



Submission from the Human Trafficking Research Coalition on the Draft Plan of Action against forced labour, people trafficking and slavery.

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www.workerexploitation.co.nz

the
préscha
initiative.

HAGAR
the whole journey

childALERT
eSpafnz Protecting Children from Sexual Exploitation

World Vision

Introduction

1. The Human Trafficking Research Coalition (the Coalition) is a network of four New Zealand NGOs with a focus on modern slavery. Three of the organisations have a focus on children. The Coalition is made up of Hagar New Zealand, The Préscha Initiative, ECPAT Child Alert and World Vision New Zealand.
2. On 14 December 2016, the Coalition published the first report on worker exploitation in New Zealand, entitled, “Worker Exploitation in New Zealand – A troubling Landscape” (“Worker Exploitation Report”).¹ The worker exploitation report contains recommendations that are still relevant to the Plan of Action against forced labour, people trafficking and slavery (Plan of Action). Some of these are outlined below. The Coalition recommends that the Worker Exploitation Report is referred to again through this consultation process.
3. This submission acknowledges that a separate implementation plan will be developed, detailing how agencies will achieve and measure each action. It further suggests some recommendations for this detail.
4. This submission follows the main headings of the draft Plan of Action.

Scope, terms and definitions²

5. The coalition suggests that the term “modern slavery” should be used as an umbrella term to refer to forced labour, people trafficking, slavery and slavery like practices including the worst forms of child labour. Australia and the United Kingdom both use the term “modern slavery” to cover these terms. The Coalition refers to the Freedom Foundation definition of this term that outlines:

“Modern slavery is an umbrella term encompassing slavery, servitude, forced or compulsory labour and human trafficking. Victims of modern slavery are unable to leave their situation of exploitation – controlled by threats, punishment, violence, coercion and deception “

6. The United Kingdom (UK) Modern Slavery Act 2015 uses the term “modern slavery” to cover slavery, servitude, forced or compulsory labour and human trafficking. It also explicitly defines “exploitation.”³
7. Similarly, The Commonwealth Modern Slavery Act 2018 definition of modern slavery includes slavery, servitude, forced labour, deceptive recruiting for labour or services, trafficking in persons and the worst forms of child labour.

Recommendation one: The Coalition recommend that the term “modern day slavery” is referenced, similarly to the UK and Australia as an umbrella term that encompasses slavery, servitude, forced or compulsory labour, human trafficking and the worst forms of child labour.

8. While the Plan of Action outlines that children are particularly vulnerable to being trafficked, they are minimally considered throughout the Plan of Action. This is surprising given that New Zealand is signatory to ILO Convention 182 on the Worst Forms of Child Labour. 30% of

victims worldwide are children and children should be named and focused on in New Zealand's Plan of Action.

Recommendation two: The Coalition recommend that the worst forms of child labour is explicitly added in the scope, terms and definition section.

9. Domestic trafficking frequently involves children, yet Oranga Tamariki are not identified as a lead agency for the development of risk indicators or for information-sharing agreements to aid the identification and support of victims.
10. Currently, neither the New Zealand Police (Police) or Oranga Tamariki policy enables data or victim tracking of disclosures of harm that amount to domestic trafficking under the New Zealand legal definition. The Coalition is concerned that the current Plan of Action does not propose a mechanism to progress the protection of child victims, share information about child trafficking and provide effective support.

Recommendation three: The Coalition recommend that Oranga Tamariki are assigned as a lead agency for the development of risk indicators for children and that Oranga Tamariki in collaboration with the Police develop protocols to share relevant information for the identification and protection of children in New Zealand.

11. The Plan of Action situates Oranga Tamariki's obligations as primarily supporting the establishment of better responses to child trafficking in the Pacific, rather than as a statutory agency charged with meeting basic (and as yet unfulfilled) requirements to identify, track, and support victims of child trafficking, including domestic trafficking, within New Zealand.

Recommendation four: Oranga Tamariki should take a lead role in identifying and supporting child victims of sexual exploitation, including through prostitution, and in sharing information to prevent an escalation or perpetuation of this trafficking.

12. The Plan of Action currently has inadequate focus on sexual exploitation. The stated priorities for progress in combatting trafficking perpetuate the gender-blind misconceptions of who trafficking happens to, with fishing industries and migrant worker policies being the principal focus.
13. This contradicts evidence regarding domestic exploitation and discriminates against women's and girls' experiences of trafficking, despite the Plan of Action referring to gendered victimization.
14. There is no mention of the ways that law enforcement and associated statutory bodies will proactively take steps to identify victims of domestic sex trafficking or sexual exploitation through forced prostitution. This nullifies the overarching claims that the plan

¹ This report can be viewed here: www.workerexploitation.co.nz/report

² Page 4 of the Plan of Action

³ Modern Slavery Act 2015, Part 1 Offences, <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

will prevent these forms of trafficking from taking place, identify and assist victims, efficiently enforce the law, and build cooperation between agencies to more effectively address this type of crime.

Recommendation five: Name other forms of trafficking in the Plan of Action and outline in the Plan of Action or Implementation Plan how victims, particularly women and girls will be identified and supported.

Recommendation six: Ensure that domestic sex trafficking is included in the Plan of Action and that data on domestic sex trafficking is included with data on forced labour, people trafficking and slavery, so a full picture of all modern slavery crime can take place.

Recommendation seven: Ensure that proactive law enforcement strategies are developed that recognise gendered forms of trafficking. Take steps to find and investigate the forced prostitution of women and girls without requiring victims to instigate this.

New Zealand's Approach

15. The Plan of Action refers to three international conventions and protocols, that New Zealand has ratified that directly address forced labour, people trafficking and slavery. It further outlines secondary legal instruments including the ILO Worst Forms of Child Labour Convention below this section.

Recommendation eight: The Coalition recommend that like Australia, the ILO Worst Forms of Child Labour Convention is elevated to sit alongside the three other named conventions. Any Plan of Action for New Zealand should have a focus on the most vulnerable victims, children.

16. The Plan of Action sets out a high-level framework that requires a separate implementation plan. The status of actions as “planned, ongoing or underway” are vague and it is unclear within a five-year timeframe when these actions will take place. Critically, the implementation plan requires goals that are time-bound and sufficiently precise to allow for real accountability.

Recommendation nine: The Coalition recommend that the “status” of actions is updated with accountable timeframes and that accountability criteria is embedded into the implementation plan to ensure that all actions are specific, measurable, attainable, relevant and time bound.

Prevention

Article 9 of Trafficking Protocol outlines that states have an obligation to prevent and combat human trafficking. It further outlines that states should undertake research into the issue of human trafficking, strengthen legislative, educational, social and cultural measures to discourage the exploitation of people and amend or adopt the necessary legislative measures and establish comprehensive policies and programmes to prevent trafficking in

persons. Article 10(2) outlines that law enforcement, immigration and other officials should be trained in identifying victims of human trafficking and prosecuting perpetrators of this crime.

Undertake awareness raising and training activity

17. The Coalition agrees that information, resources and advice need to be distributed so that people in New Zealand know their rights. However, it is important that ethnic and community groups are key stakeholders distributing this and that the information is accessible to people with disabilities and those who speak non-English languages.

Recommendation ten: The Plan of Action should list stakeholders outside of government responsible for distributing resources and advice to vulnerable groups.

18. The Coalition recommended in the Worker Exploitation report that “New Zealand Customs officers, Immigration Officers, Refugee and Protection Officers, Members of the Immigration and Protection Tribunal and all other frontline staff that interact with potential victims of human trafficking should be given mandatory training to assist with victim identification.”

Recommendation eleven: The Coalition recommends that specific roles within MBIE are named to ensure that Refugee and Protection Officers as well as Immigration Officers can identify people trafficking, forced labour and trafficking. The Coalition also recommends that the Ministry of Justice is named as an agency so that there is specific training to Judges in New Zealand courts.

19. The Coalition agrees that risk indicators and associated information sharing agreements for forced labour, people trafficking and slavery in New Zealand should be developed. The Worker Exploitation recommendation outlined this in more detail: “The New Zealand Government should establish a New Zealand Labour Code/ red flag system for human trafficking and labour exploitation, with relevant staff trained to identify these and take appropriate action. Red flags would include deception over employment terms and conditions, illegal or excessive placement fees charged to foreign contract workers, unexplained fees and costs, lack of transparency and passport retention.” Accordingly, the Coalition reaffirms this recommendation below:

Recommendation nine: The New Zealand Government should establish a New Zealand Labour Code/ red flag system for human trafficking and labour exploitation, with relevant staff trained to identify these and take appropriate action. Red flags would include deception over employment terms and conditions, illegal or excessive placement fees charged to foreign contract workers, unexplained fees and costs, lack of transparency and passport retention.

Enhance international prevention responses through regional cooperation

20. The Coalition support the actions outlined in this section and urge the government to work closely with New Zealand aid and development organisations who are working on the ground in Asia-Pacific with locals who can lead training and capability programmes.

Recommendation twelve: Encourage MFAT to work with New Zealand aid and development organisations in Asia-Pacific to lead training and capability prevention programmes.

21. Research shows that recruiters can facilitate exploitation by at times charging exorbitant fees at high interest rates. This leads to indebtedness and vulnerability to exploitation and potential trafficking. Adapting best practice examples and forming Memorandum's of Understanding (MOUs) with partner countries could assist in reducing exploitation, abuse and human trafficking. This should be considered in leveraging bilateral and multilateral agreements. This is also a recommendation from the Worker Exploitation report.

Recommendation thirteen: The New Zealand Government should adapt MOUs with other countries (where recruitment agencies are involved with migrant workers) to include; a standard contract between a migrant worker and the recruitment agency, a standard employment contract, a limit set on recruitment fees, ensuring the worker has at least one day off per week, ensuring no passports are confiscated, requiring all migrant workers to do an in country induction into New Zealand shortly after arrival.

Eliminate forced labour, people trafficking and slavery from supply chains

22. The Coalition supports all actions in this section and affirms that government procurement should lead by example in implementing supply chain practices that identify and mitigate forced labour, people trafficking and slavery from supply chains.

23. The Coalition is pleased that there is planned consideration of introducing legislation requiring businesses to report publicly on transparency in supply chain. The Coalition acknowledges that there are an estimated 40 million people living in modern slavery worldwide⁴ and that two thirds of all modern slaves live in Asia Pacific – the area New Zealand is part of and trades with extensively.⁵

24. New Zealand currently has no accountability legislation that addresses transparency in supply chain. This means that New Zealand companies and New Zealand public procurement could unknowingly be importing products or services that exploit and enslave people.

25. The Coalition notes the developments that are taking place in the European Union⁶ regarding human rights due diligence as well as the Modern Slavery Acts in the United Kingdom and Australia. The Coalition encourages the government to take international developments into consideration and develop legislation in accordance with the United Nations Guiding Principles on Business and Human Rights.

⁴ ILO and Walk Free Global Slavery Index

⁵ *Ibid.*

⁶ Shift, *Human Rights Due Diligence: the State of Play in Europe (October 2020)*

<https://shiftproject.org/resource/mhrdd-europe-map/>

26. Any supply chain legislation for New Zealand should also have a domestic focus and explicitly address worker exploitation that takes place in New Zealand based supply chains.
27. The Coalition notes that the Modern Slavery Research Institute is carrying out research regarding whether New Zealand needs Modern Slavery legislation. Complementary to this would be a representative working group led by a Queens Counsel that investigates what supply chain legislation for New Zealand would look like.

Recommendation fourteen: The Coalition recommend that the government appoint a representative taskforce led by a Queens Counsel and to consider the best form of supply chain legislation for New Zealand.

Recommendation fifteen: The Coalition recommend that in consideration of supply chain legislation, human rights due diligence in accordance with the United Nations Guiding Principles on Business and Human Rights is adhered to as the leading expertise global for supply chain legislation.

Protection

The Preamble of the Trafficking Protocol outlines that state parties have an obligation to protect the human rights of victims of human trafficking. Article 6 of the Trafficking Protocol outlines that states should protect victims by providing them with information and services including information regarding court and administrative proceedings, physical, psychological and social recovery services that include medical care, counselling, a safe place to live and employment. The UN Office of Drugs and Crime, International Framework for Action to Implement the Trafficking in Persons Protocol (2009) (“UNDOC Framework”) outlines that states should develop and strengthen victim identification procedures and ensure that these procedures have a human-rights based approach to the protection of victims “regardless of their cooperation with law enforcement.” The framework also outlines that victims should be referred to the asylum system where appropriate.

28. The Coalition has always supported the Government creating and resourcing a specific office or agency that coordinates and carries out an inter-agency cross-government response to human trafficking.⁷ We are supportive of the Trafficking in Persons Operations Group (TPOG) but suggests that the terms of reference for the TPOG may be too narrow if the sole purpose is to share information regarding coordinated investigations and prosecutions. There is still a need for centralized office or agency that has responsibility for facilitating human trafficking investigation, coordinating national awareness and anti-trafficking initiatives, being a first port of call for victims who need assistance, coordinating intelligence and developing and maintaining international partnerships. Good examples of national strategies with specific offices can be seen in the United Kingdom, United States of America and Canada.

Recommendation sixteen: The New Zealand Government should consider extending the TPOGs terms of reference or ensuring that there is centralized

⁷ See Recommendations in the Worker Exploitation Report

alignment for inter-agency, cross-government oversight and leadership for the strategic oversight of the Plan of Action and Implementation Plan.

Provide for the effective and efficient delivery of support services to victims

29. Any support to victims of people trafficking should take place through partnership with NGOs and relevant ethnic communities. Research shows that victims of people trafficking do not often trust government agencies and so it is essential that a victim-centric approach takes place alongside relevant community organisations.

Recommendation thirteen: Consider including the Office of Ethnic Communities as a responsible agency in facilitating victim support.

Improve information for victims of exploitation and vulnerable groups

30. It is important to realise that social sector agencies and non-governmental organisations are paramount to informing exploitation victims about their rights and how to access help and assistance.

Recommendation seventeen: The Plan of Action should set out an action that involves stakeholder engagement to identify New Zealand social sector and non-governmental organisations that can provide assistance to victims, and a working plan to work with them.

31. It is still very unclear how a victim accesses appropriate services if they have been exploited or are a victim of forced labour, people trafficking and slavery. It is important that a process map is established that shows a victim clearly how they can access the services they need.

Recommendation eighteen: Include a process map that shows a victim all the steps they need to take when accessing protection and services as a victim of forced labour, trafficking and slavery. Ensure this is easy to understand and published in multiple languages.

Improve our understanding of exploitation to enable better targeting of actions and measures

32. The Coalition supports more research and monitoring of forced labour, people trafficking and slavery but wonders if this should be in the “prevention” section above as a preventative measure.

33. Current research into worker exploitation in New Zealand has clearly shown that there are vulnerable ethnic groups and specific demographics with elevated levels of exploitation. The New Zealand Government should commit to further in-depth research into the vulnerable demographics identified in order to understand and address the specific and unique issues they present. Further research suggestions could include:

- Expand the current research to continue to build a better picture of the level of exploitation in New Zealand over the next five years;
- A longitudinal study, from 2013 to 2030 of labour practices, migration movement and

reports of exploitation including the New Zealand government's response, monitoring and reporting of this issue;

- More research into particular visa categories such as working holiday makers, seasonal workers, and post-study work visas which can facilitate the exploitation of people in New Zealand.
- Research into sexual exploitation in New Zealand and improved categorising of these cases (as opposed to categorisation as child abuse, sexual abuse, assisting a minor etc.).

Recommendation nineteen: The New Zealand Government should actively commit to funding further research into vulnerable demographics identified in current New Zealand research as part of its plan to prevent forced labour, people trafficking and slavery in New Zealand.

Recommendation twenty: The New Zealand Government should actively commit to monitoring industrial sectors where labour exploitation is taking place and regularly publish the results of this monitoring in order to measure and quantify this issue.

34. There is currently no research that outlines a victim's interaction with the plan of action. It is important that as part of monitoring the Plan of Action, the experiences of victims interacting with the plan is collated and monitored so that improvements can be made.

Recommendation twenty-one: Carry out victim-centric monitoring of the Plan of Action by hearing from victims. Act on recommendations made by victims to improve the Plan of Action and Implementation Plan.

Enforcement

Article 5(1) of the Trafficking Protocol states that state parties should adopt legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in the definition of human trafficking. The European Court of Human Rights states that "the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of human trafficking." The UNTOC framework encourages states to strengthen legislation in compliance with the Trafficking Protocol and criminalise crimes related to trafficking in persons, such as corruption, money laundering, obstruction of justice and participation in an organized criminal group. Section V of the Trafficking Protocol states that law enforcement entities should develop intelligence led investigations that do not necessarily rely on the testimony of victims.

35. The Coalition endorses all the actions outlined in the enforcement section.

Strengthen operational, policy and legislative settings to enhance enforcement and align with international obligations

36. There have only been a handful of successful prosecutions in New Zealand with a lot of

anecdotal evidence that the current modern slavery framework in New Zealand hinders effective prosecution. The Coalition have previously recommended that there should be an in-depth analytical review of all forced labour, people trafficking and slavery prosecutions to date with recommendations regarding how to improve these at a legislative level.

Recommendation twenty-two: The Coalition recommend as part of New Zealand’s commitment to enforcement, there is a review of successful and unsuccessful prosecutions for forced labour, people trafficking and slavery and recommendations that may include legislative changes proposed.

37. The New Zealand Crimes Act 1961 does not align with the international definition for trafficking in children. Amendment to this law has been mentioned in several US Department of State Trafficking in Persons reports, yet no action has been taken. The current wording that says “consider amending the Crimes Act” is weak and not actionable enough.

Recommendation twenty-three: The Coalition recommend that the Plan of Action should state that the government WILL amend the Crimes Act to strengthen the provisions for the criminalization of children. Coalition members would be happy to assist the government on this point as child-focused NGOs.

Recommendations

1. The Coalition recommend that the term “modern day slavery” is referenced, similarly to the UK and Australia as an umbrella term that encompasses slavery, servitude, forced or compulsory labour, human trafficking and the worst forms of child labour.
2. The Coalition recommend that the worst forms of child labour is explicitly added in the scope, terms and definition section.
3. The Coalition recommend that Oranga Tamariki are assigned as a lead agency for the development of risk indicators for children and that Oranga Tamariki in collaboration with the Police develop protocols to share relevant information for the identification and protection of children in New Zealand.
4. Oranga Tamariki should take a lead role in identifying and supporting child victims of sexual exploitation, including through prostitution, and in sharing information to prevent an escalation or perpetuation of this trafficking.
5. Name other forms of trafficking in the Plan of Action and outline in the Plan of Action or Implementation Plan how victims, particularly women and girls will be identified and supported.
6. Ensure that domestic sex trafficking is included in the Plan of Action and that data on domestic sex trafficking is included with data on forced labour, people trafficking and slavery, so a full picture of all modern slavery crime can take place.
7. Ensure that proactive law enforcement strategies are developed that recognise gendered forms of trafficking. Take steps to find and investigate the forced prostitution of women and girls without requiring victims to instigate this.
8. The Coalition recommend that like Australia, the ILO Worst Forms of Child Labour Convention is elevated to sit alongside the three other named conventions. Any Plan of Action for New Zealand should have a focus on the most vulnerable victims, children.
9. The Coalition recommend that the “status” of actions is updated with accountable timeframes and that accountability criteria is embedded into the implementation plan to ensure that all actions are specific, measurable, attainable, relevant and time bound.
10. The Plan of Action should list stakeholders outside of government responsible for distributing resources and advice to vulnerable groups.
11. The Coalition recommends that specific roles within MBIE are named to ensure that Refugee and Protection Officers as well as Immigration Officers can identify people trafficking, forced labour and trafficking. The Coalition also recommends that the Ministry of Justice is named as an agency so that there is specific training to Judges in New Zealand courts.
12. The New Zealand Government should establish a New Zealand Labour Code/ red flag system for human trafficking and labour exploitation, with relevant staff trained to identify these and take appropriate action. Red flags would include deception over employment terms and conditions, illegal or excessive placement fees charged to foreign contract workers, unexplained fees and costs, lack of transparency and passport retention.

- 13.** Encourage MFAT to work with New Zealand aid and development organisations in Asia-Pacific to lead training and capability prevention programmes.
- 14.** The New Zealand Government should adapt MOUs with other countries (where recruitment agencies are involved with migrant workers) to include; a standard contract between a migrant worker and the recruitment agency, a standard employment contract, a limit set on recruitment fees, ensuring the worker has at least one day off per week, ensuring no passports are confiscated, requiring all migrant workers to do an in country induction into New Zealand shortly after arrival.
- 15.** The Coalition recommend that the government appoint a representative taskforce led by a Queens Counsel to consider the best form of supply chain legislation for New Zealand.
- 16.** The Coalition recommend that in consideration of supply chain legislation, human rights due diligence in accordance with the United Nations Guiding Principles on Business and Human Rights is adhered to as the leading expertise global for supply chain legislation.
- 17.** The New Zealand Government should consider extending the TPOGs terms of reference or ensuring that there is centralized alignment for inter-agency, cross-government oversight and leadership for the strategic oversight of the Plan of Action and Implementation Plan.
- 18.** Consider including the Office of Ethnic Communities as a responsible agency in facilitating victim support.
- 19.** The Plan of Action should set out an action that involves stakeholder engagement to identify New Zealand social sector and non-governmental organisations that can provide assistance to victims, and a working plan to work with them.
- 20.** Include a process map that shows a victim all the steps they need to take when accessing protection and services as a victim of forced labour, trafficking and slavery. Ensure this is easy to understand and published in multiple languages.
- 21.** The New Zealand Government should actively commit to funding further research into vulnerable demographics identified in current New Zealand research as part of its plan to prevent forced labour, people trafficking and slavery in New Zealand.
- 22.** The New Zealand Government should actively commit to monitoring industrial sectors where labour exploitation is taking place and regularly publish the results of this monitoring in order to measure and quantify this issue.
- 23.** Carry out victim-centric monitoring of the Plan of Action by hearing from victims. Act on recommendations made by victims to improve the Plan of Action and Implementation Plan.
- 24.** The Coalition recommend as part of New Zealand's commitment to enforcement, there is a review of successful and unsuccessful prosecutions for forced labour, people trafficking and slavery and recommendations that may include legislative changes proposed.
- 25.** The Coalition recommend that the Plan of Action should state that the government WILL amend the Crimes Act to strengthen the provisions for the criminalization of children. Coalition members would be happy to assist the government on this point as child-focused NGOs.