



EXECUTIVE SUMMARY NEW ZEALAND*



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Introduction

New Zealand is a parliamentary constitutional monarchy with a population of approximately 4.4 million.¹ While New Zealand is a prosperous nation and ranks high in the Human Development Index, 200,000 children in New Zealand (half of whom are of Maori or Pacific Island origin), continue to live in poverty. An inexorable relationship exists between poverty and the commercial sexual exploitation of children (CSEC),² driving a small percentage of impoverished youth to prostitution in order to support themselves and their families. While New Zealand spends an estimated 6 billion NZD to offset the effects of child poverty,³ a 2009 OECD study shows the island nation to be among the worst performing member States with regard to child outcomes.⁴

Following the 1996 Stockholm and 2001 Yokohama global forums of CSEC, New Zealand reaffirmed its commitments at the World Congress III in 2008 in Rio de Janeiro. Furthermore, the Government has domestic legislation in place to combat CSEC, particularly in the area of child pornography. Nevertheless, child poverty and other vulnerability factors must be tackled in order to fully eliminate the risk of CSEC.

The availability of statistics on the number of **children exploited through prostitution** in New Zealand is limited. Following the decriminalization of prostitution through the Prostitution Reform Act of 2003, brothels operate legally although the employment of all persons under the age of 18 remains strictly outlawed. Notwithstanding the effect of decreasing the amount of underage prostitution within legal establishments, this reform also serves to drive victims of underage sex into less

secure environments, which also makes it very difficult to ascertain the extent of the problem. According to a survey carried out in 2003/2004, 56 percent of street-based sex workers became victims of commercial sexual exploitation before reaching the age of 18.⁵ The majority of victims surveyed indicated that they were forced into prostitution in order to make ends meet. The Independent Youth Benefit program, intended to provide financial aid to 16 and 17 year olds, has been highly criticised by youth as inadequate and restrictive due to its age limitations.⁶

Although no recent cases of **children trafficked for commercial sexual exploitation** have been reported, New Zealand has been named as a destination country for women who are forced into sex work from, Hong Kong, Thailand, Taiwan, China and Eastern Europe.⁷ The 2011 TIP Report has identified New Zealand as a country of internal trafficking, although this view is rejected by the New Zealand Government, which only recognizes trafficking as a transnational activity. Nevertheless, New Zealand commendably ranks as a tier 1 country in the 2011 TIP Report,⁸ reportedly due to a high level of compliance with the Trafficking Victims Protection Act 2003.

With the increased use of the Internet, **child pornography** is a growing issue in New Zealand. There have been a number of successful convictions in New Zealand for the possession and distribution of child pornography, rather than the actual production of such material within New Zealand.⁹ The New Zealand Government has been proactive in combating child pornography through the establishment of various mechanisms, such

as the Censorship Compliance Unit and the Online Child Exploitation Across New Zealand (OCEANZ) Police Unit, with experience in detection and prosecution of offenders. The Department of Internal Affairs' Digital Child Exploitation Filtering System (DCEFS), launched in 2010, has been introduced to block websites hosting known child sexual abuse images and efforts are now heavily focused on increased ISP participation and private sector support.¹⁰ Currently, seven of New Zealand's largest ISPs have voluntarily been using this filter, accounting for over 95% of online traffic. These efforts have propelled New Zealand to the forefront of combating child pornography, although more vigilant action is still required to ensure that all children are protected.

Although there are relatively few documented cases of **sexual exploitation of children in travel and tourism**, evidence has shown that New Zealanders are among child sex tourists abroad in countries such as India and Fiji, where charges have been brought against individual citizens.¹¹ Despite the passage of the 1995 Crimes Amendment Act, there has been little enforcement of the extraterritorial legislation concerning child sexual abuse abroad or the new Article 144 criminalising the organising and promotion of child sex tours. It was not until 2011 that New Zealand witnessed its first prosecution of a child sex tour organizer.

National plan of action

The National Plan of Action, entitled *Protecting Our Innocence*, has received low levels of inter-agency coordination and a lack of implementation. *Protecting Our Innocence* is therefore seldom referenced, and has been overshadowed by the *2009 Plan of Action to Prevent People Trafficking*, fulfilling New Zealand's various international obligations. Its purpose is to "prevent people trafficking, bring offenders to justice and offer protection and assistance to victims of trafficking."¹² Child trafficking, however, is not specifically addressed, an absence which could result in an overall omission of preventative measures specifically geared toward child trafficking.

The Trafficking NPA is complemented by the

New Zealand National Action Plan for Human Rights, which addresses children's issues to a much greater degree. This plan is based on *Human Rights in New Zealand Today*, an assessment of the state of human rights in New Zealand published in 2004. However, despite the Government's voiced intentions of developing a human rights NPA, the Parliament has not formally endorsed the Action Plan nor allocated any funds for its implementation. Thus, the document cannot be considered a National Action Plan.¹³ As the focus of the country's only official NPA limits itself to trafficking in persons, the other manifestations of commercial sexual exploitation of children have received less attention.

Coordination and cooperation

The Government of New Zealand has been particularly successful in coordinating efforts in the area of child pornography through the Department of Internal Affairs. This division is responsible for the enforcement and implementation of the country's censorship legislation, including all investigations into the possession and trading of any material exploiting children.¹⁴

This effort is managed principally through NetSafe: The Internet Safety Group (ISG). ISG, an independent non-profit organisation working towards cyber safety, is made up of members from all levels of society.¹⁵ NetSafe recently developed an online reporting mechanism called 'the Orb,' which provides a quick and easy way to report any questionable online behaviour or material. The Orb has provided a link to the Online Child Exploitation Across

New Zealand team (OCEANZ) for concerns related to CSEC, as well as a 'Child Alert Hotline' with a link to ECPAT Child ALERT and the Censorship Compliance Unit of the Department of Internal Affairs to report cases of child pornography.¹⁶ The Ministry of Education has partnered with NetSafe and teachers of all levels in its efforts to create a national curriculum supporting the integration of technology into schools.

New Zealand has played an active role in regional cooperation to address anti-trafficking in persons through participation in the Pacific Immigration Directors Conference, the Pacific Islands Forum, and the Bali Process, as well as through several bilateral agreements with other countries in the region. As one of two country coordinators of the Bali Process, New Zealand leads activities concerning 'Regional and International Cooperation on Policy Issues

and Legal Frameworks'.¹⁷ One tangible outcome of the Bali process has been the formulation of a model trafficking law, created using key components of the UN Trafficking Protocol while broadening the definition of exploitation beyond those of a sexual nature.

The New Zealand Police Department has also established connections with Interpol and participates in a network of government and law enforcement agencies to exchange information and practices. In 2010 the OCEANZ squad joined the Virtual Global Taskforce, a group of international law enforcement departments working collaboratively to combat online child abuse and exploitation.¹⁸ Additionally, the Department has set up a liaison officer in Thailand assisting in the flow of information regarding New Zealand offenders within the country.¹⁹

Prevention

New Zealand's commitment to preventing CSEC has most ostensibly been manifested in the Government's ratification of the Optional Protocol to the CRC on 20 September 2011.²⁰

Cyber safety is an important prevention tool in CSEC with New Zealand having one of the most advanced cyber safety systems in the world. NetSafe has focused on early education on the Internet. Because children's Internet usage is often not monitored by their families and communities as closely as other activities, providing systematic education on safe Internet usage beginning at an early age is a key prevention tool. NetSafe's online programmes and safety information focuses on smart and child-safe online practices, and even provides children aged two to nine with interactive, animated online episodes to raise awareness.

Reporting mechanisms are also an important part of prevention. The Orb, discussed above, provides New Zealanders with a simple and safe way to report incidents online.

In August 2011, the ACCOR group of hotels throughout New Zealand and Fiji registered as signatories to The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism. The

Government of New Zealand also participates in several tourism organisations which have stated a need for corporate responsibility for child sex tourism.

In the area of child pornography, the Department of Internal Affairs has piloted a filtering system between 2006 and 2008, allowing Internet providers to block websites that host child sexual abuse images and prevent access to websites known to contain child sexual abuse material. The Digital Child Exploitation Filtering System, designed as a preventative measure rather than an enforcement tool, has been in operation since the first quarter of 2010.²¹ The New Zealand Government was also one of the first to implement PhotoDNA software, a revolutionary technology to identify and remove images that exploit or endanger children.²²

Despite the Government's increased expenditures on the rehabilitation and reintegration of offenders, recidivism rates nonetheless saw an increase from 2005 to 2010. It is thus clear that the government must consider more innovative methods of preventing recidivism in order to protect children from further harm.

New Zealand has ratified the principal international treaties concerning child rights, including the CRC, its' Optional Protocol, the Convention on the Worst Forms of Child Labour, as well as the UN Trafficking Protocol. Prior to ratification of the Optional Protocol, New Zealand had already established itself as an international leader in the realm of child pornography legislation with some of the 'most comprehensive child pornography laws in existence.'

The UN Committee on the Rights of the Child has requested New Zealand to remove all reservations to the CRC.²³ They also ask that New Zealand expands the application of the treaty to include the territory of Tokelau, classified as a UN non-self-governing territory.

New Zealand law offers comprehensive protection against the **prostitution of children** and defines commercial sexual services in line with international legal standards. This is primarily achieved through the Prostitution Reform Act 2003 (PRA) which specifically criminalises the receipt of sexual services from anyone under the age of 18.²⁴

The PRA has increased the maximum penalty from five to seven years and removed the defence of 'reasonable grounds' whereby offenders could contend that they believed the victim to be over the age of 18. The PRA also transfers criminal liability from those 'underage people who provide commercial sexual services to those who arrange, profit from, or receive those services.'

Despite the increase of prosecutions and harsher punishments under the PRA, to date, two years imprisonment is the highest sentence imposed.²⁵ The low rate of conviction and extremely light punishments show that New Zealand's strong legal framework is not being used adequately to protect children.

One of the drawbacks of the current domestic law on child prostitution is that police may only enter brothel premises where they suspect that an underage person is working for prostitution and if the child is between the ages of 14 and 16. In practice, this excludes 17 year olds, unless

a warrant is granted to enter the premises. Moreover, brothel owners are not obligated to keep a record of sex workers or their ages, hindering the ability of law enforcers to identify underage sex workers.

New Zealand legislation meets international standards for **child trafficking**, criminalising trafficking-related activities as outlined in the UN Trafficking Protocol. However, the Government of New Zealand's trafficking legislation is restricted to cross-border trafficking, excluding instances of internal sexual slavery and financial benefit through sexual exploitation, which has been highly criticized by States with a wider definition of trafficking.

Commendably, the legislation of New Zealand states that no person under the age of 18 against whom an offence was committed can be charged as party to the offence, regardless of their intent, rendering consent irrelevant.²⁶ New Zealand provides support for all suspected victims of child trafficking for sexual purposes independent of their immigration status categorisation, and is currently working on expanding its support system. Nevertheless, the government has neither prosecuted any offenders, nor identified or assisted any trafficking victims in 2010 or 2011.²⁷

New Zealand is in compliance with its obligations under the Optional Protocol in relation to **child pornography** criminalising, *inter alia*, the possession of child pornography and 'grooming'. However, the legislation pertaining to grooming only protects children under the age of 16; it should be extended to protect children aged 17 years. New Zealand is nevertheless at the forefront of a minority of countries with child pornography legislation, and its legislative regime was recently rated highly, lacking only for 'not requiring mandatory reporting of offences by ISPs'.²⁸

The 2005 Films, Videos, and Publications Classification Amendment Act significantly broadened offences and increased the ability of enforcement agencies to obtain warrants to search for and seize objectionable materials, while also facilitating the extradition and prosecution of New Zealanders.

New Zealand has also taken a strong stance against virtual child abuse images in Japanese 'anime', 'manga' and 'hentai' images. The high number of arrests and prosecutions concerning child pornography reflects the comprehensive scope of the legislation protecting children. Further measures and future legislation could include collaboration with banks and credit card institutions to track funds connected to the purchase and sale of child pornography online.

Most acts relating to **child sex tourism** are criminalised under New Zealand's Crimes Amendment Act 2005. The Act creates extraterritorial legislation, criminalising any sexual conduct with children abroad that would be deemed an offence within New Zealand. The extraterritoriality means that it is illegal for all New Zealand citizens, persons ordinarily resident in New Zealand, and those found in New Zealand who have not been extradited, to engage in any sexual conduct with children abroad that would be considered an offence if carried out in New Zealand.²⁹ In accordance with the Optional Protocol, legislation is also in place to specifically call for extraterritorial jurisdiction with regard to offences involving child pornography.³⁰

Support services for victims

Victims of CSEC have access to support services under the 2002 Victims' Rights Act. Support includes welfare, health, counselling, medical, or legal needs arising from the offence.³¹ However, there is no formal procedure in place to refer these victims to NGOs and service providers; nor are there shelters

specifically allocated to victims of particular offences, such as trafficking.³²

The Victims Centre exists to enhance the accountability of agencies and expand the application of general victims' rights. This includes broadening the terms of victim statements, improving the capacity and operation of the victim notification system, and providing victims with the right to appear in youth court and present impact statements. The Victims Centre supports the development of a 'Victims Code' which will provide information to The Victim Notification System, aiding victims through the provision of information relating to the imprisoned offender who committed crimes against them. This information includes dates and times of hearings, release, or escape.

New Zealand law currently accommodates foreign victims of CSEC, allowing them temporary legal residence and relief from prosecution for immigration offences. The Department of Labour is framing policy to standardise trafficking victims' immigration status to permit long term legal residency and access to a large selection of services.³³

An emphasis has been put on victim identification training and most law enforcement personnel are now receiving training and education on CSEC issues, child-friendly procedures and the legal provisions in place for witness protection. The government is also providing training to military personnel prior to international peacekeeping missions.³⁴

Child and Youth Participation

The Ministry of Youth Development acts as the central coordinating body for youth participation in the social, educational, economic and cultural development of New Zealand. Its key function includes serving as a government contact through which youth can express themselves, providing the government with recommendations to improve outcomes for the youth, deliver opportunities to the youth for further development, fund community services, and create and share evidence concerning youth development within the country.³⁵ This is an

opportune mechanism to involve youth in advocacy and education regarding CSEC. ECPAT Child ALERT is also moving forward with its Youth Participation Program *Don't Sweep It Under the Rug*. A university-wide tour of the program (beginning in February 2012) includes, organising events at six main universities in New Zealand. During these events, ECPAT distributes literature encouraging and supporting volunteer action groups in each city.

Priority Actions Required

National Plan of Action and policies on children and CSEC

New Zealand should develop a comprehensive NPA addressing all forms of CSEC, placing an emphasis on child and youth participation. The definition of trafficking should be expanded to include an affirmative provision on the protection against internal trafficking. Additionally, the trafficking NPA should be realised to its full extent by increasing efforts to identify trafficking offenders. Finally, the Government should formally accept the 10-year children's action plan, which will be published in late 2012.

Coordination and cooperation

It is imperative that regional coordination is enhanced from primarily addressing trafficking to including all forms of CSEC. New Zealand should also develop a nation-wide system for ongoing data collection and monitoring to obtain statistical estimates of child victims for all CSEC offences. This requires collaboration between federal and local governments, disaggregation of data by race, age, sex, ethnicity, region and nationality, and active liaison between all concerned bodies.

Prevention

Thorough research should be undertaken to identify the root causes of CSEC in New Zealand so as to inform an adequate policy response. There is currently a lack of information concerning demand for sex with children and specific programmes to address this demand. The Government should also work to promote

awareness of extraterritorial enforcement of child protection laws to demonstrate its commitment to tackling child sex tourism and to deter potential offenders.

Protection

The Prostitution Reform Act should be fully enforced, which will accordingly increase the low number of prosecutions under the Act. Additionally, the Government must ensure comprehensive protection under the CRC by extending its application to the Tokelau territory. Furthermore, it is essential that in practice the CRC provisions supersede local customs and Maori law. There should be uniformity across all New Zealand laws, setting the age of a child at 18 years in conformity with the CRC. The current low conviction rates fail to serve as a strong deterrent to commit CSEC related crimes and do not reflect the gravity of such crimes. Finally, it is crucial that law enforcement officials have access to brothers to verify the age of employees; as such, legal provisions are required to fill the current gaps in protecting children from prostitution.

Child and youth participation

New Zealand should work to systematically promote the views and active participation of children and youth in the decision-making processes regarding laws and policies that affect them. Support should also be provided to programmes that help children gain a deeper knowledge of their rights to be free from sexual exploitation and the options available to them to address abuse.

Endnotes

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