

February 18, 2022

Statement to the House of Commons Justice Committee on the Review of the *Protection of Communities and Exploited Persons Act*

c/o Committee Clerk, Jean-François Pagé

We welcome the opportunity to provide input on the review of the *Protection of Communities and Exploited Persons Act* (PCEPA). Freedom United is an international anti-trafficking organization that advocates for effective and rights-based approaches to preventing human trafficking and supporting victims and survivors. We are home to the largest anti-trafficking community in the world and our staff have extensive international experience and expertise on rights-based and harm reduction models to prevent human trafficking for the purposes of sexual exploitation and support survivors.

We strongly recommend that the Committee move to fully repeal the PCEPA. The law, while intended to help prevent exploitation, has not lived up to this ideal and is not fit for purpose as it puts marginalized members of Canadian society at an even greater risk of exploitation and trafficking. An essential point we encourage the Committee to reflect upon is this: full decriminalization of sex work, meaning the repeal of laws that criminalize clients, sex workers, and third parties in sex work, is a crucial and necessary path to preventing human trafficking. Human trafficking remains a crime when those offences are removed, and the latter builds resilience to trafficking by affording sex workers the ability to negotiate safer working environments and communicate with each other to prevent exploitation from happening in the first place.

Human trafficking defined by the United Nations Palermo Protocol as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”<sup>1</sup> is different from consensual sex work. Equating “prostitution,” or sex work, with commercial sexual exploitation and positioning it as inherently violent against women obfuscates the distinction between an informed transaction between consenting adults engaging in sexual activities and the subjective fear for one’s safety and life, coercion, threat and manipulation that is present in human trafficking. The criminalization of many aspects of sex work actively disempower sex workers, instead empowering abusers by creating an environment where violence against women in the sex trade can thrive because their fear of police detection of themselves, their clients, or people they work with often trumps their pursuit of protection from the law.

Under the PCEPA, sex workers are criminalized through the sale of their sexual services in public, and through third party laws when they are working together or for each other, which

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<sup>1</sup> <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

means they continue to face severe restrictions on even the most basic measures to keep themselves safe.

As the sex worker rights groups that make up the Canadian Alliance for Sex Work Law Reform notes, the PCEPA prohibits sex workers from:

- communicating and negotiating conditions and establishing consent to sexual activity;
- obtaining relevant and identifiable information from clients and engaging in other screening practices that are vital to sex workers' safety;
- working in secure and shared indoor workspaces; and
- establishing important working and safety relationships with managers, receptionists, drivers, interpreters, partners, peers, and security, and with other sex workers who join together to pool resources, services, and knowledge.

Furthermore, “All of these provisions force sex workers to work a criminalized context, isolated from supports, made vulnerable to exploitation, eviction, and subpar working conditions, and targeted for violence. Migrant sex workers are also vulnerable to loss of immigration status and deportation.”<sup>2</sup> The PCEPA has had the effect of forcing sex workers into isolation, thereby putting them in less safe conditions and isolating them from social, health, and legal supports. For those experiencing violence and for those who identify as being trafficked, this isolation makes it harder for them to access support.

Research into the effects of prohibitionism models like the PCEPA, commonly referred to as the sex purchase ban model or Nordic model, has found that sex workers face increased precarity and risk of violence, particularly those facing intersectional discrimination.<sup>3</sup> Instead of protecting sex workers from violence, this model pushes sex workers underground where they are more likely to be vulnerable to violence, exploitation, abuse and trafficking and are less likely to report to the police and seek help.<sup>4</sup>

Evidence collected by sex workers' rights organizations, human rights advocates and academics has demonstrated that sex workers are more vulnerable to violence under this model and some can only report violent attacks by risking deportation – this is especially the case for Asian and migrant sex workers who are disproportionately targeted during anti-trafficking stings. Asian women are presumed to be trafficked and are sought out by law enforcement under the guise of protection; these unwanted and unsolicited visits to Asian sex work establishments often result in arrests, detainment, and deportation of Asian women, who originally sought out “victims” by law enforcement end up being considered “criminals”. Eviction and the risk of homelessness is also a major concern for all sex workers under the PCEPA prohibition model.

Importantly, it is crucial for the Committee to look at the global evidence from governments that have criminalized the purchase of sex. In Northern Ireland, the purchase of sex became a

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<sup>2</sup> <https://sexworklawreform.com/parliament-set-to-hear-the-human-rights-violations-caused-by-canadas-sex-work-laws/>

<sup>3</sup> <http://www.sexworkeurope.org/sites/default/files/userfiles/files/Undeserving%20victims%20-%20DIGITAL.pdf>

<sup>4</sup> <http://www.sexworkeurope.org/sites/default/files/userfiles/files/Collateral%20Damage%20-%20INTERACTIVE.pdf>

criminal offense in 2015 under the *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act*. However, a study conducted by Queen’s University Belfast and commissioned by the Department of Justice found that the ban had “minimal to no effect”<sup>5</sup> on demand for paid sex, the number of sex workers, or levels of human trafficking for human exploitation. A recent Amnesty International report also found that the criminalization of sex work under the prohibition model in Northern Ireland is forcing sex workers to take riskier decisions that put their lives in jeopardy.<sup>6</sup>

In the report’s conclusion, the researchers note that “It may be disappointing for proponents of this legislation that the research did not uncover more evidence of a reduction in prostitution in Northern Ireland, particularly since this was hailed as such a success in Sweden, and one of the main reasons why the Nordic model (so termed) has been exported internationally. However, we would respond by suggesting that the evidence base from Sweden and the Nordic countries generally is simply not strong enough to support the proposition that sex purchase legislation has led to the massive decreases in prostitution and human trafficking that are alleged to have occurred in those jurisdictions.”<sup>7</sup>

We must take into account evidence from the public health and HIV prevention sector that clearly demonstrates that criminalization of any part of sex work, as is the case under the PCEPA, contributes to violence against sex workers. As UNAIDS points out, “The legal status of sex work is a critical factor defining the extent and patterns of human rights violations, including violence against sex workers. Where sex work is criminalized, violence against sex workers is often not reported or monitored, and legal protection is seldom offered to victims of such violence.”<sup>8</sup> The Canadian government should not ignore this fact, as violence is a common tool of coercion used in sex trafficking. UNAIDS advocates globally for the full decriminalization of sex work as a crucial strategy to reduce HIV transmission.<sup>9</sup>

We recognize that the Committee may hear from other anti-trafficking organizations with a different perspective and who support criminalization of sex work. But we ask in your analysis to recognize when anti-trafficking rhetoric is being deployed to eliminate the livelihoods of sex workers and to further a carceral approach that will fail to stop trafficking or help survivors. Research has shown how law enforcement models of regulation can conflate sex work with human trafficking, which negatively affects sex workers, and particularly racialized and migrant sex workers who can be wrongly perceived as being involved in trafficking and experience harassment, discrimination and other abuse at the hands of officers. This alienates workers from health, social, legal and government services in times of actual need and so perpetuates — rather than addresses — exploitation and fails to correctly distinguish victims of trafficking from

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<sup>5</sup> <https://irishlegal.com/article/sex-purchase-ban-has-had-minimal-to-no-effect-on-demand-supply-or-human-trafficking>

<sup>6</sup> <https://www.amnesty.ie/sex-work-ireland-laws/>

<sup>7</sup> <https://www.irishlegal.com/articles/sex-purchase-ban-has-had-minimal-to-no-effect-on-demand-supply-or-human-trafficking>

<sup>8</sup> [https://www.unaids.org/sites/default/files/media\\_asset/06\\_Sexworkers.pdf](https://www.unaids.org/sites/default/files/media_asset/06_Sexworkers.pdf)

<sup>9</sup> <https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2019/december/decision-northern-territory-australia-decriminalize-sex-work#:~:text=%E2%80%9CThe%20decriminalization%20of%20sex%20work,than%20the%20general%20adult%20population.>

consenting sex workers.

Traffickers, predators and people who exploit other people often target marginalized people, many of whom are struggling to make ends meet, often by false promises. The PCEPA has made it more difficult for sex workers to survive economically — leading to further marginalization and placing them at greater risk of exploitation. Freedom United recommends the Committee focus on the structural drivers of human trafficking and take a human rights-based approach that centers labour rights, migrant rights, and sex workers' rights and addresses the numerous structural barriers including poverty, precarious immigration status, and lack of access to affordable housing, health and social services that contribute to the risks of human trafficking. If the committee intends to focus on human trafficking as part of its analysis of PCEPA, then it should focus on the structural drivers of human trafficking, rather than promote a law that eradicates sex work. The two realities may sometimes overlap but they most definitely do not deserve the same legislative response.

Stopping human trafficking and upholding sex workers' rights go hand in hand — it is not a choice between one or the other. Both can be achieved, and we encourage the Committee to fully repeal the sex work/commodification provisions in the PCEPA.

Sincerely,  
Joanna Ewart-James  
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Executive Director