

Submission by

**ECPAT Child Alert**

**&**

**Te Whāriki Whakaaro o ngā Kaimahi Taiohi**

to the **Human Rights Council**

for the 46<sup>th</sup> session of the Universal Periodic Review of the human rights situation in New Zealand

(UPR forth cycle 2019 – 2023)

This is a joint submission by ECPAT Child Alert and Te Whāriki Whakaaro o ngā Kaimahi Taiohi (the NZ Community of Practice for ending Child Sexual Exploitation) and is prepared for the Universal Periodic Review 46<sup>th</sup> session, for New Zealand.

*ECPAT Child Alert is an NGO that works to prevent and respond to child sexual exploitation. We welcome the opportunity to bring informed insights and recommendations into New Zealand's current progress, achievements, and areas for improvements with regards to children's rights and ending child sexual exploitation.*

*Te Whāriki is a collaboration of social workers and community workers from various organisations in Aotearoa interested in contributing to the provision of best practice services and helping to protect tā tātou tamariki katoa from sexual exploitation.*

We acknowledge the nation's efforts and advancements in combating human trafficking and exploitation. These commendable actions include increased trafficking investigations, improved training within government of human trafficking, and the establishment of the Plan of Action against forced labor, people trafficking, and slavery. We are privileged to sit on the Reference Group for this Plan of Action and witness firsthand its implementation. There remain, however, critical areas where the government's response continues to fall short. There is a significant lack of clarity in what constitutes trafficking and exploitation across government agencies. This lack of uniformity leads to inconsistencies in addressing these critical issues. Additionally, there is a notable deficiency in coordination and resources dedicated to prevention and protection efforts and the current legislative framework does not align with international standards, particularly in the context of child sexual exploitation.

### **Justification for Submission**

1. The present submission is an update to review the progress that has been made by the Government of New Zealand to end sexual exploitation of children (SEC). New recommendations to end SEC in New Zealand will be made. The recommendations made in this report are in line with the commitment made by the Government to eliminate all forms of violence against children, including sexual abuse and exploitation with the adoption of the 2030 agenda for Sustainable Development in 2015.
2. The content of this report is based on ECPAT Child ALERT's research and work experience, and the experiences of the social workers and frontline workers in the Community of Practice - Te Whāriki.
3. The scope of this report is primarily limited to SEC and its different manifestations, including online child sexual exploitation, child sexual abuse materials, trafficking of children for sexual purposes, sexual exploitation of children in the context of travel and tourism, and child marriage.

**Racism and discrimination: (18-26)**

The NZ Government UPR National Report sections 18-26 on Racism and Discrimination focus almost exclusively on terrorism and violent extremism without recognition of numerous other issues relevant to racism and discrimination. Many communities face heightened vulnerability to sexual violence and exploitation due to persistent racism and discrimination. Recent statistics released by the Ministry of Justice have revealed that individuals belonging to rainbow communities are twice as likely to experience intimate partner violence or sexual abuse compared to the general NZ population. This concerning trend extends to the realm of child sexual exploitation. Despite their increased vulnerability, members of the rainbow community are less inclined to engage with law enforcement agencies and receive the needed support. ECPAT and Te Whāriki acknowledge the substantial advocacy efforts underway in this domain but underscores the pressing need for government collaboration with the rainbow community itself. Such collaboration can facilitate the co-creation of specialised strategies and responses aimed at combatting this multifaceted challenge.

**Migrants, refugees and asylum seekers****Migrant exploitation: (43)**

We note considerable efforts by NZ Gov to address migrant exploitation in recent years. We are concerned however about the continuing focus on only labour exploitation and lack of attention on migrant sexual exploitation.

Persistent disparities in data underscore the disproportionate impact of sexual violence on ethnic communities. Te Aorerekura: National Strategy to Eliminate Family Violence underscores the significance of recognising and comprehending the unique dynamics within diverse populations and shows the importance of contextualising the drivers and ramifications of sexual offending within these communities. As with a number of policy areas in NZ this is well outlined in the strategy but not yet actualised and requires greater resourcing. We need to see direct collaboration between the NZ Government and ethnic communities in the development of prevention programs and support services to meet the specific needs of these communities.

We commend the Ministry of Business, Innovation and Employment (MBIE) for its initiative on distributing informational brochures clarifying the legal framework surrounding participation of migrants in sex work and offering guidance on reporting instances of exploitation. However, these materials did not specifically address trafficking. In alignment with the findings of the Trafficking in Persons Report 2023, it was noted that many of the resources pertaining to migrant workers' rights and employment laws were neither sufficiently clear nor effectively distributed. Consequently, some workers remained unaware of their rights or how to report instances of exploitation. ECPAT and Te Whāriki advocate for an expansion of the content and dissemination of resources that comprehensively explain the rights of migrant workers and the procedures for reporting instances of exploitation.

#### **Trafficking (46):**

New Zealand currently maintains its 'Tier Two' ranking in the most recent Trafficking in Persons (TIP) report (2023), indicating the need for substantial improvements to bring our efforts in addressing trafficking and exploitation up to internationally accepted standards. Despite some notable progress in combating human trafficking, certain critical areas require attention. Regrettably, the government has not initiated any prosecutions, secured convictions of traffickers, or successfully identified any victims in the recent reporting period. It is concerning to note that officials do not have established written procedures for the systematic identification of victims of trafficking. Currently there is no national referral mechanism in place for victims of human trafficking (Trafficking in Persons Report, 2023).

The Plan of Action Against Forced Labor, People Trafficking, and Slavery (2020), has taken positive steps including the investigation of trafficking cases, the development of anti-trafficking training modules for government agencies, and an enhanced level of collaboration with civil society. However, several government agencies have yet to fulfill their commitments under this plan of action. Moreover, while the Plan of Action ostensibly commits to providing victims with suitable support, the implementation details still exhibit a strong bias towards addressing labor trafficking, with inadequate provisions for the prevention and support of victims of sex trafficking.

The application of trafficking and exploitation definitions across various government agencies in New Zealand is marked by inconsistency. These definitions can sometimes be ambiguous, outdated, and do not align with international standards. This inconsistency has repercussions on efforts related to prohibition, prevention, and protection. Uncertainty in what specifically constitutes trafficking has meant that often perpetrators are more

likely to be prosecuted under less-serious charges than trafficking, such as family violence or assisting a minor into sex work, in the attempt to classify human trafficking crimes into subjectively less consequential categories (Thorburn, 2017; Lyneham, 2021). The Trafficking in Persons Report (2022) states the importance of integrating exhaustive definitions of key concepts such as ‘trafficking in persons’, ‘coercion’, and ‘exploitation’ into a country’s legislation. Without a coherent agreement of what constitutes the definition of trafficking, certain cases may fail to be defined as ‘trafficking in persons’ and therefore traffickers may be prosecuted under different legislation, often at times meaning a much lesser penalty. Currently in New Zealand, the Crimes Act 1961, does not recognise the difference between trafficking in adults and trafficking in children.

New Zealand has seen an increase in prosecutions for trafficking-type offences, but the government has exclusively used Section 98D to prosecute labor trafficking crimes and has never prosecuted a sex trafficking crime or a case of internal trafficking under Section 98D (Trafficking in Persons Report, 2023). There have been a number of convictions of what would be considered sex trafficking by the UN definition, but these are usually prosecuted under lesser offenses, such as under the Prostitution Reform Act 2003, which does not do justice to the extent of harm caused and carries a maximum sentence of 7 years prison.

ECPAT and Te Whāriki acknowledge the efforts made by NZ Gov to promote training for government agencies to detect and respond effectively to instances of human trafficking, forced labor, and slavery. This training needs to be strengthened in the area of child trafficking and needs to be extended to frontline workers outside of government. The Trafficking in Persons Report of 2023 still notes a deficit in the capability of law enforcement, particularly within the police force, to identify trafficking cases among victims of domestic or family violence, resulting in unidentified cases. It is submitted that in order to increase the capacity of law enforcement officials in New Zealand to adequately recognise and report instances of human trafficking, the New Zealand training programme should be revised and made more comprehensive.

Child sexual exploitation services in New Zealand are under resourced and are offered inconsistently across the country. Referral pathways for child trafficking, including domestic trafficking, are currently unclear, inadequate, and inaccessible. There is a lack of skills and knowledge of child sexual exploitation among professionals in New Zealand, with many expressing that they do not have response procedures in place for trafficking cases (Thorburn, 2016).

New Zealand's legislation concerning child trafficking is not in alignment with international standards. This is because the Crimes Act of 1961, as amended in 2015, does not encompass all forms of child sex trafficking, as it

still requires, under Section 98D, a demonstration of deception or coercion to constitute a child sex trafficking offense. Often it is near impossible to provide this evidence, ultimately meaning that not all forms of child sex trafficking are able to be prosecuted under this section (Human Trafficking Research Coalition, 2023). The Trafficking in Persons 2023 report noted that child sex trafficking offences were often prosecuted under the Prostitution Reform Act that carried half the sentence of child trafficking in the Crimes Act. The office of the Minister for Justice has thus far only expressed a commitment to "considering" an amendment of the Crimes Act 1961 to strengthen provisions related to the criminalization of trafficking in children.

### **Modern slavery: (48)**

The NZ Gov has taken a positive step towards eradicating modern slavery in supply chains by introducing the modern slavery legislation aimed at enhancing accountability and transparency within larger organisations. Currently however this legislation does not require these entities to take concrete measures to mitigate these risks, although the government has expressed its intention to develop proposals for more robust due diligence obligations in the future (Ministry of Business, Innovation & Employment, 2023).

While a definite improvement regarding NZ supply chains, it must be noted that this legislation falls short of international standards of modern slavery legislation and is not likely to have any impact on modern slavery existing within NZ, focusing solely on international supply chains.

### **Indigenous rights: (73-76)**

Despite the improvements and well-intentioned plans laid out in the NZ Gov UPR Report, Māori are overrepresented in many negative social indicators, including making up 57 percent of the children requiring state care and protection services (Oranga Tamariki, 2022). ECPAT requested police data in June 2022 on reports of child sexual exploitation under the provisions of the Official Information Act 1982 and whilst the response was limited it showed that of the crime types that definitively constitute child trafficking, 37.18 percent of the victims were Māori in 2021; the highest ethnic group and consistently overrepresented since 2018.

Persistent disparities in data reveal that Māori and Pasifika communities are disproportionately affected by sexual violence and child abuse, with notable overrepresentation in survival sex statistics (Thorburn & de Haan, 2014). Individuals who identify as Māori face heightened risks, often presenting clusters of risk factors that increase vulnerability to exploitation (Ministry of Justice, 2002). As the government holds the responsibility to serve the needs of tamariki and rangatahi Māori as tangata whenua, addressing equity and significant disparities linked to

poverty and child abuse is imperative. The Child and Youth Wellbeing (2019) strategy has emphasised a barrier for Māori in accessing and effectively utilising support services due to a lack of cultural competency in service design and delivery. Therefore, a pressing need exists to transform systems, policies, and services to better serve Māori. We recommend the establishment of a nationwide service specifically tailored to Māori, accompanied by the implementation of targeted prevention strategies aimed at the most vulnerable young people to combat sexual exploitation effectively.

### **Family violence and sexual violence: (95)**

ECPAT and Te Whāriki commend the broad definition of 'sexual violence' provided in Te Aorerekura, New Zealand's first National Strategy for eliminating family violence and sexual violence., particularly its inclusion of various forms of commercial exploitation and online exploitation. We recommend, however, specific actions to prevent and respond to SEC and domestic trafficking be included in this strategy and accompanying Action Plan.

The Gov NZ UPR report states that Te Aorerekura aligns to core national wellbeing strategies, but in the Child and Youth Wellbeing Strategy (launched in 2019) there is very little mention of commercial sexual exploitation or practical steps to be taken to address the issue.

The DIA, Customs and NZ Police work collaboratively and effectively to address child sexual abuse material and have been increasingly engaging with civil society to combat the issue at all levels but given the scale of the issue and the severity of the content, are considered by ECPAT NZ to be drastically under resourced. Recent reports have shown that there is an upwards trend of users accessing child sexual abuse host sites more frequently, particularly during school holiday periods in New Zealand. A recent snapshot showed that while there had been a 33.3% decrease in new users accessing child sexual abuse material, overall site views had increased by 66.4% (Department of Internal Affairs, 2019).

### **Rights of Children: (97-112)**

The NZ Gov UPR Report does not refer to child sexual exploitation, a significant but overlooked issue in NZ.

While noting that the Prostitution Reform Act (2003) establishes the prohibition to use and assist persons under 18 for prostitution, ECPAT Child ALERT is concerned that there is no definition of exploitation of children in prostitution in line with article 2(b) of the OPSC. The Prostitution Reform Act (2003) purports to create a

framework for the sex industry with licensed brothels operating under strict health, safety and employment guidelines that “safeguards the human rights of sex workers and protects them from exploitation and prohibits the use of persons of under 18 years of age in prostitution” (Raymond, 2018), and while ECPAT and Te Whāriki note that measures to maintain the prohibition of child participation within the regulated sex work industry are sufficient, attempts to identify and protect young people exploited through street prostitution or exploited by partners or families members through covert prostitution are inadequate.

The only legislation which may be used to protect children from conduct related to child, sexual abuse material is the Films, Videos, and Publications Classification Act 1993. Although the Act does not explicitly mention child sexual abuse material, it does include as “objectionable” publications those that promote or support the exploitation of children for sexual purposes.

In 2023, the Crimes (Child Exploitation Offences) Amendment Bill was passed, representing a significant legislative development. This amendment criminalised all forms of grooming targeting young individuals for sexual conduct. These include actions such as misrepresenting one's age or identity and engaging in communication with children and adolescents with the explicit intent to cause harm. Prior to this amendment, existing legislation required that a defendant physically met the young person they targeted, engaged in travel to meet them, or played a role in organising or persuading the young person to travel. This amendment reflects a comprehensive adaptation of legal measures to address evolving challenges in the realm of child protection, particularly in the context of digital interactions.

The Department of Internal Affairs established the Digital Child Exploitation Filtering System (DCEFS) in partnership with New Zealand internet service providers (ISPs) to block websites that host CSAM, track site traffic and trends, as well as develop profiles on offender typology (Department of Internal Affairs, 2009). At present, there are no legal provisions that require ISPs to connect to the DCEFS or any other type of filtering system. Therefore, all ISPs that feed into the filtering system are participating in good faith and on a voluntary basis, which means that not all ISPs have opted into the DCEFS.

Regarding SECTT, Section 144C of the Crimes Act criminalises “organising or promoting child sex tours”. The arrangements include the purchase or reservation of tickets for travelling outside of New Zealand or of accommodation in a country outside of New Zealand. The law in New Zealand covers international sexual exploitation of children but leaves a gap for domestic sexual exploitation.



The New Zealand Accident Compensation Corporation (ACC) funds support, counselling and other treatment, as well as medical care, rehabilitation services and financial entitlements under certain circumstances, for children and young people who may have suffered a mental injury as a result of sexual abuse or assault. However, ECPAT Child Alert is concerned that the measures for the recovery and reintegration of victims of all offences under the OPSC remain insufficient. Staff working for victim support are not adequately trained to be able to provide initial support to any child reporting a crime under the Optional Protocol. Furthermore, SEC victims are not made aware of their eligibility to ACC services, which are usually only publicised as an option for victims of sexual abuse or assault (ECPAT Child Alert, 2020).

The New Zealand Police and the Ministry for Children (Oranga Tamariki) does not appear to have adequate policies regarding classifying and responding to SEC victims, so it's unlikely victims coming to their attention would be offered specific support.

The purchasing of sexual services by adults from children and adolescents affects an unknown proportion of New Zealand youth but research indicates its presence in both rural and urban settings (Thorburn, 2014). While New Zealand explicitly prohibits the use of individuals under 18 for sexual services, there is currently a lack of comprehensive, nationwide support services for victims of transactional sex. Given that the issue of survival sex for children and young people has multiple causes and is associated with multiple manifestations of inequality and marginalisation, a multi-systemic approach to addressing it is required. Preventive measures can prove effective when directed towards those identified as vulnerable to exploitation, including children in foster care or with a history of abuse. Recommendations derived from existing literature advocate for initiatives such as street outreach programs, internet-based strategies, adjustments to welfare provisions for young individuals, and the implementation of targeted prevention strategies tailored for those at risk of sexual exploitation (Thorburn, 2014). The success of these efforts, however, is reliant on adequate funding, which in turn is dependent on sexual exploitation of children being prioritised as a social issue.

ECPAT and Te Whāriki acknowledge the crucial importance of involving children and young people in strategies aimed at safeguarding them from sexual exploitation. This not only upholds their inherent rights, including the right to express their opinions in matters concerning them as articulated in Article 12 of the Convention on the Rights of the Child but also enhances the effectiveness of prevention and protection efforts across all levels. We recommend that New Zealand government be commitment to systematically fostering the active engagement

and perspectives of children and youth in the decision-making processes related to laws and policies that impact their lives.

**List of Recommendations:**

- Amend the trafficking statute to explicitly define the sex trafficking of children as not requiring the use of deception or coercion;
- All activities to address exploitation and/or trafficking need to consider sexual exploitation
- Research to be conducted on sexual exploitation of children in New Zealand to ascertain scale, vulnerability, support needs, and referral pathways;
- Enhance the training of frontline personnel, encompassing law enforcement officers, customs officers, healthcare professionals, and immigration authorities, with a focus on recognising signs of sexual exploitation (as differentiated from sexual abuse), with stronger focus on domestic sex trafficking and sexual exploitation of children;
- Increase resources for anti-trafficking law enforcement including online exploitation;
- Establish a national referral mechanism to guarantee the proper identification of victims and the provision of appropriate services;
- Te Aorerekura – the National Strategy to Eliminate Family Violence and Sexual Violence should include specific actions to prevent and respond to child sexual exploitation and domestic trafficking.