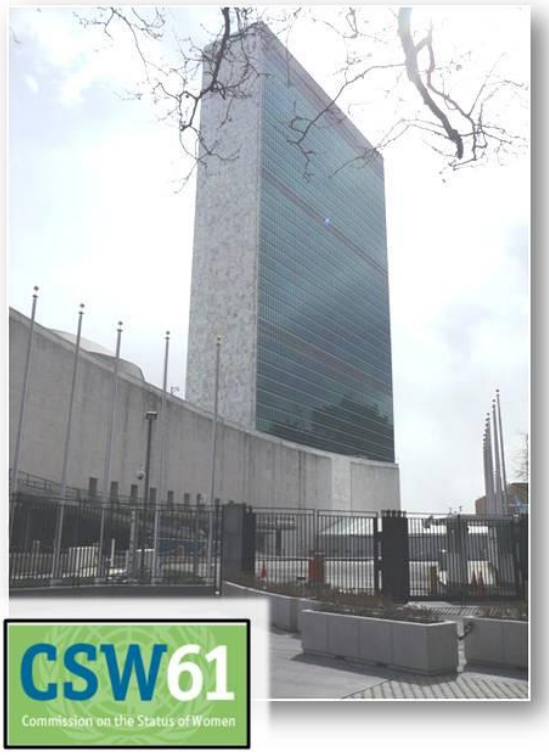


THE PARALLEL EVENT
16 March 2017

Using Law to Empower Women & Girls to Live Free from Violence in Work and Family

Sponsored by the Wales Assembly of Women, European Women Lawyers Association, Persons Against Non-State Torture, Space International, University of the West of England, and SaferWales.

The United Nations, New York City

By

Jeanne Sarson and Linda MacDonald, March 20, 2017

Besides Linda and me, panelists were invited by Jackie Jones to share experiences and knowledge and included:

1. **Grace Jalleh-Sharples**, law student, St. Edmund Hall, Oxford University, presented, **Prevailing Gender Bias in the Legal Profession & the Role of Universities**
2. **Jeanette Westbrook**, social worker, member of SPACE International, titled her presentation, **The Criminal Justice Crapshoot**," shared her experiences of survival.
3. **Harriet Wistrich**, UK lawyer, shared her legal experiences and her work in developing, **The Centre for Women's Justice**

(www.centreforwomensjustice.org.uk), which "is a new feminist charity developed to ensure that women and girls, who are subjected to male violence, get better access to justice."

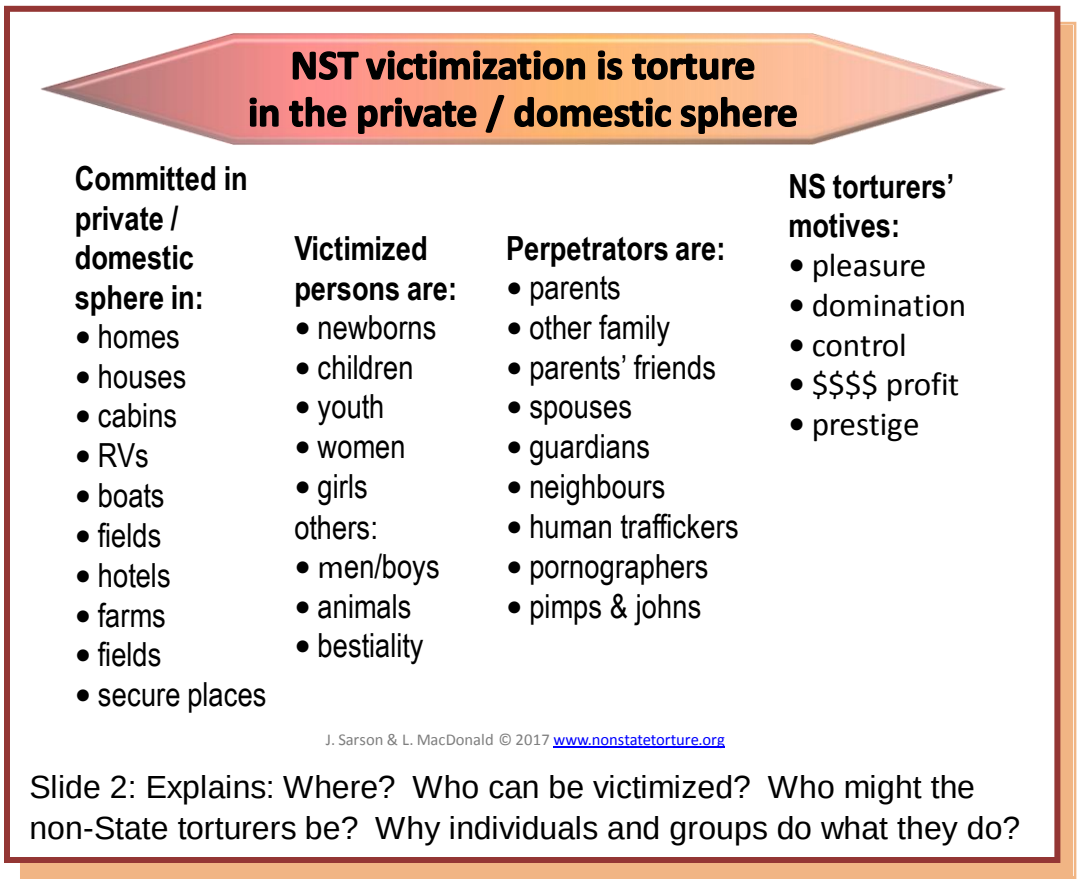
4. **Linda and my** presentation is titled, **A Canadian experience: Discrimination in law on non-State torture (NST) negates human rights equality, social justice & inclusion of victimized women & girls**. We share our PowerPoint presentation in this report.
5. **Jackie Jones**, feminist lawyer and professor from Wales, was unable to attend as she was called to present at a conference in South Korea to speak about the issues of gender. She informs us she identified in her presentation that non-State torture is a form of violence suffered by women and girls.

We thank all who attended and are appreciative of the interesting follow-up discussion.

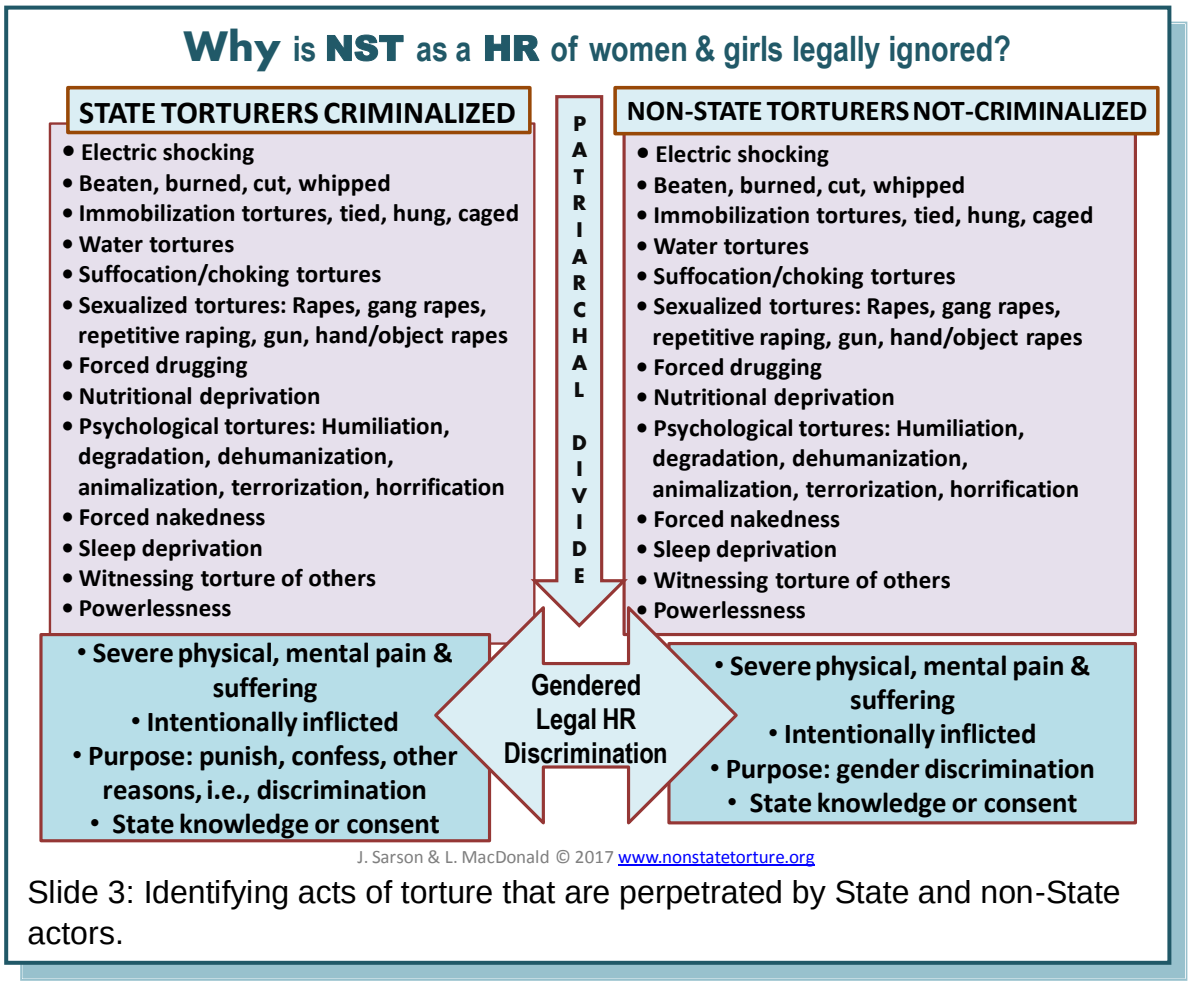
The Panelists

Speaking at the mike is Linda MacDonald; next to her are Grace Jalleh-Sharples, then Jeanne Sarson, Jeanette Westbrook, and Harriet Wistrich. Missing as explained is Jackie Jones.

Slide 1: Title

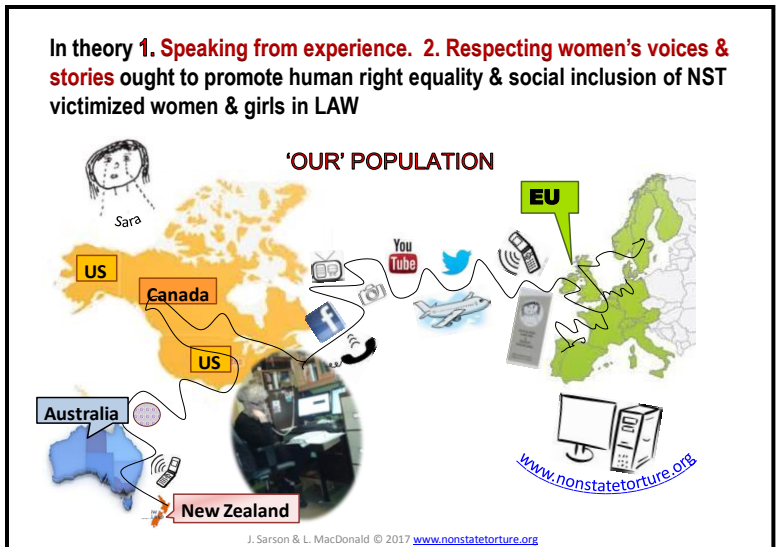


Slide 2: Explains: Where? Who can be victimized? Who might the non-State torturers be? Why individuals and groups do what they do?



Slide 3: Identifying acts of torture that are perpetrated by State and non-State actors.

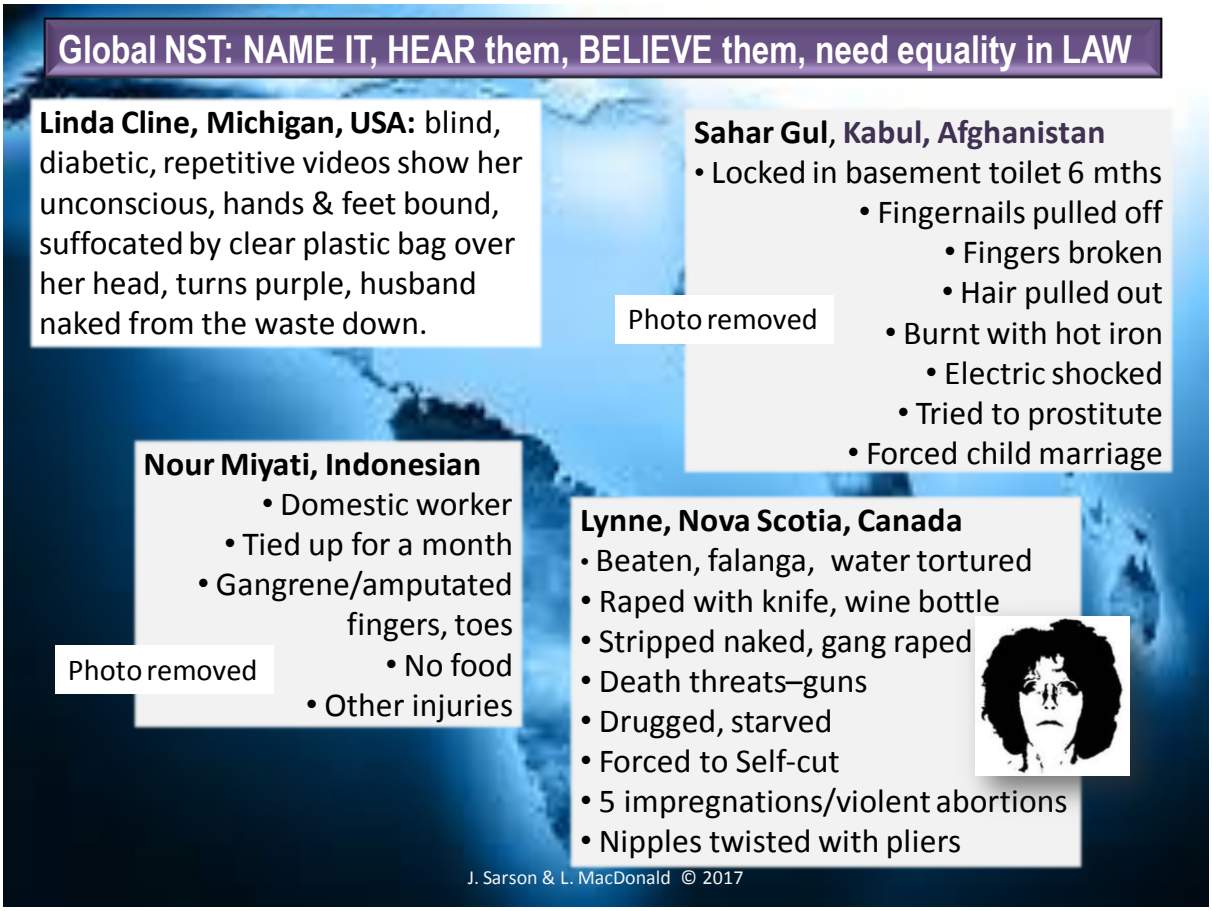
In slide 3, our research suggests that torture perpetrated by non-State actors is seldom criminalized in country laws or if there is such a law we wonder how often it is legally utilized to ensure non-State torturers' impunity does not continue. The turquoise boxes list the defining elements of torture found in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Countries that we



Slide 4: Representations of the countries whereby women identify coming from who have survived non-State torture and the many ways we connect.

have been able to identify as having law that criminalizes torture generally focus on torture committed by State actors such as police, military, or other governmental representatives. We have found a few countries that criminalize the importation of torture tools and laws that address torture of animals. We would welcome any information individuals have about their country laws and whether torture by non-State actors is criminalized and if there are case examples of its non-discriminatory implementation.

Slides 4 and 5 are self explanatory.

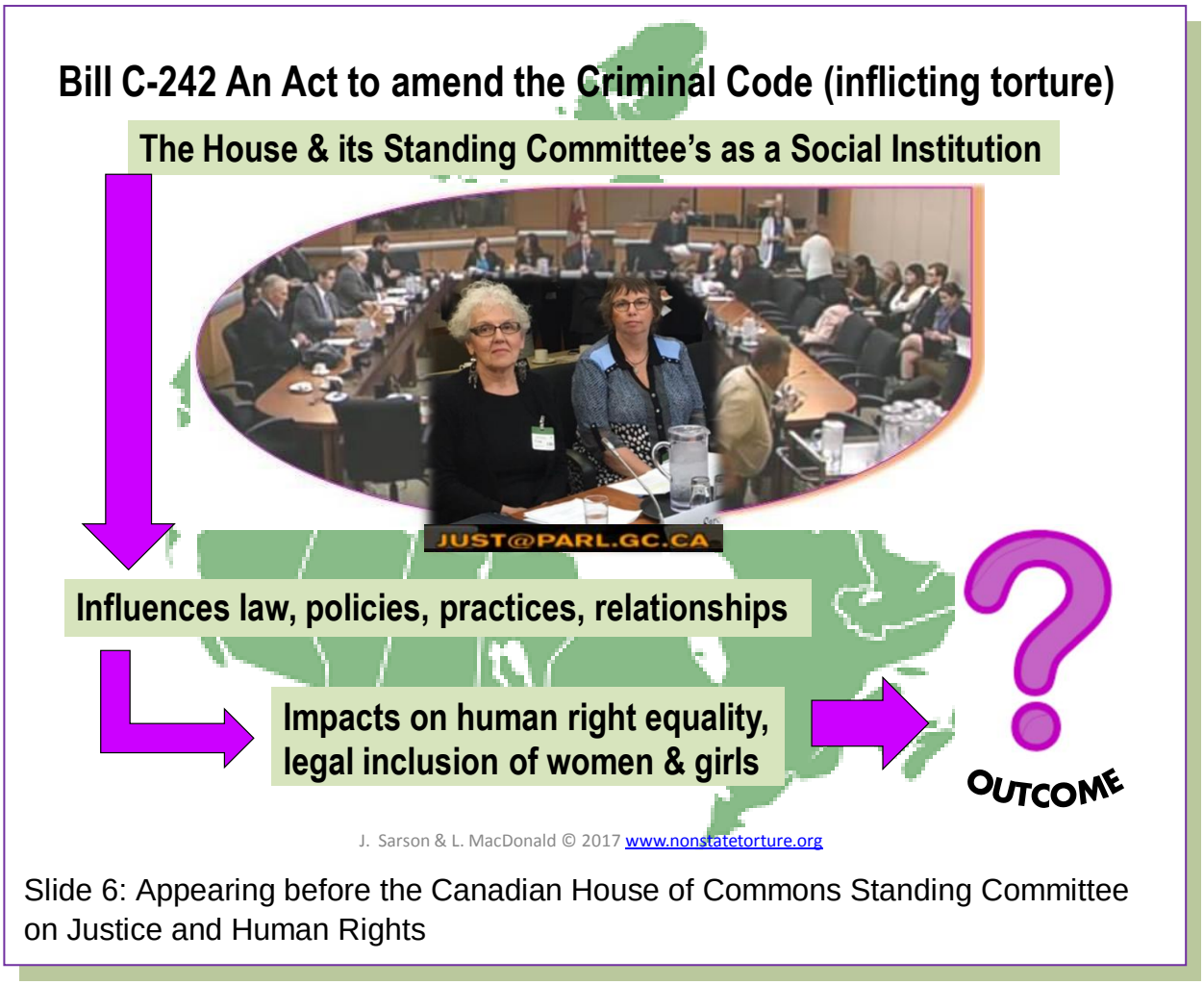


Slide 5: Shares the global reality that NST of women and girls is committed in the private or domestic sphere and must be identified as occurring.

In the following slide 6, it was explained that a Private Members Bill was put forth by a newly appointed Member of Parliament. The Bill, Bill C-242, An Act to amend the *Criminal Code* (inflicting torture) was read in the House of Commons. Passing First and Second Readings it moved to the House of Commons Standing Committee on Justice and Human Rights to be studied. Linda and I responded to the suggested Bill. The Standing Committee Members made the decision that acts of non-State torture

victimization could be dealt with by naming these acts of torture aggravated assaults or aggravated sexual assaults. The Standing Committee also sent a letter to the Minister of Justice, Jody Wilson-Raybould, asking for her consideration of non-State torture victimization when she reviewed the *Criminal Code of Canada*. Minister of Justice, Jody Wilson-Raybould, decided to maintain a State-centric legal position. This means that

only people who have suffered State torture have the legal right to expect to appear in a Canadian court of law to claim they suffered torture. This legal recourse is denied to Canadian individuals who have suffered acts of non-State torture.



Slide 6: Appearing before the Canadian House of Commons Standing Committee on Justice and Human Rights

Slide 7 listed the following reasons or legal positions of the Canadian Government as to why the Government does not agree to criminalizing torture by non-State actors. Their reasons include:

1. They **RENAME NST** using the existing provisions of aggravated assault or aggravated sexual assault as listed in the *Criminal Code of Canada* and are of the opinion this is sufficient to deal with non-State torture victimizations.

2. **UN RESOLUTIONS WERE IGNORED** that directed the UN Committee against Torture to integrate a non-discriminatory application of the UNCAT. The resolutions also directed the Special Rapporteur to do likewise, to apply a gender-sensitive examination of manifestations of violence against women and children that amounted to torture perpetrated by non-State actors and for States to collect such data.

3. The Canadian Government's position is that recommendations made by the UN Committee against Torture to the Government are based on '**SOFT LAW'** thus **n**ot legally binding. This means that the Government rejected the Committee's recommendation that the Government incorporate the UNCAT into its national law so as to address torture inflicted by non-State actors.

4. The Government expressed that a law addressing non-State torture victimization would only be **SYMBOLIC.** We ask: Are all laws symbolically useless? If so, then why do we even have a *Criminal Code*?

5. The Government's Department of Justice said a law on non-State torture could create **INTERNATIONAL PROBLEMS.** Other countries have such laws and we are unaware of international incidents. Also, the UN Committee against Torture made the recommendation for Canada to include non-State torture in its national law thus one would trust such a recommendation would not be suggested if it would create international problems.

6. **INTERNATIONAL LEGAL CASES WERE IGNORED,** as the Department of Justice did not discuss during the hearings of Bill C-242, these evolving legal decisions. Decisions that addressed gender sensitive forms of violence against women including torture that was perpetrated in the domestic or private sphere by non-State actors and that State parties had due diligence responsibilities to address.

7. **THE HUMAN RIGHTS NON-DISCRIMINATION PRINCIPLE WAS IGNORED** and its application to Article 5 of the UDHR which is that "no one be subjected to torture."

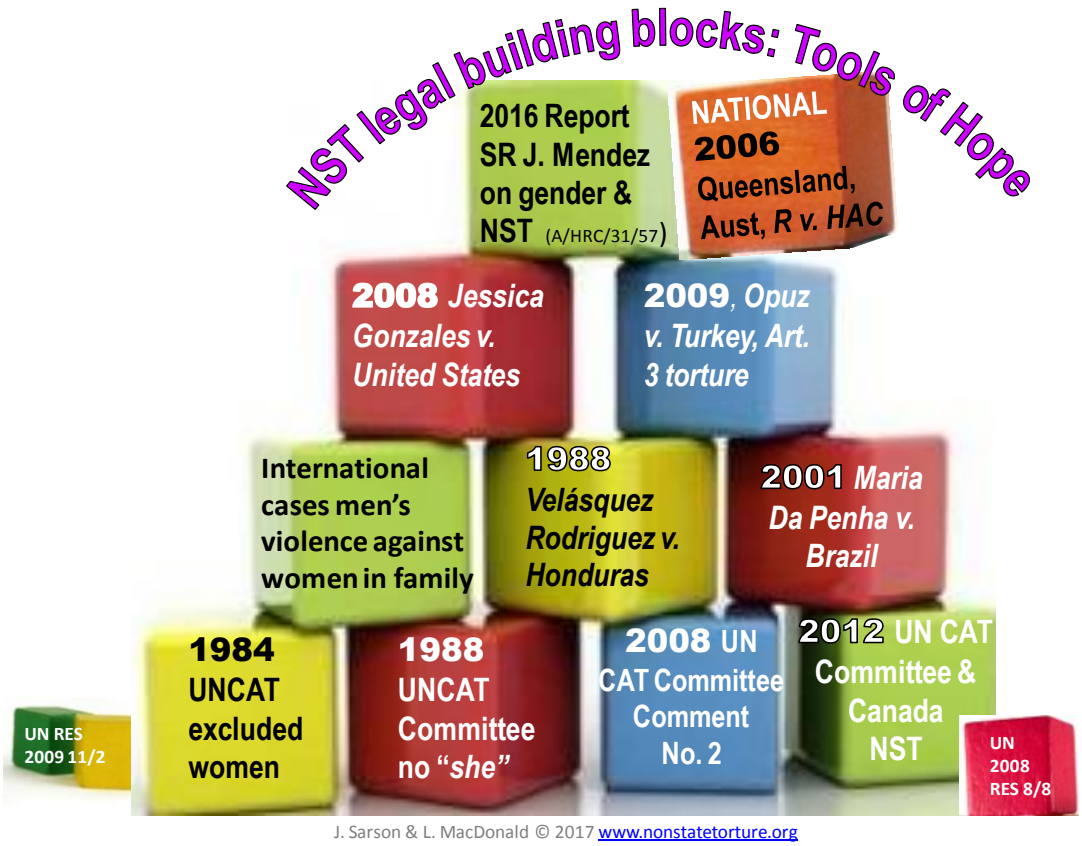
8. **IGNORED** was the principle that **"WOMEN'S RIGHTS are HUMAN RIGHTS."** During the Standing Committee on Justice and Human Rights study of Bill C-242, gender sensitivity was not questioned even though our presentation was on women who suffered non-State torture victimizations as children and or as women.

9. The Standing Committee on Justice and Human Rights appeared to **DISMISS NATIONAL PUBLIC SUPPORT** for a law addressing non-State torture. If counted

individually, support must have represented around 200,000. For example, our professional Canadian Nurses Association with 139,000 members wrote in support and of concern about the vulnerability of those we care about. The NGO, the Canadian Federation of University Women, with a membership around 8000, supported the need for a law on non-State torture. There were others both as groups and as individuals who wrote in support of the intent of Bill C-242, an Act to amend the *Criminal Code* (inflicting torture).

10. The Canadian Minister of Justice's position is to maintain a **STATE-CENTRIC PERSPECTIVE** so that only individuals tortured by State actors could lay a complaint in a Canadian court of law for having survived severe physical and mental pain and suffering that is inflicted by acts of torture.

Slide 8 illustrates the human rights evolution to operationalize the 1984 UNCAT in a gender sensitive manner. This was promoted when several UN resolutions—UN resolution 8/8 of 2008 and resolution 11/2 in 2009—prompted the UN Committee



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Slide 8: Evolving international legal decisions promoting non-discriminatory gender sensitive positions

against Torture to become non-discriminatory and gender sensitive. In 2008 the UNCAT Committee released its General Comment No. 2 recognizing, in paragraph 18, acts of torture perpetrated by non-State actors. Canada reported to the UNCAT Committee in 2012 which resulted in the Committee recommending to Canada that non-State torture be incorporated in Canada's national law. Canada has repeatedly refused to do based on the reasons listed in the previous slide 8.

Examples of international cases of men's violence (non-State actors) against women in the context of family relationships include:

- *Velásquez Rodriguez v. Honduras,* American Convention on Human Rights, decision stated that "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 by the [American Convention on Human Rights]" (1988, para. 172).
- *Maria Da Penha v. Brazil,* Inter-American Court on Human Rights, 2001 made a similar ruling.
- *Opuz v. Turkey,* the State's due diligence failure was also identified including under Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms which states that "no one shall be subjected to torture"; proceeding to say that States parties are required "to take measures . . . to ensure that individuals within their jurisdiction are not subjected to torture . . . by private individuals (2009, para. 159).
- In the 2008 ruling of *Jessica Gonzales v. United States*, before the Inter-American Commission on Human Rights, was asked about its affirmative obligations to protect individuals from private acts of violence (Bettinger-López, 2008).

In the 2016 report of Juan Mendez, previous UN Special Rapporteur against Torture, quoted several rulings that stated it was the acts of torture inflicted not the status of the perpetrator that defined the crime committed (A/HRC/31/57).

In the last building block, in the Superior Court of Queensland, Australia case of *R v. HAC* found a husband guilty of torturing his wife over a period of six months (2006). No international difficulties were created when non-State torture was criminalized.

Slide 9 is omitted pending publication. It presented the organizational framework of patriarchy illustrating that in order to challenge this dominate social framework laws must be transformed. This is why we focus on the need for law to address torture

perpetrated by non-State actors in the domestic or private sphere, and why, at the UN level, non-State torture must be acknowledged as a specific human right violation to uphold Article 5 of the UDHR which states that no one should be subjected to torture.

Slide 10: "Why?" is important to many women we know. A law on NST would facilitate the women's ability to seek social justice, enabling her to legally engage in denunciation for the non-State torture crime she suffered which is helpful to her recovery.

WHY!

When society minimizes it, it is taken personally and feels like it is me they are looking down on reinforcing the feeling of how the [torturers] minimized my worth when they tortured me. Not having the law care enough reinforces what the [torturers] said, "No one will believe you. What makes you think you are so special that someone would even want to save you or care about you."

Alexandra Lane

"Facing Reality"

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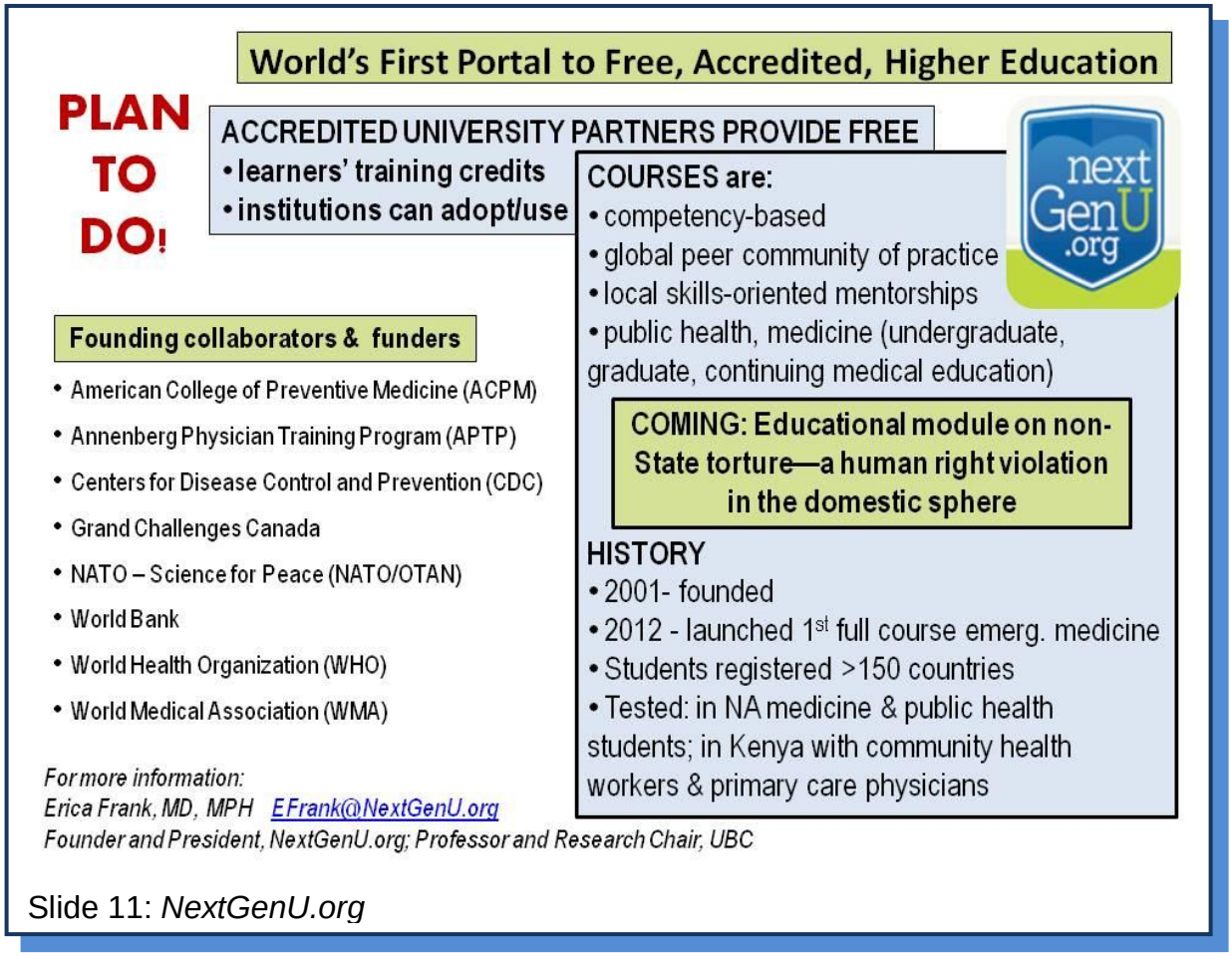
Slide 10: Alexandra explains—gives voice—to why specifically naming and criminalizing non-State torture is important to her.

Slide 11 NextGenU.org follows. It explains one of our intervention plans for the future. Further information about the world's first portal to free, accredited, higher education please contact Erica Frank *EFrank@NextGenU.org* as mentioned in the slide.



Slide 11: *NextGenU.org*

Slide 12 presented the following advocacy Ideas which are:

1. **SHADOW REPORTS** to UN Committee against Torture visibilizes NST. Even one-pagers explaining that non-State torture is not incorporated in one's national laws and thus is discriminatory in that women so tortured are unable to seek justice for non-State torture human right violations suffered. The Committee against Torture has been underutilized by NGOs working with women and girls who have suffered torture by non-State actors. The reason being is that global discriminatory conditioning operationalized the UNCAT as only applicable to the protection of men in war for example.
2. Advocate for **NST NATIONAL LAW**
3. **STATES WITH NST LAW – Investigate:** Is it utilized in a gender-sensitive manner?

4. **LEGAL DENUNCIATION OF NST** promotes women's social inclusion, decreases the pain of social isolation. But for this to occur law must provide their ability to truth-tell of surviving torture by non-State actors.

5. Promote **NGO POLICIES** on NST

6. **NAME NST** in all work on **VAWGs.** We promote an end to FGM or child marriage even though we do not work with women or girls so harmed. It would be supportive if others would identify that NST is a human rights violation suffered by women or girls; that it is an emerging form of violence perpetrated in the domestic or private sphere. Canadian media reports frequently identify that non-State torture occurred even though the Canadian court system requires NST to be identified as a form of assault for example. We are seeing that Canadian judges are making statements in their courts that torture by non-State actors occurred.

7. Women write: "*Hear me, acknowledge me when I say I was tortured, and tell me you are sorry.*"

Resources

1. Fact Sheet: Non-State Torture in the Private Sphere
2. Fact Sheet: Non-State Torture & Sustainable Development Goals
3. Seeking Equality - Justice and Women's and Girls' Human Right Not to Be Subjected to Non-State Torture is a chapter just published in a new book, Women, Law and Culture Conformity Contradiction and Conflict, edited by Jocelynne Scutt. Individual chapters can be purchased.

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