HUMAN RIGHTS HUMAN DIGNITY Persons Against NST

NO ONE SHALL BE SUBJECTED TO TORTURE BY NON-STATE ACTORS:

THE MISSING HUMAN & LEGAL RIGHT OF ALL CANADIANS—OF WOMEN & GIRLS

By

Jeanne Sarson, MEd, BScN, RN and Linda MacDonald, MEd, BN, RN

Submitted to:

Bill Casey, Member of Parliament for Cumberland-Colchester, Nova Scotia, and to

The following Ministers based on the Mandate Letters sent to them by the Prime Minister of Canada, the Hon. Justin Trudeau

Jody Wilson-Raybould, **Minister of Justice and Attorney General of Canada**

Patty A. Hajdu, Minister of Status of Women

Dr. Bennett, Minister of Indigenous and Northern Affairs

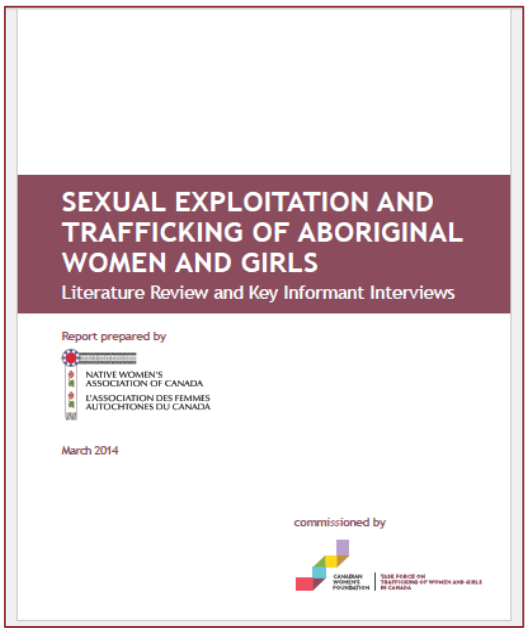
ABSTRACT: This report is a summation of our over 22 years of national and international professional scholarship and grass root work focussed solely on identifying the human and legal right that no one shall be subjected to non-State torture perpetrated by non-state actors in the private or domestic sphere. Our accountability is shared in this submission:

1. We present documentation that promotes legislative responsibilities regarding the need to amend section 269.1 of the *Criminal Code of Canada* so that non-State actors are equally criminalized just as State actors are criminalized for torturing.
2. We ask to meet with each of you and or with appropriate Committees to ensure that the human right of all Canadians—of women and girls—not to be subjected to non-State torture is socially and legally upheld and so persons who have suffered non-State torture can truth-tell with dignity and respect.

Our goals: To achieve an amendment of the *Criminal Code of Canada* to equally and specifically criminalize torturers who perpetrate non-State torture in the private or domestic sphere; to achieve article 5 that declares, "no one shall be subjected to torture" as stated in the Universal Declaration of Human Rights.

2015 Canadian Law. Presently only representative officials of government—State actors—can be held criminally accountable for torturing under section 269.1 of the *Criminal Code of Canada;* whereas, private individuals or groups—non-State actors—who commit the same acts of torture are not held equally criminally accountable for torturing under section 269.1. The acts of non-State torture are renamed an assault for example. This gap in Canadian law means that legal protection of the inalienable human right not to be subjected to torture as stated in article 5 of the Declaration does not apply equally to all Canadians. Article 2 of the Declaration states that, "Everyone is entitled to all the rights and freedoms, set forth in this Declaration, without distinction of any kind". Promoting due diligence duties requires a social and legal practice that implements truth-telling human right equality for all—section 269.1 must change to include non-State actors.

POINT 1
EVIDENCE-BASED REPORTS AND RESEARCH FINDINGS OF TORTURE BY PRIVATE INDIVIDUALS OR GROUPS (NON-STATE ACTORS) THAT OCCURS IN CANADIAN SOCIETY AND CULTURE



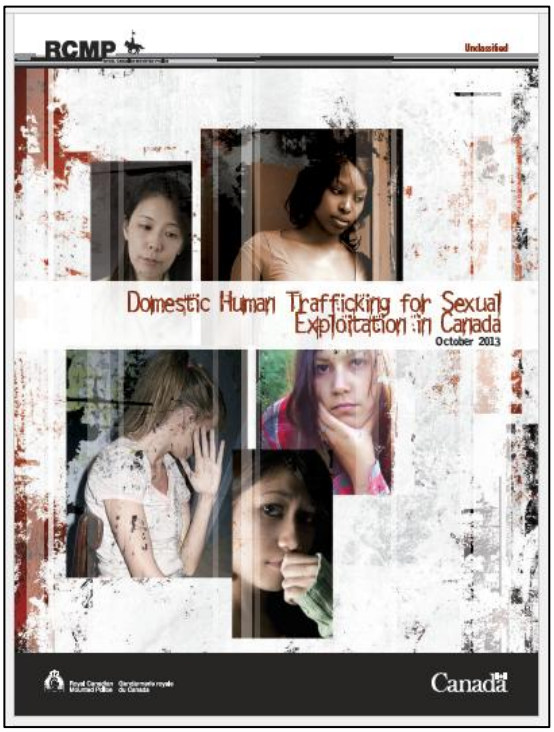
2014. In this report by the Native Women's Association of Canada, **torture** is mentioned many times and explained in detail under section 7.1.4 and 7.2.4 Torture (pp. 47-51).[1] As one woman said, "**Torture is torture**. I survived it. I'm an expert of it" (p. 51).

One of the recommendations made in this report is:

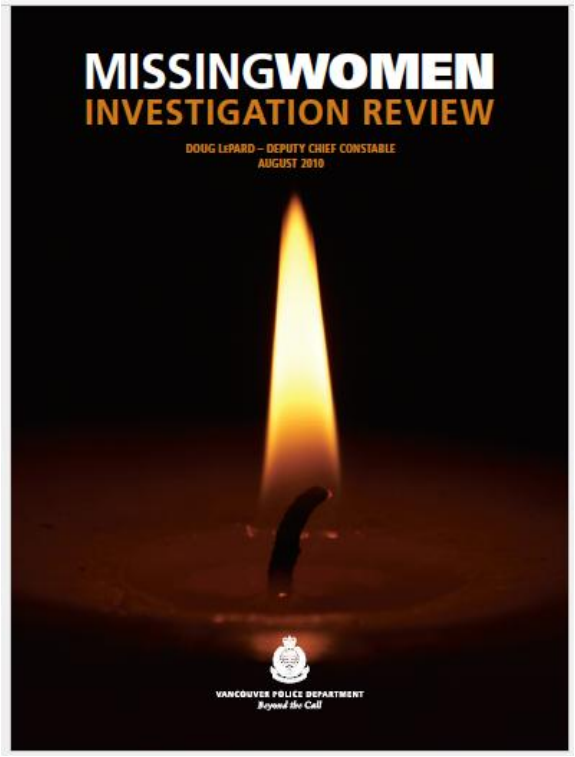
Revise section 269.1 of the Canadian Criminal Code so that a private individual (a non-State actor) who commits classic **torture** can be criminally charged for the crime of **torture** they perpetrate (p. 66).

2013. The following descriptive paragraph appears in this RCMP report on domestic sexualized human trafficking:[2]

> Victims have also reported **torture tactics** used by their traffickers, such as cigarette burns to parts of their bodies, or being forced to bathe in freezing cold water and remain naked afterwards. In one case, ice was further added to the bathtub as the accused felt the water was not cold enough. The victim was not permitted a towel and was forced to stand in front of the air conditioner for a period of time" (p. 22).

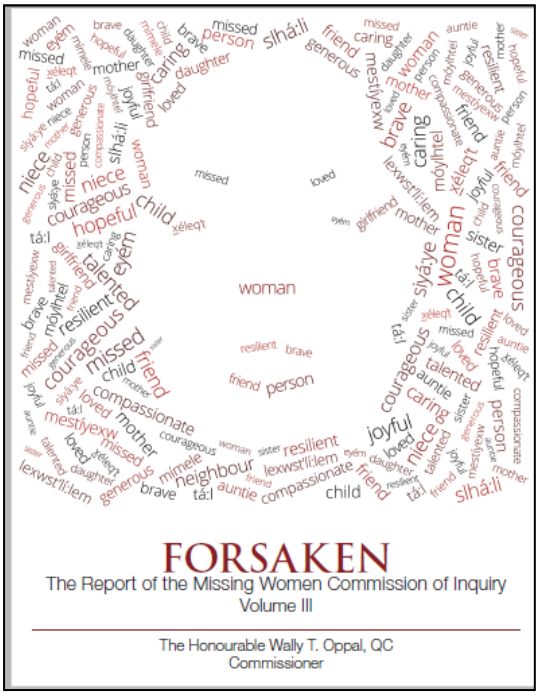


This report covers the vulnerabilities of mostly Canadian Indigenous and non-Indigenous females between the ages of 14 and 22 years who were trafficked into prostitution.



2010. The language used in this report by Doug Lepard to describe crimes includes:[3]

1. Donald Bakker: Serial rape and "**torture**" of women in prostitution identified in a 2003/2004 investigation (pp. 215, 364); and
2. Malcolm Bruce Leach: Beating and sexualized sadistic "**torture**" of a woman in prostitution, in the investigation of February 1999 (pp. 215, 488).

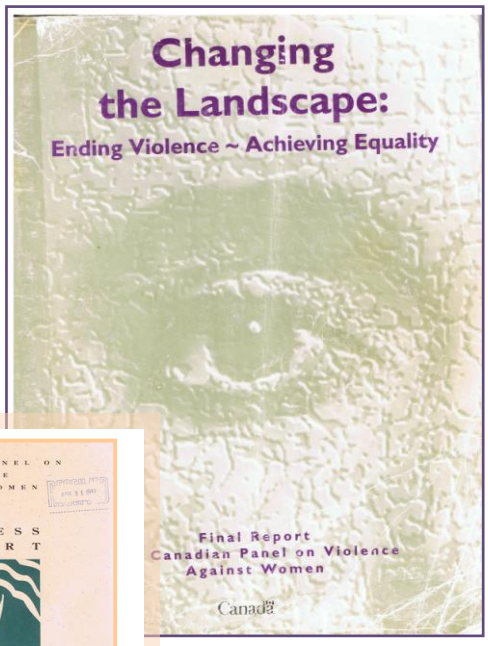


2010. In *Forsaken Volume III,* Mr. Oppal quotes the National Missing Persons Policy of Great Britain and the positive duty on police to protect people at risk, including the duty to issue warnings. Reference is made to the European Convention on Human Rights article 3 and the right not to be subjected to torture,[4] (p. 65).

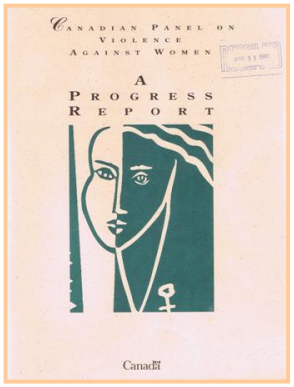
With no distinct Canadian law that names non-State torture as a specific crime a gap in awareness and knowledge is created thus limiting the police assessment of what the potential risks can be. Canadians have the human right to be protected from torture perpetrated by non-State actors; they require appropriate legislative protection.

FEDERAL ACCOUNTABILITY: Without non-State torture law there is no criminal statistical data on non-State torture crimes in Canada, consequently, non-State torture victimization remains criminally invisible as do women and girls who have endured non-State torture. An absence of law means they are not afforded legal rights to name and truth-tell in a court of law. The risk of non-State torture victimization will remain unacknowledged.

POINT 2
36 YEARS OF GOVERNMENT'S HEARING HERSTORIES OF NON-STATE TORTURE



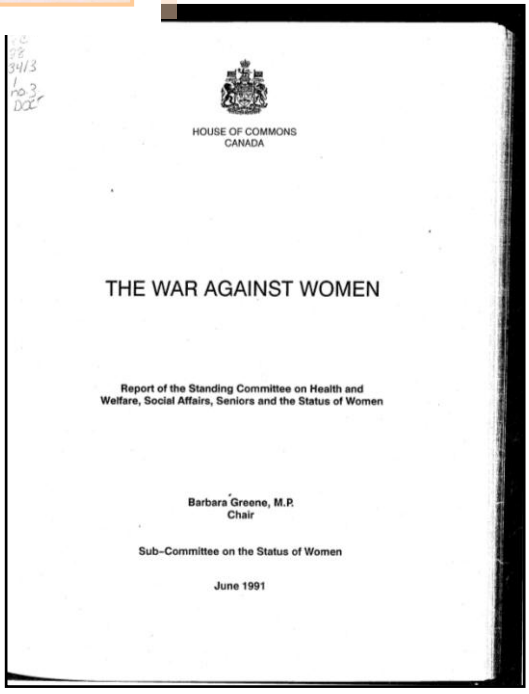
1993. "Every day in this country women are maligned, humiliated, shunned, screamed at, pushed, kicked, punched, assaulted, beaten, raped, physically disfigured, **tortured**, threatened with weapons and murdered" (p. 3).[5] This is the first sentence of Chapter 1 of the Canadian Panel on Violence Against Women report given to the Minister Responsible for the Status of Women. This sentence is repeated in the Executive Summary/National Action Plan of the Panel (p.5).[6]



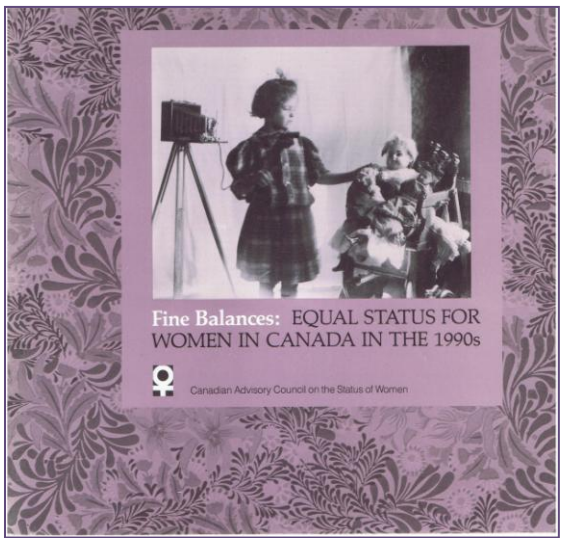
In the Panel's, *A Progress Report*, they wrote that much violence against women "**parallels with torture**" (p. 1).[7]

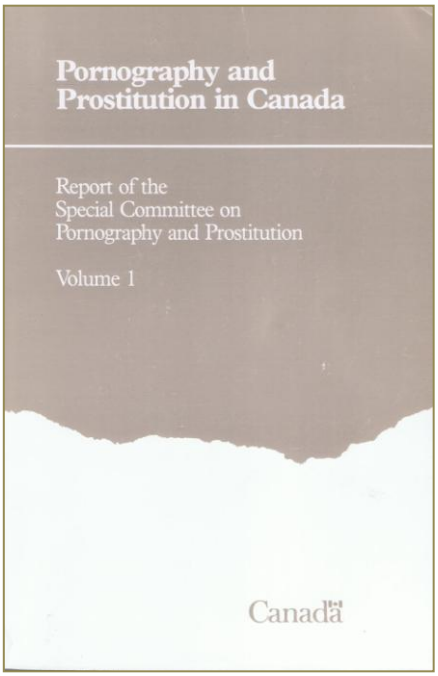
1991. *The War Against Women* was the First Report of the Standing Committee on the Health and Welfare, Social Affairs, Seniors and the Status of Women. The Committee heard the testimony of Ann Sharp who spoke of a woman whose ex-partner,

> hung [her] by ropes, naked, from the beam and whipped to a state of unconsciousness . . . . in front of the male's three children. The sentence he received was a $200 fine . . . . he was also fined $500 for an unrelated charge of possessing illegal venison. Based on this sentence, one could argue that in the future moose and deer would be safer from this man than the woman he **tortured**" (p. 25).[8]



1987. The Canadian Advisory Council on the Status of Women booklet, *Fine Balances: Equal Status for Women in Canada in the 1990s,* said: "As long as women are portrayed as sex objects or victims of **torture** and mutilation, their worth and abilities will continue to be undervalued" (p. 18).[9]





1985. Written in the, *Report of the Special Committee on Pornography and Prostitution, Volume 1*, is the following statement discussing legislative definitions of what is involved in pornography. It said: "Women are represented in scenarios of degradation, injury, abasement, **torture**, shown as filthy and inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual" (p. 55).[10]

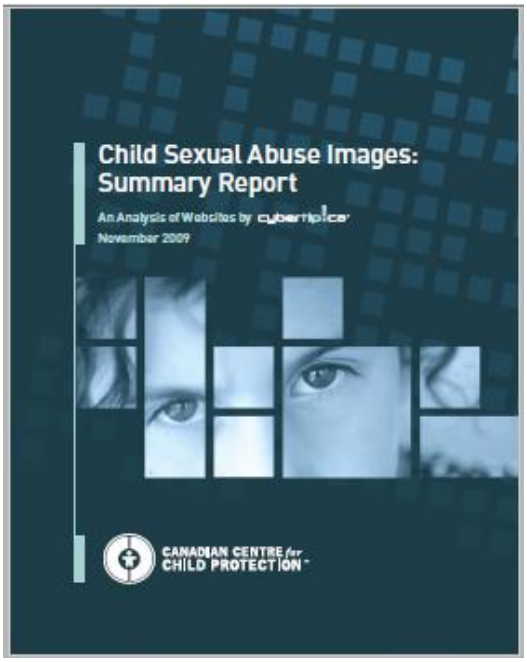
1979. Prior to the above statement, Jennifer Robertson, prepared, *Pornography and Its Effects A Survey of Recent Literature*. She quotes Reverend Brad Massman of Toronto who testified before the House of Commons Justice Committee. He said that johns want "to burn, **torture** and beat . . . ." the women prostituted (p. 13).[11]

FEDERAL ACCOUNTABILITY: Each of these governmental reports clearly identified that women were suffering torture by non-State actors in the private sphere. To continue to ignore in 2015 and beyond such evidence will raise the issue of willfulness and introduce the modern day human rights question of whether there is acquiescence by the State—by Canada—in allowing the impunity of non-State torturers not to be held legally to account for the specific crime of torturing they commit.

POINT 3
ARE WE BUILDING A HUMAN RIGHTS WORLD—A CANADA—FIT FOR CHILDREN?

2015. Reporter Robert Cribb wrote an article highlighting findings of the 2014 experiences of employees of the Canadian Centre for Child Protection. These findings included: [12]

1. 15,000 internet crime scene pornographic images were catalogued in 2014 of children from newborns to age 8 years, these represented 56% of the 26,886 documented images.
2. 73% of the crime scene images of the young involved the severity of depravity of "**torture**" and "bondage". This was a 12% increase from 2013.
3. Parents and those known to the children were common perpetrators.



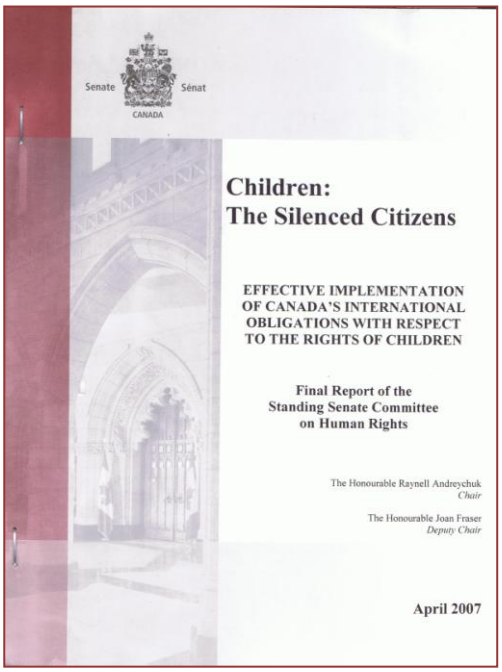
2009. Between September 26, 2002, and March 31, 2009, 15,662 websites hosting crime scene child pornography were examined at the Canadian Centre for Child Protection.[13] The findings showed:

1. 57.4% of the crime scene images were of children under 8 years of age, the most extreme sexualized victimization was inflicted against them, with many crime scene images showing infants or toddlers being victimized;
2. The extreme crime scene images involved **torture,** bondage, bestiality, and degradation, i.e., being defecated on;
3. 83.0% of the crime scene images were of the girl child; and
4. Parents and those known to the children were the most common perpetrators.

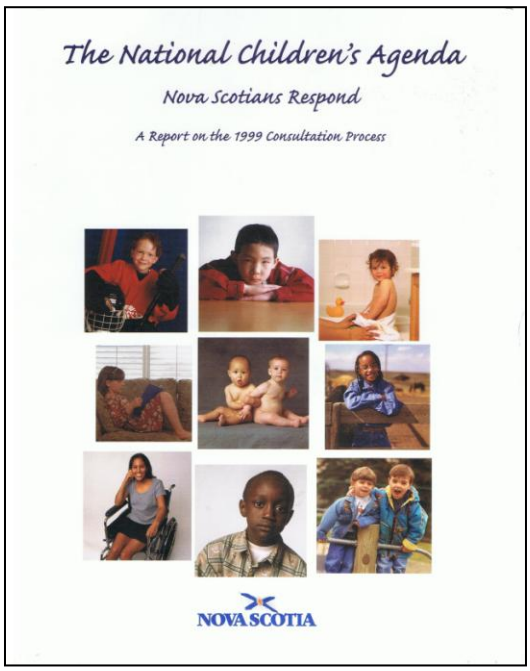
Two RCMP statements:

2008. Staff Sergeant Rick Greenwood of the RCMP Child Exploitation Unit, Ottawa, stated that a 20 percent figure for **torture** and bondage victimization was a conservative estimate (Personal telephone communication, June 18, 2008).

2006. RCMP Superintendent Earla-Kim McColl in a media interview stated that approximately 20 percent of the pedophilic sexualized violent images involved **torture**.[14]

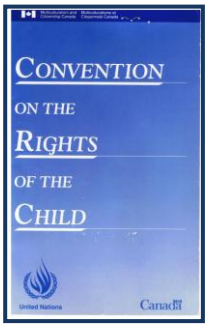


2007. In its Final Report the Standing Senate Committee on Human Rights,[15] spoke of article 39 of the United Nations Convention on the Rights of the Child. They spoke in relation to rehabilitative care, including "physical and psychological recovery and social reintegration . . . [from] any form of neglect, exploitation, or abuse; **torture** or any other form of cruel, inhuman or degrading treatment or punishment" and this care needs to foster a child's health, self-respect and dignity (p. 157).



2000. Attending this Nova Scotia provincial government consultative meeting we succeeded in having "**torture**" included in the provincial document.[16] These consultative meetings provided input into the federal government's National Plan of Action, *A Canada Fit for Children*, which became a guiding document for Canada's contribution to the United Nations document, *A World Fit for Children*. We could not find an acknowledgement of torture in the national plan of action which was taken to the United Nations to promote building a safe world for all children by acknowledging that some children, beginning in infancy, are subjected to sexualized torture and cruel, inhuman, or degrading victimization.

1991. The Convention on the Rights of the Child was ratified by Canada on 13 December 1991. Its preamble recalls that children are entitled to special care, assistance and protection, and have all the rights and freedoms as set out in the Universal Declaration of Human Rights. This includes the right to be protected from torture victimization as stated in article 5 of the Declaration regardless of whether the torturer is a State or non-State actor.



Within the Convention on the Rights of the Child, article 39, as previously mentioned, says that Canada "take all appropriate measures to promote the physical and psychological reintegration of a child victim of: . . . **torture** or any other form of cruel, inhuman or degrading treatment or punishment." Additionally, article 19 addresses the reality that Canada, "shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence . . . while in the care of parent(s), legal guardians or any other person who has the care of the child". As already shown, the above evidence provides the knowledge that children suffer sexualized torture by non-State actors; the girl child is significantly vulnerable to sexualized victimization.

Article 29 (b) speaks about supporting a child's education so they develop "respect for human rights and fundamental freedom, and for the principles enshrined in the Charter of the United Nations". We do provide guest educational sessions to children as shown in this consented to photo of Grade 7 students. They are holding the Universal Declaration of Human Rights given to them. When we present the human rights perspective and speak about the forms of violence that a child can suffer, or is at risk of suffering, we include torture in all its forms—non-State as well as State torture. However, when it comes to article 5 we must say that a child's right not to be subjected to non-State torture is not upheld legally as a human rights crime of torture because of the discrimination in the *Criminal Code of Canada*, s. 269.1.

FEDERAL ACCOUNTABILITY: The Canadian Centre for Child Protection is connected to the Government of Canada's National Strategy for the Protection of Children from Sexual Exploitation on the Internet and to the RCMP through National Child Exploitation Coordination Centre (NCECC), a national division of the Canadian Police Centre for Missing and Exploited Children/Behavioural Sciences Branch, the Department of Justice. The knowledge that non-State torture occurs to children is well established. Children's human right to be protected from torture by non-State actors calls for the essential necessity for its specific criminalization.

POINT 4
TWO COURT CASES: IN THE NOVA SCOTIA PROVINCIAL COURT AND IN THE ONTARIO SUPERIOR COURT

IN THE NOVA SCOTIA PROVINCIAL COURT

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. C.S., 2012 NSPC 45

Date: June 12, 2012
Docket: 2397460, 2397461
2397464, 2397465
Registry: Halifax

Her Majesty the Queen

v.

C.S. and K.S., young persons

DECISION

-

Revised Decision: This decision replaces the previously released decision as of June 21, 2012.

Judge: The Honourable Judge Jamie S. Campbell

2012. In this above criminal case of *R. v. C.S.,* 2012 NSPC 45, Honourable Judge Jamie S. Campbell wrote the following comments which included torture victimization written ten times distinguishing it from assault.[17] However, without section 269.1 of the *Criminal Code of Canada* criminalizing non-State as well as State torture this criminal human right violation of non-State torture could not be named thus the perpetrators not charged with torture. Honourable Judge Jamie S. Campbell's written Decision includes:

> [1] The circumstances surrounding those crimes involve confinement, degradation, **torture** and wanton cruelty."
> [12] For up to eight hours Barry Brugger, K.S., C.S., Scott Murphy and another adult participated in confining R.C.. During that time they **tortured him**. His face, arms and hands were burned with a cigarette numerous times. He was branded several times with a hot cigarette lighter. He was beaten with drumsticks and belts. He was urinated on, including having someone urinate in his mouth. He was forced to drink his own urine from a container. His hands were beaten with a sword sheath. His leg and foot were painted white. His hair was shaved into the shape of a penis. His eyebrows were shaved. He was forced to pull down his pants and expose his genitals. He was threatened that he would be raped and killed. A stick was pushed against his anus, through his clothing. A black air gun, looking very much

like a 9 mm handgun, was pointed at him. One of his ears was pierced with a tire tool that resembles a cork screw and a padlock was inserted through the piercing and locked.

[17] When R.C. was kidnapped, held against his will, and **wantonly tortured . . . .**

[33] The **torture** seems to have begun when the group got R.C. into the shed. At that point he became merely an object, not another human being. As a group they treated him like a thing to be cruelly and sadistically played with.

[34] . . . . Each act of **torture** or degradation makes the next one seem only worse by degrees.

[35] . . . . It takes something else to participate in the **torture** of another person over a period of time.

[36] . . . . When a young black man is ambushed, attacked, **tortured** and painted white by white assailants, there is a powerful inference of a racial component to the event. Seeing the pictures of R.C. with the padlock in his ear, his head shaved and his leg and foot painted white, it is hard not to be drawn back to those hateful images of lynchings from the American south.

[37] The abuse and **torture** went beyond simply confining him, beating him and burning him. He was threatened with rape and death . . . . The outrage went further when he was forced to drink his own urine and had someone urinate in his mouth. His hair was shaved into the shape of a penis. This was beyond assault and abuse. It was obscene degradation.

[38] . . . . Another human being is confined, assaulted, **tortured** and degraded.

[42] . . . . The lasting psychological impact on a person of being kidnapped, confined, assaulted and **tortured** over a period of hours should be beyond argument.

IN THE ONTARIO SUPERIOR COURT

2010. The next two paragraphs are a reflection on the Ontario Superior Court case of *Bedford v. Canada, 2010,*[18] and how it fits into our advocacy for exposing non-State torture that occurs in the private sphere, in this situation, to women or girls in prostitution.

Bedford et al. v. Attorney General of Canada; Attorney General of Ontario et al., Intervenors
[Indexed as: Bedford v. Canada (Attorney General)]

102 O.R. (3d) 321
2010 ONSC 4264

Ontario Superior Court of Justice,
Himel J.
September 28, 2010

In this case of *Bedford v. Canada, 2010,* paragraph 26 states:

> Ms. Bedford stated in her affidavit that she was "raped and gang-raped too many times to talk about", beaten on the head with a baseball bat, and **tortured** physically and psychologically."

Paragraph 531 states:

> "Other sections of the Criminal Code are available to police to charge pimps and customers who threaten or cause harm to prostitutes [including]: . . . **s. 269.1 (torture).**"

JUDICIAL DUTIES AND FEDERAL RESPONSIBILITIES. Gabriela Knaul, the Special Rapporteur on the independence of judges and lawyers, in her report to the United Nations General Assembly, stated that judges have a judicial duty and responsibility to point out the gaps that exists in a country's legislation.[19] Honourable Judge Jamie S. Campbell's judicial statement of differentiating torture from assault or abuse represents a judicial acknowledgment of this duty and responsibility. His judicial ruling clearly points to a legal gap, exposing that torture is perpetrated by non-state actors and occurs within the Canadian culture and in private spaces.

Conversely, in *Bedford v. Canada, 2010,* the judicial duty and responsibility to point out the gap that exists in Canada's legislation did not occur in reference to paragraph 531. A criminal charge of torturing is not available to the police when pimps and johns are non-State actors. It was not noted that police can only utilize section 269.1 on torture when pimps and johns are State actors. This statement went judicially uncorrected.

Furthermore, in *Bedford v. Canada, 2010,* the judicial duty and responsibility to point out the gap that existed in Canada's legislation did not occur in reference to paragraph 26 when Ms. Bedford stated she was tortured by non-State actors—pimps and johns.

Bedford v. Canada, 2010 progressed to *Canada (Attorney General) v. Bedford, [2013].*[20] That non-State torture was suffered by Ms. Bedford was never addressed as a form of violence inflicted against girls and women prostituted. It is unconsciousable that pimps and johns who inflict sexualized non-State torture enjoy impunity in Canada; this human right and legal discrimination must end with an amendment to the *Criminal Code of Canada,* s. 269.1.

POINT 5
OTHER JURISDICTIONS: ADDRESSING MISOGYNY AND MISOPEDIA

Three examples where torture became a distinct criminal offence regardless of who the torturer was—non-State or State—as a response of civil and official society recognizing torture was a specific and distinct crime are:

2006: Michigan, USA. Torture became a distinct crime in Michigan, USA, following the case of Stephen Cline and his tactics of horrific victimizations perpetrated against his blind, diabetic wife. At the time of his trial there was no anti-torture statute that prosecutors could use to fit the crime against Cline. Following this case House Bills 5268 and 5269 were introduced which led to torture legislation in Michigan's Penal Code.[21]

Cline was a former paramedic. Using his medical knowledge he placed his wife into a coma by injecting her with insulin, positioning her in a sexualized manner on a stool, bed, or sofa, he would then put a plastic bag over her head suffocating her almost to the point of death. Videos taken by Cline showed his wife, "Her face begins to turn blue and her hands turn black . . . . Then he revives her . . . . giving her glucose . . . she returns back to life . . . . Cline repeats the process, suffocating and reviving her sometimes two or three times per session. Cline later played the tapes for his own sexual gratification, police said."[22]

The Michigan Penal Code reads:[23]

750.85 Torture; felony; penalty; definitions; element of crime; other laws. Sec. 85.

(1) A person who, with the intent to cause cruel or extreme physical or mental pain and suffering, inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control commits torture and is guilty of a felony punishable by imprisonment for life or any term of years.

(2) As used in this section:

(a) "Cruel" means brutal, inhuman, sadistic, or that which torments.

(b) "Custody or physical control" means the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority.

(c) "Great bodily injury" means either of the following:

(i) Serious impairment of a body function as that term is defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(ii) One or more of the following conditions: internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds.

(d) "Severe mental pain or suffering" means a mental injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner caused by or resulting from any of the following:

(i) The intentional infliction or threatened infliction of great bodily injury.

(ii) The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt the senses or the personality.

(iii) The threat of imminent death.

(iv) The threat that another person will imminently be subjected to death, great bodily injury, or the administration or application of mind-altering substances or other procedures calculated to disrupt the senses or personality.

(3) Proof that a victim suffered pain is not an element of the crime under this section.

(4) A conviction or sentence under this section does not preclude a conviction or sentence for a violation of any other law of this state arising from the same transaction.

1997: Queensland, Australia. Legislation on torture changed in Queensland, Australia, following, "a notorious case of child abuse by a private actor (R v Griffin - where a child was subjected to electric shocks as a means of inflicting punishment)." (Personal email communication from Sarah Fulton, International Legal Officer, REDRESS, June 2, 2013.)

Their Criminal Code 1899 – **Sect 320A Torture reads**:[24]

(1) A person who tortures another person commits a crime. Maximum penalty—14 years imprisonment.
(2) In this section ***pain or suffering*** includes physical, mental, psychological or emotional pain or suffering, whether temporary or permanent.
torture means the intentional infliction of severe pain or suffering on a person by an act or series of acts done on 1 or more than 1 occasion.

1980: California, USA. The case of THE PEOPLE, Plaintiff and Respondent, v. LAWRENCE SINGLETON, Defendant and Appellant, involved torture inflicted by Singleton when he picked up Mary, a 15 years old hitchhiker, in 1978. He hit and immobilized Mary; he tied her hands behind her back, tearing at her clothes, Singleton raped her orally and vaginally. Driving further before stopping, he then repeatedly orally, vaginally, and anally raped her. Forced to drink a liquid Mary passed out. Later, Singleton cut the ropes from her hands, then with a hatchet, chopped off both of Mary's hands. Throwing her over the side of the road, he shoved Mary into a drainage culvert and told her she was free. Singleton left. Mary climbed back onto the road and eventually found help.[25]

Penal Code Section 206-206.1 reads:

> 206. Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another, **is guilty of torture**.
>
> The crime of torture does not require any proof that the victim suffered pain.
>
> 206.1. Torture is punishable by imprisonment in the state prison for a term of life.

BELGIUM. REDRESS gave the example of Belgium's **anti-torture law that addresses both State and non-State actors**. This law has been used twice, both times against non-State actors for acid burning and for a ritualized exorcism victimization ordeal that resulted in the woman's death.[26]

FEDERAL ACCOUNTABILITY: Canada's Constitution states that both the Senate and the House of Commons must approve bills separately for bills to become law. To amend section 269.1 torture or to enact a new bill to address non-State torture is governmental responsibility. The direct research and legal evidence illustrated in all the above points has been accumulating for years, even some for at least 36 years. It has become indisputable—torture is inflicted in the private or domestic sphere. It is time that the Canadian justice system responds to ensure section 269.1 is amended so that torture perpetrated by non-State actors is equally legally addressed as the specific and distinct human right crime it is. As the above legislative examples illustrate such a request of our government attends to our evolving humanity—it is time we evolve to stop non-State torture that presently causes unconscionable destruction to all who suffer non-State torture in our culture.

POINT 6
2012—THE UNITED NATIONS COMMITTEE AGAINST TORTURE AND THE THEN CANADIAN GOVERNMENT'S OPPOSITION TO THE COMMITTEE'S GENERAL RECOMMENDATION NO. 2

2012. As members of the non-governmental organization, the Canadian Federation of University Women (CFUW), we work, for example, to improve the status of women, their human rights, and access to social justice. In 2011, the membership voted into policy the need for non-State actor torture to be criminalized in Canada.[27] This policy is based on due diligence responsibilities of the Canadian Government to uphold United Nations' legally binding human rights instruments it has ratified. One of these instruments is the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Following the CFUW policy, CFUW submitted a shadow report to the United Nations Committee against Torture.[28] Like all CFUW members, we contribute our expertise to achieving the work of CFUW which means we presented the shadow report to the United Nations Committee against Torture. The following paragraphs outline this experience. It was shocking and exhilarating; shocked by the Canadian Governments delegations' comments to the Committee and conversely, exhilarated by the Committee's support of the CFUW shadow report.

The Committee against Torture described that its review work was "partially undermined by the approach of [the Canadian] delegation" along with that of Rwanda and Cuba (p. 9).[29] Being present, we were able to capture the discourse of the Canadian Governmental delegation which suggested to the Committee that the Committee should not be addressing acts of violence against women. Committee Chair, Claudio Grossman responded that it would be discriminatory treatment if only the torture of white males was addressed. Some States have been challenging the Committee's capacity to issue General Comments saying that General Comments create new obligations that, "are not contained in the text of the Convention" (p. 11).[30] The past Canadian Government was one of the States parties that held this position. This position was clearly stated to us, independent of being members of CFUW, in an email explaining that, "Canada's longstanding view is that the general comments and concluding observations of the UN treaty bodies are not legally binding" (E. Brady, email communication, July 11, 2013).

This position of States parties ignores rule 74 of the Committee's Rules of Procedure which reads:[31]

1. The Committee may prepare and adopt general comments on the provisions of the Convention with a view to promoting its further implementation or to assisting States parties in fulfilling their obligations.

2. The Committee shall include such general comments in its annual report to the General Assembly.

The General Comment of the Committee against Torture that Canada was referring to when objecting to the Committee addressing violence against women was General Comment No. 2. General Comment No. 2 is vital and transformative in promoting the full human rights equality of women and girls not to be subjected to torture by non-State actors. Therefore, it promotes the human rights principle of non-discrimination and eliminates the silencing of the numerous forms of non-State torture perpetrated against women and girls. Of particular importance and a basic principle in the CFUW shadow report is paragraph 18.[32] This paragraph states:

> The Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.

Violence against Women by private actors: Is there State responsibility under the Convention against Torture?

12 mars 2015 by OMCT

Felice Gaer, Vice Chair of the Committee against Torture, in her article, *Violence against Women by private actors: Is there State responsibility under the Convention against Torture?* wrote that human rights bodies have excluded violence suffered by women and girls in 'private' spaces from human rights discourses, focussing instead on violence in the public space.[33] This invisibility, Felice said, also applied to acts of "**ordinary**

torture" that was perpetrated by non-State actors.

The United Nations CAT entered into force 26 June 1987 and was ratified by Canada. Felice Gaer joined the CFUW panel titled, *Genderizing the UN Convention against Torture (CAT) & Non-State Torture Victimization*, during the 57th session of the United Nations Commission on the Status of Women in New York City in 2013.[34] In her presentation, speaking in her capacity as Director of the Jacob Blaustein Institute for the Advancement of Human Rights, Felice described how the silence about sexualized torture perpetrated against women was first acknowledged and broken in 1986 when addressed as occurring in prison perpetrated by State actors. The Committee's General Comment No. 2 was officially released in 2008 identifying both State and non-State actors as perpetrators of torture.

Returning to the CFUW presentation of its shadow report to the Committee against Torture, in brief, the Concluding Observations of the Committee against Torture made to Canada include the following significant points:

1. There is an obligation to fully implement the Convention against Torture at the domestic legal order or domestic law; incorporation of the Convention into Canadian law would strengthen the protection of persons by allowing them to cite the provisions of the Convention directly before the courts giving prominence to it. Also this would raise awareness of its provisions among members of the judiciary and the general public (art. 2, paras. 4, 8);
2. The Committee regretted the Canadian delegations' statement that violence against women did not belong under the Convention. The Committee restated that the State 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 committed by non-State officials or private actors (art. 2). Also, it was stated that Canada should strengthen its efforts to exercise due diligence to intervene to stop, sanction acts of torture committed by non-State officials or private actors, and provide remedies to victims (para. 20); and
3. That Canada to compile statistical data relevant to the monitoring of the implementation of the Convention including data on complaints, investigations, prosecutions and convictions of cases of torture involving domestic and sexual violence as well as a means of redress, including compensation and rehabilitation provided to the victimized persons (para. 23).

These observations by the Committee reinforce what we have already outlined in our previous points, such as, when there is no specific criminalization of non-State torture there is no such statistical data and falsely no Canadian crime of non-State torture to report. Likewise, in

reference to the court cases mentioned previously, without a law that incorporates torture by non-State actors fully into Canadian law it was impossible for Honourable Judge Jamie S. Campbell to do more than name that non-State torture had occurred. However, in the Ontario Superior Court ruling it must be realistically suggested that there appears to have been an obvious lack of knowledge about the serious limitations of section 269.1 in reference to torture perpetrated by non-State actors versus State actors. Tragically, since there is no legal opportunity for a person who has survived non-State torture to have the crime of non-State torture entered into the Canadian courts, truth-telling, one of the first interventions of redress, is denied as is non-State torture rehabilitative informed care.

FEDERAL ACCOUNTABILITY: Previous United Nations Special Rapporteur on Torture, Manfred Nowak, stated that a deficient legal framework occurs when other existing legal provisions such as aggravated assault are used to misname torture crimes, thereby failing to take into account the destructive gravity of torture victimization and that it is impermissible to minimize and trivialize torture to an assault or another crime.[35] This is exactly what has been occurring within the Canadian legal system as a consequence of the ongoing position of our previous governments as written by Governmental delegate Ms. E. Brady that Canada's "longstanding view is that the general comments and concluding observations of the UN treaty bodies are not legally binding". Therefore, in spite of the years of increasing evidence that non-State torture occurs in Canada there has been an ongoing disregard to legislatively amend the *Criminal Code of Canada* to ensure that torture by non-State actors is distinctly made a human rights crime.

Additionally, Manfred Nowak says that a culture of impunity occurs when a deficient legal framework exists and torturers—both State and non-State--are not held accountable for the offence of torture.[36] Like the Committee against Torture, he wrote that some forms of violence perpetrated against women and girls by non-State actors in the private sphere are comparable to classic torture tactics perpetrated by State actors.[37] We will address this fact in our concluding summation point 7.

Acquiescence by Canada is a reality. The Canadian Government does know, accordingly consented to, agreed to, and accepted that torture by non-State actors was and continues to occur in the domestic or private sphere. Will this knowing now not raise the legal question of willfulness on the part of government if such a position continues?

POINT 7
A SUMMATION: OUR 22 YEARS OF NATIONAL AND INTERNATIONAL SCHOLARSHIP AND GRASS ROOT WORK SOLELY ON THE HUMAN RIGHT NOT TO BE SUBJECTED TO TORTURE BY NON-STATE ACTORS IN THE DOMESTIC OR PRIVATE SPHERE

1993. It was mid-August when Sara contacted us for help. It was her plea for help that has led us to have the expertise to write this report. For over 22 years we have been determined to right the social, political, legal, and personal human right injustices that existed in 1993 and continue in relation to non-State actor torture victimization of women and girls but also of boys and men. Our work has, however, been mainly with women. It began in our community of Truro, Nova Scotia, when Sara began disclosing non-State torture herstories. Unable to obtain non-State torture informed support for her because it did not exist, we, professionally and ethically, decided not to abandon her. This decision altered our lives and that of our families forever. What began as a local concern has become a national and international human rights concern. Women, predominately, now contact us not only from Canada but from the US, the UK and other Western European countries, Australia, New Zealand, Philippines, and just this week we have been asked by a woman from an African country for help.

In 1993 there was no global acknowledgement that there was a global human rights responsibility to recognize that non-State torture of women and girls was a human right violation that was being perpetrated in the domestic or private sphere. As Felice Gaer, in the previous section explained, the United Nations Committee against Torture did not release its General Comment No. 2 until 2008. In so doing, the Committee clarified that torture by non-State actors occurs. It also clarified that if States parties are aware that non-State torture is occurring they have a due diligence responsibility to address it as torture under the CAT which, they recommended, must be fully incorporated into national law. While the global human rights awareness was evolving so was our professional knowledge, our scholarship and participatory research, our published writings, and our international experience at the United Nations level was also building.

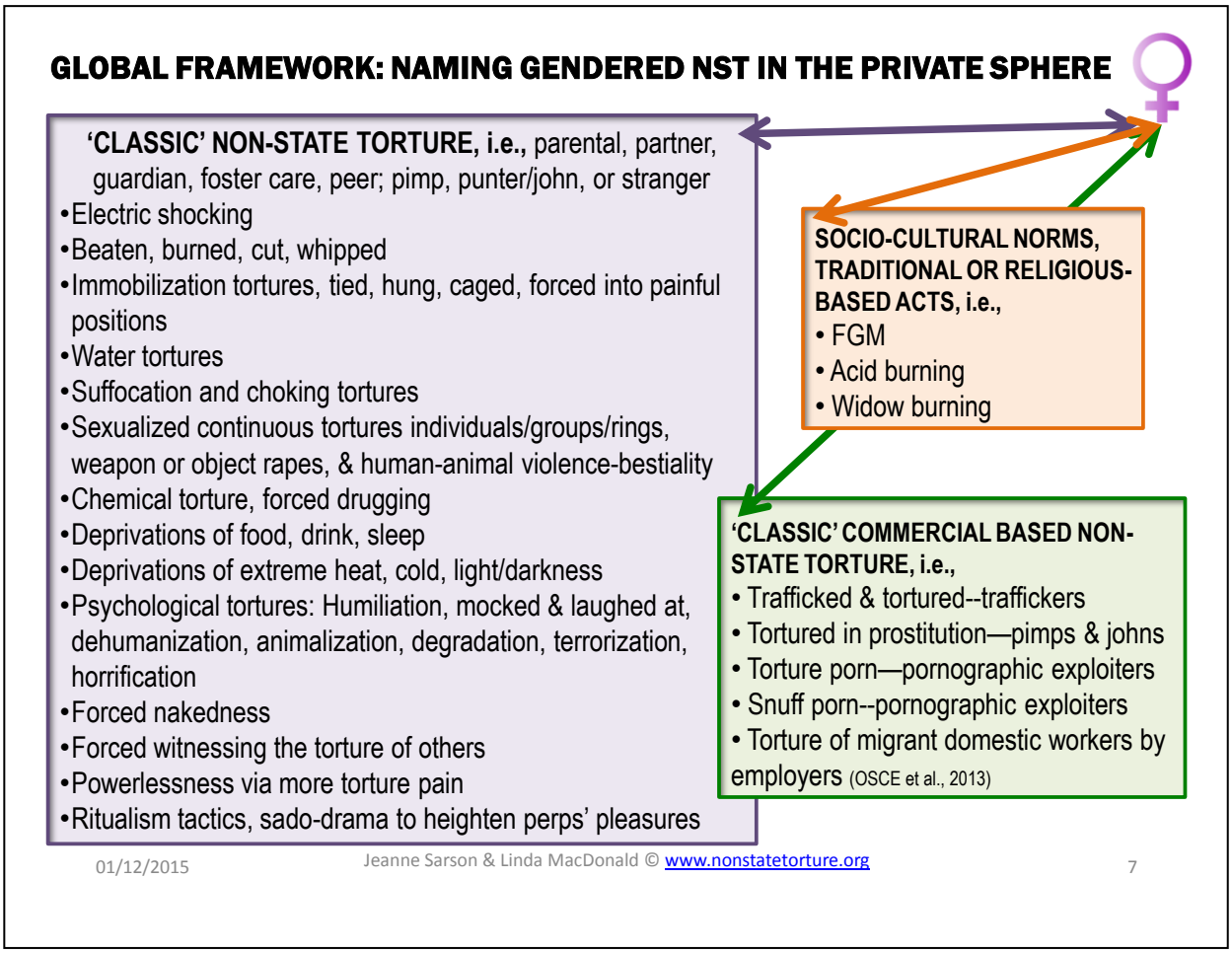
2014. The majority of the 4000 women who have connected with us speak of being born into families where they suffered years of 'classic' non-State torture. Classic refers to a term that is sometimes used when referring to the tactics of State actors, for example, electric shocking, being hung, cut, burnt, and repetitively raped. Sara, beginning when she was two years old, endured the continuous ordeals of non-State torture until she was in her late-20s; Lynn was held captive, tortured, trafficked, and prostituted by her husband and three of his friends.[38,39] Non-State torture is not a new crime. Lynn's non-State torture ordeals had been inflicted 25 years to disclosing to us.[40] She said she tried to tell without success. We are also contacted by

women who were in prostitution who describe suffering acts of non-State torture inflicted by traffickers, pimps, and johns when trafficked and prostituted.

2015-2016. This year is ending with our hope we will finally have the opportunity to influence a genuine federal responsibility to amend the *Criminal Code of Canada*, to establish the distinct legal right of women and girls—of all Canadians—not to be subjected to torture perpetrated by non-State actors. This is their human right they are equally entitled to since 1948 as stated in the United Nations Universal Declaration of Human Rights, articles 2 and 5.

We share, in this summary conclusion, diagrams to present, as concisely as possible, the knowledge we have gathered over 22 years of hard work. We begin with, as far as we know, the first global framework identifying three categories of gender-based non-State torture.

DIAGRAM 1: GLOBAL CATAGORIES OF GENDERED NON-STATE TORTURE



The Global Framework of Categories of Non-State Torture. Categories No. 1 and 2 involve acts of classic non-State torturing which has been the focus of our expertise.[41]

The perpetration of female genital mutilation (FGM), and widow and acid burning as listed in the third category are acts that have been declared torture by Special Rapporteurs against Torture. These forms of torture have for centuries been absorbed into a socio-cultural context, considered traditional, or had religious applications applied thereby disguising atrocities suffered by millions of women and girls. We have no expertise in these areas.

DIAGRAM 2: THE PATRIARCHAL DIVIDE

The Patriarchal Divide. We built the reality of acts of classic non-State torture women were describing by comparing these acts to the acts that have been globally identified as classic State torture. We call this diagram the patriarchal divide because, for decades, the human right not to be subjected to torture was only a human right of warring men. The sexualized torture of women and girls in war was not considered a human rights violation. The following diagram illustrates State versus non-State acts of torture which are the same, but, because State torturing is considered to occur in the public sphere versus non-State torture in the private sphere, legal discrimination continues to exist in Canada. This must be amended.

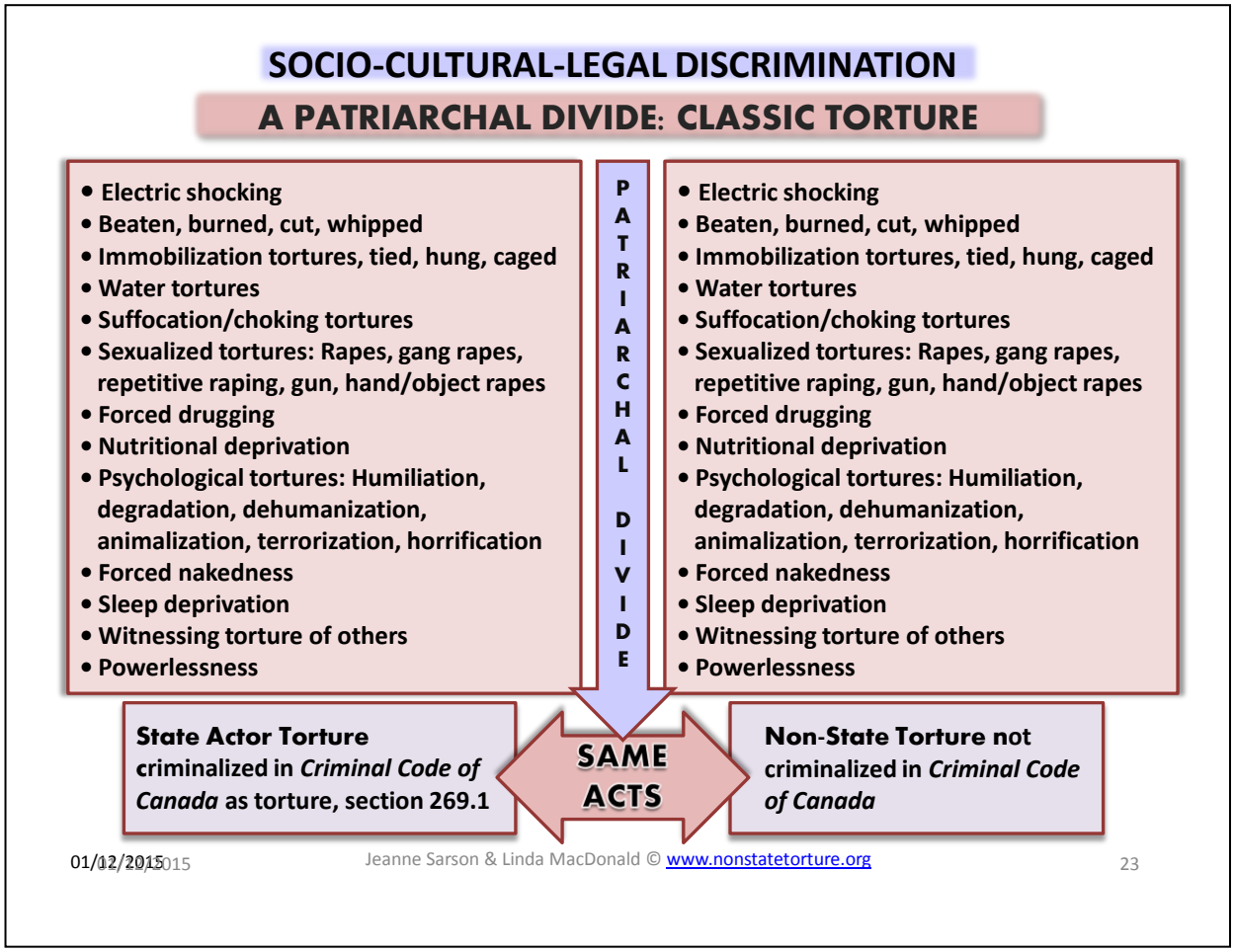
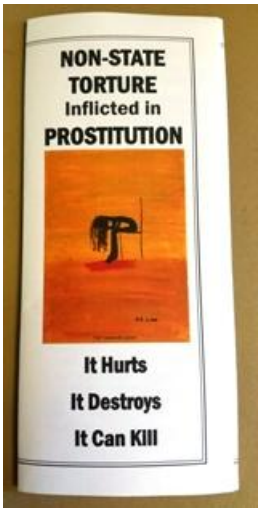


DIAGRAM 3: 'CLASSIC' COMMERCIAL BASED NON-STATE TORTURE INFLICTED IN PROSTITUTION

Classic commercial based non-State torture. In this category we have listed the non-State torture women we support who were born into families that tortured them when they were tiny children. The non-State torture they suffered was compounded when they were trafficked, prostituted, forced into adult-child or child-child crime scene pornography as previously described in point 3. Women have also told us about being exposed to snuff or "death porn". Organized crime, local, national, and international was also a reality of the women. Lynn's non-State torture victimization, as mentioned earlier, was organized by her husband and three of his friends.



The one group listed in this category that we have never worked with are migrant domestic workers; we have collected research material that speaks of their non-State torture victimization perpetrated by their employers and or by the employer's family members. For diagram 3 we share our *Non-State Torture Inflicted in Prostitution* pamphlet which is a one-pager, tri-folded educational resource that reflects our years of knowledge.[42]

DIAGRAM 4: QUESTIONNAIRE ON TORTURE THAT HAPPENS IN FAMILIES AND IN OTHER INTIMATE RELATIONSHIPS

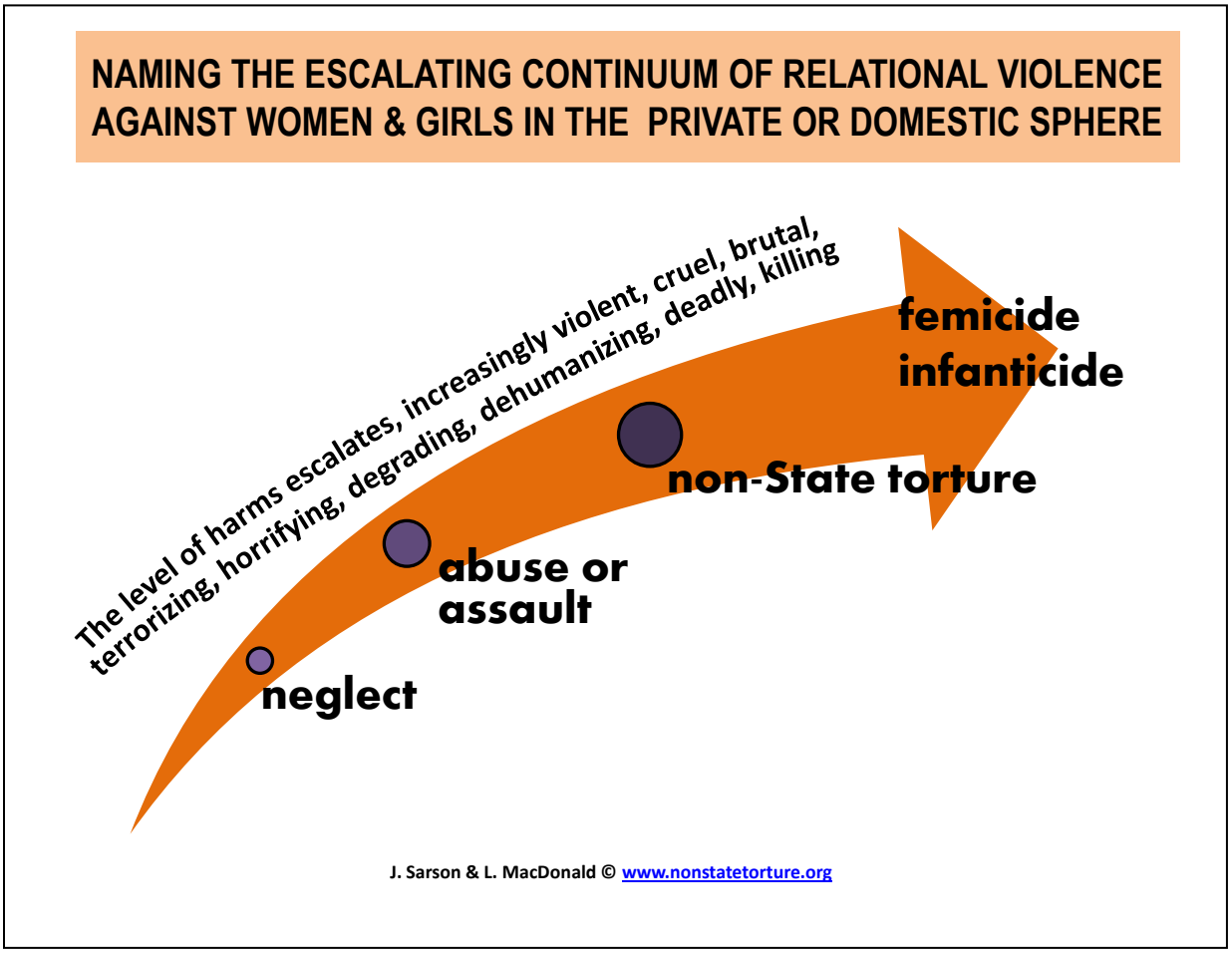
On the next page we share a Canadian woman's response to our participatory research questionnaire on the non-State torture that is inflicted in families or in other intimate relationships. Her response was to question 5. Question 5 lists many of the acts of non-State torture that we have become very familiar with when listening to women describe their suffering. This woman from Upper Canada reports being born into a family unit that engaged in non-State torture with organized connections to like-minded others. This meant she was transported to other individuals and groups who perpetrated non-State torture. Sexualized torture is a predominate aim of such perpetrators and groups.

Here is her response to question 5:

5. Below is a list of many acts of torture that might be inflicted on a person at one time or repeatedly. **Circle <u>ALL</u> the numbers of any of the violent acts that you have suffered as a victim of non-State torture.**

1. food/drink withheld**...YES**
2. chained or handcuffed to a stationary object**...YES**
3. savagely and repeatedly beaten**...YES**
4. savagely and repeatedly kicked**...YES**
5. hung by one's limbs...**DO NOT REMEMBER THIS**
6. burnt**...YES**
7. cut**...YES**
8. whipped**...YES**
9. soles of one's feet beaten (falanga) **...YES**
10. fingers, toes, and limbs twisted**...YES**
11. fingers, toes, and limbs broken**...NO**
12. fingers, toes, and limbs dislocated**...SOME YES**
13. tied down naked for prolonged periods of time**...YES**
14. sat on making breathing difficult**...YES**
15. forced to lie naked on the floor/ground without bedding/warmth**...YES**
16. confined to a dark enclosed space**...YES**
17. placed in crate/box**...YES**
18. caged**...YES**
19. electric shocked**...YES**
20. forcibly impregnated**...YES**
21. forcibly aborted**...YES**
22. forced to eat one's vomitus (throw-up) **...YES**
23. forced to eat one's or another's bowel movements**...YES**
24. raped by one person**...YES**
25. raped by a family/group**...YES**
26. raped with a weapon (gun or knife) or other objects**...YES**
27. raped with animals**...YES**
28. prevented from using toilet**...YES**
29. smeared with urine, feces, or blood**...YES**
30. forced under cold or burning hot water**...YES**
31. placed in a freezer**...YES**
32. near drowned when held under water in the tub, toilet, bucket, stream**...YES**
33. drugged with alcohol**...YES**
34. drugged with pills**...YES**
35. drugged with injections**...YES**
36. drugged by mask**...YES**
37. choked**...YES**
38. suffocated by object placed over one's face**...YES**
39. pornography pictures taken**...YES**
40. pornography or snuff films made/used**...YES**
41. forced to harm others**...YES**
42. forced to watch others being harmed**...YES**
43. forced to watch pets being harmed or killed**...YES**
44. forced to harm or kill pets or animals**...YES**
45. threatened to be killed**...YES**
46. called derogatory names**...YES**
47. put down**...YES**
48. treated as non-human**...YES**

DIAGRAM 5: NAMING THE ESCALATING CONTINUUM OF RELATIONAL VIOLENCE



Naming the escalating continuum of relational violence. This diagram on escalating relational violence is included to illustrate that there has existed for far too long the invisibility of non-State torture victimization. To be knowledgeable about the degrees of violence that occurs, non-State torture, as a category of violence, needs to be made legally visible. The importance of legal naming was shockingly clear when, at a conference, we were seated next to a child protection worker and when speaking with him mentioned non-State torture of children. He did not believe such violations occurred, he was of the opinion that when he hears such horrific stories from children that these were nightmares. We share this experience simply to illustrate that there can be corresponding educational gaps in professional knowledge when there are gaps in law.

DIAGRAM 6: PARTICIPATORY RESEARCH—QUESTIONNAIRE: WHAT ARE YOUR THOUGHTS?

Whenever possible, before we present a lecture on non-State torture victimization, its impact, and the painful process of healing and rehabilitation, we ask the audience to voluntarily fill out the following participatory research questionnaire asking for their thoughts. We do so to provide them with the opportunity to consider their own perspective before we share our over 22 years of work. Especially important is question 3. It asks: Consider: If you were forced to choose between being a victim of abuse or a victim of torture which would you choose? Abuse or torture?

The underlying principle of this question is to evaluate if people would, prior to engaging in our presentation, make a clear distinction between the crimes of assault/abuse versus torture by private actors. Torture was explained as being non-State. We have tabulated 546 responses. Although this number does not represent all the presentations we have given, for example, we just returned from presenting at a conference in the UK with over 200 people in attendance; the setup was not conducive for the audience to do the questionnaire. We did have open feedback. One woman said that she was working with individuals who had endured the victimization we described but did not have a name for it but said she did now. This is the power of correctly naming a specific human right crime not only for persons so tortured but also for those who are offering support.

Of the 546 responses 0.04 percent chose not to answer question 3; 0.05 percent selected torture. Two-fold reasons for this response are: (a) women explained that they had endured non-State torture but did not know what the experience of abuse meant so chose the violence they were familiar enduring, and (b) in conversation with others they misunderstood the question. For those who choose not to answer question 3, the common explanations were that abuse and torture were both harmful, that it was too disturbing to have to choose, and a rare comment was the question minimizes one form of violence versus another. This was not the intent of the question, rather, the question was meant to evaluate if respondents distinguished various forms of violence. The remainder of respondents, all which are representative of civil society, choose abuse over non-State torture. The reasons given used universally descriptive language, such as, that non-State torture was:

- more extreme, harsher, severe, intense, brutal, excruciating, and meant unbearable pain
- more violent, gruesome, horrific, and has a greater significant impact on mental health
- a greater threat, was methodical, intentional, premeditated, the main purpose being to inflict severe pain and suffering, was dehumanizing, and could lead to death

QUESTIONNAIRE: WHAT ARE YOUR THOUGHTS?

It is increasingly recognized that some violent parents, relatives, husband, friends, guardians, someone known to the person harmed, or a stranger (i.e., human trafficker) inflict acts of torture. We seek your opinion on how you separate acts of abuse from acts of torture.

1. Your gender is: Female _____ Male _____ Transgendered _____

2. Country you live in: _____

3. Consider: If you were forced to choose between being a victim of abuse or being a victim of torture which would you choose? Abuse _____ Torture _____

4. Briefly explain your reasoning _____

_____

5. If **MANY or ALL** of the following violent acts were **INFLICTED ON ONE PERSON** would you define these as acts of torture **"T"** or abuse **"A" (Put T or A in blank spaces).**

- food/drink withheld _____ chained or handcuffed to a stationary object _____
- savagely and repeatedly beaten _____ kicked _____ hung by limbs _____
- burnt _____ cut _____ whipped _____ soles of feet beaten (falanga) _____
- fingers, toes, and limbs twisted _____ broken _____ dislocated_____
- tied down naked for prolonged periods of time _____ sat on _____
- forced to lie naked on the floor/ground without bedding/warmth _____
- confined to a dark enclosed space _____ placed in crate/box _____ caged _____
- electric shocked _____ forcibly impregnated _____ forcibly aborted _____
- forced to eat one's vomitus (throw-up) _____ bowel movements _____
- raped by one person _____ raped by a family/group _____
- raped with a weapon (gun or knife) or other objects _____ with animals _____
- prevented from using toilet _____ smeared with urine, feces, or blood _____
- forced under cold or burning hot water _____ placed in a freezer _____
- near drowned when held under water in the tub, toilet, bucket, stream _____
- drugged with alcohol _____ pills _____ injections _____ by mask _____
- choked _____ suffocated by object placed over one's face _____
- pornography pictures taken _____ pornography or snuff films made/used _____
- forced to harm others _____ forced to watch others being harmed _____
- forced to watch pets being harmed or killed _____ threatened that this is what will happen to them if victim tells _____ forced to harm or kill pets or animals _____
- called derogatory names _____ put down _____ treated as non-human _____
- other harms that you are aware of_____

Thank you for doing this questionnaire © 2008.
Please return to: Jeanne Sarson & Linda MacDonald
Mail: 361 Prince Street, Truro, NS, B2N 1E4 Canada; Email: contact@nonstatetorture.org
Website: http://www.nonstatetorture.org

As we have outlined, torture is a distinct human rights crime different from abuse or assault; however, prolonged global social conditioning has particularly discriminated, invisibilized, minimized, or misnamed non-State torture that is perpetrated in the domestic or private space, including sexualized torture, which always involves physical and psychological tortures. However, the answers given in this questionnaire strongly suggest that without prior discussion the respondents' answers correspond with the definition of torture described in article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It defines torture as any act that intentionally and purposefully inflicts severe pain and suffering, whether physical or mental, on a person.

2009. Sexualization of Non-State Torture. It is worth noting that non-State torture has been sexualized and reframed as torture pornography or sadomasochism. This social cultural and structural conditioning was illustrated when contacting Statistics Canada asking:

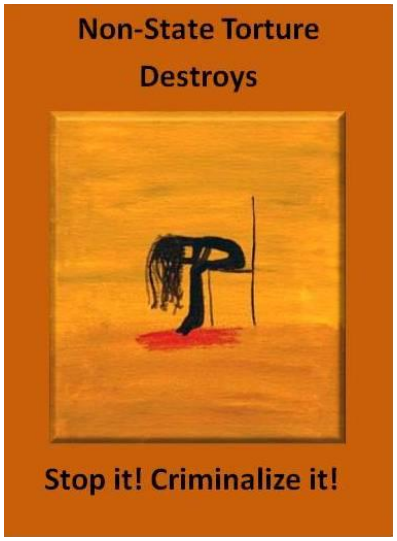
> How Canada identifies the crime of non-State actor torture (NSAT) that occurs in the 'domestic' or private sphere and how NSAT is distinguished from other forms of violence against women/children such as physical or sexual abuse/assault (Email communication sent, July 27, 2009).

This is the partial response received from a Statistics Canada respondent:

> If Howe ever [sic] 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) (Email communication, July 27, 2009), [Emphasis added].

The normalization and social and legal conditioning of non-State torture as sexualized has very serious implications as to the suffering women in prostitution report. This normalization of sexualized violence perpetrated against women and girls in prostitution is reinforced when prostitution is renamed work—"sex work". Additionally, for the women born into families whose perpetrators have pleasure inflicting repetitive sexualized non-State torture, a societal and legal system that fails to acknowledge that non-State torture is a crime creates a climate not only of impunity but of the normalization and sexualization of non-State torture acts. This poses serious risks for children as stated in Point 3. We made our concerns known about the risks for children in a letter sent to former Peter MacKay, Minister of Justice and Attorney General of Canada.[43]

2016. A victimized Canadian woman's voice: Her space of equality and dignity.[44] Freedom from torture is a specific non-derogable human right that must be protected under all circumstances, at all times and in any place in the public or private spheres, whether perpetrated by State or non-State actors. Sharing space in this report for a Canadian woman who survived non-State torture is about sharing equality and dignity. We close, therefore, with the drawing and written voice of Alex, a Canadian woman, who fled Canada; she is not the only woman we know who has fled Canada to escape the non-State torturers. Her voice echoes that of many who are a group made most vulnerable when tortured in childhood and/or in adulthood and whose voices are not being heard. Here is what it means to her to not have a law in Canada that criminalizes non-State torture:



> *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."*

FEDERAL ACCOUNTABILITY: This is 2015, soon to be 2016! Throughout this report we have shown repetitive governmental reports that progressively and clearly identify that non-State torture is inflicted in the private or domestic sphere with sexualized non-State torture predominately impacting women and girls. To continue in 2015 and beyond to ignore such evidence will raise the issue of willfulness and introduce the modern day human rights question of whether there is acquiescence by the State—by Canada—to permit non-State torture to continue unnamed and not specifically criminalized, nurturing a culture of impunity whereby non-State torturers are not held to account for the human right crime of torturing.

OUR ACCOUNTABILITY. Lawmaking starts with legislative responsibilities to create a new law or change an existing one, we are advocating undertaking in 2016 the processes necessary to work to achieve the criminalization of non-State torture.

We ask for meetings with each of you and or with Committees to present the knowledge we have held for so many years to ensure that the human rights of Canadians—of women and girls—not to be subjected to non-State torture comes into force as due diligence duties set forth in ratified human rights instruments and as recommended by the United Nations Committee against Torture.

Endnotes

[1] Native Women's Association of Canada. (2014, March). *Sexual exploitation and trafficking of Aboriginal women and girls Literature review and key informant interviews*. Toronto: Canadian Women's Foundation Task Force on Trafficking of Women and Girls in Canada. Retrieved from: http://canadianwomen.org/sites/canadianwomen.org/files/NWAC%20Sex%20Trafficking%20Literature%20Review_2.pdf

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