

**Submission to the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading  
Treatment or Punishment  
Sexual Rights Initiative  
May 2019**

This submission is made by the Sexual Rights Initiative (SRI).<sup>1</sup> SRI is a coalition of national and regional organizations based in Canada, Poland, India, Egypt, Argentina and South Africa, that work together to advance human rights related to sexuality, gender and bodily autonomy at the United Nations.

### **Human Rights Standards on Domestic Violence as Torture**

1. The UN Human Rights Council (**UNHRC**) in 2015 recognised that domestic violence can take many different forms, including physical, psychological and sexual violence, economic deprivation and isolation, and neglect, that it occurs within the family or domestic unit, and is generally between individuals who are related through blood or intimacy.<sup>2</sup> The resolution was a welcome development by the UNHRC and this normative foundation has since been built upon in subsequent resolutions. In 1996 the Special Rapporteur on Violence against Women, its causes and consequence, highlighted the specificities of domestic violence and state obligations to respect, protect and fulfill the human rights of women. The Special Rapporteur defines domestic violence as “violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law.”<sup>3</sup> She goes on to add “despite the apparent neutrality of the term, domestic violence is nearly always a gender-specific crime, perpetrated by men against women.”<sup>4</sup>

2. The Special Rapporteur in that report also highlights the ways in which domestic violence amounts to torture within the ambit of the Convention Against Torture and other cruel, inhuman or degrading treatment or punishment. She describes “like torture, domestic violence commonly involves some form of physical and/or psychological suffering, including death in some cases. Secondly, domestic violence, like torture, is purposeful behaviour which is perpetrated intentionally. Men who beat women partners commonly exercise control over their impulses in other settings and their targets are often limited to their partners or children. Thirdly, domestic violence is generally committed for specific purposes including punishment, intimidation and the

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<sup>1</sup> <http://www.sexualrightsinitiative.com/>

<sup>2</sup> A/HRC/RES/29/14, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/29/14](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/29/14)

<sup>3</sup> E/CN.4/1996/53, Special Rapporteur on Violence Against Women its Causes and Consequences report to the Human Rights Commission on domestic violence, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/105/09/PDF/G9610509.pdf?OpenElement>

<sup>4</sup> E/CN.4/1996/53, Special Rapporteur on Violence Against Women its Causes and Consequences report to the Human Rights Commission on domestic violence, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/105/09/PDF/G9610509.pdf?OpenElement>

diminution of the woman's personality. Lastly, like torture, domestic violence occurs with at least the tacit involvement of the State if the State does not exercise due diligence and equal protection in preventing domestic abuse. This argument contends that, as such, domestic violence may be understood to constitute a form of torture."<sup>5</sup>

3. The Committee Against Torture has applied the framework of torture to ask member states about gender-based violence, including domestic violence.<sup>6</sup> General Comment 3 clearly highlights that states have to adopt the due diligence principle to prevent, and address domestic violence. The state is responsible for ensuring that there are laws and policies in their jurisdiction. The state obligation is not vitiated because it is ostensibly seen as the act of an individual. The Committee applied this principle to states parties' failure to prevent and protect victims/survivors from gender-based violence, such as rape and domestic violence.<sup>7</sup>

4. The Special Rapporteur on torture<sup>8</sup> further highlighted the specific conditions created by domestic violence, in particular intimate partner violence as amounting to torture. He compares the conditions created by police officers towards female detainees and women who are subjected to domestic violence. He reiterates "in both scenarios, physical violence is usually accompanied by insults, varied forms of humiliation, and threats to kill or harm the victim or her family members (often children). Domestic violence, as well as torture, tends to escalate over time, sometimes resulting in death or leaving women's bodies mutilated or permanently disfigured."<sup>9</sup>

### **Public vs private dichotomy**

5. Historically, international human rights law was mostly concerned with what is perceived to be violations in public, furthering the false dichotomy between public and private spheres. As the Special Rapporteur on Violence against Women highlighted, this "rhetoric of public versus private and the consequent primacy afforded to the public realm has fundamentally affected perceptions of women's rights. In distinguishing certain forms of violence as domestic violence, definitions have

<sup>5</sup> E/CN.4/1996/53, Special Rapporteur on Violence Against Women its Causes and Consequences report to the Human Rights Commission on domestic violence

<sup>6</sup> See for example CAT/C/CAN/QPR/7 para 8

<sup>7</sup> See for example

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgISZMQd1BoEakgym8DLjlp%2ftVZwAcP32UhceoEv6s9EFDnHa%2ffIXxFR9KNVY4qkr3X7%2faP5eVqCmw6nDLJyD3dA5iGzIWJ0XfsLEbi0ylvz>

<sup>8</sup> A/HRC/7/3, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, focusing on the protection for women from torture, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement>

<sup>9</sup> A/HRC/7/3, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, focusing on the protection for women from torture, para 45 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement>

arisen out of the original conceptualization of such violence as private acts within the family.”<sup>10</sup> Domestic violence including intimate partner violence was seen to be a part of the private sphere absolving states of any and all responsibility. “At its most complex, domestic violence exists as a powerful tool of oppression. Violence against women in general, and domestic violence in particular, serve as essential components in societies which oppress women, since violence against women not only derives from but also sustains the dominant gender stereotypes.”<sup>11</sup> This public versus private divide is also emulated in the evolution of state accountability, in particular the evolution of due diligence principle discussed later in this submission.

6. The work of feminist movements and women’s rights organisations over decades has been to dispel this myth about violations in the so-called private sphere, particularly in relation to domestic violence and intimate partner violence. While the term seemingly is gender neutral, it is essential to highlight that these forms of violence are a manifestation of patriarchy and the need to control women. The public, private false dichotomy also overlooks the gender specific nature of the violations in ‘family’ spheres. The CEDAW Committee General Recommendation 35 rightly points out that “women’s right to a life free from gender-based violence is indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal protection within the family, *freedom from torture, cruel, inhuman or degrading treatment*, and freedom of expression, movement.”<sup>12</sup>

### Root Causes

7. Domestic violence is a form of and a manifestation of gender inequality. This is established by the overwhelming statistics of women who are subjected to this form of violence.<sup>13</sup> Often this violence is based on the desire to “punish” those identities, expressions, behaviors or bodies that transgress traditional gender norms and roles.<sup>14</sup> From the accounts of activists and groups working with women, these statistics are under reported and do not represent an accurate picture of the phenomenon worldwide. As highlighted by the Special Rapporteur on extrajudicial, summary and arbitrary executions - “homicide at the hands of an intimate partner disproportionately affects women to the extent that, at the global level, almost half of female homicide victims are killed by

<sup>10</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85. E/CN.4/1996/53, 5 February 1996, <https://undocs.org/E/CN.4/1996/53>, para. 26.

<sup>11</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85. E/CN.4/1996/53, 5 February 1996, <https://undocs.org/E/CN.4/1996/53>,

<sup>12</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. CEDAW/C/GC/35, 26 July 2017, para. 15.

<sup>13</sup> See WHO statistics, <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

<sup>14</sup> <http://www.oas.org/en/iachr/reports/pdfs/violence-lgbtipersons.pdf>

their family members or intimate partners, whereas the equivalent figure for men is just over 5 per cent.”<sup>15</sup>

8. The Special Rapporteur on violence against women, its causes and consequences noted in 2014, “gender, stripped of ideas of male privilege and female subordination, came to mean that women and men suffered equally the costs of the existing gender order.”<sup>16</sup> This is evident in UN resolutions which use language to the effect of “fully recognizing that everyone, including men and boys, benefits from the achievement of gender equality and that the negative impacts of gender inequality, discrimination and violence against women and girls are borne by society as a whole...”<sup>17</sup> Feminist activism in all parts of the world has continuously and repeatedly asserted this need for dismantling the power structures which privileges one group of people over another. It is necessary that work on gender-based violence must be rooted in a framework that acknowledges power structures/imbbalances/asymmetries.

9. Domestic violence, and in particular intimate partner violence, is a manifestation of power inequalities and an assertion of male supremacy in the confines of the home. It is always rooted in and motivated by the need to exercise control on women and often children. This control takes many forms, from complete isolation to controlling finances in order to control movement. There are innumerable accounts of the patterns of behavior by the perpetrators towards women who are subjected to such violence. It is also established that women in such situations who seemingly can leave whenever they want, are unable to do so because of the complex system of patriarchal structures that surround the women and make leaving almost impossible. This coupled with the long-term violence which erodes women’s self-perception amounts to long term detention with violence.

10. It is crucial that the Special Rapporteur on torture unequivocally holds that domestic violence is a form of gender-based violence that amounts to torture and/or degrading treatment, that patriarchal structures and inequalities based on gender and sexuality cause and perpetuate this form of violence. The history of gender-based violence indicates that women’s words and accounts are not heard as authentic or real, in society and in criminal justice systems. Decades of feminist work the world over has been to counter this perception and narrative. However, there is a resurgence of an organised and motivated group of actors, aiming to regress on rights, standards and norms particularly on gender and sexuality. For instance, the so-called gender ideology proponents use any means possible to counter measures to prevent and eliminate gender-based

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<sup>15</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, A/HRC/35/23, 6 June 2017, para. 52.

<sup>16</sup> A/HRC/26/38, Report of the Special Rapporteur on violence against women, its causes and consequences on developments in the United Nations regarding violence against women, its causes and consequences, over approximately 20 years

<sup>17</sup> See for example A/HRC/RES/35/10

violence, especially those that seek to expose and disrupt the root causes of gender-based inequality and violence. One of the ways they address this, is through false propaganda, using hyperbole, creating fear and paranoia and this often takes the form of racist, sexist, misogynist speeches and addresses. Another way in which they do this is to de-link gender-based inequalities from the conversation, and frame the phenomenon as neutral, ignoring the root causes and furthering the rhetoric that domestic violence affects everyone the same.

11. Regressive movements across the world aim to undermine women's rights by de-linking historical discrimination, promoting the imbalance of power, and perpetuating patriarchal gender stereotypes in the context of violence. This is also very closely linked to false claims around women's roles within families and the reinforcement of stereotypes which feminist movements have worked for decades to dispel. Some European countries are opposed to the Istanbul Convention and are actively working to undermine this. For instance, despite ratification by Poland, the Polish President has publicly stated that they will not implement the Convention.<sup>18</sup>

### **Families as sites of violence**

12. It is important to situate domestic violence not only within the patriarchal structures in which all societies operate but also to reiterate that families are sites that exercise this patriarchal control. This control exercised by families is not an abstract concept, families are routinely sites of violence especially upon women and girls. Families exercise a power provided to them by society to restrict and control the members arguing "the major preventative vehicle against violence against women is the family"<sup>19</sup>. This is especially true of women and girls who transgress the dominant social norms which are almost always hetero - patriarchal. This control can take the form of violence or threats of violence (physical, emotional, verbal, sexual) forced pregnancy, forced abortions, forced marriage, involuntary sterilizations among others.

13. Families are also sites where there is a desire to 'punish' and 'correct' women and girls who transgress norms around gender and sexuality. This is particularly true of lesbian, bisexual and queer women who are routinely compelled into forced marriages, forced pregnancies and forced to have children and face multiple compounded violence. The UN High Commissioner for Human Rights has rightly concluded that violence against LGBT persons constitutes "a form of gender-based violence, driven by a desire to punish those seen as defying gender norms."<sup>20</sup> The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted

<sup>18</sup> For more details, please refer to <https://www.hrw.org/report/2019/02/06/breath-government-my-back/attacks-womens-rights-poland#>

<sup>19</sup>Rights at Risk: Observatory on the Universality of Rights Trends report , 2017 available at [https://www.awid.org/sites/default/files/atoms/files/ours\\_trends\\_report\\_2017\\_en.pdfpp72](https://www.awid.org/sites/default/files/atoms/files/ours_trends_report_2017_en.pdfpp72)

<sup>20</sup> A/HRC/19/41, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, [https://www.ohchr.org/documents/issues/discrimination/a.hrc.19.41\\_english.pdf](https://www.ohchr.org/documents/issues/discrimination/a.hrc.19.41_english.pdf)

that “a considerable proportion of the incidents of torture carried out against [LGBT persons] suggests that they are often subjected to violence of a sexual nature, such as rape or sexual assault, in order to “punish” them for transgressing gender barriers or for challenging predominant conceptions of gender roles.”<sup>21</sup> The special rapporteur further adds that this violence faced by people because of their perceived deviation of socially constructed gender dehumanizes them which is often is required to establish torture.<sup>22</sup>

14. It is also important to mention the multiple and compound violence faced by women with disabilities. The societal perception of women with disabilities being asexual operates at multiple levels. The Special Rapporteur on violence against women, its causes and consequences stresses that, “given the particular vulnerability of women with disabilities, forced abortions and sterilizations of these women if they are the result of a lawful process by which decisions are made by their “legal guardians” against their will, may constitute torture or ill-treatment.”<sup>23</sup> When the perpetrator of violence against women with disabilities is also the care-giver, the complex power imbalance coupled with dependency creates a situation with limited options. Often laws consider family members, including husbands as the automatic legal guardians increasing the complexity and power inequalities. Some specific forms of violence against women with disabilities include threats of institutionalization, interfering with mobility aids and being forced to staying with an abusive caregiver which leaves them financially dependent on the caregiver. The general indifference to explore the particular forms of domestic violence and intimate partner violence faced by women with disabilities, results in few remedies available to women with disabilities.

### **State Obligations**

15. Gender-based violence is most often considered from an individualistic perspective of the person who has been subjected to violence or the perpetrator. The response from criminal law has its roots in this paradigm. While the need for this response has not in any way diminished, and criminal justice system responses to gender-based violence are lacking everywhere, the missing link is the ways in which systems and structures perpetuate, contribute to and are complicit in gender-based violence and the lack of adequate responses therein. The Special Rapporteur through this report on domestic violence as a form of torture can help in devising frameworks that looks at institutional responses towards gender-based violence.

16. The Convention against Torture goes beyond the traditional concept of State responsibility and includes acts which are not directly inflicted by the State officials, but executed with their active or passive agreement or were possible to occur due to their lack of intervention, which

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<sup>21</sup> <http://www.oas.org/en/iachr/reports/pdfs/violenceigbtipersons.pdf>, page 34

<sup>22</sup> A/56/156, para. 19

<sup>23</sup> A/HRC/7/3

would have been possible.<sup>24</sup> The Special Rapporteur on torture has also expounded the state obligations on this as “the Special Rapporteur wishes to recall that the language used in article 1 of the Convention concerning consent and acquiescence by a public official clearly extends State obligations into the private sphere and should be interpreted to include State failure to protect persons within its jurisdiction from torture and ill-treatment committed by private individuals.”<sup>25</sup> The Special Rapporteur on violence against women highlights the need for “the development of a comprehensive framework clearly depicting the relation between the nature of the violence perpetrated against women and their private personae is important in an effort to move beyond a private/public distinction in addressing violence.”<sup>26</sup>

17. It is important to apply the due diligence principle toward state obligation to respect, protect and fulfill women’s human rights. The prevalence of domestic violence worldwide shows its nature. States cannot absolve their responsibility by naming it as an act committed by a private individual. They have the responsibility to ensure that torture and other forms cruel and inhuman forms of treatment and punishment are not exercised. It is also true that inaction is as much of an active component as committing the violence itself. States by not enacting, enforcing and implementing clear measures to prevent and eliminate these forms of violence are committing torture to millions of women.

18. Domestic violence often elicits a criminal justice response, which is necessary to punish the perpetrators. However, criminal law and the punishment of perpetrators provides no actual remedy to women who are subjected to violence. Criminal justice mechanisms are also sites where the same gender stereotypes are replayed, continuing the cycle of violence. Further, if these women are in a situation of financial or other forms dependency with the perpetrator, it is an actual deterrent to report such violence. It is therefore necessary for states to work in consultation with women who have been subjected to violence and other women’s rights groups to design holistic strategies towards addressing domestic violence. Using the framework of torture might provide more avenues of state responsibility of reparations and non-recurrence, which is essential to address domestic violence comprehensively.

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<sup>24</sup> A/HRC/13/39/Add.5, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, focusing on the protection for women from torture, available at <https://undocs.org/A/HRC/13/39/Add.5>

<sup>25</sup> A/HRC/7/3, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, focusing on the protection for women from torture, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement>

<sup>26</sup> E/CN.4/1996/53, Special Rapporteur on Violence Against Women its Causes and Consequences report to the Human Rights Commission on domestic violence, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/105/09/PDF/G9610509.pdf?OpenElement>

**Recommendations:**

- Reiterate that domestic violence is gender-based violence and is rooted in patriarchal norms.
- Lay down state responsibility in preventing and addressing this form of violence applying due diligence.
- Lay down guidelines on reparations to women subjected to domestic violence.
- Prevention of gender-based violence should begin at schools to educating young people about inequalities, gender stereotypes, consent and sexuality amongst others. Therefore, it is necessary for the Special Rapporteur to reiterate that Comprehensive Sexuality Education (CSE) is a crucial tool to prevent GBV through the removal of sex hierarchies, stereotypes and gender norms
- Encourage the key role that CSE plays in the promotion and protection of human rights, by encouraging cultural change that fully embraces diversity and promotes acceptance of diverse sexual orientations and gender identities