

CEDAW Shadow report

Full name of Organisation: New Zealand Prostitutes' Collective

State party: New Zealand

Submission available to the public: Yes

Executive Summary

In the replies of New Zealand (CEDAW/C/NZL/Q/8/Add.1), the government states our existing legal framework is comprehensive enough to provide "universal protection against all forms of discrimination". However, sex workers in New Zealand (who are predominantly cis and transgender women) still suffer a considerable amount of discrimination.

This submission elaborates on the situation of women who are sex workers in New Zealand based on evidence and knowledge gained by the New Zealand Prostitutes' Collective (NZPC) in its role as the only sex worker led national organisation in Aotearoa-New Zealand.

While this submission documents ways the situation has been advanced under the New Zealand Model of decriminalisation of sex work (and related activities) to the Committee, it also highlights issues needing to be addressed not covered by the New Zealand Government reply.

In particular, this submission seeks to show disparities that still exist between non-migrant sex workers and migrant sex workers on a temporary visa who have not been able to benefit from decriminalisation and must work in breach of the laws. Experiences such as sexual violence and exploitation are explored as they apply to these two distinct groups.

For non-migrants, the evidence is that violence and exploitation have markedly declined since decriminalisation in 2003. For migrant sex workers, while recent research did not find evidence of trafficking, it did find many migrant sex workers experience exploitation and that discriminatory migration laws create conditions rendering migrant sex workers vulnerable to trafficking.

This submission therefore recommends that:

- The New Zealand Government establish mechanisms to protect migrant sex workers from deportation as a result of reporting or seeking assistance after experiencing violence.
- Section 19 of the Prostitution Reform Act 2003, which prohibits people on temporary visas from working as sex workers, be repealed.
- Section 21(1) of the Human Rights Act 1993 should be amended to include "being, or having been, a sex worker" as a prohibited ground of discrimination.

And supports, and includes, the following recommendations from the GAATW Report¹

- An interdepartmental committee is formed to include a variety of governmental organisations and relevant non-governmental organisations such as NZPC.
- A firewall is established between immigration officials and police so migrant workers may report crimes against them without repercussions.
- NZPC strongly supports the recommendation to the New Zealand Government to actively promote decriminalisation of sex work as a best practice model.

New Zealand Prostitutes' Collective

The New Zealand Prostitutes' Collective (NZPC) is a nationwide sex worker operated organisation. We advocate for rights, 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.

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.

NZPC has thousands of contacts with sex workers from all sectors of the sex industry each year² 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.

Introduction

NZPC gathered representatives from six regions around New Zealand to discuss the issues raised by the CEDAW Report. This submission presents their concerns and addresses issues raised by the CEDAW committee.

NZPC is interested in Article 6 of the Convention on the Elimination of Discrimination Against Women (CEDAW) as it directly affects how sex workers in New Zealand can access a number of other rights guaranteed by the Convention:

- Gender equality and the elimination of discrimination (Articles 2 and 3);
- Acquiring or changing nationality (Article 9); the right to an education (Article 10) and to work (Article 11);
- Access to health care (Article 12), including family planning (Article 14);
- The right to an economic and social life (Article 13);

¹ Global Alliance Against the Trafficking of Women, (2018). *Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions*. Bangkok, TH: GAATW International Secretariat, p106. Available from: <http://www.gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf>.

² NZPC, (2018). *Six Monthly Report to the Ministry of Health*. Wellington, NZ: NZPC. Available upon request.

Access to the law (Article 15); and
Freedom of movement (Article 15(4)).

This submission addresses these CEDAW Articles through the lens of Article 6 and decriminalised sex work related activities.

Sex Work Regulation in New Zealand

The Prostitution Reform Act 2003 (PRA) decriminalised sex work in New Zealand. It safeguards the human rights of sex workers, and promotes occupational health and safety³. A review by the Prostitution Law Review Committee (PLRC) found most sex workers benefitted from the decriminalisation of sex work⁴.

UNDP, UNFPA and UNAIDS⁵ and Amnesty International⁶ have found decriminalisation is the best model to protect the rights, health, and well-being of sex workers and to enhance the prevention of HIV. The World Health Organisation⁷ noted the “Criminalization of sex work contributes to an environment in which violence against sex workers is tolerated, leaving them less likely to be protected from it”, and further stated⁸ that “all countries should work toward decriminalization of sex work and [the] elimination of the unjust application of non-criminal laws and regulations against sex workers”.

³ Prostitution Reform Act 2003, 2003, No28. Available from

<http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>

⁴ Prostitution Law Review Committee, (2008). *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*. Wellington, NZ: Ministry of Justice. Available from:

<https://web.archive.org/web/20130219032731/http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>

⁵ UNDP, UNFPA, & UNAIDS, (2012). *Sex Work and the Law in Asia and the Pacific*. Bangkok, TH: UNDP.

Available from: <http://www.undp.org/content/dam/undp/library/hiv aids/English/HIV-2012-SexWorkAndLaw.pdf>

⁶ Amnesty International, (2016). *Amnesty International Policy on State Obligations to Respect, Protect and fulfil the Human Rights of Sex Workers*, POL 30/4062/2016, 26 May 2016. Available from

<https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>

⁷ World Health Organisation, (2005). Violence against sex workers and HIV prevention. *Violence Against Women and HIV/AIDS: Critical Intersections*, Information Bulletin Series, no. 3. Available from:

<http://www.who.int/gender-equity-rights/knowledge/sexworkers.pdf?ua=1>

⁸ World Health Organisation, (2012). *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: recommendations for a public health approach*. Geneva, CH: World Health Organisation. Available from:

http://www.nswp.org/sites/nswp.org/files/WHO%20prevention%20treatment%20HIV%20STI%20sex%20workers_0.pdf

Situation of Non-Migrant Sex Workers

Article 2: Elimination of discrimination –

Combating violence towards female sex workers

At paragraph 135⁹ the New Zealand Government states that “violence has significant impacts on the physical and mental health of women” and at paragraph 194¹⁰ that it “views all forms of violence against women as a serious social problem”. Since decriminalisation there are strong indications sex workers are more able to address violence in sex work. For example, managed workers in brothels are more able to refuse clients they previously felt they had to accept before sex work was decriminalised.

Ability to refuse clients in the last 12 months for Christchurch¹¹ female 1999 and 2006 samples¹².

	Christchurch 1999 %	Christchurch 2006 %	Comparison across samples (df=2)	
			χ^2	p
Felt that they had to accept a client when they didn't want to in the last 12 months				
Street workers	53	44	1.3	0.3
Managed Workers	58	45	4.0	0.05
Private Workers	63	38	6.0	0.01
Refused to do a client within the last 12 months				
Street workers	85	82	0.3	0.6
Managed Workers	47	68	11.1	0.0009
Private Workers	77	77	0.01	0.9

Comparisons between a 1999 study¹³ and a study done after decriminalisation¹⁴, show a reduction in violence against women who are street-based sex workers across a range of measures:

⁹ Committee on the Elimination of Discrimination Against Women, (2016). *Consideration of reports submitted by States parties under article 18 of the convention. Eight periodic report of States parties duties*, CEDAW/C/NZL/8.

¹⁰ CEDAW/C/NZL/8.

¹¹ Christchurch is the main city in the South Island of New Zealand with a relatively high population of sex workers per capita.

¹² Abel, G., Fitzgerald, L., & Brunton, C., (2007). *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers*. Christchurch, NZ: Otago University, p117. Available from: https://www.researchgate.net/publication/43505445_The_impact_of_the_Prostitution_Reform_Act_on_the_health_and_safety_practices_of_sex_workers.

¹³ Plumridge, L., & Abel, G., (2001). A ‘segmented’ sex industry in New Zealand: sexual and personal safety of female sex workers, *Australia and New Zealand Journal of Public Health*, 2001, Vol 25, no 1, p82. Available from: <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1467-842X.2001.tb00555.x>

¹⁴ Abel, G., Fitzgerald, L., & Brunton, C., (2007), p61.

Adverse experiences in sex work for street based sex workers, 1999 and 2006

12 months prior to study:	1999 Christchurch Street only, n=78 %	2006 five centres Street only, n=201 %
Refusal to pay (after service given)	54	31.5
Had money stolen by client	42	24.4
Been physically assaulted	41	13.4
Threatened with physical violence	65	39.5
Held somewhere against their will	23	10.2
Raped	27	5.3

Despite the limitations of not having the exact same reference base, it can be seen violence against women who are street based sex workers appears to have decreased significantly after decriminalisation. Similar reductions in adverse experiences occurred for indoor workers.

Amnesty International¹⁵ reported “violence against sex workers is further compounded by criminal and other punitive laws and policies against sex work which inhibit sex workers’ ability to seek state protection from violence and and/or compel sex workers to operate in covert ways that compromise their safety”.

Under decriminalisation, non-migrant sex workers in New Zealand are able to access the justice system. In *DLM v Montgomery*, a woman sex worker at a brothel in Wellington complained to the Human Rights Review Tribunal (HRRT) about sexual harassment by the operator of the brothel. In 2014, the HRRT upheld her complaint and ordered the operator to pay her NZ\$25,000 and to undertake sexual harassment training¹⁶.

Police relationships with sex workers

Relationships with the police have shifted from a position of being combative to more collaborative since decriminalisation. Recently NZPC has formed a working group with the police aimed at reporting and combating sexual violence.¹⁷

It should be noted that UNDP et al¹⁸ have found evidence suggesting decriminalisation combats police corruption and improves health promotion.

¹⁵ Amnesty International, (2016), p12.

¹⁶ *DLM v Montgomery* [2014] NZ Human Rights Review Tribunal 6 (12 February 2014). Available from <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZHRRT/2014/6.html>

¹⁷ Williams, K., (2018). Sex worker assault complaints 'will be taken seriously, Stuff.co.nz. 27 January 2018, available from <https://www.stuff.co.nz/national/crime/100888983/sex-worker-assault-complaints-will-be-taken-seriously>.

¹⁸ UNDP, UNFPA, & UNAIDS, (2012), pp197-198,

Discrimination and stigma

Whilst NZPC believes discrimination and stigma has reduced significantly towards sex workers, it is important to note there are areas where it still exists and needs addressing. For example, sex workers report to NZPC they have experienced discrimination based upon their occupation from prospective employers in the non-sex industry sector, and when seeking accommodation either to live in or work from. Apartment management bodies' rules may impact those sex workers who wish to work from apartments, while allowing other tenants to work there. Sex workers have also reported to NZPC that some NZ banks limit what types of business services they offer once they find out an individual is a sex worker.

Negative references to sex workers are pervasive throughout society, in media, pop culture and casual conversations. As well as posing a risk to psychological and emotional well-being, stigma poses a harm to physical (and mental) well-being – strong correlations exist between stigma and access to health care¹⁹ and stigma and risk of violence²⁰. Research has identified links between stigma and exclusion, inequality, exploitation and oppression.²¹

Article 6: the suppression of all forms of traffic in women and the exploitation of prostitution of women

Decriminalisation affects trafficking

There is a strong indication that "migrant sex workers have entered New Zealand of their own volition"²². Similarly, research currently underway or recently completed indicates there are few indications of trafficking within migrant sex workers^{23,24}.

Combating exploitation

Exploitation, where it exists, is most commonly reported to NZPC as being related to disputes over money owed or taken from sex workers by operators of brothels. Sex workers are able to seek redress through an accessible Disputes Tribunal in the court system, which follows principles of natural justice,²⁵ as well as a range of other legal fora to resolve work related disputes²⁶.

¹⁹ Lazarus, L., Deering, K.N., Nabess, R. et al (2012) Occupational stigma as a primary barrier to health care for street-based sex workers in Canada *Culture, Health and Sexuality* 14 139-150.

²⁰ Scambler, G. (2007) Sex Work stigma: opportunist migrants in London *Sociology* 41 1079-1096, available from <http://journals.sagepub.com/doi/10.1177/0038038507082316>; Harris, M., Nilan, P. and Kirby, E. (2011) Risk and risk management for Australian sex workers *Qualitative Health Research* 21(3) 386-398, available from <https://www.ncbi.nlm.nih.gov/pubmed/20952601>.

²¹ Scambler, (2007), p1087.

²² Roguski, (2013), p56.

²³ Bennachie, C., (2018). *Preliminary report for New Zealand: SexHum Project*, May 2018, forthcoming.

²⁴ Ting, D., (forthcoming). Untitled MA thesis on Asian migrants in the sex industry in New Zealand.

²⁵ More formal legal redress options are also available through the courts system.

NZPC is not aware of disputes being resolved formally prior to decriminalisation, as most direct sex work related activities were illegal. Research indicates “the fact that the activities associated with sex work were no longer criminalised and that participants were aware they now had legal rights, made them more empowered”²⁷.

Ability to leave sex work

In a criminalised situation, often those seeking to leave sex work may have obtained a police record or a conviction for soliciting. This makes it very difficult for them to leave sex work, as prospective employers doing a background check would find out about the conviction.

In New Zealand, the decriminalisation of sex work itself has had a substantial impact in avoiding the harm and stigma caused by an official record related to sex work. The names of sex workers are no longer recorded on an official register held by a government authority, such as the police, immigration or a licensing authority.

There is, however, a certification process for a person who is an operator of a brothel. This information is not available to the public and only a small number of government officials can access it, which limits stigma. NZPC continues to strongly oppose the registration of sex workers names.

While the New Zealand Government “does not fund exit programmes that target women in prostitution”(para 87)²⁸, New Zealand law requires Work and Income New Zealand, the agency providing welfare assistance to job seekers, unemployed, and sick people²⁹, to provide assistance to sex workers who wish to leave sex work without an extra stand down period³⁰. Normally if people leave their employment voluntarily, they are denied government assistance for up to 13 weeks. This may go some way to addressing the Committee’s concerns at paragraph 10(b)³¹. While the government funding NZPC receives is for sexual and reproductive health, and NZPC supports those who need assistance to find alternative work, NZPC is not funded by government for this. NZPC would support the Committee in recommending the government fund comprehensive programming to promote the health, safety, and rights of women sex workers, whether they continue to engage in sex work or wish to seek other forms of work.

NZPC has concerns that if funding is provided by government specifically for ‘exit programmes that target women in prostitution’, this programming may be coercive, fail to meet the needs of women engaging in or transitioning out of sex work, and negatively affect non-judgemental, comprehensive

²⁶ Lewis, O., (2018). 'Stripping was all I had': Former dancer exposes Calendar Girls' rules and fines, *Stuff.co.nz*, 17 May 2018. Available from <https://www.stuff.co.nz/the-press/news/103840709/stripping-was-all-i-had-former-dancer-exposes-calendar-girls-rules-and-fines>.

²⁷ Abel, G., Fitzgerald, L., & Brunton, C., (2007), p118.

²⁸ CEDAW/C/NZL/Q/8/Add.1

²⁹ See <https://www.workandincome.govt.nz/>

³⁰ Section 18, PRA.

³¹ CEDAW/C/NZL/Q/8.

programming and reductions in funding of other services that support the health and safety of this community.

Article 12: Access to health

Sexual and reproductive health care

Decriminalisation allows female sex workers to take better care of their sexual and reproductive health. Shannon et al³² found between 33-46% of new HIV infections among female sex workers could be averted over the following decade if sex work were to be decriminalised.

In New Zealand, since decriminalisation in 2003, sex workers have felt more able to disclose their occupation to their general practitioner (GP). In 1999³³, 27.3% of female sex workers surveyed in Christchurch disclosed their sex work to their GP when attending for sexual health checks. This compares to the most recent surveys by NZPC for their six-monthly report to the Ministry of Health³⁴, which shows the majority of sex workers surveyed who went to their GP for sexual health checks disclosed their occupation to their GP. It is important sex workers feel able to disclose their occupation when seeking health care to ensure adequate information and treatment is provided to them.

At paragraph 86³⁵, the New Zealand Government states “Medical Officers of Health are empowered as inspectors under the PRA to conduct inspections relating to compliance with health and safety regulations”. NZPC has worked with Medical Officers of Health and Labour Inspectors to ensure access to brothels and to advise them of issues needing addressing.

Article 15(1), (2) and (3): Equality before the law and Identical legal capacity –

Integrating sex workers into society

As sex work is decriminalised in New Zealand, sex workers are protected under employment laws and standards, such as occupational safety and health legislation, and granted sex workers the same rights as those afforded to everyone else.

³² Shannon, K., Strathdee, S.A., Goldenberg, S.M., Duff, P., Mwangi, P., Rusakova, M., Reza-Paul, S., Lau, J., Deering, K., Pickles, M.R., Boily, M-C., (2015). Global epidemiology of HIV among female sex workers: influence of structural determinants, *Lancet*, vol 385, p55. Available from [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(14\)60931-4.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(14)60931-4.pdf)

³³ Plumridge, L., & Abel, G., (2000). Services and information utilised by female sex workers for sexual and physical safety, *New Zealand medical Journal*, 113(1117), pp370-372. Abstract available from <https://www.ncbi.nlm.nih.gov/pubmed/11050900>

³⁴ NZPC, (2018), Available upon request.

³⁵ CEDAW/C/NZL/Q/8/Add.1

Sex workers in New Zealand are able to operate from the location of their choice (such as street-based, home-based and brothel-based sex work).

The Situation of Migrant Female Sex workers in New Zealand

At paragraphs 84 and 85³⁶ of their reply, the New Zealand Government outlines the requirements of section 19 PRA, that no person coming to New Zealand with the intention of being a sex worker may enter the country, and that those on a temporary visa may not work as a sex worker and may be deported. It also states that Immigration Border Operations have guidelines to identify and prevent people being trafficked.

NZPC is concerned actions taken by the New Zealand Government in respect to migrant sex workers are at odds with their claims regarding the “advancement of the rights of migrant women” and the “preventing the exploitation of migrant women” (paragraphs 28-31)³⁷.

Article 6: Suppression of trafficking and the exploitation of prostitution of women –

Finding the current law prohibiting migrants from working as sex workers actually facilitated the conditions required for trafficking³⁸, GAATW made recommendations³⁹ to the New Zealand Government which NZPC supports. The report also notes in “the anti-trafficking discourse sex work exploitation is portrayed in extreme terms, eclipsing the more mundane forms of exploitation that sex workers experience. This, it was argued, means that actual instances of exploitation are not addressed because such situations are constructed as ‘boring’ and trivial”⁴⁰.

Articles 9: Changing nationality; Article 11: Right to work; Article 13: Right to an economic and social life; and Article 15(4): freedom of movement –

Deportation Liability Notices.

Despite the gains for most sex workers, there are still issues remaining for those on a temporary visa, as the PRA states they may not work as a sex worker. This means that any migrant on a temporary visa who is a sex worker is working illegally and can face deportation. This includes people who have worked as sex workers in other countries. People who are able to work in any other industry, such as students, those on working holiday visas, etc., are unable to work as a sex worker if they choose to do so, restricting both their right to choose their work, and their right to an economic and social life. Furthermore, these restrictions also affect the ability of a person to enter

³⁶ CEDAW/C/NZL/Q/8/Add.1

³⁷ CEDAW/C/NZL/8

³⁸ GAATW, (2018), p89.

³⁹ GAATW, (2018), p106.

⁴⁰ GAATW, (2018), p84.

New Zealand and eventually apply for Permanent Residency or Citizenship, restricting their ability to change their nationality.

Migrant sex workers are at risk of being served Deportation Liability Notices (DLNs), indicating they will be deported for breaching their visa conditions by providing commercial sexual services. NZPC is concerned this will cause harm as it may be permanently attached to their immigration record. Furthermore, these women may be required to declare this to other border control organisations in countries they wish to visit. The stigma associated with being a sex worker, and having 'providing commercial sexual services' on the deportation notice may unnecessarily affect their ability to enter other countries or to re-enter New Zealand after a specific time has elapsed. This may contravene Article 15(4) of the Convention which protects the freedom of movement.

Articles 10: Right to an education; and Article 15(1)-(3) Equality before the law –

NZPC has encountered several migrant sex workers who have been victims of sexual violence and exploitation who have not spoken out or reported the incidents to the police for fear of the police notifying Immigration New Zealand (INZ) of their breach of their visa conditions. NZPC has been able to support some workers to approach the police by arranging an understanding that police would not information share with INZ.

Bennachie⁴¹, interviewing 23 migrant sex workers in depth, found interviewees would not report violence or a crime of any sort against them out of fear that the police would inform INZ of their status and INZ would then issue DLNs to them for being in breach of their visa conditions. Of those interviewed, three had received a DLN, two of whom were students weeks from their final exams. Both students were therefore unable to complete their papers after at least three years of study.

Article 12: Access to health care –

Some migrant sex workers are afraid to tell their doctor they are working as sex workers, as this may result in INZ being notified and a DLN served. This could have negative consequences upon their health as issues affecting their treatment may be unknown. One migrant sex worker was so afraid a doctor may find out she was working as a sex worker she refused to seek medical treatment until her condition was very serious⁴².

Migrant sex workers are often cut off from support, and it is front-line service organisations, such as NZPC, that engage with them. Often NZPC is the only organisation they will trust, demonstrating the value of peer-led organisations in this context.

⁴¹ Bennachie, C., (2018), forthcoming.

⁴² Bennachie, C., (2018), forthcoming.

RECOMMENDATIONS

In view of the above, NZPC recommends:

- The New Zealand Government establish mechanisms to protect migrant sex workers from deportation as a result of reporting or seeking assistance after experiencing violence.
- Section 19 of the Prostitution Reform Act 2003, which prohibits people on temporary visas from working as sex workers, be repealed.
- Section 21(1) of the Human Rights Act 1993 should be amended to include "being, or having been, a sex worker" as a prohibited ground of discrimination.
- An interdepartmental committee is formed to include a variety of governmental organisations and relevant non-governmental organisations such as NZPC.
- A firewall is established between immigration officials and police so migrant workers may report crimes against them without repercussions.
- The New Zealand Government actively promotes decriminalisation of sex work as a best practice model from which other countries can learn.