

ACCESS TO JUSTICE FOR WOMEN AND GIRLS TORTURED BY NON-STATE ACTORS**In Context of the CEDAW Convention Articles 2(b) and (c) and 15(1) and (2)****Written Submission to the CEDAW Committee by Jeanne Sarson & Linda MacDonald****January 17, 2013****Women's and Girls' Human Right not to be Subjected to Torture by Non-State Actors**

1. We submit this paper to advocate for women's and girls' human right, inherent dignity, equality, and legal protection before the law not to be subjected to torture. Specifically addressed are:
 - a. Acts of 'classic' torture perpetrated by private individuals or non-State actors in the so-called domestic or private sphere and the need for it to be legally recognized as a specific criminal human right violation,
 - b. The need to eliminate the discrimination that presently exists in Canada or other countries with similar criminal legislation that only identifies and criminalizes torture that is perpetrated by State actors, therefore dismissing torture inflicted by non-State actors; and
 - c. Advocating for CEDAW to operationalize General Recommendation 19, 7(b) by assessing whether in country reports legislation establishes women's and girls' legal capacity to distinctly hold non-state actors accountable for acts of torture perpetrated.
2. The 1945 UN Charter affirmed the fundamental human rights of equality, dignity, and worth of women to men. Since the signing of the Charter, UN human rights instruments have evolved that specifically and distinctly include articles stating that "no one shall be subjected to torture." "No one" must always include women and girls. The UN instruments that include articles prohibiting torture are:
 - The UN *Universal Declaration of Human Rights* (UDHR), article 5;
 - The *International Covenant on Civil and Political Rights* (ICCPR), article 7;
 - The *Declaration on the Elimination of Violence against Women*, article 3(h);
 - The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), General Recommendation 19, 7(b); and
 - The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).
3. Torture is considered a *jus cogens* norm from which no derogation is permitted. Therefore, it is a non-derogable human right of all women and girls not to be subjected to torture regardless of who the torturers are—State or non-State actors. And if so tragically tortured they must have legal access to just law that permits them to speak their truth of having suffered this specific criminal human right violation.
4. Historically global female gender-based patriarchal discrimination has interfered with addressing forms of violence inflicted against women and girls in the private or domestic sphere that were and are manifestations of torture perpetrated by non-State actors. However, since 2007 for instance, such manifestations have increasingly become an issue of jurisprudence by the Committee against Torture.¹ Genderization of the CAT can be found in the Committee's 2007 General Comment No.2 where "rape, domestic violence, female genital mutilation and human trafficking" can be considered manifestations of gender-based violence that fall under the CAT and that are perpetrated by

¹ Fortin, K. (2008, December). Rape as torture an evaluation of the Committee against Torture's attitude to sexual violence. *Utrecht Law Review*, 4(3), 145-162.

non-State actors.² General Comment No. 3 by the Committee also states that perpetrators can be familial as well as non-familial.³

5. The Convention articles and the CEDAW General Recommendation listed in paragraph 2 above specifically “obligates and guides States in the adoption of their own laws to address violence against women.”⁴ Promoting access to just law for women and girls who have endured torture perpetrated by non-State actors means ensuring that they are not excluded from having it clearly, specifically, and legally stated that they have suffered non-State torture victimization. Therefore, when country reports are submitted to the CEDAW Committee for example, countries must be asked whether their criminal codes specifically include and address torture that is perpetrated by non-State actors in the so-called private or domestic sphere. Such an event occurred in 2008.

6. On Wednesday, 22 October 2008, at 10:30 a.m. the meeting of the 42 session between the CEDAW Committee and Canada was called to order in Chamber A.⁵ CEDAW expert Ms. Tan posed to the Canadian delegation the following, “Some acts involving family violence constitute torture and it was appropriate to ask whether the Government, as part of its many family violence initiatives, had examined the issue of non-State-actor torture by family members.”⁶ To which the Canadian delegate Ms. Morency responded with, “Canada recognized torture as a State-actor offence and prohibited it categorically. What was sometimes referred to as torture by non-State actors was covered . . . as simple assault, aggravated or sexual assault, forcible confinement, kidnapping or trafficking in persons.”⁷ Canada’s position was not challenged. It remains the legal order to this day.

7. Acceptance, in 2008, that Canada specifically, knowingly, and legally misnamed and trivialized as another crime the non-derogable human right violation not to be subjected to torture perpetrated by non-State actors has facilitated the on-going invisibilization of non-State torture victimization in Canada. It invisibilized and excluded acknowledging and upholding the equality, human dignity, worth, and legal protection of women and girls so victimized. It failed to uphold CEDAW General Recommendation 19, 7(b) and women’s and girls’ human right not to be subjected to torture. Being excluded from having support for their human right not to be subjected to torture by non-State actors did cause and does cause secondary revictimization because it reinforced and reinforces socio-legal exclusion. Being excluded causes actual social pain that is similar to experiencing physical pain.⁸

8. Alexandra, a Canadian woman wrote these words to us to express what socio-legal human rights exclusion meant to her:

When society minimizes [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

² CAT/C/GC/2/CRP.1/Rev.4, para. 18.

³ CAT/C/GC/3, para. 3.

⁴ General Assembly. (2010, August 2). *Intensification of efforts to eliminate all forms of violence against women Report of the Secretary-General*. (A/65/208, para. 7).

⁵ CEDAW/C/SR.854 (A).

⁶ *Ibid*, para. 36.

⁷ *Ibid*, para. 46.

⁸ Naomi I. Eisenberger, N. I., Lieberman, M. D., & Williams, K.D. (2003). Does Rejection Hurt? An fMRI Study of Social Exclusion. *Science*, 302, 290-292.

one will believe you." "What makes you think you are so special that someone would even want to save you or care about you."⁹

What is Classic Non-State Torture?

9. Alexandra, the Canadian woman whose words we just quoted, is referring to acts of classic torture that were inflicted onto her by familial and non-familial perpetrators acting individually at times and at other times in like-minded groups. She, like many others who have sought our support, report such non-State torture victimization began in their first years of childhood. Many women also disclose that the torture victimization lasted into their late teens or early adulthood years, ending only when they could find a way to escape or exit such family and like-minded group systems. Classic non-State torture victimization also occurred in adulthood inflicted by a spouse and like-minded others.

10. Classic torture is a term frequently used to refer to acts of torture inflicted by State actors. Non-State actors inflict similar acts. Evolutionary patriarchal devaluation of women and girls as equal persons has enforced global social conditioning of gender-based discrimination that disallowed women's and girls' non-derogable human right not to be subjected to torture whether perpetrated by State or non-State actors. However, in recent times, many efforts have achieved the recognition that women and girls suffer State inflicted torture as a crime against humanity. Now the challenge is for all UN Committees to genderize and operationalize articles and General Recommendations to specifically address classic torture perpetrated by non-State actors. Such leadership is being exercised by the Committee against Torture.

11. In the following chart we present a comparative reality of the similar ordeals of two groups of women—one group survived classic State torture the other classic non-State torture. From a human rights perspective it is now understood that forms of violence, oppression, and discrimination perpetrated against women and girls as a group is because of their gender—because they are women and girls. Torture is a non-derogable human right and a crime against their humanity, their equality, and their dignity regardless of whether the torturer is a non-State or State perpetrator.

<p>MEDICAL FOUNDATION FOR THE CARE OF VICTIMS OF STATE TORTURE, UK¹⁰</p> <p>This column of information reflects 20 years of expertise and experiences of the Medical Foundation working with women seeking asylum who reported State torture victimization.</p>	<p>OUR PROFESSIONAL EXPERIENCES WITH WOMEN WHO ENDURED NON-STATE TORTURE</p> <p>This information reflects 20 years of expertise and experiences, come August of this year, working with women mostly,¹¹ who Self-report having endured torture by non-state actors.</p>
<p>HERSTORIES:</p> <ul style="list-style-type: none"> • Study of 100 women who sought asylum in the United Kingdom and who report torture victimization perpetrated by State actors, i.e., police, military personnel, prison guards, and members of political and ethnic groups. • Age when classic torture victimization was inflicted ranged 	<p>HERSTORIES:</p> <ul style="list-style-type: none"> • Approximately 3000 women have contacted us with 30 having years of contact and support from us; they report perpetrators to be parents, other family members, spouses, guardians, like-minded others including human traffickers, exploiters, pornographers, pedophilic rings, gangs, and 'client-

⁹ Sarson, J. & MacDonald, L. (2011, November 11). *Due Diligence Obligations: Non-State Torture of Women/Girls in the So-Called Private Sphere—A Canadian and Multi-Country Perspective*. Paper submitted to Special Rapporteur Ms. Rashida Manjoo in response to her call for papers for her study on the "Due Diligence Obligations to Address Violence against Women". http://nonstatetorture.org/files/5513/5765/0141/Due_Diligence_paper.pdf

¹⁰ Smith, E. & Boyles, J. (2009, December). *Justice denied: The experiences of 100 torture surviving women of seeking justice and rehabilitation*. Medical Foundation for the Care of Victims of Torture, UK.

¹¹ We have also worked with a few men and transgendered persons; their information is not included.

<p>from a girl of six years to a woman of 62.</p> <ul style="list-style-type: none"> • The majority of the women were from Africa and Asia, only four were considered from other countries. 	<p>perpetrators' who also derive brutal and cruel pleasures from torturing girls and women who have been 'prostituted'. Some perpetrators also use their positional power including State powers to intimidate, i.e., they are police, government officials, lawyers, health care professionals, etc.</p> <ul style="list-style-type: none"> • Age when classic torture victimization was inflicted ranged from infancy to adulthood or occurred in early adulthood with years of torture enforced states of psychological and or physical captivity. Stalking and harassment continued for years if perpetrators could gain contact with the women following their exiting. • The majority of the women are from Canada, the United States, the U.K. and other Western European countries, Australia, and New Zealand
<ul style="list-style-type: none"> • Torture sites included in their homes, in places of detention or custody, in the bush, and in a graveyard for one woman. • In detention one woman was held in a cell with a bucket for a toilet. 	<ul style="list-style-type: none"> • Torture sites included in their homes or the homes of other like-minded, in the bush or fields, in graveyards, on farms, in warehouses, in cabins, in motels, on private boats and in other vehicles, and any place that the torturers had private access to. • Women report being held in confined spaces, locked in a room with only a bucket as a toilet or with no toileting alternatives which forced Self-degradation ordeals.
<ul style="list-style-type: none"> • Sexualized torturing was predominate, vaginally, orally, and anally; raping included with implements, i.e., with guns, sticks, bottles; repetitive rapes, multi-perpetrator/gang rapes, and some women or girls were raped over a period of years. Over a third of the women were unable to recall the exact number of rapes survived. • Bottle anal rape tactic inflicted against one woman included being forced to balance her-Self on the bottle and threatened with rape if she fell off. • Torture of women's breasts which were bitten, burnt, cut, or electric shocked. • Rapes were committed in front of family members, in front of children, in public, and community settings. • Rapes were photographed or filmed to be shown to a husband. • Raped, urinated and ejaculated on. 	<ul style="list-style-type: none"> • Sexualized torturing was predominate including being vaginally, orally, and anally raped with implements, i.e., guns, sticks, bottles, plastic animal toys, keys, hot metal poker, etc.; repetitive rapes, multi-perpetrator/gang rapes; we estimated that 10,000 or more rapes was common for women whose torture victimization began in infancy. Women's recall was 'simply' stated as years of raping by familiar and non-familiar perpetrators. • Bottle anal rape tactic inflicted against one woman whose spouse enjoyed, over four years, repetitively raping her with a "Hermit 827 wine bottle", forcing her to balance on it; she feared she would hemorrhage to death.¹² • Torture of women's or girls' breasts which were bitten, burnt, cut, or electric shocked. Pliers were used to twist one woman's nipples¹³ • Rapes were committed in front of other victimized children or adults; children were forcedly 'taught' to rape each other in front of family or like-minded groups for torturers' pleasures. • Rapes were photographed or filmed with the threat that these would be circulated among outsider peers or community to discredit her, it was also a tactic used to maintain a victimized woman's silence. • Raped, urinated and ejaculated on.
<ul style="list-style-type: none"> • Reproductive torture: 17 women were rape-impregnated and seven women lost pregnancies due to rape. 	<ul style="list-style-type: none"> • Reproductive torture: We did a web initiated questionnaire on reproductive torture, of the 233 respondents, 56% (131) stated being raped during forced abortions or torture induced deliveries; of 232 respondents 43% (99) stated they were forced to swallow placental or fetal tissue.
<ul style="list-style-type: none"> • Severely beaten, kicked, whipped, and punched including with weapons and implements. 	<ul style="list-style-type: none"> • Severely beaten, kicked, whipped, and punched including with weapons and implements.
<ul style="list-style-type: none"> • Cut or stabbed with knives, razor blades, machetes, broken glass, belt buckle, and sharpened pieces of wood. 	<ul style="list-style-type: none"> • Cut or stabbed with knives, razor blades, broken glass, needles, sharpened pieces of wood, sharp pencils, pinched

¹² Sarson, J. & MacDonald, L. (2009, Winter). Defining torture by non-state actors in the Canadian private sphere. *First Light*, 29-33. <http://ccvt.org/wp-content/uploads/2011/08/firstlight2009.pdf>

¹³ Ibid, p. 30.

	with clothes pins attached to labia, and forced to Self-cut to satisfy the pleasures of the torturers.
• Burnt with cigarettes, boiling water, caustic liquid, metal rods, heated knives, or burnt with sticks from a fire.	• Burnt with cigarettes, boiling water, caustic liquid, metal rods, or heated spoons, hair curling iron and hot iron, and with sticks from a hot fire, not only on their skin but some women spoke of being vaginally burnt.
• Shot	• Shot at during “hunting games” when one woman was taken into the woods and told to run or be shot, she became the hunted; guns were used to ‘play’ Russian Roulette; plastic bullets were used to shoot at one woman when she was a child. ¹⁴
• Falaka , endured beatings to the soles of the feet.	• Falaka , endured beatings to the soles of the feet.
• Suspension or other hangings	• Suspension or other hangings were very common.
• Enforced standing	• Enforced standing or commanded never to move was very common.
• Electric shocking torture	• Electric shocking torture was very common.
• Immersion , submarine	• Immersion , submarine or non-fatal drowning, ¹⁵ common, i.e., when held under water in bath tub, sink, toilet, or lake.
• Binding , tying, handcuffs, leg irons	• Binding , tying, handcuffing, and caging were routinely inflicted.
• Cold water , hosing	• Cold water , hosing was common, for some they were forced to stand under a cold shower or placed in a bath tub filled with ice and cold water, forced inside a freezer, or transported in a freezer truck.
• Loss of consciousness	• Loss of consciousness was a standard ordeal and when recalling childhood unconsciousness it was often experienced and described as “going into the black” or “dying”.
• Suffocation	• Suffocation was common, i.e., with a plastic bag over one’s head, with pillows over one’s face, and from chest compression when sat on and orally raped.
• Isolation , solitary confinement	• Isolation , solitary confinement was always intermittently present when placed in box, locked in cupboard, or basement.
• Sensory deprivation , e.g., blindfolding, hooding	• Sensory deprivation , e.g., blindfolding, hooding, and drugging with pills, inhalants, and injectables was common.
• Deprived of food and liquids	• Deprived of food and liquids was common and a child was often deprived to keep their body underdeveloped to enhance the pedophilic torturers’ pleasures.
• Deprived of sleep	• Deprived of sleep common as often tortured at night or taken out to be tortured by group; forced to lie on floor without bedding so coldness caused sleep deprivation.
• Denial of toilet	• Denial of toilet was common and when soiled urine and feces was smeared over the girl’s or woman’s body.
• Loud noises or music	• Loud noises or music and often forced to wear earphones.
• Threats of violence/death to Self	• Threats of violence/death to Self , always.
• Threats of violence/death to others	• Threats of violence/death to others was a standard MO of these torturers.
• Sight and sounds of others being tortured	• Sight and sounds of others being tortured always occurred when the violent process included family or like-minded group torture and raping—i.e., girl was both victim and witness.
• Enforced nakedness	• Enforced nakedness was always present.
• Humiliation , ¹⁶	• Humiliation always.

¹⁴ Sarson, J. & MacDonald, L. (2010, April). Canada: torturers, guns and bullets. *Bulletin*, 22. <http://www.iansa-women.org/sites/default/files/newsviews/en-iansa-wn-bulletin22-web.pdf>

¹⁵ Beynon, J. (2012). “Not waving, drowning”. *Asphyxia and torture: the myth of simulated drowning and other forms of torture*, 22(1), 25-29.

<ul style="list-style-type: none"> • The prime torturers were State officials. 	<ul style="list-style-type: none"> • Generally, women state they were trafficked as children to individual/group pedophilic torturers and or as adults to 'client-perpetrators'. Trafficking could include being transported nationally and or internationally. Just as torture is a crime against humanity so is "Human trafficking . . . a crime against humanity."¹⁷ • Some older women disclosed that their parents also trafficked them to 'health care professionals' as victims for human experimentation. • Additionally, women spoke of being forced to participate in criminal activities such as being forced to peddle drugs to peers when they were teenagers in school. • Violations of trust and abuse of power were horrendous as the parent(s), other family members, guardians, or spouses, were the persons in whom they ought to have trusted the most, but who were the prime torturers and traffickers.
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12. This chart illustrates that similar acts of classic torture are endured equally by women and girls regardless of whether the perpetrators are State or non-State actors. Women and girls who have suffered classic non-State torture must not be subjected to discrimination, oppression, and marginalization by trivializing, invisibilizing, or misnaming classic torture inflicted by private persons or non-State actors as an assault for example, as occurred when the Canadian delegate explained to the CEDAW Committee that this was Canadian legal practice. Access to justice requires a law that specifically permits women or girls to correctly and truthfully name in a court of law the criminal human right violation of classic torture suffered and that was perpetrated by non-State actors.

Barriers to Access to Justice

13. Women in the above chart who survived State inflicted classic torture identified barriers to reporting. These included a lack of trust in systems as the police were often perpetrators, threats were leveled at the women and their families, women faced gender-based discrimination, the system was corrupt and non-responsive, torture was so endemic women thought it pointless to report, and torturers functioned with impunity. Women also feared being blamed, shamed, stigmatized, and socially excluded if they spoke out.

14. For the women who survived classic torture inflicted by non-State actors they encountered system responses similar to those of the women who survived torture perpetrated by State actors. For example, grave barriers to victimized women's and girls' access to justice includes (a) the unwillingness of others and systems to believe that classic non-State torture victimization exist within relationships in the domestic or private sphere; indeed, some women have reported that they were threatened by police that they would be charged for making false accusations if they persisted with their allegations, (b) because of the absence of a law that covers classic torture by non-State actors women saw that the torturers functioned with impunity, (c) women encountered misogynistic attitudes and gender-based

¹⁶ Humiliation was added as a purpose element of torture victimization in 1996; see *Fernando and Raquel Mejia v. Peru*, 1 March 1996, Report No. 5/96, Case No 10.970 in Annual Report of the Inter American Commission on Human Rights, para. 3(a, b, c). <http://cidh.org/annualrep/95eng/Peru10970.htm>

¹⁷ UN Office on Drugs and Crime. (n.d.). *Human trafficking*. <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

discrimination, (d) women lacked trust in the police, and (e) women considered the systems non-responsive. A few women spoke of being assaulted, raped, and tortured by perpetrators who were police. Women's trust in the police was also violated when they were children. Some pedophilic torturers dressed in police costumes as a form of coercive manipulation to keep women when they were children from trusting or ever telling good police what was happening to them.

15. Based on our knowledge of this specific population of non-State torturers, they are serial criminals. Serial meaning they repeat their acts of classic torturing over extended periods of years and with impunity. Drawing on knowledge about other serial criminals such as serial killers, it is known, for instance, that police are "often unwilling to admit they have a serial killer in their jurisdiction;" this unwillingness creates blind spots in the ability of police systems to appropriately investigate such crimes.¹⁸ Unwillingness to believe, we suggest, similarly blocks identifying non-State torturers who use family systems as a 'perfect' cover. In countries such as Canada, with criminal codes that do not specifically criminalize torture by non-State actors, this deepens the invisibilization of the crime and the women and girls so victimized. They are confronted with discriminatory attitudes when attempting to disclose. When women tried to tell, either when they were children or later in adulthood, they were also placated, told they were lying, told they were "crazy", or labelled mentally ill. Women speak of how this made and makes them feel like "freaks." As Alexander stated in her quote on page 2, an absence of law reinforces that no one cares and that they are unworthy of being cared about.

16. An absence of law reinforces disbelief. Being disbelieved creates a negative rebound cycle in that women give up reporting to police because they realize they would not be taken seriously. They give up and lose hope that the police and civil society would be open to listening or understanding their non-State torture victimization and their suffering. Some speak of the patriarchal misogyny they encountered which minimized or normalized relational violence generally. Investigative knowledge and skills are compromised when police or medical personnel seek physical evidence but fail to recognize that it is quite common not to find scars and that some bruises and abrasions can heal quickly. Our knowledge and women's disclosures reveal that when they were children or as adults they were kept isolated until physical injuries healed, or until they could cover their injuries with clothing, and or they were forced to rehearse plausible excuses that would explain the injuries as being 'accidental'. Often such torturers appeared to have connections with corrupt providers including police and health care professionals. Women's discourse often included speaking of how non-perpetrating doctors remained silent about the victimization they knew a woman as a child had endured. Women also tell us that some health professionals abused their positional power and perpetrated acts of sexualized and psychological violence against them, telling them that if they tried to tell no one would believe them. Which is the reality, they seldom were or are believed when they tried to report.

17. A failure to believe a girl child who is attempting to report classic non-State torture victimization violates the principle of the best interest of the child as written in Article 3 of the *Convention on the Rights of the Child*. Being disbelieved is a form of ism—misogynistic childism—which devalues the girl child's human rights and her access to protection and justice. When a State party such as Canada knowingly fails to have a law that makes classic non-State torture victimization a reality, girls as a vulnerable group are deeply invisibilized and stuck in an environment where on-going classic non-State torture victimization is perpetrated. Without such a law police training and investigative skills are lacking, no data is collected, and systems fail when such knowledge is invisibilized. Women speak of how

¹⁸ Oppal, W. T. (2012, November 19). *Forsaken The report of the missing women commission of inquiry executive summary* (p. 27). <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

they attempted to run away as small children only to be returned home. Some women disclosed that as preschoolers they attempted to kill themselves by running out in front of cars or by 'falling off' dangerous heights.

18. The World Health Organization states the graver the violent ordeal and the more than one type of violence endured the greater its impact on women's and girls' physical and mental health, with consequences that can persist long after victimization.¹⁹ Women who have been tortured by non-State actors suffer severely and long after they have managed to escape or exit such violence family or group systems. A deadly mix of impunity occurs when a lack of non-State torture-informed specialist knowledge and services combine with disbelief and a lack of law. Therefore, gaining access to justice requires massive human rights education,²⁰ including the genderization of UN international human rights instruments that include the human right not to be subjected to torture by non-State actors.

Gaining Access to Justice: Breakthrough via the Committee against Torture

19. This section draws on the breakthrough achieved in May 2012, when the NGO, the Canadian Federation of University Women (CFUW) submitted a shadow report,²¹ and we, as representatives, appeared at the 48th Session of the Committee against Torture in Geneva. When the Canadian governmental delegation presented its country report to the Committee against Torture, the delegation was adamant that gender-based manifestations of violence which would include torture by non-State actors should not be addressed by the Committee or come under the CAT. The Committee advised the Canadian delegation that manifestations of violence that amounted to torture perpetrated against women and children by private persons or non-State actors did belong under CAT and were to be addressed by the Committee to prevent discriminatory practices. Condensing the Committee's Concluding Observations, particularly its comments in reference to violence against women including torture by non-State actors, the following points were made:²²

1. Canada and its officials should be considered authors, complicit or otherwise responsible under the CAT for consenting to or acquiescing in acts of torture committed by non-State actors;
2. Canada should strengthen its efforts to exercise due diligence to stop acts of torture committed by non-State officials or private actors;
3. Canada has an obligation to fully implement the CAT into domestic law; and
4. Canada should compile national statistical data to monitor the implementation of the CAT obligations, including complaints, investigations, prosecutions, and convictions of torture involving domestic and sexual violence, and victim redress, compensation and rehabilitation.

20. These Concluding Observations apply not only to Canada but to all States parties that have deficit laws that fail to criminalize torture by non-State actors. Based on the 2008 Committee against Torture General Comment No. 2, 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,"²³ whether acts of torture are perpetrated by State or non-State actors.

¹⁹ World health Organization & Pan American Health Organization. (2012). *Understanding and addressing violence against women Health consequences* (WHO/RHR/12.43). http://apps.who.int/iris/bitstream/10665/77431/1/WHO_RHR_12.43_eng.pdf

²⁰ General Assembly. (2012, February 16). *United Nations Declaration on human rights education and training* (A/RES/66/137).

²¹ CFUW. (2012, April 8). *A Shadow Report: Canada Fails to Establish Non-State Actor Torture as a Specific and Distinct Criminal Human Rights Violation*. http://www2.ohchr.org/english/bodies/cat/docs/ngos/CFUW_Canada_CAT48.pdf

²² CAT/C/SR.1087 and 1088.

²³ Committee against Torture. (2008, January 24). *General comment no. 2 Implementation of article 2 by States parties* (CAT/C/GC/2, para. 2).

21. Operationalizing the Committee's General Comment No. 2, paragraph 11, makes it clear to Canada or any States parties that naming, criminalizing, and defining the human rights crime of torture alerts everyone—perpetrators, victims, and the public, to the special gravity of the crime of torture. Criminalizing non-State torture (a) strengthens the deterrent effects, (b) enables States to track crimes of torture, (c) enables and empowers the public to monitor and, when necessary, to challenge State action or inaction that violates the Convention, (d) enables States Parties to eliminate any legal or other obstacles that impede the eradication of torture and to review, improve, and revise national laws and performance that shows continual evolution, and (e) helps States to act to prevent the on-goingness of privately inflicted harm and impunity enjoyed by such non-State or private actor perpetrators.

Genderization: CEDAW General Recommendation 19, 7(b) Facilitating Access to Justice

22. CEDAW General Recommendation 19, 7(b) states that no one be subjected to torture. *Genderizing* General Recommendation 19, 7(b) means the message sent to women and girls is to expect the CEDAW will support their non-derogable human right not to be subjected to torture regardless of whether the torturers are non-State or State actors. *Genderizing* General Recommendation 19, 7(b) means eliminating the patriarchal discrimination that has excluded, trivialized, misnamed, and invisibilized the reality that women and girls have and do endure acts of classic torture perpetrated in the domestic or private sphere similar to the acts of classic torture inflicted against women and girls in the public sphere. *Genderizing* General Recommendation 19, 7(b) means it must be operationalized—meaning it must be globally acknowledged, globally spoken out loud, that some women and girls are tortured. Being tortured is a crime against women's and girls' humanity. As previously described, this position is obviously supported in the General Comments of the Committee against Torture; it is necessary for the CEDAW to provide women and girls with corresponding support to further facilitate women's and girls' legal protection, their access to equal justice, and to eliminate on-going harms and gender-based discrimination.

23. There can be no doubt that women and girls suffer extreme forms of violence perpetrated in the domestic or private sphere, including acts of classic non-State torture as previously illustrated. It is also illustrated that sexualized and reproductive tortures and human sexualized trafficking are predominate forms of gender-based violence and discrimination endured by women and girls on every continent on this planet. Torture victimization, whether inflicted in the private or public sphere, severely impairs and nullifies women's and girls' human rights and fundamental freedoms in all fields of life. Therefore, gaining access to and being free to pursue "justice is essential for both prevention of future acts of torture and the recovery of the individual survivor."²⁴

24. Gaining access to and the pursuit of justice means having the ability to access a just law.²⁵ In the case of this paper, it means having law that criminalizes non-State torture thereby protecting women's and girls' human rights and fundamental freedoms,²⁶ not to be subjected to torture. Attaining a just law would help promote informed protection, services and reparations at international and national levels.²⁷

²⁴ Smith, E. & Boyles, J. (2009, December). *Justice denied: The experiences of 100 torture surviving women of seeking justice and rehabilitation* (p. 4). Medical Foundation for the Care of Victims of Torture, UK.

²⁵ Commission on the Legal Empowerment of the Poor and United Nations Development Programme. (2008). *Making the law work for everyone, Vol. 1 Report*. NY: UN.

²⁶ UN doc. A/RES/61/39. *The rule of law at the national and international levels* (p. 1).

²⁷ UN doc. A/61/636-S/2006/980. *Report of the Secretary-General on uniting our strengths: Enhancing UN support for the rule of law*.

Global understanding is evolving its recognition that violence against women and girls is a violation of human rights and States have due diligence duties of prevention, protection, investigation, punishment and reparations to restore women's and girls' fundamental human rights and freedoms.

Inherent dignity,^{28,29} of each human being is written into the first sentence of the preamble of the UN *Universal Declaration of Human Rights*, followed by articles such as article 5 which states that "no one shall be subjected to torture". Women's human rights cannot be realized unless their equality, worth, and human dignity as persons not to be subjected to torture by non-state actors is distinctly upheld. When, for example, women were tortured as infants, toddlers, young or older children, they can never go back and recapture and restore the damage inflicted on their developing childhood dignity—they have lost forever their childhood. Reparations and restoration can only alter the present and the future. . . . When such restoration is possible it delivers messages of hope, compassion and of social equality, worth . . . inherent dignity and social inclusiveness . . . Restoration can contribute to a reduction in tortured women's social anger, anger that occurs when the socio-legal environment denies them the right to have their truths legally criminalized and legally heard. Social inflicted anger creates additional intense emotional pain and can and does contribute to acts of Self-harming and suicidal thoughts

When restoration is unavailable . . . this contributes to serious hardships and chronic re-victimizations, as the absence of non-state torture law excludes them and their realities from the . . . [global] socio-legal consciousness. It denies the inherent dignity of women/girls so tortured. It denies them the right to speak, to have their truths heard, believed and understood. It denies them their safety, increasing the risks to their lives. It denies them their right to seek appropriate justice and to hold those responsible accountable.³⁰

24. Therefore; we ask that in context of the CEDAW Convention Articles 2(b) and (c) and 15(1) and (2) and in the Committee's discourse on a "General Recommendation on access to justice" that the CEDAW Committee assist women and girls tortured by non-State actors achieve access to justice, and to secure their legal empowerment, inherent dignity, equality, and human rights by:

- 1. Specifically acknowledging non-State torture as a distinct violation that fits under CEDAW General Recommendation 19, 7(b) and therefore requires legal recognition,**
- 2. Examining country reports presented to the Committee to ascertain whether the country provides women and girls distinct access to a law that specifically criminalizes torture by non-State actors as required under CEDAW General Recommendation 19, 7(b), and**
- 3. Addressing under Article 2 (b) and (c) that when there is an absence of law that fails to identify manifestations of non-State torture when it occurs that this be named as a violation of women's and girls' human rights under CEDAW General Recommendation 19, 7(b); hence, there is the need for the CEDAW Committee to recommend to States parties to undertake legislation that promotes access to a just non-State torture law.**

²⁸ Phillips, B. Y. (2011). *Dignity and human rights The missing dialogue? A report of a meeting at the Rockefeller Foundation Bellagio Center, April 7-10, 2009*, Bellagio, Italy. Programme on Women's Economic, Social and Cultural Rights (PWESCR).

²⁹ Lloyd, L. (2011, July). *Maintaining dignity in later life: a longitudinal qualitative study of older people's experiences of support and care*. NDA Research Programme, Department of Sociological Studies, University of Sheffield, UK.

³⁰ These paragraphs are from the CFUW *Advocacy Report*, Appendix A, Verbal Statement to the UN Committee against Torture May 18, 2012 (pp. 10-11). <http://www.cfuw.org/Portals/0/ADVOCACY%20REPORT%20NST.pdf>