

Conformity of NZ's obligations to criminalise child trafficking with international law

July 2021

The Trafficking in Persons Report (TIP Report) by the U.S Department of State provides a snapshot of the action that governments are taking to address human trafficking in their countries. The 2020 Report categorized New Zealand as a Tier 1 country that is fully meeting the minimum standards for the elimination of trafficking. However, the 2021 report found that New Zealand's efforts no longer meet the minimum standard required, downgrading New Zealand's ranking to Tier 2. You can find the the Human Trafficking Research Coalition ("the Coalition")'s statement on the 2021 TIP report [here](#).

Both the 2020 and 2021 reports outline a number of areas that the New Zealand government should take action on to improve our nation's efforts to address human trafficking. Several of the recommendations highlight sections of The Crimes Act 1961 that should be amended to ensure that New Zealand's domestic legislation in relation to the criminalisation of child trafficking is fit for purpose.

The Coalition consider it of vital importance that New Zealand is, at a minimum, meeting its international obligations to address human trafficking including in relation to children. As such, prior to the release of the 2021 TIP report, the Coalition took steps to investigate the TIP 2020 report recommendations regarding The Crimes Act 1961 further. We instructed legal counsel to provide advice on whether New Zealand's domestic law adequately discharges our international obligations in relation to the criminalisation of child trafficking and what could be done to address any shortcomings. In our view, the subsequent downgrade of New Zealand in the 2021 TIP report rankings make the legal analysis even more important.

Relevant International Legal Framework

New Zealand is party to two important international instruments that are designed to criminalize child trafficking – the Palermo Protocol and the UNCROC Protocol. As a nation state that is party to these agreements, New Zealand has to ensure that its domestic legislation contains certain protections for children. New Zealand has three pieces of legislation that seek to incorporate its international obligations in relation to criminalisation: The Crimes Act 1961, the Prostitution Reform Act 2003 and the Films, Videos and Publications Classifications Act 1993.

A comparison was undertaken regarding three pieces of domestic legislation with the obligations New Zealand has under the Palermo and UNCROC Protocol. The comparative analysis identified discrepancies between the instruments, and therefore domestic provisions that could benefit from reform.

Summary of Legal Opinion and Key Recommendations

Weaknesses were identified in the current wording of relevant sections of The Crimes Act 1961 and made a number of recommendations as to how the provisions could be strengthened to align with the international instruments. In summary:

- 1) In contrast to the Palermo Protocol, Section 98B of the Crimes Act does not specify that 'abuse of power' and 'abuse of vulnerability' are methods by which trafficking can be achieved;
- 2) The Crimes Act does not cover that the giving of payments can achieve a form of consent of a person having control over another person; and
- 3) Section 98D of The Crimes Act is silent on the question of consent whereas the Palermo Protocol explicitly states that the consent of a victim to the exploitation is irrelevant if the situation has involved coercion or deception.

Specifically in relation to children, the provisions relating to child exploitation contained in 98AA could be amended to be more consistent with the international instruments.

HTRC Response

The recommended amendments address areas where New Zealand legislation should be improved to better align with New Zealand's obligations to criminalise trafficking under the relevant international agreements. HTRC encourages the New Zealand government to introduce reforms to the provisions as identified in the opinion to ensure that our domestic framework provides the best possible platform for successful identification of trafficking offences and prosecution of perpetrators.

Notwithstanding the work needed for improvement, it is positive that the provisions broadly align with the international instruments in relation to the criminalisation of trafficking offences. However, we note that the scope of the analysis was limited to the criminalisation of child trafficking offences, and did not include an analysis of whether New Zealand's domestic framework meets our wider obligations in relation to trafficking under international law, including (but not limited to) obligations in relation to the protection of privacy and identification of trafficking victims, support measures including housing, counselling and legal advice, the provision of physical safety of victims, and provisions relating to compensation and remedy for victims.

Exploitation in New Zealand continues and is increasing in some sectors, so it is obvious there is significant work that needs to take place within New Zealand's trafficking response. As such, the Coalition recommends follow up research is now necessary, as despite only minimal recommendations made in the Parry Field report to align domestic legislation to international obligations, these are only in relation to criminal provisions, and we are seeing considerable vulnerability to various forms of exploitation in New Zealand. It could be that New Zealand's approach to addressing

trafficking is too narrowly focused on a criminal strategy, and we are failing in our wider obligations to prevent exploitation and protect victims of trafficking

As such, the Coalition recommend further research is conducted to explore:

- The extent to which the criminal legislation is being applied consistently in New Zealand and any barriers to implementation;
- The gaps in New Zealand's approach to combating trafficking, including in relation to prevention and protection services, that may be leaving particular groups at risk of exploitation;
- Any other shortcomings in domestic legislation, broader than criminal obligations; and
- What is needed for New Zealand to meet more than just the minimal requirements under international law.

This might include, for example, research into identification practice and data collection such as how the police should code cases of sexual exploitation so that we can review trends and improve our prevention and response processes.

The Coalition will be looking to address some of these research gaps in future.

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