November 22, 2016

To: Ron McKinnon | Ron.McKinnon@parl.gc.ca
Jody Wilson-Raybould, Minister of Justice | Jody.Wilson-Raybould@parl.gc.ca

Re: Promoting transparency and correcting misinformation presented during the study of *Bill C-242, An Act to amend the Criminal Code inflicting torture)*

Firstly, Mr. McKinnon, thank you for acknowledging that existing charges do not cover the nature of the offences we presented to the Standing Committee.

We include you Jody Wilson-Raybould, Minister of Justice, because we strongly disagree with the motion put forth by Ms. Iqura Khalid and supported unanimously by the Standing Committee on October 6, 2016, that says non-State torture crime can be addressed by existing provisions in the *Criminal Code* such as aggravated assault and aggravated sexual assault. This motion fails to critically analyze the evidence put forth by us and by Alexandra Lane in her brief with Robert G. Holodak, Jr.. **The discussion in/to the Standing Committee has not distinguished that there is this population of non-State torturers who were/are organized; they purposefully plan, and intentionally inflict severe physical, sexualized, and mental pain and suffering which is very different than the "reckless infliction of harm" perpetrated in aggravated assaults including aggravated sexual assault.**

THERE IS A GAP IN THE *CRIMINAL CODE OF CANADA*

There is, based on our 24 years of experience, a serious gap in the *Criminal Code of Canada* whereby torture perpetrated by non-State actors is invisibilized as are the individuals so tortured. Our opinion has always been for creating section 269.2 to address non-State torture which was the last proposed amendment put forth by Mr. Fragiskatos. Because we had no prior knowledge of this amendment our testimony was in response to Mr. Fragiskatos' private Members Bill C-242, not to his proposed amendment of 269.2. **Global Affairs** submitted to the Standing Committee that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) does not prevent creating a new offence "containing the word 'torture'" nor "prevent or restrict criminalizing ... severe mental or physical suffering by non-State actors" (29 September, 2016). Our opinion is the suggested amendment of 269.2 torture by non-State actors is doable and consistent with documentations of the United Nations Committee against Torture and its requests of Canada.

PROMOTING TRANSPARENCY: DOCUMENTING MISINFORMATION PRESENTED AT SEPTEMBER 27, 2016 HEARING

To clarify misinformation regarding the Canada's international obligations on torture by non-State actors we provide evidence from the United Nations and the Committee against Torture:

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1. **1994-1995:** With 1994/45. Question of integrating the rights of women into human right mechanisms of the United Nations and the elimination of violence against women starts the global recognition that women are human beings with human rights equal to men and that women, including girls of all ages, suffer extensive forms of violence 'simply' because they were/are women or girls.
2. **2008:** Human Rights Council resolution 8/8 on the CAT called for the Special Rapporteur and States parties—on Canada—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).
4. **2012:** Canada ignores the gendered evolution of the application of the CAT and informs the Committee against Torture "it should refrain from asking questions that fall more squarely within other treaty bodies mandates, such as general issues relating to violence against women" (CAT/C/SR.1076, May 23, 2012). In response, Ms. Belmir, Committee expert stated, "In fact, the Committee was duty-bound to address any issue involving the possibility of a risk of torture" (para. 30). Ms. Gaer, also a Committee expert, said she was disappointed in Canada's remarks that the Committee not deal with gender-based torture (para. 35). Ms. Sveaass, Committee expert, asked if Canada would amend its *Criminal Code* to include torture perpetrated by non-State actors as a lack of specific legislation could result in incomplete investigations (para. 38).
5. **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).
6. **2017:** Canada is to give its country report to the 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).

International obligations put forth by the Department of Justice are not those of the Committee against Torture. These appear to be a-made-in-Canada perspective. As to holding

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other States parties “feet to the fire”, there are many examples of governments or states within a country that have laws on torture that are not specific to State actors, for example:

i. 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
ii. France’s Penal Code has numerous sections with references to “torture”
iii. Belgium has both State and non-State law which has been used twice, which both times involved non-State torture of women
iv. Bulgaria’s law, section 11 Crimes Against Youth refers to torture
v. Germany’s section 225 refers to the crime of torture perpetrated by persons in a position of trust
vi. Malta in section 54 refers to torture, sadism, brutality in pornography of a minor under 9 years of age
vii. Romania, article 111 and 117 refers to torture by State and non-State
viii. Slovenia, article 192 neglect and maltreatment of a child (2) mentions torture
ix. Spain has various articles on torture
x. 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.
xi. California, USA, its Penal Code has section 206 torture.
xii. Michigan, USA, its Penal Code has section 750.85 torture
xiii. Queensland, Australia, its Criminal Code has section 320A torture

Discriminatory inequality occurs when there is a governmental failure to support the human and legal right of all citizens not to be subjected to torture. By maintaining that it is an exclusive human and legal right only for persons who are tortured by the State actors to seek justice for the torture suffered ignores the requests of the United Nations Committee against Torture.

Denunciatory means to have the ability to denounce the torturer and for society to hear the tortured person’s telling, this helps uphold the credibility and reliability of persons so tortured versus being told they have been assaulted. Denunciatory means to accuse someone publically for something that is very bad or evil—torture is an evil act regardless of who the torturer is. Its importance is voiced by Alexandra in her Victim Impact Statement. The United Nations Committee against Torture is asking Canada to provide a person the opportunity to invoke the CAT in Canadian courts.

Canada: torture statistics and the sexualization of non-State torture. Statistics on torture victimization are requested of States parties—of Canada—according to General Assembly resolution 65/205 (A/RES/65/205), and the Committee against Torture that include a gendered perspective and that of children, both State and non-State. Without a law that distinctly names non-State torture it remains invisible or sexualized as in this information obtained from Stats Canada:

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If the state is not involved, it is just **regular torture** between two individuals and called non-state actor torture. This is usually charged instead as assault (level 2 or 3) with intent, and the torture element often comes out at the trial stage (re: motive) and believe it or not there are all kinds of implications and exceptions for S&M (re: consent to torture)" (bolding added). (email communication, July 27, 2009)

France and the Committee against Torture. When presenting at the International Institute for the Sociology of Law, in May 2016, in Onati, Spain, a lawyer from France explained that France had incorporated "torture" into their *Penal Code* before they had included its definition. This has been corrected and "torture" is found in various places within their *Penal Code* including torture perpetrated by non-State actors.

OBJECTIONS AND MISINFORMATION THAT OCCURRED SEPTEMBER 29, 2016

We refer now to objections and misinformation that occurred September 29, 2016, in the discussions with Mr. Michael Spratt. These are:

1. **No prevention strategy is initiated for non-State torture crimes when this is misnamed an aggravated assault.** We presented to the Standing Committee evidence of organized family-based non-State torture victimization that perpetrators do intentionally and purposefully. This is illustrated in our brief. We presented that a child born into such a family unit can suffer over 23,000 torture rapes for years (pp. 8-9). Also, we presented that the Canadian Centre for Child Protection had evidence of the sexualized torture of children from infancy to age eight predominately perpetrated by parents and their friends who intentionally torture and intentionally place online images of their perpetration. The Centre works on prevention and protection of crime which is part of the federal mandate under Public Safety. This evidence is negated by the Committee's motion. In the brief submitted by Alexandra Lane and Robert G. Holodak, Jr., Alexandra describes organized family-based non-State torturers, clearly detailing their torture acts including intentionality and purposefulness. Prevention will only occur if non-State torture is criminally named.

2. **Consequences of not naming non-State torture as a specific crime means:**
    a) **A failure to promote** Canada's capability of taking measures to protect persons—children and adults—subjected to such an organized and intentional crime.
    b) **Lawyers** can make uninformed and harmful decisions if there is not a specific law on non-State torture. A woman who disclosed to a Victim's Compensation Board was told by the two lawyers hearing her case that they did not believe such crimes are perpetrated in Canada; she was disbelieved.
    c) **Police investigators** cannot effectively investigate unless they are aware of the patterns and tactics of perpetrators. We know this because when presenting to the Nova Scotia Chiefs of Police Association and in our professional

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communication with policemen, even with 30 years of experience, they tell us they had no knowledge of the crime of non-State torture we reveal to them.

d) **A knowledge gap occurs**, for example, in child protection workers when non-State torture crimes are misnamed. We know when speaking with social workers they did not believe that children were tortured and did not know that a little girl who was torture raped would bleed, as in the example we provided in our oral testimony. Consequently children are not believed or protected.

3. **Factual evidence shows that the statement that a law on non-State torture would not be used much is not sound because:**
   a) Evidence from the Canadian Centre for Child Protection reveals increasing crime scene pedophilic pornographic images involving torture thus a non-State torture amendment to the *Criminal Code* suggests this would be used more than section 269.1 on State torture. As to the question about State torture convictions, 269.1 was used against Canadian military State actors who tortured a teen to death.
   b) Failure to respect such evidence we forwarded a brief to Ministers Ralph Goodale, Jody Wilson-Raybould, and Patricia Hajdu entitled, 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. This addresses the definition of torture and how the definition of intent, purpose, and severe pain and suffering, physical or mental, exists in non-State equally as in State inflicted torture.

4. **Absolutely incorrect and an enormous failure of truth is perpetuated in the statement that says a person who is being tortured will know that a law has been broken.** This statement is discriminatory, demeaning victimized children and adults who have been subjected to non-State torture since childhood because:
   a) As Alexandra Lane said in her Victim Impact Statement and in the brief by her and Robert G. Holodak, Jr., she did not know that the non-State torture she was suffering and being trafficked to a group or ring of non-State torturers was wrong, that she was being victimized. Such early childhood victimization is generally normalized as relational. It is also general knowledge that bonding is essential for infant survival. This includes that preverbal infants and toddlers for example have no alternative but to bond to the torturer who often is her parent(s).
   b) Our 24 years of non-State torture victimization work has educated us that if an infant is born into such family units they are conditioned to normalize non-State torture in relationships and the psychological torture includes being forced to believe they are “special”, that their torture is an expression of “love”, and for girls that it makes them “a women”. Conversely that they are “worthless” and “useless”.
   c) It is general professional knowledge that children frequently internalize and reframe the violence they are suffering as occurring because they are “bad”, that

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they are at “fault”, and they are to “blame”. These beliefs are enforced by non-State actors over and over again.

5. **A discriminatory bias, maybe childism and gender, is promoted with the statement that naming non-State torture would not likely deter the perpetrators. We present other evidence that must be considered, such as:**
    a) Every law in the *Criminal Code* has not deterred all crimes; therefore, legal discrimination must not be applied as a reason for not amending the *Criminal Code* to include non-State torture as a specific crime.
    b) The statement that deterrence comes from the likelihood of being caught fails to explain that a torturer cannot get caught and charged for non-State torture if there is no such crime. The experts on the United Nations Committee against Torture and the Special Rapporteurs on Torture both express that specific naming of torture crimes are necessary to address the impunity torturers enjoy whether they are State or non-State torturers.
    c) Naming of a specific crime can change social attitudes and be educational thus act as a deterrent. A prime example is impaired driving causing bodily harm s. 255(2) or s. 255(3) impaired driving causing death. At one time drunk driving was a macho normalization and socially tolerated. No longer. Because of the naming of these specific laws and changed attitudes such as “safe driver” designates have become common. These social trends are preventive deterrents based on the use of language of specifically naming a crime that challenges behaviours.
    d) Naming is also about developing appropriate language, for example, media headlines can educate and can change social attitudes. Such as it is wrong to say an, “adult arrested for having sex with children” because sexualized victimization of a child is never “sex” it is always a sexual assault, a criminal act perpetrated against children and must be named that way.
    e) Being named a torturer places a different weight of responsibility on the perpetrator and the brutality of the crime they commit. This came to light in the U.S. case of Ariel Castro, in Ohio, who did not want to be called a torturer by the three women he held captive in chains, beat, torture raped, impregnated and beaten into aborting, starved, plus inflicting brutal torture for over 11 years.
    f) Naming torture by non-State actors is educational and essential, for civil society and for education in the classroom. Our experiences of teaching in schools, for example in a Grade 7 relationship class, the question asked by the students was about the torture Ariel Castro inflicted. For reasons such as this we use our Relationships Model for educational purposes to promote child safety given that at this age the girl child becomes increasingly at risk for exploitation and boys are at risk of watching pornographic images. All genders need to understand that torture pornography and ‘snuff’ films are not make-believe but are actual crimes involving torture. Truth-telling is a best practice to assist children to understand the adult world they are living in and the violence it expresses.

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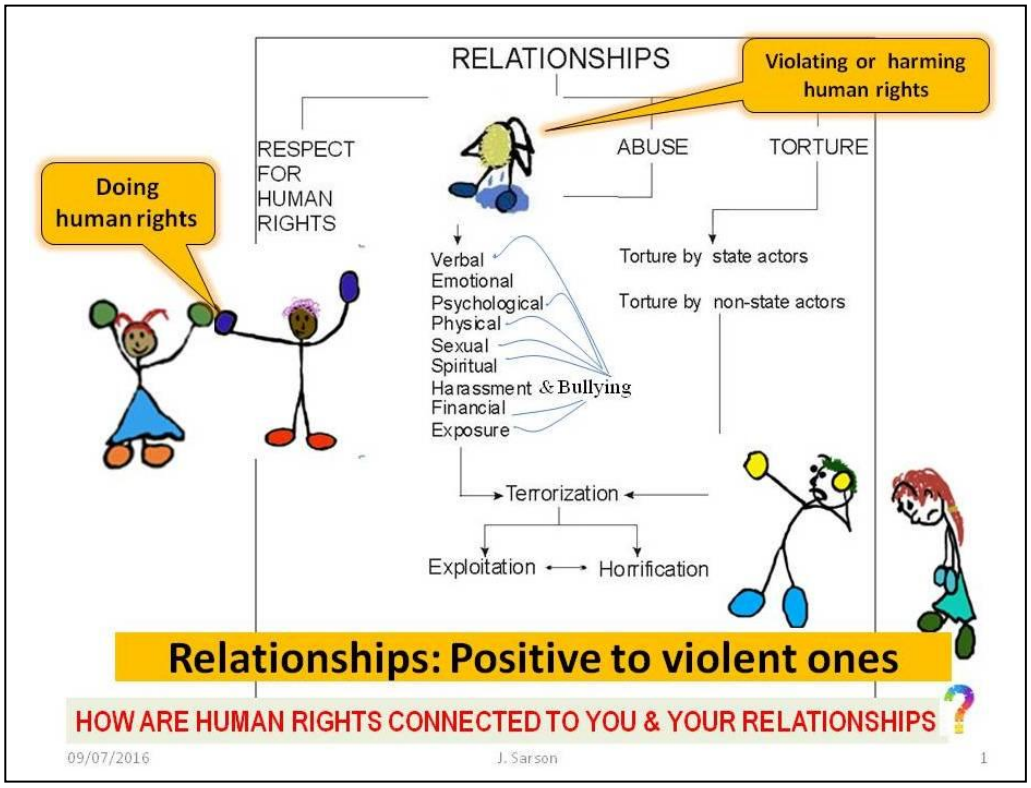

Because the Universal Declaration of Human Rights forms the basis for our relationship classes, the legal and human rights discrimination of Canadian law is discussed. Because article 5 says "no one shall be subjected to torture" raises the question about lack of universality of human rights and equality for all.

6. **Right to equality under the law for persons who have survived non-State torture is dismissed with statements about cost and time be better spend on over-incarceration issues.**
    a) This is a discriminatory devaluation of individuals who have survived non-State torture victimization.
    b) Charging a person with the correct crime committed obviously may save cost as over-incarceration costs are about correcting the wrongfulness issues that arise in the exercise of justice.
    c) From a victimization perspective being able to accurately name the crime suffered and tell their truth that they have survived non-State torture prevents secondary revictimization trauma. Also the torture rehabilitation literature gives evidence that legal truth-telling is healing—thus naming a crime accurately is an inexpensive intervention versus spending monies on trying to avoid legal truth-telling or charging for an incorrect crime.
    d) There are centers for the rehabilitation of immigrant individuals who have suffered torture, presumably by State actors but also by militants who would be non-State actors. The reason we have these centers is because the world

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knows that the care they require is specific to having survived torture. This fact applies to individuals who have survived non-State torture.

Respectfully submitted,

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