes</li> <li>• Forced drugging</li> <li>• Nutritional deprivation</li> <li>• Psychological tortures: Humiliation, degradation, dehumanization, animalization, terrorization, horrification</li> <li>• Forced nakedness</li> <li>• Sleep deprivation</li> <li>• Witnessing torture others</li> <li>• Powerlessness</li> </ul>	P A T R I A R C H A L D I V I D E	<ul style="list-style-type: none"> <li>• Electric shocking</li> <li>• Beaten, burned, cut</li> <li>• Immobilization tortures, tied, hung, caged</li> <li>• Water tortures</li> <li>• Suffocation/choking tortures</li> <li>• Sexualized tortures: Rapes, gang rapes, repetitive raping, hand/object rapes</li> <li>• Forced drugging</li> <li>• Nutritional deprivation</li> <li>• Psychological tortures: Humiliation, degradation, dehumanization, animalization, terrorization, horrification</li> <li>• Forced nakedness</li> <li>• Sleep deprivation</li> <li>• Witnessing torture others</li> <li>• Powerlessness</li> </ul>

c) The military torturer will be held accountable differently depending **not** on the criminal acts of torture committed but depending on whether the tortured person was a prisoner or whether the person tortured was a spouse or child. Acts of non-state torture, particularly sexualized torture, are committed

predominately against women and girls. When their torture victimization is not valued equally as torture their suffering is minimized and devalued. This position supports the existence of on-going gender-based discrimination regarding torture victimization and the application of Canadian law. Such discrimination has its roots in patriarchy and misopedic and misogynistic socio-cultural and legal attitudes and practices.

### Our CEDAW Committee Multicultural Experience

The countries of Slovenia, El Salvador, Belgium, Uruguay, Myanmar and Canada were assigned to meet in Chamber A at the Palais des Nations, United Nations in Geneva (Figure 3). This meant that we, as

activist women, from these countries were focussed on connecting with the following CEDAW Committee experts present: Ms. Saisuree Chutikul, Ms. Magalys Arocha, Ms. Dorcas Coker-Appiah, Mr. Cees Flinterman, Ms. Ruth Halperin-Kaddari; Mr. Dubravka Šimonovic, Ms. Glenda Simms, Ms. Maria Regina Tavares de Salva, Ms. Heisoo Shin and Ms. Anamah Tan.



Figure 3: Palais des Nations  
UN Geneva

Following each country review there were debriefing meetings facilitated by IWRAW. In these meetings we were able to share our responses about contacts with the CEDAW experts and express our analysis of country reports. Here we learned how other women identified positive country movements but, again, there were also tears shed. Tears about how even CEDAW experts had oppressive biases that failed to uphold the principles of human rights equality for LGBTI persons; also, we shared our experiences related to our perception of the negative view that appeared to be present with some CEDAW experts regarding torture of women and girls by non-state actors. This was extremely troublesome for us as it represented a failure to uphold CEDAW General Recommendation 19,7(b) which speaks about the human right not to be subjected to torture.[3] Debriefing meetings revealed how deep the oppression of specific groups was and how much more work has to be done to achieve women human rights and equality. This was, at times, a daunting reality. But mostly we were witness to the determination of women to expose human rights violations and to gain human rights equality in their respective countries and to continue to push to the CEDAW become the women’s convention it is meant to be.

### Our CEDAW Committee Canadian Experience

Preparing a response to Canada’s report to be delivered in Chamber A as stated, meant many meetings with other Canadian women (Figure 4) who contributed to FAFIA’s presentation that would be read by Sharon McIvor. FAFIA organized a lunch hour meeting to invite CEDAW experts to meet with Canadian women on the day Canada’s governmental delegation presented its combined sixth and seventh periodic report to be reviewed by the CEDAW Committee. Canadian women present could have two minutes to respond to Canada’s report and for CEDAW experts who attended FAFIA’s luncheon to hear and to ask questions from women working at the grass root level.



Figure 4: Canadian women meeting

The day that the CEDAW experts asked questions of the Canadian government’s delegates will be remembered most painfully, to the degree that caused both Linda and I to discuss with each other whether we would be able to overcome an increasing feeling of nausea and disempowerment. I would say to Linda that I did not know whether I would be able to stand up and leave Chamber A when the CEDAW review and question period of Canadian delegates was over. I was almost faint with a feeling of impending doom that we would not even succeed to have a CEDAW expert ask a question about torture by non-state actors in the domestic sphere.

To backtrack a bit, based on the guidance provided by IWRAW in the “From Global to Local” workshop, we learned to spend our activist energy wisely by approaching the CEDAW experts we thought might be interested in and who might be supportive of addressing violence against women and girls. Even thinking like this—that not all CEDAW experts had violence against women and girls as a major concern—was a challenge because, we have to admit, we had a perception that all CEDAW experts would have as a priority addressing violence against women and girls given that gender-based violence is a global endemic human rights violation. So, after undoing this, our incorrect perception, we walked



Figure 5: CEDAW and Canadian delegation settling at the CEDAW Board’s Head Table

into Chamber A, as the Board was setting up (Figure 5), armed with trying to assess which CEDAW expert might be supportive.

We came away that first day feeling quite hopeful and positive that we had connected with a CEDAW expert, Ms. Glenda Simms, who was open to asking the question on non-

state torture of the Canadian delegation the following day when Canada was presenting its review as required under article 18 of CEDAW. The next day, at 10 a.m., October 22, we crashed with disappointment when learning that Ms. Simms could not ask questions of Canada because of her previous work in Canada. What to do now? Well, we got right to work trying to see if we could gain another connection with a CEDAW expert who would ask such a question. We were armed with a brief information sheet to hand out as had been suggested in the IWRAW mentoring workshop. Linda was met with a serious brush off and dismissed of not worthy of being listened to by one CEDAW expert. But, we kept trying.

For the second time, we thought we had gained success as another CEDAW expert agreed to ask the question about torture by non-state actors. The CEDAW Committee session began its review of Canada’s report. The CEDAW review process is organized by going through the Convention article by article, ending with articles 14 to 16. When it seemed the appropriate article arose for the CEDAW expert to ask our question there was only deafening silence—no question was asked. Worry began. During the break we asked this specific CEDAW expert why she had not asked the question. Her response, “I forgot”. Our guts twisted into a knot of deep concern.

Lunch time came and we waited for the CEDAW experts to re-enter Chamber A. For the third time we went on the ‘hunt’ for a CEDAW expert who would agree to ask a question on the non-state torture of women and girls in the domestic sphere. CEDAW experts Ms. Anamah Tan and Ms. Ruth Halperin-Kaddari both agreed. So we sat and waited. Article after article can up for discussion. The clock kept ticking closer and closer to the 5 p.m. closure of the CEDAW Committee and country review session. During the break Ms. Tan came to seriously consult with us, she was concerned how to formulate the question so it would fit into the upcoming articles. Weak-kneed worry became engulfing as discussion began again.

The CEDAW Committee Chair announced that articles 14-16 were to be addressed. These were the last articles and Canada had not yet been asked how it addressed non-state torture in the private sphere. A

new concern began—how would we ever inform all the women who had been so victimized that a question on non-state torture was not addressed? Weak-kneed worry became even more deeply engulfing.

Then, we heard Ms. Anamah Tan speak. She said:

Moreover, some acts involving family violence constitute torture and it was appropriate to ask whether the Government, as part of its many family violence initiatives, had examined the issue of non-State torture by family members.[4]

Carole Morency of the Canadian delegation responded with:

Canada recognized torture as a State-actor offence and prohibited it categorically. What was sometimes referred to as torture by non-State actors was covered by the criminal law as simple, aggravated or sexual assault, forcible confinement, kidnapping or trafficking in persons.[5]

### **The Impact of this IRAW CEDAW Experience**

Expressing our appreciation to Ms. Tan followed (Figure 6); the next hurdle was that of wondering whether the CEDAW Committee would hold Canada to account for misnaming non-state torture as another crime? Would the CEDAW Committee see Ms. Morency's response as devaluing women and girls, therefore, discriminatory? Would the CEDAW Committee uphold CEDAW General Recommendation 19,7(b) which states that no one should be subjected to torture?



Figure 6: Linda, Ms. Tan and Jeanne

The CEDAW Committee in their 2008 Concluding Observations submitted to Canada did not include supporting the human rights for women and girls who had suffered or who suffer non-state torture victimization.[6] Nor did they ask Canada to criminalize non-state torture so that women and girls so victimized would have access to due legal processes and be respected as a vulnerable group in need of torture-informed specific services and protection. In spite of these disappointments we have tried to utilize Ms. Tan's question and Ms. Morency's response to illustrate the existing legal discrimination experienced by Canadian women and girls so victimized. We have presented these issues to various groups; we have had articles published in which we discussed the ongoing oppression and marginalization such socio-legal discrimination inflicts against women and girls so tortured.

The IRAW CEDAW experience helped make visible the Canadian socio-legal discrimination that exists in regard to non-state torture. This has helped us to critically evaluate, based on Ms. Morency's response, how Canada is not measuring up to the evolving application of a gender-based framework of the UN *Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). Referring to the *Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including as assessment of conditions of detention* (Nowak, 2010),[7], this report does not support misnaming non-state torture as another crime. Rather, it states that utilizing existing legal provisions such as misnaming or minimizing torture crimes as another crime is impermissible because torture is considered to be one of the worse, most destructive human rights

violations there is. It must not be so trivialized—this is presently the Canadian legal reality. This same report goes on to say that impunity is one root cause for torture being widespread, whether perpetrated in the home or elsewhere, and that a culture of impunity develops in any country when applicable laws do not exist. Presently, in Canada, torture by non-state actors is not specifically criminalized, therefore, all possible acts that fit the definition of torture whether perpetrated in the so-called private or domestic sphere are not legally addressed.

Women and girls are the predominate victims of torture, especially sexualized torture, that is committed in the domestic sphere. Object sexualized torture also occurs such as gun-rapes. Sexualized torture can involve physical torture such as electric shocking inflicted in the woman's or girl's vagina as well as to her body. Profound and destructive forms of gender-based torture occur in Canada and women and girls do not have the legal right to seek legal justice for such torture victimization—this is discriminatory.

### **In Conclusion**

The IWRAW CEDAW experience gave us tools to strengthen our position that the present Canadian torture law that criminalizes State inflicted torture while denying non-state inflicted torture is discriminatory. It denies that women and girls, even infants, suffer non-state torture. Without a specific and distinct law no police or legal case data is collected, therefore, the crime of non-state torture is invisibilized.

The UN *Declaration of Human Rights*, article 5, states “no one shall be subjected to torture”; CEDAW General Recommendation 19,7(b) also states this. It is decades overdue—women and girls have the human right not to be subjected to torture and this right needs to be upheld. It is time for CEDAW to operationalize their General Recommendation 19,7(b) by supporting the human rights of women and girls so tortured by holding countries accountable to develop laws on torture that apply equally to State and non-state actors.

This is what the IWRAW CEDAW experience helped us with—it helped give voice to the plight of Canadian women and girls suffering of torture by non-state actors.

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