



## *New Zealand Prostitutes Collective*

By email: [consultation@unwomen.org](mailto:consultation@unwomen.org)

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United States

October 2016

Dear Sir/Madam

**Submission of NZPC on Consultation seeking views on UN Women approach to sex work,  
the sex trade and prostitution**

Thank you for the opportunity to contribute to this consultation (the **Consultation**). This submission is made on behalf of the New Zealand Prostitutes' Collective (**NZPC**). Our submission is **enclosed**.

NZPC are a sex-worker led organisation founded in 1987 to promote the rights, health and well-being of sex workers and to seek to have sex work decriminalised. Since 1988, NZPC have contracted with the New Zealand Ministry of Health to provide community-based services to sex workers. As such, NZPC is considered the lead agency with the deepest knowledge in relation to sex workers and is frequently called upon to provide advice and information to government and non-government agencies on sex workers and sex work.

Since its inception, NZPC have advocated for decriminalisation of sex work, sex workers, third parties and clients. We have worked with various women's organisations to achieve this outcome. These organisations included YWCA, Business and Professional Women's Federation, National Council on Women and various public health and human rights organisations. The decriminalisation aim was mostly achieved in June 2003 when the Prostitution Reform Bill (New Zealand) became law, repealing prohibitions on soliciting, brothel keeping, procurement and living on the earnings of sex work. In the same year, NZPC was appointed to the Prostitution Law Review Committee, which reported to the government on the impact of decriminalisation in 2008.

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The aims of the Prostitution Reform Act 2003 are:

“to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—

- (a) safeguards the human rights of sex workers and protects them from exploitation:
- (b) promotes the welfare and occupational health and safety of sex workers:
- (c) is conducive to public health:
- (d) prohibits the use in prostitution of persons under 18 years of age:
- (e) implements certain other related reforms.”<sup>i</sup>

We believe that the decriminalisation of sex work is the only way to ensure that sex workers are able to work in greater safety with increased rights. Sex workers can now work for themselves, from their homes, through street-based sex work, with other workers or in a managed brothel – whichever environment they prefer.

NZPC urges UN Women to consider our submission when drafting its 2017 public policy paper.

Yours sincerely,

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National Co-ordinator

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Community Liaison: law policy and practice

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<sup>i</sup> Section 3 Prostitution Reform Act 2003 (NZ).

## **New Zealand Prostitutes' Collective: Submission to Consultation seeking views on UN Women approach to sex work**

Question 1) How do you interpret the following principles in relation to sex work?

a) **Universality:** sex workers in New Zealand have the same rights as all people in all other recognised work. They have the right to health and safety in the workplace and the right to legal redress in situations such as sexual harassment. They have the right to determine whether or not to provide commercial sexual services in the context of sex work.

b) **Human Rights:** in 2003, New Zealand introduced the Prostitution Reform Act. Section 3 provides-

The purpose of this Act is to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—

(a) safeguards the human rights of sex workers and protects them from exploitation:

(b) promotes the welfare and occupational health and safety of sex workers:

(c) is conducive to public health:

(d) prohibits the use in prostitution of persons under 18 years of age:

(e) implements certain other related reforms.

c) **Leaving nobody behind:** Although New Zealand legislation does not “endorse or morally sanction” sex work, it does promote the rights, health and safety of sex workers. Some sex workers use sex work to escape poverty and others to enhance their opportunities in life.

Question 2) How do you suggest that policies on sex work can promote the following SDG targets and objectives?

a) **Reproductive rights:** decriminalisation enables sex workers to access relevant information pertaining to sexual and reproductive health and sex work. At their place of work, they can have condoms and lubricant and other safer sex products, knowing they will not be seized to contribute to a pattern of evidence to criminalise them, or their clients, or third parties, such as operators of brothels. Decriminalisation of sex work, and related activities, allows sex workers to freely communicate about prevention strategies to protect their sexual and reproductive health with their clients and operators of brothels and other third parties.

The former Department of Labour, in collaboration with sex workers, developed guidelines with a focus on occupational health and safety, and sex work. These feature best practice strategies on sexual and reproductive

health. This recognition of sex work supports sex workers to negotiate for a safe workplace, including one which upholds safe sex with their clients. There is no mandatory testing requirement in New Zealand legislation. This means sex workers are not discriminated against on the basis of their sexual and reproductive health, which may compel them to work underground.

- b) **Women's ownership of land and assets:** sex workers in New Zealand are able to control their assets and income, and purchase and lease properties to work from. They can manage their own sex work or elect to work with other sex workers and/or a brothel operator.
- c) **Building peaceful and inclusive societies:** sex workers in New Zealand are able to fully participate in society. They have the option to move in and out of sex work without the weight of state-endorsed stigma caused by criminalisation. Although some stigma and discrimination still exists, this has improved considerably since decriminalisation.
- d) **Ending the trafficking of women:** while anti-trafficking concerns are raised periodically, and investigations by the police and immigration authorities have been conducted, there has to date been no official confirmation of any instances of human trafficking for commercial sex exploitation.

Parties who suspect that people might be victims of sex trafficking, such as clients, brothel operators and others, feel able to report any concerns to authorities and NGOs such as sex-worker led organisations (NZPC) without risk of self-incrimination. Young people under the age of 18 are supported to find other options.

- e) **Eliminating violence against women:** sex workers are more able to report violence to the police in New Zealand because they are no longer criminalised. Evidence suggests that sex workers in New Zealand feel more comfortable reporting violence<sup>ii</sup> and after decriminalisation, there was a marked increase in the number of sex workers who felt more able to decline clients.

Question 3) The sex industry is gendered. How best can we protect women in the sex industry from the following?

- a) **Harm:** New Zealand addressed harm by ensuring sex workers, their clients, and third parties such as brothel operators are no longer criminalised. This led to a reduction in harm associated with criminalisation, which caused ongoing effects of stigma, discrimination, displacement, poverty and many other harmful outcomes.

Sex workers now have a lot of choice in how they conduct their sex work and where they work from, including working in managed brothels, as well as working for themselves, or with other sex workers, or from home-based settings. They can also meet their clients through street-based sex work or

through online advertising. The intention was to create a law which could protect sex workers from harm and exploitation and allow them to work in the environments they felt safest working in.

- b) **Violence:** sex workers have a voluntary relationship with the police and can reach out to them for assistance. This was not possible prior to decriminalisation as they were previously arrested and monitored on a police database as being part of a criminal underworld. Sex workers can now report violence to police, labour authorities, health authorities or organisations such as NZPC without fear of a backlash of criminalisation.

The relationship that sex workers have with the police in New Zealand has improved considerably and sex workers feel more able to report violence to the police<sup>iii</sup>. There has been judicial confirmation that sex workers have the same rights as other workers not to be subjected to sexual harassment<sup>iv</sup> and a considerable improvement in sex workers' relationship with the police.

It also leads to a decrease in stigma and discrimination, which has been linked to a corresponding increase in violence<sup>v</sup>.

Law and policy in New Zealand ensures that sex workers are able to work from whichever environment they feel safest in – from their homes, street-based sex work, with other workers or in a managed brothel. Decriminalisation of sex work enables a sex worker to devise and implement anti-violence strategies and practices<sup>vi</sup>. Decriminalisation of all sex work, including street-based sex work, allows a sex worker time to 'screen' a potential client in a safe, well-lit area without the threat of arrest<sup>vii</sup>.

Decriminalisation also allows for collaboration with organisations such as the police to work towards eradicating violence. The relationship that sex workers have with police in New Zealand has improved significantly since decriminalisation<sup>viii</sup>.

- c) **Stigma and discrimination:** Sex workers are not on a state register and can therefore remain private about their involvement in sex work, and this facilitates their ability to move in and out of sex work without attracting stigma and discrimination. They can access a range of services of relevance to them knowing they are not being monitored as criminals. Their rights are upheld, including the right to be treated equally.

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<sup>i</sup> See for example *DML v Montgomery and M & T Enterprises Ltd* [2014] NZHRRT6, a 2014 Human Rights Tribunal decision which awarded a sex worker NZD\$25,000 after she was subjected to sexual harassment in a New Zealand brothel.

<sup>ii</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice 2008 at p57.

<sup>iii</sup> Abel, G., *Discrimination: A Harm Minimisation and Human Rights Approach to Regulating Sex Work*, University of Otago, Dunedin 2010 at p239.

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<sup>iv</sup> See for example *DML v Montgomery and M & T Enterprises Ltd* [2014] NZHRRT6, a 2014 Human Rights Tribunal decision which awarded a sex worker NZD\$25,000 after she was subjected to sexual harassment in a New Zealand brothel.

<sup>v</sup> Explanatory note on Amnesty International's Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers, 26 May 2016, available at:

<https://www.amnesty.org/en/documents/pol30/4063/2016/en/>. Barnard describes this is a consequence of sex workers being treated as "second-class citizens" (see Barnard, M., *Violence and Vulnerability: Conditions of Work for Streetworking Prostitutes*, *Sociology of Health and Fitness* (1993) at p702).

<sup>vi</sup> Lyon, W., *Client Criminalisation and Sex Worker's Right to Health*, (2014) 13 *Hibernian Law Journal* 58 at p63, 67 and p86.

<sup>vii</sup> These screening opportunities reduce the risk of violence because a worker can conduct an on-the-spot risk assessment of the client and the vehicle (for example, a worker can view the entire interior of a car to confirm there are no hidden passengers or weapons).

<sup>viii</sup> Sex workers are now able to, and do, report violence to police without fear of repercussions – a majority (70%) of sex workers interviewed commented that sex workers were now more likely to report violence: *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, Ministry of Justice 2008 at p57.