

NCIWR Submission on the Draft Plan of Action Against Forced Labour, People Trafficking, and Slavery

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Introduction

The National Collective of Independent Women's Refuges (NCIWR) is a non-governmental organisation (NGO) delivering services to women and children affected by domestic violence in New Zealand. NCIWR receives over 50,000 crisis calls per year (nearly 140 per day), and provides support, advocacy, legal, and health services to over 26,000 clients annually. Forty-seven percent of these are women, and 53 percent are children.

We would like to thank MBIE for the opportunity to submit on this Draft Plan of Action, the content of which has implications for many of our clients. We strongly support the Government's focus on addressing trafficking and exploitation; however, we have identified several aspects of this Draft that merit amendment or clarification. We set out these issues thematically below. Please note we would welcome the opportunity to discuss these issues further.

Key feedback

We recommend that the Draft Plan of Action (Draft Plan) be entirely reworked to include:

- The establishment of shared definitional clarity and a cohesive understanding of the nature of trafficking, as it relates to support and intervention;
- Cross-agency strategies to counter trafficking consistent with the updated definition of trafficking in the Crimes Amendment Act 2015 (s5), rather than narrow and outdated conceptions of trafficking currently in the Draft Plan;
- An outline of New Zealand's emerging context that demonstrates an understanding of the current evidence-base and conceptual framework;
- A gendered analysis of trafficking and exploitation, given the gendered nature of these issues and the Draft Plan's focus on forms of exploitation that impact men at the expense of the various forms of trafficking that impact women;

- A clarification of which victims and which forms of victimisation the State regards as important (and the justification for this) to avoid the Government reproducing the marginalisation they are supposed to be addressing;
- A more comprehensive discussion of the vulnerability factors (age and gender) referenced in the introduction so that the body of the Draft Plan reflects its stated intention;
- A focus on vulnerability of women and girls, including as a result of gender-based violence;
- An outline of specific obligations under each International Convention, paying particular attention to the visibility of different forms of trafficking and exploitation within each;
- An explicit plan for Police to be equipped with the knowledge, training, and policy to build the capacity to respond to all victims and prosecute under appropriate legislation; and
- A strategy to collaborate with, and use expert advice from NGOs.

The Draft Plan's lack of conceptual clarity and focus

This Draft Plan of Action (the Draft Plan) is the first since New Zealand's 2009 Plan of Action. The last decade has seen significant shifts in global comprehension of different forms of trafficking and the factors that shape vulnerability to trafficking. New Zealand's legislative context has been amended in accordance with these shifts, however emerging evidence base and conceptual development has not been reflected in this updated Draft Plan. The updated definition¹ of trafficking which includes its domestic forms does not appear to have prompted a corresponding shift in strategies to address trafficking. Domestic, and in particular, sexual exploitation and trafficking barely feature in this Draft at all. The Draft selectively focuses on forms of exploitation that impact men, while minimizing or ignoring the various equally unlawful forms of trafficking that impact women. These forms include exploitation of women through forced prostitution and forced labour/slavery-like practices that are perpetrated as part of intimate partner violence, and the exploitation of children through prostitution. Trafficking imperatives cannot be progressed without the establishment of a shared definitional clarity and a cohesive understanding of the nature of trafficking, and consequent support and intervention needs across and between agencies.

Despite plentiful evidence underlining the presence and impacts of both trafficking and intimate partner violence in New Zealand, these have been left out of the focus of the Draft Plan. They have been positioned as subordinate and tangential to the primary focus on labour exploitation within recognised industries, which invariably comprise a predominately male workforce. To avoid state actions reproducing the marginalisation they are supposed to be addressing in order to combat people trafficking, it is imperative that an articulation of which victims and which forms of victimisation the state regards as important (and the justification for this) is included in the next iteration of the Draft.

¹ S.5 of the Crimes Amendment Act 2015 inserted the following definition: (b) the reception, recruitment, transport, transfer, concealment, or harbouring of a person in New Zealand or any other State—(i) for the purpose of exploiting or facilitating the exploitation of the person; or (ii) knowing that the reception, recruitment, transport, transfer, concealment, or harbouring of the person involves 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both.

The Draft Plan's omission of women and children

The Draft Plan references vulnerability factors in the introduction; the first factors listed are poverty, gender, and age. Paradoxically, neither gender nor age are highlighted throughout the Draft or even considered within the Draft's conceptualisation of anti-trafficking imperatives which is highly problematic. Types of trafficking that are highly gendered or predicated on age-related vulnerability (such as forced prostitution or intimate partner violence-related labour exploitation) are conspicuously absent, representing a gender-biased privileging of certain types of trafficking over others.

Throughout the entire Draft Plan, types of trafficking that chiefly involve a.) migrants, and b.) men constitute the main focus – almost all of the recommendations and state sector and high-level initiatives referred to are implicitly targeted at exploitation of migrant men (e.g. within the commercial fishing industry or other comparable labour industries). It is therefore missing any inclusion of women as vital economic actors who merit parallel interventions to those mapped out for trafficked men. Especially given that men are more likely to be exploited through work that is formalised or contracted, labour-oriented, and reportable. In contrast, trafficking that principally impacts women is more likely to be street-based or concealed by virtue of an illicit economy, based on sexual or domestic services, and devoid of access to usual disclosure pathways.

The rights of children to safety and protection are equally ignored. This represents an immense step backward for children's rights. Government has previously acknowledged child-specific forms of exploitation and targeted prevention strategies accordingly. This targeted focus is not discernible throughout the Draft. Paradoxically, there is a substantive body of evidence in New Zealand underlining the prevalence of trafficking of women and girls, and the law enforcement/social service gaps that perpetuate this. This body of evidence exceeds that which supports the superordinate construction of trafficking as it is presented in the Draft, which situates trafficking as principally enacted within traditionally masculine and precarious but employment-based labour industries²³. Moreover, the disproportionate victimisation of women and girls through trafficking is also referenced in the initial sections of the Draft, contrasting starkly with the gendered bias, which privileges men, throughout. We recommend amending the Draft so that the different forms of trafficking that relate to each section are made explicit and the corresponding initiatives to address them are made fit for purpose. The rationale for this is further underlined in the remainder of this submission.

² Thorburn, N., & Beddoe, E. (2020). Capital Accrual and Constraints: Domestic Sex Trafficking Victims' Negotiation of Vicarious and Feminized Capital. *Affilia: Journal of Women and Social Work*, 1-8. DOI: 10.1177/0886109920913337
journals.sagepub.com/home/a

³ Thorburn, N., & de Haan, I. (2016). Connecting through Chaos: Escape Behaviour among Sex-Working Adolescents in Aotearoa New Zealand. *Kotuitui: New Zealand Journal of Social Sciences Online*. DOI: 10.1080/1177083X.2016.1188133

Associations between partner violence and trafficking

Women's Refuge Context

Women's Refuge, along with other organisations set up to support women and girls subjected to gender-based violence, commonly encounter women (particularly young women) who have been forced by a partner to sell sex, and receive little or no profit themselves. These experiences are characterised by the abusive partner's use of myriad coercive control tactics that collectively act to constrain their autonomy and ensure their compliance. For these victims, these abuse tactics preclude opportunities for them access support and take steps to extricate themselves from the abuser's pattern of violence. This link highlights that trafficking and domestic violence are inextricable from one another, as gender-based violence can act both as a precipitant to and an instrument of trafficking.

Women's Refuge safety assessment tool

In addition to anecdotes from frontline practitioners, Women's Refuge's safety assessment partially evidences the scale of these experiences. Over the period from 1 July 2019 to 30 June 2020, 3.7 percent (127 clients) of Women's Refuge's clients disclosed being forced to sell sex against their will by a partner in order for the partner to buy drugs or other substances. This is likely to be a significant under-representation of actual prevalence of forced prostitution amongst our clients for several reasons. First, more than 20 percent of clients are either not asked or elect not to answer this question. Second, this question pertains only to abusers' substance-related motivations rather than other commercial interests. Finally, being forced to prostitute is be an experience many women associate with shame. Therefore, although our safety assessment does not capture the total prevalence of trafficking our clients experience, it suggests that sexual exploitation is pervasive, even if inconsistently disclosed.

Sexual exploitation in substance use coercion and economic abuse

Three recent exercises further highlighted the role of sexual exploitation as part of a broader pattern of abusers' behaviour toward their women partners. First, in an initial scoping exercise as part of research into substance use coercion and intimate partner violence earlier this year, Women's Refuge facilitated a seminar with safety programme providers. Several of the 14 participating providers had recently worked with clients whose partners had forced them to prostitute. Second, we conducted research into family violence victims' experiences of economic abuse in 2017. Many of our participants disclosed being forced to sell sex due to the threat of or actual violence, although we did not directly ask about forced participation in sex work. Third, in 2019-20, Women's Refuge presented to family violence and sexual violence service providers around the country. During these presentations, many attendees identified forced prostitution as a common experience amongst their clients, especially those working with victims of sexual violence. Echoing the findings of research into practitioner preparedness to recognise and respond to sex trafficking⁴, these attendees did not initially conceptualise this as trafficking. Instead they adhered to the pervasive

⁴ Thorburn, N. (2017). Practitioner knowledge and responsiveness to victims of sex trafficking in Aotearoa/New Zealand. *Women's Studies Journal*, 31(2), 77-96

stereotype of trafficking as invariably involving certain markers such as crossing borders, physical ill-health, and the holding hostage of victims.

Artificial separation between family violence and trafficking

These examples of women's trafficking experiences that Women's Refuge and similar organisations encounter highlight the artificial separation between experiences that are considered 'family violence' and experiences that are considered 'trafficking'. Gender-based violence can act both as a precipitant to and an instrument of trafficking. However, without Government commitment to applying a trafficking analysis to these experiences of violence, and especially to experiences occurring within homes or similarly covert locations, trafficking as a component of partner abuse remains unseen. Given the historical battle to achieve visibility and acknowledgement of gender-based violence more generally, plans to combat trafficking must not replicate tendencies to dismiss or marginalise women's stories of violence. Adherence to outdated stereotypes about trafficking signals how little progress has been made toward updating New Zealand's national understanding of trafficking and exploitation in this regard. It also suggests that sex trafficking and sexual exploitation continue to be positioned as subordinate or secondary priorities compared to other forms of trafficking.

There is no indication of any commitment by Government to purposefully address this. Without this commitment, the Draft condemns women and girls who are victims of gendered exploitation (such as sex trafficking) at the hands of intimate partners or family members to continue to suffer these experiences. We therefore recommend that the Draft introduces an equivalent focus on vulnerability of women and girls, including as a result of gender-based violence. Additionally, we recommend the integration of an equivalent focus on forms of trafficking and exploitation that primarily impact women and girls, such as forced prostitution, underage prostitution, and intimate partner violence-related forced labour.

Obligations under United Nations commitments

Inconsistency and obligations

The absence of definitional and conceptual clarity of trafficking in the Draft has dual implications; the inability of Government to fulfil its obligations to relevant U.N conventions and the preclusion of an equivalent investment of Government to identify, apply and prosecute form of harm within the trafficking legislation.⁵ For example, although forcing a minor to sell sex so that the third party may profit is criminalised through S.98D of the Crimes Act (New Zealand's trafficking provision), sexual exploitation is rarely prosecuted using this provision. This contravenes the ILO Convention 182's the use of young people in prostitution as one of the "worst forms of child labour" and demands that it be proactively be addressed by member States.

⁵ This law reads: For the purposes of this section, exploit, in relation to a person, means to cause, or to have caused, that person, by an act of deception or coercion, to be involved in - (a) prostitution or other sexual services; (b) slavery, practices similar to slavery, servitude, forced labour, or other forced services; (c) the removal of organs.

UNCROC's mandate to ensure provisions addressing child prostitution

Similarly, UNCROC's Article 2 defines child prostitution as "the use of a child in sexual activities for remuneration or any other form of consideration". It mandates that State parties ensure that this is both fully covered under the law and that each State Party "shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of Article 2." While, as stated previously, the use of children aged under 18 *is* effectively criminalised through Crimes Act offences, this too has yet to lead to any clear commitment to penalise perpetrators. Instead, law enforcement intervention in the prostitution of children and young people has focused only on young people themselves. At best, this has generally involved returning them home. On the rare occasions that Police have investigated third-party actors' involvement in the sexual exploitation of young people, they have almost always failed to identify this as trafficking and have instead classified it using offences established by the Prostitution Reform Act 2003, rather than S.98D of the Crimes Act. This arguably does not fulfil New Zealand's obligations under Article 2.

CEDAW's recommendation on prosecution, case identification, and data collection

Inadequacies in prosecution, and case identification and data-collection have repeatedly been identified by CEDAW as a barrier to Government's fulfilment of its obligations. The Committee recommending to New Zealand in its concluding observations "identify, prosecute, and punish traffickers... of women and girls" and "Ensure systematic monitoring and periodic evaluation, including the collection and analysis of data on trafficking and exploitation of women". This does not currently feature in the Draft Plan.

Inappropriate use of the Prostitution Reform Act 2003

In the last three years, there have been numerous and widely publicised examples of parents, caregivers, or much older 'boyfriends' facilitating the selling or hiring of a minor for sexual services for profit. Coercion enacted here uses the power difference inherent in their age difference or caregiver status. None of these were labelled as trafficking or prosecuted using the trafficking legislation. The absence of objectives to encourage law enforcement's utilisation of trafficking offences, in order to hold traffickers accountable, implicitly perpetuates this persistent minimisation of cases of domestic sexual exploitation. This inappropriate use of legal instruments downgrades the perceived seriousness of the crime – the Prostitution Reform Act (2003) (PRA) offence that has been inappropriately utilised, for instance, is aimed at those 'assisting' or 'encouraging' someone aged under 18 into sex work, and thus does not capture the victim's experience of force or coercion⁶.

Similarly, although family violence victims' subjection to forced prostitution using abuse tactics such as threats of/actual violence, intentional reputation damage, or supply/withholding the supply of substances is expressly prohibited under S.16 of the PRA, these experiences are not typically asked about by police when dealing with family violence. Even if disclosed by the victim or other agencies, they tend not to be regarded

⁶ Thorburn, N. (2018). Sexual Exploitation in Adolescent Dating Relationships: Recruitment and Entrapment of Victims. Sexual Abuse in Australia and New Zealand. Retrieved from <https://www.anzatsa.org/saanz-journal/browse-saanz-articles/>

as worthy of investigation. The forced prostitution of adult women is therefore systematically marginalised as a form of trafficking, with far-reaching implications for women's prospects of accessing safety and justice even if they disclose or report these experiences.

Palermo Protocol and Police (Mis)Identification of Trafficking

Finally, the Palermo Protocol, supplementing the Convention Against Transnational Organised Crime, stated in Article 2 its aim to combat trafficking of women and children and to protect and assist victims. In order to access the support that is offered to trafficking victims as per the 2009 Plan of Action, victims must be certified⁷. When Police inappropriately classify crimes that amount to trafficking as lesser offences, they render these victims ineligible for support. The statement that certain essential support is offered to victims is then usually false when those victims are women or children and are encountering inadequately trained staff. Relatedly, establishing targeted prevention or investigation efforts only within legitimised and labour-based industries disregards forms of trafficking that are perpetrated within opportunistic or illicit street economies⁸. Yet again, this privileges forms of trafficking impacting predominately men over those impacting women and children. In sum, if there is not conceptual clarity regarding what trafficking is and who it impacts, or if entire groups of victims (namely, women and children) are excluded, the Draft cannot aspire to practicably fulfil New Zealand's obligations as a signatory to these conventions.

Next steps

We therefore recommend that the next iteration of the Draft sets out their specific obligations under each Convention, paying particular attention to the visibility of different forms of trafficking and exploitation within each Convention and shaping actionable items accordingly. We further recommend amending the Draft to make explicit the expectation that police will be equipped with the knowledge, training, and policy to build the capacity to respond to victims. The Draft Plan must at a minimum, include the following to ensure that cases with commercial components are being captured:

- Challenging misconceptions of trafficking;
- Articulating the role of gender in vulnerability to and victimisation through trafficking; and
- Improving standards of victim identification, recording, and case tracking/review.

NGO consultation and collaboration

At present, very little reference is made to the involvement of non-state actors (such as non-governmental organisations) to the implementation of the Plan of Action and the monitoring of its effectiveness. Since much of the expertise in the various manifestations of trafficking sits outside of Government, it is imperative to include the expert NGO voice in the next iteration of the Draft in order to make the aims of the Draft Plan viable. It is essential that the involvement of NGOs is targeted; there is particular merit in involving

⁷ Certified victims of trafficking have the right to access resources such as accommodation, counselling, and compensation. It appears these resources were designed with only international trafficking in mind.

⁸ <https://www.nzherald.co.nz/nz/underage-sex-trade-uncovered/CKAALZ7BV3VIW5IG2MPIY5XP4A/>

service providers that work with forms of vulnerability closely correlated with trafficking victimisation such as poverty and gender-based violence⁹¹⁰.

Sexual exploitation by an abusive partner for profit is one such example: while unlikely to be recorded by police, this is a frequently encountered component of intimate partner violence. The specialist family violence sector is well-equipped to apply an expert lens to these experiences and articulate the factors that complicate or deter victims' disclosures, and to identify essential features of support provisions for victims. This may partially ameliorate current shortfalls with the conceptualisation of trafficking, the application of legislation, and statutory agencies' classification of trafficking. We recommend that Government seek and utilise NGO input both for the development of the Draft Plan and in its implementation, in order to strengthen both its breadth and its effectiveness.

⁹ Reid, J. A. (2011). An exploratory model of girls' vulnerability to commercial sexual exploitation in prostitution. *Child Maltreatment*, 16(2), 146–157. doi:10.1177/1077559511404700

¹⁰ Brayley, H., Cockbain, E., & Laycock, G. (2011). The value of crime scripting: Deconstructing internal child sex trafficking. *Policing*, 5, 132-143. doi:10.1093/police/par024