Update: *Bill C-242, An Act to amend the Criminal Code (inflicting torture)*

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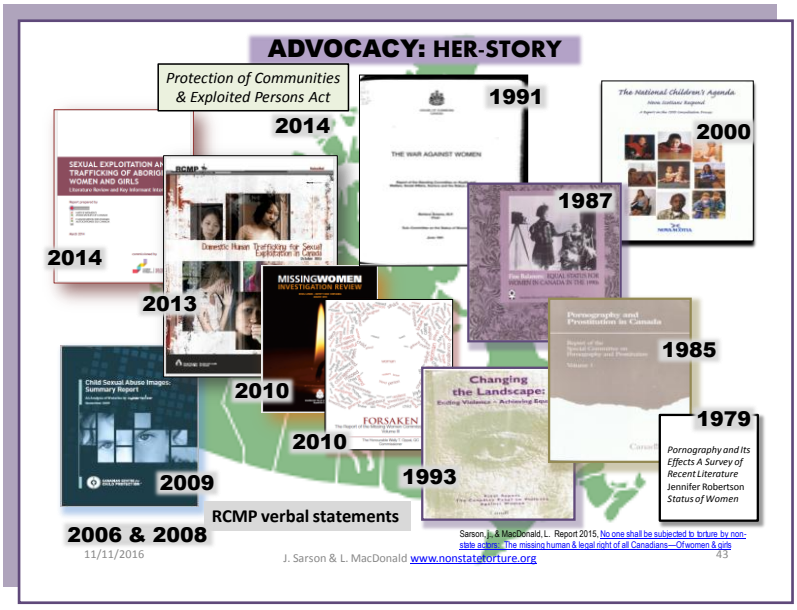
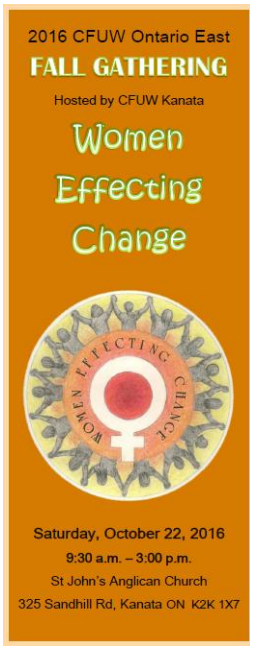
A LITTLE BACKGROUND

We think it is important to know that Bill C-242 had national support from a significant variety of groups and individuals. By CFUW national and by CFUW Clubs who contacted their MPs asking they support the Bill. CFUW Club, The University Women's Club of Vancouver, collaborated closely with us because their MP is the Minister of Justice, Jody Wilson-Raybould. They were able to speak with her about the CFUW policy on non-State actor torture and that CFUW supports Bill C-242. Linda and I appreciated greatly that they also shared with her our professional submission sent to her, to Minister Patricia Hajdu, Minister of Status of Women, and Dr. Bennett, Minister of Indigenous and Northern Affairs. It is titled, No One shall be Subjected to Torture by Non-State Actors: The Missing Human & Legal Right of All Canadians—Of Women & Girls.



Our submission shared many points including that, at least from 1979, there have been many Canadian government,

police, and research reports that have stated that torture by non-State actors occurs in Canada, and is inflicted against adults and children beginning with infants. This image, *Advocacy: Her-Story*, is an illustration of the many reports where torture by non-State actors is mentioned.[1] This illustration is from our presentation at the most welcoming *Fall Gathering* of CFUW Ontario East hosted by CFUW Kanata, October 22, 2016. The theme was Women Effecting Change how CFUW women can work together for the human and legal rights of women and girls.



From across Canada, in addition to all the CFUW Clubs that contacted their MPs with a request for the MP to support Bill C-242, we also heard from individuals and from organizations that wrote to the Minister of Justice and to other Ministers and MPs in support of Bill C-242. Examples include the Canadian Nurses Association, the Native Women's Association of Canada, First Call BC Child and Youth Advocacy Coalition, London Abused Women Centre, London, Ontario, and the Nova Scotia Government & General Employees Union. In addition, cross Canada awareness was created as the *Canadian Nurse* journal carried this article, Champions for the cause, by Debra Huron who also wrote, New Bill Takes Aim at Domestic Torture, published in *herizons*. Cathryn Atkinson wrote, The fight against non-state torture, in *Pique* and Angela MacIvor of CBC News carried this article Truro human rights advocates thrilled to see torture bill tabled in Ottawa. And we are very appreciative of all this support as Bill C-242 has created an awareness that in Canada we have a culture in which non-State torture victimization occurs and a socio-legal framework that, to date, has invisibilized not only the crime but so tragically the individuals who suffer the severe pain and suffering inflicted by non-State torturers.

THE HOUSE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS' POSITION

When Bill C-242 passed 2nd reading, 21 April, 2016, in the House of Commons it proceeded to the Standing Committee to be studied. Linda and I professionally submitted our brief to the Standing Committee as well as supporting Alex Lane and Robert G. Holodak who submitted their joint brief. Alex also submitted her Victim Impact Statement. Linda and I gave our testimonies on September 22, 2016, 42nd Parliament, 1st session, following MP Peter Fragiskatos' presentation of his Bill C-242 which can be watched here (Linda and my recorded testimony begins at 12:23:24). The Department of Justice presented twice (September 27th and October 6th) and lawyer Michael Spratt from the Criminal Lawyers' Association testified on September 29th, 2016. The Standing Committee concluded with the motion not to proceed with the Bill to 3rd reading submitting their Fifth Report. The Standing Committee's unanimous decision is that non-State torture can be considered aggravated assault and aggravated sexual assault and sentencing could be addressed under section 718.2 of the Criminal Code. In

[1] Sarson, J., & MacDonald, L. (2015, November 27). *No one shall be subjected to torture by non-State actors: The missing human & legal right of all Canadians—Of women & girls*. Report submitted to Federal Ministers. Retrieved from http://nonstatetorture.org/files/1014/5546/8756/NoOneShallbeSubjectedtoNST.pdf

addition, the Standing Committee sent a letter to Jody Wilson-Raybould to bring non-State torture to her attention as in the mandate letter Prime Minister Justin Trudeau sent to her. He asked The Minister to review the *Criminal Code*, to address "gaps" in the *Criminal Code* with the goal to toughen laws that will keep "survivors and children safe".

WE STRONGLY DISAGREE WITH THE STANDING COMMITTEE'S FIFTH REPORT DECISION

Linda and I estimate that the support letters and emails sent to the Minister of Justice and to MP Peter Fragiskatos, if counting membership numbers as well as individual submissions, would probably number over 250,000 Canadians. Sadly, the voice of civil society did not seem to be of interest to the Standing Committee on Justice and Human Rights studying Bill C-242.

Linda and I, strongly disagree with misnaming non-State torture as aggravated assault. This is invalidating to the creditability and reliability of persons telling of non-State torture. This is how the Standing Committee's motion will contribute to invisibilizing ongoing non-State torture crimes and the persons—child or adult—who has suffered non-State torture victimization.

Legal creditability is about a victimized person being able to truth-tell, and considered to be sincere and honest in what they tell in a court of law. Legal reliability is about the accuracy by which a victimized person is seen to recount their victimization. Thus, the question that must be asked is: How can a person who has suffered non-State torture be seen as credible and reliable if a law on non-State torture does not exist?

This is what we know about the dismissal of persons' legal creditability and reliability:

1. When accompanying a woman to see a lawyer to speak of over 25 years of non-State torture that began in childhood, he told her that it would be her blood on the floor if she spoke about the non-State torture victimization in the courtroom. She left the office and never returned.
2. A woman who went to the Victim's Compensation Board and told of her years of non-State torture victimization and named several of her perpetrators was told by the two lawyers at the hearing that they did not believe her because such a crime does not happen in Canada.
3. When attending a child abuse conference we asked a child protection worker what he did when a child tried to tell of ordeals that could be non-State torture; his response was to say that the children were having nightmares or making up stories because non-State torture victimization of children does not happen.
4. Also, by not naming and specifically criminalizing non-State torture a person who writes non-State torture in their Victim Impact Statement can have all such references redacted, silencing them from speaking their truth.

Based on our experience, these are the consequences that will continue because there is a gap in the *Criminal Code of Canada* and thus in the knowledge base of many professionals and civil society. This is how the Standing Committee motion will continue to contribute to the invisibilization of persons of all ages, from infancy onwards, who have suffered, or who are at

risk of suffering, and who are suffering non-State torture victimization. In response to the Standing Committee's decision we have submitted a professional brief to Ralph Goodale, Minister of Public Safety and Emergency Preparedness, to Jody Wilson-Raybould, Minister of Justice, and to Patricia Hajdu, Minister of Status of Women. This brief is focussed on presenting the undeniable evidence that children, especially from infancy to age eight, suffer extreme sexualized victimization including torture that is captured when they and their victimization is trafficked on the internet. The brief is called, 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.

WHAT TO DO NEXT

LOCALLY, individuals or CFUW Clubs can ask MPs to write to Jodi Wilson Raybould, Minister of Justice, requesting that non-State torture be criminalized based on the mandate she was given by Prime Minister Justin Trudeau. Our very supportive MP Bill Casey has submitted a letter to the Minister of Justice supporting the criminalization of non-State torture.

NATIONALLY, individuals can email Jody Wilson-Raybould, Minister of Justice this message at: Jody.Wilson-Raybould@parl.gc.ca:

> *Non-State torture is not identified and criminalized in the Criminal Code of Canada thus is a human right discriminatory legal gap that fails to help keep "survivors and children safe". I/we request that as you conduct a review of the Criminal Code of Canada that non-State torture be specifically criminalized.*

INTERNATIONALLY, uphold the CFUW mandate of achieving social justice and human right equality for women and girls in Canada and globally because of CFUW's NGO ECOSOC consultative status involves undertaking the work of the UN and human rights principles.

GLOBALLY, the Special Rapporteur on violence against women, Ms. Dubravka Šimonović took up the function as Special Rapporteur on 1 August 2015. She put out a call for input to the five questions listed below, seeking information on the important role that different stakeholders play in reinforcing universal human right standards. CFUW can become aware that this is a present day issue, that there is a need for a legally binding treaty if women and girls are to gain equality, and eliminating all forms of violence and discrimination against them is to be achieved. Her questions were:

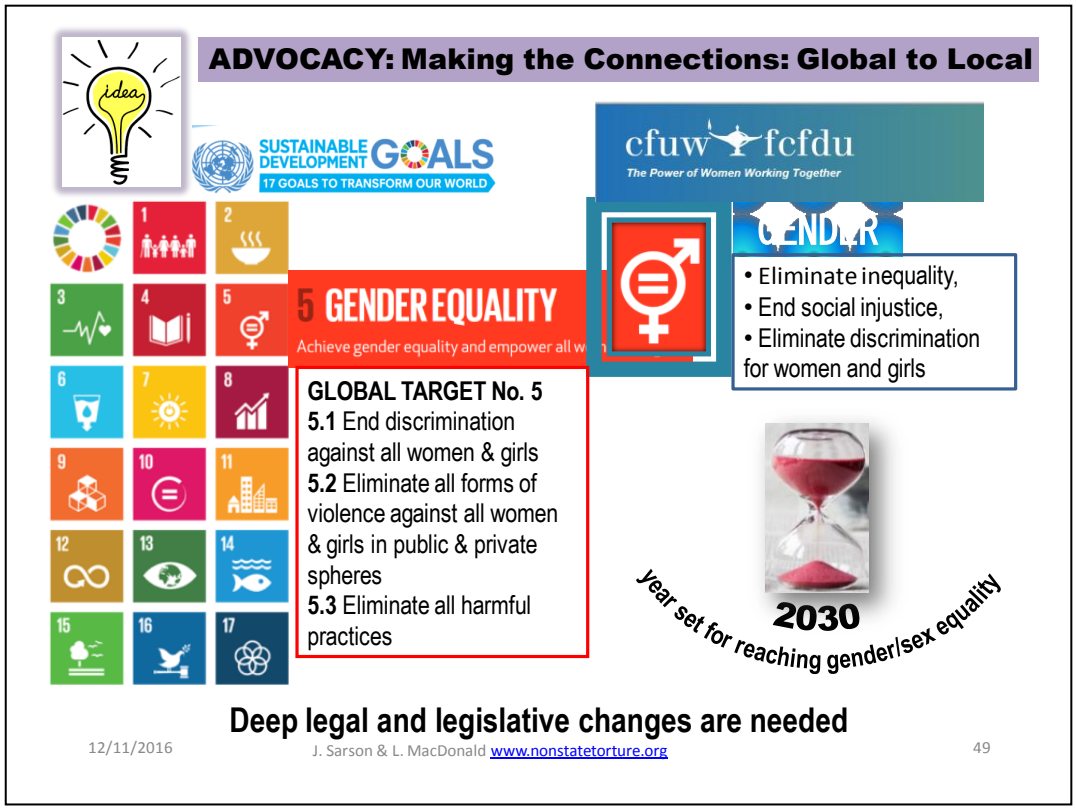
1. Do you consider that there is a need for a separate legally binding treaty on violence against women with its separate monitoring body?
2. Do you consider that there is an incorporation gap of the international or regional human rights norms and standards?
3. Do you believe that there is a lack of implementation of the international and regional legislation into the domestic law?
4. Do you think that there is a fragmentation of policies and legislation to address gender-based violence?

5. Could you also provide your views on measures needed to address this normative and implementation gap and to accelerate prevention and elimination of violence against women?

There are some responses listed on her page however we have learned that at least 150 responses have been sent to her in support of a new legally binding treaty that would address all forms of violence against women and girls. Linda and I along with Jackie Jones did submit a professional response and share it here, A Response to Five Questions.

MAKING THE LINKS BETWEEN CFUW AND THE STGS

The CFUW policy, Non-State Actor Torture, urges that the government amend the *Criminal Code of Canada* to criminalize non-State actor torture. This policy advanced CFUW's support of Bill C-242. In addition, this policy fits into the sustainable development goal (STG) 5 on gender equality, ending all forms of discrimination and violence against women and girls. UN Women has a campaign of Step it Up for Gender Equality—Planet 50-50—by 2030.



For Canadian women and girls to achieve the socio-cultural, the legal and human right equality not to be subjected to torture by non-State actors, the advocacy is not over given the Standing Committee decision not to pursue criminalizing non-State torture. This decision fails to uphold article 5 of the Universal Declaration of Human Rights (UDHR)—that no one shall be subjected to torture—and invisibilizes women and girls so tortured. The UDHR is the most translated document in the world fundamental to international human rights law. Its articles apply universally, without discriminatory to all human beings, including women and girls.