

# Review of Canada's Compliance with the Convention on the Elimination of All Forms of Discrimination against Women

Submission to the United Nations Committee on the Elimination of Discrimination against Women

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Founded in 1919, the Canadian Federation of University Women (CFUW) is a self-funded, non-partisan, non-profit, voluntary organization. Close to 9,000 women from across Canada, promote women's equality, human rights, justice and peace.

CFUW the largest of 60 national affiliates of Graduate Women International (GWI), an international, non-governmental organization.

CFUW is active in public affairs, working to raise the social, economic and legal status of women and girls and to improve education, the environment, peace, justice and human rights. CFUW has special consultative status at the United Nations (ECOSOC) and serves on the Education Committee of the Canadian Sub-Commission to UNESCO.

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## Introduction

General Recommendation No.19 (11<sup>th</sup> session, 1992) made by the Committee on the Elimination of Discrimination against Women states that all people have the “the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment”. At present, the *Criminal Code of Canada* does not include torture by non-state actors as a specific and distinct criminal offence, nor does Canada recognize that non-state actor torture is a form of violence against women.

Women are disproportionately affected by this type of violence, and yet the crimes committed against them are not adequately recognized. Without the recognition of non-state torture in our *Criminal Code*, victims cannot receive justice, support or rehabilitation; the Canadian public remains ignorant of the extent and gravity of these crimes; sufficient data cannot be collected on the subject, and law enforcement cannot prevent these crimes from happening.

In this submission the Canadian Federation of University Women (CFUW) presents our concerns with Canada’s implementation of the Convention on the Elimination of All Forms of Discrimination against Women with regards to violence against women and torture. This submission refers specifically to the *List of Issues in Relation to the Combined Eighth and Ninth Periodic Reports of Canada* which was distributed on March 16, 2016.

## Violence against Women – Non-State Actor Torture

7. Information before the Committee refers to the continued prevalence in the State party of violence against women, in particular domestic violence, that affects mainly indigenous and minority women. (List of Issues, 16 March 2016).
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CFUW has been working for years to criminalize Non-State Actor Torture in Canada. These efforts have been championed by two CFUW members in particular: Jeanne Sarson and Linda Macdonald frequently appear as expert witnesses and speak to the necessity of this law.

### *What is Non-State Actor Torture?*

Non-state actor torture is a heinous form of interpersonal violence; it occurs when someone is tortured by a parent, spouse, guardian, stranger, organized gang, or other groups/organizations not affiliated with the state, in the private sphere (e.g. in homes, cottages, warehouses, etc).

### *Background*

The 1993 report of the Canadian Panel on Violence against Women first established that women are being tortured in the private sphere by non-state actors. However, since torture by non-state actors is not criminalized as a specific offence in

Canada, no statistics on its occurrence have ever been collected through existing data collection tools, such as the Uniform Crime Reporting (UCR) Survey or the General Survey (GSS) on victimization.

Protection from torture is a non-degradable human right. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Universal Declaration of Human Rights, and the Convention of the Elimination of Discrimination Against Women, among other conventions and agreements have all reinforced that no one shall be subjected to torture irrespective of who the torturer was/is. Despite being a signatory to these conventions and agreements, Canada has not taken appropriate steps to prevent non-state actor torture, or ensure that victims have access to adequate services and truthful justice (i.e. laws specifying that torture by private individuals and organizations is a distinct criminal offence).

This issue is particularly important to CFUW given that women and girls are disproportionately affected by extreme forms of violence.

In 2010, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated the following:

- a) **Acquiescence:** a state must neither fail to act nor may it act with indifference to torture perpetrated by State or non-state persons. Such a failure to act suggests tacit agreement, permission or 'acquiescence' to the infliction of acts of torture;
- b) **A state is required** to uphold its international due diligence obligations to respect, prevent and protect its citizens from torture inflicted by State actors or by non-state actors (private persons) in the private sphere;
- c) **A state is obliged to protect** all citizens from torture whether by state or non-state actors (in the private sphere). Domestic laws must provide adequate protection against torture, whether by State or non-state actors. In Canada. "Domestic criminal law must cover all possible cases falling under the definition of torture";
- d) **A deficient legal framework:** occurs when other existing legal provisions already in the Criminal Code, are used to misname crimes. Failure to name the actual crime minimizes and trivializes torture crimes. Torture is one of the worst and most destructive of all human rights violations;
- e) **Culture of impunity:** when there is no law against a crime, in this case torture, the perpetrator/s is not held accountable for the offence. This creates impunity. The absence of a specific law enables the criminal.

In 2012, CFUW submitted a shadow report to the United Nations Committee against Torture in Geneva, Switzerland. The Committee supported the CFUW recommendations, which were:

1. That the Government of Canada amends, immediately, the *Criminal Code of Canada* to include torture committed by non-state or private individuals and organizations (non-state actors) as a specific and distinct criminal offence.
2. That the Government of Canada exercise due diligence by initiating into Canadian policies and practices all appropriate measures to ensure that no person is subjected to torture by non-state actors; be respectful of the priority of gender-sensitive frameworks on the United Nations agenda, given that women and girls are disproportionately affected by extreme forms of violence; and that Canada uphold the evolving commitments of the United Nations human rights instruments such as CAT which Canada has ratified.

## **What Now?**

In early 2016, Member of Parliament Peter Fragiskatos put forward a Private Member's Bill, "Torture in the Private Sphere", to criminalize Non-State Actor Torture. This bill would amend *The Criminal Code of Canada* to include Non-State Actor Torture as a criminal offence. CFUW has been a fervent supporter of this bill and commends Mr. Fragiskatos on his action. The bill passed both first and second reading and is currently in committee. Due to the nature of our parliamentary procedures, however, this bill still faces potential challenges, and is not guaranteed to pass.

To protect Canadian human rights we need a separate section within the Criminal Code that recognizes these crimes that far exceed aggravated assault. Such an amendment would provide recognition of this crime and protection for those most vulnerable.

In September 2016, Jeanne Sarson and Linda MacDonald made a submission to the House of Commons Standing Committee on the Status of Women for its Study on Violence against Young Women and Girls in Canada, addressing the grievous impact of Non-State Actor Torture. CFUW is following developments closely and we are keen to see the Government act.

## **Recommendations**

CFUW recommends that the Canadian authorities:

- Prioritize the passing of Bill C-242, a bill to amend the *Criminal Code of Canada* to include torture committed by private individuals and organizations as a specific and distinct criminal offence, so that it may proceed to Royal Assent and become law;
- Exercise due diligence by initiating into Canadian policies and practices without delay, all appropriate measures to ensure that no person is subjected to torture by non-state actors;

- Respect the priority of gender-sensitive frameworks on the United Nations agendas, given that women and girls are disproportionately affected by extreme forms of violence; and
- Uphold Canada's commitments to United Nations human rights instruments to which Canada is a signatory.

In 2017 Canada will be reviewed by the Committee against Torture. We urge the Government of Canada to anticipate this review by passing Bill C-242 and amending the *Criminal Code* to include Non-State Actor Torture.