

January 23, 2017

To: Bill Casey, Member of Parliament for Cumberland—Colchester
40 Inglis Place
Truro, NS, B2N 4B4
902.895.2863

Dear Bill,

Re: Government's existing provisions, State-centric approach does not uphold due diligence non-discriminatory human and legal rights of persons who have survived non-State torture

Firstly, we thank you for your support during the House Standing Committee on Justice and Human Rights study of Bill C-242; it is greatly appreciated. As well, please thank Joel Henderson as he also has been most respectful and helpful.

Secondly, Bill, as you know the Standing Committee on Justice and Human Rights and Jody Wilson-Raybould, Minister of Justice, have both made their decisions re *Bill C-242, An Act to amend the Criminal Code (inflicting torture)*. The Standing Committee's decision is that existing provisions of aggravated assaults can deal with non-State torture crime. Minister of Justice Jody Wilson-Raybould's decision is to maintain a State-centric position. We strongly disagree with their decisions.

What troubles us is it appears that issues relating to the non-discrimination principle and upholding that human rights are inalienable, integral, and indivisible are not being considered. Nor is it openly revealed and transparently discussed that Canada has decided to dismiss the efforts of the United Nations and international legal rulings working with due diligence to remove the human rights discrimination and inequality that has been leveled onto women and girls. We understand that any State makes its own decisions. Canada has prided itself as a world-leader for human rights; however, evidence listed below illustrates a present failure to consider the human rights and legal due diligence evolution that has been occurring internationally and at the United Nations. The evidence we refer to includes:

1. **2012 Canada stated to the UN Committee against Torture** that it should not address "general issues relating to violence against women of trafficking in persons" (CAT/C/SR.1076, May 23, 2012). In response the Committee members told Canada that "due to its obligations to the Convention; discriminatory treatment for women or men that could constitute torture was clearly listed in article 16" of the Convention against Torture (CAT). Canada has chosen to disagree with this UN Committee position.

2. **UN resolutions** which Canada is apparently deciding to ignore versus following the evolutionary working to eliminate gender-based discrimination in reference to acts of violence against women that are manifestations of torture. The resolutions are:
 1. **1994-1995** resolution 1994/45. *Question of integrating the rights of women into human right mechanisms of the United Nations and the elimination of violence against women*. This resolution starts the global recognition that women are human beings with human rights equal to men, in other words women's rights are human rights.
 2. **2008** *Human Rights Council resolution 8/8 on the CAT* called for States parties—including on Canada—and on the Special Rapporteur against torture to integrate a gender perspective into their work with attention given to violence against women that manifest as torture, noting torture perpetrated by non-State actors (18 June 2008, paras. 3(e), 6,(j)).
 3. **2010** *General Assembly resolution 65/205*, called upon all States—on Canada—to adopt a gender-sensitive framework in relation to the CAT, that all acts of torture be specifically criminalized “under domestic law”, and encouraged the Special Rapporteur to include in reports information about children and gender-based manifestations of torture when recommending proposals on prevention and investigation, (Adopted 21 December 2010, A/RES/65/205, paras. 10, 26, 30). It is impossible for Canada to make such reports because having no law on non-State torture crime, there is no such crime identified that children or women are surviving, and thus no data. The crime of non-State torture is invisible just as the victimized persons are invisibilized.
3. **2012 Committee against Torture** recommends Canada “incorporate all the provisions of the Convention into Canadian law in order to allow persons to invoke it directly in courts other than through domestic legal instruments” (art. 2, para. 8); reminding Canada that it “bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in acts of torture ... by non-State officials or private actors (arts. 2, 12, 13 and 16, CAT/C/CAN/CO/6, 25 June, 2012, para. 20). Obviously Canada has decided to reject this evolutionary UN human rights movement.
4. **International legal rulings** are apparently being ignored by Canada whereby the act of a private person can lead to international responsibility of the State because of the lack of due diligence to prevent the violation or to respond to it as required; legal rulings include:
 1. *Velásquez Rodríguez v. Honduras*
 2. *Maria Da Penha v. Brazil*
 3. *Opuz v. Turkey*
 4. *Jessica Gonzales v. United States*

5. **Special Rapporteur Mendez's 2016 report** cited *Prosecutor v. Kunarac et al.* and *Prosecutor v. Semanza*, discussing the rulings determined that torture can occur when the State had no role in its perpetration and where the State did not fail to exercise its due diligence obligations, rather it is the “**characteristic trait of the offence [being] found in the nature of the act committed rather than in the status of the person who committed it**” (para. 52). This report (A/HRC/31/57) focused on the applicability of the prohibition of torture in international law to the unique experiences of women and girls for example. Apparently Canada has decided to reject the legal rulings Mendez referred to.
6. **2017** Canada is to give its country report to the UN Committee against Torture; the Committee has asked Canada to:

Please indicate which actions and measures have been taken to strengthen ... [Canada's] efforts to exercise due diligence to intervene to stop and sanction acts of torture ... committed by non-State officials or private actors, and to provide remedies to victims (CAT/C/CAN/QPR/7, para. 31).

We assume Canada's decision is to maintain its 2012 decision as quoted in the above item number 1 which the Committee says is discriminatory.

7. **Examples of laws on torture that do also address torture by non-State actors**, which challenge Canada's State-centric approach. Examples include:
 1. Rwanda Penal Code refers to various sections on torture including for rape, sexual torture, forced prostitution, article 177 on torture refers to any person who inflicts torture on another person, article 187 refers to sexual torture
 2. France's Penal Code has numerous sections with references to “torture”
 3. Belgium has both State and non-State law which has been used twice, which both times involved non-State torture of women
 4. Bulgaria's law, section 11 Crimes Against Youth refers to torture
 5. Germany's section 225 refers to the crime of torture perpetrated by persons in a position of trust
 6. Malta in section 54 refers to torture, sadism, brutality in pornography of a minor under 9 years of age
 7. Romania, article 111 and 117 refers to torture by State and non-State
 8. Slovenia, article 192 neglect and maltreatment of a child (2) mentions torture
 9. Spain has various articles on torture
 10. Alabama, USA, its Criminal Code has these sections: Section 13A-6-65.1: sexual torture and Section 26-15-3: torture, willful abuse, etc., of child under 18.
 11. California, USA, its Penal Code has section 206 torture.
 12. Michigan, USA, its Penal Code has section 750.85 torture
 13. Queensland, Australia, its Criminal Code has section 320A torture and in the Queensland, Australia, case of *R v. HAC* a husband was found guilty of torturing his wife over a period of six months (2006).

8. **The Government of Canada knows acts of non-State torture** occur as shared not only in our Standing Committee testimonies regarding Bill C-242 but by the brief submitted by Lane and Holodak. Additionally, we have submitted the following two briefs to various Ministers including the Minister of Justice, Jody Wilson-Raybould, which provide evidence that non-State torture brutality has been and continues to be inflicted on persons beginning for some from infancy. Our two briefs are:

1. *No one shall be subjected to torture by non-state actors: The missing human & legal right of all Canadians—of women & girls.*
2. *There is no public safety for children when their torture by non-state actors is legally unnamed, invisibilizing them as persons in specific need for such protection.*

Obviously, the Government of Canada is making the decision to ignore the position of the UN Committee against Torture when in 2012 it reminded Canada that it “bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in acts of torture ... by non-State officials or private actors (arts. 2, 12, 13 and 16, CAT/C/CAN/CO/6, 25 June, 2012, para. 20).

The UN Committee against Torture sent its list of issues it wants Canada to address when Canada presents its report to the UN Committee. We have already sent a brief responding to these issues to Adam Côté, Policy Officer, Human Rights Program, Department of Canadian Heritage, which was to be forwarded by the Department to the UN Committee against Torture. We want to attend the session so are investigating ways to be accredited to address our submission.

Bill, these are the reasons we are troubled by the decisions made by the Standing Committee on Justice and Human Rights as well as the State-centric position of the Minister of Justice. It has always been our goal to make Canada a country fit for children; safe for all not to be subjected to torture regardless of whether the torturer is a State or non-State actor. It is clearly identified in the Universal Declaration of Human Rights that all articles, including the right not to be tortured, apply equally to women as to men—to all human beings.

Thank you for meeting with us today, January 23rd, 2017.

Respectfully submitted,

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