DUE DILIGENCE OBLIGATIONS: NON-STATE TORTURE OF WOMEN/GIRLS IN THE SO-CALLED PRIVATE SPHERE—A CANADIAN AND MULTI-COUNTRY PERSPECTIVE

By

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A RESPONSE TO SPECIAL RAPPOREUR MS. RASHIDA MANJOO’S WELCOMING OF RELEVANT SUBMISSIONS FROM NGO’S AND OTHER INDEPENDENT EXPERTS FOR A STUDY ON THE “DUE DILIGENCE OBLIGATIONS TO ADDRESS VIOLENCE AGAINST WOMEN.”

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Our Professional Expertise

As independent scholars and human right defenders our focus has been, since 1993, on non-state torture (NST) victimization—specifically acts that can be categorized as ‘classic’ torture perpetrated by non-state actors in the so-called private or domestic sphere of like-minded families/groups. Working at a grassroots level our attention has been to have NST victimization recognized, both nationally and internationally, as a specific and distinct form of violence and a human rights violation that has been and continues to be perpetrated, frequently trivialized, misnamed, and therefore invisibilized. The many forms of NST that occur in the domestic/private sphere are global realities, inflicted predominately against women and girls.

We are also international educators, speakers, consultants, researchers, published authors, and Listeners of Atrocity. As independent scholars we fund ourselves, including managing our website: www.nonstatetorture.org. Since 1993, our Canadian activism has been to seek amendments to the Criminal Code of Canada to have a law that specifically and distinctly identifies and criminalizes acts of NST. Canadian women, or any citizen, so tortured are presently denied their socio-legal right to seek justice for NST victimization inflicted by non-state actors because Canadian law only criminalizes torture inflicted by State actors. Therefore, because women and girls are the dominate victims of NST, Canadian law remains discriminatory.

Although, we are Canadian women with a prolonged insight into the Canadian reality, since the creation of our website we are contacted by persons from the industrialized countries of New Zealand, Australia, the UK and other Western European countries, and the US. These contacts have been from persons reporting NST victimization, from anti-violence workers wanting support, and by persons working in the media and legal professions. This gives some aspects of the information shared in this paper a multi-country perspective.
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Introduction

We welcome the opportunity to submit this paper to share the knowledge we have gained over the past 19 years working with women mainly, but also a small number of male and transgendered persons, who detail surviving categories of non-state torture (NST) victimization, specific to this paper is the identification and infliction of classic NST victimization. For some this form of NST victimization began in infancy, continued into their childhood years, or even into their adulthood. The perpetrators were identified as parents, grandparents, other family members, guardians, and other liked-minded individuals/families/groups (non-state actors). For others the NST victimization began in adulthood, such as in spousal NST victimization.1

Information in this paper comes from Canadian citizens as well as from citizens of New Zealand, Australia, Israel, the UK and other Western European countries, and the U.S. Regardless of the country, the details of the NST victimization is repetitively similar. Therefore, our opinion is that acts of classic NST victimization, whether perpetrated inter-generationally or as in spousal torture victimization, is a graver global human rights violation and form of violence against women and girls than has been dutifully recognized at an individual level, within communities, by States, or transnationally, including at the United Nations level. We suggest the reason for this is the existence of a patriarchal divide whereby the torture of women and girls within the relational private or domestic sphere has been unnamed, minimized, and devalued therefore unsupported as a specific human rights violation and a predominately gender-based crime. Since 1993, it has been our focus to remedy this oppressive and marginalizing invisibility. This work began because in August of 1993 a victimized woman ‘introduced’ us to the massive destructive classic acts of torture, terror and horrification she suffered for over 30 years.

All categories of NST need to be considered forms of violence suffered predominately by women and girls in order to combat it. In this paper, as stated, we are specifically addressing acts of classic NST victimization. We present two models: (a) NST and Gender to assist explain the global reality of NST victimization and (b) The Patriarchal Divide to illustrate how acts of classic NST perpetrated by non-state actors in the private sphere have been invisibilized. The socio-legal failure of Canada to practice with due diligence to prevent, protect, investigate, punish and provide reparations particularly in regards to acts of classic NST will be addressed.

Torture: Categorizing Acts of Non-State Torture and Gender

From an international human rights perspective freedom from torture victimization has been given specific and distinct attention in UN instruments such as:

1. The UN Universal Declaration of Human Rights (UDHR), article 52
2. The International Covenant on Civil and Political Rights (ICCPR), article 73
3. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General Recommendation 19, 7 (b)4
4. And the specific Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)\(^5\)
5. Declaration on the Elimination of Violence against Women, article 3(h)\(^6\)

Freedom from torture is a non-derogable human right of all persons, including women and girls, that must be protected under all circumstances, at all times and in any place, in the public or private spheres, whether perpetrated by State or non-state actors. Acts of torture must not be trivialized, minimized, or misnamed as another crime such as an assault or abuse.\(^7\) In the past several decades the reality that forms of NST victimization are perpetrated within the domestic/private sphere and predominately suffered by women and girls has emerged. Considering this emergence from a holistic perspective we offer the following model as a means of visibilizing the categorizations of NST (Figure 1).\(^8\)

1. **NST embedded in socio-cultural and religious violations.** For example, FGM\(^9\), acid burning, widow burning,\(^10\) which will not be discussed in this paper, have however, been identified as forms of gender-based torture in UN Special Rapporteur reports.

2. **NST that is commercial based.** The actions of these non-state torturers can be described as driven by misogynistic and misopедic attitudes and by greed. They are involved in the organized crimes of sexualized human trafficking and exploitation, including sexualized adult and child torture-pornography, as well as in the production of snuff torture films/photos [sexualized torture and killing].\(^11,\)\(^12\) This group of torturers inflict tactics such as sexualized torture for the destructive “breaking in” rape of women and use other life-threatening classic NST tactics to exert domination and control over women and girls who are kept in a captive terrorized and powerless state as they are trafficked and exploited. Inflicting powerlessness is a defining element of torture victimization.\(^13\) Parents, other family members or spouses who inflict NST to satisfy their personal pleasures frequently cross over into exploiting and trafficking their children to like-minded pedophilic torturers or a spouse to ‘client-perpetrators’. One woman described the childhood NST and exploitation she suffered this way-she was “rented” and “trafficked for torturing”. She also explained that there was a demand for children who had been conditioned to withstand NST.

3. **Non-state ‘classic’ tortures.** The word classic is a term used to refer to the acts and tactics of torture perpetrated by State actors. Literature with information on State inflicted torture tactics is plentiful; this is not equally so when seeking literature information on NST inflicted in the domestic/private sphere although the torture tactics of non-state torturers generally mimic and adapt the tactics of State torturers. For example, a form of State physical torture is water torturing. Water torturing equipment is in the home, adapted using a bath tub filled with water which the non-state torturer uses to hold a woman or a girl under the water until she is unconscious. This is but one life-threatening torture ordeal that must be added to many others inflicted over months and years, such as those listed in the Patriarchal Divide figure in a later section of this paper. Combination torturing
is also listed under the above category of classic NST. Acts of NST are never inflicted in isolation from each other but are combined to maximize the destructiveness and dehumanization of the woman or girl being tortured. For example, electric shocking when applied to a victimized woman’s head is physical torture, when inserted into her vagina it is also sexualized torture. Some non-state torturers also heighten their torture pleasures by creating rituals around the acts of torture they inflict. For instance, like-minded NST individuals/families/groups may create a ritual drama such as a ‘marriage ceremony’ to overwhelm a girl child with the distortion that the family/group rape is a legitimate marriage. This inflicts undue influence, increasing her sense of the powerfulness of the torturers and concretizing her sense of captivity. The degree of overwhelming life-threatening destructiveness is so severe physically, psychologically and spiritually as to cause her to dissociate from her body or have a spontaneous out-of-body survival response; this can also happen to victims of State inflicted torture. Because women and girls and their bodies have been and continue to be commercialized and commodified, objectified and sexualized in industrialized cultures, a consequence is that acts that constitute classic NST are minimized and in many ways normalized in the media and via exploitative and torture pornography as to render the harmful practices of classic NST invisible.

**Classic NST Victimization: A Specific Vulnerable Group**

For women whose NST victimization was inter-generational, they recount the torture began when they were infants, toddlers, or preschoolers. Some women report the NST stopped when they reached puberty, or following their first forced impregnation and forced abortion, when the prime torturer/organizer of the family/group died, or when they were removed from paid-for-care, for example. For other women the inter-generational NST victimization continued into their adult years until they were able to escape by going to university and never returning home, by seeking citizenship in another country, developing a new identity, running to the streets to ‘disappear’, or developing safe relationships that provided them with protection. Some report being unable to escape chronic re-victimization until their 30s. When the NST victimization was intergenerational some women chose not to have a child or felt compelled to abort at conception, fearing they might not be able to keep a child safe from inter-generational NST victimization. For instance, some torturers can use social and community positional power to gain legal guardianship to a granddaughter by claiming her mother was unfit—the mother being a survivor of intergenerational NST diagnosed with ‘mental illness’. If women deemed they could not cope moving away from their communities, being chronically stalked and harassed was/is common. This frequently extended into their workplaces. If alone in their workplace some women report being physically assaulted and raped. Perpetrators know this pushes victimized women into perpetual crisis and if unable to work the perpetrators goal is the woman will end up back within the family/group to live a life of chronic NST victimization and if she has children the intergenerational NST will continue. Or, she might be pushed into suicide—silenced forever the torturers’ risk of discovery disappears. Many women tell us that as children they were groomed to commit suicide if they ever tried to tell. Preventing suicidal attempts has been a minute-by-minute struggle common to women exiting NST victimization regardless of the torturer-victim relationship.

Women who were victims of family/group classic torture have also informed us that stalking and harassment began when they started school. Previous to beginning school a child’s captivity can be easily controlled and maintained by the family/group; however, this control changes when a child starts school therefore a tactic of some parents has been to volunteer in the school to ensure they kept frequent contact with their child. This facilitated instilling in her an on-going sense of her captivity. If, as a child, women were, at times, unable to cope with school following, for example, a week-end of severe...
torture and drugging, women tell us parents manipulated the situation with lies. Teachers were told that as a child she had been ill or that she had mental problems and had not taken her medications. Some parents protected them-Selves by home schooling; others moved frequently if, we assume, they felt at some risk of being questioned more deeply about a child’s behaviours.

When the NST victimization was spousal, socio-cultural responses were of not being believed and told it was her fault. Regardless of the age of the women when the NST victimization began, there was a constant threat that they would be killed if they told. Many spoke of enduring forced induced abortions, a consequence of severe physical torture beatings or perpetrated by the perpetrators them-Selves or by their criminal connections with, in the words of one woman, “a pig doctor”. Therefore, the women saw the dehumanization and death of the foetuses; this ordeal reinforced their terror that they too could be killed. When 233 women, who Self-identified being victims of NST (ritual abuse-torture), answered a web survey on reproductive tortures, 131 (56%) reported they had been raped during the forced abortions/deliveries.  

Women, who endured inter-generational classic childhood torture victimization, speak of how pets were brought into the house and when they became attached to the pets they were forced to watch the pets, such as cats and rabbits, murdered. Sometimes they were forced to do the killing. They were told it was their fault because they were not supposed to care, they were not supposed to have emotional feelings. Such horrors reinforced the perpetrators threats that “if you tell this will happen to you.”

When a State such as Canada does not recognize NST victimization as a specific and distinct crime the ripple effect is seriously damaging because women are left without protection. Most inform us that when attempting to report to the police they have been, to date, generally considered “crazy”, mentally ill, not believed, or met with other misogynistic attitudes. Some women say they tried to run-away from home, even as preschoolers, but were found and returned to their homes, sometimes by police. We have also been told by some women that as vulnerable children or as vulnerable adults they experienced sexualized harms, rapes, or other forms of torture by persons whose job it was to provide protection, to provide health care or psychological care. Such professional re-victimizations were devastatingly crushing and life-threatening, triggering increased suicidal risks. When combined with the spouses, family/group’s torture, terror and horrification, with threats they would be killed, and faced with socio-legal disbelief enforced victimized women’s belief there was no way out. Or, the only way out was by Self-harming and suicide.

The Patriarchal Divide

Figure 2, the patriarchal divide, has two columns that list identical

<table>
<thead>
<tr>
<th>Column I: Classic Acts of Torture by State Actors in the Public Sphere</th>
<th>Column II: Classic Acts of Torture by Non-State Actors in the Private/Domestic Sphere</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Electric shocking</td>
<td>• Electric shocking</td>
</tr>
<tr>
<td>• Beaten, burned, cut</td>
<td>• Beaten, burned, cut</td>
</tr>
<tr>
<td>• Immobilization tortures, tied, hung, caged</td>
<td>• Immobilization tortures, tied, hung, caged</td>
</tr>
<tr>
<td>• Water tortures</td>
<td>• Water tortures</td>
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<tr>
<td>• Suffocation/choking tortures</td>
<td>• Suffocation/choking tortures</td>
</tr>
<tr>
<td>• Sexualized tortures: Rapes, gang rapes, repetitive raping, hand/object rapes</td>
<td>• Sexualized tortures: Rapes, gang rapes, repetitive raping, hand/object rapes</td>
</tr>
<tr>
<td>• Forced drugging</td>
<td>• Forced drugging</td>
</tr>
<tr>
<td>• Nutritional deprivation</td>
<td>• Nutritional deprivation</td>
</tr>
<tr>
<td>• Psychological tortures: Humiliation, degradation, dehumanization, animalization, terrorization, horrification</td>
<td>• Psychological tortures: Humiliation, degradation, dehumanization, animalization, terrorization, horrification</td>
</tr>
<tr>
<td>• Forced nakedness</td>
<td>• Forced nakedness</td>
</tr>
<tr>
<td>• Sleep deprivation</td>
<td>• Sleep deprivation</td>
</tr>
<tr>
<td>• Witnessing torture others</td>
<td>• Witnessing torture others</td>
</tr>
<tr>
<td>• Powerlessness</td>
<td>• Powerlessness</td>
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</tbody>
</table>
acts of classic torture. The differences are that:

1. The acts listed in column I are identified as being perpetrated by State actors; the identical acts listed in column II are identified as perpetrated by non-state actors;
2. The acts of torture listed in column I are acknowledged and criminalized in the Criminal Code of Canada as torture under section 269.1; however, the identical acts of NST are not criminalized as torture in the Criminal Code of Canada; and
3. The Criminal Code of Canada under section 269.1 holds official Canadian perpetrators of State torture or State actors legally accountable for acts of torture inflicted; however, Canadian non-state torturers will not be held equally accountable for the identical acts of torture they inflicted because NST is not criminalized in the Criminal Code of Canada.

Discrimination: Historical and present day consequences—global and national. The patriarchal divide (figure 2), as well as the non-state torture and gender model (figure 1), and the international human rights instruments listed previously show that:

1. Historically, global attention via international instruments has focussed on identifying and upholding State inflicted torture as a human rights violation and a specific and distinct crime whereas NST, because it was/is inflicted in the private sphere, has not received equal attention as a specific and distinct human rights violation and a crime; historically, due diligence obligations have also been “State-centric”.
2. A gender-based discriminatory socio-legal and human rights disregard of the NST victimization women and girls suffer has been in existence thereby devaluing and invisibilizing forms of NST as a specific and distinct human rights violations and as crimes;
3. When NST is not equally, specifically and distinctly criminalized as torture, for example in the Criminal Code of Canada, these torturers are not held legally accountable for the NST inflicted and the women so tortured cannot gain access to justice as they cannot have criminal charges laid that name non-state torture as the crime they suffered; therefore, the destructiveness of NST and the reparation required are not addressed;
4. When NST is not specifically and distinctly identified as a crime in Canada there is no police-criminal data available to collect therefore statistically the crime of NST does not exist and the women and girls, or other citizens, who have survived NST victimization are invisibilized; and
5. The sexualization of torture can occur in the courtroom as was shown when we received the following email response from a Statistics Canada employee who was answering our query on how or whether NST was statistically recorded. The response stated NST was not criminalized therefore no data collected and,

If the state is not involved, it is just regular torture between two individuals and called non-state actor torture. This is usually charged instead as assault (level 2 or 3) with intent, and the torture element often comes out at the trial stage (re: motive) and believe it or not there are all kinds of implications and exceptions for S&M [sadomasochism](re: consent to torture) (email communication, July 27, 2009).

When we asked how this legal rationale would be applied to the NST of children in a court of law we did not receive a further response.

Steps to Evaluate the Implementation of a State’s Due Diligence Obligations: A Canadian Perspective
To measure whether a State is meeting its due diligence obligations to prevent, protect, investigate, punish and provide reparations to the specific population of women and girls who have suffered the destructive gravity of classic forms of NST victimization, we refer to the 2008 and 2010 reports of Manfred Nowak, the previous Special Rapporteur on CAT. These two reports provide information useful for creating steps effective for interpreting and evaluating the implementation of due diligence responses of a State to gender-based violent crimes and human rights violations. First we list these steps then utilize these to assess how Canada preformed its due diligence obligations that come attached to ratified human rights instruments, given that Canada ratified CAT in 1987, CEDAW in 1981, and ICCPR in 1976.

Steps for evaluating due diligence obligations of prevention, protection, investigation, punishment and reparations of a State to gender-based violent crimes and human rights violations are:

**Step 1: Prevention.** For prevention to happen this requires that a State must not act with indifference or with inaction to torture perpetrated by State or non-state actors because taking no action suggests giving a form of agreement, and/or permission or acquiescence for such acts of torture to be inflicted;

**Step 2: Protection.** All citizens have an inalienable human right to be protected from torture victimization even in the private sphere, for example, protecting women and girls from classic torture victimization that happens in a home. For protection to occur it requires that “domestic criminal law has to cover all possible cases falling under the definition of torture” (2010, para. 48);

**Step 3: Investigation.** This requires ensuring that a deficient legal framework does not exist. A deficient legal framework occurs when other existing legal provisions, such as an aggravated assault or abuse, are used to misname torture crimes, thereby failing to take into account the destructiveness of torture victimization. Utilizing an existing legal provisions perspective by stating that, for example, aggravated assault can replace torture crimes is impermissible. Other crimes such as an aggravated assault are not equal to torture crimes therefore it must not be allowed to minimize and trivialize torture crimes as another crime regardless of whether the torture is perpetrated by State or non-state actors in the public or private spheres. Torture is considered one of the worst, most destructive human rights violations that one person can inflict onto another. When torture is trivialized as another form of violence huge knowledge gaps appears in socio-legal systems whereby informed investigations do not occur and informed protective and investigative services are lacking;

**Step 4: Punishment.** For punishment to occur this requires that applicable laws exist so that torturers are held accountable for the offence of torture they perpetrate; otherwise, a culture of impunity develops. Impunity is one root cause for torture being widespread, whether perpetrated in the home or elsewhere; and,

**Step 5: Reparations.** For women so tortured they require having their socio-legal right to name and express in a court of law the NST victimization they suffered, to be heard, and never silenced from speaking their truth. Seeking criminal justice to hold torturers accountable is a fundamental core of reparation processes of healing from classic NST victimization as is providing a holistic fit to assist a woman regain her relational sense-of-Self—her humanness, her personhood and her dignity and integration into her community and the world.

**The Canadian Government’s Knowledge of the Existence of NST.** In this section we expose a brief historical review outlining the length of time the Canadian government has known there were/are Canadian women and children who have suffered, who are suffering, or who are at risk of suffering NST victimization.
<table>
<thead>
<tr>
<th>DATE</th>
<th>EVENT</th>
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| 1992 March| Co-chair of the Canadian Panel on Violence Against Women, Pat Freeman Marshall, speaking to the press told of hearing about levels of victimization that included “years of terrorism in relationships” and degrees of torture that her only point of reference was to “torture in a prisoner of war camp.”  

27 |
| 1993     | The Canadian Panel on Violence Against Women, which had been appointed by the Minister Responsible for the Status of Women, reported that the torture of women, and women when they were children, had/was occurring in Canada.  

28 |
| 1999 July 15 | Attending the Nova Scotia provincial government’s consultative meeting held for the purpose of providing feedback to the federal government to use in shaping Canada’s National Plan of Action document entitled, A Canada Fit for Children, which was later submitted to the UN as Canada’s input to the document, A World Fit for Children. At the Nova Scotia consultative meeting we lobbied successfully to have “torture” victimization inserted into the provincial document, however, when the federal National Plan of Action document was released torture victimization had been excluded.  

29 |
| 2006 July | A supervisor of the child exploitation unit of the Royal Canadian Mounted Police, Ottawa, the federal police service of Canada, in a media interview stated that approximately 20% of the pedophilic images viewed involved torture.  

30 |
| 2006     | We distributed to the federal Minister of Justice and to provincial Justice Ministers across Canada a report entitled, Within Canada: Trafficking and Non-State Actor Torture Combined, providing case examples of NST victimization.  

31 |
| 2007 February 27 | A written statement was given to Deputy Ambassador Henri-Paul Normandin, Canadian Mission, New York, by a woman member of a Canadian NGO who also stated she was a survivor of NST. The statement corresponded with the CSW thematic issue of the elimination of all forms of discrimination and violence against the girl child.  

32 |
| 2007 August | We wrote and submitted, Non-State Actor Torture in Canada: A Shadow Report, to Senator Raynell Andreychuk of the Standing Senate Committee on Human Rights and to the federal government’s Human Rights Program at Canadian Heritage.  

33 |
| 2007 August | We sent a communication to the Special Rapporteur on VAW on behalf of a young woman and the lack of legal recourse for her to seek justice/support in Canada for the chronic ongoingness of a lifetime of ritual abuse-torture, a form of NST.  

34 |
| 2008 March | We submitted, Torture of Canadian Women by Non-State Actors in the Private Sphere: A Shadow Report, to the federal government’s Human Rights Program at Canadian Heritage.  

35 |
| 2008 October | We met with Terry Cormier, Minister and Deputy Permanent Representative Mission of Canada, Geneva, and two Senior Legal Counsels of the Department of Justice who were representatives of the Canadian governmental CEDAW delegation, to discuss the above mentioned Shadow Report, prior to Canada’s presentation to the CEDAW Committee.  

36 |
| 2008 October 20 | A Canadian NGO statement under the auspices of the Canadian Feminist Alliance For International Action (FAFIA) was presented to the CEDAW Committee which included the following statement, “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.”  

37 |
| 2009 February | Petition re criminalizing NST with cross Canada signatures was presented in the House of Commons by Mr. Bill Casey, Member of Parliament.  

38 |
| 2009 November | The Canadian Centre for Child Protection, with its website cybertip.ca and phone line, works with police; this site has a research report stating 2.7% of 4,110 images of pedophilic ‘pornography’ viewed included torture of children; in addition 9.8% of the images involved the victimization of infants and toddlers and 83% of the images involved girls. The most common age of victimization was under eight years.  

39 |
| 2011 August | The NGO, the Canadian Federation of University Women (CFUW) passed into policy to urge the Canadian government to criminalize NST and implement appropriate policies and interventions to address NST victimization with attention to gender-based NST victimization.  

40 |
| 2011 October 24 | Our last correspondence concerning NST victimization and the need for its criminalization was sent to The Honourable Rona Ambrose, Minister for the Status of Women. On November 3, 2011, we were notified the action taken was that our correspondence was shared with Justice Canada. |
Step-by-Step Evaluation of Canada’s Due Diligence Obligations. Presently, as previously stated, torture by non-state actors is not a specifically identifiable human rights violation and a distinct crime in the Criminal Code of Canada. Therefore, for Canada to meet its due diligence obligations to prevent, protect, investigate, punish and provide reparations in its efforts to address all forms of torture victimization, a law needs to exist that criminalizes NST. Having knowledge, as revealed in the above chart, and not responding in the manner outlined in the five steps listed above places Canada in violation of its due diligence obligations. For example:

**Step 1: Prevention.** Canada has knowledge that NST occurs and has not acted to prevent it as being a specific and distinct crime. Canada knows that with its ratification of international human rights instruments that torture is identified as a specific and distinct human rights violation, whether perpetrated by State or non-state actors. Canada also knows that NST is predominately suffered by women and girls and when no action is taken in law that socio-legal gender-based discrimination occurs. Canada’s inaction to specifically address in law that NST is a specific violation and a distinct crime suggests Canada is giving a form of agreement, and/or permission or acquiescence for acts of NST to be inflicted;

**Step 2: Protection.** Not willing to enact a law to cover all possible criminal acts of torture which means criminalizing acts that constitute NST, leaves victimized women and children without knowledgeable protection. This lack of protective criminalization has an expansive reach throughout communities. It creates a gap of ignorance among professionals regarding the degree of violence a girl or woman could be or is suffering. For example, a Child Protection Officer who does not know that NST occurs may simply disregard the horror that a child is trying to tell and to put into words. We have professionally experienced this ignorance gap when professionals have told us that they did not know a little girl would bleed when raped or that they did not believe that NST happened because it was not in their educational framework;

**Step 3: Investigation.** Presently Canada utilizes an existing legal provisions perspective, replacing the human rights violation and crime of NST by misnaming NST as another form of violence. This creates a deficit legal framework which is stated to be impermissible by Manfred Nowak. This misnaming and invisibilization was evidenced with the following statement made to the UN CEDAW Committee by Canadian Department of Justice legal delegate, Ms. Morency, who stated:

> 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.\(^{39}\)

Utilizing an existing provisions framework invisibilizes NST victimization as well as victimized women and children. It prevents their ability to heal when they cannot speak their truth publically and, in effect, is a form of social exclusion. It is known that social exclusion causes emotional pain that is comparable to physical pain;\(^{40}\) therefore, contributes to deeper oppression, marginalization and vulnerability of victimized women and girls. It becomes secondary re-victimization as it fails to assist a woman or girl so victimized restore her sense of personhood and human dignity;

**Step 4: Punishment.** Perpetrators of NST in Canada are not held accountable for the acts of torture they commit because there is no legal recognition that NST is a specific and distinct criminal offence; and

**Step 5: Reparations.** For appropriate reparations to occur it must be socio-legally recognized that a woman or girl has suffered acts that are deemed acts of classic NST and therefore require healing.
and rehabilitative interventions that are based on torture-informed care to assist her in restoring her human dignity following the dehumanization, humiliation and degradation she has suffered.

The aim of such non-state torturers is the destruction of the woman or girl’s relationship with Self and with others, as well as distorting her worldview so that she is psychologically held in an ongoing state of captivity, vulnerability, enslavement and confusion. Women who began being tortured as young children speak of being generally confused by the world because they have existed under totalitarian domination within a closed family/group system that forced them to believe distortions about their Self and about relationships with outsiders. This population of like-minded family/group torturers satisfy their need for brutal pleasures by destroying a victimized woman or girl’s sense of humanness, a sense that she is a person. This intentional relational destructiveness compounds making safe relationships with others difficult and confusing. Such relational and social complexities require holistic considerations. Rehabilitative and social integrative attention needs to address, for example, the relational complexities such as exposed by the following statements of victimized persons:

1.  I didn’t know how to order food in the restaurant because my captors always did.
2.  I never knew I was permitted to use the washroom at night so when I escaped at 20 I peed in the bed.
3.  What do people who haven’t been in captivity think about? What words are supposed to go through your head?
4.  Why would someone want to help me? Like me?

Implementation of State Due Diligence Obligations across Spheres: Individual, Family, Community, State, Transnational and UN Organs

State Reports to the Committee on Torture. The Criminal Code of Canada excludes NST as a specific crime of torture and the Canadian legal system minimizes and misnames NST as another crime, therefore, statistical data on NST does not exist and will not exist. When States are urged to include gender-based manifestations of torture, including information concerning children, in its reports to the UN as asked for, for instance, in UN Resolution 65/205 on torture, how will Canada and other States with similar criminal codes reply? Will they say they have no data therefore gender-based manifestations of NST are not present in their countries? If so, for Canada, and other industrialized countries with similar criminal codes, this will be a truthful untruth—Canada will have no NST data this is true but the untruth will be that Canada has been informed that there has been and are gender-based manifestations of torture by non-state actors in the Canadian private/domestic sphere as shown in the above section illustrating the Canadian Government’s long-term knowledge concerning the existence of NST.

State Reports and the CEDAW Committee. State parties are to present reports to the CEDAW Committee which calls on State parties to include in their reports information on gender-based discrimination and violence, as well as measures taken to overcome gender-based crimes and human rights violations. The CEDAW Committee also has an accountability to bring to life General Recommendation 19, 7(b) which states that no one shall be subjected to torture by calling on States, in their CEDAW reports, to intervene on acts of torture perpetrated by non-state actors including the necessity to legislate the primary intervention of the criminalization of NST. Such “legislative and regulatory gaps, as well as a lack of implementation and enforcement of legislation and regulations, perpetuate de jure as well as de facto [gender-based] inequality and discrimination,” that our humanity will continue to inherit if not outrightly addressed.
**An educational ripple effect: In the spheres of individual, family and community.** Once Canada meets its due diligence obligation to criminalize NST, much education and benefits could flow from this primary intervention. For example, when a child protection worker speaks with a child and the child is attempting to tell of the horrification of torture victimization, the child protection worker would have been educated on the impact of torture horrification and be able to understand what a child might be trying to tell. If such education has not occurred, the child protection worker has a blind spot in her/his knowledge about the degree of violence a child may be enduring. Many women so tortured often ask why, when they were children in school, teachers, nurses, and other helpers did not see that they were in grave difficulty. So the benefit is that a societal ripple effect can occur once a law is in place. Society becomes aware, education follows, as does prevention and other due diligence obligations. Public education also provides opportunities for citizens to learn about the existence of NST and potentially aide them to make informed decision that may be Self protective.

Protective interventions occur because once there is a law police and judicial education can follow, impacting on the proficiency of investigations into tactics of the torturers and the tools use to torture. For example, an uninformed police investigation may miss that a hot light bulb becomes a tool for sexualized torture by burning the vaginal mucosa when inserted into a girl or woman’s vagina. Informed investigative methods contribute to protection and the prevention of ongoing chronic revictimization because police will realize that non-state torturers are serial perpetrators. Our experience tells us that they are chronic stalkers and will attempt and do succeed to inflict intermittent assaults, rapes or tortures, including taking so-called sexualized ‘pornographic’ videos of the rapes to use to manipulate and threaten that these will be circulated to discredit the women they have re-victimized if they tell.

Strategies for effective care within communities requires a NST law which will then trigger the need to educate health and service professionals to become aware that torture victimization occurs. The physical and psychosocial health-based responses to State torture victimization have been developing since the early 1970s. However, this knowledge has been isolated to State torture victim supportive, diagnostic and rehabilitative services due to a failure of societies to accept that similar acts of classic torture by non-state actors occurs. Consequently this caring knowledge has not been transferred to helping those tortured in the so-called private sphere. This means that developing knowledge about infant torture, early child torture that extends into youthhood is socially and professionally denied, as is the destructive health and social impacts NST has on women.

**Reparation and the Centres for Victims of Torture.** Based on our experiences it would be helpful if the global torture victimization recovery model was not isolated to dealing with State-inflicted torture which is the situation in Canada. In Toronto, there is the Canadian Centre for Victims of Torture (CCVT) which is an accredited member of the International Rehabilitation Council for Torture Victims (IRCT) which has 140 global affiliations.43 The focus of these organizations is on the rehabilitation of persons who have suffered State torture. Two Canadian women, one who survived classic NST victimization beginning around age one and that lasted approximately nine years, the other reports NST victimization that began in infancy and continued until her early 30s, approached the CCVT for support. The Centre informed them that services were for immigrant individuals who had survived State torture and did not provide torture-informed rehabilitative support and services for NST victimization. There is a need for sharing the developing diagnostic services and the rehabilitative and care services that have evolved in relation to State torture victimization so as to assist women and girls who have survived classic NST. For this to happen there needs to be a global-social admission and naming that NST happens relationally in the domestic/private sphere.
Naming and verbalizing gender-based non-state tortures. Article 2 of the UN Declaration on the Elimination of Violence against Women names examples of the vast forms of violence women suffer as women or as girls. Torture is not specifically named, although it would be understood to occur based on article 3(h). However, without naming NST will continue to be invisibilized. Over the past 19 years of our practice one reoccurring observation has been a hesitancy for people to admit and speak aloud the truth that women and girls are subjected to acts that constitute classic torture in the private/domestic sphere. It is as if there is a resistance to accepting that such relational tortures are inflicted against women and girls ‘simply’ because they are women and girls. This may be because NST victimization is an emerging reality and/or because saying the word ‘torture’ opens up the admission that relational violence can be and is this brutal and dehumanizing of women and girls. To overcome this social silence our recommendation is that not only must laws acknowledge NST victimization and operationalize such laws, but all levels of human systems must do likewise—from the individual to the transnational and the UN, including in Special Rapporteur reports, NST must be specifically named and visibilized. Verbalization of such gender-based violence means speaking and writing the words “non-state torture”. Words carry meaning; they transform reality. This intervention alone educates and embraces a space of equality and dignity for women and girls so tortured.

A victimized woman’s voice: Her space of equality and dignity. Freedom from torture is a specific non-derogable human right that must be protected under all circumstances, at all times and in any place in the public or private spheres, whether perpetrated by State or non-state actors. Sharing space in this report for a woman who survived NST is about sharing equality and dignity. We close, therefore, with the drawing and voice of one Canadian woman’s comment on what having no law on NST means to her. Her voice echoes that of many who are a group made most vulnerable when tortured in childhood and/or in adulthood and whose voices are not being heard. Here is her brief ‘victim impact statement’. She says,

*When society minimizes [NST], ... it is taken personally ... and feels like it is ... me ... they are looking down on ... reinforcing the feeling of how the [torturers] minimized my worth when they tortured me ... Not having the law care enough ... reinforces what the [torturers] said ‘No one will believe you. What makes you think you are so special that someone would even want to save you or care about you.’*

Endnotes


