

From: "Jeanne Sarson" <XXX>

To: <ComarJ@parl.gc.ca>

Cc: "Casey, Bill - Assistant 3" <CaseyB8@parl.gc.ca>; "Linda MacDonald" <flight@ns.sympatico.ca>

Subject: House discussion addressing torture and Afghan law

Date: April 4, 2009 1:09 PM

Joe Comartin, Justice Critic and Deputy House Leader, NDP

Recently in the House there has been discussion about Canada and its willingness to accept tortured testimonies from persons who have been tortured, and now, it is being revealed that Canadian military women and men who are fighting in Afghan for democratic and human rights are faced with the recent suggested Afghan law agreeing to men's legal right of holding married women in states of 'captivity' and to rape. Both are violations of human rights that we are against and hope that the NDP will speak out against such violations.

Additionally, we also ask that the NDP support the specific criminalization of non-state actor torture in Canada. We believe that Canada ought to become a "torture free zone" and begin leading the world in the elimination of the atrocities of torture in both the public and private spheres. To this aim we ask for your support/suggestions on making changes to the Criminal Code of Canada so that torture by non-state actors becomes a specific Criminal Code offense. Our rationale is briefly outlined in the following paragraphs.

To briefly understand issues related to torture we refer to the following three UN instruments.

. Universal Declaration of Human Rights 1948 - Article 5 states "no one should be subjected to torture ." however since human rights were not considered women's rights at the time, this Article was applied to the public or male sphere. It would be almost half a century before women's rights become human rights and still there remains a failure to recognize the existence of non-state actor torture of women. Until it is recognized that non-state actor torture of women in the private sphere is a violation of Article 5 in the Universal Declaration of Human Rights, women's equality, women's suffering, is minimized as are women as human persons.

. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1975 - was enacted to address the specific human rights violation of torture but still focused on the public sphere.

. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 - is the present UN instrument and remains focused on torture that is inflicted by state actors; however, there is beginning to be a push to recognize non-state acts of torture that are inflicted by paramilitary groups versus state actors who are persons employed by a state or who represent a state, such as the police, the military, federal prison guards, embassy staff or any government official.

Torture inflicted by state actors in the public sphere is considered:

- A SPECIFIC offense DISTINCT from other forms of violence
- Its elimination is unconditional and
- Is an absolute violation of fundamental human rights

To ensure that Canada complies with the 1984 UN Convention, Canada has 'flipped', so to speak, the UN Convention into the Canadian Criminal Code therefore making torture in the public sphere that is committed by state actors a criminal offense under section 269.1.

TORTURE & WOMEN'S HUMAN RIGHTS

What does it mean for women and women's legal and human rights and Canada's due diligence responsibility to protect ALL its citizens including women from torture victimization in the private sphere by non-state actors such as a spouse, family member, human trafficker, or others known or unknown to her? It means:

- That torture that occurs in the private sphere is not equally recognized as a SPECIFIC offense DISTINCT from other forms of violence
- That women's torture victimization in the private sphere is minimized to assaults of some kind
- That tortured women are a statistically invisible population
- That maintaining a law that only addresses torture by state actors provides on-going impunity for non-state actor torturers
- That maintaining a law that only addresses state inflicted torture as a specific offense distinct from other forms of violence while minimizing non-state actor torture causes effect-based, gender-based DISCRIMINATION because women are the most common victims of everyday violence in the private sphere and from our work this holds true for non-state actor torture victimization.

OVERCOMING GENDER CRIMES REQUIRES

Recognizing women as full subjects of human rights - that "women's rights are human rights" in the public and private spheres was a struggle that heightened during the years of 1993 to 1995. Women's struggle in the private sphere provided the framework for the work of the Women's Caucus for Gender Justice in relation to the processes of the International Criminal Court. They pushed against much oppression but did succeed in the feminization of International Criminal Law when the RAPE of women became TORTURE & GENOCIDE versus the privileged spoils of men's warring. These efforts together have led to a process for eliminating impunity for gender crimes in the public sphere.

The FEMINIZATION OF NATIONAL CRIMINAL LAW specifically in relation to non-state actor torture must occur to eliminate impunity for torture that occurs in the private sphere and in regards to women eliminate the effect-based discrimination that the present law 269.1 on torture imposes.

Our MP Mr. Bill Casey has presented a petition to the House requesting that non-state actor torture be specifically identified as a crime distinct from other crimes. The present government considers present laws to be adequate ... we do not. We are seeking a better Canada than one that minimizes acts of torture that happen in the home or in other private places to an assault of some kind. Without being enshrined in law women and children's human right not to be subjected to torture means nothing.

We will anticipate your response.

Sincerely,

Jeanne Sarson

"Torture happens in the home"

Jeanne Sarson, MEd, BScN, RN & Linda MacDonald, MEd, BN, RN
361 Prince Street
Truro, Nova Scotia
Canada
B2N 6H9
Fax: 1-902-895-6659 or Phone: 1-902-895-2255
Email: XXX <flight@ns.sympatico.ca>

Post Script: As of November 9, 2009 we have received no response.