

**A BRIEF IN SUPPORT OF
BILL C-242 AN ACT TO AMEND THE CRIMINAL CODE
(INFLICTING TORTURE)**

Submitted to:

THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

BY

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23 May, 2016

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Jeanne Sarson and Linda MacDonald**

RECOMMENDATIONS

Our recommendations in relation to the proposed Bill C-242 are:

RECOMMENDATION 1: Ensure that the term ‘torture’ perpetrated by private individuals or non-State actors is maintained as a specific and distinct criminal offence term in the proposed amendment of the *Criminal Code of Canada*.

RECOMMENDATION 2: Reduce the “maximum punishment of life imprisonment” as suggested in Bill C-242 to a maximum penalty of 14 years to promote consistency in punishment with section 269.1 of the *Criminal Code* that addresses State actor torture that is punishable to a maximum of 14 years.

RECOMMENDATION 3: Under “interpretation” we suggest the following wording changes: “For the purpose of this section, a person is considered to have experienced severe and prolonged mental pain and suffering ~~only~~ if they have suffered a mental injury that [add, *may or may not*] leading to a visibly evident and significant change in intellectual capacity.

INTRODUCTION

The information and opinions in our brief are based on our 23 years of professional work focussed on supporting persons, mainly women, and a few men and transgendered persons, who detailed torture victimization perpetrated by non-State actors in the private realm. The torture was repetitive and continuous, lasting for years. For most their recall was from their earliest of childhood memories of toddlerhood or earlier.

Additionally, our support for Bill C-242 is based on knowledge gained over these years of advocating for the legal human rights equality of persons who survived torture inflicted by private individuals, commonly identified as non-State actors in human rights language. Our experiences have been national, international, and at the United Nations level. Nationally we are members of the non-governmental organization, the Canadian Federation of University Women (CFUW). In this capacity we have been involved in writing shadow reports which have been submitted to various United Nations Committees, to identify that Canada needs to criminalize torture inflicted by non-State actors. Most relevant to this submitted brief is that we appeared before the United Nations Committee against Torture in 2012 thus we have first-hand knowledge of Canada’s appearance before this Committee and the Committee’s

interaction with the Canadian governmental delegation. This experience is most applicable to this brief and support for amending the *Criminal Code of Canada* so that torture inflicted by non-State actors or private individuals becomes specifically named and criminalized.

PRESENTATION OF FACTUAL AND CONCISE INFORMATION

The factual information we share below primarily addresses the concerns presented by MP Sean Casey, Parliamentary Secretary to the Minister of Justice and Attorney General of Canada to Bill C-242. In addressing the points of Mr. Casey, we think we will also address other general questions raised by Members of Parliament who were present during the second reading debate but who were generally in support of the Bill C-242 given adjustments are made at Committee level to make it fit into the *Criminal Code of Canada*. Below are our responses that explain and support why, with amendments, that Bill C-242 progress through the Standing Committee with a recommendation that it be voted into law by amending the *Criminal Code of Canada*. Our explanations are categorized as topics of concern put forth by MP Sean Casey:

1. **Prevention of torture:** Creating the criminal offence of private torture will not seriously weaken Canada's contribution to the global effort to prevent torture; instead, **it will seriously strengthen** the prevention of torture as outlined under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and clearly established by the United Nations Committee against Torture which oversees Canada's compliance to this Convention. The Committee instructs:
 - i. That a State, that Canada has obligations to prevent torture that are wide-ranging, absolute and non-derogable, and must be an offence under its criminal law. A best practice is to ensure that Canada's national law criminalizes non-State torture just as State torture is criminalized. One reason being is that when Canadian officials know that non-State torture is being inflicted by non-State actors and fail to take action against such private actors consistent with the CAT, Canada and its officials should be considered as authors, complicit or responsible under the CAT for consenting to or acquiescing in such impermissible acts (para 18);¹ therefore, without a law on non-State torture the Canadian government and its officials contribute to the on-goingness of non-State torture victimization that is being inflicted against Canadian citizens—from infants to adults;
 - ii. That it is presently requesting the Canadian government to indicate the actions or measures it has taken to stop or sanction acts of torture inflicted by non-State

¹ Committee against Torture. (2008, January 24). *General comment no. 2. Implementation of article 2 by states parties* (CAT/C/GC/2).

actors that is consistent with the CAT (para. 16);² support for the passage of Bill C-242 into law would show due diligence on the part of the Canadian government and meet the standard outlined by the Committee;

- iii. That the non-discrimination principle is fundamental to the protection of human rights and to the interpretation and application of the CAT, thus, law must apply equally to ALL persons (paras. 20-21);³ presently, only Canadian citizens who have been tortured by State officials have the human right not to be subjected to torture legally upheld. When the same acts of torture are inflicted by private or non-State actors against a Canadian citizen their legal human right not to be subjected to torture is not an equal legal right under Canadian law; therefore, the non-discrimination human right principle is not practiced under present Canadian law. Presently what occurs is that if a citizen who has suffered non-State torture wanted to proceed into a Canadian court of law they are ‘forced’ to ‘consent’ to not tell the truth, ‘forced’ to misname their non-State torture victimization as an assault which misrepresents their non-State torture victimization. Passage of Bill C-242 into law would result in a legal practice that upholds the non-discriminatory human rights principle of all citizens not to be subjected to torture which is a fundamental and non-derogable human right stated in articles 2, 5, and 7 of the United Nations Universal Declaration of Human Rights.⁴

2. **Non-State torture is not an assault crime it is a torture crime:** The statement that the *Criminal Code* already contains crimes that capture torture by naming torture as an “aggravated assault and sexual aggravated assault” thus “no gap” exists in the *Criminal Code* **is seriously inconsistent** with the international position of the United Nations Committee against Torture which states:

- i. There is an international obligation for States parties, for Canada, to name and define torture whether perpetrated by State or non-State actors as distinct from other crimes such as assaults.⁵ It goes on to say that naming and defining torture (a) alerts everyone, including perpetrators and those they torture, the public, and the courts of the gravity of the crime of torture, (b) addresses perpetrators impunity for torture crimes, (c) facilitates tracking of torture crimes, and (d) creates public ability to challenge governmental action or inaction that

² Committee against Torture. (2014, July 28). *List of issues prior to submission of the seventh periodic report of Canada, due in 2016* (CAT/C/CAN/QPR/7).

³ Committee against Torture. (2008, January 24). *General comment no. 2. Implementation of article 2 by states parties* (CAT/C/GC/2).

⁴ United Nations. (1948). *Universal declaration of human rights*. Available from: <http://www.un.org/en/universal-declaration-human-rights/>

⁵ Committee against Torture. (2008, January 24). *General comment no. 2. Implementation of article 2 by states parties* (CAT/C/GC/2).

violates the CAT (para. 11). Passage of Bill C-242 will address these issues because, for instance, without a law there is no such criminal offence, therefore prevalence of the crime is unknown, and persons so tortured are invisibilized.

3. **Definition of torture:** The statement that the definition of torture described in Bill C-242 “would be narrower than the internationally accepted definition of torture” is incorrect when evaluated against the description of torture presented in the report of the Special Rapporteur on Torture, Manfred Nowak, to the United Nations Human Rights Council in 2008.⁶ Mr. Nowak clearly articulates the defining elements of torture as outlined in article 1 of the CAT includes:

- i. Severe pain and suffering, physical or mental;
- ii. Intent;
- iii. Purpose;
- iv. State involvement;

Bill C-242 uses comparable descriptors such as:

- i. Severe and prolonged pain or suffering, whether physical or mental;
- ii. Intentionally;
- iii. Purpose is stated as intimidation or coercion and described as any act or omission that has as its consequence the infliction of severe and prolonged pain or suffering and that is repeatedly inflicted;

Although State involvement or knowledge is not factually stated, the Canadian government has for years been informed that torture perpetrated by private individuals has been occurring in Canada. For example, our report to Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, to whom MP Sean Casey is Parliamentary Secretary to, gave examples of government reports dating back to 1979 that documented that acts of “torture” was inflicted by non-State actors.⁷ Additionally, police and judicial statements that non-State torture occurs were also included.

As referenced in point 1. i, State involvement occurs when officials know torture by private actors is occurring and fail to take action against them in a manner consistent with the CAT, the State—Canada—and its officials are then considered authors, complicit or responsible under the Convention for consenting to or acquiescing in such impermissible acts (para 18).

⁶ Nowak, M. (2008, January 15). *Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak* (A/HRC/7/3). Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement>

⁷ Jeanne Sarson, & Linda MacDonald, “No One shall be Subjected to Torture by Non-State Actors: The Missing Human & Legal Right of All Canadians—of Women and Girls” (report, 2015, November 27). Available from: <http://nonstatetorture.org/files/1014/5546/8756/NoOneShallbeSubjectedtoNST.pdf>

We accept, as did MP Peter Fragiskatos, who introduced Bill C-242 into the House, that amendments could happen; therefore, the concern voiced by MP Sean Casey that other countries could possibly use a Canadian law that describes torture by private individuals or non-State actors in an unacceptable way ignores that informed amendments will occur to Bill C-242. It also ignores that other countries have law on State and/or non-State torture, for example France, Belgium, Georgia, and Romania have specific national laws or mention torture regardless of who the perpetrator is. The various ways of framing their laws on State and/or non-State torture has not created international incidents. In addition, some torture laws apply without discrimination to any person regardless of their position—non-State or State. There are torture laws within countries in Queensland, Australia, and Michigan, Alabama, and California in the United States, for example; thus, tabling of Bill C-242 is consistent with developing international legal norms.

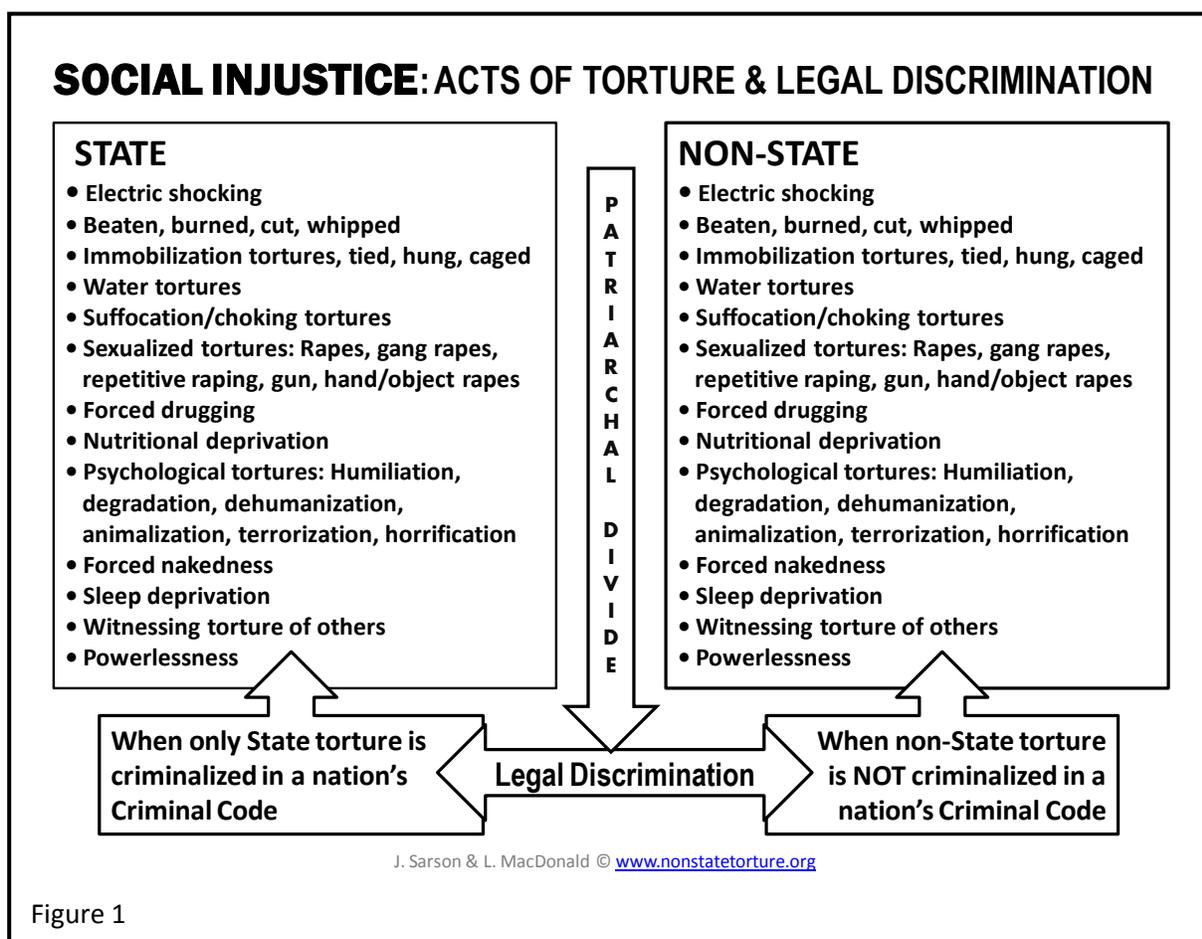
4. **Years of maximum punishment conflict:** The issue of years of maximum punishment as life imprisonment as stated in Bill C-242 conflicts with 14 years of maximum punishment in section 269.1 for State torture. To eliminate this conflict our recommendation is that the maximum punishment of life stated in Bill C-242 be reduced to 14 years to correspond with that of section 269.1.
5. **Laws are not symbolic or symbolisms they are concrete statements:** Regarding the statement that enacting Bill C-242 would be of symbolic value to citizens who have suffered the infliction of torture by non-State actors, in our opinion, is disrespectful to the human right dignity of person so tortured. Amending the *Criminal Code* remove the legal human rights discrimination that presently exists in reference to non-State torture victimization. This is not symbolic—it is a legal act taken to rectify a human right violation that has been knowingly invisibilized by Canadian governments. In other words, **laws are not symbolisms they are extremely concrete statements, for example:**
 - i. Laws are concrete statements that help shape Canadian society and culture,
 - ii. Laws are concrete statements that tell citizens what they must not do to others but if they ignore these concrete rules there are consequences,
 - iii. Laws are concrete statements that describe and define for citizens what a specific crime is,
 - iv. Laws create concrete relational and educational advancements in many aspects; for example, when asking a child protection worker what he did when a child's disclosure might describe torture, his response was that child torture did not happen, that the child was making up stories or having nightmares. His educational knowledge depends on the study of the law. When torture inflicted by non-State actors is invisibilized so too is professional knowledge which can impact on a failure to be open to knowing the grievous harms a child may be

suffering. In another incident, a woman described to a provincial victim Compensation Board the non-State torture she endured as a child; she was informed by the lawyers that such torture did not occur in Canada.

- v. Laws are not symbolic; laws have very serious consequential impacts on the lives of persons who have suffered torture inflicted by non-State actors, as illustrated in the following points.

INFLECTION OF NON-STATE TORTURE: 23 YEARS OF KNOWLEDGE

Three figures are included below to illustrate and give insight into the meaning of non-State torture victimization. We begin with: **Social Injustice**, figure 1, which illustrates that perpetrators of non-State torture adapt similar torture tactics as State torturers. Discrimination in law occurs when the only citizens who have the legal right to claim torture victimization are the persons who have suffered State inflicted torture—persons who have survived non-State torture are denied equal legal recourse. A patriarchal divide exists.⁸



⁸ Sarson, J., & MacDonald, L. (2009). Torturing by non-state actors Invisibilized, a patriarchal divide and spillover violence from the military sphere into the domestic sphere. *Peace Studies Journal*, 2(2), 16-38. Available from: <https://issuu.com/icasonlinepublications/docs/psjvol2issue2/20>

Historically when the CAT came into force the human right of all not to be subjected to torture was socially and legally operationalized as a human right of men in war and their need to be protected from State torture. The reality that women endured State inflicted torture in detention, predominately sexualized torture, was not considered until 1986.⁹ The Committee against Torture began addressing non-State actor torture in its 2008 General Comment No. 2.¹⁰

The meaning of repetitive continuous sexualized non-State torture (NST) is illustrated in figure 2. Based on our years of experience, inflicting sexualized torture is a prime torture tactic of these non-State torturers. This particular figure represents the Nova Scotia woman, Sara, who first ‘introduced’ us, in 1993, to the reality that non-State torture occurs and that when born into a relational environment where surviving non-State torture victimization becomes the daily norm the acts of torture continuously inflicted far exceed a crime of an aggravated assault. The fact is the Canadian government knows that infants to children under the age of eight suffer “torture” and “bondage” inflicted mainly by parents, and parental friends.¹¹

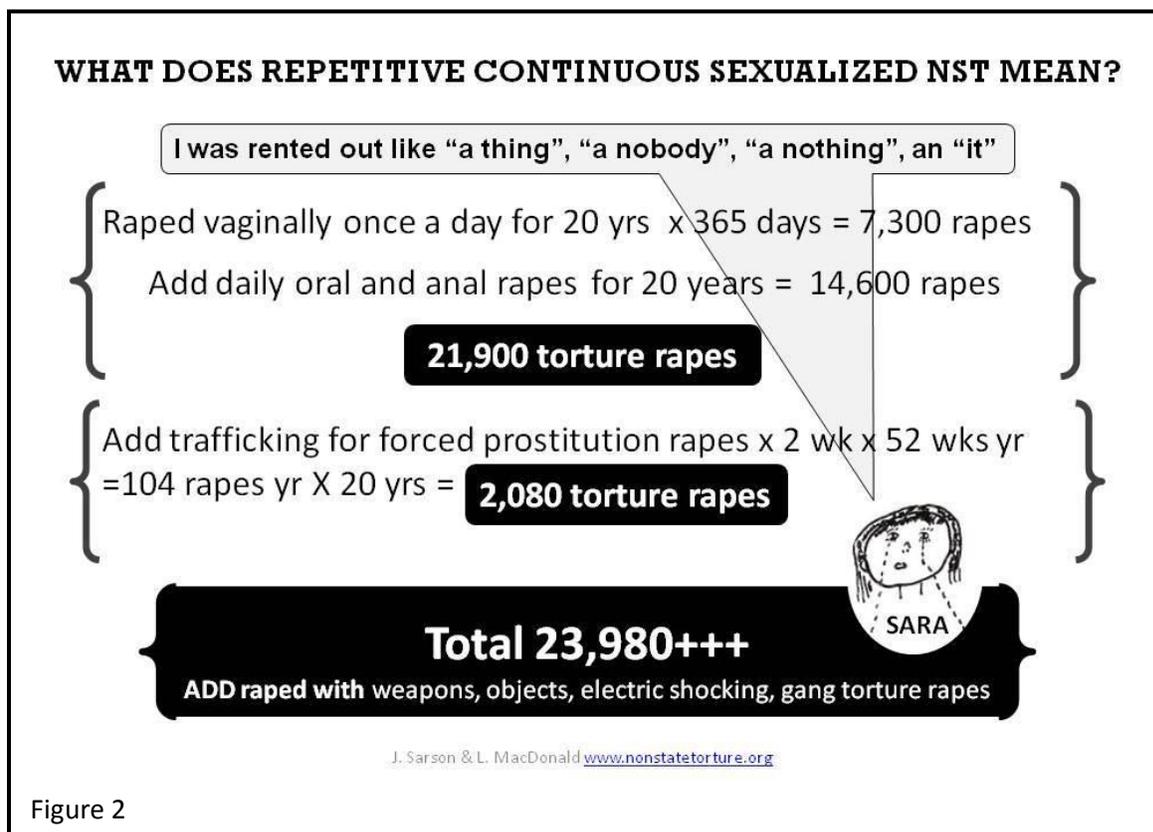


Figure 2

⁹ Jeanne Sarson, & Linda MacDonald, “Our Journal Report NGO CSW Forum 2013 At CSW57: Ending Violence against Women and Girls” (report, 2013), 7-8. Available from:

<http://nonstatetorture.org/files/9313/6413/6998/JOURNALCSW572013.pdf>

¹⁰ Ibid.

¹¹ Cribb, R. (2015, April 26). Underground child porn trade moving towards youngest. *The Hamilton Spectator*. Retrieved from <http://m.thespec.com/news-story/5587790-underground-child-porn-trade-moving-toward-youngest-victims>

Non-State torture tactics are inflicted in combinations as shown in figure 3.¹² It illustrates how various forms of torture are inflicted at the same time with severe and destructive consequences. A torturer’s goal is to dominate and destroy the personality of the person they torture; this has been made precisely clear when women we support speak about not knowing they are human, not knowing they are persons, knowing only that they are “a nothing”, “a nobody”, an “it”, “a thing” or “a robot”.

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

Figure 3

We add here, in our 23 years of advocacy viewing the second reading discussion on CPAC where federal government officials demonstrated insight and compassion, differentiating the grievous human right crime of non-State torture from an assault was a rare experience; our MP Bill Casey has been supportive since 2004. Over all these years of speaking with Canadian governmental representatives seldom have we been asked to describe the destruction that non-State torturers inflict and the ongoing complex misery caused that can last a lifetime. Trying to recover is like being tortured all over again as their body remembers what they dissociated in order to survive. This means that, for example, if their vagina was burnt and blistered as a child, as women recall this ordeal in healing they can re-experience weeping of their vaginal tissue as well as the sensation of having their vagina burnt. They feel the cuts, the dislocation of their limbs, the swelling of their face from massive oral rapes, pain in their jaw from being repeatedly battered, pain in the soles of their feet from falanga that causes pain to radiate up their back—they suffer horrifically and often just want to die or commit suicide.

Conclusion: We have supported Canadians but also others in countries such as Scotland, England, Western Europe, Australia, New Zealand, and the U.S.. Most of our work has been

¹² Jeanne Sarson, & Linda MacDonald, “Non-State Torture—Specifically Sexualized Non-State Torture—Inflicted in the Private/Domestic Sphere against Girls/Women: An Emerging ‘Harmful Practice’” (paper submitted to the Joint CEDAW and CRC United Nations Committees for their proposed Joint General Recommendation/Comment, 2011). Available form: http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/JeanneSarson-LindaMacDonald.pdf

with women, but also includes a few men and transgendered persons. They have shared graphic details of the torture they survived that was inflicted by non-State actors. The painful social and legal exclusion they endure when unable to name their non-State torture victimization has motivated our activism for the criminalization of non-State torture to be legally differentiated from other crimes such as an assault. The need to gain the ability of persons who have survived torture inflicted by private individuals or non-State actors for legal equality and access justice gives rise to our support of *Bill C-242, An Act to amend the Criminal Code (inflicting torture)*. It is legal best practice to uphold the legal and human right of all Canadians not to be subjected to torture as written in articles 5, 2, and 7 of the United Nations Universal Declaration of Human Rights which is considered basic to customary law which governs all States,¹³ and Canada is obligated to eliminate any legal obstacle that impedes the eradication of torture.¹⁴

Our recommendations in relation to the Bill C-242 are:

RECOMMENDATION 1: Ensure that the term ‘torture’ perpetrated by private individuals or non-State actors is maintained as a specific and distinct criminal offence in the proposed amendment of the *Criminal Code of Canada*—no other word can replace the use of the word “torture” because this word identifies the specific human right crime being addressed.

RECOMMENDATION 2: Reduce the “maximum punishment of life imprisonment” as suggested in Bill C-242 to a maximum penalty of 14 years to promote consistency in punishment with section 269.1 of the *Criminal Code* that addresses State actor torture that is punishable to a maximum of 14 years.

RECOMMENDATION 3: Under “interpretation” we suggest several wording changes to the paragraph as follows: “For the purpose of this section, a person is considered to have experienced severe and prolonged mental pain and suffering ~~only~~ [remove] if they have suffered a mental injury that [add, *may or may not*] leading [remove] to a visibly evident and significant change in intellectual capacity. This rewording is suggested because evidence reveals that non-State torture can be inflicted against infants so it is impossible to say that there would be visible evident and significant change in their intellectual capacity. Also torture related trauma responses can be pronounced and interfere with capacity; however, with knowledgeable non-State torture informed support capacity can change; a positive rehabilitative change must not prevent a person who suffered non-State torture victimization from seeking justice when they have recovered sufficiently to cope with such a decision.

¹³ Bauer, J., & Anissa, H. (2006). *Documenting women’s rights violations by non-state actors*. International Centre for Human Rights and Democratic Development and Women Living Under Muslim Laws.

¹⁴ ¹⁴ Committee against Torture. (2008, January 24). *General comment no. 2. Implementation of article 2 by states parties* (CAT/C/GC/2).