# Theme: D27 prohibition of slavery, trafficking Theme: G4 Migrants

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| SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES |
| While noting the number of themes which touch on the illegal confinement and exploitation of people, for the purpose of this advocacy sheet two only will be touched on.  1. Increase efforts to investigate and prosecute alleged trafficking offenders, and adopt legislation that will expand New Zealand’s current anti-trafficking legal framework to prohibit and adequately punish all forms of human trafficking (United States of America) .  2.tackle the challenges which still persist concerning the rights of migrants, refugees, asylum seekers and their families and consider an eventual withdrawal of New Zealand’s reservations to the Convention on the Rights of the Child and a declaration in support of article 14 of ICERD  3.Consider acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (Egypt);Brazil) |

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| NATIONAL FRAMEWORK |
| Following on from the 2nd Periodic Review New Zealand has furthered its anti trafficking response by a number of legislative changes as well as considering revising its 2009 Plan of Action which is now well out of date.  **Plan of action**  In 2009 the NZ government launched its Plan of Action to Prevent People Trafficking. In the acknowledgements at the beginning of the document it states,  ‘The Plan of Action was coordinated by the Department of Labour on behalf of the interagency Working Group on People Trafficking The approach to the development and implementation of the Plan of Action has been based on the principle of government and non-government working in partnership to achieve the common goal of preventing and combating people trafficking in New Zealand. The Department acknowledges the positive contribution of stakeholders in the non-government sector.  The 34 formal submissions received from the non-government sector during the public consultation period in June 2008 helped to shape the Plan of Action. Moreover, the implementation of some of the action items, particularly in relation to victim support, will utilise the existing partnerships between government agencies and non-government social service providers.’[[1]](#footnote-1)  **Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill 2014[[2]](#footnote-2)**  It was in the 2011 that researchers presented on the issues surrounding foreign charted vessels fishing within New Zealand waters, their ground breaking research received significant public attention. As a consequence of that report and ensuing work, as well as emerging issues relating to the exploitation of migrant workers the New Zealand government subsequently introduced sweeping changes to legislation aimed at effectively addressing such abuse.[[3]](#footnote-3)  **Protecting Migrant Workers**[[4]](#footnote-4)  In 2015, the Immigration Amendment Bill (No 2) was passed by Parliament. This Bill made a number of amendments to the Immigration Act of 2009 to address gaps in the compliance regime and introduce new measures to prevent exploitation of migrant workers. Subsequently, in 2017 new measures were introduced to stop employers who breach immigration and employment law from recruiting migrant workers.  The Ministry of Business, Innovation and Employment is proactively targeting employers that exploit workers, particularly migrant workers. Compliance and enforcement campaigns have been rolled out, supported by advice and education programmes. A Serious Offences Unit has also been established which investigates and prosecutes the most serious, complex and organised offending, including migrant exploitation.  **People trafficking**  Accepting the UPR recommendation 131 that ‘*New Zealand Increase efforts to investigate and prosecute alleged trafficking offenders, and adopt legislation that will expand New Zealand’s current anti-trafficking legal framework to prohibit and adequately punish all forms of human trafficking’*,  In 2015, Parliament passed the Organised Crime and Anti-Corruption Bill.  Exploitation and coercion where the victim has remained in New Zealand now constitutes an offence, meaning the offence is not restricted to cases where a victim has crossed a national border. The definition of exploitation also includes forced labour (and other forced services), slavery and like practices, and servitude.[[5]](#footnote-5) |

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| CHALLENGES | | IMPACT |
| **Uncovering cases of exploitation and abuse and bringing to justice the perpetrators of the crime**  **Tackling migrant exploitation**  **Ensuring the rights of all people** | The first successful case of a person to be convicted of people trafficking in New Zealand occurred in December 2016. Faroz Ali, a Fijian national with New Zealand residence, was found guilty in September of 15 human trafficking charges involving Fijian nationals. He was sentenced at the High Court in Auckland to a total of nine years and six months in jail and ordered to pay a total of $28,167 reparation to his victims.[[6]](#footnote-6)  However concern continues to be expressed at the low level of convictions. The US Trafficking in persons report 2018 expressed concern that, “Although the government meets the minimum standards, it did not consistently identify victims in vulnerable sectors, provide shelter services designed specifically for trafficking victims, or adequately conduct campaigns to raise general awareness of human trafficking”.[[7]](#footnote-7)  This concern was mirrored in the CEDAW report where it states, (c) The minimal level of prosecutions and convictions and of the sentences imposed on traffickers, possibly stemming from a high threshold of proof and demanding nature of proceedings. [[8]](#footnote-8)  As early as 2006 issues of concern have been publicly rose regarding migrant labour exploitation. The Pacific Trafficking in Persons Forum, Wellington in 2009 highlighted the plight of Filipino nurses recruited to work in New Zealand through a research report published by the NZ Nurses Organisation. Because of growing concerns relating to possible abuse of overseas trained nurses the New Zealand Nurses Organisation commissioned a study. [[9]](#footnote-9)  The issues raised in that research relating to the recruitment of overseas workers are still being reflected in the realities of today.  Deception, fraud and abuse features prominently as overseas workers and students, desperate for work or study within our country fall victim to such dishonesty.  ***Commonalities with identified cases to date are*,**  the lure of employment offering a remuneration way beyond what a worker could expect  Seductive advertising holding out the promise of opportunity and a good working environment  Employment agents (usually resident in country of origin) deceiving potential workers, and charging exorbitant recruitment fees and obscure and misleading employment contracts  Arrival into New Zealand, often indebted back in their homeland.The newly arrived worker upon discovering a vastly different employment situation then what was understood now in an extremely vulnerable position.  Extreme reluctance in most cases for exploited workers to disclose the nature and extent of the abuse they are experiencing due to a range of factors such as fear of authorities, fear of deportation, the ‘some money is better than no money’ premise, being employed by a family member or countryman and therefore very unwilling to report because it could lead to dishonour in their homeland, having accrued significant debts to take up the offer of employment and seeing no recourse other than accepting abusive conditions.  E32 Right to just and favourable conditions of work  New Zealand is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 7 provides that State Parties are required to recognise the right of all persons to:   1. Just and favourable conditions of work 2. Fair wages and equal remuneration 3. Remuneration that provides a decent living for the worker and their family.   New Zealand depends heavily on migrant labour it is therefore incumbent upon our society that we make certain we recognise and respect the worth of all people, and work towards a country that is free from labour abuse and exploitation.  Of particular concern is the vulnerability of overseas students arriving into New Zealand believing they will receive an education leading to a brighter future for themselves and their families back home.  This weekTV3 news and other media sources highlighted their plight as they spoke of’ being treated like slaves’. [[10]](#footnote-10) | |
| RECOMMENDATIONS | | |
| Whilst trafficking was a little known crime inside our country prior to 1999, knowledge and awareness has steadily grown as has the political will to actively prevent the crime from gaining an increasing foothold within our shores. Simultaneously there has been an increase in media reporting and community awareness and more positive engagement from the business sector and civil society. While acknowledging the progress to date there is a need to also concede there is much still to do and this will require a whole of country approach.  **On-going opportunities and challenges for New Zealand going forwards**  **Opportunities**   * Building effective partnerships/collaboration between government and non-government in combating all forms of people trafficking/labour exploitation * Further research which will help uncover evidential data * Engaging grass roots in effective action; noting that exploitation occurs in communities. Accordingly it is vital to ensure local communities are well informed as to the signs to look for should abuse be happening in their locality. * Ensuring we frame an authentic New Zealand response to what is happening within our shores * Finding new ways of ensuring those new into our country know how to access help when needed. Presently information for new migrants is available through pamphlets, translated into various languages, and found on the Immigration web site. Such vital information needs to be far more readily accessible to those unfamiliar with our country, our language and our culture. * Updating the 2009 Plan of Action to bring it in line with present day realities * Building on our current anti trafficking work by working towards the introduction of a NZ Modern Day Slavery act   **Challenges**   * The hidden nature of labour abuse making it difficult to gain sufficient evidence * The disparate nature of many non-government agencies which makes working cooperatively together more difficult * The ingrained beliefs appertaining to what people trafficking is which have been shaped by overseas agenda, which is not real or actual for our country. * Adopting appropriate culturally sensitive guidelines which take into account the need to ensure a victim centred approach * Actively working more intentionally together to ensure such words as ‘collaboration and consultation’ are not merely used for the purpose of documentation but rather as verbs for positive action.   Lastly, all forms of people trafficking and migrant labour exploitation is a human rights issue and needs to be viewed and addressed that way. It is concerning that to date New Zealand has not ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) 1990; in fact few countries have done so.  **The Human Rights Commission in New Zealand states,**  There is no human right to immigration as such, but migrant workers have all the human rights contained in the major international human rights treaties. Some human rights take on a particular significance in the process of labour migration, including freedom from discrimination; freedom of thought, religion and belief; freedom of expression and association; the right to privacy, property and security of the person; the right to family reunification; freedom from arbitrary arrest, detention and expulsion; the right to language and culture; and the rights to justice, work and health.[[11]](#footnote-11)  ***‘We are all in the same boat, in a stormy sea, and we owe each other a terrible loyalty”. Author unknown*** | | |

1. <http://www.dol.govt.nz/publications/research/people-trafficking/people-trafficking.pdf> [↑](#footnote-ref-1)
2. <https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL11820_1/fisheries-foreign-charter-vessels-and-other-matters-amendment> [↑](#footnote-ref-2)
3. <http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf> [↑](#footnote-ref-3)
4. UPR recommendation 101, 147 [↑](#footnote-ref-4)
5. UPR recommendation 131, **UNIVERSAL PERIODIC REVIEW – NEW ZEALAND DRAFT REPORT** [↑](#footnote-ref-5)
6. <https://www.immigration.govt.nz/about-us/media-centre/media-releases/convicted-people-trafficker-sentenced> [↑](#footnote-ref-6)
7. <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271252.htm> [↑](#footnote-ref-7)
8. Committee on the Elimination of Discrimination against Women Concluding observations on the eighth periodic report of New Zealand July 2018 [↑](#footnote-ref-8)
9. A MIXED PICTURE: THE EXPERIENCES OF OVERSEAS TRAINED NURSES IN NEW ZEALAND Leonie Walker New Zealand Nurses Organisation 2008 [↑](#footnote-ref-9)
10. <https://www.newshub.co.nz/home/new-zealand/2018/10/treated-like-slaves-overseas-students-claim-they-re-underpaid-overworked-threatened.html> [↑](#footnote-ref-10)
11. Chapter 17: The rights of migrant workers and their families - Ngā tika ō te hunga manene e mahi ana, me ō rātou whānau, HRC NZ [↑](#footnote-ref-11)