

## TORTURE FREE ZONE

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### PEACE IN BOTH PUBLIC AND PRIVATE SPHERES

To achieve sustainable peace it is now recognized that women must be present at the peace negotiation table; however, it is also recognized that women must be assured of equality and of safety and security or many will not risk being present therefore sustainable peace becomes 'aborted'.

To ensure women's place at the negotiation table means that women need to be safe in both the public and private spheres. Creating a role model of a country such as Canada to become a "torture free zone" where torture is made illegal in both the public and private spheres would be a step towards **achieving women's safety and world peace**. The feminization of women's legal and human rights in regards to torture that is committed by non-state actors in the private sphere is our focus.

### TORTURE & PATRIARCHY

To briefly understand issues related to torture we refer to the following three UN instruments.

- Universal Declaration of Human Rights 1948 – Article 5 states "no one should be subjected to torture ..." however since human rights were not considered women's rights at the time, this Article was applied to the public or male sphere. It would be almost half a century before women's rights become human rights and still there remains a failure to recognize the existence of non-state actor torture of women. Until it is recognized that non-state actor torture of women in the private sphere is a violation of Article 5 in the Universal Declaration of Human Rights, women's equality, women's suffering, is minimized as are women as human persons.
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1975 – was enacted to address the specific human rights violation of torture but still focussed on the public sphere.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 – is the present UN instrument and remains focussed on torture that is inflicted by state actors; however, there is beginning to be a push to recognize non-state acts of torture that are inflicted by paramilitary groups versus state actors who are persons employed by a state or who represent a state, such as the police, the military, federal prison guards, embassy staff or any government official.

Torture inflicted by state actors in the public sphere is considered:

- **A SPECIFIC offence DISTINCT from other forms of violence**
- **Its elimination is unconditional and**
- **Is an absolute violation of fundamental human rights**

To ensure that Canada complies with the 1984 UN Convention, Canada has 'flipped', so to speak, the UN Convention into the Canadian *Criminal Code* therefore making torture in the public sphere that is committed by state actors a criminal offence under section 269.1.

## **TORTURE & WOMEN'S HUMAN RIGHTS**

What does it mean for women and women's legal and human rights and Canada's due diligence responsibility to protect ALL its citizens including women from torture victimization in the private sphere by non-state actors such as a spouse, family member, human trafficker, or others known or unknown to her? It means:

- that torture that occurs in the private sphere is not equally recognized as a SPECIFIC offence DISTINCT from other forms of violence
- that women's torture victimization in the private sphere is minimized to assaults of some kind
- that tortured women are a statistically invisible population
- that maintaining a law that only addresses torture by state actors provides on-going impunity for non-state actor torturers
- that maintaining a law that only addresses state inflicted torture as a specific offence distinct from other forms of violence while minimizing non-state actor torture causes effect-based, gender-based DISCRIMINATION because women are the most common victims of everyday violence in the private sphere and from our work this holds true for non-state actor torture victimization.
- As feminist Senator Nancy Ruth said in 1999, **"If your rights [aren't] enshrined in law you [have] nothing"**, (Finlayson, J. (1999). *Trailblazers Women Talk About Changing Canada* (p. 121). Toronto: Doubleday Canada).

## **OVERCOMING GENDER CRIMES REQUIRES**

Recognizing women as full subjects of human rights - that "women's rights are human rights" in the public and private spheres was a struggle that heightened during the years of 1993 to 1995. Women's struggle in the private sphere provided the framework for the work of the Women's Caucus for Gender Justice in relation to the processes of the International Criminal Court. They pushed against much oppression but did succeed in the FEMINIZATION OF INTERNATIONAL CRIMINAL LAW when the RAPE of women became TORTURE & GENOCIDE versus the privileged spoils of **men's warring**. These efforts together have led to a process for ELIMINATING IMPUNITY FOR GENDER CRIMES in the public sphere.

**The FEMINIZATION OF NATIONAL CRIMINAL LAW specifically in relation to non-state actor torture must occur to eliminate impunity for gender-based discrimination that occurs in the private sphere.**

**Only when the feminization of laws that outlaw torture equally in both the public and private spheres will women sit at the peace table with safety and security and only then will sustainable peace be possible!**