

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

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Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, and
Patricia A. Hajdu, Minister of the Status of Women**

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THIS IS WHAT WE ARE ASKING

Based on the individual mandate letters Prime Minister Justin Trudeau sent to each of you, working together collaboratively to problem-solve is stressed, therefore, we ask that you:

1. Uphold the human and legal rights of children of all ages not to be subjected to torture by non-State actors or private individuals/groups;
2. Acknowledge that the girl child suffers gender-based misopedic violence, including sexualized torture as evidenced in reports;
3. Promote the goal “to keep survivors and children safe”,¹ by specifically naming and criminalizing non-State torture or if necessary specifically limiting the criminalization to ‘sexualized torture’ in the *Criminal Code of Canada* to address the legal gap that presently exists regarding non-State torture victimization.

¹ Justin Trudeau. (n.d.). *Minister of Justice and Attorney General of Canada Mandate Letter*. Retrieved from <http://pm.gc.ca/eng/minister-justice-and-attorney-general-canada-mandate-letter>

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WHY WE ASK THIS OF YOU.

We contact you Minister Ralph Goodale because of your charge for Public Safety Canada:²

1. Which leads the Government of Canada's National Strategy for the Protection of Children from Sexual Exploitation on the Internet and knows non-State torture of children happens, and
2. To increase investigative skills and identify predators of non-State torture, to promote public education and awareness about non-State torture victimization, and to support further research on child sexual exploitation, including on the severity of non-State torture and the necessity for this form of victimization to be criminally named.

We contact you Minister Jody Wilson-Raybould because of your charge of the Department of Justice and responsibility for:

1. Providing the 'victims lens' for all criminal law reform and criminal justice policy written by the Federal Victims Strategy on the following Policy Centre for Victims Issues (PCVI);³
2. Addressing the "victims lens" which is missing for children (and others) who suffer non-State torture victimization, and
3. Considering that a "victim-related *Criminal Code* amendment" is essential to address non-State torture victimization to ensure "a victims' of crime perspective; attending to this existing legal gap in the *Criminal Code of Canada* would help prevent its ongoingness.

We contact you Minister Patricia Hajdu because of your charge for the Status of Women Canada to:

1. Promote women's and girls' equality and ending violence against women and girls;
2. Implement the Gender-based analysis (GBA) that attends to legislative development that addresses diverse groups of women and men;⁴ it needs to include women who as children suffered non-State torture and/or non-State torture that lasted into their adulthood because they are a specific group that require social-legal inclusion so they no longer suffer the physical emotional pain of social-legal exclusion. Many speak of feeling like "freaks" or non-persons because there is no social-legal recognition for the non-State torture victimization they suffered; and
3. Address the existing gaps that were identified during roundtable regional meetings such as in Halifax, Nova Scotia, that recognized that "gender violence can reach the threshold of non-state torture and these victims have different needs".⁵

² Public Safety Canada. (2015, December 16). *Child Sexual Exploitation on the internet*. Government of Canada. Retrieved from: <https://www.publicsafety.gc.ca/cnt/cntrng-crm/chld-sxl-xplttn-ntnrt/index-en.aspx>

³ Department of Justice. (2015, January 7). *The federal victims strategy evaluation, final report*. Retrieved from <http://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/11/fvs-sfv/p2.html>

⁴ Status of Women. *GBA Gender-based analysis plus*. Government of Canada. Retrieved from <http://www.swc-cfc.gc.ca/gba-acg/index-en.html>

⁵ Status of Women. (2016, July 28). *Federal strategy on gender-based violence* [Halifax Regional Meeting]. Retrieved from <http://cfc-swc.gc.ca/violence/strategy-strategie/0728-en.html>

NON-STATE TORTURE OF CHILDREN IS UNDENIABLE:

The data is indisputable. That this knowledge of non-State torture of children has been identified for years is undisputable. Examples are:

1. Data in the 2009, *Child sexual abuse images: Summary report* describes the following:⁶
 - a. Child victimizations included bestiality, bondage, **torture**, and degrading acts such as being defecated on
 - b. Victimization included infants and toddlers
 - c. Most victimizations (68.%%) were inflicted against children under 8 years of age
 - d. The girl child was the predominate gender victimized (83.0%)
2. The 2014 National Strategy for the Protection of Children from Sexual Exploitation on the Internet includes the following findings:⁷
 - a. 26,886 images were catalogued
 - b. 15,056 (56%) were of children up to age 8 years
 - c. Newborns were victimized
 - d. An increase of 7% from 2012-2013 occurred
 - e. Children suffered "**torture**" and "bondage"
 - f. Non-State actors were predominately family and their friends
3. A 2016 Canadian Centre for Child Protection report provides a **gender and age analysis**:⁸
 - a. A review of close to 152,000 reports between 2008-2015 focusing on sexual violence examined 43,597 images of children so victimized and classified as "child pornography" revealed that:
 - 80.4% appeared to be girls
 - 19.58 % were boys
 - 63.40% appeared younger than 8 years (page 22)
 - Babies and toddlers were victimized
 - 50.0% of the violations showed the younger the child the more victimization harming they suffered
 - 68.7% of the violations appeared to be taken in homes
 - The worst victimizations were classified as extreme violence including bestiality, bondage, weapons, degradation with being defecated and urinated on



⁶ Bunzeluk, K. (2009). *Child sexual abuse images: Summary report*. Winnipeg: Canadian Centre for Child Protection.

⁷ Cribb, R. (2015, April 26). Underground child porn trade moving toward youngest victims. *The Star*. Retrieved from <http://www.thestar.com/news/insight/2015/04/26/inside-canadas-saddest-room-working-to-curb-the-trade-in-child-porn.html>

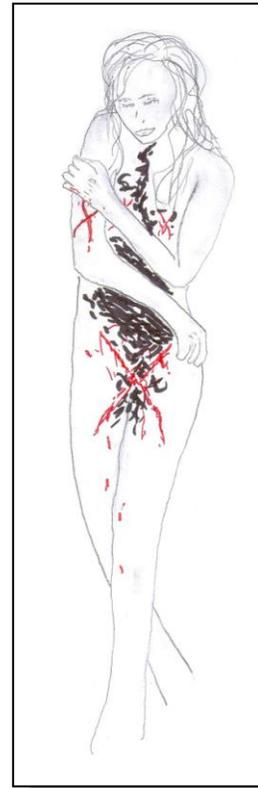
⁸ Canadian Centre for Child Protection. (2016). *Child sexual abuse images on the internet: A cybertip.ca analysis Summary of key findings*. Retrieved from https://www.cybertip.ca/pdfs/CTIP_CSAResearchReport_Summary_2016_en.pdf

National Police Services are also partners along with Public Safety Canada of Canada's National Strategy for the Protection of Children from Sexual Exploitation on the Internet. A few examples of their statements that cover over a decade of facts are:

- a. In 2015 Det. Justin Brooks with the Internet Child Exploitation (ICE) unit of the Alberta Law Enforcement Response Teams (ALERT) stated, "This is more than just photos of a kid in the bath. This is graphic sexual abuse, **even torture**, of children as young as infants."⁹
- b. In 2006 Earla-Kim McColl of the RCMP Child Exploitation Unit in Ottawa estimated that 20% of child internet exploitation involved **torture** and bondage.¹⁰
- c. In 2006 Detective Randy Wickens of Edmonton's Internet child exploitation unit came across a "child porn ring" and when describing the victimized children stated, "These are real children in real homes that were **being tortured**".¹¹
- d. In 2002 Staff Inspector Gary Ellis of Toronto's sexual assault squad said some of the 200,000 seizures of child pornography made by the police included children "**being tortured** in the most unimaginable ways".¹²

Post traumatic stress responses are consequences to exposure and/or being subjected to non-State torture victimization, for example:

- a. "If you watch a six-month-old baby being raped, you'll never feel the same again. And that "is what we deal with on a daily basis." were the words of Detective Paul Gillespie.¹³ This statement represents the post traumatic stress responses that can occur for people working in this horror which some call "evil".¹⁴
- b. Women who survived childhood non-State torture also have post traumatic stress responses as well as 'evilism' fears and anxiety. They fear being 'infected' when forced to ingest the torturers' body fluids during horrific sexualized tortures inflicted against them. With forced bestiality as children they developed fears they would have "monster babies" because they were told this by the torturers. Alex writes that she developed at age 12 an on-going belief that an evil being grew inside of her, a result of the torturers' group tactic of forcedly aborting her, forcing her to ingest aborted tissue. She says Self-cutting and anorexia developed in her efforts to eliminate this evilness fear (consent to share drawing).



⁹ *CBC News*. (2015, September 1). Child porn probe in Alberta uncovers 'extreme' photos, videos. Retrieved from <http://www.cbc.ca/news/canada/calgary/alberta-child-exploitation-charges-sexual-abuse-1.3211195>

¹⁰ *CTV News*. (2006, July 26). Earla-Kim McColl states torture and bondage is involved in 20% of the pedophilic pornography viewed by the RCMP Child Exploitation Unit in Ottawa according to supervisor.

¹¹ Sher, J. (2006, March 16). Police bust worldwide child-porn ring. *The Globe and Mail*, p. A7.

¹² Pacienza, A. (2002, January 22). Seizure shows city has become centre for child porn: Toronto police. *The National Post*, p. A2.

¹³ Smith, G. (2003, January 24). Grim images haunt police. *The Globe and Mail*, p. A1.

¹⁴ Morgan, J. (2006, March). "ruin.yr pjs?". *Readers Digest*, 131-32, 134-40.

WHAT DOES REPETITIVE INTENTIONAL SEXUALIZED NON-STATE TORTURE MEAN?

WHAT DOES REPETITIVE CONTINUOUS SEXUALIZED NST MEAN?

I was rented out like “a thing”, “a nobody”, “a nothing”, an “it”

{

Raped vaginally once a day for 20 yrs x 365 days = 7,300 rapes

Add daily oral and anal rapes for 20 years = 14,600 rapes

21,900 torture rapes

}

{

Add trafficking for forced prostitution rapes x 2 wk x 52 wks yr = 104 rapes yr X 20 yrs =

2,080 torture rapes

}

Total 23,980+++

ADD raped with weapons, objects, electric shocking, gang torture rapes



SARA

Bestiality, by small and large animals

J. Sarson & L. MacDonald 2016

Sara was the first person to ‘introduce’ us to the now undeniable fact that children from infancy onwards can suffer torture by non-State actors—by parents, extended family members, and like-minded others who intentionally seek children to torture, sadistically and repeatedly. A child born into non-State torture family systems has no choice but to normalize relational non-State torture victimization and bond with the torturers. Our professional work began in 1993, for 24 years we have learned of the many ways non-State torturers intentionally and purposely destroy the child they torture to the point that many tell us they do not perceive they are human, perceiving they are an “it”, a “thing”, a “nothing” for example. Some do not know they have a physical body, or skin, having spontaneously dissociated to survive the severe torture pain, physical and mental, intentionally and purposefully inflicted onto them.

As to the human-animal sadistic sexualized torture tactics perpetrators intentionally and purposely inflict, there was a time when we were not believed when we spoke that the non-State torture of children involved bestiality. Factual evidence removed such denial when in 2004 the RCMP in Burnaby, B.C. seized 100 DVDs depicting sexualized victimization of children as young as seven years of age, involving dogs and horses.¹⁵ This validates the



¹⁵ *The Chronicle Herald*. (2004, September 23). Authorities seize child porn, bestiality DVDs, p. A6.

information many women have told us they suffered as children.

Complex criminal activities. Our knowledge is that non-State torture family operators engage in complex criminal activities. Forced drugging, forced pornographic exploitation, human trafficking to like-minded perpetrators, and forced mental and physical conditioning. One woman recounted being force fed mashed potatoes so she would learn not to gag or vomit when suffering oral torture rapes. Those responsible for the safety of children need to know, for example, that stalking and harassment by family-based torturers can begin at age five when children start school. Some women tell us their parents volunteered at their school or sent in like-minded torturers to threaten them with their presence. This tactic kept the women, as children, silenced. Police need to know that non-State torture crimes occur and the tools used, such as a hot light bulb or a bottle may be evidence of sexualized torture when inserted into a little girl's vagina. When speaking with some police they had no idea that such crimes occurred, mentioning that a non-State torture law could facilitate greater efficiency in their work.

**CRIMINALIZING NON-STATE TORTURE:
UNITED NATIONS DUE DILIGENCE
HUMAN RIGHTS PRINCIPLES OF NON-
DISCRIMINATION, UNIVERSALITY,
INTERDEPENDENCE. INDIVISIBILITY.**

An understandable framework. We were challenged, beginning in 1993, into developing an understandable framework of what non-State torture victimization was and the tactics inflicted by such torturers. Societies and even the United Nations had yet to develop a non-discriminatory gender-based insight into the existence that the human right violation of non-State torture of women and girls existed. The process of *genderizing* and integrating a gender perspective and a non-discriminatory application of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) began with the following two resolutions. These specifically asked for the Committee against Torture and the Special Rapporteur against torture to insert into their work a gender-sensitive perspective and information on manifestations of torture inflicted by non-State actors onto women and children.

- a. Human Rights Council resolution 8/8. Torture and other cruel, inhuman or degrading treatment or punishment (2008)¹⁶
- b. General Assembly resolution 65/205. Torture and other cruel, inhuman or degrading treatment or punishment (2010, A/RES/65/205)¹⁷

From these resolution mandates and to eliminate the prior operationalized human rights discrimination the United Nations Committee against Torture wrote a gender-based perspective

¹⁶ Retrieved from http://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_8_8.pdf

¹⁷ Retrieved from <http://www.un.org/en/ga/65/resolutions.shtml>

into its General Comment No. 2, paragraph 18, mindful of the definition of torture in article 1 of the CAT which is:

- a. Any act whereby severe pain and suffering, physical and mental is inflicted
- b. That the acts of torture are intentional
- c. For purposes such as inflicting punishment, or to intimidate or coerce, or based on discrimination of any kind
- d. And that the State is aware or consents or acquiesces to such acts that are impermissible under the CAT

Non-discrimination is a fundamental human rights principle. It must be applied to acts of torture perpetrated by non-State actors, such as considering:

- a. **Severity.** Non-state torture victimization causes severe physical and mental pain as shown in the following chart.
- b. **Intentionality.** Non-State torture is planned, for example women tell us that their family had “parties” which was a coded word for group gatherings to inflict group torture on them when they were children.
- c. **Purpose.** Punishment, intimidation, coercion, and discrimination are all included in the CAT as defining elements of torture; these are all present in the actions of non-State torturers. Women grew up being told they were bad and told they were being punished, punishment being a coded word for being tortured. Like State torturers non-State torturers have pleasure as a purpose, the pleasure of dominating and inflicting severe humiliation of the tortured person, sexualized pleasures of inflicting rape torture, and the pleasure of manipulating control over the tortured person’s fear of being killed. (There can be no questioning of the pleasures State torturers experience as these pleasures were exposed to the world with Abu Ghraib.) As a group women and girls endure human rights discrimination and inequality simply because they are women and girls.
- d. **Acquiescing.** According to the United Nations Committee against Torture, when States parties know that acts of torture are being committed by non-State actors and fail in their due diligence responsibilities of prevention, investigation, prosecution and punishment of such torturers the State should be considered as acquiescing in such impermissible act under the CAT.¹⁸ The Committee is asking Canada to explain how the rights contained in the CAT have been invoked in national courts and initiatives taken to stop non-State torture when reporting to the Committee in 2017.¹⁹ The Canadian government knows that acts of non-State torture are occurring as recorded, for example, in this paper.

A model of three examples of severe non-State torture physical and mental pain is based on our 24 years of focussed work supporting mainly women who suffered non-State torture victimization from their earliest of childhood years.²⁰

¹⁸ Committee against Torture. (2008, January 24). *General Comment No. 2 Implementation of article 2 by States parties* [CAT/C/GC], para. 18.

¹⁹ Committee against Torture. (2014, July 28). *List of issues prior to submission of the seventh periodic report of Canada, due in 2016* [CAT/C/CAN/QPR/7].

²⁰ Sarson, J., & MacDonald, L. (2011). *Non-State torture—Specifically sexualized non-State torture—Inflicted in the Private/domestic sphere against girls/women: An emerging “harmful practice”*. Retrieved

Torture acts translate→→	Into sexualized torture→→	Harmful consequences
1. Physical torture: electric shocking	<ul style="list-style-type: none"> ◆ Electric cattle prod inserted into her vagina, her anus, her mouth ◆ Electric wires inserted into her vagina, placed to her nipples 	<ul style="list-style-type: none"> ◆ Psychological torture as women & girls blame & hate their body ◆ Terrorized ◆ Torture pain and suffering
2. Physical torture: water torture and pseudo-necrophilic torture	<ul style="list-style-type: none"> ◆ Submerged underwater in a tub, or her head held under water in a bucket until she is unconscious then her inert body raped for pseudo-necrophilic pleasures 	<ul style="list-style-type: none"> ◆ Terrorized ◆ Near-death ordeals ◆ Powerlessness when rendered unconsciousness ◆ Torture pain and suffering
3. Physical torture: cutting	<ul style="list-style-type: none"> ◆ Knife inserted into her vagina, her vagina cut and her vaginal blood smeared on her body ◆ Knife used to cut her breast tissue 	<ul style="list-style-type: none"> ◆ Terrorized ◆ Horrified at seeing her blood and fear of bleeding to death ◆ Torture pain and suffering

The power of adequate naming: The United Nations Committee against Torture has stated:

By defining the offence of torture as distinct from . . . other crimes. . . States parties will directly advance the Convention’s overarching aim of preventing torture Naming and defining [torture] . . . alert[s] everyone . . . perpetrators, victims, and the public, to the special gravity of the crime of torture (para. 11).²¹

Legal credibility and reliability. Women tell us repeatedly that they want their non-State torture named as a specific criminal offence as it would provide them with legal credibility to truth-tell and when named it will be understood thus their statements would carry legal reliability.

**UPHOLDING THE HUMAN RIGHT NOT TO BE
SUBJECTED TO NON-STATE TORTURE**

The United Nations writes that the Universal Declaration of Human Rights, adopted in 1948, is generally considered to be the foundation of international human rights law.²² Representing inherent, universal, and inalienable non-discriminatory equality and dignity for all persons; but these principles only began being voiced when women opposed the Declaration being called the “Declaration of the Rights of Men”. Activists demanded that article 1 read “All human beings are born free and equal in dignity and rights “versus “All men ...”, and article 5 to read “no one shall be subjected to torture” versus “no man ...”.²³

from http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/JeanneSarson-LindaMacDonald.pdf

²¹ Committee against Torture. (2008, January 24). *General Comment No. 2 Implementation of article 2 by States parties* (CAT/C/GC/2).

²² United Nations. (n.d.). *The foundation of international human rights law*. Retrieved from <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>

²³ Pietilä, H. (2002). *Engendering the global agenda The story of women and the United Nations*. UN NGO Liaison Service, Geneva.

Sixty years later as women, as feminists, the struggle persists for human right equality of women and girls to be considered born equal so all articles of the Declaration, including article 5 with the right not to be subjected to torture, belongs to them. Our struggle has been with the Canadian government which has rejected upholding the core human rights principles of universality, interdependence, indivisibility, non-discrimination, equality, dignity, and justice for all in reference to criminalizing non-State torture. The rationales given include:

- a. Admitting that non-State torture happens in Canada NST but is addressed by renaming it another crime, such as human trafficking or assaults;²⁴
- b. Existing provisions such as assault as satisfactory in criminally addressing torture by non-State actors because they only want to apply the CAT to State actors;
- c. That Canada's "longstanding view is that the general comments and concluding observations of the United Nations treaty bodies are not legally binding. 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 (email communication Erin Brady, July 11, 2013);
- d. Having law on non-State torture would only be symbolic, and
- e. That non-State torture law would create international problems.

To response to these rationale;

- a. We find it grievously disturbing that not once has reference been made that torture is a violation of universal human rights and as such must be upheld as belonging to all persons equally, including women and girls irrespective of who the torturer is.
- b. Not once have we been asked to fully explain why non-State torture victimization is destructively unique. The government funds torture rehabilitation centers for immigrants of State torture knowing that such torture recovery is unique; State torture is not renamed an aggravated assault for example. Women who have suffered non-State torture require non-State torture informed care, beginning with the ability to truthfully name the non-State torture suffered just as persons' name State torture victimization.
- c. That "soft law" is used as a reason not to support human rights equality, from our perspective, speaks of a due diligence disregard by the Canadian government versus becoming a global leader to promote human rights equality.
- d. A law on non-State torture is considered symbolic, we assume then all laws are equally symbolic, thus serving no purpose. Why not throw the *Criminal Code* away if it is only symbolic? However, we consider the *Criminal Code* to be of value as a relational legal guidebook that tells citizens what they should not do and if ignored what the consequences are. It shapes our country and our culture; this is why immigrants are told that 'honour killing' for example, is a crime in Canada and not a cultural practice.
- e. That a law on non-State torture will cause international problems was given as a rationale for not supporting Private Member's *Bill C-242, An Act to amend the Criminal Code (inflicting torture)*. Such a position ignores that international incidents have not occurred because, for instance, the following countries have various laws on torture, State and non-State, there is no evidence of international incidents occurring:

²⁴ CEDAW Committee. (2009, January 29). *Summary record of the 854th meeting* (Chamber A), para. 46.

- 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

In the conclusion of the Standing Committee on Justice and Human Rights studying the Private Member's *Bill C-242, An Act to amend the Criminal Code (inflicting torture)*, we see:

- a. No acknowledgement that non-State torture is perpetrated against children as young as infants who are a distinct social group that requires special protection;
- b. No gender-sensitive perspective to protect girl children specifically vulnerable to suffer sexualized non-State torture, as presented in testimony and briefs to the Committee;
- c. No 'victims lens' or "victim-related *Criminal Code* amendment" given to naming and criminalizing non-State torture as an economically healing, justice-giving intervention;
- d. There can be no GBA without a *Criminal Code* amendment because when non-State torture is not specifically named and criminalized no such crime and victimization exists, no victimized children (or adults) exist, thus, no data is present to analyze.

IN CLOSING, THIS PAPER HAS FOCUSED ON THE NON-STATE TORTURE OF CHILDREN, identifying that the girl child specifically suffers gender-based misopedic violence and many forms of sexualized victimization. The fact that non-State torture is inflicted against children of all ages must become common Canadian socio-legal knowledge to promote their visibility, their dignity, and to protect them from further non-State torture victimization. If the goal is "to keep survivors and children safe",²⁵ due diligence demands addressing the legal gap by specifically naming and criminalizing non-State torture or, if necessary, criminalizing 'sexualized torture' in the *Criminal Code of Canada*. A non-State torture law would uphold human and legal rights of all citizens by validating their right not to be subjected acts of non-State torture.

²⁵ Justin Trudeau. (n.d.). *Minister of Justice and Attorney General of Canada Mandate Letter*. Retrieved from <http://pm.gc.ca/eng/minister-justice-and-attorney-general-canada-mandate-letter>