



Special Rapporteur on violence against women and girls

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VIA EMAIL

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[Woodhull Freedom Foundation](#), the [National Survivor Network](#), and [Freedom Network USA](#) jointly submit this response to the UN Special Rapporteur on violence against women and girls' [call for input to the addendum to the report of the Special Rapporteur on violence against women and girls to the HRC on the concept of consent in relation to violence against women and girls](#).

As civil society organizations based in the United States focused on issues related to sexual freedom, sex worker rights, and anti-trafficking, the concept of consent is critical to our work. We therefore recognize our expertise is necessary to inform this call for input from the Special Rapporteur on violence against women and girls.

The distinction between consensual and non-consensual sexual contact, both as defined in law and as recognized by society, is crucial in protecting the safety, health, and rights of women and girls (cisgender and transgender). It is also crucial that bad actors do not weaponize the concept of consent in order to undermine the fundamental human rights of adults to sexual freedom, including the right to work as defined in the [Universal Declaration of Human Rights](#), which includes the right "to free choice of employment, to just and favourable conditions of work and to protection against unemployment." These rights extend to adults who work within the sex industry whether that be in adult film or online content development and distribution, stripping, full-service in-person sex work, or providing other sexual services.

We are hopeful that the current UN Special Rapporteur, Ms. Reem Alsalem, will, this time, include the input of experts on the rights of sex workers as well as transgender and gender expansive individuals, who make up a significant portion of adult industry workers. That was not the case when the prior report, "[Prostitution and violence against women and girls - Report of the Special Rapporteur on violence against women and girls, its causes and consequences](#)," was developed and distributed. That report repeatedly and erroneously conflated sex work and human trafficking, directly undermining the consent of adults to choose sex work.

In developing this reply to the current call for input, we focus attention on the work of [Count Me In! \(CMI\)](#), an international nongovernmental organization which envisions a gender equal and just world, where all women and girls, and non-binary, gender non-conforming, trans, and intersex people enjoy their rights fully and live to their full potential. This organization [archived](#) all input from sex worker rights advocates to the SR's call for input on their previous report

focused on the sex trade. We emphasize this as many of the submissions address the concept of consent and are invaluable to the development of the SR's current call for input.

We highlight here [CMI's statement on consent](#) from their previous submission which succinctly addresses some of the SR's question in this current call for input, "Consent, both to engage in sexual relations as well as to submit to an employment relationship, always takes place in the context of power dynamics, including in the context of capitalism, patriarchy, gender inequality, and institutionalized forms of intersectional discrimination. Historically, sex work has been treated differently because it has been stigmatized as a moral transgression, thanks to patriarchal norms and the sacralization of sex.

To ignore this would be to admit that gender inequality in a patriarchal society invalidates the consent of women only when it comes to sex work— and is not the case in any other type of work, like domestic work or care work, mining, sewing in a garment factory, or any other work. **The autonomy and capacity of adults to consent to sex work must be respected in the same way that the right of persons to consent to participate in any other form of work, workplace environment, or to make any other decisions in their life is respected."**

Although this call for input does not explicitly address issues related to sex work, human trafficking, and the sex trade more broadly, we know that the concept of consent is critical to ensure the safety of all people involved in this industry, including women and girls (cisgender and transgender), as well as nonbinary people and men and boys (cisgender and transgender). We therefore take this opportunity to inform the forthcoming addendum on the concept of consent as it relates to the rights and safety of consensual sex workers and people who experience trafficking. Understanding and respecting the distinction between consensual sex work and non-consensual exploitation in the sex trades is a crucial part of ending violence against women and girls (cisgender and transgender) and is therefore central to the UN SR effectively and meaningfully carrying out their mandate.

2. In what sex and gender-specific crimes has the relevance or irrelevance of consent been invoked? What differentiates them?

We see that consent is frequently invalidated or deemed "irrelevant" when police are investigating the sex trade in the United States. People in commercial sex are often subjected to police violence that includes "assault, sexual harassment, public 'gender searches' (police strip searches for the purpose of viewing genitalia), and rape."¹ This is true for people in commercial sex across the spectrum of agency -- who are there consensually, due to circumstance, and/or through trafficking.² Sex workers and trafficking survivors report that police will often threaten to arrest them if the person does not perform sexual acts on the officer (or similarly, will offer to "let this one go" in exchange for oral or penetrative sex).

¹ <http://www.bestpracticespolicy.org/wp-content/uploads/2013/01/2014UPRRReportBPPPDASWOPNYC1.pdf>
² <https://nationalsurvivornetwork.org/learning-the-spectrum-of-agency/>

In the United States, it is not illegal for officers to engage in sexual contact with potential victims while acting under the color of law. Recent attempts to exclude this practice in our federal anti-trafficking legislation failed due to agencies insisting that they must be able to engage in sexual activity under fraudulent pretenses in order to investigate human trafficking, sex work, and other crimes. The criminalization of full service-sex work, defined as prostitution in most US jurisdictions, gives power to law enforcement to utilize investigations as cover to gain access to sex workers and carryout these acts of sexual violence.

Individuals report that they may be mid-handjob or mid-oral sex when the police officer produces a badge and identifies as law enforcement, and this is traumatic for all individuals in commercial sex, particularly so for those already there through force, fraud, or coercion. This is especially true in the US in investigations into Asian massage businesses, in which racism meets anti-sex work stigma, leading to trauma, deportation, and incarceration for massage workers. Workers have reported finding these raids terrifying and have even jumped to their deaths to escape this terror.³

7. What examples of decisions and approaches by courts represent good and problematic practice?

Woodhull Freedom Foundation is the lead plaintiff on a federal challenge to a set of laws in the United States, FOSTA, the Fight Online Sex Trafficking Act, and the Senate bill, SESTA, the Stop Enabling Sex Traffickers Act (collectively known as SESTA/FOSTA).⁴ SESTA/FOSTA erroneously conflates consensual sex work with trafficking, and interferes with more productive attempts to protect vulnerable people from harm. FOSTA also chills online expression about sexual topics and encourages massive self-censorship by internet platforms. Unfortunately, the most recent ruling in the case by the United States Court of Appeals for the District of Columbia upheld FOSTA, though it did clarify certain limitations on how the law could be interpreted in relation to general advocacy about the sex trade and efforts to decriminalize sex work.⁵

Woodhull, NSN, and FNUSA all agree that SESTA/FOSTA must be repealed. It has failed in its goal of stopping trafficking and has further fueled the harmful conflation of consensual sex work with trafficking. SESTA/FOSTA is a prime example of how US laws invalidate sex workers' consent to choose employment within the sex trade. This law has also had negative impacts on trafficking victims. The US Government Accountability Office reported that trafficking has become more difficult to investigate since SESTA/FOSTA due to relocation of online platforms overseas (where they may not be subject to US subpoenas for evidence).⁶ Thus, by "pushing purveyors of sex both consensual and non-consensual farther into the dark web, FOSTA-SESTA has worsened the problem of sex trafficking in the US."⁷

³ <https://theappeal.org/new-evidence-in-the-death-of-a-queens-massage-worker/>

⁴ <https://www.woodhullfoundation.org/fosta/>

⁵ <https://www.woodhullfoundation.org/press-release/dc-circuit-upholds-fosta/>

⁶ <https://www.gao.gov/assets/gao-21-385.pdf>

⁷ <https://www.bjcl.org/blog/sex-sells-but-not-online-tracing-the-consequences-of-fosta-sesta>

8. How do cultural norms and practices in different regions influence the interpretation and application of consent in cases of violence against women and girls?

Within the United States, in-person sex work is criminalized in all jurisdictions except a few counties in the state of Nevada where it is legal within very limited settings. The widespread criminalization of the sex trade is significantly influenced by regressive cultural norms and practices related to sex and sexuality which seek to punish women for sexual activity outside of a heteronormative marriage. Laws criminalizing sex work fuel violence against sex workers and impede efforts to address trafficking within the sex trade.

For adults involved in the sex trade, either as consenting workers or due to trafficking, we must speak about meaningful consent if we are to honor these individuals' agency and autonomy. We must believe individuals in commercial sex know their own situations better than we do, and having experienced trauma does not negate that.

11. "Moving forward, how should States and other relevant stakeholders engage with the issue of consent?":

States and other relevant stakeholders often engage in harmful rhetoric and support policy and legal approaches to the sex trade that undermine the safety and rights of sex workers and survivors of trafficking. Laws that criminalize consensual adult sexual behavior (including commercial sex involving consenting adults) violate people's human rights and are the foundation for a vast array of laws targeting women and girls as well as LGBTQ+ individuals.⁸ Language in these laws continues to be used to deny individuals' agency and ability to choose sex work and negates their consent. We see this particularly in relation to conflating sex work with human trafficking where the rights of individuals to choose sex work are undermined by laws and policies that do not respect the distinction between consensual sex work and human trafficking.

In addition to fueling the criminalization of sex work in the US, the conflation of consensual sex work and sex trafficking has resulted in restrictions of online safety tools and hampering efforts to identify potential trafficking victims online. Sites where sex workers share best screening practices, information about dangerous clients, and other safety practices censored this safety-related content in the years after SESTA/FOSTA was enacted.⁹ Without the ability to screen clients and share safety information, sex workers are forced to take on more risk to earn a livable income. Therefore, SESTA/FOSTA must be repealed in the United States.

Legal approaches to the sex trade significantly impact the health and safety of sex workers and survivors of trafficking. Moving forward, States and other relevant stakeholders must support and enact the full decriminalization of sex work and stop the conflation of consensual sex work

⁸ <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL4077632018ENGLISH.pdf>

⁹ <https://genderpolicyreport.umn.edu/the-coercive-impact-of-fosta-on-consensual-adult-sex-workers/>

with human trafficking. All workers should be safe in their workplaces, no matter their profession. Decriminalizing sex work is a necessary pre-condition to decreasing abuse and exploitation within the sex trade. In the US, the path to decriminalization includes repealing local anti-loitering ordinances, decriminalizing sex work at the state and local levels, criminal record expungement for those with prostitution-related convictions, and repealing federal immigration policies that restrict the entry of anyone who has engaged in sex work. Decriminalization does not include removing penalties for assault, battery, sexual assault, rape, sex trafficking, child trafficking, theft, extortion, or any other form of force, fraud, or coercion against any worker.

We reject other legal approaches that have been shown to impede safety in the sex trade and blur consensual sex work with exploitation. This includes partial criminalization, which often relies on denying workers' rights for those in the sex trade, replicates narratives that reinforce stigma against sex workers, and denies the agency and autonomy of adults who trade sex consensually. Interestingly, implementation of this approach often denies the agency and autonomy of individuals in the sex trade about when and how to leave, and when and how to get help, thus interfering with their safety and impeding the restoration of their autonomy.

Research has shown that partial criminalization replicates the harms of full criminalization of commercial sex.¹⁰ These harmful impacts affect not just individuals in the sex trades consensually, but victims being sex trafficked.¹¹ These approaches also maintain stigma against sex workers, which fuels violence. Sex workers have a 45-75% chance of experiencing sexual violence on the job under criminalization. Even when individuals willingly consent to engaging in commercial sex there may still be specific sexual acts they are not willing to do in certain situations, and language that “men who buy prostitutes can do whatever they want to them” (often repeated by anti-sex work activists as a call to end commercial sex) reifies and reinforces the stigma that enables this violence to continue.

Therefore, States and other stakeholders must adopt language that avoids perpetuating stereotypes against sex workers. Biased language often includes “prostituted” to refer even to consensual workers, referring to all commercial sex as “exploitation,” and language that suggests only a broken person would ever “choose” sex work or that deny their agency to make their own choices. In doing so, policymakers must also reject ‘End Demand’ approaches which directly contradict the consent of sex workers and make it harder to ensure the safety of people involved in the sex trades. We also oppose “demand reduction” because it reduces income for people who are in the sex trades consensually without changing the fundamental societal and economic conditions that create their vulnerability to trafficking, thereby decreasing their economic security and stability.

¹⁰ <https://nationalsurvivornetwork.org/document-tag/demand-reduction/>;
<https://nationalsurvivornetwork.org/endeddemandannouncement/>

¹¹ <https://nationalsurvivornetwork.org/endeddemandstatement/>

Furthermore, States and other stakeholders must ensure that anti-trafficking sting operations are only done when there is evidence of trafficking, and not just as anti-prostitution operations pretending to be anti-trafficking. The media often reports almost verbatim the press releases of law enforcement agencies that have conducted anti-prostitution operations by their “human trafficking unit” (which is sometimes just a rebranded vice unit) resulting in “hundreds” of arrests. When we dig deeper, it is often either clients of consensual sex work who are arrested, or worse, the sex workers or trafficking survivors themselves. This then leads to a misconception in the public about what the arrests were for – misconceptions that are rarely corrected.

12. What alternatives would put the burden of proof on the perpetrators and not the victims, on unequal power relationships?

While adult consensual sex workers may engage with clients who are powerful individuals, sex trafficking survivors also report being forced to engage in commercial sex with government officials (including elected), celebrities, diplomats with immunity, teachers, religious leaders, social service providers and directors, judges, prosecutors, immigration officials, and law enforcement.

Any time a person is forced into commercial sex or engaged/enticed into it as a minor, this is violence. And any time a person engaging in commercial sex by choice or circumstance is forced to engage in acts they didn’t consent to, defrauded out of the terms to which they’d agreed to it, or raped, this is violence against individuals in commercial sex. Forcing anyone into commercial sex or sexually exploiting a minor is a violation of human rights, as is criminalizing consensual adult sexual behavior.

Many arguments that deny the agency of those engaged in commercial sex infantilize or invalidate the people involved. Suggesting that experiencing prior trauma (particularly sexual trauma) makes someone unable to consent to commercial sex implies that survivors of prior trauma can no longer make informed choices about their own bodies and sexuality, ever.

Suggesting that the existence of a power dynamic (such as a client having a different race, economic status, or gender from the sex worker) precludes consent implies that any sexual interaction that involves power differentials is similarly non-consensual. Suggesting that the presence of money negates consent because you wouldn’t do it if you weren’t being paid implies that all paid labor is forced because you wouldn’t be doing it if you weren’t paid. Joel Quirk’s framework for the continuum of exploitation may prove helpful in this regard.¹² While we typically think of exploitation as being a small aberrance in a sea of otherwise free labor, most labor falls under a range of exploitation and very little labor is freely chosen.

Sex work is not entirely unique in this regard. It is true that people often engage in commercial sex when they have few meaningful or accessible options, whether due to racial or gender

¹² <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/are-you-better-or-worse-understanding-exploitation-through-comparison/>

discrimination, transphobia, poverty, homelessness, substance use, or a criminal background. Survivors of human trafficking may also choose to engage in commercial sex when other options are not available. What makes us different from standard “demand reduction” advocates is that we don’t believe ending sex work is the solution; we believe that the better solution is ending racial and gender discrimination, transphobia, poverty, homelessness, childhood trauma, and mass incarceration. If people are not pressed under the weight of oppression, they can make choices, and those who don’t want to choose sex work won’t have to.

We believe that rather than trying to end the sex trade, a more effective strategy that is more aligned with a human rights framework is to root out and address violence against sex workers and exploitation within the industry. After all, for centuries, domestic violence was normalized and accepted as an inherent part of marriage and it was not resolved through bans on marriage – it was addressed through specific efforts to end abuse within marriage.

Some groups of individuals in commercial sex are already working on in-group solutions to name and push back against racism in the adult industry and to support sex workers so that they are less vulnerable to exploitation. Several adult sites are offering more transparency about the treatment and payment of their workers. Some sites offer companion videos for every erotic video that allow the performers to discuss how they navigated consent on set. Similarly, erotic laborers are organizing for (and in some cases winning) rights in clubs.¹³

The reality is that we must look at collective solutions rather than legislating on individual experiences. We must accept that for some people, all their engagements with commercial sex felt exploitative, and for others, it felt consensual, and we must build solutions that acknowledge both realities. States and other stakeholders must enact the policies suggested above, including full decriminalization of sex work, to ensure consensual sex workers can work in a safe environment where their labor rights are protected and if exploitation occurs it can be swiftly addressed with the goal of effectively and meaningfully ending trafficking within the industry.

¹³ <https://www.haymarketpole.com/> is one example of worker organizing.