NGO: Canadian Federation of University Women (CFUW) Fédération canadienne des femmes diplômées des universités

A Shadow Report: Canada Fails to Establish Non-State Actor Torture as a Specific and Distinct Criminal Human Rights Violation

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To

The United Nations Committee against Torture (CAT)

In Consideration of Reports Submitted by States Parties under Article 19 of the Convention

Sixth periodic reports of States parties due in 2008

Canada (4 October 2010)

Canadian Federation of University Women (CFUW)

Fédération canadienne des femmes diplômées des universités

The Right to Speak – The Responsibility to Act

CFUW is a non-partisan, voluntary, self-funded organization of close to 10,000 women university graduates, students and Associate Members in 112 Clubs across Canada. Members bring vast experiences and expertise to the work of CFUW to improve the human rights and status of women and girls; they support life-long education, social justice and peace. CFUW holds special consultative status under ECOSOC United Nations Resolution 1996/31. This latter responsibility involves working to promote and protect human rights and to achieve women and girls equality as first outlined in the *Universal Declaration of Human Rights* which is now 64 years old. Article 5 of the Declaration specifically asserts that "no one shall be subjected to torture...." As well, CFUW belongs to the Education Committee of the Canadian Sub-Commission to UNESCO. CFUW is the largest of 61 affiliates of the International Federation of University Women (IFUW) which has as one of its focal pillars educating for freedom from violence.

Contact CFUW: 331 Cooper Street, Suite 502, Ottawa, Ontario, Canada, K2P 0G5
Telephone: (613) 234-8252 (102) Fax: (613) 234-8221
www.cfuw.org

This Shadow Report is presented to the United Nations Committee against Torture by the CFUW advocating for the CFUW policies regarding the criminalization of non-state actor torture adopted at the Annual General Meeting, August 8th, 2011. It is presented by:

Brenda Wallace – CFUW-FCFDU President

Susan Russell – Coordinator of International Relations and Volunteer Member of the Board of the CFUW. Susan has been an advocate for the rights of women and girls for many years in her role as CFUW Executive Director. She presently advocates for the criminalization of non-state torture in her home town of Ottawa.

Linda MacDonald and Jeanne Sarson – As members of CFUW they bring to the CFUW almost 19 years of independent professional grass root experience working to support persons, predominately women, who Self-identify as having survived non-state actor torture victimization within the domestic/private sphere. Their academic papers and presentations, national and international, share the knowledge so gained as they present the voices of those who have survived, from Canada and other industrialized countries. As human right defenders their attention has also concentrated on having acts of 'classic' torture perpetrated by non-state actors recognized as a distinct and specific criminal offence which presently is not the situation in Canada.

A Shadow Report: Canada Fails to Establish Non-State Actor Torture as a Specific and Distinct Criminal Human Rights Violation

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INTRODUCTION: THE UNIVERSAL HUMAN RIGHT NOT TO BE SUBJECTED TO TORTURE

1. The United Nations recently released the *Declaration on Human Rights Education and Training.*[1] It calls on "governments, agencies and organizations of the United Nations system and intergovernmental and non-governmental organizations," (para. 2) to promote universal respect, to take responsibility to build global human rights equality and to challenge situations where discrimination occurs. As a non-governmental organization (NGO) the Canadian Federation of University Women (CFUW) takes the promotion of building global human rights seriously, particularly working for the human rights of women and girls which also benefits men and boys. In 2011, the CFUW adopted into policy the need to immediately request of the Government of Canada to criminalize non-state or private actor torture. CFUW also urged Canada to initiate policies and practices that would uphold its due diligence human rights responsibilities in regards to non-state actor torture.[2] This Shadow Report is submitted as a follow-up of these adopted CFUW policies.

2. Not to be subjected to torture is a fundamental, non-derogable and absolute universal human right. This absolute human right not to be subjected to torture must apply equally to women and girls, as well as men and boys, as persons of equal inherent dignity and worth, respecting that in Canada and globally women and girls are in pandemic proportions the predominate victims of gender-based discrimination and violence in the 'so-called' private or domestic sphere, including forms of torture inflicted by non-state or private actors. The absolute human right not to be subjected to torture, whether perpetrated by State or non-state private actors, is distinctly stated in articles of the following United Nations human rights instruments:

(a) The UN *Universal Declaration of Human Rights* (UDHR), article 5[3]
(b) *The International Covenant on Civil and Political Rights* (ICCPR), article 7[4]
(c) The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), General Recommendation 19, 7 (b),[5]
(d) The *Declaration on the Elimination of Violence against Women*, article 3(h),[6] and
(e) The *Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* (CAT).[7]

3. This Shadow Report respectfully identifies that in Canada there are Canadian citizens whose human right not to be subjected to torture is violated. They suffer repetitive acts that constitute torture perpetrated by non-state actors in the private or domestic sphere. This violation of their human right not to be subjected to torture is invisibilized in Canada because the Government of Canada, although aware that acts of non-state torture occur, does not specifically name and criminalize torture perpetrated by non-state/private actors in the *Criminal Code of Canada*. Consequently negative socio-legal events occur, such as:

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[1] UN Doc. A/C.3/66/L.65.
[2] Canadian Federation of University Women (CFUW). (2011). *Policy Book 1964 -2011,* p. 152. Available http://www.cfuw.org/Portals/0/Advocacy/PolicyBook/Policy_Book_2011.pdf
[3] United Nations (UN). (1948). *Universal declaration of human rights*.
[4] UN. (1966). *International covenant on civil and political rights*.
[5] UN. (1992). *Convention on the elimination of all forms of discrimination against women* (CEDAW). General Recommendation 19, (11th session), 7(b).
[6] UN. (1993). *Declaration on the Elimination of Violence against Women.*
[7] UN. *Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.* Ratification and accession by General Assembly resolution 39/46 of December 10, 1984.

(a) Non-state torture is misnamed as another crime such as assault and/or sexual assault for example,
(b) No statistical data is collected that identifies that non-state torture victimization occurs in Canada because the crime of non-state torture does not criminally exist,
(c) The impunity that results from non-criminalization invisibilizes the perpetrators and their criminalized modus-operandi thereby contributing to the making of complaints by victimized persons—adults and children—misunderstood, dismissed, or considered unbelievable. This severely hampers the development of preventive interventions; and for example, makes human rights defenders and anti-violence workers more vulnerable to various forms of attacks by perpetrators, from being falsely discredited, having their work refuted or in other countries being physically attacked, raped and killed.[8] Attacking such carers is a modus operandi planned at removing victimized person's support systems so as to make them repeatedly more vulnerable to chronic victimization, and
(d) Women and girls so victimized are invisibilized as is the severity of their torture pain and suffering. The complexity of their needs for social justice, reparation, safety, recovery and rehabilitation are negated because these are not informatively addressed when non-state torture is an invisible crime.

4. This Shadow Report is written to seek the human right, equality status and dignity for the women and girls so victimized along with their right to obtain social justice in Canada. Therefore, this Shadow Report has as its objectives:

(a) To bring to the attention of the United Nations Committee against Torture that there are Canadian citizens who report surviving non-state torture inflicted by private individuals in the domestic/private sphere,
(b) To illustrate that Canada has knowingly failed to criminalize acts of torture inflicted by non-state or private actors; thereby, invisibilizing and discriminating against this specific vulnerable group/population, enhancing the dangers that they are at extreme risk to experience ongoing privately inflicted harms, including that of further non-state torture, and
(c) To present two best practice recommendations.

5. This Shadow Report submission:

(a) Draws heavily on the Committee against Torture General Comment No. 2 of 2007 and 2008, regarding the implementation of article 2 by State Parties,
(b) It applies the defining elements of torture listed in Article 1 of the *Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* (CAT) to the acts of classic non-state torture described in this Shadow Report,
(c) It relies on the wisdom outlined of reports by Manfred Nowak, past Special Rapporteur on Torture,[9] other United Nations reports and resolutions which address strengthening

[8] See for instance the chapter on, "Strategies to address the situation of WHRD's" in, Women Human Rights Defenders International Coalition. (2012, January). *Global report on the situation of women human rights defenders* (pp. 108-129). WHRD International Coalition through the Asian Forum for Human Rights and Development (Forum Asia).
[9] Nowak, M. (2008, January 15). *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (A/HRC/7/3); _____. (2010, February 5). *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Study on the phenomena of torture in the world, including an assessment of conditions of detention* (A/HRC/13/39/Add.5); _____. (2010, September 15). "*Acid burning attacks—victimization, survivors, support*". Side event sponsored by Women's UN Report Network, Worldwide Organization for Women and NGO Committee on the Status of Women-Geneva.

protection of women from forms of violence that may constitute torture victimization by non-state or private actors; as well,

(d) It makes reference to the discourse in the Committee against Torture *Sixth periodic reports of State parties due 2008 Canada.*[10]

6. The acts of non-state torture specifically referred to in this Shadow Report uses the terminology of 'classic' torture because the acts of torture perpetrated by the non-state actors mimic those of classic torture perpetrated by State actors. Past United Nations Special Rapporteur on Torture, Manfred Nowak, noted, in his 2008 report to the Human Rights Council, that forms of violence inflicted by private actors are comparable to what is known as "classic" torture perpetrated by State actors and should not be trivialized.[11] The terminology, classic torture, was also used by Yakin Ertürk, past United Nations Special Rapporteur on violence against women, its causes and consequences and present member of the European Committee on the Prevention of Torture (CPT), when responding to a question on torture by non-state actors in 2011.[12] Because the acts discussed in this Shadow Report constitute classic torture perpetrated by non-state or private actors and are invisible in Canada, exposing this gap makes this an emerging issue. This Shadow Report therefore draws on emerging knowledge of published reports and literature that includes victimized women's testimonials. These writings disclose that women speak of being tortured as adults or that they endured classic torture that began in infancy and continued into their early adult years until they were able to flee or escape from such destructive family/group systems. Non-state actors were/are identified as consisting of intergenerational or extended family members/groups, spouses, guardians and/or like-minded others known or unknown to the victimized person, such as human traffickers and pornographers.

ACTS OF CLASSIC TORTURE AND DISCRIMINATION: ARTICLE 1 OF CAT AND COMMITTEE AGAINST TORTURE GENERAL COMMENT NO. 2 IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES (In addition CEDAW articles 1-3 and General Recommendation 19, 7(b))

7. Torture is explicitly prohibited when carried out for "*any reason based on discrimination of any kind*…" (CAT Article 1; Committee against Torture General Comment No. 2*,* paras. 20-22). As previously stated the acts of classic torture that are perpetrated by State actors are mirrored in the actions of non-state or private actors. There is universality in the acts of 'creative' brutality that torturers commit whether State or non-state/private actors. This commonality is illustrated in figure 1, The Patriarchal Divide.[13] The figure has two columns listing identical acts of classic torture. Operationalized it shows structural discrimination embedded in Canada's socio-legal system in that:

(a) The acts of State inflicted classic torture listed in column 1 are acknowledged and criminalized in the *Criminal Code of Canada* as torture under section 269.1;[14] however, the identical acts of non-state/private actor torture listed in column 2 are not criminalized as torture in the *Criminal Code of Canada,* thereby invisibilizing the crime and human rights violation of non-state or private actor torture;

(b) Furthermore, acts listed in column 1 are commonly identified in the literature as acts of classic torture perpetrated by State actors; but, because the identical acts listed in column 2

[10] UN Doc. CAT/C/CAN/6.
[11] UN Doc. A/HRC/7/3, para. 44.
[12] Ertürk, Y. (2011, February 26). *Where do we go from here?*. Panel presentation Celebrating UN Women The way forward. Women's Learning Partnership. New York, NY: The New School.
[13] Sarson, J., & MacDonald, L. (2009, Winter). Torturing by non-state actors invisibilized, a patriarchal divide and spillover violence from the military sphere into the domestic sphere. *Peace Studies Journal*, 2(2), 16-38.
[14] Department of Justice Canada. (2009). *Criminal code* of *Canada* (Torture, s. 269.1). Ottawa: Government of Canada.

are perpetrated by non-state actors persons who have suffered such torture victimization, predominately women/girls, they and the classic acts of non-state torture suffered are invisibilized; and

(c) The *Criminal Code of Canada* under section 269.1 Torture specifically identifies that only State actors—military, police, embassy staff or other governmental "officials"—can be held legally accountable for inflicting acts of torture; Canadian non-state/private actors cannot be held accountable for inflicting identical acts of classic torture because acts of non-state torture are not equally criminalized as torture in the *Criminal Code of Canada.* Consequently, non-state or private actors continue to function with impunity when committing the crime of torture; torture is generally considered to be one of the most insidious evils that a person can inflict against the dignity of another human being.[15]

8. The wording "patriarchal divide" is included in this figure to illustrate that the *Criminal Code of Canada* recognizes the need to protect citizens from State torturers during conflict and in post-conflict times, which predominately relates to men, war and terrorism. Persons who have endured similar acts of classic torture as listed in column 2 which are predominately women and girls are treated with socio-legal inequality. Their human right not to be subjected to torture is excluded from the *Criminal Code of Canada*; their classic torture victimization, their dignity and worth as human persons is clearly devalued. They suffer from socio-legal exclusion, oppression, marginalization and discriminatory policies and practices.

Column 1: Classic Acts of Torture by State Actors in the Public Sphere Criminalized as Torture in the *Criminal Code of Canada,* section 269.1		**Column 2: Classic Acts of Torture by Non-State Actors in the Private/Domestic Sphere Not Criminalized as Torture in the *Criminal Code of Canada***
• Electric shocking • Beaten, burned, cut, whipped • Immobilization tortures, tied, hung, caged • Water tortures • Suffocation/choking tortures • Sexualized tortures: Rapes, gang rapes, • repetitive raping, hand/object/weapons rapes • Forced drugging • Nutritional deprivation • Psychological tortures: Humiliation, degradation, dehumanization, animalization, terrorization, horrification • Forced nakedness • Sleep deprivation • Witnessing torture others • Powerlessness	**PATRIARCHAL DIVIDE**	• Electric shocking • Beaten, burned, cut, whipped • Immobilization tortures, tied, hung, caged • Water tortures • Suffocation/choking tortures • Sexualized tortures: Rapes, gang rapes, • repetitive raping, hand/object/weapons rapes • Forced drugging • Nutritional deprivation • Psychological tortures: Humiliation, degradation, dehumanization, animalization, terrorization, horrification • Forced nakedness • Sleep deprivation • Witnessing torture others • Powerlessness
Figure1: The Patriarchal Divide		

9. The previous United Nations Special Rapporteur on CAT, Manfred Nowak, includes in his 2010 report that women do suffer forms of violence that amount to torture perpetrated by private actors and that States bear primary responsibility to protect them from such human rights violations.[16] He also writes that based on his experiences it is probably impossible to cover all aspects of torture included in article 1 of CAT unless "explicitly incorporating this definition into the domestic criminal code" (para. 48). Therefore, to prevent and protect the human right of women and girls not to be subjected to acts that constitute torture perpetrated by private non-state actors such a crime needs to be explicitly and equally criminalized in the *Criminal Code of Canada*.

[15] United Nations. (1985, April). *Outlawing an ancient evil: Torture,* p. 1. New York: Department of Public Information.
[16] UN Doc. A/HRC/13/39/Add.5.

10. Discrimination as emphasized in article 1 of CEDAW "has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women...of (their) human rights..." Torture by non-state or private actors absolutely impairs and nullifies victimized women's human rights. Gender-based discrimination in law does not depend on finding that only women are impacted or that all women are equally affected.[17] It is sufficient to show that Canada`s legal position negatively impacts on the specific population/group of women who endure classic torture perpetrated by non-state or private actors and that the present law fails to uphold their human right not to be subjected to torture. Article 2 and 3 of CEDAW imposes due diligence obligations on States, on Canada, to consider the negative impact of not criminally identifying non-state or private actor torture has on women and girls, such as outlined in the points listed previously in paragraph 3. Worthy of expanding on three points in particular and in reverse order are that:

(a) The absolute human right of women and girls not to be subjected to torture is invisibilized as is the severity of their torture pain and suffering. The complexity of their needs for social justice, reparation, safety, recovery and rehabilitation are negated because these are not informatively addressed when the socio-legal position is to dismiss the reality that non-state or private actor torture occurs in Canada.
(b) The impunity that results from non-criminalization invisibilizes the perpetrators and their criminalized modus-operandi, thereby contributing to the making of complaints by victimized persons—adults and children—minimized to a lesser crime or negatively dismissed, misunderstood, or demeanfully considered unbelievable. This severely hampers the development of preventive interventions, and
(c) No statistical data is collected that identifies non-state torture victimization as occurring in Canada because the crime of non-state torture does not exist; therefore, gender-based victimization and discrimination, marginalization and social exclusion information remains unavailable.

11. Article 1 of CAT defines torture as involving "acts by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes [as]... discrimination of any kind...." Fundamental gender-based discrimination will never be eliminated in Canada if the Canadian socio-legal system treats the severe torture pain and suffering intentionally and purposely inflicted by non-state actors as a lesser criminal human rights violation than torture perpetrated by State actors. The right to human dignity and worth and women and girls' right not to be subjected to torture in the domestic or private sphere must be equally upheld, if it is not then fundamental discrimination raises it gender-biased ugliness.

12. When the torturer is someone who the victimized person—the infant, toddler, older child or adult knows and depends on—parents, other family members, guardians or spouses for example—the violation of trust suffered and the destruction of their sense of Self is unconscionable. Because of their gender women and girls do suffer sexualized reproductive tortures such as forced impregnations and forced abortions, even forced cannibalistic torture related to forced abortions. The non-state torturers' intentional and purposeful infliction of severe pain and suffering is described by a Canadian woman who fled Canada as a teenager to escape years of family/group-based non-state actor torture. Eventually, finding inner fortitude to tell, she told that she,

[17] Canadian Feminist Alliance for International Action. (2003, January). *Canada`s failure to act: Women`s inequality deepens. Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the Occasion of the Committee`s Review of Canada`s 5th Report.*

Got pregnant by one of the men when I was 12 years old. They did an abortion on me saying they were trying to get evil out of me... wanting to die because the pain was excruciating. After they finished they cut up the baby they aborted and made me eat some of it. I was confused and believed I just ate evil again…I believed there was evil inside of me. I did not want it to grow. I stopped eating thinking that if I don't eat the evil won't grow…By 12 years old I had stopped eating unless forced. I didn't know anything about anorexia, however that is what developed. My goal was not to feed the evil inside. If I ate the evil inside would grow and would explode out of my stomach breaking through my skin and come out of my mouth and stomach. People would know how evil I was. I wanted to disappear. I wanted to get smaller and smaller and just completely disappear (Email communication 2009).[18]

13. The dehumanization, the reproductive cannibalistic and psychological classic tortures described are also instruments of terror and comparable to those that come to light in the context of conflicts.[19] She, like women/girls around the world, are silenced by societies that have failed to include them as equal persons with dignity and worth who have had their human rights violated, in particular their human right not to be subjected to acts that constitute torture perpetrated by private actors. Such social exclusion adds to their on-going vulnerabilities and to their suffering as social exclusion creates its own unique pain, pain that is similar to physical pain.[20]

CLASSIC TORTURE AND THE INTENTIONAL AND PURPOSEFUL INFLICTION OF SEVERE PAIN AND SUFFERING: CAT ARTICLE 1

14. The following chart (Figure 2) is adapted from an expert paper accepted by the United Nations Joint CEDAW-CRC Committee.[21] It provides brief insights into the intentional and purposeful severe pain and suffering perpetrators of classic non-state/private actor torture are capable of inflicting. Like State torturers, non-state torturers cause unconscionable and grievous destruction to the personhood of the victimized woman or girl they consciously decide to torture. The specific population/group of women who report non-state classic torture victimization have exposed that acts of classic torture generally include sexualized torturing. The following chart illustrates how the tools of classic torture are used. The figure gives examples of categories of classic torture in the first column; the second column shows how some tools are used for sexualized torturing; the third column provides examples of the severe torture pain and suffering endured by those so tortured as children and/or as adults.

Figure 2: Categories of Classic Torture	**Classic Non-State Sexualized Torture**	**The Devastating Consequences of Classic Torture on Victims**
Acts of classic torture acts can commonly translate➔➔➔➔➔➔➔	Into acts of sexualized torture which together cause➔➔➔➔➔➔➔➔	Severe harmful consequences for girls and women
1. Physical torture: burning	♦ Hot light bulb, hot poker inserted	♦ Psychological torture—Terror

[18] Sarson, J. & MacDonald, L. (2011). *Non-state torture—Specifically sexualized non-state torture—Inflicted in the private/domestic sphere against girls/women: An emerging "harmful practice*". Expert paper submitted to the UN Joint CEDAW and CRC Committee. Available http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/JeanneSarson-LindaMacDonald.pdf

[19] Amnesty International and REDRESS. (2011). *Gender and torture conference* (p. 44). London, UK: Amnesty International.

[20] Eisenberger, N. I., Lieberman, M.D. & Williams, K. D. (2003). Does rejection hurt? An fMRI study of social exclusion. *Science*, 302, 290 -292.

[21] Sarson, J. & MacDonald, L. (2011). *Non-state torture—Specifically sexualized non-state torture—Inflicted in the private/domestic sphere against girls/women: An emerging "harmful practice*". Expert paper submitted to the UN Joint CEDAW and CRC Committee. Available http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/JeanneSarson-LindaMacDonald.pdf

♦ Burnt with cigarettes, burning candles and hot light bulbs, etc. ♦ Spoon heated on a stove element then placed on her skin ♦ Taken "camping", the camp sticks are used for burning tools	into her vagina ♦ Smouldering campfire stick inserted into her vagina	♦ Torture pain and suffering ♦ Burning and blistering of her vaginal tissue ♦ Reproductive organ damage, i.e., infertility, hysterectomy ♦ Sexuality and relational difficulties
2. Physical torture: electric shocking ♦ Electric currents delivered to her mouth, her head and back with cattle or animal training prods, electric wires hooked to a battery or other electric equipment	♦ Electric tools, i.e., cattle or animal prods, electric wires hooked to a battery or other electric equipment inserted into her vagina, anus, or placed to her breasts	♦ Psychological torture—women and girls are forced into blaming and hating their own bodies, i.e., believing they were tortured because they had a vagina ♦ Near-death and emotional terrorization and powerlessness ♦ Dissociating from her body ♦ Torture pain and suffering
3. Physical torture: water torture ♦ Submerged underwater in a tub, lake or stream or her head held under water in a bucket ♦ Tied down and water thrown over her face until she "blacks out"	♦ Submerged underwater until she is unconsciousness and her inert body pseudo-necrophilic raped	♦ Emotional terrorization ♦ Near-death ordeal ♦ Powerlessness when rendered unconsciousness ♦ Torture pain and suffering ♦ Horrification
4. Physical torture: cutting and puncturing ♦ Knife used to cut her body ♦ Knife used to threaten her life	♦ Knife inserted into her vagina ♦ Her vagina cut and her body smeared with her blood	♦ Emotional terrorization fearing she will bleed to death ♦ Near-death ordeal ♦ Horrification ♦ Torture pain and suffering ♦ Dissociating from her body
5. Physical torture: hanging ♦ Corresponding joint pain and dislocations	♦ Hung upside down exposing her vagina and anus and objects rammed into her vagina and anus	♦ Emotional terrorization ♦ Torture pain and suffering ♦ Often left hanging and intentionally alone so that when the torturers return the victim perceives them as rescuers which tightens the torture-victim bond and increasing her powerlessness
5. Physical torture: pinching, twisting ♦ Fingers, toes and limbs twisted	♦ Pinching by applying clothes pins to her labia ♦ Twisting her nipples with pliers	♦ Emotional terror ♦ Torture pain and suffering ♦ Digital fractures
6. Physical torture: immobilization ♦ Tied down, handcuffed, chained, caged, hung ♦ Isolated to confined space ♦ Unable to move – physical powerlessness	♦ Spread eagled and immobilized for sexualized individual, group and/or repetitive raping	♦ Terror, torture pain/suffering ♦ Vaginal tearing pain ♦ Psychological torture—humiliation, shame, Self-blame ♦ Degradation—denied bathroom access so forced to defecate and urinate on her-Self
7. Physical torture: Nutritional depravation ♦ Food and liquids withheld	♦ Starved to keep her body from developing and child-like to be marketed to pedophilic torturers ♦ As stated by one Canadian, she was conditioned to withstand torture as a child so she could be	♦ Starvation pain and suffering ♦ Women speak of drawing food pictures on paper when they were children and eating the paper as a way of coping with hunger pain and suffering.

	"trafficked for torturing"	♦ Women speak of difficulties with eating some foods because of the look, shape, texture, i.e., cannot eat sausages because the shape resembles penises and oral rapes
8. Animal-human tortures ♦ Used animals such as dogs to threaten victim	♦ Forced bestiality	♦ Terrorization ♦ Horrification ♦ Animalization—internalized distortions that she was an animal and would have "monster babies" ♦ Emotional pain that is equal to physical pain, grave shame
9. Chemical or pharmaceutical tortures ♦ Can cause short term paralysis and other drugged responses ♦ Immobilizes preventing escape	♦ Immobilized for sexualized torture and prevents resistance ♦ Renders girl/woman silent, disconnected/dissociated from her body	♦ Terror ♦ Increased physical and cognitive powerlessness and helplessness ♦ Mental torture pain and suffering

15. When a woman or a woman as a child has 'lived' in such an environment in which the above grievously destructive acts of non-state torture are perpetrated this means she lived/lives with severe pain and suffering, physical or mental, every minute of every day. She is dehumanized to the extent she may think of herself as an "it" or a "nothing" having internalized a sense of deep worthlessness and spiritual shame, with her right to dignity extinguished. If she was a child so entrapped, psychologically she can become conditioned to believe such captivity and destructive relationships are the norm. This distorts her ability to understand mainstream society and its culture and contributes to the acculturational tortures that are intentionally inflicted to increase a state of on-going captivity.

THE EMERGING ISSUE OF TORTURE PERPETRATED BY PRIVATE NON-STATE ACTORS: CAT ARTICLE 1 AND COMMITTEE AGAINST TORTURE GENERAL COMMENT NO. 2 IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES (In addition Human Rights Commission General Comment No. 20 on article 7 of the ICCPR)

16. Gleaned from the above information provided in figure 2, identification of acts of classic torture by private actors must be named as an emerging and distinct form of violence, predominately gender-based, perpetrated against women and girls. It must not be trivialized and misnamed. There is a fundamental human right for all peoples—this includes women and girls—not to be subjected to torture. The Human Rights Committee General Comment No. 28 on article 3 of the ICCPR on equality of rights between men and women states "that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality" (para. 2).[22] Human Rights Committee General Comment No. 20 on article 7 of the ICCPR, identifies that State parties have duties to protect every person against acts of torture prohibited by article 7 of the ICCPR through legislation, including by persons acting "in a private capacity" (para. 2).[23] In addition, the Committee against Torture General Comment No. 2 Implementation of article 2 by States Parties, paragraph 18 writes that,

> *[T]he failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts*

[22] UN Doc. CCPR/C/21/Rev.1/Add.10, General Comment No. 28, 29 March 2000.
[23] CCPR General Comment No. 20. Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Article 7), (Forty-fourth session, 1992).

impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.

17. Classic torture perpetrated by persons acting "in a private capacity" is differentiated from other human right crimes such as female genital mutilation or human trafficking. Figure 3, Non-State Actor Torture, is suggested here as a model to illustrate the emerging forms of gender-based violence that have increasingly come to be recognized as amounting to torture perpetrated by persons acting "in a private capacity."[24] In this model these emerging forms of torture by non-state actors are grouped under three heading:

(a) classic tortures
(b) commercial-based tortures, and
(c) socio-cultural or religious-based tortures

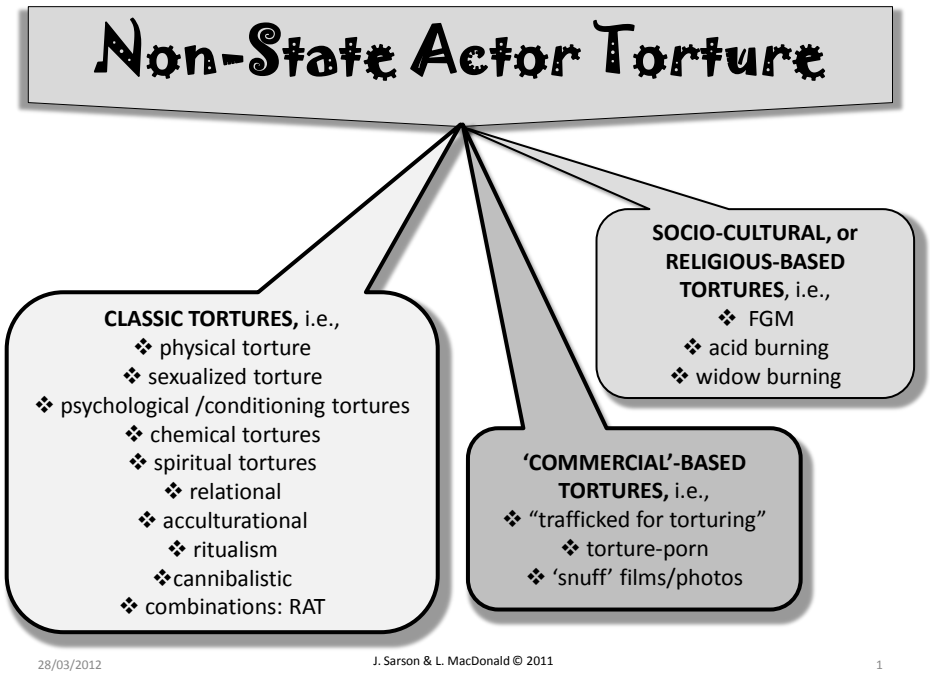

Figure 3: Non-state actor torture

18. ***Socio-cultural or religious-based tortures***. Female genital mutilation (FGM), acid and widow burning have already been identified as forms of gender-based torture perpetrated by private actors by several United Nations Special Rapporteurs on Torture.[25,26] These have generally been associated with beliefs and practices that have been considered traditional, cultural, or having some religious affiliation. Although some forms of torture such as FGM that is perpetrated by private actors is inflicted only on girls, other forms such as commercial-based tortures are not always absolutely gender-specific.

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[24] Sarson, J. & MacDonald, L. (2011). *Non-state torture—Specifically sexualized non-state torture—Inflicted in the private/domestic sphere against girls/women: An emerging "harmful practice*". Expert paper submitted to the UN Joint CEDAW and CRC Committee. Available http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/JeanneSarson-LindaMacDonald.pdf

[25] Méndez, J. E. (2011, June 1). *Female genital mutilation: Progress-realities-challenges*. Side event sponsored by Women's UN Report Network, Worldwide Organization for Women and NGO Committee on the Status of Women-Geneva. Available http://www.wunrn.com/news/2011/06_11/06_06/060611_un.htm

[26] Nowak, M. (2010, September 15). *"Acid burning attacks-victimization, survivors, support*". Side event sponsored by Women's UN Report Network, Worldwide Organization for Women and NGO Committee on the Status of Women-Geneva. http://www.violenceisnotourculture.org/files/UN%20SR%20Torture%20Statement%20for%20Event%20on%20Women%20&%20Acid%20Attacks-HRC%2015.pdf; _____. (2010, March 8). *Statement by Manfred Nowak, Special Rapporteur on torture to the 13th session of the Human Rights Council* (p. 3). United Nations, Geneva.

19. ***Commercial-based tortures***. Classic sexualized adult inflicted pedophilic 'pornographic' torture-porn can, for instance, also be inflicted on male children; however, the girl child is the predominate victim. For example, in figure 4, the Canadian Centre for Child Protection did a study of 4,110 images of pedophilic pornographic violence; the results showed that 83% of the child victims were girls.[27] This study and others,[28,29] expose the horrific reality that children of many ages are powerless victims of pedophilic torturers. The acts of classic torture perpetrated by private persons is sexualized and included degradation tortures, bestiality, immobilization torture as in "bondage", terrorization that accompanies weapons usage, psychological trauma when forced to inflict harms on others and torture that the researchers identified as necrophilic which can be classified as "snuff" images. At one time such adult-child victimization imagery, including "snuff', was commonly denied to exist. This is no longer possible. There is a supply and demand for torture-porn including pedophilic-necrophilic-porn, evidence that was collected by police in the U.K.[30,31] Demand for adult-child sexualized violence featuring themes of humiliation, degradation and torture has been in the Canadian news.[32] Canadian media and its use of language expose, for example, a demand for "torture" crimes against children as well as infant victimization.[33] Surely, many Canadian politicians read newspapers and listen to television. And surely, they see and hear the word "torture" so they cannot be ignorant that such a human rights violation of classic torture is being committed against children. The question becomes: Do they even care?

Supporting evidence that pedophilic non-state or private actor torture occurs in various countries:

- **In Canada** the RCMP Child Exploitation Unit stated 20% of the images they view involve torture and bondage
- **In the US** the study suggested 26% of the images viewed showed torture and bondage
- **In Australian** the Federal Police study: showed 21 % involved torture, bondage and rape
- **Canadian Centre for Child Protection** 2.7% (111) of 4,110 images viewed showed:
  1. Torture, bestiality, bondage
  2. Necrophilia, degraded, defecated & urinated on
  3. Weapons used
  4. Forced to inflict sexualized harms against each other
  5. Mostly inflicted on children under 8 years old
  6. Girls were in 83% of the pedophilic images
  7. 9.8% violent images involve newborns & toddlers

Figure 4: Pedophilic Pornographic torture

20. Children compose a specific vulnerable population and they require special care and protection including legal protection.[34] In the outcome document of the 51st session of the Commission on the Status of Women it was recognized that torture victimization and discrimination against the girl

[27] Canadian Centre for Child Protection. (2009, November). *Child sexual abuse images An analysis of websites by cybertip!ca*. Available http://www.cybertip.ca/pdfs/Cybertip_researchreport.pdf

[28] In Canada: Caswell, J., Keller, W., & Murphy, S. (Producers). (2006, July 26).Supervisor of RCMP child exploitation unit, Ottawa, Earla-Kim McColl speaking about child pornography [Television broadcast]. Atlantic Canada: *CTV News*.

[29] Reference to the U.S. and Australia data is in: Maalla, Najat M'jid. (2009, July 13). *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography* (A/HRC/12/23, paras. 39-40).

[30] Burke, J., Gentleman, A., & Willan, P. (2000, October 1). British link to 'snuff' videos. Available http://www.guardian.co.uk/uk/2000/oct/01/ameliagentleman.philipwillan

[31] *Scottish Daily Record & Sunday*. (1999). Perverts murdered woman for snuff movie. Available http://www.thefreelibrary.com/Perverts+murdered+woman+for+snuff+movie.-a060425776;

[32] Seymour, A. (2011, May 4). Catholic bishop enters custody at Ottawa courthouse after pleading guilty to importing child pornography. *The Ottawa Citizen*.

[33] Gillingham, R. (2010, September 11). Former priest sent to jail. *The Telegram*.

[34] UN. *Convention on the Rights of the Child*. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 Entry into force 2 September 1990, in accordance with article 49.

child occurs in the domestic or public sphere.[35] To respect and protect their human rights and prevent their on-going childhood vulnerability, socio-legal systems of Canada must criminalize torture by non-state actors otherwise the Canadian culture will fail to support and protect girls predominately, and boys, from the on-going impunity provided to non-state or private actors of classic commercial-based torture.

21. Manfred Nowak, past United Nations Special Rapporteur on Torture, stated in his 2010 report that certain cases of human trafficking can amount to torture victimization (para. 200).[36] This involves acknowledging that human trafficked victims are subjected not only to the transporting, harbouring, and coercion as defined in article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,[37] but that the victims are intentionally and purposefully subjected to acts of violence that cause severe pain and suffering and meet the defining elements of torture as stated in article 1 of CAT.

22. ***Classic-based tortures***. Included in the model on non-state torture are examples of various categories of classic torture previously discussed in Figure 2: Categories of Classic Torture (page 9). In the 2010 report by independent expert and past United Nations Special Rapporteur Manfred Nowak, he stated he was able "to provide a fairly comprehensive report about the phenomena of torture … in our contemporary world" (paras. 7-8).[38] His report included the reality of women and children and torture by non-state actors in the domestic/private sphere. In so doing he referenced the defining elements of torture victimization of article I of CAT and the issue of the powerlessness of the victims who "find themselves in a situation of complete dependency" (para. 37). Women and children who are being subjected to torture depend on the torturer for their survival or alternatively their death. They and their bodies consciously and/or spontaneously respond at the basic level of trying to survive. This is a second-by-second dependency for survival. Mr. Nowak's discourse included descriptors of the "devastating brutality", the "repugnant creativity" and the humiliation of the torture methods which all dehumanize the person being tortured. He listed examples of classic torture that victimized persons endure, some of which are ancient (paras. 50-55). Similar examples of classic torture victimization are visible in a Canadian woman's story which follows in paragraph 23. Although she endured examples not listed by Mr. Nowak, she does speak of enduring many that Mr. Nowak listed, such as:

- ✓ severe beatings of being punched and kicked, frequently to unconsciousness
- ✓ beatings with instruments and weapons
- ✓ floggings using whips
- ✓ suffocations during oral raping
- ✓ threatened with electric shocking
- ✓ handcuffed to a radiator
- ✓ stripped naked
- ✓ falanga (beatings to the soles of their feet)
- ✓ sexualized tortures
- ✓ exposure to extreme temperatures

[35] United Nations Division for the Advancement of Women. (2007), *Agreed conclusions on the elimination of all forms of discrimination and violence against the girl child, outcome document of the 51st session of the Commission on the Status of Women 26 February-9 March.* United Nations Headquarters, New York: Department of Economic and Social Affairs.
[36] UN Doc. A/HRC/13/39/Add.5.
[37] UN Doc. CTOC/COP/2005/3/Rev.1.
[38] UN Doc. A/HRC/13/39/Add.5.

- ✓ submersion in water
- ✓ psychological tortures sleep deprivation and prolonged solitary confinement

23. Published articles describing acts of non-state classic torture perpetrated by private actors replicate the dehumanizing horrors and brutalities listed by Mr. Nowak. For example, in this article published by Canadian Centre for Victims of Torture (CCVT), a woman's story of classic torture perpetrated by her spouse and three others briefly illustrates many forms of classic torture;[39]

> *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 laugher humiliated me and 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.*

24, Mr. Nowak went on to say that the patterns of classic torturing suggest that formal and/or informal "torture training" occurs and that some is inflicted in a systematic manner (para. 56). The systematic or ritualistic patterns of some torturers, State or non-state, is not surprising given that it is generally accepted that relational violence perpetrated in the private sphere is learned and can be passed on and re-perpetrated by some who have been likewise victimized or so exposed. The systematic pattern of classic torturers is evidenced when comparing the Canadian woman's story with the list presented by Mr. Nowak; however, the ritualistic patterns of classic torture become clearer as the woman described how her spouse anally raped her with the "*Hermit 827 wine bottle"* and how the 'client-perpetrators' inflicted a ritualized pattern of forcing her to Self-cut.

CANADA'S DUE DILIGENCE: COMMITTEE AGAINST TORTURE GENERAL COMMENT NO. 2 IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES

25. CAT Committee General Comment No. 2, and the implementation of article 2 by State parties, points out that freedom from torture victimization is a non-derogable human right of ***all*** (emphasis added) persons, that must be absolutely protected and prevented under all circumstances, at all times and in any place, in the public or private spheres, whether perpetrated by State or non-state actors (General Comment No. 2, paras. 1, 3, 5, 22, 23). Paragraph 18 from the 2007 and 2008 General Comment No. 2 outlines State parties due diligence responsibilities to prevent non-state or private actors from committing acts that are "impermissible under the Convention". It,

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

[Makes] clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture…are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, 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 such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission.

26. Canada has known for many years and acknowledged in 2008 that non-state torture occurs in Canada. However, the Canadian government continues to make the decision not to specifically and distinctly criminalize acts that constitute torture perpetrated by private non-state actors. Such torturers continue to be able to act with impunity in that they cannot be and are not held responsible for committing the crime of torture. Canada's position violates its due diligence responsibilities as outlined in the CAT Committee's General Comment No. 2 which describes that a State needs—in this case Canada needs "to take actions that will reinforce the prohibition against torture through legislative, administrative, judicial, or other actions that must, in the end, be effective in preventing it," (para. 2) whether perpetrated by State or non-state actors. Amnesty International and REDRESS stated that "precise criminal labelling enables the full range of different social ills or evils represented by a course of conduct to be pronounced."[40] This is precisely what naming and criminalizing acts of non-state or private actor torture would do. It would specifically state and condemn the prohibited human rights violation of torture by non-state actors.

27. ***Official consent/acquiescence***. As stated in the Committee against Torture, paragraph 18 above, "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 such impermissible acts." This position was stated as far back as 1986 by the first United Nations Special Rapporteur on Torture, Professor Kooijmans, who verbalized that passive attitudes of States might be considered consent or acquiescence when they abandon the "function of protecting its citizens from any kind of torture."[41]

28. Invisibilizing torture by non-state or private actors by misnaming it another crime has the result of not prosecuting it as the crime of torture under domestic law. It also results in the failure to "reinforce the prohibition against torture." In Canada, the Government of Canada is aware that this is what it is practicing because a Canadian governmental official acknowledged, in 2008, that torture by private actors does occur in Canada. Responding to a question posed by CEDAW Committee expert Ms. Tan during Canada's country report and presentation to the CEDAW Committee, the discourse between the Canadian governmental delegate and Ms. Tan was as follows:

> Ms. Tan asked the Canadian delegation the following question, "*Some acts involving family violence constitute torture … as part of its many family violence initiatives, had [Canada] examined the issue of non-State-actor torture by family members?*"[42]

[40] Amnesty International and REDRESS. (2011). *Gender and torture conference* (p. 45). London, UK: Amnesty International.
[41] UN Doc. E/CN.4/1986/15, para. 38.
[42] CEDAW. (2009, January 28). *Committee on the Elimination of Discrimination against Women, Forty-second session Summary record of the 854th meeting (Chamber A) Held 22 October 2008.* (CEDAW/C/SR.855 (A), paras. 36). Palais des Nations, Geneva.

Canadian governmental delegate, Ms. Morency, responded with, "*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...*"[43]

29. The discourse in the Committee against Torture General Comment No. 2 outlines that when States fail to exercise due diligence perpetrators are able to commit acts that are "impermissible under the Convention". Canada's socio-legal actions that minimize and misname torture perpetrated by private actors as another crime, as stated by Ms. Morency, provides a socio-legal climate of impunity. Private torturers are able to commit impermissible acts of classic torture without being held legally responsible for their acts of torture. Canada's socio-legal failure to criminalize private actor torture does not "reinforce the prohibition against torture through legislative, administrative, judicial, or other actions that must, in the end, be effective in preventing it" (Committee against Torture, para. 2). The consequences are that torture by private actors is invisibilized therefore deemed not to be occurring in Canada. Victimized persons do not have access to redress including full rehabilitation for the severe torture pain and suffering they survived. The Special Rapporteur on violence against women, Ms. Rashida Manjoo, noted that States need to address structural causes by giving recognition to the multiple forms of gendered violence that occur by addressing their due diligence obligations of prevention, investigation, punishment and the provision of reparation for all acts of violence against women to effectively achieve human rights for all.[44] Canada has not done this. Rather it continues not to recognize torture perpetrated by private actors as one specific and distinct form of violence.

CANADA'S FAILURE TO PREVENT ITS ACQUIESCENCE: ARTICLE 1 OF CAT AND COMMITTEE AGAINST TORTURE GENERAL COMMENT NO. 2 IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES

30. Canada has and continues to misname the human rights violation and crime of torture by non-state or private actors as another crime, therefore perpetuating its indifference to the fact some of its citizens—predominately women and girls—are victims of non-state torture. Canada has taken no action to specifically and distinctly criminalize torture perpetrated by private actors such as parents, guardians, spouses, and like-minded others. As understood from Committee against Torture General Comment No. 2, paragraph 18, when a State such as Canada takes no such action this suggests Canada is giving a form of agreement, and/or permission or acquiescence for such acts of torture to continue to be inflicted.

31. Canadian governments have been aware of the perpetration of torture by private actors, at least, since 1992. Below are some examples of events which have informed Canadian governmental officials that non-state or private actor torture has been occurring in Canada.[45]

DATE	INFORMING EVENTS
1992 March	Co-chair of the Canadian Panel on Violence Against Women, Pat Freeman Marshall, spoke openly of hearing about levels of victimization that included "years of terrorism in

[43] Ibid. (para. 46).
[44] Manjoo, R. (2012, February 29). *Statement by Ms. Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences*. Presented at the Commission on the Status of Women Fifty-sixth session, 27 February to 9 March 2012, United Nations Headquarters, New York.
[45] Sarson, J. & MacDonald, L. (2011). *Due diligence obligations: Non-state torture of women/girls in the so-called private sphere—A Canadian and multi-country perspective*. Paper submitted as a response to Special Rapporteur 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".

	relationships" and degrees of torture that her only point of reference was to "torture in a prisoner of war camp."[46] The Canadian Panel on Violence Against Women was appointed and introduced by the Minister Responsible for the Status of Women in 1991.
1993	The Canadian Panel on Violence Against Women reported that the torture of women, and women when they were children, had occurred/was occurring in Canada. The Panel wrote in the Executive Summary that "*Every day in this country women are maligned, humiliated, shunned, screamed at, pushed, kicked, punched, assaulted, beaten, raped, physically disfigured,* ***tortured*** *(emphasis added), threatened with weapons and murdered*."[47]
1999 July 15	A Nova Scotia provincial government's consultative meeting was 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*. Later this document was submitted to the UN as Canada's input to the document, *A World Fit for Children.* At the Nova Scotia consultative meeting "torture" victimization was included in the provincial document; however, when the federal National Plan of Action document was released torture victimization had been excluded.[48]
2006 July	A supervisor of the child exploitation unit of the Royal Canadian Mounted Police, Ottawa, and the federal police service of Canada, in a media interview stated that approximately 20% of the pedophilic 'pornographic' images viewed involved torture.[49]
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."*[50]
2009 February	Petition re criminalizing non-state actor torture with cross Canada signatures was presented in the House of Commons by Mr. Bill Casey, Member of Parliament.[51]
2009 November	The Canadian Centre for Child Protection, with its website c*ybertip!ca* and phone line, works with police; this site has a research report describing that 4,110 images of adult-child pedophilic `pornography` were viewed; the findings included; • 2.7% of the images involved the torture, bestiality and bondage of children • necrophilia, degradation, and children being defecated & urinated on • weapons used against the children • children being forced to inflict sexualized harms against each other, and • In addition, 9.8% of the images involved the victimization of infants and toddlers; 83% of the images involved girls, and the most common age of victimization was under eight years.[52]
2011	The NGO, the Canadian Federation of University Women (CFUW) passed policies urging the

[46] Cox, W. (1992, March 23). Panel hears horror stories of violence against women. *The Chronicle Herald The Mail Star*, p. B13.
[47] Canadian Panel on Violence Against Women. (1993). *Changing the landscape: Ending violence ~ Achieving equality* (Executive Summary/National Action Plan, p. 5). Ottawa: Minister of Supply and Services Canada.
[48] Nova Scotia Department of Community Services. (2000). *The national children's agenda Nova Scotians respond A report on the 1999 consultation process, December 1999* (p. 11). Halifax, NS: Author.
[49] Caswell, J., Keller, W., & Murphy, S. (Producers). (2006, July 26).Supervisor of RCMP child exploitation unit, Ottawa, Earla-Kim McColl speaking about child pornography [Television broadcast]. Atlantic Canada: *CTV News*.
[50] Canadian Feminist Alliance For International Action (FAFIA). (2008, October 20). *NGO statement (Canada)*. Available http://nonstatetorture.org/files/7213/1325/5484/CanadaNGOCEDAWFAFIA.pdf
[51] Parliament of Canada. (2009, February 11). *40th Parliament, 2nd Session Edited Hansard No. 013* (Under Routine Proceedings, Petitions, Torture). Author. Available http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3669101&Language=E&Mode=1&Parl=40&Ses=2
[52] Canadian Centre for Child Protection. (2009, November). *Child sexual abuse images An analysis of websites by cybertip!ca*. Available http://www.cybertip.ca/pdfs/Cybertip_researchreport.pdf

August and on-going	Canadian government to criminalize NST and implement appropriate policies and interventions to address NST victimization with attention to gender-based NST victimization.[53] Members of the CFUW have sent correspondence or spoken with Members of Parliament concerning the occurrence of torture by non-state or private actors and the need for its criminalization. The Minister of Justice has refused to meet to discuss the reality that Canadian infants, toddlers, older children and adult citizens are victims of non-state or private actor torture.

CANADA'S DEFICIENT LEGAL FRAMEWORK: CAT ARTICLE 1 and COMMITTEE AGAINST TORTURE GENERAL COMMENT NO. 2 IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES

32. In the 2010 report by previous United Nations Special Rapporteur, Manfred Nowak, he included this statement, "domestic criminal law has to cover all possible cases falling under the definition of torture" (para. 48).[54] Presently, Canadian domestic law does not cover acts that fit the defining elements of torture, (CAT article 1) perpetrated by non-state or private actors; therefore, there is a failure in Canadian domestic law to cover and protect "all possible cases falling under the definition of torture." Because the *Criminal Code of Canada* does not recognize non-state or private actor torture as a specific and distinct human rights crime Canadian domestic law fails to set for its citizens the human right standard that no one shall be subjected to acts of torture. There is also the failure to provide, for example, informed protection, such as police protection, to its vulnerable citizens—children and adults--who have been, who are, or who may be at risk of suffering acts of torture perpetrated by private actors. Children, girls predominately, and women so victimized are members of a group/population who remain at extreme risks (a) because they are children, (b) because of being female, and (c) because they have suffered torture victimization which presently leaves them vulnerable and marginalized. According to the 2007 Committee against Torture General Comment No. 2, there is an obligation on States—on Canada—to "ensure the protection of members of groups especially at risk," (para. 21) "to eliminate any legal or other obstacles that impede the eradication of torture," (para. 4) and to "review and improve national laws." (para. 4).[55] According to Ms. Ertürk, past Special Rapporteur on violence against women, "reforming criminal codes is a first step to ensuring access to justice for women."[56] For Canada to make positive interventions to eradicate all forms of torture and to eliminate legal obstacles to ensure victimized women and girls have access to justice, torture perpetrated by non-state or private actors would need to become a distinct criminal offence to ensure that such acts of torture are explicitly prohibited.

33. ***A deficient legal framework***. As long as the Government of Canada misnames torture by non-state private actors as another form of crime, there is a failure to take into account the destructive gravity of classic torture victimization. Torture is considered one of the worse, most destructive human rights violations; it is impermissible to minimize, trivialize or invisibilize the human right violation of torture to another crime. Inflictions of other criminal offences, such as bodily injuries, do not equally meet the defining elements of torture given in article 1 of CAT as the "particular evil of torture is the deliberate infliction of severe pain or suffering," (para 74) and not all acts of torture inflict physical bodily injuries according to Mr. Nowak, past Special Rapporteur on Torture.[57] This truth is evidenced in

[53] Canadian Federation of University Women (CFUW). (2011). *Policy Book 1964 -2011,* p. 152. Available http://www.cfuw.org/Portals/0/Advocacy/PolicyBook/Policy_Book_2011.pdf
[54] UN Doc. A/HRC/13/39/Add.5.
[55] UN Doc. CAT/C/GC/2/CRP.1/Rev.4, para.4.
[56] Ertürk, Y. (2008, January 29). *Indicators on violence against women and State response* (UN Doc. A/HRC/7/6, para. 79).
[57] UN Doc. A/HRC/13/39/Add.5, para. 74.

the 'stories' of the two women shared previously. Reproductive cannibalistic torture is not physically evident; its dehumanizing consequences of anorexia only became visible once the woman disclosed the association. Being held underwater in the bathtub and threatened with electrocution do not cause physical evidence nor is the suffering of terror and horror of these acts of classic torture visible. The on-going decision of the Government of Canada to reject creating a distinct law to hold non-state or private actors directly accountable for the acts of non-state classic torture they perpetrate has a negative impact on the lives of women and girls. To effectively change negative impacts strategies, policies and practices need to address the specific criminal violation of torture by private actors according to resolution 52/86 on crime prevention and criminal justice measures necessary to address gender-based violence against women.[58]

34. ***A culture of impunity***. In any country, including Canada, when applicable non-state torture laws do not exist private actors enjoy built-in socio-legal impunity. They will not be held accountable for the offence of torture. Invisibilizing torture perpetrated by non-state private actors increases women and girls' vulnerability to further risks for victimization because impunity 'nurtures' the perpetrators on-going capacities for inflicting such human right violations; this is particularly so when acts of non-state torture are invisibilized.

35. ***Criminalizing torture inflicted by private non-state actors in Canada***. In Canada to achieve the criminalization of torture by non-state or private actors calls for amendments to section 269.1 on torture of the *Criminal Code of Canada*.[59] For example, instead of reading "*Every official who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment* ...." the language could be amended to read: "'***Every one'*** *who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment* ...." Replacing the stipulation of "*every official*"—persons who in their capacities are official representatives of the government of Canada—with '*every one'* means Canada will not tolerate, will not look the other way, will not continue to consent or give acquiescence to impermissible acts of torture being committed, by State or non-state actors, against another human being be they infant, toddler, older child or adult, remaining mindful that women and girls are the predominate victims of acts of torture perpetrated in the domestic or private sphere.

36. Canada's position to intentionally misname private actor torture as another crime as stated by governmental lawyer, Ms. Morency, (para. 28 above) delivers a socio-legal message that the classic torture severe pain and suffering endured by women and girls predominately is not deserving of equal legal recognition as State inflicted severe torture pain and suffering. When approached, the Government of Canada insists that existing legal provisions adequately address private actor torture. The discrimination of the Canadian government's existing provisions argument can be seen when examining the case of the member of the Royal Canadian Mounted Police who was charged with torture as well as other offences such as aggravated assault, unlawful confinement, and the obstruction of justice.[60] In this case it is clear that the charge of torture is differentiated and distinguished from the other offences of aggravated assault, unlawful confinement and the obstruction of justice. When women and girls suffer non-state or private actor torture it too must be differentiated from other crimes they may have also suffered. The socio-legal discrimination of misnaming acts of classic torture perpetrated by non-state actors violates Canada's due diligence responsibilities to prevent and protect the human right of all

[58] UN General Assembly. (1998, February 2). *52/86. Crime prevention and criminal justice measures to eliminate violence against women*. (A/RES/52/86). Available http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/764/59/IMG/N9876459.pdf?OpenElement

[59] Department of Justice Canada. (2009). *Criminal code* of *Canada* (Torture, s. 269.1). Ottawa: Government of Canada.

[60] Committee against Torture Doc. CAT/C/CAN/6, para. 50.

persons from being subjected to torture. It devalues gender equality, dignity and human worth. It prohibits women and girls full enjoyment of all human rights including the right not to be subjected to torture at any time as specifically enshrined in the CEDAW General Recommendation 19, 7 (b), in ICCPR, article 7, in the *Declaration on the Elimination of Violence against Women*, article 3(h), in the UDHR, article 5, as well as the evolving application of a gendered framework of the CAT.

37. Article 1 of the CAT defines torture as involving "acts by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes [as]...for any reason based on discrimination of any kind...." How can our humanity develop and how will we ever eliminate fundamental gender-based discrimination if the Canadian socio-legal human rights perspective delivers a message to women and girls tortured by non-state private individuals/groups that they and the torture they suffered as human beings is of lesser human right recognition and worth than that of the person whose torturer is a State actor?

38. When the torturer is someone who the victimized person—the infant, toddler, older child or adult—knows and depends on—parents, other family members, guardians or spouses, for example—the violation of trust and the complex destruction of Self that the victimized person suffers is unconscionable. It should be of no surprise that classic torture can happen within families given General Assembly Resolution 65/228 which identifies that gendered violence is perpetrated by non-state or private actors within families and by others in communities and that there is a need to strengthen criminal justice responses and prevention.[61] Fundamental gender-based violence is suffered differently by women and girls. For example, during sexualized tortures there are risks of forced impregnations and forced abortions,[62] these or any act of classic torture inflicted by State or non-state actors should never be the reason to discriminate against women or girls so tortured by withholding from them their human and legal right to seek justice for having been subjected to torture.

CANADIAN STATISTICS—TRACKING CRIMES OF NON-STATE TORTURE: COMMITTEE AGAINST TORTURE GENERAL COMMENT NO. 2 IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES

39. Canadian women and girls who are subjected to or at risk of suffering classic non-state or private actor torture are invisible in Canada. When the Committee against Torture identifies that country reports "frequently lack specific and sufficient information on the implementation of the Convention with respect to women" (para. 22),[63] this applies to Canada. Recently, United Nations Resolution 65/205 again calls on States, Canada included, to identify in its country reports to the Committee against Torture gender-based manifestations of torture.[64] Additionally, the Committee against Torture has asked Canada for statistical data related to acts that constituted torture as specifically addressed in paragraph 8 of the Committee's report.[65] Such information will not be forth coming in regards to identifying torture perpetrated by private non-state actors. No such data can be

[61] UN Doc. A/RES/65/228, page 3, para. 1.
[62] Sarson, J. & MacDonald, L. (2011). *Non-state torture—Specifically sexualized non-state torture—Inflicted in the private/domestic sphere against girls/women: An emerging "harmful practice"*. Expert paper submitted to the UN Joint CEDAW and CRC Committee. Available http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/JeanneSarson-LindaMacDonald.pdf
[63] UN Doc. CAT/C/GC/2/CRP.1/Rev.4, para. 22.
[64] UN General Assembly. (2011, March 28). *Resolution adopted by the General Assembly. 65/205. Torture and other cruel, inhuman or degrading treatment or punishment* (A/RES/65/205, Sixty-fifth session, Agenda item 68 (a)). Available http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/65/205&Lang=E
[65] Committee against Torture. (2011, October 31 to November 25). *List of issues prepared by the Committee to be considered in connection with the consideration of the sixth periodic report of Canada* (CAT/C/CAN/6). Advanced unedited version, para. 8.

tabulated when the human rights crime of non-state or private actor torture is not specifically identified and criminalized in the *Criminal Code of Canada*. Therefore, in Canada such a human right crime will continue to be knowingly invisibilized and intentionally misnamed as another form of violence such as an assault and Canada's State reports and due diligence responsibilities will not be achieved.

CLASSIC NON-STATE TORTURE VICTIMIZATION, REPARATION, RECOVERY AND REHABILITATION: COMMITTEE AGAINST TORTURE GENERAL COMMENT NO. 2 THE IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES

40. Reparation aims "to eliminate as far as possible the consequences of the illegal act."[66] It is impossible to give back to a woman her childhood if her classic torture victimization began when she was a child, perpetrated by family members or guardians for example. But it is possible to rebuild a renewed relationship with her-Self, to provide her with dignity, respect and access to a legal justice system that will hear her truth. She must be listened to and believed. She needs to have informed safety and protection. In Canada, her human right not to be subjected to torture is dismissed by being misnamed as another crime therefore both she and the classic torture endured are invisibilized. And if the law does not work it needs to be changed.[67] Canada's laws need changing.

41. Unless a woman has the socio-relational opportunity to speak her truth and to be heard and understood she can carry the torture pain as unreleased cellular memory—'body talk'—for years. [68] This has long term consequences to her health and functionality. For example, when cellular memory is stored versus emotionally, cognitively and biologically processed it can be re-experienced by being re-felt during a flashback. This means that the woman re-feels and re-experiences the torture pain ordeals that have been stored in memory, even at a cellular level. For example, when the memories come of having her vagina burnt she may physically re-experience both the searing burning torture pain followed by physical symptoms of having a vaginal watery discharge that mimics her history of the time when her vaginal tissue was blistered from the burning tortures and the aftermath of leaking clear blister fluid. In her flashbacking her body can replay incontinence of urine and feces which can/does actually occur following vagina or anal rapes. This adds present day humiliation. When oral torture raping memories surface she can re-experience shortness of breath, gagging symptoms and difficulty breathing. Such body talk memories many be experienced as sensations of being choked and/or the sensation of a heavy weight on her chest. The heavy weight sensation can be the memory of being sat or kneeled on during oral raping tortures and being forced to swallow seminal fluid. Other serious threats to her health can occur when her responses are misdiagnosed and she is pathologically labelled as mentally ill, drugged, hospitalized and stigmatized, for instance. Women so victimized suffer the same intense agony as those tortured by State officials.[69] Obviously, enduring classic torture victimization by private actors severely impairs and nullifies the enjoyment of human rights and life generally of women or girls so victimized.

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[66] Amnesty International and REDRESS. (2011). *Gender and torture conference* (p. 48). London, UK: Amnesty International.
[67] Ibid, p. 54.
[68] Sarson, J., & MacDonald, L. (n.d.). *Sexualized Torture in the Domestic/Private Sphere and 'Body Talk': A Human Rights and Relational Feminist Paradigm*. Paper presented at the Sexual Violence Conference: Sept 8, 2011, Forensic Psychological Services, Middlesex University London, U.K. Available http://www.mdx.ac.uk/Assets/Jeanne%20Sarson%20%26%20Linda%20MacDonald.pdf
[69] Nowak, M. (2010, September 15). "*Strengthening the protection of women from torture and ill-treatment Acid burning attacks—victimization, survivors, support"* (p. 2). Side-event sponsored by Women's UN Report Network, Worldwide Organization for Women and NGO Committee on the Status of Women-Geneva.

42. To achieve best practices those who have been so tortured must be listened to and have the right to be believed. The power of naming the acts of classic torture suffered is about attaining the right to gender equality and social justice. It is shocking that our government has never asked the question: What do those so tortured need to be safe, to recover, to be included versus excluded from Canadian society and legal justice? We include here the voice of one Canadian woman who freed her-Self from on-going childhood classic torture victimization. Years of poverty and struggle gradually led to safety and on-going recovery, which continues today. Presently in her 40s, this is what she says about the need for a specific law to criminalize torture by private or non-state actors:

> *When society minimizes [non-state torture], ... 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.'*

43. Women so harmed have a right to be seen as equal human beings worthy of dignity and respect. When socio-legal systems negate their human right not to be subjected to torture by non-state or private actors this is a demeaning and exclusionary socio-legal injustice that compounds the torture harms already suffered. To right such a wrong the CFUW suggests that the Committee against Torture recommend that Canada initiate the following best practices.

ACHIEVING BEST PRACTICES: COMMITTEE AGAINST TORTURE GENERAL COMMENT NO. 2 IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES

44. Based on the 2008 Committee against Torture General Comment No. 2 Implementation of article 2 by States Parties, obligations are imposed on States parties "to take actions that will reinforce the prohibition against torture through legislative, administrative, judicial, or other actions that must, in the end, be effective in preventing it," (para. 2) whether acts of torture are perpetrated by State or non-state actors. The actions recommended by the Committee in its General Comment No. 2 are condensed under the necessity to criminalize torture whether perpetrated by State or non-state actors because (para. 11):

(a) Naming and defining the human rights crime of torture alerts everyone—perpetrators, victims, and the public, to the special gravity of the crime of torture,
(b) Criminalizing non-state torture strengthens the deterrent effects,
(c) Criminalization enables States to responsibly track crimes of torture,
(d) Criminalization enables and empowers the public to monitor and, when required, to challenge State action as well as State inaction that violates the Convention,
(e) Criminalization enables States Parties to address their obligations to eliminate any legal or other obstacles that impede the eradication of torture and to keep under review, and improve and revise national laws and performance in a process of continual evolution (para. 4), and
(f) Criminalization assists State to intervene to prevent on-going dangers of privately inflicted harm because if States Parties do not impose the offence of torture punishable under its criminal law actual or potential loopholes for impunity occur (paras. 9, 15).

45. This Shadow Report represents the CFUW's efforts to monitor and out of necessity to challenge Canada's inaction as this inaction violates the evolving gendered framework regarding applications of

the CAT as expressed in point 1 (e) above. Based on the CFUW's adopted policies of 2011,[70] several recommendations are considered necessary for achieving best practices in relation to upholding the human right of women and girls predominately not to be subjected to torture by private or non-state torturers in Canada.

RECOMMENDATIONS FOR BEST PRACTICE

46. RECOMMENDATION NO. 1

That the Government of Canada amend, immediately, the *Criminal Code of Canada* to include torture committed by non-state or private individuals and organizations, (non-state actors) as a specific and distinct criminal offence.

47. RECOMMENDATION NO. 2

Following the criminalization of torture inflicted by non-state or private actors the Government of Canada needs to:

- **i. 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;**
- **ii. Be respectful of the priority of gender-sensitive frameworks on the United Nations agendas, given that women and girls are disproportionally affected by extreme forms of violence; and,**
- **iii. Uphold the evolving commitments of United Nations human rights instruments such as CAT which Canada has ratified.**

48. Examples of due diligence actions that will reinforce the prohibition against torture by non-state or private actors would include, for example:

(a) Public education so Canadian citizens become aware of the special gravity of the crime of torture that is inflicted by private actors. This will facilitate social transformations and support human rights education as stated in the *United Nations Declaration on Human Rights Education and Training*.[71] Such a program needs to be extended into all levels of the Canadian educational system.

(b) Sensitization workshops to increase professional knowledge including the promotion of a human rights framework.

(c) The collection of statistical data about the human rights crime of torture by non-state or private actors so Canada can track all crimes of torture and share this data in country reports as per United Nations Resolution 65/205,[72] for example.

(d) Increasing mandatory training in the specialized investigative and protective skills of police and child protection workers to increase their comprehension that non-state torture is perpetrated by private actors and can/is inflicted against very young children. Additionally, by increasing professional skills this can help decrease the danger of on-going privately inflicted harm. For example, sexualized harassment is a most common form of violence against women and girls

[70] Canadian Federation of University Women (CFUW). (2011). *Policy Book 1964 -2011,* p. 152. Available http://www.cfuw.org/Portals/0/Advocacy/PolicyBook/Policy_Book_2011.pdf

[71] UN Doc. A/C.3/66/L.65.

[72] UN General Assembly. (2011, March 28). *Resolution adopted by the General Assembly. 65/205. Torture and other cruel, inhuman or degrading treatment or punishment* (A/RES/65/205, Sixty-fifth session, Agenda item 68 (a)). Available http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/65/205&Lang=E

and is frequently chronic;[73] this does not change when the perpetrators are non-state torturers. A victimized person's fear of reprisals must be taken seriously as is their need for adequate protection.

(e) The development of specialized holistic support services to address the destructive impact of non-state torture victimization suffered predominately by women and girls including, for instance, how helpline staff can be taught how to listen to disclosures and how first responders can develop specialized intervention skills for dealing with flashbacks.[74]

(f) Eliminating the legal or other obstacles so victimized persons can partake in the "effective pursuit of justice,"[75] which is essential for healing from torture victimization as it helps to prevent victimized persons suffering the pain of being/feeling socially excluded.[76]

(g) The development of torture-informed services as victimized persons can suffer long-term,[77] and the ordeals of recovery from torture inflicted by non-state or private actors can cause responses similar to those of the torture pain suffered originally.[78] Globally services have been and continue to be established for persons who are tortured by State actors. Women victimized by non-state actors require equal access to informed torture victimization services and rehabilitation support.

[73] Ertürk, Y. (2008, January 29). *Indicators on violence against women and State response* (A/HRC/7/6, p. 11).

74 Sarson, J. & MacDonald, L. (in press). Torture Victimization—Child to Adult: Flashbacks and Connection with First Responders. (Part 1 May/June 15(5) and Part 2 July/August, 15(6)). *Sexual Assault Report.*

[75] Medical Foundation for the Care of Victims of Torture. (2009, December). *Justice denied: The experiences of 100 torture surviving women of seeking justice and rehabilitation*. Medical Foundation Press Office.

[76] Eisenberger, N. I., Lieberman, M.D. & Williams, K. D. (2003). Does rejection hurt? An fMRI study of social exclusion. *Science*, 302, 290 -292.

[77] Nowak, M. (2010, February 5). *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Study on the phenomena of torture in the world, including an assessment of conditions of detention* (A/HRC/13/39/Add.5).

[78] Sarson, J. & MacDonald, L. (2011, September 8). *Sexualized Torture in the Domestic/Private Sphere and 'Body Talk': A Human Rights and Relational Feminist Paradigm*. Paper presented at the Sexual Violence Conference: Sept 8, 2011, Forensic Psychological Services, Middlesex University London, UK.