

**Brief to:**

**The House of Commons Standing Committee on Justice and Human Rights**

**In view of its study of**

***Bill C-36 AN ACT TO AMEND THE CRIMINAL CODE IN RESPONSE TO THE SUPREME COURT OF CANADA DECISION IN ATTORNEY GENERAL OF CANADA V. BEDFORD AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS.***

**Submitted by**

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**June 30, 2014**

## Brief re Bill C-36

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1. Essentially, we support Bill C-36. It is socially, legally, and relationally transformative in its approach to address the objectification and commodification of women and girls disproportionately impacted, controlled, pimped, and trafficked into prostitution. The 20 million dollars in funding slated for efforts to provide meaningful support to help women recover from the consequences of violence most suffer and assist them to exit prostitution, although a great start it will probably be insufficient. The promotion of social awareness, educational, preventive, and protective strategies will also be necessary.

2. This brief shares knowledge based on our national and international professional work of almost 21 years focussed on addressing the criminal human right violation of non-State actor torture victimization associated with sexualized human trafficking, forced prostitution, and exploitative relationships. Detailed knowledge comes from mainly women who survived non-State torture (NST) victimization that began when they were children and or occurred in adulthood. Their victimization of NST, human trafficking, and forced prostitution was primarily organized and perpetrated within the context of intimate family or spousal relationships then expanded to like-minded individuals and groups. This is emerging knowledge that identifies vulnerable, tortured, and prostituted girls whose NST victimization is presently legally excluded from proposed amendments to the *Criminal Code of Canada* suggested in Bill C-36.

3. Being respectful of this opportunity to submit our brief to the Committee, we will focus on the following two recommendations as being necessary changes to Bill C-36. Recommendation two contains our rationale; we do not intend to expand on this rationale. Recommendation one is the focus of this brief. It exposes, as previously described, a glaring criminal human rights violation of NST inflicted against some prostituted women and girls that has not been addressed.

4. **The two recommendations are:**

- 1) **The need to amend Section 269.1 on torture of the *Criminal Code of Canada* to ensure Canada meets its human rights obligations “to protect human dignity and the equality of all Canadians” as stated in the Preamble of Bill C-36. Specific to Bill C-36 this refers to all prostituted adults and children, predominately women and girls, who have endured non-State torture victimization when pimped, trafficked, bought or rented by johns. Presently, only government officials such as police or military—considered**

**State actors—can be prosecuted for torture under the *Criminal Code of Canada*. When private individuals, groups, pimps, or johns—non-State actors—commit similar cruel and inhuman acts of torture they cannot be criminally charged for torturing. Consequently, there is no public acknowledgement of the truth that some women and children have suffered and do suffer sexualized non-State torture when prostituted. Only when this legal discrimination is removed will prostituted and tortured women and girls experience their human and legal rights of equality and human dignity as stated in the Preamble of Bill C-36.**

**Paragraph 30 (page 22) of Bill C-36 proposes Section 753.1(2)(a) of the *Criminal Code* be replaced by adding additional *Code* sections to it. Section 269.1 needs to be amended so it applies to “everyone”—both State and non-State actors—who commit acts of torture so it can be included in, for example, proposed Section 753.1(2)(a) and in other appropriate places.**

- 2) To amend Sections such as Section 213 which criminalizes “everyone” including prostituted persons who communicate with others for the purpose of providing sexual services when in a public place or around persons under 18. We suggest that prostituted persons be exempt or have immunity from criminalization. Pimps and johns do pose a threat to children. Bill C-36 criminalizes and imposes various levels of penalties on pimps and johns for violations occurring in public places or when it is reasonably considered children could be present.**

### **Absolute Knowledge: Non-State Actor Torture Happens to Prostituted Persons**

5. Bill C-36 proposes many amendments to the *Criminal Code of Canada*. Thus, it is the ideal due diligence legislative and administrative opportunity to amend Section 269.1 on torture so that “everyone” who commits acts of torture—be they State or non-State actors—is held equally to account. There is **absolute evidential knowledge**—from governmental awareness to people on the street—that NST is inflicted by private individuals, be they parents, relatives, friends, spouses, pimps, johns, pornographers, or traffickers. Child crime scene pornography, for example, commonly accompanies the prostitution of children. It provides the absolute knowledge that sexualized NST of some prostituted children occurs when they are exploited. Examples of absolute evidential knowledge include:

- a) In a media interview a supervisor of the child exploitation unit of the RCMP, Ottawa, stated that approximately 20% of the pedophilic crime images viewed involved torture.<sup>1</sup>

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<sup>1</sup> Caswell, J., Keller, W., & Murphy, S. (Producers). (2006, July 26). Supervisor of RCMP child exploitation unit, Ottawa, Earla-Kim McColl speaking about child pornography [Television broadcast]. Atlantic Canada: CTV News.

- b) A Canadian research report stated 2.7% of 4,110 images of pedophilic ‘pornography’ included torture of children. Children suffered bestiality, bondage, necrophilia, being defecated and urinated on, weapons used against them, and being forced to harm other children. In addition, 9.8% of the images involved the victimization of infants and toddlers; 83% of the images involved girls. The most common age of victimization was under the age of 8.<sup>2</sup>
- c) A RCMP report named and described NST ordeals perpetrated by a pimp against a victimized person as including “cigarette burns . . . forced to bathe in freezing cold water and remain naked afterwards.” Further ordeals included ice being added to the bathtub, forced nakedness and the victimized person being “forced to stand in front of the air conditioner for a period of time;”<sup>3</sup> and
- d) Women in prostitution do suffer NST as reported by Doug LePard.<sup>4</sup>

### **Sexualized NST is not “Sexual Assault”: NST is a Distinct Criminal Offence**

6. Various paragraphs, such as paragraph 30, of Bill C-36 lists different offences that an offender can be convicted of—NST is missing. NST is not an assault—it is a distinct criminal human right offence. This distinction has been well established, for example, by UN human right instruments which Canada has ratified, some of which are legally binding. For instance, the following instruments have articles or recommendations that state “no one shall be subjected to torture”: (a) the *Universal Declaration of Human Rights* (UDHR), article 5; (b) the *International Covenant on Civil and Political Rights* (ICCPR), article 7; (c) the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), General Recommendation 19, 7(b); (d) the *Declaration on the Elimination of Violence against Women*, article 3(h); and (e) the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). Canadian governments have and continue to willfully ignore that NST occurs, rejecting for instance, the UN Committee against Torture Concluding Observations that Canada “should strengthen its efforts to exercise due diligence to intervene to stop, sanction acts of torture or ill-treatment committed by non-State officials or private actors, and provide remedies to victims”. This statement came under the Committee’s section on “violence against women”.<sup>5</sup> It was a recommendation made in response to a Canadian NGO shadow report submitted to the Committee.<sup>6</sup>

<sup>2</sup> Bunzeluk, K. (2009, November). *Child Sexual Abuse Images: Summary Report. An Analysis of Websites by cybertip!ca*. Canadian Centre for Child Protection.

<sup>3</sup> The Human Trafficking National Coordination Centre. (2013, October). *Domestic human trafficking for sexual exploitation in Canada* (p. 22). Royal Canadian Mounted Police.

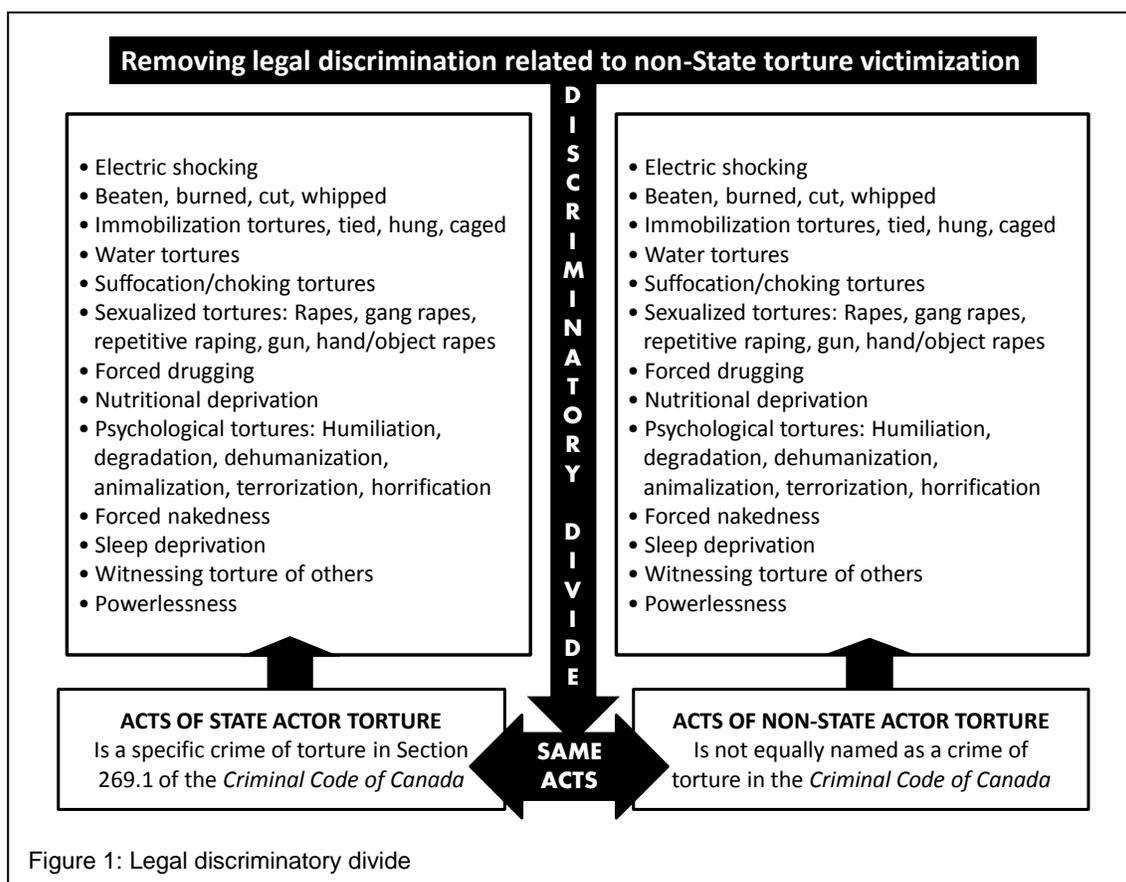
<sup>4</sup> LePard, D. (2010, August). *Missing Women Investigation Review* (pp. 215-216,365). Vancouver Police Department.

<sup>5</sup> Committee against Torture. (2012, June 25). *Concluding observations of the Committee against Torture Canada* (CAT/C/CAN/CO/6, para. 20).

<sup>6</sup> Canadian Federation of University Women. (2012, April 8). *A Shadow Report: Canada Fails to Establish Non-State Actor Torture as a Specific and Distinct Criminal Human Rights Violation*. Available at <http://nonstatetorture.org/files/3313/5904/1307/CFUWShadowReportCanadaCAT48.pdf>

## Understanding the Brutality of NST: Justice Means Eliminating Legal Discrimination Related to NST

7. Figure 1 lists acts of torture the prostituted girls and women we speak of suffered for years. It also illustrates the discriminatory divide that presently exists in Canadian law.<sup>7</sup> This divide prevents “public acknowledgement of the truth and public apology,”<sup>8</sup> from occurring for persons, including prostituted women and girls, who seek to speak their truth and be heard legally and socially. Speaking truth and being heard are considered “measures of satisfaction” in achieving justice, reparations and restitution.<sup>9</sup>



8. To identify what persons who contact us mean when they say they endured NST, we ask them to consider completing a questionnaire which lists many of the acts of NST that have been repeatedly described to us. Figure 2 provides insight from a Canadian woman’s ordeal who, from childhood, described being “sold to hundreds of perpetrators

<sup>7</sup> Figure is an adaptation of the patriarchal divide in Sarson, J. & MacDonald, L. (2009 Winter). Torturing by non-State actors invisibilized, a patriarchal divide and spill over violence from the military sphere into the domestic sphere. *Peace Studies Journal*, 2(2), 16-38.

<sup>8</sup> Inter-American Commission on Human Rights. (2011). *Access to justice for women victims of sexual violence in Mesoamerica*, p. 32. Organization of American States.

<sup>9</sup> *Ibid.*

for sex,” stating that “the goal of torture is to control and or break the human spirit thru any heinous means possible”.

**Questionnaire: Place yes or no next to any of the violent acts that you have suffered:**

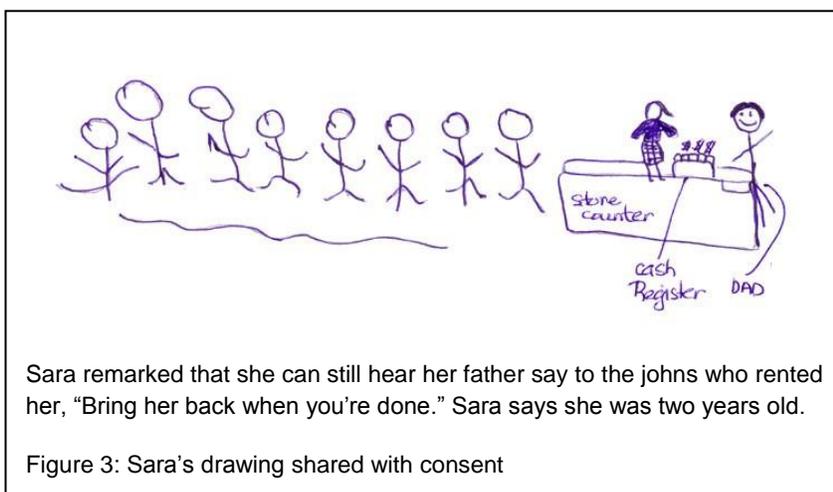
1. food/drink withheld **YES**
2. chained or handcuffed to a stationary object **YES**
3. savagely and repeatedly beaten **YES**
4. savagely and repeatedly kicked **YES**
5. hung by one's limbs -DO NOT REMEMBER THIS
6. burnt **YES**
7. cut **YES**
8. whipped **YES**
9. soles of one's feet beaten (falanga) **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**

Figure 2: Example of a completed questionnaire on NST that happens in families and in other intimate relationships.

## Seeing Child Prostitution through the Eyes of a Victimized Woman: Faceless and Countless

9. Sara's drawing was her attempt to show how she felt and experienced being pimped, "rented" or prostituted for sexualized NST by her parents. Although only her father is present in her drawing she explained her mother dressed or "prepared" her. Note that Sara is faceless as are the johns. And there was no shortage of johns—they were countless.

Facelessness has significant meaning. Firstly, Sara and many of the women who have spoken to us of such victimization share how they were so dehumanized and destroyed by the terror, horror, and overwhelming torture pain that they felt nonexistent and



nonhuman. Sara, for instance, described her-Self as an "it" when we met her when she was almost 30. She spoke of being "trained" from her earliest of memories to withstand torturing, particularly sexualized torture and torture "parties". She said there was a demand for children who could withstand sexualized NST. The johns are faceless—they were too many. The countless numbers are too traumatizing to remember. Only Sara's pimping father had a face—pleased he was benefiting from controlling, pimping, trafficking, and prostituting Sara.

10. Women can endure spousal home-based NST, trafficking, and prostitution. Here is a brief description of Lynn's four and one-half years of such victimization:

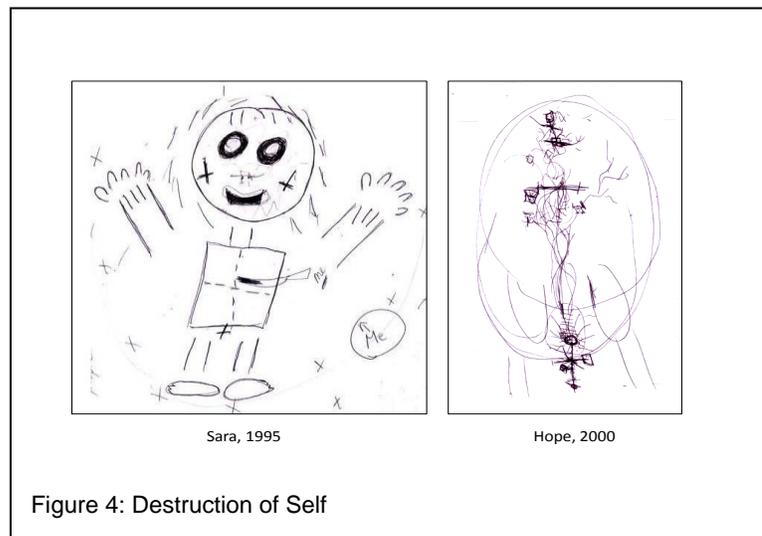
*I was called bitch, slut, whore and "piece of meat." Stripped naked and raped – "broken in" – by three goons who, along with my husband, held me captive in a windowless room handcuffed to a radiator. Their laughter humiliated me as they tied me down spread-eagled for the men they sold my body to. Raped and tortured, their penises and semen suffocated me; I was choked or almost drowned when they held me underwater threatening to electrocute me in the tub. Pliers were used to twist my nipples, I was whipped with the looped wires of clothes hangers, ropes and electric cords; I was drugged, pulled around by my hair and forced to cut myself with razor blades for men's sadistic pleasure. Guns threatened my life as they played Russian roulette with me. Starved, beaten with a baseball bat, kicked, and left cold and dirty, I suffered five pregnancies and violent beatings forced abortions. They beat the soles of my feet and*

when I tried to rub the pain away they beat me more. My husband enjoyed sodomizing me with a Hermit 827 wine bottle causing me to hemorrhage and I saw my blood everywhere when I was ganged raped with a knife. Every time his torturing created terror in my eyes, he'd say, "Look at me bitch; I like to see the terror in your eyes." I never stopped fearing I was going to die. I escaped or maybe they let me escape thinking I'd die a Jane Doe on that cold November night.<sup>10</sup>

## Understanding NST Destruction to Self: Objectification and Commodification

11. It is globally known that torture victimization attacks one's sense of humanness.

How does a girl or a woman who suffers NST, trafficking, and prostitution survive thousands of sexualized NST that involves overwhelming terror and horror? As Sara stated she felt and believed she was nonhuman, an object, an "it". Figure 4 exposes what destruction or shattering of a concept of Self looked like and felt like to Sara and Hope, both Nova Scotian women. Sara disconnected each part of her



body to dissociate the torture pain; Hope conceived her physical shape as drawn. Disconnecting or dissociating is a survival skill when in a position of NST victim. Bill C-36 uses the terminologies of objectification and commodification. These drawings are shared to show what these terms mean to a human being—to a girl child or woman—who is subjected to NST, human trafficking, and prostitution victimization.

When exiting women require holistic support and safety to heal and re-build their relationship with Self. Being able to decide to seek justice, in this case for NST victimization, is identified as healing, promoting a sense of social and personal dignity.<sup>11</sup> Being socially excluded adds secondary pain to the NST pain remembered.

## Strategies: Prevention, Awareness, Rehabilitation, Justice, and Reparations

12. We suggest the following:

<sup>10</sup> Sarson, J. & MacDonald, L. (2009, Winter). Defining torture by non-State actors in the Canadian private sphere. *First Light*, 29-33. Available at <http://ccvt.org/wp-content/uploads/2011/08/firstlight2009.pdf>

<sup>11</sup> Germain, R. & Vélez, L. E. (2011). Legal services: Best, promising, and emerging practices. *Journal on Rehabilitation of Torture Victims and Prevention of Torture*, 21(1), 56-60.

- a) **Prevention—human rights education in school systems.** To promote awareness of ostracizing attitudes such as sexism, racism, and homophobia, frame classes on the *Universal Declaration of Human Rights*.<sup>12</sup> It promotes gender equality and human dignity. It provides the universal framework to address all forms of violence within relationships. Topics addressed when educating Grade 7 classes, such as in figure 5 (shared with consent), included answering questions about NST. For example, questions were asked concerning the three women in Ohio who were held captive and tortured for 10 years. Other

relational issues included discussions about prostitution, pornography, snuff images, human trafficking, and other forms of harm, including the destructive impact of verbal emotional and



Figure 5: Teaching *Human Rights & Healthy Living in Relationships* by Jeanne Sarson (r) to Grade 7 students holding their United Nations *Universal Declaration of Human Rights* with teacher Ms. MacDonald (l).

psychological bullying. These Grade 7 students also participated in an empathy creating exercise. The importance of a human rights perspective is captured in Chelsea Wadden’s reflective comment:

*What I liked about the presentation was, that it showed us the importance of Human Rights. You taught us about having respect for ourselves and others, and thinking before we act; because we really don’t know what the consequences will be. I believe it’s vital that people- of all ages- be aware of equality. Because every single person on this earth deserves to be treated fairly- no matter your age, race, gender, or sexuality.*  
(Grade 7, June 12, 2014, shared with consent).

- b) **Awareness—NST education of all professionals.** Knowledge that NST is a form of victimization that can occur, compounding the severity of harms associated with human trafficking and prostitution victimization, is important in making appropriate interventions. We make, for example, special mention of all health professionals, child protection workers, and teachers.
- c) **Awareness—Investigative and protective skills of police.** These need expanding to include NST awareness. For instance, realizing that a hot light bulb

<sup>12</sup> UN. (2012, February 16). *United Nations Declaration of Human Rights Education and Training (A/RES/66/137)*.

is a NST weapon that inflicts burns when inserted into a girl's vagina can be new investigative knowledge that would be missed if investigators did not possess the knowledge that NST victimization occurs.<sup>13</sup>

- d) **Rehabilitation—Exiting and healing strategies.** These need to be holistic when a woman identifies surviving NST. Torture informed recovery care is essential. When victimization is identified appropriate services can be implemented. This prevents revictimization and, we suggest, decreases cost.
- e) **Justice and reparations—A legal due diligence obligation to criminalize NST.** 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 woman who survived NST is about sharing equality and dignity. We close this brief with a woman's comment of what having no law on NST has meant to her. She was born on the Canadian prairies but fled Canada to find safety. Her voice echoes that of many who are a group made most vulnerable when tortured, trafficked, and prostituted in childhood and/or in adulthood and whose NST is invisibilized. Alex said;<sup>14</sup>

*When society minimizes [NST] . . . 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.'*

- 13. We ask the Committee to incorporate our recommendations, summarized here:
  - 1. **To amend Section 269.1 on torture of the *Criminal Code of Canada* to add it to Bill C-36 to ensure Canada meets its human rights obligations to all Canadians. Specific to Bill C-36 this refers to all prostituted adults and children, predominately women and girls, who have endured NST victimization when pimped, trafficked, bought or rented by johns.**
  - 2. **To amend Sections such as Section 213 which criminalizes “everyone” including prostituted persons who communicate with others for the purpose of providing sexual services when in a public place or around persons under 18. We suggest that prostituted persons be exempt or have immunity from criminalization.**

<sup>13</sup> Sarson, J. & MacDonald. (2014, April). Vagina torture: Two women talking. A monologue included in the *Vagina Monologues*, Truro, NS. Available <https://www.youtube.com/watch?v=jZh6C7qMEf4&feature=youtu.be>

<sup>14</sup> Sarson, J. & MacDonald, L. (2011, November 11). *Due diligence obligations: Non-State torture of women/girls in the so-called private sphere—A Canadian and multi-country perspective. A response to Special Rapporteur Ms. Rashida Manjoo's welcoming of relevant submissions from NGO's and other independent experts for a study on the "due diligence obligations to address violence against women"*. Available at [http://nonstatetorture.org/files/5513/5765/0141/Due\\_Diligence\\_paper.pdf](http://nonstatetorture.org/files/5513/5765/0141/Due_Diligence_paper.pdf)