

Human Trafficking and National Human Rights Institutions: Cooperating to End Impunity for Traffickers and to Secure Justice for Trafficked People

*The New Zealand Human Rights Commission:
Past Success and Current Challenges*

“Human trafficking is a microcosm of many of the complex social issues facing global society, including gender disparities, migrants’ rights, and cultural imperialism”

Source: Sigma Huda, the UN Special Rapporteur on Trafficking in Persons

1. The New Zealand legislative background:

New Zealand has a good record of ratifying international instruments. It also has a policy of ensuring its domestic legislation is compatible with an international treaty before ratifying it¹. Therefore, when in July 2002, the Government ratified the Protocol to the UN Convention Against Transnational Organised Crime on the Trafficking of Women and Children and the Smuggling of Migrants, it was in the belief that the domestic legislative framework was adequate to support ratification.

Legislation had been enacted to ensure that people smuggling and trafficking crimes attracted stiff penalties, trafficking was criminalised and penalties of up to 20 years in prison and fines of up to \$NZ500000 could be levied. There are also laws against child sexual exploitation and slavery which carry penalties of up to 14 years in prison.

However, recent socially progressive legislation such as the Prostitution Reform Act 2003 which decriminalised prostitution, may have inadvertently had the effect of eliminating a mechanism that had previously allowed the police to monitor people trafficking and the exploitation of women. Therefore, although no new cases of trafficked persons have been brought to the attention of the authorities since 2001, it may be that this is not a true reflection of the situation.



¹ NZ has also ratified CECSR; CCPR + OP; CEDAW +OP; CRC ILO 182; plus the Slavery Conventions

2. The New Zealand position generally:

In March 2003 the New Zealand Government addressed the UN Commission on the Status of Women on its responsibilities to eliminate violence against women and girls. The government indicated its commitment to combating people smuggling and trafficking, with a particular focus on the Asia-Pacific region but at present there is no national plan or coordinated government response to deal with trafficking.

In the absence of a national plan or government response to deal with trafficking the Human Rights Commission (“the Commission”) is heavily reliant upon information sources such as the police.

The New Zealand Police

“[There is] a growing emphasis on improved border control, and enhanced law enforcement. From the perspective of powerful countries of destination, trafficking and migrant smuggling are, first and foremost, problems of migration, of public order, and of transnational organised crime.

Source: The APF Advisory Council of Jurists (2002) background paper, *Consideration of the Issue of Trafficking*’

Auckland – as the main New Zealand destination for legal and illegal migrants – is a focus for border control and law enforcement.

Auckland is one of the fastest growing cities in Australasia, fuelled in part by internal migration but largely by migration from source countries in Asia: the Asian population of Auckland is now around 13% of the total population.

Police resources are limited, including their capacity to engage with the proliferation of non-English language media. Resource constraints are also a factor in determining the extent of police liaison with other regional law enforcement agencies. Local population ethnic diversity is still not reflected in the local police population. This may have implications for access to, and engagement with, potential victims of trafficking.

Police responses must necessarily take into account the changing patterns of inward migration and the immigration policies which strongly influence these changes. For instance, police report a trend in recent years away from female Thai sex workers to workers from the PRC – a trend which coincides with a more general increase in Chinese migration to New Zealand generally coinciding with a tightening of visa requirements for Thais.

New migration trends can lead to equivalent changes in forms of domestic exploitation. For instance, New Zealand police suspect that English-language schools (a major destination for both migrants and for visitors on temporary student visas) may be settings for inter-student financial extortion and, possibly, sexual exploitation.

Increasing rates of PRC migration have also resulted in new models of prostitution which police believe – at least initially – to replicate PRC and Hong Kong models: for instance, hairdressing salons as a ‘front’ for rear-of-premises prostitution) to, now, more overt and organised premises. Police suspect – but often lack the resources to categorically establish – that the coercion of female workers is a significant issue.

In 2003, Police reported to the Commission that they were having reasonably frequent contact with sweatshops and labour exploitation issues, particularly with PRC Chinese exploiting other PRC Chinese who may be entering the country on student visas, for instance. Reports of passport and ticket confiscation by operators. Often, these people are housed communally, and moved around the Auckland area every 2 to 3 months. Typically, these activities involve gender-based exploitation (males, for instance, into plastering; females into the food or sex industries). More recently, however, Police (November 2005), have reported that sweatshops are 'very uncommon' and, in any event, would be monitored by the NZ Department of Labour rather than Police.

The latest trend identified by immigration has been the arrival in New Zealand of increasing numbers of female sex workers from both Brazil and the Czech Republic. Citizens from both countries have recently gained visa free entry to New Zealand.

The Prostitution Reform Act:

The PR Act which decriminalised prostitution was passed in June 2003. The Commission supported the decriminalisation of prostitution as it created an environment that is both less hostile and more transparent to those victimised by the trafficking industry. In particular, the Commission took into account Article 6 of the Convention for the Elimination of All Forms of Discrimination Against Women, which requires states parties to take efforts to reduce the exploitation of women in prostitution, but which does not prohibit prostitution per se.

The new law has specific provisions designed to prevent trafficking. The Act prohibits the granting of permits under the Immigration Act for persons providing commercial sex, and prohibits holders of temporary permits from providing commercial sex.

Benchmarking reports have been published earlier this year by both the police and the Prostitutes' Collective on the nature and extent of the sex industry in New Zealand describing the industry prior to law reform. These reports will be used as a measurement to determine the effects of decriminalisation. A Prostitution Law Review Committee has been established and will review the operation of the Act within 5 years, and consider (among other matters) whether any amendments to the law are desirable to limit or control the location and conduct of prostitution. The Commission has been active in supporting nominees to this Committee who have knowledge of and expertise in human rights.

However, since the passage of the Prostitution Reform Act 2003, police report that one of the primary intelligence-gathering mechanisms has been removed. Legal/licensed premises/ brothels are now largely inaccessible compared to the pre-reform situation when operators of "massage parlours" were obliged to keep – and make available for police inspection – a comprehensive register of employees.

Auckland police report that there is no dedicated current work programme relating to trafficking issues and that the current focus of the Asian Crime Unit is drug trafficking. This situation is exacerbated – from the perspective of police – by the growing "invisibility" within the sex industry of potential trafficking victims as a result of monitoring constraints created by the passage of the Prostitution Reform Act.

3. The work of the New Zealand Human Rights Commission:

The Commission is continuing to actively monitor the effect of the new legislation by liaising with government agencies and relevant community organisations. A particular focus of attention is the area of child sexual exploitation and collaboration with other agencies to ensure that the government actively implements its obligations under the Optional Protocol on the Sale of Children, Child Prostitution and Exploitation of Children.

Inevitably, the Commission's response to trafficking and its associated issues in the New Zealand context is mediated by the assessment of the extent of the problem. These circumstances change over time

A Past Success: The 'Pink Sticker' Campaign:

(See last page for a copy of the "Pink Sticker")

“...one constant factor is the social and economic distinction between countries of origin and countries of destination. Trafficking, like all other forms of irregular migration, involves movement from poorer countries to relatively wealthy ones.

An analysis of the human rights record of the major source countries appears to confirm a link between the position of women and their susceptibility to trafficking and related exploitation”

Source: The APF Advisory Council of Jurists (2002) background paper, *Consideration of the Issue of Trafficking*

In 1999, in response to concerns about Thai and other women and girls being trafficked into New Zealand and held in debt bondage, the Human rights Commission set up a “safe house” programme to assist Thai sex workers to escape prostitution in New Zealand. The mayor of Auckland City and various organisations, including the department of Immigration, the Police, the Prostitutes' Collective, Shakti Asian Women's Centre and the Thai Embassy assisted the Commission. The Pink Stickers Campaign publicised information about the hotline and safe house, in both Thai and English, on pink stickers. They were placed in hospitals, red-light districts and police stations. The Human Rights Commission launched a “Pink Stickers campaign” in 2000 to publicise the repatriation programme which provided a safe house, travel arrangements and follow-up support from Thai women's organisations on return to Thailand. By April 2001, the Commission had helped six Thai women bonded to the New Zealand sex industry. The Commission also assisted one of the women to make a successful claim in the Disputes Tribunal for money paid to the traffickers.

The work with Thai sex workers included provision of legal counselling and assistance; the provision of a safe house for up to two weeks; crisis intervention and direct monetary assistance; a telephone hotline in normal working hours; accepting referrals from the Police, hospitals and private persons; organising safe returns to the country of origin in collaboration with women's NGO's in the home country. The Pink Sticker campaign is no longer in effect and the minister of Immigration suspended visa-free status between New Zealand and Thailand, in part because of the abuse of the system by traffickers and those working illegally in New Zealand.

...the majority of smuggled migrants are men and the majority of trafficked persons are women. It is likely that women's relative inability to pay up-front for their transportation is one factor predisposing them to subsequent exploitative arrangements such as debt bondage. Women are also more

vulnerable to certain forms of exploitation including sexual exploitation. Finally, it is the informal labour and entertainment sectors – both predominantly female – that are the principle targets for traffickers”

Source: The APF Advisory Council of Jurists (2002) background paper, *Consideration of the Issue of Trafficking*

Recent influences on the Commission’s work

As the result of an amendment to the Human Rights Act in 2001 the Commission has been given more wide-ranging powers to deal with a range of human rights issues – including the development of a National Plan of Action for Human Rights.

During 2003-2004 – and as a precursor to its release of the *New Zealand Action Plan for Human Rights* – the Commission developed and published a major report on the status of human rights in New Zealand (*Human Rights in New Zealand Today*).

The report was put together from a wide range of sources including the commissioning of a nation-wide public opinion study to identify the most urgent human rights issues in New Zealand. The expertise of a number of specialist groups as well as almost 5,000 individuals, groups and agencies from around the country also informed the work.

Trafficking was not mentioned during consultations as a high priority human rights issue for New Zealanders at this point of time. Consequently, trafficking was not identified as a priority for action in *the New Zealand Action Plan for Human Rights (2005)*

However, the Commission is still committed, within its available resources, to maintaining a work programme relating to trafficking and related issues.

The work programme prioritises the monitoring of domestic legislation to ensure compliance with human rights principles and compliance.

The Commission also seeks regular consultation with relevant government agencies (such as the Immigration Service, the Department of Labour, the National Commissioner of Police), community groups and NGOs with an established interest in trafficking issues.

The Commission is currently formalising strategies which will shape and systematise its relationships with key sectors (central government, local government, business, communities). These strategies are primarily designed to maximise the Commission’s capacity to influence and to encourage the exchange and collection of information.

The Commission already has good issues-based relationships with some key NGOs and local government agencies who work with migrant communities on issues of under-age prostitution – including the provision of safe houses for under-age sex workers and refuges for migrant women victims of violence or sexual or financial exploitation.

NGOs are important sources of information. For instance, the Shakti Migrant Services Trust, an anti-trafficking NGO, has provided reports of prostitution and abuse resulting from the immigration of women for arranged marriages. The Trust reported that some of these women were forced to work long hours, treated as virtual slaves, and in some cases forced into prostitution.

Another key ally, and information source, is the New Zealand Prostitutes' Collective which, periodically, has sought to provide multi-lingual outreach workers for the local sex industry.

Information-sharing must remain a priority, including the APF trafficking mechanism and, domestically, the Inter-Commission Liaison Group. This group of five rights-based Commissions – Human Rights, Children, Health and Disability, Mental health, and Families – was initiated by the Human Rights Commission and provides a very useful venue for information-sharing, collaborative work, and issues-based collective responses.

The Commission recognises the significance of the interface between border control, immigration policies, domestic law enforcement and systematic respect for, and realisation of, human rights. Over the last year *Making Human Rights Work* – the Commission's train-the-trainer model for human rights education in the public sector – has been delivered to New Zealand Customs staff and will soon be delivered to police senior managers and front-line staff.

4. Future challenges:

A key challenge for the Commission is to effectively contribute to public and political awareness of trafficking issues in a domestic context in which, largely, trafficking is not currently perceived to be a significant issue.

However, there are clear existing gaps in the systemic collection of information relating to trafficking – so the word “perception” is significant and possibly inaccurate.

There is, then, a question around whether New Zealand is effectively monitoring trafficking into and through New Zealand.

Currently, in New Zealand, a number of assumptions are made around the actual prevalence of trafficking. However, there is no systematic national programme charged with monitoring these issues and it is possible that a liberal legislative agenda may have resulted in the erosion of an important monitoring or intelligence-gathering mechanisms in relation to the sex industry.

At the moment, trafficking is widely understood to be an issue affecting adults (“If trafficking is happening in New Zealand, there is no evidence that it involves children” – Source: Cindy Kiro, Children's Commissioner, June 2004).

New Zealand is no exception to the general observation that trafficking issues are closely related to the movement of people from poorer countries to relatively wealthy ones.

Although there are cyclical or immigration policy based changes over time, in New Zealand, trafficking is primarily associated with the financial and sexual exploitation of women.

These movements – and the particular countries of origin involved – are closely linked to a number of factors – including New Zealand's immigration policies (which has radically changed from time to time over the past few decades), and to the quality of its relationships with other countries in its region.

As noted at the UNOHCHR 13th Workshop on Regional Cooperation for the Protection and Promotion of Human Rights in the Asia-Pacific Region (Beijing, 30

August – 02 September 2005) there is a recognition that trafficking is at one end of a continuum of human movement around the globe that includes illegal migration and legal migration – all of which are inextricably related to the search and necessity for decent work.

A more particular question is whether the treatment of those trafficked (or those willingly illegally brought into New Zealand to fill demand for cheap labour) when apprehended by New Zealand authorities meets human rights standards and principles i.e. that they be treated as victims and not criminals. (Noting that Australian government this year announced, as a result of work done by HREOC, a multi-million dollar programme for the support and rehabilitation of people trafficked into Australia)

The New Zealand Immigration Service has acknowledged the difficulty in quantifying the actual extent of trafficking in New Zealand. People smuggling offences are, from the NZSI's perspective, easier to detect and prove – and the New Zealand horticulture industry is particularly problematic. To date, there has been one prosecution under the Crimes Act and 6 under the Immigration Act.

Another issue relates to the conceptual approach to the current review of the New Zealand Immigration Act. The Commission must make every effort to ensure that the relationship between decent work, trafficking and legal and illegal migration is explicit in the review – and that these issues remain an integral part of the Commission's thinking, analysis and advocacy

The Commission operates within a context in which its financial and other resources are shrinking in real terms. These conditions inevitably lead to a situation in which it must prioritise some issues over others. While its commitment to the prevention of trafficking is unquestioned, its capacity to systematically engage with the issues is likely to remain problematic

The Commission must maintain its roles in relationship to the monitoring of domestic legislation, and expand its interest, and its influence, in broader issues such as trade and human rights – and the nature and implications of New Zealand's economic, aid, and migration relationships with other countries in the region.

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