

Freedom from violence, stigma and stereotypes (Violence, Human Rights and Health)

Subtopic: Non-State Torture (NST)

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Introduction

Non-State torture (NST) is a specific form of violence and human rights violation perpetrated against women (VAW) and girls. It refers to acts of torture perpetrated by non-State actors in the domestic, private, or public spheres. Freedom from torture is considered a non-derogable human right meaning it cannot be compromised. It appears as article 5 in the 1948 [United Nations Universal Declaration of Human Rights](#) (UDHR) which states that “No one shall be subjected to torture”

Learning Outcomes

1. Define non-State actor versus State actor
2. Compare acts of torture when perpetrated by non-State actors and State actors, explaining how acts of torture perpetrated by non-State actors are similar and or different than torture perpetrated by State actors
3. Discuss the feminization of human rights and how freedom from non-state torture has been discriminatorily excluded as a human right of women and girls
4. Discuss how State parties have discriminatorily compromised the non-derogable human right violation of torture in law and practice when applied to women

Preparation

Read

- 10 FACTS ABOUT NON-STATE TORTURE infographic.
- Amnesty International. (2000). Respect, protect, fulfil women's human rights. London, UK: Amnesty International UK
- Procedural and substantive obstacles to reparations for women subjected to violence through judicial and administrative forums. Paper presented at Mandate of the Special Rapporteur on Violence Against Women, Its Causes and Consequences - Panel Discussion on Reparations for Women Subjected to Violence, UN Geneva.

Watch

Elizabeth Gordon describes what it was like for her to name the crime and human rights violation of non-State torture (NST) that she endured since infancy.

<https://www.youtube.com/watch?v=tKUij3NsG-E&t=127s>

Listen

Podcast: Linda MacDonald & Jeanne Sarson on feminism as a means of opposing misogyny and mass violence.

<https://podcasts.google.com/feed/aHR0cDovL2ZlZWRzLnNvdW5kY2xvdWQuY29tL3VzZXJzL3NvdW5kY2xvdWQ6dXNlcnM6NzkwODI5NDEzL3NvdW5kcy5yc3M/episode/dGFnOnNvdW5kY2xvdWQ6dXNlcnM6NzkwODI5NDEzL3NvdW5kcy5yc3M>

[W5kY2xvdWQsMjAxMDp0cmFja3MvODI1OTYzMDUy?ved=0CAcQ38oDahcKEwi40bbExcjpAhUAAAAAHQAAAAAQ](https://www.youtube.com/watch?v=W5kY2xvdWQsMjAxMDp0cmFja3MvODI1OTYzMDUy?ved=0CAcQ38oDahcKEwi40bbExcjpAhUAAAAAHQAAAAAQ)

Key Institutions and Actors

- United Nations Human Rights Office of the High Commissioner Committee against Torture
- United Nations Human Rights Office of the High CEDAW Committee

Instructional Options

Lecture

Although human rights are meant to apply universally to all people to be entitled to a life of equality, dignity, respect, and free from discrimination, article 5 of the UDHR has not been operationalized as a human right belonging to women and girls, rather it has been predominately applied as a human right belonging to warring men. It was also considered that torture was only inflicted by State actors therefore many countries enacted their law on torture as only occurring when perpetrated by State actors.

In 2013, Felice Gaer, Director of the Jacob Blaustein Institute for the Advancement of Human Rights, and who served as Vice-Chair of the UN Committee against Torture, speaking in her personal capacity, discussed the process that led to manifestations of VAW being addressed by the UN Committee against Torture and the changes that occurred over years. Gaer explained that it was not until 1986, when UN Special Rapporteur Peter Kooijmans acknowledged in his report to the UN Human Rights Commission that sexualized torture of women by State actors was occurring. During 2002-2005, the Concluding Observations of the Committee against Torture only identified three rape violations in the Committee's reports to States Parties. From 2007-2011, this increased to 31 States in which sexualized violations were addressed. In 2008 the Committee released it General Comment No. 2: Implementation of Article 2 by States Parties which in paragraph 18 it identified that State and non-State actors are perpetrators of torture making reference to forms of VAW such as rape, domestic violence, female genital mutilation (FGM), and human trafficking.

Read and Discuss

Read the Report of the special rapporteur on violence against women, its causes and consequences (A/HRC/17/26). United Nations.

<https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-26.pdf>

And discuss as a group the strengths and weaknesses of a holistic approach to women's right to be free from violence as presented on page 13 of the report. Would this approach be successful in reducing or eliminating non-state torture?

Additional Resources

- Jones, J., Sarson, J., & MacDonald, L. (2018). How non-state torture is gendered and invisibilized: Canada's non-compliance with the committee against torture's recommendations. In: *Gender Perspectives on Torture: Law and Practice*. Center for Human Rights & Humanitarian Law Anti-Torture Initiative, Washington, DC, p. 33-56.)
- Clapham, A. (2006). *Human rights obligations of non-state actors* [introduction, pp. 1-23]. Oxford, NY: Oxford University Press; Copelon, R. (2009). End torture, end domestic violence. *On the Issues*.)
- Gaer, F. (2012). Rape as a form of torture: The experience of the committee against torture. *CUNY Law Review*, 15:293, 293-308.
<https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1301&context=clr>
- Human Trafficking National Coordination Centre (HTNCC). (2013). *Domestic human trafficking for sexual exploitation in Canada*. Ottawa, Ont.: Royal Canadian Mounted Police. <http://www.cathii.org/sites/www.cathii.org/files/Project-SAFEKEEPING-EN-Unclassified-FINAL.pdf>
- Manjoo, R. (2011). Report of the special rapporteur on violence against women, its causes and consequences (A/HRC/17/26). United Nations.
<https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-26.pdf>
- Native Women's Association of Canada. (2014). *Sexual exploitation and trafficking of aboriginal women and girls literature review and key informant interviews*. Toronto, Ont. Canadian Women's Foundation Task Force on Trafficking of Women and Girls in Canada.
https://www.nwac.ca/wp-content/uploads/2015/05/2014_NWAC_Human_Trafficking_and_Sexual_Exploitation_Report.pdf
- Office of Drugs and Crime. (2013). Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons. Vienna, AT: United Nations.
https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf

- Sarson, J., & MacDonald, L. (2019). "A difficult client": Lynn's story of captivity, non-state torture, and human trafficking by her husband. International Journal of Advanced Nursing Education and Research, 4(3), 107-124.
- Sarson, J., & MacDonald, L. (2018). Having non-state torture recognized by the UN and member states as an infringement of woman's human rights is imperative. *Canadian Woman Studies/Les Cahiers de la Femme*, 33(1. 2):143–155.

Advocacy

Contact an NGO to inquire on the process of submitting a shadow report to a UN Committee of a legally binding human rights treaty, for example:

- to the UN Committee against Torture on the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
(<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>)
- to the CEDAW Committee on the UN Convention on the Elimination of All Forms of Discrimination against Women
(<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>)