

REPORT:**BARRIERS WOMEN FACE WHEN TRYING TO ACCESS JUSTICE AT THE NATIONAL LEVEL – A CANADIAN PERSPECTIVE ON NON-STATE ACTOR TORTURE COMMITTED IN THE PRIVATE OR ‘DOMESTIC’ SPHERE**

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We list the following barriers to be:

1. *Failure of Canada to eliminate female-based discrimination regarding domestic torture or NSAT.* There are three points to make:

- a. *Canada continues to maintain a male-gendered bias in present Canadian law regarding torture.* State torture is criminalized in the Canadian *Criminal Code*, s. 269.1. From a historical point of view this position is patriarchal having evolved from the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, which basically focussed on attempting to protect warring men from subjecting each other to torture.
- b. *Female-gendered discrimination under the law.* The consequence for women (and girls) who would attempt to report surviving NSAT or domestic torture is that although state torture is considered a specific offence distinct from other forms of violence, an absolute violation of fundamental human rights and its elimination unconditional NSAT is not equally recognized as a specific offence distinct from other forms of violence under Canadian law. Therefore, women do not have access to the specific legal justice for the NSAT have endured.
- c. *Maintenance of on-going impunity.* Because there is no specific and distinct Canadian law regarding domestic or NSAT torture women cannot proceed to hold perpetrators of NSAT legally accountable therefore perpetrators are granted on-going impunity for the NSAT they inflict. Women suffer secondary re-victimization caused by such on-going social-legal injustice.

For further information and an example that compares a woman’s domestic torture or NSAT ordeals to that of state torture please refer to our published article entitled *Defining Torture by Non-State Actors in the Canadian Private* (pp. 29-33), available at:

<http://www.ccvt.org/pdfs/firstlighwinter2009.pdf>.

2. *Canada’s continued rejection of the value of making specialized laws as good practice for the elimination of violence against women.* Canadian policy ought to be impacted by the Organization for Security and Co-operation in Europe (OSCE), the world’s largest regional security body, which sees the promotion of gender equality and combating violence against women as an integral part of its commitments. In its recently released report: *Bringing Security Home: Combating Violence Against Women in the OSCE Region. A Compilation of Good Practices*, June

2009 (<http://www.osce.org/item/38013.html>), it proposed the development of specialized laws and/or reviewing existing laws so as to,

strengthening how they protect survivors of violence and prosecute perpetrators ... For example, any definitions of violence against women can be expanded so that all forms of such violence are actionable ... the responsibility for prosecuting all crimes given clearly to the State... Revising existing law is, however, a minimalistic approach to addressing violence against women ... (p. 97).

The report also suggested further interactions have been taken in other countries that have enacted stand-alone or specific laws to combat specific types of violence against women. Therefore, requesting that the Canadian government specifically and distinctly criminalize domestic torture or NSAT is a reasonable and effective intervention. However, the Canadian federal Department of Justice continues to reject such an intervention of enacting a stand-alone or specific law naming NSAT as a specific crime; therefore, victimized women's right to speak their truth in a court of law is denied because if they wanted to go to court they would have to be willing to withhold or lie or minimize the NSAT victimization they endured by having it considered an assault of some kind under presently existing laws.

3. *Failure of the Canadian Minister of State (Status of Women) to advocate for the criminalization of NSAT and uphold women's freedom of speech to tell their truths in Canadian courts of law.*

Canada has ten provinces and three territories with governments that correspond with the federal government. The Canadian *Criminal Code* applies to all Canadian citizens no matter where they dwell. The Honourable Helena Guergis, P.C., M.P., is the federal Minister for the Status of Women. On the Status of Women website it is written that one of the three pillars of the Status is ending violence against women (<http://www.swc-cfc.gc.ca/med/spe-dis/2009/0306-eng.html>). It is also written their role is helping women participate fully in the economic, social and democratic life of Canada and that Canada is committed to women's human rights. When we approached our Nova Scotia provincial Minister for the Status of Women, Minister Bolivar-Getson, for assistance she wrote to the federal Minister, the Honourable Helena Guergis requesting federal support for the criminalization NSAT. The Honourable Helena Guergis responded by stating that she had forwarded a copy of Minister Bolivar-Getson's letter of support to the Minister of Justice the Honourable Robert Nicholson being "sure he will give the matter every consideration" (May 14, 2009).

We consider this action by the Honourable Helena Guergis to be totally inadequate because she has a responsibility to assertively advocate for ending violence against women. We assume she would know that the Minister of Justice has rejected identifying NSAT perpetrated in the domestic sphere as a distinct crime. We also assume she is aware of our shadow report sent to CEDAW and the women's testimonials therein. The passing on of the letter is an example of placation, presenting a serious barrier for women in their struggle to overcome the patriarchy of the Canadian political and legal systems.

This response by the federal Minister for the Status of Women, the Honourable Helena Guergis is, in our opinion, an example of a failure of the federal Office of the Minister for the Status of Women to advocate for the women (and girls) of Canada who have or are enduring NSAT in the domestic sphere. Minister Helena Guergis' response creates deeper social injustices, further subordinates the NSAT of women (and girls) and continues to render the women (and girls) so harmed statistically invisible. Also, such a failure silences their right to gain truthful legal and social justice in Canadian courts. This is also a failure to uphold their freedom of speech – to be provided with equality in the socio-legal space to speak their truth.

The Executive Summary/National Action Plan of the Canadian Panel on Violence Against Women, established by the federal Office of the Status of Women, released its report in 1993. This report, *Changing the Landscape: Ending Violence ~ Achieving Equality*, stated that Canadian women were being subjected to domestic “torture” (p. 5). Today Canadian police experience (and U.S. academic research) identifies that 20-22% of pedophilic crime scene pornography involves “torture and bondage”. Girls harmed in childhood are prone to re-victimization in adulthood. The Royal Canadian Mounted Police (RCMP) website speaks of the need to recognize that trafficked women may also be victims of torture (see question number five: <http://www.rcmp-grc.gc.ca/imm-passp/g-a-trafficking-traite-eng.htm#5>). Many of the women who contact us are women who report NSAT victimization beginning in childhood, who report multi-forms of torture victimization including being victims of human trafficking. Therefore, the presence of such mainstream reports and website information illustrates that there is a need for the Office of the Status of Women to acknowledge that NSAT can and does occur in Canada and to be active in its elimination.

Furthermore, the Office of the Status of Women ought to consider not only the information in our shadow report and the Executive Summary of the Canadian Panel, but also the 1996 Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy.¹ In her report she clearly states that

governments are not only obligated to refrain from committing human rights abuses [state torture], without discrimination ... [and] a State can be held complicit where it fails systematically to provide protection from private actors ... To avoid complicity, States must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors ... (paras. 30-33).

Canada and the Office of the Status of Women have failed in their due diligence responsibilities because women who report surviving domestic torture or NSAT have no section in the Canadian

¹ Coomaraswamy, R. (1996, February 6). *Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms*. (E/CN.4/1996/53). Available: <http://74.125.113.132/search?q=cache:625MFoGbl14J:www.unhchr.ch/Huridocda/Huridoca.nsf/0/c41d8f479a2e9757802566d6004c72ab%3FOpendocument+Rhonda+Copelon+non-state+actor+torture&hl=en&gl=ca&strip=1>

Criminal Code that permits them to identify the specific and distinct crime of NSAT, they cannot expect torturers to be prosecuted for the domestic torture or NSAT they commit therefore these perpetrators function with impunity. Moreover, the women are unable to seek protection because the crime of NSAT is not listed in the Canadian *Criminal Code* consequently the police remain ignorant of the degree of protection victimized women (and girls) require further reinforcing barriers to their access to justice.

- 4. Harmful misogynistic and biased socio-cultural and professional attitudes that cause women (and girls) to be discredited and disbelieved.** Criminal knowledge has been male-defined and male-centered (Comack 1992).² Historically harmful misogynistic attitudes have dominated and negatively shaped perspectives about women who have endured relational harms in that their suffering was labelled hysteria, for example. Neither of these socio-cultural perspectives considered that women ought to have had human and legal equality rights therefore violence against women should not be tolerated. These perspectives persist today which has led to the discreditation of women's voices and disbelief in their attempts to disclose ordeals of violence including NSAT. And this is especially true for women disclosing NSAT that involved ritualism-based tortures. In industrialized countries such as Canada, women's attempts to speak out and to cognitively struggle to understand what they had endured as girls, as young infants for some, and as women and not be totally overwhelmed by this recovery process, has been used and still is used as fertile ground for discrediting them when they speak of ritualism-based tortures. Socio-cultural and institutionalized discriminatory biases have focused on the demonization or satanization of ritualism-based tortures drawing attention away from the perpetrators' acts of torture resulting, most frequently, in social and legal discreditation of the women's testimonies. These socio-cultural and systematic forms of discreditation have been formidable barriers for this specific population of women so harmed by perpetrators of NSAT.

This discreditation continues as a formidable barrier to victimized women's ability to seek legal justice. This, in spite of the fact that it is now recognized that ritualism-based tactics are used by a variety of perpetrators as a tool to disempower and hold victimized women and girls in a state of physical, cognitive, emotional and spiritual captivity. The following are some examples of how various perpetrators use ritualism as tools for control and harming:

- a. An American Catholic pedophilic priest manipulated a child into victimization by equating oral rape to the ritualism of "receiving Holy Communion" (McGary, J. (2002, April 1). Can the church be saved? *Time*, 17).
- b. Nigerian shaman used voodoo ritualism to instill a state of captivity in Nigerian women being trafficked into France (Hourelid K. (2006, October 2). Sordid sex-trafficking tale starts at Nigerian shrines. [On-line].

² Comack, E. (1982). Women and crime. In R. Linden (Ed.), *Criminology: A Canadian Perspective* (2nd ed.) (pp. 127-162). Toronto: Harcourt Brace & Company Canada.

<http://community.seattletimes.nwsourc.com/archive/?date=20061002&slug=sextrade02> October 2, 2006.

- c. The centuries-old socio-cultural ritual of the Devadasi system of India, although made illegal, persists in 'secret', with girls under 10 years of age chosen to become Devadasis, meaning handmaidens of the goddess Yelamma. The girls on reaching puberty will become victims for human trafficking (Reuters NewMedia, Inc. (1997, January 22). Indian Cult Supplies Child Sex Trade).
 - d. Marsha Allen, was a five year old Russian girl when she was adopted – bought for \$15,000.00 – by an American pedophile who held her in a state of captivity, starved her to keep her body underdeveloped, subjected her to a “marriage” ritual, tortured her, and exploited her in crime scene internet ‘pornography’ (Appleby T. (2006, May 4). ‘I was held hostage by a monster’. *The Globe and Mail*, pp. A1, A13).
5. **Failure of Canada to be held accountable by the CEDAW Committee.** We submitted a shadow report to the CEDAW Committee entitled: *Torture of Canadian Women by Non-State Actors in the Private Sphere: A Shadow Report* (2008, March). Recommendations 1 (p. 13), 2 (p. 16) and 3 (p. 22) and the discourse surrounding these recommendations were suggested to overcome existing barriers in accessing justice for women so victimized. The ongoing invisibility of victimized women ensures a future barrier will continue to exist. The shadow report is accessible at: <http://www.ritualabusertorture.org/tortureofcanadianwomen.pdf> .

We were present in Geneva when the Canadian delegation presented their report to the CEDAW Committee. Dr. Anamah Tan, CEDAW Committee expert, asked the Canadian governmental delegation a question regarding “domestic violence in the private domain that amounts to torture” (October 22, 2008). The Canadian delegation responded to her question by stating Canada considered that NSAT could be “holistically” dealt with under the existing provisions of the Canadian *Criminal Code*. This perspective means minimizing NSAT or domestic torture or torture that women endure within the context of ‘family’ to an assault of various forms, such as a sexual assault or an assault with a weapon for example. In our shadow report we speak of how this is discriminatory and makes such torture victimization invisible. Canada was not held to account by the CEDAW Committee as Dr. Tan stated there was resistance within the CEDAW Committee to acknowledge and support that women endure domestic torture or torture by non-state actors in the private sphere.

Besides our Shadow Report there was a NGO Statement (Canada) presented to the CEDAW Committee on October 20, 2008, in Geneva. It was read by Sharon McIvor, Feminist Alliance for International Action (FAFIA). In this report it stated “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.”

There were and are 'legitimate' reasons for presenting our Shadow Report to the CEDAW Committee, for the CEDAW Committee to hear the NGO statement which included reference to torture by non-state actors and for Dr. Tan to ask for support from the CEDAW Committee to hold Canada accountable for naming the specific criminality of NSAT. These reasons pertain to the CEDAW General Recommendation No. 19 (11th session, 1992) violence against women which states under item 7:

(b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; ... [and] ... (e) the right to equal protection under the law ...

The CEDAW General Recommendation No. 19 goes on to state that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."

Therefore, at this time, in our opinion and from this experience, one of the barriers Canadian women who have survived various forms of NSAT face relates specifically to the failure of Canada to be held accountable by the CEDAW Committee process.

These five issues are most daunting. Until they are overcome women so harmed will continue to be re-victimized by Canadian socio-cultural and structural systems such as the Canadian political and legal systems which present legal barriers for the women who have and are enduring multi-forms of non-state actor torture perpetrated in the domestic or private sphere.

Respectfully submitted,

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