



## VERBAL STATEMENT TO THE UN COMMITTEE AGAINST TORTURE MAY 18, 2012

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### **Supplement to: *A Shadow Report: Canada Fails to Establish Non-State Actor Torture as a Specific and Distinct Criminal Human Rights Violation*, submitted April 8, 2012 to The United Nations Committee against Torture (CAT), United Nations, Geneva**

Our names are Linda MacDonald and Jeanne Sarson; we are members of the Canadian Federation of University Women (CFUW), a NGO with special consultative status under ECOSOC. We are here to advocate for the legal empowerment and the human right and inherent dignity of women and girls subjected to torture by non-state actors in the so-called private/domestic Canadian sphere. Presently, in Canada, women and girls so tortured cannot seek criminal justice for the distinct crime of non-state torture they endured, as Canada has no law that specifically criminalizes torture by non-state actors. Although women and girls are predominate victims, the Canadian Federation of University Women realizes that achieving the criminalization of torture by non-state actors will also benefit men and boys so victimized, as well as promote the development of greater humanity within Canadian society, its culture and its communities.

**LEGAL EMPOWERMENT AND THE RULE OF LAW**—is presently unattainable for this specific population of women/girls because without a specific law that criminalizes torture by non-state actors, the women/girls are denied their legal empowerment. Attaining legal empowerment requires access to a just law,<sup>1</sup> that criminalizes non-state torture; thereby, enforcing the protection of their human rights and fundamental freedoms,<sup>2</sup> not to be subjected to torture. Attaining a just law would provide informed protection, services and reparations.<sup>3</sup> For this to happen, the law on torture in Canada must be reformed to include the criminalization of non-state torture. Canada's Constitution established political and legal relational foundations between the government and the rights of citizens, which are described within a Charter of Rights and Freedoms.<sup>4,5</sup> Section 28 of the Charter guarantees the existence of women's equality to men.<sup>6</sup> Equality rights include "the right to equal protection and equal benefit of the law,"<sup>7</sup> and freedom of speech. There is no freedom of legal speech when women/girls so victimized are denied their right to speak and have acknowledged in a court of law that they were tortured. Therefore, women/girls, the predominate victims of many forms of non-state torture, do not have the equal protection and benefit of the law as do persons who suffered State inflicted torture which is criminalized in Canada. This specific population of women and girls continue to be confronted by a lack of access to social and legal justice—their human right not to be subjected to torture remains invisibilized—as do they. Without a law on non-state actor torture Canadian political and civil society can falsely pretend that acts of non-state torture do not occur in our culture.

**INHERENT DIGNITY**<sup>8,9</sup>—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". Speaking now as professionals, into our 20<sup>th</sup> year as listeners to the atrocities of women who disclose severe pain and suffering of non-state torture victimization, inflicted by families/guardians, spouses, and other like-minded persons/groups, their inherent dignity is intentionally destructively harmed or destroyed by the perpetrators who purposefully dehumanize those they decide 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. Presently, there is a failure in the development of Canada's moral humanity and socio-legal agenda as torture perpetrated by non-state actors is not specifically identified in the *Criminal Code of Canada*. It needs to be. To do otherwise will continue to exclude women/girls so tortured from the possibilities of

legal restoration and empowerment. 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. Restoration can only alter the present and the future. This requires that within Canadian society women so victimized have access to criminal justice for the crime of non-state torture suffered and the legal ability to hold those responsible accountable. When such restoration is possible it delivers messages of hope, compassion and of social equality, worth and inherent dignity and social inclusiveness as respected citizens of Canada. 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 as women/girls so tortured attempt to relieve the additional pain of social rejection and social exclusion.<sup>10</sup>

**WHEN RESTORATION IS UNAVAILABLE TO CANADIAN WOMEN**—this creates legal disempowerment. The absence of non-state torture law excludes victimized women/girls and their realities from the Canadian 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. As stated by Alex, who speaks of non-state torture victimization,

*When society minimizes it, ... 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.*

**Therefore;** we ask the Committee against Torture to assist the CFUW efforts to achieve the legal empowerment, inherent dignity and human rights of women/girls tortured by non-state actors by recommending that the Government of Canada, having acknowledged that non-state torture occurs, specifically name and include torture perpetrated by non-state actors as a distinct criminal offence within the *Criminal Code of Canada*, specifically differentiating non-state torture from other crimes such as “simple, aggravated or sexual assault, forcible confinement, kidnapping or trafficking in persons...”<sup>11</sup>

## Endnotes

<sup>1</sup> 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.

<sup>2</sup> UN doc. A/RES/61/39. *The rule of law at the national and international levels*, (p. 1).

<sup>3</sup> 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*.

<sup>4</sup> Government of Canada. (1982). *The Constitution and you*. Ottawa: Publications Canada.

<sup>5</sup> Forsey, E. (1982). *How Canadians govern themselves*. Ottawa: Government of Canada.

<sup>6</sup> Franks, M. (no date). *Women and equality: Will the Charter make a difference?* Halifax, Nova Scotia: Public Legal Education Society of Nova Scotia.

<sup>7</sup> Government of Canada. (1982). *The Charter of Rights and Freedoms A guide for Canadians* (p. 15). Ottawa: Publications Canada.

<sup>8</sup> 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).

<sup>9</sup> 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.

<sup>10</sup> Eisenberger, N. I., Lieberman, M. D. & Williams, K. D. (2003). Does rejection hurt? An fMRI study of social exclusion. *Science*, 302, 290 -292.

<sup>11</sup> 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. 46). Palais des Nations, Geneva.