

PLENARY SESSION: IFUW ADVOCACY AND THE UNITED NATIONS

**CASE STUDY: *ARE WOMEN AND GIRLS “NO ONE”?*
NON-STATE TORTURE AND THE COMMITTEE AGAINST TORTURE**

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International Federation of University Women (IFUW) Triennial Conference
Kadir Has University, Istanbul, Turkey

August 18, 2013

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In April, 2012, the Canadian Federation of University Women (CFUW) submitted a shadow report to the UN Committee against Torture entitled, *A Shadow Report: Canada Fails to Establish Non-State Actor Torture as a Specific and Distinct Criminal Human Rights Violation*.² This advocacy grew from the CFUW policy adopted in 2011.³ In Canada the only citizens who have the legal right to take a charge of torture victimization into Canadian Courts are persons who have been tortured by State actors—by police, military, or an official of the government. Persons who endured the same acts of torture such as electric shocking, hanging, cutting, caging, burning, deprivations, water torture, and sexualized torture cannot do so when the torturer is a private individual; their victimization is renamed as other crimes such as assaults.⁴ These acts of torture are frequently known as *classic* torture when perpetrated by State actors but in Canada, as just stated, these same acts of classic torture when perpetrated by private individuals are renamed assaults. Private individuals or groups who perpetrate such acts are referred to as non-State actors because they are not representatives of the government. The human rights terminology of *actor* simply refers to the person as the actor who is engaged in a specific act.

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted by the UN General Assembly December 10, 1984 (resolution 39/46), carried with it a fundamental human right discriminatory perspective that operationalized it as applying only to State actors, State torturing, and warring men. It failed to acknowledge, at that time, that torture by non-State actors occurred. In 1987 Canada ratified the CAT. Canadian federal law, section 269.1 on torture, followed suite whereby only a citizen who is tortured by State actors has the legal right to hold the torturers accountable in court.⁵ Other countries such as the UK and Australia also adopted this same legal and discriminatory application of CAT.

¹ Jeanne Sarson has spent 20 years, along with colleague Linda MacDonald, in grass root supporting, writing, educating, and defending the human right of persons, mainly women, who have suffered classic non-State torture victimization. She found ‘a home’ in CFUW in 2009, with their mandate to work for the human rights of women and girls and is appreciative of this IFUW opportunity. Jeanne’s background is in public, community and multicultural nursing. Linda will be videoing as a producer has indicated interest in doing a radio documentary.

² See http://www2.ohchr.org/english/bodies/cat/docs/ngos/CFUW_Canada_CAT48.pdf

³ CFUW. (1964-2011). *Policy book*. http://www.fcfdu.org/Portals/0/Advocacy/Policy%20Book%202011_Links.pdf

⁴ 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), para. 46). Palais des Nations, Geneva.

⁵ Government of Canada. (n.d.). *Justice laws website*. <http://laws-lois.justice.gc.ca/eng/acts/C-46/section-269.1.html>

CFUW Intervention: Representation at the Committee Against Torture

As representatives of CFUW, Linda MacDonald and I travelled to the UN, Geneva, to address the Committee against Torture prior to the Committee hearing Canada's country report in May 2012. We knew the application of the CAT had become increasingly genderized. But, would the Committee support the CFUW shadow report was still a concern as we were breaking new human rights ground.

Genderization of the CAT is evident in the Committee's General Comments, reports of UN Special Rapporteur against torture Manfred Nowak,^{6,7} and by, for example, the Joint Statement issued by six UN entities—the UN High Commissioner for Human Rights, the Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on torture, the Special Rapporteur on violence against women, and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture.⁸ I quote from their Joint Statement:

The adoption of the Universal Declaration sent a clear and unequivocal message – that dignity and justice were for all, including of course for women. Sixty years on, we call upon States to reaffirm their resolve to ensure that the torture protection framework is applied in a gender-sensitive manner, to help to end violence against women; . . . Women fall victim to torture in different ways . . . Certain forms of gender-specific violence perpetrated by . . . private individuals or organizations, clearly amount to torture, and it is now recognized that gender-specific violence falls within the definition of torture in the Convention against Torture.

Linda and I stated the CFUW position to the Committee against Torture in the several minutes allotted. I held up the Universal Declaration of Human Rights (UDHR) with article 5 cut out stating that until article 5 applies to women and girls the application of the Declaration is flawed in patriarchal discrimination and the women and girls so tortured are invisibilized. The Committee asked a few questions of us relating to the shadow report.

Day two found Linda and me listening with surprise to the Government of Canada delegation's adamant statement that forms of gender-based violence should not be heard by the Committee.

Day three meant waiting for the Committee's response. Linda and I could hardly believe what we were hearing. In giving his response, Claudio Grossman, Committee Chairperson,

noted the [Canadian] delegation's invitation for the Committee not to consider acts of domestic violence, but said unfortunately that was an invitation the Committee could not affect due to its obligations to the Convention; discriminatory treatment for women or men that could

⁶ 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)*.

⁷ 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)*.

⁸ OHCHR. (2008, June 26). *Joint Statement on the Occasion of the UN International Day in Support of Victims of Torture*. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8752&LangID=E>

constitute torture was clearly listed in article 16. . . . if the Committee was to do that it would end up only considering acts of torture that were committed against white males.⁹

Following Mr. Grossman, Nora Sveaass, Special Rapporteur for the Committee said,

torture by non-State actors was an issue that sometimes seemed not to be taken as seriously as it should be. Such acts included severe violence against women and children, such as female genital mutilation, burning, cutting, imprisonment by families, whipping and severe sexual and psychological violence. Those acts may be performed in a non-State situation . . . In gravity those crimes shared aspects of the definition of torture, as well as its discriminatory effect . . . Torture was not something that happened only to one gender: it happened to women and children as well.

The Committee's Concluding Observations to Canada included, for example:¹⁰

- a) The Committee recommends that the State party incorporate all the provisions of the Convention into Canadian law in order to allow persons to invoke it directly in courts, to give prominence to the Convention as well as to raise awareness of its provisions among members of the judiciary and the public at large; and
- b) 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 acts of torture or ill-treatment committed by non-State officials or private actors.

Outcomes of the CFUW shadow report intervention. The CFUW shadow report was a breakthrough in advocating for the human right recognition that women and girls do endure torture perpetrated by non-State actors and ought to have the legal right to have their torture violation named and addressed in a court of law as torture. Although the Committee recommendations are not legally binding, this breakthrough supports women's and girls' right under article 5 of the UDHR; it supports their right to equality under the UN Charter. It contributes to the genderization of the CAT and works at reducing patriarchal human rights discrimination.

Other Interventions

With the specific focus on the human right that "no one"—specifically women and girls—be subjected to non-State torture these are the interventions I propose to IFUW national federations and associations (NFA) members for consideration.

- A. *Understanding the full definition of torture as written in the CAT.* Torture is understood as, (a) acts that cause severe physical or mental pain or suffering that are, (b) intentionally inflicted for, (c) a

⁹ UN News & Media. (2012, May 22). *Canada-Committee session*. [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/9B973CA427BFA0A8C1257A060033219D?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/9B973CA427BFA0A8C1257A060033219D?OpenDocument)

¹⁰ Committee Against Torture. (2012, June 1). *Concluding Observations of the Committee against Torture made to Canada*. <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CAN.CO.6.doc>

purpose such as for any reason based on discrimination of any kind, and (d) with the consent or acquiescence of a public official. Social patriarchal conditioning led to ignoring that torture could not be inflicted for discriminatory reasons such as gender-based discriminatory reasons, thereby excluding acknowledging, upholding, and protecting the human right of women and girls not to be subjected to torture. Genderization of the human right application of the CAT is working to eliminate this gender-based discrimination irrespective of who the torturers are. So acquiescence by the State has transformed to mean that as long as the State knows torture by non-State actors is occurring and fails to respond the State is facilitating the ongoingness of non-State torture; it is failing to protect women and girls from human right discrimination and non-State torture victimization.

- B. *Are women and girls “no one”?* (Figure 1). I encourage women of IFUW NFAs to advocate for women’s and girls’ fundamental human right under article 5 of the UDHR which says, “no one shall be subjected to torture”. They have a human right to such equality as stated in the UN Charter.

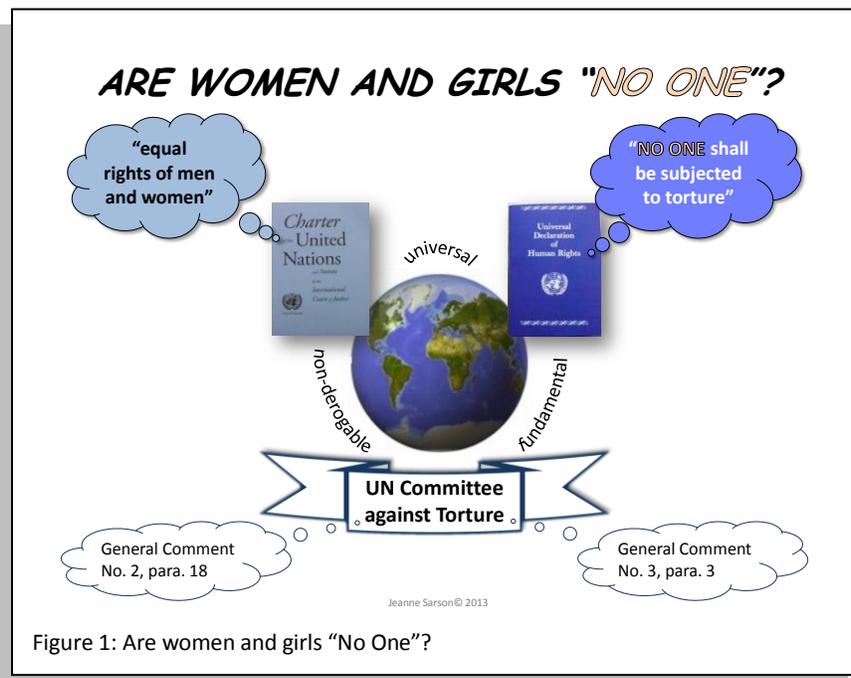


Figure 1: Are women and girls “No One”?

Until article 5 of the UDHR is operationalized as applying equally to women and girls when perpetrated by non-State actors patriarchal human rights discrimination will dominate. If torture by non-State actors is denied, how will all forms of gender-based violence and discrimination be understood and eliminated? How will all human rights become equally women’s rights and girls’ rights?

Especially relevant in promoting women’s and girls’

human right equality under CAT are two General Comments written by the Committee against Torture. General Comment No. 2, paragraph 18 says,¹¹

where State authorities or others acting in official capacity . . . know or have reasonable grounds to believe that acts of torture or . . . 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

¹¹ Committee against Torture. (2008, January 24). *General Comment No. 2 Implementation of article 2 by States parties (CAT/C/GC/2)*.

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. 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.

In General Comment No. 3, the Committee stated, "A person should be considered a victim regardless of whether the perpetrator of the violation is . . . of any familial or other relationship between the perpetrator and the victim" (paragraph 3).¹² This statement recognizes that non-State torture within intimate relationships can occur. It gives support to the statements of women and girls who report being so harmed by family members. IFUW NFA women can operationalize the General Comments of the Committee in shadow reports that address torture by non-State actors as a violation of the human rights of women and girls under the CAT. This also provides support to the Committee experts who work so hard to genderize the CAT and eliminate human right discrimination.

Felice Gaer, Director of the Jacob Blaustein Institute for the Advancement of Human Rights and Vice-Chair of the UN Committee against Torture, was a guest on the CFUW CSW panel this year.¹³ Speaking in her personal capacity, Felice discussed the process that led to manifestations of gender-based violence being addressed by the UN Committee against Torture and the changes that have occurred over time. She described how the silence about sexualized torture by State actors first broke in 1986 when UN Special Rapporteur Peter Kooijmans wrote in his report to the UN Human Rights Commission that rapes that occurred in prison were considered torture perpetrated by State actors. Later, tribunals began to name and identify forms of torture perpetrated by private or non-State actors as well as address the due diligence to States Parties' failure to act. In other words, States Parties were considered providing *de facto* permission for such violations to occur. Legal jurisprudence in reference to the Concluding Observations of the Committee against Torture evolved. Identification of rape violations from 2002-2005 included three mentions in the Committee's reports to States Parties. From 2006-2007, 12 State reports cited rape victimizations. This was also the year the Committee released its General Comment No. 2: Implementation of Article 2 by States Parties.¹⁴ From 2007-2011 there were 31 States in which sexualized violations were addressed. Obviously the trend to recognize gender-based manifestations of sexualized torture is ever increasing. The Committee's General Comment No 2 also addresses obligations of States parties "to take actions that will reinforce the prohibition

¹² Committee against Torture. (2012, December 13). *General comment No. 3 Implementation of article 14 by States parties (CAT/C/GC/3)*.

¹³ This section is from Linda and my journal report of attending the CSW57 session on ending violence against women and girls, (pp. 7-8). <http://nonstatetorture.org/files/9313/6413/6998/JOURNALCSW572013.pdf>

¹⁴ CAT/C/GC/2.

against torture through legislative, administrative, judicial, or other actions” .¹⁵ It is important to the mandate of IFUW NFAs to become increasingly aware of the Committee’s role in the elimination and prevention of manifestations of violence against women and girls that amount to torture by non-State actors and the Committee’s recommendations to States parties to enact specific laws in their national criminal codes that address torture by non-State actors.

C. *Advocating for legal equality not to be subjected to torture by non-State actors.* Seven points are listed in Figure 2 beginning with asking and assessing federal law that deals with torture.

1. *Law: Ask, assess, advocate.* Five suggested questions are useful steps in examining whether the law has gaps, whether it covers non-State torture (NST) victimization, whether it is genderized, and whether it is used to hold such torturers accountable in reference to crimes against children and in human trafficking ordeals. A federal human trafficking law may take its definition from the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. It describes trafficking to mean the recruitment, transfer, transporting, harbouring of persons using threats, force, coercion, fraud,

abduction, deception, abusing positional power and a persons’ vulnerabilities. It does not define the harm a woman or girl can suffer when held in human trafficking captivity. Women and girls can and do suffer classic non-State torture victimization when held in trafficking captivity.

Every women’s or girl’s responses to classic non-State torture victimization needs to be understood from the perspective they

HUMAN RIGHTS ARE WOMEN’S RIGHTS UNDER CAT & UN COMMITTEE AGAINST TORTURE

1. **LAW: ASK, ASSESS, ADVOCATE:** Cannot prevent what we do not name/know
 ? Does national torture law apply to non-State actors? If not, advocate for law reform.
 ? If torture law applies to non-State actors is it genderized? If not, advocate for this.
 ? Is human trafficking law covering-up non-State torture victimization? If so, separate.
 ? If NST law present is it applied to NST victimized children? If not, advocate for this.
 ? Is NST victimization sexualized, i.e., in torture pornography? If so, speak out.
2. **COMMITTEE AGAINST TORTURE SHADOW REPORTS – USE THEM**
3. **CEDAW SHADOW REPORT: General Recommendation 19, 7(b) – USE IT**
4. **HUMAN RIGHTS EDUCATION: SPEAK OUT** gender equality & right not to be tortured
5. **CSW STATEMENTS, COMMUNICATIONS & PRESENTATIONS – WRITE IT, SPEAK IT**
6. **BUILDING ADVOCACY PARTNERSHIPS** with members with same issue: **JOIN FORCES**
7. **OTHERS: UPRs, OHCHR requests input, i.e., on Management Plan 2014-2017: GIVE IT**

Figure 2: Women’s Rights

were tortured so their care is appropriate. Additionally, the perpetrators of classic non-State torture need to be held to account otherwise a culture of socio-legal impunity continues.

The question whether classic non-State torture is sexualized as in the manufacturing and distributing of pedophilic and adult ‘torture pornography’ ought to be of major concern globally. Because, for example, a 2008 U.S. study found that 21 percent of these pedophilic

¹⁵ Ibid, para. 2.

crime scenes involved torture;¹⁶ in Canada the special police units and a research project identify this to be 20 percent.^{17,18} The age when child victimization can begin is in infancy. When I asked Stats Canada how they tracked non-State torture crimes their response was sexualized as quoted below;

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

When I asked how this rationale applied to children I did not receive a response. Speaking out against such sexualized non-State torture in adult-child crime scene pornography creates public awareness and contributes to the need for stronger enforcement.

2. *Committee against Torture shadow reports – use them.* Once the above assessment is completed a decision can be made of whether to submit a shadow report to the Committee. If there is no federal law that holds non-State torturers to account for the torture they commit say so. If there is a law that covers non-State torture and it is not utilized say so. If there is discrimination say so. Make reference to the Committee’s General Comments. UN Special Rapporteur Manfred Nowak indicates that a failure to hold a perpetrator of torture criminally accountable is one reason torture victimization is a widespread global crime.¹⁹
3. *CEDAW shadow report: General Recommendation 19, 7(b) – use it.* This specific recommendation states “no one” shall be subjected to torture. Recently, the U.K. Women’s Resource Centre shadow report referenced this recommendation and non-State torture victimization;²⁰ the CEDAW Committee did not respond to General Recommendation 19, 7(b).^{21, 22}
4. *Human rights education: Speak out on gender equality and the human right not to be tortured.* The UN Declaration on Human Rights Education and Training reaffirms that

¹⁶ International Centre for Missing & Exploited Children. (2008). *Child Pornography: Model Legislation & Global Review* (5th edition). Author.

¹⁷ 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.

¹⁸ Canadian Centre for Child Protection. (2009, November). *Child sexual abuse images An analysis of websites by cybertip!ca*. <https://www.cybertip.ca/app/en/>

¹⁹ 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).

²⁰ Women’s Resource Centre. (2013, April). *Women’s equality in the UK – A health check. Shadow report from the CEDAW Working Group assessing the United Kingdom Government’s progress in implementing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.

http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WomenResourceCentre_UK55_ForTheSession.pdf

²¹ Gordon, E. (2013, July). *CEDAW journal from activist and NAWO member*. National of Women’s Organizations. <http://www.nawo.org.uk/category/news/>

²² Committee on the Elimination of Discrimination against Women. (2013, July 26). *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/GBR/CO/7).

education strengthens respect for human rights in accordance with the principles of universality, equality, inclusion, and non-discrimination to develop a universal culture of human rights. This cannot be achieved if article 5 of the UDHR is only applied as a human right of some individuals and not of others. Such a position would be fundamental reinforcement of human rights discrimination.

5. *CSW statements, communications, and presentations: Do them.* If federal law violates human rights equality send in a statement or depending on the work of IFUW NFAs the communication procedure may be an option. CFUW did submit a written statement on non-State torture,²³ and included non-State torture in their oral statement²⁴ this year at CSW along with a panel presentation entitled *Genderizing the UN Convention against Torture (CAT) & Non-State Torture Victimization*.²⁵ As panel participants Linda and I distributed a fact sheet on non-State torture in the private sphere.²⁶
6. *Building advocacy partnerships with members with the same issue: Join forces.* Non-State torture victimization of women and girls is a global reality that is generally an invisibilized gendered human rights violation. Joining together can change this discriminatory exclusion.
7. *Others: UPRs, OHCHR requests for input - Give it.* One example of the OHCHR request for input occurred in April of this year when civil society had the opportunity to input on its Management Plan 2014-2017. Linda and I did so as civil society professionals advocating for three interventions. But just imagine the impact that might or could be achieved if many NFAs and IFUW joined forces to put forth a common position. Linda and my three suggested interventions to the Management Plan concerned non-State torture and are listed here:²⁷
 - i. Plan an educational CSW Side Event co-operatively with the Committee against Torture, sharing equal knowledge on State and non- State inflicted classic torture.
 - ii. Hold a forum on classic torture—non-State and State—facilitating persons so victimized to speak (Similar to the human trafficking forum²⁸).
 - iii. Present a future CSW Side Event on manifestations of violence against women and girls identified as torture by past and present Special Rapporteurs such as FGM, acid and widow burning; include classic non-State torture in such an event.

²³ CFUW. (2012, November 26). *Statement submitted by Canadian Federation of University Women, a non-governmental organization in consultative status with the economic and social council* (E/CN.6/2013/NGO/10). http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.6/2013/NGO/10

²⁴ CFUW. (2013, March 16). *Oral statement*. http://www.youtube.com/watch?v=RqZklLq_AGg&feature=youtu.be

²⁵ CFUW. (2013, March 5). *Genderizing the UN Convention against Torture (CAT) & Non-State Torture Victimization*. CSW panel presentation, UN Headquarters, NY City. http://nonstatetorture.org/files/9713/6140/7156/Poster_2013_CFUW_panel.pdf

²⁶ Sarson, J. & MacDonald, L. (2013). *Fact Sheet: Torture in the Private Sphere*.

http://nonstatetorture.org/files/3913/6165/3540/fact_sheet_torture_in_the_private_sphere2.pdf

²⁷ Sarson, J. & MacDonald, L. (2013, April). *A response to the call for written submissions consultation on OHCHR's management plan 2014-2017*. <http://nonstatetorture.org/files/8013/6612/6738/submissionOHCHR.pdf>

²⁸ OHCHR. (2010, June 7). *Survivors of human trafficking – breaking the silence*.

<http://www.ohchr.org/EN/NewsEvents/Pages/SurvivorstraffickingBreakingthesilence.aspx>

Conclusion

As women we are at this stage of relational and human rights development because of the tremendous and previous efforts of women and some men. The Universal Declaration of Human Rights was originally titled the Declaration of the “Rights of Men”.²⁹ Its title and language was a struggle to transform. Now there is the need to make article 5 real to every girl’s and woman’s human right—that they have the equal human right not to be subjected to torture perpetrated by non-State actors, including acts of classic torture. And if they are so victimized that the world acknowledges the human right violation they suffered so they can speak their truth, be believed, be granted full equality, and greeted and treated with respect, dignity, and worth. It is the time for such patriarchal human rights violation and gendered discrimination to end. It is time the human right article that “no one shall be subjected to torture” belongs to women and girls regardless of who the torturer is. They must be included in the “no one”.

²⁹ Pietilä, H. (2002). *Engendering the global agenda the story of women and the United Nations* (p. 18). UN Non-governmental Liaison Service, Geneva.