

**Shadow Report for the CEDAW Committee on New Zealand
from: Coalition Against Trafficking in Women New Zealand.**

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**CATWA New Zealand is a branch of the international non-government
organisation Coalition Against Trafficking in Women which has category II
consultative status with ECOSOC.**

**This report is on the New Zealand government's compliance with Articles 5 and 6 of
CEDAW on harmful cultural practices, trafficking and prostitution. This report
argues that the 2003 decriminalisation of prostitution in New Zealand is in violation
of these articles.**

Preamble:

Article 6 requires that: ‘States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women’. The language of CEDAW is taken from the 1949 Convention Against Trafficking in Persons and Exploitation of the Prostitution of Others. In this Convention the phrase ‘exploitation of the prostitution of others’ means profiting, by third parties, from the use of women in prostitution. The decriminalisation of prostitution in New Zealand is thus in violation of **Article 6**.

Article 5(a) of CEDAW states that ‘all appropriate measures’ will be taken to ‘modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’. This report will argue that prostitution fits perfectly the criteria required to identify what are now commonly called harmful cultural/traditional practices and thus that countries such as New Zealand which decriminalise prostitution are in direct contravention of **Article 5(a)** that calls for the elimination of these practices.

Prostitution law reform

The 2003 legislation the Prostitution Reform Act ‘decriminalises’ all forms of prostitution, including street and brothel prostitution. The legislation was controversial and passed by only 1 vote. Under the legislation operators of prostitution businesses must apply for and hold certificates. Small owner operated brothels (soobs) in which 4 or fewer women work, do not need certificates and can be operated from homes. The specific purposes of the legislation are as follows: to safeguard the human rights of sex workers and protect them from exploitation; to promote the welfare and occupational health and safety of sex workers; to protect public health; to prohibit the use in prostitution of persons under 18 years of age. A Prostitution Law Reform Committee was set up at the same time as the reform took place with two tasks. One was to immediately conduct research to find out the shape and size of the industry in 2003, which was published in 2005, and the other was to report on the effects of decriminalisation, not due until 2008.

This report will examine the ways in which the legislation is a failed social experiment. Specifically we will look at the ways that the legal and illegal industry has expanded and the harms to women involved, and the rise of child prostitution.

Expansion of the industry and organized crime

There is evidence that the prostitution industry in New Zealand was expanding rapidly before the reform and this reform seems destined to lead to further expansion which will escalate the physical and mental harms as more women are recruited. In other jurisdictions where prostitution has been legalized or decriminalized there has been

considerable expansion of the legal industry, but the illegal industry has expanded most and regularly comprises 80% of the industry, as Mary Sullivan's book on the effects in Australia, *Making Sex Work* (2007)¹ reveals. Legalisation/ decriminalisation increases the worth of the industry and transforms it into a respectable market sector, with a vast illegal subsector. The industry of strip clubs and brothels in Australia was estimated in an industry report in 2007 at \$AUD 2 billion yearly.² The worth of the industry in New Zealand in 2005 was estimated at \$800 million NZ per year.³

The 2005 Report on the state of the prostitution industry at the time of the reform found that there was an apparent considerable rise in the number of unregulated brothels (as opposed to massage parlors which were regulated), from 6 to 93, between a police report in 2001 and the research of 2003. It states that this may mean there has been a large growth in the non-regulated sector, and comments that the 2001 report was already indicating a tendency towards growth in this area.⁴ The estimated number of workers in the 2005 Report was 5932. The 2001 Report estimated 4500 and included peep shows and strip clubs, which were found to be strongly linked to prostitution, whereas the 2005 Report does not.

Media reports suggest a boom in small owner operated brothels (soobs). As they do not need certificates, councils are not able to stop soobs being set up. The Act permits councils to put brothels that apply for certificates in industrial areas but soobs may set up in residential areas. The lack of control of soobs is likely to be open to abuse. One effect is that organized crime gangs have exploited the liberalisation of brothel zoning regulations to establish large illegal brothels in New Zealand's residential suburbs. United Future MP Gordon Copeland - who was part of a 2006 working group reviewing problems with the legislation – found that brothels in Waitakere and on the North Shore were run by Chinese 'gangs', and exploited mainly Chinese women in their brothels.⁵ North Shore Council authorities reported to the review working group that one such illegal brothel had nine prostitutes and grossed over \$600,000 per year.⁶ Police Association President Greg O'Connor has said he is concerned that decriminalisation will lead to increased organized crime involvement.⁷

Indeed, the link between organized crime and prostitution – both in the legal and illegal sectors – is indisputable. For example, in the aftermath of the Melbourne, Victoria, 2003 'gangland' murders, the Crimes Commission heard that 'gangs were involved in the ownership of some... legal brothels', presumably using such 'legitimate' businesses as a front for the laundering of money and other illegal activities.⁸ Within the provisions of the law, such organized crime syndicates simply 'get somebody licensed and operating'.

In New Zealand, the links between organized crime and prostitution are similarly apparent. The 2005 Report found that respondents estimated that from one-fifth through to nearly three-quarters of 'massage parlors' in their areas were connected with organized crime. It was estimated that from one in ten to three-fifths of private sex workers had connections with organized crime. The 2001 Police Report stated that there was an increase in the connections between drugs and the sex industry. The reduction in police monitoring of the sex industry which is intended to result from decriminalisation is likely

to lead to an increase in these figures since there will be no longer be any disincentive for crime groups. Some respondents to the 2005 Report had particular concerns ‘over the reduction of police powers with respect to certification and inspection of parlors’.⁹ They thought this would ‘allow for greater involvement of organized crime in the sex industry’.

Reduction of Harms

One of the stated aims of the Prostitution Reform Act was harm reduction. In 2006 however, prominent barrister David Garrett wrote in the *New Zealand Herald* that the Act was a ‘disaster’, particularly in regard to harm minimisation.¹⁰ He cited a significant rise in underage prostitution since legalisation and the murder of three women in prostitution during 2005 as evidence that the Act was not working.¹¹ Respondents to the 2005 Report commented that with the removal of police monitoring of brothels it would be more difficult to protect women from violence. In one six month period in 2006 the Prostitutes’ Collective in Christchurch New Zealand said that there had been 147 reports to them of violence against prostitutes in that city, where two women had been murdered in one year.¹² Also in 2006, the United Future party raised concerns about the levels of sexually transmitted diseases (STDs) in New Zealand and suggested that the Prostitution Reform Act had done nothing to help prevent the spread of STDs but rather could have promoted an increase.¹³

Harms in the industry are supposedly addressed in a booklet from Occupational Safety and Health.¹⁴ The booklet overlooks the most obvious problems of health in the industry in favour of warning against ‘overuse disorders’, for instance, which can be avoided through beds and workstations providing ‘support for the back’ and training in the safe use of all equipment, ‘particularly that used in B&D and S&M fantasy work’. Overuse of the vagina or anus is not mentioned here though material from the legalized prostitution industry of Victoria, Australia, makes it clear that this is a major source of pain.¹⁵ In that state the South Melbourne Community Health website advises escort workers to be wary of using local anaesthetic as this can cause numbness which may mean injury will not be immediately noticed.¹⁶

Underage prostitution

The Prostitution Reform Act was supposed to reduce underage prostitution and ‘protect young people’¹⁷, by introducing offences such as paying for ‘sexual services’ provided by any person under 18. However, Commissioner for Children Dr Cindy Kiro argues that New Zealand has a ‘clear problem’ of child prostitution, which has most likely worsened since the decriminalisation of prostitution.¹⁸ Dr Kiro’s hypothesis is supported by many of the major police groups within New Zealand. Inspector Gary Knowles of the Christchurch police argues that there has been a noticeable rise in the number of underage street prostitutes since the introduction of the new legislation.¹⁹ It is reported that girls as young as 12 have been found on the streets, sought mostly by men wanting unprotected sex.²⁰ Police in Wellington have also reported that the age of prostituted women has declined since the Act.²¹ The 2005 Prostitution Law Review Commission report, estimates that 20% of prostitutes in street prostitution and 8% of escort agency workers

were underage, with a low estimated total of 210 such underage persons in the industry.²² ECPAT NZ²³ reported in 2004 that ‘most child prostitutes come from backgrounds of sexual abuse, drug-taking, and family dysfunction’.²⁴ Of those who were first prostituted when they were younger than 16 years of age, 60% had been sexually abused, most drank ‘lots’ of alcohol when sexually servicing men, and all used drugs.²⁵ Amongst underage Maori prostitutes, 74% had been sexually abused.²⁶ In an address to the United Nations in 2001, the New Zealand government recognised that Indigenous children and children from lower socio-economic groups were particularly vulnerable to becoming involved in prostitution.²⁷

Detective Senior Sergeant Shane Cotter from the Vice Squad argues that the Act makes it harder to prosecute men who are paying for sex with underage girls because they were not required to obtain proof of age under the new legislation, which police fear provides a ‘loophole’ for offenders.²⁸ United Futures Party MP Gordon Copeland revealed in March 2006 that only 16 clients of prostitutes under 18 years have been convicted since the introduction of the Act in June 2003/between June 2003 and December 2005.²⁹ Despite the lack of prosecutions, Copeland estimates that the number of men that have purchased underage girls is in the thousands.³⁰ The ‘architect’ of the Prostitution Reform Act, Christchurch MP Tim Barnett, called for a parliamentary investigation into child prostitution in Christchurch in 2004, arguing that it is ‘only right’ for the issue to be investigated.³¹ No investigation has since occurred.

Maori & Pacific Islander girls and women in prostitution

As occurs globally, Indigenous women in New Zealand are disproportionately victims of prostitution, particularly underage and street prostitution. A study conducted in Christchurch in 2000 & 2001, for example, found that one fifth of prostituted women in Christchurch identified themselves as Maori, compared to a percentage of the female population aged between 15 and 44 who were Maori of 7.4%.³² A South Auckland Maori community worker estimates that 80% of the women involved in street prostitution are Maori or Polynesian.³³ Maori women are most commonly prostituted on the streets as a result of what Auckland community activist Mama Tere refers to as an ‘apartheid system’ within prostitution itself, where Indigenous women are at the ‘bottom of a brutal race and class hierarchy’.³⁴ Subsequently, Maori women are more likely to be employed in ‘high-risk, lower-paid venues’ than Pakeha (non-Indigenous) women.³⁵ Reports also suggest that a disproportionate number of children and young women in underage prostitution are Indigenous. A representative of the Prostitutes Collective outreach program claims that the majority of underage prostitutes are Maori or Pacific Islander.³⁶ This is reflected in statistics which show that 68% of Indigenous prostituted women enter prostitution at 17 years or younger, compared to 25% of Pakeha women.³⁷ ECPAT NZ found that ‘Indigenous young people...are the most vulnerable to this form of [commercial sexual] exploitation’.³⁸ Prostitution researcher Melissa Farley argues that ‘prostitution is one specific result of colonisation’, stemming from the homelessness, land and economic dispossession, lack of educational and employment opportunities, and cultural and physical assaults that Indigenous people have suffered as a consequence of colonisation. Farley found in one study, for example, that 65% of Maori respondents reported a history

of homelessness, compared to 16% of Pakeha women.³⁹ These factors combine to place indigenous prostituted women and children in the most vulnerable positions of all.

Trafficking / Illegal workers

Respondents to the 2005 Report who considered that the issue of non-New Zealand residents workers was significant, estimated that between 25 and 60% of sex workers in their respective areas were non-New Zealand residents. An Auckland Police District Report in 1999 ‘conservatively estimated ... 500 Thai sex workers were in the Auckland area alone’.⁴⁰ In 2006, The Prostitution Reform Act Review Committee found that an increasing number of immigrants are working illegally in New Zealand brothels. According to the Committee’s report, the problem is particularly evident in areas with education facilities such as language schools and universities, as many of the illegal workers are international students who have entered the country on student visas.⁴¹ Although there were no official reports in 2006 that persons were internationally trafficked either to or from New Zealand, the U.S. State Department has noted that there is evidence that women from Asia, the Czech Republic, and Brazil are working illegally in the commercial sex industry.⁴² Concern was also raised in 2004 by the U.S. State Department that children were being internally trafficked within New Zealand for the purposes of prostitution.⁴³ Trafficking is likely to grow as the industry grows and must be supplied but decriminalisation means an absence of monitoring which could help to deal with this problem.

Street Prostitution

The Prostitution Reform Act decriminalised street prostitution. In 2004, a year after the introduction of the Prostitution Reform Act, an investigation by the *New Zealand Herald* newspaper, found that street prostitution was increasing, and that decriminalisation had led to a ‘price war’ in street prostitution, fueled by a significant increase in teenage women working in street prostitution.⁴⁴ In 2005, the problem of street prostitution had reached such proportions in parts of Auckland that the Manukau City council attempted to pass a bill controlling street prostitution within its jurisdiction.⁴⁵ More recently, owners of legal brothels have complained to the press about the increase in competition from illegal street prostitution since decriminalisation.⁴⁶

Prostitution as a harmful cultural/traditional practice

Article 2(f) of CEDAW states that parties to the Convention will ‘take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, *customs and practices* which constitute discrimination against women’ (emphasis added). **Article 5(a)** similarly states that ‘all appropriate measures’ will be taken to ‘modify *the social and cultural patterns of conduct* of men and women, with a view to achieving the elimination of prejudices and *customary* and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’ (emphasis added).

The definition of harmful traditional practices was developed in 1995 in a UN Fact Sheet No 23 entitled ‘Harmful Traditional Practices Affecting the Health of Women and Children’. The definition offered in the introduction covers several aspects that fit prostitution very well. As well as damaging the health of women and girls, traditional/ cultural practices are said to ‘reflect values and beliefs held by members of a community for periods often spanning generations’ and are said to persist because they are not questioned and take on an aura of morality in the eyes of those practicing them. The practices are ‘performed for male benefit’. They are ‘consequences of the value placed on women and the girl child by society’, and they ‘persist in an environment where women and the girl child have unequal access to education, wealth, health and employment’.

Conclusion

This report has argued that the decriminalisation of brothel prostitution by New Zealand abrogates that state’s responsibilities under CEDAW, particularly **Article 5** on harmful cultural practices and **Article 6** on trafficking and the exploitation of the prostitution of women. Brothel prostitution exploits women by providing third party profit to brothel owners. Moreover decriminalisation is likely to exacerbate all the problems of prostitution, as legalisation/decriminalisation has in other jurisdictions. There was evidence from the time when the reform took place that the industry was already growing considerably, particularly in the unregulated sector, and that the prostitution of underage persons and the exploitation of trafficked women were serious problems. Anecdotal reports since then suggest that Asian crime gangs are getting a foothold in the industry and that small owner operated brothels are providing a cover for organized crime. The violence that women suffer in prostitution from routine sexual harassment through to assault continues, and Occupational Health and Safety codes are ludicrously unsuited to addressing these harms. Decriminalisation in New Zealand enables the state to become a pimp through profiting in license fees and in taxes from this form of violence against women. Prostitution fits perfectly the criteria for recognising a harmful cultural practice and New Zealand should therefore be seeking to eliminate the practice through changing attitudes as CEDAW requires. In the case of prostitution a change in attitudes can be achieved through criminalizing the exploitation of prostitution and educating boys and men against the abusive practice. In New Zealand legislation has been put in place which will serve to enable the male abusers to access women and teach future generations of men and boys that this behaviour is legitimate.

We recommend that the committee should condemn the decriminalisation of brothels and escort prostitution in New Zealand as violating Articles 5 and 6 of CEDAW.

¹ Mary Sullivan, *Making Sex Work. A failed experiment with legalised prostitution*. Melbourne: Spinifex, 2007.

² IBISWorld (2007). *Sexual Services in Australia*. Q9528. IBISWorld Industry Report.

³ Sex and the City. *New Zealand Truth*, 28 July, 2005

⁴ Prostitution Law Reform Committee 2005: *The Nature and Extent of the Sex Industry in New Zealand: An Estimation*, p 24.

- ⁵ Grant Fleming, 'Asian gangs exploiting prostitution laws – Copeland', *New Zealand Press Association*, 28 September 2006.
- ⁶ Fleming: NZPA; 28 September 2006
- ⁷ New Zealand Press Association. Prostitution Legislation Creates Headaches. 17 February 2005
- ⁸ Commonwealth of Australia 2003, p.18 in Sullivan: 'What Happens When Prostitution Becomes Work? An Update on the Legalisation of Prostitution in Australia, p.14.
- ⁹ Prostitution Law Reform Committee 2005: The Nature and Extent of the Sex Industry in New Zealand: An Estimation, p. 40.
- ¹⁰ David Garrett 'Sex Law Does More Harm Than Good' *The New Zealand Herald* 17/04/2006
- ¹¹ Ibid.
- ¹² Tvnz. Sex workers call for end to violence. 16 December 2006.
- ¹³ United Future Press Release 'Health Minister slack on STDs' 08/09/2006
Available from: http://www.unitedfuture.org.nz/press/show_item.php?t=0&i=1456
- ¹⁴ Occupational Health and Safety in the New Zealand Sex Industry 2006.
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- ¹⁶ Rhed n.d. Safety Tips for Escort Workers. South Melbourne Community Health, Victoria, Australia.
- ¹⁷ Police Minister George Hawkins, quoted in Danya Levy, '13-year-old Girls Selling Themselves for \$5: United Future', *New Zealand Press Association*, 4 May 2005.
- ¹⁸ Leanne Bell, 'Under-10s "Lured Into Sex Industry"', *Dominion Post*, 11 February 2004, p. 3.
- ¹⁹ Jo McKenzie-McLean, 'Christchurch police crackdown on teen prostitutes', *Stuff.co.nz*, 20 January 2006, <http://www.stuff.co.nz/stuff/0,2106,3545624a10,00.html>.
- ²⁰ Anna Claridge, 'Prostitution-reform MP wants inquiry into Christchurch child sex trade', *www.stuff.co.nz*, 24 February 2004, <http://www.stuff.co.nz/stuff/0,2106,2824106a11,00.html>.
- ²¹ 'Age of Prostitutes Noticeably Younger', *NewsTalkZB*, 18 June 2004, <http://xtramsn.co.nz/news/0,,3762-3444029,00.html>.
- ²² Danya Levy, '13-year-old Girls Selling Themselves for \$5: United Future', *New Zealand Press Association*, 4 May 2005.
- ²³ End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes. ECPAT New Zealand is a non-government organisation, which is part of a larger global network.
- ²⁴ Miriam Saphira and Averil Herbert, 'The Involvement of Children in Commercial Sexual Activity', *ECPAT 2004*.
- ²⁵ Leanne Bell, 'Under-10s "Lured Into Sex Industry"', *Dominion Post*, 11 February 2004, p. 3.
- ²⁶ Leanne Bell, 'Under-10s "Lured Into Sex Industry"', *Dominion Post*, 11 February 2004, p. 3.
- ²⁷ Ministry of Foreign Affairs and Trade, 2001, quoted in Miriam Saphira and Averil Herbert, 'The Involvement of Children in Commercial Sexual Activity', *ECPAT 2004*, p. 3.
- ²⁸ Shane Cotter, quoted in Kim Thomas, 'Act Fails to Protect Girls', *Stuff.co.nz*, 15 February 2005
- ²⁹ 'Police run shy on clients of underage prostitutes', *Press release: United Futures NZ Party*, 22 March 2006
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- ³³ Mama Tere, quoted in Jan Jordon, *The Sex Industry in New Zealand*, p. 34.
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- ³⁵ Jan Jordon, *The Sex Industry in New Zealand*, p. 33.
- ³⁶ Stephen Cook. 'Teenagers New Zealand Herald, 10 July 2004.
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- ³⁸ Miriam Saphira and Averil Herbert, 'The Involvement of Children in Commercial Sexual Activity', *ECPAT 2004*, p. 10.
- ³⁹ Melissa Farley, Preliminary Report on Prostitution in New Zealand. Unpublished, available from mfarley@prostitutionresearch.com, Wellington, New Zealand, 2003, p. 2.

⁴⁰ 2005 Report p36.

⁴¹ Jo McKenzie-McLean 'Visitors Join Sex Industry' *The Press* (Christchurch) 12/09/2006

⁴² U.S. Department of State *Country Reports on Human Rights Practices 2006 – New Zealand* (Bureau of Democracy, Human Rights and Labor, 2007)

Available from: <http://www.state.gov/g/drl/rls/hrrpt/2006/78785.htm>

⁴³ Agence France Presse 'US to review report of human trafficking claims in New Zealand' 18/06/2004

⁴⁴ Stephen Cook 'Teenagers Offer Cheap Sex' *New Zealand Herald* 10/07/2004

⁴⁵ Select Committee Report on Manukau City Council (Control of Street Prostitution) Bill. 2006.

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⁴⁶ Felicity Rookes 'More on Street, Say Sex Workers' *Taranaki Daily News* 10/10/2006