

National Council Women Canada

The National Council of Women of Canada NCWC

Submission to the UN Committee on the Elimination of Discrimination Against Women

89th Pre-Session Working Group (9th September 2024)

Contact Information:

Marianne Wilkinson,

President

presncwc@gmail.com

Daniela Chivu,

Vice President Justice, Global Affairs and United Nations

europa75@gmail.com

The National Council of Women of Canada (NCWC) is a national organization of women, working together since 1893, by advocating for the welfare of women, the family and the community in Canada, through local, and provincial councils of women, nationally organized societies and the federal government. The NCWC holds Consultative Status (General) with the Economic and Social Council (ECOSOC) of the United Nations, enabling us to bring a Canadian perspective to the work of the United Nations as an active participant in the United Nations Commission on the Status of Women (CSW) and a founding member of the International Council of Women.

Introduction:

This report is being presented by the National Council of Women of Canada, in advance of Canada's review, to the 89th Pre-Sessional Working Group of the UN Committee on the Elimination of Discrimination Against Women taking place from October 7th to 25th 2024.

The following is a list of issues that concern NCWC due to lack of action by the Government of Canada to deal with them: Femicide as a Distinct Article in the Criminal Code of Canada, Non-State Actor Torture, Sexual and Reproductive Health, the effects of Menopause on women's access to work and social protection. In these areas NCWC is concerned about the federal government's inaction and diligence to uphold and protect the rights of women and girls under The Canadian Charter of Rights and Freedoms, pursuant of Section 28-Gender Equality Rights between male and female persons. <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art28.html> Section 15, Provisions 15 (1), (2) Section (1) <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art15.html/>. Canada's policy to uphold and protect the human rights of women and girls (female persons), thus fails Section 28-Gender Equality Rights, Section 15, Provisions 15 (1), (2) Section (1) of the Canadian Charter of Rights and Freedoms by declining to recognize 'Femicide' as a distinct crime against women and girls, the most brutal manifestation of violence and discrimination directed against women and girls; and further perpetuating age discrimination within policies addressing the negative impact of Menopause on women's access to work and social protection.

Femicide is a distinct crime

Violence against women has been on the rise in Canada, 44% of women or 6.2 million women aged 15 and older have reported some kind of abuse in their intimate partner relationship. However, 'Femicide' has become Canada's pandemic.

Femicide fundamentally involves the murder of females, predominantly by males, solely due to their sex. While 'Homicide' is a word defining murder, within the global legal framework, the classification of 'Femicide' as an act of killing under 'Homicide' is wrongfully attributed, as it misrepresents the act of males killing females. The etymological origin of the word Homicide literal translation is "man-killing" from Latin homicidium

"manslaughter," from homo "man" (see homunculus) + -cidium "act of killing," from caedere "to kill, to cut down" (from PIE root *k^hae-id- "to strike"). As such, addressing 'Femicide' as Gender Homicide under Canada's Criminal Code not only misrepresents addressing the victim's sex but also the intent, motivation, and severity of the crime; it therefore, fails to address the most brutal form of violence against women and girls making the victims of femicide invisible. Within the legal operational and agreed language of the UNGA/UNDOC reports the definition of 'Femicide' is recognized as violence against women (females). UNwomen reports show the same. Findings by the Canadian Femicide Observatory for Justice and Accountability indicate that 850 women and girls have been murdered in Canada over the past five years, which translates to one woman or girl being killed approximately every 48 hours. Furthermore, there was a 27 percent rise in deaths attributed to male suspects between 2019, 2022 and 2023. Although not all cases had identified perpetrators, 82 percent of those identified were male, while 18 percent involved female suspects. Intimate-partner violence was the most prevalent form of femicide, followed by familial and non-intimate femicide.

Notably, femicide has not yet been recognized as a distinct crime within Canada's Criminal Code. Despite a commitment made in 2018 to sign a global convention aimed at developing programs to investigate and prevent femicide, Canada remains one of three out of 35 countries that have not fulfilled this pledge. Despite numerous calls to action and campaigns from civil society to recognize 'femicide' as a pandemic, to date the government of Canada has not enacted specific legislation establishing Femicide as a distinct crime in the Criminal Code of Canada, thus failing to move to ensure the eradication of one of the most brutal, cruelest and heinous forms of violence against women and girls.

The information presented underscores the urgent need for comprehensive action to address the serious and widespread issue of femicide. By recognizing femicide as a violation of human rights and a public health crisis, and by drawing lessons from jurisdictions that have successfully addressed this issue, Canada can take meaningful steps toward combating femicide.

CEDAW Part I Articles 1-6:

From a perspective of Canada fulfilling its obligations as a CEDAW signatory state, Canada failed to comply with the following articles:

1. CEDAW, particularly Part I Articles 1-6 in which States parties agree to take appropriate legislative measures including abolishing laws that promote discriminatory practices that violate women's fundamental human rights, and
2. CEDAW, 2 (b), legislative measure, (c), (d) (e)(f)- Femicide, (g) Homicide as a definition in the Canadian Criminal Code as Femicide. General Recommendation 19 general comment 7(b) which says women have "the right not to be subject to torture . . . and
3. CEDAW, General Recommendation 35 which clarified that violence against women can amount to torture in cases, for example, of domestic violence. Understanding the level of pain and suffering a woman is subjected to and the purposes and intentionality of those inflicting it, or when Government's discriminatorily fail to protect her based on her sex need to be addressed.

These insolvencies due to lack of action, continue to perpetuate brutal forms of violence against women and girls leading to Non-State Torture for survivors.

Non-State Actor Torture and a Failure of Due Diligence. This section identifies that Canada is failing its due diligence obligations to uphold the human right of women and girls not to be subjected to torture perpetrated by non-State actors. This means Canada violates the following:

CEDAW, particularly Part I Articles 1-6 in which States parties agree to take appropriate legislative measures including abolishing laws that promote discriminatory practices that violation women's fundamental human rights;

CEDAW General Recommendation 19 general comment 7(b) which says women have "the right not to be subject to torture . . . and

CEDAW General Recommendation 35 which clarified that violence against women can amount to torture in cases, for example, of domestic violence when understanding the level of pain and suffering a woman is subjected to and the purposes and intentionality of those inflicting it, or when Government's discriminatorily fail to protect her based on her sex.

Women and girls—including Canadian women and girls—who suffer torture perpetrated by non-State actors or non-State torture are a massive global group, as this definition exposes:

Non-State torture is committed by non-State actors in public or private, in relationships, perpetrated within families, in human trafficking, in prostitution, in pornographic exploitation, by violent groups and gangs, dismissed as socio-cultural, traditional, or religious acts or norms, and can be committed during migration, displacement, in humanitarian and civil unrest, for example.

Legislative and Institutional Frameworks are Barriers to Access to Justice. Canada does not legislatively acknowledge that violence against women can amount to torture perpetrated by non-State actors. In spite of repeated expert testimony to Canada's House of Commons Standing Committees recommending section 269.1 of the Criminal Code of Canada, be amended to include torture by non-State actors. For example, a latest testimony, and accompanying brief occurred March 2024, continued to call for non-State actor torture to be included as a torture crime in Canada's Criminal Code. Such repeated testimonies have not altered the following explanation by the Department of Justice, legal counsel in 2013 because 11 years later this perspective continues:

Canada's longstanding view is that. General comments and concluding observations of the treaty bodies, and this includes the Committee against Torture, are given serious consideration by governments in Canada, but Canada's view is that States Parties are not legally bound to implement them (E. Brady, personal communication, July 11, 2013) (p. 38).

This means that in Canada torture perpetrated by non-State actors is specifically, knowingly, and legally invisibilized and misnamed, for example, when aggravated or sexual assault when perpetrated against women within their private or community lives is ignored.

In 2013, the CEDAW Committee called for information on access to justice regarding CEDAW Convention Articles 2(b) and (c) and 15(1) and (2) . A submission by Sarson and MacDonald detailed non-State torture victimizations of Canadian women and girls, including that they also suffered sexualized human trafficking and exploitation perpetrated for example by parents and spouses. Their submission stipulated that non-State torture was not recognized as a crime of torture in 2013; 11 years later this remains a legal barrier that prevents incorporating a victim-centered approach for the truth-telling of non-State torture victimizations by women and girls (children) in Canada. However, rare advancements have recently occurred, for instance:

In 2023, a finding of fact occurred in the 2023 Ontario Superior Court Justice ruling that included the Affidavit of Megan Walker. She described that, "Some women and girls report being victims of torture, gang rape, mutilation, whipping, and waterboarding at the hands of both purchasers and exploiters" (para 209). This legal decision acknowledged that non-State torture victimizations are committed against women in prostitution in Canada and is a violation of Article 6 of CEDAW as well as CEDAW General Recommendations 19 and 35. The CEDAW was not utilized in this legal decision.

In 2022, "A Review of the Measures to Address Prostitution Initiative (MAPI)" was released by authors in the Department of Justice Canada, Research and Statistics Division. The Review includes this statement, "In one interview, one MAPI organization representative reported that some of their clients viewed their experiences as torture" (p. 14). The inclusion of this statement was hard-fought for because when the review was originally released this statement was excluded by the authors. This Review exposed that women in prostitution endure severe torture pain and suffering perpetrated by the sellers and buyers who are non-State actors. CEDAW was not referred to in this Review.

The report "Prostitution and Violence against Women and Girls" by Reem Alsalem, UN Special Rapporteur on violence against women and girls, concluded and recommended that prostitution needed to be addressed through a rights-based approach, legislation to guarantee that women and girls have freedom from violence . . . and freedom

from torture and inhuman and degrading treatment.

A Victim-Centred Approach Requires Upholding Women's Human Right not to be Subjected to Torture by Non-State Actors

In 2023 a federal-provincial Mass Casualty Commission had a mandate to examine the role of “gender-based and intimate partner violence” and how it related to a mass killing in a Nova Scotia community. CEDAW was not referenced in the Commission final report. Sarson and MacDonald submitted their paper dedicated to understanding violent men's non-State torture of Nova Scotian women. Their recommendations included that non-State actor torture victimizations create associated life-threatening risks to women within intimate partner relationships. Quoting from their paper they presented the following information (pp. 16, 21-22):

Research indicates intimate partner violence is a risk factor for suicidal attempts by women (Kapoor, 2000; Rahmani, et al., The more severe the violence is results in women's elevated suicidality ideation or attempts (Khodabandeh, 2019; Warshaw, et al., 2018).. . . [N]on-State torture victimization is severely dehumanizing thus there is a risk a woman may die by suicide. This would be a consequential or a delayed femicide.

Official knowledge is established by naming and criminalizing femicide. It builds indicator evidence of the perpetrator-victim relationship, prevents misidentification, concealment, and underreporting of red flag warnings, including that women subjected to continuous violence and discrimination are always on death row, always in fear of execution.

In July, 2024, Sarson and MacDonald submitted this Brief, “Non-State Torturers' Tactic of Coercive Control.” Sharing one woman's ordeal as a child born into a family of violence against her mother and of being non-State tortured by her father. Carrie said:

One experience . . . my mother was sitting in her rocking chair with my father holding a gun to her head. I remember my mother was referred to as the nagging wife. He pulled the trigger . . . I started screaming and screaming...I remember I couldn't stop. I thought my father was going to kill me!

I will attempt to share the dehumanizing and horrific acts so you will begin to understand the reality of my childhood . . . and my father's “secret” relationship with me . . . so many days of torture, of horror, terror; so much pain trafficking me to about 12 of his friends to be tortured and torture-raped. One personally chilling and threatening experience was the day my father took me with my pet kitten, Brownie, for a walk in the woods to the lake. My father forced me to hold Brownie under the water . . . he forced me to drown Brownie. I screamed and screamed. My father told me I was never to tell my mother what was going on or he'd kill me like I'd killed Brownie. I never told (pp. 1-2).

There is an ongoing due diligence failure by the Government of Canada to take positive socio-legal action to acknowledge non-State torture human right criminal violations thus a failure to prevent and protect predominately women and girl children from torture perpetrated by non-State actors. This is intrinsically dangerous and creates life-threatening risks to the lives of women and girls suffering non-State torture victimizations within family systems and within the organized informal criminal networks of sexualized exploitation and human trafficking as shared by Carrie in her story of violence perpetrated by family-based non-State torturers. Carrie's story illustrates a violation of CEDAW; it also fails to advance the Sustainable Development Goals 5.1 and 5.2 on equality but also goal 16.2 that specifically calls for the elimination of the torture of children.

Their invisibilization as suffering non-State torture victimization clearly, specifically, and legally excludes acknowledging them as persons and is a due diligence failure to uphold their human rights equality, human dignity, worth, and legal protection. Being excluded from having support for their human right not to be subjected to torture by non-State actors did cause and does cause secondary revictimization because it reinforced and reinforces socio-legal exclusion. Being excluded causes actual social pain that is similar to experiencing physical pain (Naomi.et al., 2003). As Alexandra, a Canadian woman who fled Canada to seek safety, said about socio-legal human rights exclusion meant to her and why there is the need to amend the Criminal Code of Canada to include torture by non-State actors (Sarson & MacDonald, 2018-2019)

The Negative Effects of Menopause on women's access to work and social protection

Canada limits women's SRHR to reproductive years, without taking into account aging women, categorizing women as younger and older women. One-quarter, or five million, of Canada's workers are women aged 40-plus; 2 million are between 45 and 55, the age range when most women reach menopause, Canada's laws, policies and programs are not in conformity with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) "15. The full development and advancement of women cannot be achieved without taking a life cycle approach, recognizing and addressing the different stages of women's lives — childhood, adolescence, adulthood and old age — and their impact on enjoyment of human rights by older women. The rights enshrined in the Convention are applicable at all stages of a woman's life but, in many countries, age discrimination continues to be tolerated and accepted at the individual, institutional and policy levels and few countries have legislation prohibiting discrimination based on age. This demographic represents the most rapidly expanding group of employed women, with projections indicating a growth of nearly one-third by the year 2040.

According to the World Health Organization (WHO) "Many governments do not have health policies and financing for the inclusion of menopause-related diagnosis, counseling, and treatment services as part of their routinely available services. Menopause-related services are a particular challenge in settings where there are often other urgent and competing priorities for health funding. The government of Canada is among the above-mentioned governments.

The lack of government (s) action-oriented initiatives addressing menopause is often absent in Canada, in workplaces, and in healthcare environments. The disruptive symptoms associated with menopause compel women to make difficult decisions, often leading them to risk job loss or voluntarily exit the workforce. The stigma surrounding aging perpetuates the notion that women lose value in society and the workplace as they age. "There are an estimated 10 million women over the age of 40 in Canada, making up more than one-quarter of the population. Despite the size of this cohort, their health care and societal needs related to menopause – a natural yet complex transition experienced by all women – have largely been ignored The Silence and the Stigma: Menopause in Canada, reported by Menopause Foundation Canada (2022).

It is estimated that the unmanaged symptoms of menopause result in an economic burden of \$3.5 billion annually. Survey data indicates that lost productivity accounts for \$237 million in lost workdays due to menopause symptom management, alongside \$540 million in lost income stemming from reduced hours, pay cuts, or exiting the workforce entirely. Notably, there is a 14% decline in the number of working women in Canada between the ages of 45 (85.9% employment rate) and 59 (71.9% employment rate), in contrast to a 10% decrease observed among working men. Thus, this will further deepen the already existing inequalities between men and women.