

A RESPONSE TO THE US DEPARTMENT OF STATE

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**REQUEST FOR INFORMATION FOR THE 2015 TRAFFICKING IN
PERSONS REPORT**

COUNTRY OF FOCUS OF THIS REPORT: CANADA

January 6, 2015

SUBMITTED TO: Kari Johnstone, Acting Director, Office to Monitor and
Combat Trafficking in Persons, U.S. Department of State.

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REQUEST FOR INFORMATION FOR THE 2015 TRAFFICKING IN PERSONS REPORT

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Jeanne Sarson, MEd, BScN, RN

DIRECT PROFESSIONAL EXPERIENCE. Since 1993, my nursing colleague, Linda MacDonald, MEd, BN, RN, and I have focussed our professional grass root work on supporting mainly women who disclose being born into family units where they endured sexualized torture, were trafficked and exploited from their earliest of memories—for instance, beginning when they were toddlers. Their parent(s) or guardians were their traffickers, their pimps, and their torturers. One or both parents were involved and were frequently joined by other family members. Women’s disclosures reveal such family units commonly had connections with like-minded others including organized rings or groups. This reality has been reported to us by over 4000 women living not only in Canada but in the U.S., the U.K., other Western European countries, Australia, and New Zealand. Women tell us of being trafficked within their homes when the perpetrators gathered there for pedophilic torture “parties”. They also report being trafficked to places such as cabins, cottages, to farms, to warehouses, taken on boats, or to other places that perpetrators obviously secured within their communities, their countries, or for some women they speak of being transported across borders. Transportation was by car including by taxi, by truck, and by plane. Some women describe how as children they were taken to pick-up points such as bus or train stations, and kept there until picked up by the perpetrators or traffickers who then delivered them to johns, to small groups, or to larger group torture “parties”. Additionally, some women report being trafficked—taken to studios—for adult-child or child-child crime scene pornography. Some women clearly describe how they were conditioned to withstand sexualized torturing, “trained” and “trafficked for torturing” were words one woman used as she unravelled the normalization of her victimization. The sexualized torturing and trafficking generally lasted into young adulthood or longer. They had to be old enough to find a way to escape. Escaping or exiting has been by running. Some women fled Canada. And, based on our experiences others did not fully exit until they sought our support.

This is the predominate population of women that we shed insights about when responding to pertinent questions on the minimum standards for the elimination of trafficking in persons. We have, however, had contact with other women who were recruited, trafficked, pimped, and controlled or held captive by a pimp trafficker or a group of perpetrators. One woman was held captive by her spouse and three of his friends.¹ Other women speak of being recruited, trafficked,

¹ Sarson, J., & MacDonald, L. (2009, Winter). Defining torture by non-State actors in the Canadian private sphere. *First Light*, pp. 29-33.

and tortured as teenagers by individual male perpetrators or by organized crime groups. For instance, one woman shared that she was recruited and began being trafficked at age 12. She suffered acts of torture inflicted to control her as described in her response to our research questionnaire.² Women also describe the pleasures the johns had when they “rented” or “bought” them.

We are also published authors. Our most recent published work is, *Torture Victimization—Child to Adult: Flashbacks and Connection With First Responders*.³ Other published works as well professional submissions to United Nations Special Rapporteurs, such as the due diligence paper to Rashida Manjoo, Special Rapporteur on violence against women,⁴ can be found on our website: www.nonstatetorture.org.

As members of the NGO, the Canadian Federation of University Women (CFUW), we were instrumental in presenting a [shadow report](#) to the United Nations Committee against Torture in Geneva. As well we were involved in a [written statement](#) on non-State torture as a violation of human rights submitted by CFUW to the United Nations Commission on the Status of Women, New York City. CFUW has position statements on the need for the Canadian Government to [criminalize torture by non-State actors](#) and on [Prostitution and Human Trafficking](#). Our most recent human rights advocacy as professionals was the brief, *Non-State Torture Happens to Women and Girls*, submitted to the Geneva NGO Forum – Beijing 20+, held from November 3-5, 2014 at the United Nation Headquarters, Geneva.⁵ Our attendance at this forum was also as members of CFUW.

OBJECTIVE OF THIS SUBMISSION. Our objectives, based on our professional experiences as just described, are twofold:

1. To reveal the necessity for the TIP report to address the truthful reality that women and girls who are trafficked may also be trafficked and tortured by family members, as well as by other non-familial traffickers (non-State actors).
2. To suggest that it is essential to examine whether countries have laws that address torture by non-State actors so perpetrators of human trafficking do not enjoy impunity.

² See Appendix A for a brief detailed description of her victimization which we received when the woman filled out one of our questionnaires.

³ Sarson, J., & MacDonald, L. (2014, Winter). Torture victimization—Child to adult: Flashbacks and connection with First Responders. *Family & Intimate Partner Violence Quarterly*, 6(3), pp. 47-56.

⁴ Sarson, J., & MacDonald, L. (2011). *Due diligence obligations: Non-State Torture of Women/Girls in the So-called Private Sphere—A Canadian and Multi-country Perspective*. A paper in Response to Special Rapporteur Ms. Rashida Manjoo’s Welcoming of Relevant Submissions from NGOs and Other Independent Experts for a Study on the “Due Diligence Obligations to Address Violence against Women.” Available http://nonstatetorture.org/files/5513/5765/0141/Due_Diligence_paper.pdf

⁵ Sarson, J., & MacDonald, L. (n.d.). *Non-State Torture Happens to Women & Girls*. Available <http://nonstatetorture.org/files/2414/1420/4940/briefBeijing20.pdf>

In Canada there is no law on non-State torture therefore traffickers are not identified as having committed torture. Thus, women so trafficked and tortured are denied the legal opportunity to name being tortured and have their torture victimization specifically believed and addressed in a court of law. Canadian governmental departments such as the Department of Justice and the Status of Women reject amending the *Criminal Code of Canada* to include torture by non-State actors which would include human traffickers who torture. This decision represents wilful blindness.⁶ Wilful blindness means this decision is deliberately and intentionally chosen in spite of all the knowledge that reveals there is a need for such inquiries and alternative actions other than the present position of these governmental departments. This legal discrimination of subsuming torture perpetrated by non-State actors such as human traffickers as other crimes such as an assault needs to be removed if trafficked and tortured persons are to experience socio-legal inclusion and re-capture their human dignity.⁷

THE FOLLOWING INFORMATION IS SUBMITTED BASED ON OUR 2014 EXPERIENCES IN RELATION TO THE MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING IN PERSONS

A NEW CANADIAN LAW. The Canadian government passed into law Bill C-36 the Protection of Communities and Exploited Persons Act, on December 6, 2014. A Canadian Department of Justice Technical Paper explains the fundamentals of the Act as a paradigm shift whereby prostitution is a form of dangerous sexualized exploitation that disproportionately and negatively impacts on women and girls; it also acknowledges that prostitution intersects with sexualized human trafficking and exploitation.⁸ For example, the new section 286.3 of this Act builds on existing criminal procuring offences such as found in the *Canadian Criminal Code* section on human trafficking.⁹ From an international perspective, Canada is taking the approach in this new Act that pimping is related not only to prostitution but also is a criminal act that occurs in sexualized human trafficking including of persons under the age of 18 years. The new Act aids in addressing prevention of both prostitution and sexualized human trafficking. This law has just been enacted thus there is no evidence as to its effectiveness as yet.

⁶ Department of Justice. (2014, July 31). *A handbook for police and crown prosecutors on criminal harassment* (Part 3: The law, 3.4.3). Available <http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/har/part3.html>

⁷ See our diagram on removing legal discrimination on page 5 of our [brief to the House of Commons Standing Committee on Justice and Human Rights](#).

⁸ Department of Justice. (Technical Paper: Bill C-36, Protection of Communities and Exploited Persons Act. Available <http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html#edn45>

⁹ See section 279.01 of the *Criminal Code*, which prohibits recruiting, transporting, transferring, receiving, holding, concealing or harbouring a person or exercising control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation. Section 279.04 of the *Criminal Code of Canada* defines exploitation. These provisions were enacted in 2005. Examples of jurisprudence interpreting the offence, includes: *R c Urizar*, [2013] JQ no. 132 (QCA) and *R v Beckford and Stone*, [2013] OJ No. 371 (Ont. SCJ), in which the constitutionality of section 279.011 (trafficking in children) was upheld. Section 279.011 is identical to section 279.01, with the exception that it imposes mandatory minimum penalties for trafficking children.

We supported the principles embedded in the new law as well as for other more concrete reasons. It, in our opinion, makes a sustained effort to address and reduce the demand for commercial sexualized commodification of trafficked and exploited persons therefore preventing Canada from becoming an open destination country for sex tourism. The new law expanded the definition of “weapons” as “anything used, designed or intended to be used to restrain a person against their will”.¹⁰ This suggests, for example, that rope, chains, handcuffs, or tape can be weapons. The women who have contacted us have expressed that such items were used to restrain them when they were captive and multi-victimized young children as well as multi-victimized young adults.

OUR 2014 INVOLVEMENT IN THE PROVISION OF EVIDENCE RELATING TO THE NEW LAW. Both Linda and I gave expert evidence to the Canadian House of Commons Standing Committee on Justice and Human Rights when it was conducting its hearings on Bill C-36, the Protection of Communities and Exploited Persons Act, in Ottawa, July 7-11th, 2014. Once the Bill passed through the House of Commons it was sent to the Canadian Standing Senate Committee on Legal and Constitutional Affairs. Our involvement in these Standing Committees included:

1. Our [brief to the House of Commons Standing Committee on Justice and Human Rights](#) which includes a drawing of human trafficking done by a woman we supported. Consent is given to use this drawing in the TIP report, in the event you choose to. I have included it as appendix B;¹¹
2. Our verbal documented presentation to the [Standing Committee on Justice and Human Rights Evidence](#) Wednesday, July 9, 2014;¹² as well as being recorded, a [cpac video recording](#). To explain the dangerous continuous harms that can occur in sexualized human trafficking we spoke of two examples of the continuous non-State torture harms suffered firstly by a women and secondly a woman when she was a child; and
3. Our brief to the Canadian Standing Senate Committee on Legal and Constitutional Affairs, [Pimps & Johns: In-house Sexualized Torture of Prostituted Women and Girls is always potentially Life-threatening](#) provides discussion on how trafficking that includes non-State torture was discarded during Supreme Court hearings. We also share how very

¹⁰ Department of Justice. (2014, December). Backgrounder Protection of Communities and Exploited Persons Act. Available <http://news.gc.ca/web/article-en.do?nid=910819>

¹¹ Sarson, J., & MacDonald, L. (2014, June 30). *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*. Available <http://nonstatetorture.org/files/1614/0555/9142/BriefJusticeHRcommittee.pdf>

¹² Standing Committee on Justice and Human Rights. (2014, July 9, Wednesday). *Evidence*. (Number 040, 2nd Session, 41st Parliament. (2014, August 25). House of Commons Canada. Available <http://nonstatetorture.org/files/2914/0812/7629/EvidenceJeanneLinda.pdf>

young girls were conditioned to be trafficked by their parents and how torture is a tactic that was used to control and silence them.¹³

OUR PRIME RECOMMENDATION WAS AN AMENDMENT TO THE NEW LAW.

Our prime recommendation was to amend the *Criminal Code of Canada*, section 269.1 on torture to include torture perpetrated by non-State actors—human traffickers and pimps for example. Section 269.1 only applies to State actors such as government employees, police, or military personnel.¹⁴ Our recommendation was rejected. Because the new law acknowledges the connections between human trafficking, pimping, and prostitution we consider this failure to amend the *Criminal Code of Canada* by criminalizing torture by such non-State actors a serious weakness because:

1. The failure to criminalize torture by non-State actors which includes human traffickers affords such perpetrators levels of impunity that invisibilizes the life-threatening severity of the crimes they commit against the persons they traffic, predominately women and girls.
2. Without a law that specifically includes non-State actors there is no collection of criminal data to give evidence that non-State torture happens—for instance, that human traffickers commit torture.
3. Without a specific non-State torture law women so victimized are not identified as having endured torture so no specialized non-State torture informed services are available for women so multi-victimized (our work has been voluntary and generally pro-bono).
4. Without a specific non-State torture law the torture tactics of human traffickers are not legally addressed as torture consequently there is a failure to inform and educate the public, including potential victims, about the causes and consequences of severe life-threatening forms of torture by human traffickers. This failure to create public and professional awareness is evident when attendees at our lectures commonly mention they had not previously considered that torture is perpetrated by non-State actors such as traffickers.¹⁵
5. Women generally state that service providers and law enforcement do not believe them if they attempt to disclose, or consider them “crazy” or mentally ill. Women say that once they have such labels these become a form of multi-system induced secondary re-victimization that leads to their continuous discreditation.

¹³ Sarson, J., & MacDonald, L. (2014, August 25). *Brief Pimps and Johns: In-house Sexualized Torture of Prostituted Women and Girls is always potentially Life-threatening*. Submission to the Standing Senate Committee on Legal and Constitutional Affairs. Available http://www.parl.gc.ca/Content/SEN/Committee/412/lcjc/Briefs/C-36/SM_C-36_brief_JeanneSarson-LindaMacDonald_E.pdf

¹⁴ Government of Canada. (2014, December 19). *Justice Laws Website*. Available <http://laws-lois.justice.gc.ca/eng/acts/C-46/section-269.1.html>

¹⁵ See item c on pages 8-9 of our [Pimps & Johns: In-house Sexualized Torture of Prostituted Women and Girls is always potentially Life-threatening](#)

6. A refusal to amend section 269.1 on torture of the *Criminal Code of Canada* to include torture by non-State actors such as human traffickers is a due diligence failure of international human rights instruments that include the right not to be subjected to torture”.¹⁶ There is a failure to provide adequate protection, for example police protection, because the risk for on-going victimization is not understood.¹⁷ These failures occur despite, for instance, a report by the national police force, the Royal Canadian Mounted Police (RCMP), in which they write that trafficked persons report enduring torture tactics described 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.¹⁸
7. In response to the question of whether our Canadian government officials understand the nature of trafficking, its severity of continuous harms suffered by trafficked persons, our opinion is Canadian governmental departments have knowingly decided to:
- a. Disregard such acknowledge as written in the RCMP report just mentioned in the previous item;
 - b. Subsume non-State torture offences into other offences such as assault, aggravated assault, or sexualized assault which invisibilizes the crime of torture and the persons who survive it; and
 - c. Use positional power to whitewash or invisibilize the reality of the continuous harms caused by non-State torture victimization that occurs in organized human trafficking whether perpetrated by parents or non-familiar perpetrators in our Canadian culture.

¹⁶ For example, the [International Covenant on Civil and Political Rights](#) guarantees women the right to be free from torture and cruel, inhuman or degrading treatment and the right to security. The [Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW) creates binding obligations for signatories such as Canada, requiring that “all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.” (Article 6); as well CEDAW [General Recommendation No. 19](#), 7 (b) states no one shall be subjected to torture, as does article 3 (h) of the [Declaration on the Elimination of Violence against Women](#). Additionally, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also applies and is supported by [General Comments No. 2](#) and [3](#) of the United Nations Committee against Torture. The [United Nations Universal Declaration of Human Rights](#) article 5 states “no one shall be subjected to torture” and is considered customary law, a peremptory norm, a global just cogens violation.

¹⁷ Under principles of international law, States are obligated to provide adequate support for victims of crimes. The [United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), paragraph 4, states that victims are entitled to access the justice system and prompt redress and that for this to occur States need to revise their legislation.

¹⁸ Royal Canadian Mounted Police. (2013, October). *Domestic human trafficking for sexual exploitation in Canada*, p. 22. Human Trafficking National Coordination Centre. Available http://publications.gc.ca/collections/collection_2014/grc-rcmp/PS64-114-2014-eng.pdf

8. If there is no law on non-State torture judges and lawyers may lack the appropriate knowledge such as we discussed in our brief [Pimps & Johns: In-house Sexualized Torture of Prostituted Women and Girls is always potentially Life-threatening](#), paragraph number 6. In this paragraph we wrote a comment that illustrates an incorrect statement about torture that was allowed to stand unchallenged in the following Supreme Court case of;

Bedford v. Canada, 2010 . . . paragraph 531 [which] states police can charge pimps and johns under various sections of the *Criminal Code* and provides a list [of such sections]. Included in this list is section 269.1 on torture. This is not a true legal reality as explained; just State actors—not non-State actors—can be held criminally accountable for torturing under section 269.1.¹⁹

Section 269.1 on torture of the *Criminal Code of Canada* is the only section that addresses torture victimization in the *Code*. And, as stated, it can only be used to hold State actors accountable.

RECOMMENDATIONS TO REMEDY A DEFICIENCY AND/OR OTHER GOVERNMENTS COULD CONSIDER ADOPTING TO IMPROVE ANTI-TRAFFICKING EFFORTS

The following is our prime recommendations:

1. There is the necessity for governments to address the truthful reality that women and girls who are trafficked may also be trafficked and tortured by family members, as well as by other non-familial traffickers (non-State actors). In order to promote rehabilitation non-State torture informed interventions need to be present—from exiting, to care, to protective services.
2. Canada and any country ought to ensure their criminal or penal code includes the criminalization of torture perpetrated by any person including non-State actors to eliminate impunity. Such a law must then be used to hold perpetrators such as human traffickers fully accountable for the acts of non-State torture they perpetrate. Such laws are not precedent setting because, for example,
 - a) France has various penal code sections that include torture that is applicable to any person who commits such acts. There is, however, a specific section, *Trafficking in Human Beings*, article 224-4-1, that says, “when committed with recourse to torture or acts of barbarity, is punished by life imprisonment and by a fine of €4,500,000.”²⁰
 - b) California’s penal code, section 206 states that;

¹⁹ *Bedford v. Canada, 2010* ONSC 4264 (CanLII). <http://canlii.ca/t/2cr62>

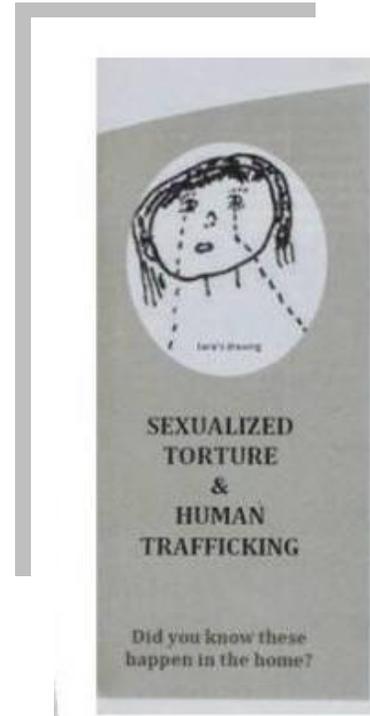
²⁰ Spencer, J. R. (2005, October 12). *Penal Code*. Legislationline.org by the Organization for Security and Co-operation in Europe. Available <http://www.legislationline.org/documents/section/criminal-codes>

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." Section 206.1 Torture is punishable by imprisonment in the state prison for a term of life.²¹

- c) Michigan's penal code also addresses torture under section 750.85.²² It applies to any 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.

In our opinion specific and direct law if utilized properly filters through a society and has potential to influence attitudes and behaviours within the society. It promotes opportunities to address prevention if a society acknowledges a specific crime such as human trafficking and non-State torture exists. For example, we were presenters at the [4th International Conference on the Survivors of Rape](#), in Lisbon, Portugal, November 21, 2014. Following our presentation we had the opportunity to speak with European professionals who said they realized they and the police do encounter non-State torture victimization but were not speaking out and were unaware of resources that they could access. We shared with them, for example, one pamphlet we developed entitled, [SEXUALIZED TORTURE & HUMAN TRAFFICKING](#) (image shown).



²¹ *California Penal Code*. (n.d.). Chapter 2. Section 203-206.1. Available <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=pen> Accessed 28 December 2014.

²² The Michigan Penal Code Chapter 750. Available <http://legislature.mi.gov/documents/mcl/pdf/mcl-chap750.pdf> Accessed 28 December 2014.

APPENDIX A**THE RESPONSE TO OUR QUESTIONNAIRE RECEIVED FROM A WOMAN WHO WAS RECRUITED BY A TRAFFICKER-PIMP WHEN SHE WAS 12 YEARS OF AGE****QUESTIONNAIRE ON TORTURE THAT HAPPENS IN FAMILIES AND IN OTHER INTIMATE RELATIONSHIPS**

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 are working to expose torture that happens in such relationships. If you think you have been a victim of torture please consider answering this questionnaire. Your voice will help to expose torture that happens in the home for example and help us work for changes in Canada and globally.

1. Your gender is: Female Male Transgendered

2. Country you live in:

Canada

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

4. Briefly explain your reasoning Cause you can heal from abuse without a lot of support but with torture you have to live with the effects _____

5. Below is a list of many acts of torture that might be inflicted on a person at one time or repeatedly. Circle ALL the numbers of any of the violent acts that you have suffered as a victim of torture. Or if answering by email place yes or no next to each act.

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 yes

6. burnt

7. cut yes

8. whipped *__yes__*
9. soles of one's feet beaten (falanga)
10. fingers, toes, and limbs twisted *__yes__*
11. fingers, toes, and limbs broken *__yes__*
12. fingers, toes, and limbs dislocated *__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
16. confined to a dark enclosed space *__yes__*
17. placed in crate/box
18. caged
19. electric shocked *__yes__*
20. forcibly impregnated *__yes__*
21. forcibly aborted *__yes__*
22. forced to eat one's vomitus (throw-up)
23. forced to eat one's or another's bowel movements
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
28. prevented from using toilet *__yes__*
29. smeared with urine, feces, or blood
30. forced under cold or burning hot water
31. placed in a freezer
32. near drowned when held under water in the tub, toilet, bucket, stream

33. drugged with alcohol __yes__
34. drugged with pills __yes__
35. drugged with injections __yes__
36. drugged by mask
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
45. threatened to be killed __yes__
46. called derogatory names __yes__
47. put down __yes__
48. treated as non-human __yes__
49. if you chose you can list other torture harms that you have suffered that we have not included on this list or share your comments below: ____*I was forced to have sex for money from the age of 12- 21. I was not allowed to have friends who were not prostituting and a part of the game my exploitation haunts me all the time my money was taken and I was not allowed to buy things that I needed. I also was forced to commit crimes so that I could give the proceeds to my exploiter. I was forced to do sex acts and if I complained I would get beaten by a pimp stick (heated coat hanger) I also had to find victims for my exploiter if I had any friends or family they were at risk of been exploited. I was alienated from my family. To this day I cannot feel confined I sleep with the lights on.*

Thank you for doing this questionnaire.

Website: <http://nonstatetorture.org>

Email: contact@nonstatetorture.org

APPENDIX B

HUMAN TRAFFICKING DRAWING INCLUDED IN OUR BRIEF TO THE HOUSE OF COMMONS STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

