Submission to the

Committee for the Elimination of Discrimination Against Women on the

**DRAFT General recommendation on Trafficking in**

**Women and Girls in the Context of Global Migration**

**Full name of Organisation:** New Zealand Prostitutes’ Collective

**State party:** New Zealand

**Submission available to the public:** Yes

1. **Executive Summary**

NZPC supports the general tenor of the General Recommendation (GR) but suggests the following amendments in order to clarify some points and make the GR tighter and stronger. The following recommendations are made:

1. ***Paragraph 2***: systems that treat sex work as criminal have a negative effect on the safety, health, and well-being of sex workers while a decriminalised environment protects them. **Sex work should be decriminalised**.
2. ***Paragraph 7***: sex work and trafficking should not be conflated, and it needs to be clarified that “*the exploitation of the prostitution of others*” **does not include sex work**.
3. ***Paragraph 24***: this paragraph may conflate sex work with trafficking and ignores that women make the choice to enter sex work. Conflating sex work with trafficking **increases the vulnerability of the women involved**.
4. **Paragraph 27:** In line with earlier CEDAW decisions this should refer to the implementation of labour frameworks to *“prevent and combat other exploitative practices assimilated to trafficking”* as the phrase “including those on the demand side” may be misinterpreted and misapplied to target sex workers.
5. **Paragraph 58**: This paragraph should be moved to below the current paragraph 26 as it is more applicable to State obligations to address the root causes of trafficking while clause (a) should make it clear it is protecting *… all women workers, including women migrant workers*.
6. **Paragraph 92**: NZPC notes the importance of ensuring anti-trafficking efforts are not used as a means to deport migrant women.
7. **New Zealand Prostitutes’ Collective**
8. The New Zealand Prostitutes’ Collective (NZPC) is a nationwide sex worker operated organisation. We advocate for rights, safety, health and wellbeing of all sex workers throughout New Zealand and are informed by both empirical research and lived experience. NZPC recognises sex work is work and is committed to the integration of sex workers into society, the majority of whom are women, so they may have agency over all aspects of their work and life.
9. NZPC contracts to the Ministry of Health to provide sexual and reproductive health services. We also provide expert advice to a range of other government and non-government agencies, such as Police, Ministry of Justice and sexual violence services.
10. NZPC has thousands of contacts with sex workers from all sectors of the sex industry each year[[1]](#footnote-1) and supports them with health services as well as occupational safety. NZPC recognises sex workers should not experience stigma or discrimination due to their work and assists sex workers to overcome barriers to their wellbeing.
11. **Introduction**
12. New Zealand decriminalised sex work in 2003 by removing the offences of soliciting, brothel keeping, living on the earnings of prostitution, and procuring, replacing these offences with legislation that integrated sex work into the general employment and other law, and[[2]](#footnote-2)

(a) safeguards the human rights of sex workers and protects them from exploitation:

(b) promotes the welfare and occupational health and safety of sex workers:

(c) is conducive to public health:

(d) prohibits the use in prostitution of persons under 18 years of age:

1. Research has shown this legislation reduces exploitation of sex workers. Prior to the change in law, 37% of Christchurch based independent sex workers felt they could refuse a client. After decriminalisation, this increased to 62%. Similarly, 48% of managed sex workers in Christchurch had refused a client in the 12 months prior to decriminalisation and this increased to 68%[[3]](#footnote-3).
2. The Prostitution Law Review Committee, a statutory body formed as a result of the Prostitution Reform Act to examine the effect of the Act and to report those findings to government within 5 years. This involved extensive visits to brothels, to areas where street-based sex work occurs, and to the private houses of individual sex workers, speaking with sex workers and seeking their input. The Committee also sought information from Police, Immigration, and a range of other government and non-government agencies. The Committee found

That the PRA has had a marked effect in safeguarding the right of sex workers to refuse particular clients and practices, chiefly by empowering sex workers through removing the illegality of their work[[4]](#footnote-4).

1. Furthermore, the Committee sought information from Immigration about trafficking in the sex industry in New Zealand. The Committee, in it’s report to Parliament stated:

Information received from Immigration Services NZ indicates that no situations involving trafficking in the sex industry have been identified

and the Committee was

satisfied, on the basis of information received from NZPC and other NGOs involved with street based sex workers, that during the period of tis investigation, there were no internationally trafficked women working as street-based sex workers in New Zealand[[5]](#footnote-5)

1. It can therefore be seen that sex work in a decriminalised environment discourages criminal acts against sex workers while protecting their rights, health, and well-being.
2. **Key concerns and recommendations**
3. ***Paragraph 2***

***… over-reliance on the criminal justice system to address trafficking in women and girls are barriers for victims’ access to justice and other services including health and psychosocial support.***

1. From the experience that NZPC has gathered in over 30 years working with sex workers and supporting their rights, NZPC is well aware that systems that treat sex work as criminal have a negative effect on the safety, health, and well-being of sex workers. On the contrary, in a decriminalised environment, police, rather than prosecute sex workers, protect them. Rather than arrest a sex worker for seeking consensual adult sexual activity, they concentrate on those who exploit or commit crimes against them. For example, police have helped street-based sex worker obtain money from those who have refused to pay them for services provided:

The client had refused to pay the woman .... Police settled the matter by driving the man home to get his wallet, taking him to an ATM and then delivering the cash to the worker. … A Counties Manukau police spokesperson said the incident was common. "It sounds remarkable but it is a routine thing. Police would help any citizen having a disagreement whether they were a sex-worker or working in a pizza shop"[[6]](#footnote-6)

1. ***Paragraph 7***

***Exploitation shall include, at a minimum, the exploitation of the prostitution of others …***

1. NZPC believes very strongly that it is important not to conflate sex work with trafficking in any way. To do so treats women as if they have no self-agency, and cannot make valid choices for themselves. It thus increases their vulnerability. NZPC therefore believes it must be made clear that “*the exploitation of the prostitution of others*” does not include sex work where the woman has entered it voluntarily, or through limited choices.
2. ***Paragraph 24***

***… render rural women especially vulnerable to exploitation, in particular in prostitution…***

1. NZPC is concerned this conflates sex work with trafficking and ignores the fact that rural women make the choice to enter sex work. Conflating sex work with trafficking increases the vulnerability of the women involved. Furthermore, in writing the Trafficking in Persons Protocol, UNODC made it clear that ‘sexual exploitation’ does not refer to all sex work:

When used in the context of the Protocol, **this term could not be applied to prostitution generally as States made clear that was not their intention[[7]](#footnote-7)**.

1. ***Paragraph 27***

***Discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to human trafficking by:[[8]](#footnote-8)***

1. ***Adopting or strengthening legislative and other measures to implement prevention techniques through educational, social or cultural measures, including in particular those targeted toward potential users of trafficked goods or services;***
2. ***Where applicable, instituting penal legislation to sanction the users of goods and services that result from trafficking in persons;***
3. ***Instituting regulations, policies and procedures for public agencies and private businesses to identify and remove goods and services that result from trafficking in persons from their supply chains;***
4. ***Investigating, prosecuting and convicting all perpetrators involved in the trafficking of persons, including those on the demand side.***
5. This clause is a barely veiled attempt to focus solely on buyers of sex work and push for the introduction of the Nordic Model that has immense adverse human rights impacts on sex workers. This position is also incongruous with the CEDAW Committee’s existing body of work on Article 6 that so far, that rightly, does not indicate an equivocal espousal of client criminalisation strategies as an effective method to ‘discourage demand’.
6. The CEDAW Concluding Observations on Article 6 have included recognising the adverse human rights impact of client criminalisation on sex workers[[9]](#footnote-9) and recommending implementation of labour frameworks to *“prevent and combat other exploitative practices assimilated to trafficking”[[10]](#footnote-10)*. In particular, the phrase “including those on the demand side” may be misinterpreted and misapplied to target sex workers.
7. ***Paragraph 58***
8. NZPC believes this paragraph should be moved to below the current paragraph 26 as it is more applicable to State obligations to address the root causes of trafficking. Clause (a) should make it clear it is protecting

*… all* *women* workers, *including women migrant workers*, irrespective of level of skill or the sector in which they work, *or whether they are in the formal or informal economy* …

1. Clause (f) should similarly include the wording

“Facilitate the self-organisation and unionisation of *women workers, including in particular women migrant workers* …

1. NZPC acknowledges and appreciate the Committee’s responsiveness to addressing the structural links between labour exploitation and trafficking. The Committee’s recommendations in this respect are progressive and far reaching and should be made applicable to women workers in general, not just women migrant workers in order for their gender transformative impact to be realised.
2. ***Paragraph 66***

***particularly as victims are often hidden in non-public areas such as private residences, isolated factories and farms, and brothels and private apartments used for commercial sexual exploitation. The victims, themselves, may lack awareness that they are subject to a criminal act, may not know where to report the crime or may be reluctant to engage with law enforcement and other state agents due to uncertainty about legal processes or for fear of being placed in detention and deported***

1. This paragraph, in the opinion of NZPC treats women as if they cannot make a choice and cannot consent. It therefore infantilises women. The GR would be better without this.
2. ***Paragraph 92***

***Ensure that anti-trafficking efforts are not used as a means to deport migrant women with an irregular immigration status.***

1. Although New Zealand decriminalised sex work in 2003, in an attempt to prevent trafficking migrant sex workers were excluded from the protections offered by the Act and will be deported if they were found to be sex working in New Zealand. As a result, migrant sex workers are loathe to report any criminal acts against them to the police due to fear of deportation, even if the criminal act is not related to their sex work. It is therefore very important that

anti-trafficking efforts are not used as a means to deport migrant women with an irregular immigration status.

1. NZPC, (2018). *Six Monthly Report to the Ministry of Health*. Wellington, NZ: NZPC. Available upon request. [↑](#footnote-ref-1)
2. NZ Government, (2003). Prostitution Reform Act 2003, (section 3). Available from <http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197821.html> [↑](#footnote-ref-2)
3. Abel, G., Fitzgerald, L., & Brunton, C., (2007). *The impact of the Prostitution Review Act on the occupational health and safety of sex workers*. Christchurch, (NZ): Christchurch School of Medicine, p117. [↑](#footnote-ref-3)
4. Prostitution Law Review Committee, (2008). *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*. Wellington: Ministry of Justice, p14. [↑](#footnote-ref-4)
5. Ibid, p167. [↑](#footnote-ref-5)
6. Wynn, K., (2014). Police help short changed sex worker, *New Zealand Herald*, 13 July 2014, <https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11292537> [↑](#footnote-ref-6)
7. Network of Sex Work Projects, (2019). *Briefing Note: Sex Work is not Sexual Exploitation*. Edinburgh (UK): NSWP, https://www.nswp.org/sites/nswp.org/files/briefing\_note\_sex\_work\_is\_not\_sexual\_exploitation\_nswp\_-\_2019\_0.pdf [↑](#footnote-ref-7)
8. Article 9(5), UN Trafficking Protocol; A/73/263 (2018), para. 18. [↑](#footnote-ref-8)
9. CEDAW/C/NOR/CO/9, para 28 [↑](#footnote-ref-9)
10. CEDAW/C/CHE/CO/4-5, para 29 [↑](#footnote-ref-10)