

Decriminalization of Sex Work: The New Zealand Model  
An Analysis of the Integrative Sex Industry Policy in New Zealand  
(Aotearoa)

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# Decriminalization of Sex Work: The New Zealand Model

## *An Analysis of the Integrative Sex Industry Policy in New Zealand (Aotearoa)*

Decriminalisering van sekswerk: het Nieuw-Zeelandse Model  
Een analyse van het integratieve seksindustriebeleid in Nieuw-Zeeland  
(Aotearoa)  
(met een samenvatting in het Nederlands)

### PROEFSCHRIFT

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*door*

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geboren op 26 september 1949  
te Heerlen

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# Acknowledgements

In many countries worldwide, sex workers often have no other choice than to carry out their profession in illegal and dark environments. Repressive policies might force them to work in difficult or dangerous fields. They often need to struggle against incomprehension, moral disapproval, prejudices, and increasing stigmatization by society and politicians. The more data I gathered during my research, the more I became aware of the impressive effects the pragmatic New Zealand sex industry decriminalization policy has on sex workers and other parties in this country.

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Joep Rottier

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## List of Abbreviations

AI	Amnesty International
ARSI	Auckland Rough Sleepers Initiative
CA	Crimes Act
CATW	Coalition Against Trafficking in Women
CD act	Contagious Diseases Act
CDA	Christen Democratisch Appèl
COYOTE	Call Off Your Old Tired Ethics
CSoM	Christchurch School of Medicine
CU	Christen Unie
D66	Democraten 66 (Social liberals)
DCE	Directie Coördinatie Emancipatiebeleid (Directorate for Coordination of Emancipation Policy)
DoL	Department of Labour
EP	European parliament
EU	European Union
FPP	First Past the Post
GAATW	Global Alliance Against Traffic in Women
GFE	Girl Friend Experience
GP	General Practitioner
HRRT	Human Rights Review Tribunal
HSAW	Health and Safety At Work Act 2015
INZ	New Zealand Immigration
IRD	Inland Revenue Department
KvK	Kamer van Koophandel (Chamber of Commerce)
MBIE	Ministry of Business, Innovation and Employment
MMP	Mixed Member Proportional
MoH	Ministry of Health
MoJ	Ministry of Justice
MP	Member of Parliament
MP act	Massage Parlours Act
MSD	Ministry of Social Development
NGO	Non-Governmental Organization
NIMBY	Not In My Back Yard
NSEP	Needle and Syringe Exchange Programme

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NSW	New South Wales
NSWP	Global Network of Sex Work Projects
NZPC	New Zealand Prostitutes' Collective
NZQA	New Zealand Qualification Authority
ONTOP	Ongoing Network Transgender Outreach Project
OP	Respondent Operator
PCV	Prostitutes' Collective of Victoria
PLRC	Prostitution Law Review Committee
PP	Palermo Protocol
PRA	Prostitution Reform Act
PRB	Prostitution Reform Bill
PUMP	Pride and Unity among Male Prostitutes
PvdA	Partij van de Arbeid (Social Democrat Party)
RA	Rose Alliance
RB	Respondent Bank
RC	Respondent Council
RHC	Respondent Health Care
RIM	Respondent Immigration Service
RLD	Red Light District
RM	Respondent Media
RMOJ	Respondent Ministry of Justice
RNGO	Respondent NGO
RNP	Respondent National Politicians
RPOL	Respondent Police
RPOLNL	Respondent Politicians the Netherlands
RWHA	Respondent Women's Health Action
SA	Salvation Army
SO act	Summary Offences Act
SOOB	Small Own Operated Brothel
SOP	Supplementary Order Paper
STD	Sexually Transmitted Diseases
SW	Respondent Sex Worker
TAs	Territorial Authorities
TIP	Trafficking in Persons
UPG	Unitary Plan Guidelines (Auckland)
UN	United Nations
UNAIDS	United Nations Joint Programme on HIV
UNDP	United Nations Development Program
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFPA	United Nations Population Fund
VNG	Vereniging van Nederlandse Gemeenten (Association of Dutch Municipalities)
VVD	Volkspartij voor Vrijheid en Democratie (Liberals)
WHA	Women's Health Action Trust

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WHO	World Health Organization
WRp	Wet regulering prostitutie en bestrijding misstanden in de seksbranche (Law for the Regulation of Prostitution and Suppression of Abuse in the Sex Industry)
YCD	Youth and Cultural Development
YWCA	Young Women's Christian Association





## Chapter 1

# Introduction

“I did not do anything extraordinary. I’ve done what everybody else would have done if they were working in another industry” (SW 28<sup>1</sup>).

This quote comes from a New Zealand sex worker who in 2011 took her boss, a brothel operator in Wellington, to court<sup>2</sup> after repeated severe sexual harassments over a period of three to four months.<sup>3</sup> Remarkable was that the charge did not concern any physical sexual assault by her boss, but was based on long-term “verbal sexual harassments by the use of language of a sexual nature” (HRRT 6:2;<sup>4</sup> SW 28). The trial, which became known as the ‘New Zealand Landmark Case’, was considered world’s first case in which a brothel operator was sentenced for *verbal* threatening and humiliating a sex worker over months. The case attracted media attention worldwide:

Escort wins landmark case (New Zealand Herald 01-03-2014).

Hooker wins sexual harassment case against brothel owner (The New York Post 05-03-2014).

Prostitute wins damages for sexual harassment in ‘world-first’ case (ABS News 01-03-2014).

Here, we immediately identify an important feature of New Zealand’s unique sex industry policy. By decriminalizing the entire consensual<sup>5</sup> sex industry, the sex sector in this country became subject to the same controls and regulations that manage the operation of other service businesses (Jordan 2005; Abel & Fitzgerald 2010). Suddenly, instead of fearing arrests and raids, sex workers could rely on the protection of the police and justice system (Abel 2010). As a result, they could appeal on the basis of workers’ rights in case of physical abuse – or even in case of verbal harassment (Barnett et al. 2010).

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1 List of interviews: see Appendix I-VIII.

2 The New Zealand Human Rights Review Tribunal (HRRT).

3 From approximately March 2010 to June 2010.

4 *DML v Montgomery and M & T Enterprises Ltd* [2014] NZHRRT (New Zealand Human Rights Review Tribunal) 6:2 – Ministry of Justice, New Zealand [2].

5 Forced sex work and commercial sex work under the age of eighteen remain criminalized under the Prostitution Reform Act (PRA).

In fact, that is what the above-mentioned sex worker did. She was infuriated by her boss, and not willing to work with him any longer (SW 28). Prior to passage of the Prostitution Reform Act (PRA) in 2003, she probably had to accept the humiliations since working as a prostitute was illegal at the time. She could not appeal for judicial protection. Additionally, she could lose her job. Now, due to the decriminalization of the sex industry, she could defend herself by going to court for judicial protection against the verbal provocations. Her complaint was upheld. The defendant was sentenced to a pay of 25,000 NZ dollars to the sex worker “for humiliation, loss of dignity and injury to the feelings of the plaintiff” ([2014] NZHRRT 6 - 33 [155.4]).<sup>6</sup>

The decision of the New Zealand Parliament to (i) vote for a new national sex industry policy, the 2003 PRA,<sup>7</sup> (ii) abandon all former specific prostitution-related regulations,<sup>8</sup> and (iii) consider the sex industry any other occupational service industry, marks a significant turning point for the New Zealand sex industry (Healy et al. 2010; Abel 2014). From that time on, the New Zealand Parliament fully recognized the existence of commercial sex as work, as sex work. The former repressive approach to the sex industry, which was predominantly based on moral or religious beliefs, changed towards a pragmatic approach that is focused on improving the rights of sex workers – promoting their welfare and occupational health and safety, and protecting them from exploitation – as well as on harm minimization, destigmatization, and promoting the public health (Abel & Fitzgerald 2010; Östergren 2017).

In contrast to the New Zealand Model, sex industry policies abroad regularly associate prostitution with “criminality, human trafficking and ethnically charged images of migrant victims (and perpetrators)” (Wagenaar et al. 2017:189). Several European countries intend to abandon the sex industry, or control, or manage it through repressive measures. For instance, Sweden criminalized the demand side of prostitution in 1999. Other countries, such as Norway, and recently France and Canada, adopted this so-called Swedish Model. In these countries the discourse has become predominantly abolitionist. Even in countries that legalized the sector, such as the Netherlands and Germany, specific restrictive policies are used to control this industry.<sup>9</sup>

Within the international sex industry discourse, the impact of the policies ‘(semi-)criminalization’ and ‘legalization’ are often discussed. Although I particularly focus on the effects of the – internationally lesser-discussed – sex industry decriminalization policy in New Zealand, in some chapters, I will also

6 See: <https://www.justice.govt.nz/assets/Documents/Decisions/2014-NZHRRT-6-DML-v-Montgomery-and-MT-Enterprises-Ltd.pdf>, retrieved May 2017.

7 See: <http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html?src=qs>.

8 Specific prostitution-related regulations such as the ban on selling sex, and living on the earnings of a sex worker, the prohibition on managing sex work premises, or advertising sex services.

9 In Chapter 4, I will further explain the differences between the main sex industry policies: legalization, criminalization, partial criminalization, and decriminalization of the sex sector.

put elements of the New Zealand sex industry development in an international context. I will particularly focus on the Netherlands, where the sex industry is legalized, and Sweden, where the clients of prostitutes are criminalized. Comparing the genesis and effects of the decriminalization policy with the genesis and effects of different sex industry policies will show whether we should consider the New Zealand sex industry policies a unique phenomenon, and why (not).

## 1.1 The New Zealand Sex Industry: a Brief Introduction

New Zealand /Aotearoa<sup>10</sup> is a multicultural island nation situated in the western South Pacific Ocean, comprised of the larger North and South Island, as well as a number of smaller islands. The United Nations estimates that the current population of New Zealand is 4,751,306.<sup>11</sup>

The sex industry in New Zealand predominantly occurs in the main cities Auckland, Wellington, and Christchurch, and, on a smaller scale, in the middle-sized cities (Abel et al. 2007). According to staff members of the New Zealand Prostitutes' Collective (NZPC), most New Zealand sex workers operate as independent contractors rather than employees in brothels or parlors, or as private workers indoors (an estimated rate of respectively sixty to forty percent). Private solo or SOOB<sup>12</sup> sex workers are allowed to legally work from home without a license provided they do not exceed the maximum of four sex workers in the house. It becomes a larger commercial sexual service premises the moment a manager gets involved (this could also be one of the four). In that case, the operator/manager needs to have a license (PRA Section 3). Independent contractors do not need a license either. On the contrary, the operator working with independent contractors has to be licensed. Street-based sex work only occurs in the bigger cities and is estimated to be ten percent of the whole. Male sex workers often work privately or in gay or bisexual clubs. Transgender sex workers regularly operate on the streets. The majority of the New Zealand sex workers are of Pakeha,<sup>13</sup> Maori, or Asian descent. Some combine indoor with outdoor environments (NZPC 6). Minor prostitutes/sex workers are mostly limited to the streets because employing minors in an indoor setting is illegal (PRA Section 20). Window prostitution does not exist in New Zealand. New Zealand sex workers remain independent, there are no registrations required and they do not need certificates.

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10 The Maori name for New Zealand is Aotearoa, in English 'the Land of the Long White Cloud' (King 2003).

11 See: <http://www.worldometers.info/world-population/new-zealand-population/>, July 17, 2018.

12 SOOB: Small Own Operated Brothel.

13 Pakeha is the name for citizens of New Zealand whose cultural and genetic origins mainly come from Europe (King 1991:7).

It is difficult to determine accurate numbers of sex workers. Many sex workers still hesitate or refuse to disclose their occupation, in part because of the stigma attached to sex work. Often, fear for impact on their or on their family's privacy – or deportation in case of illegality – keeps them from disclosure. Additionally, the sex industry is a dynamic industry that moves from city to city, or from country to country. In this context, estimating the number of sex workers in New Zealand belongs to the world of the dark figures.

Nevertheless, according to a retrospective survey of police officers, there were an estimated 5,932 sex workers in the country around the time the PRA came into force.<sup>14</sup> New estimates in five locations<sup>15</sup> conducted by the Christchurch School of Medicine (CSOM) in 2006 and 2007 determined there were 2,396 sex workers nationwide. According to the Prostitution Law Review Committee (PLRC), this change in the number was due to both the limitations of initial data collection methods and the more accurate methodology, rather than a decline in sex workers. Latest estimates by NZPC show numbers between 3,000 and 3,500 sex workers (NZPC 27).

## 1.2 The Decriminalization Process of the New Zealand Sex Industry

The sex industry legislation in New Zealand prior to 2003 did not forbid prostitution, however, all prostitution-related activities<sup>16</sup> were illegal (Abel & Fitzgerald 2010). The former legislation<sup>17</sup> reflected a double standard of morality in that surveillance, control, discrimination, and criminal sanctions were focused on the prostitutes; their clients were not blamed (Jordan 2005; Jordan 2010). The prostitutes were considered an underclass and disease carriers, who could jeopardize society's health and stability. Both the repressive policy and the 'double standard' approach toward the sex sector created an environment in which the prostitutes were vulnerable to exploitation (Jordan 2010; Healy et al. 2010).

### *The Launch of Decriminalization*

The campaign for decriminalization of the sex industry took nearly sixteen years. It started in 1987 with the foundation of NZPC and ended in 2003 with the enactment of the PRA. We will see in the course of this book that – contrary to many other sex work unions – NZPC operates as a distinctive national sex workers organization. NZPC not only intensively campaigned for decriminalization of sex work, by the late 1980s it was also playing an

14 See: <https://www.parliament.nz/en/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand#RelatedAnchor> (Retrieved: October 2017).

15 In Christchurch, Wellington, Auckland, Nelson and Hawke's Bay.

16 For example, activities such as soliciting, brothel keeping, living on the earnings of prostitution, were illegal (Abel & Fitzgerald 2010).

17 The 1961 Crimes Act (CA Act), the 1978 Massage Parlours Act (MP Act), and the 1981 Summary Offences Act (SO Act). See also Chapter 4 and Appendix IX.

important role in the prevention of HIV/AIDS in the New Zealand sex industry (Abel & Fitzgerald 2010; Jordan 2010; Healy et al. 2010).

Finally, on the 25<sup>th</sup> of June 2003, the decriminalization campaign ended in a narrow victory for its supporters. The PRA was passed in Parliament by sixty votes to fifty-nine, with one abstention (Abel et al. 2010; Barnett et al 2010). From that moment on, prostitution became sex work and prostitutes became sex workers. The sex industry was held to the equal rights as any other occupational industry. Moreover, the policy became focused on a harm minimization approach based on rational and pragmatic arguments (Jordan 2010; Abel 2014;).

However, there also is resistance to total decriminalization. Opponents of this policy on local, national, and international level regularly reject decriminalization for various reasons, such as moral fundamentalist or radical feminist values. They often consider prostitution denigrating for women and prostitutes helpless victims of brutal, dominant men. They advocate, usually on a basis of emotions such as anger and disgust, for abolition of prostitution since it is – in their vision – associated with human trafficking and exploitation of vulnerable individuals (Raymond 1999; Jeffreys 1997; Farley 2004; Farley 2017; Månsson 2017). In Chapter 4, this debate will be extensively discussed.

Other critics deem the New Zealand Sex Industry Model irrelevant since it concerns a geographically isolated country with a limited number of citizens ‘somewhere down under’. Indeed, applying the New Zealand Model to another country unaltered might be complicated. After all, every country has its own sociocultural, political, and geographic context. However, here I follow the arguments of Abel (2015) who introduces three aspects of the New Zealand sex industry development that certainly justify international attention. The first aspect refers to the process towards the PRA as an example of how to get decriminalization on the policy agenda. The second aspect is the steps undertaken to implement the PRA at both the municipal and national level. Finally, she advises monitoring the effect decriminalization has on the working conditions of New Zealand sex workers. This is one of the topics this study aims to examine.

Apart from these three aspects and an elaboration on the above-mentioned sex industry policies, emphasis will be placed on the structure and functioning of NZPC. It is often argued that sex worker unions have an almost negligible impact on policy processes, for example due to the ongoing stigma on sex work (Mathieu 2003; Mc Adam et al. 2008; Weitzer 1991). The decriminalization of the New Zealand sex industry, however, would probably never have happened without the influence of NZPC. So which factors enabled NZPC to communicate the sex workers’ feelings of injustice and dissatisfaction about the former legislation, the ‘liberal’ vision that considers sex work as work, and the idea that sex workers are individuals with their own agency, instead of incapable victims who have to be protected by social control? Moreover, which lobby strategies did NZPC mobilize to receive academic and sociopolitical support from allies and conscience constituents such as women’s movements,

in its campaign for decriminalization? A social movement model will be used to explain the role of NZPC on the decriminalization process in New Zealand. Additionally, I will analyze sex workers' opinions about the functioning and value of NZPC.

Finally, I will analyze the PRA, especially focusing on several PRA quandaries and inconsistencies. Apart from the controversial PRA ban on non-residents to provide sexual services or to operate or invest in a commercial sexual business, and efforts of local authorities to recriminalize certain aspects of the sex industry, I will also discuss forms of violence and exploitation that still exist within the industry. The existence of pimps and the traditional relationship between pimps and sex workers will not extensively be treated, but this does not imply that there are no pimps in this country. Large-scale pimping, however, has not been a feature of the New Zealand sex industry (Jordan 2010). Rather, associated parties are frequently named 'minders'. They often have a family or partner relationship with the sex worker.

Nevertheless, violence and exploitation occur, even within a decriminalized sex industry climate. The street-based sex industry is especially vulnerable to violence and humiliation (Armstrong 2011; Abel & Sweetman 2018). In this research, I will not extensively investigate the extent of violence within the New Zealand sex industry as such. Rather, I discuss forms of violence and exploitation that still exist within the New Zealand sex industry, as well as the domestic human trafficking in relation to the international human trafficking discourse that often equates trafficking with sex work.

The 2003 PRA aims "to decriminalize 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" (PRA Part 1 Sub Section 3).

New Zealand has implemented a sex industry policy that claims a place in the international discourse. Its unique approach attracts increasing attention of supporters as well as of opponents worldwide who follow the effects of this legislation with considerable interest.

### 1.3 Research Aims, Research Question and Sub Questions

Since 2003, in close cooperation with NZPC and other involved parties such as police, territorial authorities<sup>18</sup> (TAs), Salvation Army (SA), and Youth &

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18 Territorial authorities: cities and district councils (Knight 2010).

Cultural Development (YCD), sex industry-related measures have been developed to enhance sex workers' health, safety, and self-determination in a decriminalized environment. Existing research<sup>19</sup> on the effects of the PRA already indicates remarkable improvements for the sex workers. The presence of brothels and parlors within city street scenes even seems to be more accepted by policymakers and New Zealand citizens (Multiple research observations in the main New Zealand cities 2015, 2016).

Howard S. Becker (1963:196) argues that '(...) the real attack on the social order is to insist that all parties involved are fit objects of study'. In his book *Outsiders. Studies in the Sociology of Deviance*, he emphasizes the value of an interactionist approach which refers to the importance of analyzing social reactions, meanings, interpretations, and opinions of all involved actors in a phenomenon in order to get a thorough understanding of a certain study object (Becker 1963:183). In this regard, this research aims are to:

- (i) analyze de facto experiences and interpretations on the effects of the decriminalization policy from different perspectives in order to obtain comprehension of the effects of the decriminalization policy on the New Zealand sex industry.<sup>20</sup> Particularly, the voice of the sex workers will be heard about both the effects of the decriminalization policy and their relationship with NZPC;
- (ii) analyze the key elements and their interaction, leading to the decision to decriminalize the sex industry in New Zealand. On a macro, meso and micro level, I will focus on historical-cultural and sociopolitical backgrounds and contextualize the development of this policy within the New Zealand sex industry;
- (iii) analyze NZPC as a type of social movement organization, its context and complexities;
- (iv) analyze the tensions between the legal PRA principles and its practical implementation.

Overviewing the research aims, this thesis strives to find answers to the following research question:

*What are the consequences of the sex industry decriminalization policy in New Zealand, and what is the de facto experience of sex workers in this country?*

The subquestions are:

- What was the historical and cultural context in which the New Zealand sex industry developed?

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19 Abel & Fitzgerald 2008; Abel et al 2010; Armstrong 2011; Mossman 2010; Harrington 2010; Roguski 2013.

20 Involving clients of New Zealand sex workers – as a separate research population – went beyond the scope of this research.



- Which social, political, and cultural push factors after the 1980s were decisive for the emergence of the PRA?
- What was the role of NZPC in the development of the decriminalization?
- Which quandaries and inconsistencies arose in the attempt to implement the PRA?
- What is the de facto effect of the decriminalization from the perspective of the New Zealand sex workers?
- What does the existence of NZPC mean for the New Zealand sex workers?

## 1.4 Relevance

### *Academic Relevance*

This underlying explorative and descriptive research aims to contribute to the existing literature about the New Zealand sex industry (e.g. Jordan 2005; Abel & Fitzgerald 2008; Abel & Fitzgerald 2010; Healy et al. 2010; Armstrong 2011; Harrington 2012; Weitzer 2012; Roguski 2013; Zangger 2015; Wageenaar et al 2017; Abel & Sweetman 2018). I travelled to New Zealand in 2015 and 2016 to gather data by using qualitative research methods, aiming to not only apprehend – from an inside perspective – how the sex industry decriminalization is experienced by directly involved (sex workers, NZPC, brothel operators) and indirectly involved (police, immigration, academics, medical health professionals) parties, but also to frame and analyze the features of the sex workers' organization NZPC. Apart from this, the underlying study will contribute to existing literature by presenting a critical analysis of the PRA, and the complexity regarding the legal PRA principles versus its practical implementation.

The second scientific relevance of this qualitative research is related to current policies regarding the sex industry. Outshoorn (2004) notes that in many historical periods, nations have tried to manage the prostitution sector by various methods. She adds that “depending on the dominant definition of the issue, [governments] have done so in different ways” (Outshoorn 2004:6). Often, the choice was influenced by the existing predominant vision towards sex work. For instance, countries which consider prostitutes victims of human trafficking, as individuals who are not able to decide for themselves and who have to be protected, implemented a repressive policy, such as (partial) criminalization of the sector (Abel & Fitzgerald 2010; Siegel 2015). On the other hand, countries which consider prostitution sex work and prostitutes sex workers able to make their own free decisions, opted for a liberal approach, such as legalization or decriminalization (Abel et al. 2010; Jordan 2015; Mossman 2007; West 2000). In Chapter 4, three main sex industry policies – criminalization, legalization, and decriminalization – and their effects regarding the interests of sex workers will be discussed. I will also explore the confusing terminology of these sex industry policies and will hone in on a new less confusing sex industry typology which has been introduced by scholar Petra Östergren (2017).



A third scientific relevance of this research is its contribution to the scientific discourse around stigmatization and secrecy within the sex industry. Regularly, discussions of prostitution go hand in hand with moral judgments. The occupation, especially street-based sex work, is often considered inferior or dirty work to be avoided (Abel & Sweetman 2018). Clients of prostitutes are labelled as deviants<sup>21</sup> who abuse helpless female minors or incapable adults (Wagenaar et al. 2017). Critics of prostitution often see the stigma on sex work as a natural consequence of its conditions. The question then arises, could the sex industry decriminalization policy in New Zealand decrease the level of stigmatization on sex workers? In Chapter 8, I will further elaborate on this question.

The fourth scientific contribution deals with my experience as a male researcher operating in mainly female surroundings, which relates to the subject ‘gendered power relationships during interviews’.

The fifth scientific contribution of this research is the analysis of the efforts of sex worker unions to disseminate the ideals of the (global) social movement that aims to decriminalize the sex industry. I will discuss a social movement concept in relation to the decriminalization process in New Zealand and assess to what extent and how the NZPC managed to play a role in this process.

### *Relevance for Society*

Could the New Zealand Sex Industry Policy Model be a realistic and attractive alternative to regulate the sex industry? Contrary to New Zealand, there seems to be a growing tendency in Europe to support criminalization according to the Swedish Model. In February 2014, the European Union (EU) endorsed this policy. In a non-binding resolution, the EU advised EU-countries to consider policies which reduce the demand for prostitution by punishing the clients, not the prostitutes<sup>22</sup> (European Parliament (EP) News 2014), while according to Vanwesenbeeck (2017:2), in 1986 the EP still recommended the decriminalization of sex work.

One could ask why countries, such as France (in 2016) adopt repressive sex industry policies, when literature (Dodillet & Östergren 2011; Jordan 2012; Vanwesenbeeck 2017) increasingly shows the negative effects of this policy on the human rights of sex workers. According to Vanwesenbeeck (2017:2), opponents of criminalization argue that this repressive policy “fuels stigma by framing commercial sex as immoral, illicit and unlawful, by declining sex workers (human and worker) rights, and by powering negative opinions”. In contrast to the EU, Amnesty International endorses the decriminalization of all aspects of adult consensual sex work. They fear the “foreseeable barriers that

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21 Becker (1963) defines deviance as not a quality of a bad person but the result of defining someone’s activity as bad.

22 The non-binding resolution, drafted by Mary Honeyball (S&D, U.K.), was adopted by 343 votes to 139, with 105 abstentions (Source: European Parliament News 26-02-2014).

criminalization creates to the realization of the human rights of sex workers” (Amnesty International 2016:2).

Ultimately, the question arises: how do New Zealand sex workers experience the effects of decriminalization regarding their health, safety, and self-determination, and how do they experience their de facto working circumstances compared to before the PRA? The social relevance of this underlying research might be its challenge to broad public and political policymakers and involved stakeholders to reflect on the effects of a decriminalized sex industry policy in New Zealand as well as its insights regarding the organization and functioning of a strong sex workers’ collective.

### 1.5 Structure of the Book

In **Chapter 2**, the qualitative research methods used in this study will be outlined. I will reflect on the research approach and will elaborate on the interviews and observation techniques. Ethical issues, gendered power relations, reciprocity, and research limitations I encountered will also be discussed. The chapter will finish with a focus on the validity, reliability, and triangulation of this research.

In **Chapter 3**, criminological and sociological theories that have underpinned and explained the empirical findings of this research will be described. After a brief clarification of common terminology linked to sex workers and their work, the phenomenon of the social exclusion of ‘deviant’ individuals and marginalized groups, in this case sex workers, will be explored. Furthermore, the persistent stigmatization of, and discrimination around, sex work will be discussed, and I will focus on the human trafficking issue which sex work frequently is equated with. In the last part of this chapter, I will link the (global) decriminalization process to theoretical insights in social movements.

In **Chapter 4**, the current state of sex industry policies will be elaborated on. First, a critical analysis will concentrate on three main sex industry policies, their differences and their confusing terminology, and will discuss new concepts of sex industry policies, as introduced by Östergren (2017). Next, the different effects of sex industries policies on harm reduction, harm minimization, and stigmatization of sex work will be discussed. Finally, the preparedness of parties to involve sex workers or their representatives in the law-making processes will be explored.

In **Chapter 5**, the historical context of the New Zealand sex industry will be explored on a macro level. It briefly opens with a retrospective of the precolonial Maori sexual culture and its sexual intercourse tradition prior to the arrival of the first European settlers. I will question whether prostitution-related activities were already practiced by the Maori society before the European settlers entered New Zealand. Next will be an elaboration on the development of the sex industry from the beginning of the colonization at the end of the eighteenth century till 1987, the year of the establishment of NZPC and the beginning of the NZPC’s campaign to decriminalization.

To put the New Zealand sex industry developments in an international perspective, in this chapter, after every subsection, a reflection will be given on sociocultural and historical sex industry developments in the Netherlands and in Sweden, two other democratic and liberal western countries, each with an opposing sex industry legislation.<sup>23</sup>

In **Chapter 6**, the elements that played a dominant role in NZPC's campaign for legal change will be outlined on meso level. I will focus on the cultural backgrounds of New Zealand and their impact on the sex industry decriminalization process. Additionally, I will go into the influence of four sociopolitical elements in the last decades of the twentieth century: (i) the influence of the HIV/AIDS epidemic on NZPC's establishment; (ii) the preparedness of academics, non-governmental organizations (NGOs) and other parties to advocate for NZPC's ideals; (iii) the willingness of politicians to get involved in the parliamentary PRA process; and (iv) the influence of actuarial thinking on the parliamentary PRA decision process.

In the last part of this chapter, the focus will be on de facto effects of the sex industry decriminalization policy, focusing in particular on the perspectives of New Zealand sex workers. How do they experience the effects of the decriminalization in relation to their health, safety, and self-determination?

In **Chapter 7**, the micro level perspective will be outlined. Here, the focus is on the main actor in the campaign for decriminalization: NZPC. I will introduce the organization as a social movement organization that aims to implement the decriminalization social movement objectives in New Zealand. In addition, eight key NZPC elements will be explored that not only might have played an important role in the decriminalization campaign, but might also determine the uniqueness of NZPC as sex workers' collective in relation to its allies abroad. Here, sex workers' perspectives on their organization will also be explored. How do they look at the functioning of NZPC and what, according to them, should be improved?

In **Chapter 8**, the effects of the PRA will be explored. The focus will be on analyzing inconsistencies and new quandaries within New Zealand's sex industry. Tensions are identified between legal PRA principles and their practical implementation. After a brief introduction about ongoing stigma on sex work, I will hone in on the controversial ban on non-residents to provide commercial sexual services or to operate or invest in commercial sexual business and elaborate on several ambiguous local bylaws related to the indoor and outdoor sex industry. Critical observations of sex workers will be explored

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23 To emphasize that these specific text blocks refer to developments in the Netherlands and Sweden, I will place these texts both in a grey-colored frame (as above-demonstrated).

regarding forms of exploitation and the ‘unsafe sex’ PRA clause. The chapter will finish with two stigma-related inconsistencies affecting sex workers.

In **Chapter 9**, the conclusion of this research will be presented.

## Chapter 2

# Methodology

The intention of this qualitative research is to obtain deep, rich, and detailed insights into a decriminalized sex industry, in particular focusing on the experiences, emotions and opinions of New Zealand sex workers and NZPC, as well as on their everyday dynamic culture. I considered the extended case study to be an appropriate research approach. Leys, Zaitch and Decorte (2010:174) define a case study as a detailed, intensive study of a delimited research unit, in the way it presents itself within the social reality.

Here, I investigate the background and effects of the sex industry decriminalization policy in New Zealand within its natural context and with respect for its complexity. In particular, the study focuses on the directly involved social groups of the sex industry: the sex workers, NZPC, and to a lesser degree, the brothel operators.<sup>1</sup> They all were involved in the process of decriminalization, and are all – each in their own ways – influenced by the goals and results of this new policy.

### 2.1 Desk Research

Reading New Zealand's literature – from its Polynesian beginnings through the colonial period in the eighteenth century, and towards the twenty-first century (e.g. Belich 1996; Donne 1927; Eldred-Grigg 1984; King 1991; King 2003; Macdonald 1986) – not only helped me to build an image of the cultural and historical background of the country, it also provided me an image of the historical development of New Zealand's sex industry and its sociocultural context. It allowed to capture what the confrontation between the European settlers and the native Maori inhabitants meant, in particular regarding the beginnings of the New Zealand commercial sex service.

In addition, studying literature from national and international researchers and other involved authors regarding the developments of the New Zealand sex industry after the enactment of the PRA (e.g. Abel & Fitzgerald 2008; Abel et al. 2010; Healy et al. 2010; Jordan 2005; Harrington 2012; Armstrong 2011;

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1 It went beyond the intentions of this thesis to also involve the clients of sex workers into the research.

Roguski 2013; Zangger 2015; Wagenaar et al. 2017; Weitzer 2012) enabled me to critically compare my collected fieldwork data with the findings and conclusions of these authors.

Furthermore, during the whole research period, I have read national and local newspaper articles from both the period prior to and around the 2003 PRA which provided valuable insights into perceptions and feelings about the national and international sex industry in general and about the new approach to New Zealand's sex industry in particular. Especially out- and insider comments during the process of implementation of decriminalization ideologies in the sex industry and in New Zealand society were helpful in trying to reconstruct the different perceptions of 'what was going on' in practice.

## **2.2 Explorative and Descriptive Research**

This research in New Zealand was conducted in two consecutive fieldwork periods: in 2015 from the middle of January until the middle of April, and in 2016 from the end of January through the end of March. Although 'rural' sex work does exist, the main part of the New Zealand sex industry happens in the cities. As a consequence, the fieldwork mainly occurred in the biggest cities: the cities Wellington and Auckland on the North Island, the cities Christchurch and – to a limited extent – Dunedin on the South Island.

In order to find answers to the research questions, the study has been based on qualitative research, including open and responsive semi-structured in-depth interviews; observations; visual techniques; and studying and comparing existing literature, media, and reviews of the PRA. The study particularly focuses on the de facto experiences of the sex workers and NZPC. Apart from analyzing the opinions of this inside group, I also used an 'interactionists approach' (see Becker 1963) which enabled me to explore the reactions, meanings, interpretations, and opinions of other involved parties in order to map positive as well as the negative elements of decriminalization from different perspectives.

### *2.2.1 Interviews*

Discussing the strengths of qualitative interviews, Edwards and Holland (2013:90-91) refer to Jennifer Mason (2002) who argued that qualitative interviews support in "exploring the texture and weave of everyday life, the understandings, experiences and imaginings of research participants, how social processes, institutions, discourses or relationships work, and the significance of the meanings that they generate". I deemed this interview form as very fit for stimulating and facilitating people to tell their narratives in their own words. In this context, I borrow the opinion of Holstein and Gubrium (2004) stating that "interviews are conversations where meanings are not only conveyed, but cooperatively built up, received, interpreted, and recorded by the interviewer" (Cited in Decorte & Zaitch 2010:202). I concluded that the

in-depth semi-structured interviewing technique would be the most appropriate method. This technique allows the use of a topic guide of interview subjects<sup>2</sup> by which a minimum of structure can be guaranteed, while at the same time offering the possibility to change the scheme if the setting demands it. Put differently: it offers the possibility to remain flexible if the interview takes unexpected turns (Beyens & Tournel 2009; Edwards & Holland 2013; Rubin et al. 2005). After this decision, I was able to prepare several topic guides for the different groups of New Zealand respondents in the period prior to my departure for New Zealand.

### *Access Gatekeepers and Respondents*

The initial preparatory steps were focused on making contacts with gatekeepers and informants in New Zealand. Their responses to my interview requests by skype showed an impressive willingness to collaborate on and support the research. The majority of the contacted persons replied quickly, often including positive reactions to the aims of the study. This enabled me to set up a number of meetings with key informants in an early phase<sup>3</sup> through which I could start my research more or less immediately after two days of acclimatization in New Zealand.

I conducted 119 interviews (see Appendix II). The respondents were divided into three groups: (i) people who are or have been directly involved in the sex industry; (ii) people who are closely related to the sex industry; and (iii) people who have for a variety of reasons partial connections with the sex industry (see Appendix I).

The 'directly involved people' category consists of sex workers, NZPC staff members, and brothel operators. I interviewed forty-one sex workers<sup>4</sup> who, at that time, were working in different sectors within both the indoor and outdoor sex industry (see Appendix III). Besides the sex workers, I conducted twenty-seven interviews with NZPC staff and NZPC collaborators (see Appendix V) and nine with brothel operators (see Appendix IV).

The second category concerns organizations closely related to the sex industry. Of this group, I interviewed fifteen persons total. Six were involved in the Health Care sector and nine worked for non-government organizations (NGOs) (see Appendix VI).

The third group consists of people who are important to the sex industry, but only partly related to it. Here, I conducted thirty-four interviews: Members of Parliament and local politicians; representatives of the NZ Police and

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2 A topic guide includes a list of questions or subjects that needs to be covered during the interview.

3 Arranged appointments with NZPC staff members, representatives of NZ Police and NZ Immigration Service, NGOs, MPs, and academics.

4 Forty-one sex workers of which thirty females, nine transgender people, and two male sex workers.

Immigration Service; a member of the Ministry of Justice; media professionals; a bank representative; a female activist, and New Zealand academics (see Appendix VII).

### *Gaining Access to Sex Worker Respondents*

Edwards and Holland (2013:45) mention that “seeing the participant in context (in their home, their classroom, their workplace), surrounded by the material culture of their created space, and possibly interacting with others in that space, offers a wealth of information beyond that obtained, and possibly obtainable, in an interview, providing an ethnographic dimension to the exchange”. In that spirit, I tried to contact sex workers by searching on special newspaper sites and sex service websites where sex workers present themselves to clients. I then called the indicated mobile telephone number and, after having explained the interview intentions, I asked for an interview by telephone or a meeting at a certain location, for instance at their home or work place. Edwards and Holland (2013:48) describe that an interview by telephone might be “more acceptable to some participants when discussing sensitive topics, for confidentiality/privacy or convenience, for fitting into busy and complicated lives”. However, according to these authors, the disadvantages include “the lack of face-to-face contact and so lack of information about the other from their appearance, non-verbal communication in the interaction and the physical context” (Edwards & Holland 2013:48).

Apart from this, I also experienced that it is not quite common for sex workers to accept the request of a male researcher for an interview. My efforts to invite sex workers ‘on my own’ for an interview, mostly by telephone, often failed since a number of them – despite what I hoped to come across as an open and honest introduction of the research intentions – refused to participate. Apart from the group who just was not interested (hung up), there was the group who hesitated and tried to frame my request. It seemed to me that their doubts often appeared to be based on distrust and insecurity: “Who is that man? What does he really want? Can I trust him?” Their cautious hold-back attitude confronted me with the handicap of being a man who intends to do research with sex workers. Probably due to the stigmatization and the special nature of the occupation – in particular with regard to sex workers’ expectations when meeting a man at their workplace – I experienced their initial reluctance. On my own, I found only four private sex workers<sup>5</sup> prepared to be interviewed, face-to-face or by telephone. In subsection 2.5, I will further elaborate on this gender issue.

A second way to meet sex workers occurred through the mediation of brothel operators. This approach was not easy either since, on the one hand, I was dependent on the willingness of the operator or manager, and on the other

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5 Two sex workers interviewed by telephone, two at their work places.



hand, an interview during working hours implied financial consequences for the sex workers in that it would hinder them from serving their clients and earning money. Nonetheless, I was able to interview seven out of the forty-one sex workers at a brothel or parlor, individually or as a group.

A third occasion to meet sex workers occurred during meetings with people of sex industry-related NGOs such as *Stop Demand* and *Freedom from Sexual Exploitation*. In this way, I was introduced to five sex workers who accepted an interview. Four of them were face-to-face interviews, and one interview was by a written questionnaire.

By far the most successful way to get access to sex workers happened through mediation of NZPC. Its broad network within the industry – indoor and outdoor, males, females, transgender persons, young, older, and ex-sex workers – and its dedicated mediation supported me in finding sex workers who were willing to contribute to an interview. This approach enabled me to interview twenty-four former and current sex workers, whose work was private, managed and street-based, in all within a private setting at NZPC community centers. An additional advantage of these meetings was that I could use the so-called snowball method<sup>6</sup>, hoping that the sex worker respondent would inform peers about my research. This indeed occurred; however, it was successful in only a small number of cases.

The fifth and last employed occasion to interview sex workers occurred during my street-based observation trips. I mostly encountered outdoor sex workers who were working and trying to make money, and thus were unwilling or uninterested in participating in an interview. An exception to the rule happened during my street outreach activity in Christchurch where I got the chance – on NZPC's invitation – to meet some sex workers in a mobile campervan.<sup>7</sup> Only one street-based sex worker, however, was really prepared to share more extensively her opinion on my topics, apart from smaller conversations.

#### *Gaining Access to NZPC Staff Respondents*

Seeing into the heart of NZPC – observing its daily procedures and meeting and interviewing NZPC-related members – was a crucial aspect of this research. The intention was to create trusting relationships with NZPC members in order to understand its backgrounds, basic objectives, and present concerns.

My fieldwork in Wellington started with a meeting with NZPC National Coordinator Catherine Healy, one of the Founders of NZPC, at the NZPC Office. The leading role of this NZPC center in Wellington with regard to

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6 Snowball effect: a process in which contact is made with participants through whatever access route, and through these first participants follow introductions to other relevant individuals or groups (Edwards & Holland 2013, Decorte & Zaitch 2010).

7 Once a week, this campervan is placed in the street-based sex work area in Christchurch by the SA. Together with NZPC, the SA-collaborators offers hospitality services such as drinks and food to sex workers from 10 pm till 1 am.

managing the New Zealand sex industry in its broad context and complexity became rapidly clear. Here, as well as at the other NZPC community centers, access was acquired rather easily, as all members were willing to cooperate.

My research also benefitted from the extensive NZPC network spread across the country. The organization introduced me to a number of different sex industry key actors, or at least to people or organizations who are closely linked to the branch, such as medical staff, representatives of the SA, YCD, and Drugs Rehabilitation Centers.

### 2.2.2 Observations

In addition to the interviews, the field observations enabled me to gather additional data about the New Zealand sex industry. The intentions of these observations were threefold. First, I wanted to make descriptive observations in different indoor and outdoor sex work settings, successively by visiting brothels and parlors, by being part of street outreaches through which I could observe street-based sex work, and – if possible – by visiting private sex workers at their homes. Second, referring to NZPC as a paramount part within this research, I wanted to observe the daily activities of NZPC community centers in different cities. Regular visits to the main NZPC centers in Wellington, Auckland, Christchurch and – to a lesser degree – Dunedin<sup>8</sup>, enabled me to often interact with NZPC staff and other NZPC collaborators. The visits provided me the opportunity to not only interview NZPC staff and sex workers, but also to observe the NZPC atmosphere, and to capture similarities and differences between NZPC locations in different cities.

### 2.2.3 Recording and Analysis of Data

#### *Recordings*

After guaranteeing the anonymity of the interview data, most respondents gave their permission to record the interview.<sup>9</sup> In this context, I agree with Edwards and Holland (2013:69) that audio recording can be useful during the interview because it enables the interviewer to “focus on listening, probing and following up and maintaining eye contact with their interviewee”. A second advantage of recording an interview is that rehearing a recorded interview – especially long after the interview – could again evoke the tones of voice, expressions, or emotional timbre, which may have additional value for the research. However, recording an interview also has disadvantages.<sup>10</sup>

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8 I have visited four out of six community centers (I missed the NZPC community base in Tauranga).

9 All recordings are saved in a protected file, without access for others.

10 Disadvantages of recording interviews, for instance, it might provoke pressure to speak frankly to interviewees, and the interviewer might be distracted because of constantly checking the recording device (Beyens & Tournel 2010; Rubin & Rubin 2005).

Respecting respondents' integrity and privacy was a priority for me. This particularly applies to sex workers, many of whom – due to the stigma attached to sex work – still prefer to keep their occupation secret from family, husband, friends, or non-sex work-related business acquaintances.<sup>11</sup> Besides asking permission, I also encouraged the sex workers – before and during the interview – to stop the recorder or to stop the interview at any time if they wanted to. In the end, none of the respondents objected the recording.

Occasionally, it was not possible to record the interview due to circumstances such as a noisy environment or it concerned an unexpected or informal meeting. Sometimes, I deliberately decided to not record the interview because I assessed that asking permission to record could jeopardize the spontaneity of the conversation, and, in that spirit, the quality of the interview.

After the interviews, I often made notes of special thoughts, associations or tensions which came up during the interview. These notes reminded me of the interview ambiance during the transcription process which mostly happened after the fieldwork. To minimize the risk of missing or overlooking relevant interview issues, I decided to transcribe most recorded interviews ad verbatim (Decorte & Zaitch 2010; Rubin & Rubin 2005).

Besides making notes during interviews, I also made field notes of the observational part of the research. During and after the observations, I noted details of the observed ambiance, the people, the events, tensions and emotions as extensively as possible. If allowed, I also tried to take photographs, for instance of NZPC community centers and of brothels – its rooms, working tools, pictures. Sometimes, I was able to take photographs of involved people (e.g. NZPC staff) with their consent. However, to ensure privacy, I always avoided taking photographs of respondent sex workers. One exception was made for a sex worker who insisted that I use her photographs for my thesis, if I wanted to.<sup>12</sup>

Visual printed materials like flyers and other information leaflets which could have additional value and might support the reporting activities at a later stage were collected.

### *Analysis of the Qualitative Data*

To manage and be able to analyze the large amounts of interview data, I first sorted the collected interview and observation data, documents, and materials. Then, I structured it by coding the transcribed interview information – opinions, interpretations, contradictions, meanings, and quotes – per investigated subject for each group of respondents. This enabled me to come to data reduction

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11 Apart from Chapter 3 in which the stigma on sex work will be discussed, more chapters will refer to consequences of the stigmatization of the sex industry.

12 This sex worker has sent me by e-mail a number of pictures which she uses on her website.

(initial coding<sup>13</sup>) and subsequently to realize themes, categories, and patterns within these codifications (axial coding<sup>14</sup>). Finally, I analyzed these patterns which enabled me to draw conclusions. To illustrate a research example, I refer to my interview group ‘Sex Workers’. Here, I first labelled the transcribed answers of each sex worker in a number of items. For instance, I constructed (and reconstructed) the items such as ‘health’, ‘safety’, ‘self-determination’, ‘stigmatization’, ‘exploitation’. The next phase was to place all relevant opinions together under the same codes. By doing this, I was not only able to compare and to analyze their opinions per category, I also could collect a number of quotes per category. This same procedure was used with the other respondent groups. It enabled me to reduce data and to compare and analyze answers per group. Subsequently, I could construct, compare, and analyze opinions of specific items between the different groups, which helped to come to conclusions.

## 2.4 Ethical Reflections

In order to do fieldwork in the New Zealand sex industry, understand the effects of the decriminalization policy on the most involved group, the sex workers and NZPC, I had to build contacts with sex workers. Most of them agreed to be interviewed at the NZPC community centers. The fact that their NZPC introduced me and the fact that the interview could take place at their NZPC community center<sup>15</sup> created a kind of ‘familiar’ atmosphere of confidentiality, which mostly encouraged them to accept my request. This aligns with Edwards and Holland (2013:43) that if privacy might be an issue, while private space could be more suitable, “private rooms can be available in otherwise public spaces, (...) the office of the participant in an organization of which they are part”.

### *Avoiding Selectivity*

Of importance was to question whether access to sex workers through NZPC mediation could jeopardize the ad random choice of respondents. In theory, this way could cause a selective access to certain kinds of sex workers, created by NZPC. However, in practice, most sex worker respondents demonstrated a spontaneous willingness to share their opinions very openly. Even if some interview topics touched certain sensitive subjects, or exposed critical attitudes towards the effects of the decriminalization, or towards their experiences on the functioning of NZPC itself, I did not discover resistance to answering. In fact, most interviewed sex workers were glad to participate and to share their opinions and views. In a way, I interpreted this attitude as a relevant sign of sex

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13 Initial or open coding: the splitting, by attaching codes and labels, of interview texts (Decorte & Zaitch 2010).

14 Axial or pattern coding: bringing together the different codes and labels in categories or pattern codes (Decorte & Zaitch 2010).

15 NZPC offered me a private room in its buildings for the interviews.

workers' independence in New Zealand and an awareness of the right to speak frankly without fearing negative consequences. Meanwhile, I do realize that this will not be the case for every sex worker in this country.

### *Researcher's Role*

The stigmatization of the occupation still determines that the majority of the sex workers wishes to remain anonymous. Being interviewed might threaten their anonymity. Because of this fear, it was my task to respect their privacy and to convince the sex workers of a discrete and safe treatment of the data. Furthermore, it was of importance to inform the sex workers extensively about my role as researcher and about the intention of the interview. In this context, I follow De Wildt (2016:59), who argues that "respondents in a study should be given all the information needed to make an informed decision about their participation".

With regard to my position as a researcher towards the respondents, I wanted to avoid any ambiguity in the field by ensuring the respondents that I was not a client searching for sexual services, but a researcher searching for information. This attitude is what I applied both during the interviews and during the fieldwork observations in which I acted as a non-intrusive observer (Zaitch et al. 2010).

Regarding my *modus operandi*, I introduced myself at the start of the interviews as a researcher from Utrecht University in the Netherlands. After having explained the interview intention and my commitment to respect their privacy and anonymity (see subsection 2.4 Ethical reflections), most interviewed respondents – supporters as well as opponents of the decriminalization policy – were very willing and motivated to share their experiences and critical opinions about the effects of the decriminalization of sex work. Some respondents could demonstrate emotions, anger, or indignation. I tried to pay attention to these and other vulnerable feelings of unease. To mark these signs might be of importance to adequately interpret the narrative part of the interview (Van Gemert 2010; Edwards & Holland 2013). Although it could be predictable that a topic or question might become sensitive in some cases, sometimes emotional reactions also could appear in unexpected moments. I agree with Kelly and Coy (2016:42), who mention that "the reality is that questions or topics which are not considered sensitive may be for some [sex workers] because of their life experiences". They also argue that "ethics involves far more than completing a form or being able to show you have met institutional requirements: rather ethics are constantly present, in process, and have to be negotiated as part of an ethical research practice" (Kelly & Coy 2016:36). In that sense, I strived to constantly be aware of changing circumstances during the interviews. A short break, a glass of water, showing understanding, often helped to rebalance the respondent (and the interviewer) and, if possible, to continue the interview after some moments.

Regarding NZPC, we succeeded in building a strong relationship of trust. The staff invited me to not feel inhibited to ask critical ‘probing’ questions about delicate NZPC issues. By that, I was able to look ‘behind the curtains’, which worked out in favor of the validity of the data. However, I used vigilance to be aware of my involvements and participations. While being friendly and attentive, I kept distance in order to remain as neutral and objective as possible.

### *Informed Consent*

At the beginning of an interview, I regularly presented an interview information leaflet and a form of consent. The first enabled the respondent to read interview information and to ask questions. The second showed their agreement with the interview (Edwards & Holland 2013; O’Gorman et al. 2010; De Wildt 2016). Some of the interviewees took the time to closely read the form. Others decided to read the text superficially, followed by signing the consent form.<sup>16</sup>

Yet, opinions with regard to the value of an informed consent are ambiguous. Siegel and de Wildt (2016:3) refer in this context to Punch (1994) by writing that “informed consent is a delicate issue, especially in ethnographic research. In some situations it can become unworkable, as consent often reduces participation”. Considering my field work research in New Zealand, in some cases I deemed it better to only discuss consent in a verbal form. I feared that reading and signing a formal paper could not only damage the informal atmosphere between us, but could also reduce the willingness of the respondent to cooperate, which then might jeopardize the quality of the research.

Values such as respecting privacy and anonymity, confidentiality, listening and facilitating, going in-depth without jeopardizing sex workers’ interests, are essential for reliable interviews (Easton & Matthews 2016). Theoretically, however, there might be exceptions by which a reconsideration has to be made. Kelly and Coy (2016:43) mention that “on the one hand, an ethical position suggests providing the conditions, including confidentiality, which encourage open and honest accounts; on the other hand is a wider social responsibility to prevent further harm to this person and potentially others”. Within this context, the text of the consent form I presented to the respondents indicated that, apart from respecting anonymity and confidentiality, there exists:

“the only exception to this will be if there is an expectation that I [the sex worker] or someone else was at risk of serious harm, but he [the interviewer] promised he will discuss this with me first” (Researcher’s Form of Consent 2015/2016).

Most respondents accepted this consent form. Although I had some fear that this text could make some respondents reluctant to speak frankly, my personal

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16 All sex workers signed the form with pseudonyms as proposed.

impression was that it did not influence the candor of the interviews at all. In the end, the text did not appear to apply to the respondents.

## 2.5 Gendered 'Power' Relations and Reciprocity

### *Gender*

Edwards and Holland (2013:80) refer to Ann Oakley (1981) who argued that "a feminist, interviewing women, is by definition both 'inside' the culture and participating in that which she is observing". Oakley presented the feminist interview as a "non-hierarchical exchange" (Edwards & Holland 2013:80). Edwards and Holland (2013:80) contravene this argument by mentioning that also "women are not all similarly socially positioned nor sharing cultural experiences". They add that social divisions and power are not eradicated in an interview, "even where interviewee and interviewer share membership of a marginalized minority group" (Edwards & Holland 2013:80). Does Oakley's statement imply a self-evident power relationship between the female sex worker respondent and the male interviewer? Discussing ethics and power relation in a qualitative study, Das (2010:20) refers to Tang (2002), who suggests that "sharing a common experience of gender can help to build better rapport and facilitate closeness between the researcher and the researched". With regard to females interviewing males, Das (2010:20) also refers to Taylor and Rupp (2005). They argue that "negotiating power within research becomes even more complex with women interviewing men as gendered power also becomes a part of the power relationship that has to be considered". Reflecting on her own research, Das (2010:20) affirms that she was able to build better rapport with female participants than with male participants. She concludes that she "was more aware of her femininity, vulnerabilities, took additional precautions with regards to health and safety issues during personal interviews, was more conscious as to how she posed questions, how she presented herself, how she physically moved in their presence". Discussing cross-gender interviews, Rubin and Rubin (2005:89) believe that "a blunt question from a male to a female may get a less detailed and thoughtful response than a more indirect question". Das (2010:16-17) refers to Grenz (2005) who suggests that this movement of power between the researcher and the researched "is shaped by the different positions that researcher and researched take within the research encounter which subsequently shapes the data and outcomes of the study".

Unfortunately, apart from these discussions, I was not able to identify literature that explores the specific 'gendered power impact' between a male interviewer and female respondents. I follow Grenz' opinion (2005) that "power is fluid and is not possessed by anybody, neither the researcher nor the researched, and hence it is not possible to conceptualize power in these terms" (Grenz cited in Das 2010:16). However, without presumptuously arguing that gender did not play any role during the interviews, in practice I did not encounter impediments in terms of interviews being obstructed by interpersonal tensions



of power and gender. Perhaps the surroundings facilitated a relaxed interview environment, showed understanding for eventual arising tensions and emotions, anticipated uneasy feelings, and above all, implied experience in interacting with people. I experienced most interviews as a symmetric interaction, as a so called 'interview dance'.<sup>17</sup> In these terms, I again follow Edwards and Holland (2013:87) who argue that "the minimal structure of an in-depth qualitative interview in particular invites and enables multifaceted power shifts between interviewer and interviewee across the course of an interview". During these interview dances, interactional power shifts did sometimes occur. I experienced respondents' capacity to select – to a certain degree – which stories they want to tell, how these stories are told, and – in a sense – to influence a certain order of interview items. For instance, interviewees who might insist to firstly comment on a certain issue before answering my question. The used interview method – open and semi-structured interview techniques – in fact did allow and facilitate these mutual shifts.

Certainly, my position as a man who was only interested in a conversation about sex industry issues might have occasionally provoked a form of a sex worker's distrust or a lack of interest in accepting my interview request. However, the alleged 'gendered power problem', once a trustful ambiance had been created, whatever the location, actually revealed itself to be a very minor limitation. Participant sex workers were often prepared to express their opinions on my questions. Here thus, I discovered that once into the conversation with sex workers, gender apparently did not matter so much anymore.

As above-discussed, my efforts without outside help to invite sex workers to participate in an interview were not really successful. In this context, I understand Zangger (2015:57), who discusses the cooperation of sex workers willing to welcome researchers into their homes. She states that "if I had been a man, I doubt that many of my participants would have felt comfortable or safe inviting me to their homes, or sharing their sex work-related experiences in an open and sisterly fashion" (Zangger 2015:57). The gender difference might certainly have played a striking role here in the refusal to be a party to an interview.

In sum, being a male researcher working within a predominantly female arena did not hinder the objective to gather valuable information from the emic perspective, in this case, from the most involved stakeholders within the New Zealand sex industry.

### *Reciprocity*

"Establishing reciprocity between research subjects and researchers can potentially help the research benefit participants in the work as much as it benefits those who carry out the research" (Dewey & Zheng 2013:51)

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17 'Interview dance', described by Elizabeth Hoffman (2008) and cited by Edwards & Holland (2013:78).



A number of practical measures helped me to both shape reciprocity and to minimize a certain power relationship. First, I introduced my meetings with sex workers as a conversation rather than as an interview, with the intention to avoid ‘one-way-questioner-versus-responder’ relationship. Second, I created an interview atmosphere in which both the respondent and the researcher felt as relaxed as possible. Put differently: I avoided an unbalanced or chaotic impression at the first encounter, which might directly have had a negative impact on the interview (Beyens & Tournel 2010). Third, in the interview itself I mostly opened the conversation with some shared small talk about trivial subjects. Often, this chat was the beginning of the ‘building trust process’ between the researcher and the respondent. In this spirit, I follow Siegel and De Wildt (2016:2) who argue that “the issues that always come up in the context of social research are harm, consent and confidentiality”. A fourth indicator of reciprocity concerned the question whether or not to pay the sex worker for the interview. Perhaps I could have interviewed more sex workers if I had offered money for an interview. Thompson (1996), who discusses the advantages and disadvantages of payments to respondents, concludes that payments could have gains, for instance more respondents. However, “although every effort should be made to avoid bias, the reality is that some will inevitably affect aspects of the research process” (Thompson 1996)<sup>18</sup>. I decided not to do so, since I could not overview to what extent payments might influence respondents’ objectivity. A fifth indicator of reciprocity occurred within my relationship with NZPC. During formal or informal<sup>19</sup> meetings, we could interchange opinions together, either on certain NZPC issues or on some delicate private concerns. Further, I accepted an NZPC invitation to present a part of my research findings in 2016 during the annual Sex Worker Symposium Day in Wellington.

### *Considerations*

“Ethic protocols should not be equated with absolute, watertight measures. Social research is first of all human research: It is conducted by human beings and its subject matter are also human beings” (Siegel & De Wildt 2016:3).

During the interviews, I preferred to trust my intuition, experience, and human knowledge to question the respondent with respect and without doing harm. The final interview questions often inquired to whether the participants wished to add certain issues as well as a request for a brief spontaneous feedback in order to evoke their feelings concerning the interview. Sometimes this ‘after-conversation’ could lead to more candor or could provoke critical remarks on the issues discussed. Mostly, the respondents did not disapprove the interview

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18 See: <http://sru.soc.surrey.ac.uk/SRU14.html>.

19 Moments of pauses or lunches at the centers of which some of the lunches had been offered by me.

style and the feedback often resulted in demonstrating sincere mutual respect, or sometimes even in a spontaneous hug, which could sometimes have a surprising or overwhelming effect on me.

## 2.6 Research Limitations

### *Gossip and Lies*

Other research limitations could be the introduction of gossip and lies which indeed sometimes occurred during the interviews. For instance, a sex worker would repeat an allegation about brothels, operators, or other sex workers, often with the probable intention to strengthen her position or to empower her statements. I tried to estimate the value of these statements by their accuracies or inaccuracies. But whatever the outcome was, I agree with Siegel (2015:19) who states that gossip and lies are not useless material. She believes that in cultural criminological and anthropological research, gossip and lies could provide insights into the social construction of images. In this research case, respondents' perception of the sex industry decriminalization policy or, for instance, the dynamics between sex workers and colleagues or other groups could provide me insights into the social construction of images.

## 2.7 Validity, Reliability, Triangulation

According to Maesschalck (2010), triangulation is often seen as an important research strategy to strengthen its internal validity. To increase the internal validity, the credibility of the underlying research, this study focused on data triangulation that implies the use of different data sources (Maesschalck 2010). Besides literature review and readings of documents, reports, media articles, flyers, visual images related to the sex industry, I used semi-structured interviews with a diverse number of respondents who were directly or indirectly involved in the New Zealand sex industry. I also used observations of the current outdoor and indoor sex industry, including regional NZPC community centers in the biggest cities of New Zealand.

To reinforce the external validity – the transferability of the research – I not only critically compared my findings with the opinions of the respondents, but I also submitted and discussed a part of my findings with peer academics who also did or still do investigate aspects of the New Zealand sex industry (Maesschalck 2010).

With regard to the analyses of NZPC, I tried to increase the external validity by member validation (Maesschalck 2010). I sent sections of text that particularly treat NZPC and/or legislation-related subjects to NZPC staff members in New Zealand with the request to read and to comment on the text. Depending on the relevance of the content, the text was sent to the NZPC community center in Wellington or Christchurch in order to offer them the opportunity to check the texts for – in their opinion – untruth or incomplete

aspects. Thereafter, it was up to me to analyze their feedback with other sources and to interpret their corrections.

To guarantee the reliability of the research, I discussed my research findings with other scholars, in particular with my supervisors and other PhD colleagues. I also compared my research findings on a regular basis with the research results of academics who have also investigated or still study (parts of) the background and effects of the New Zealand sex industry decriminalization policy (Maesschalck 2010).

“Realities are constructed within a specific social and cultural context. Hence the meanings can only be understood within this particular cultural and social understanding” (Liamputtong 2007:16)

I collected multiple opinions which might parallel or contrast each other and which might support or oppose the decriminalization policy. One unified answer does not exist either. Realities are multiple and not static. In these terms, I agree with Gbrich (2004:16) who argues that “truth and reality are situated within the meanings individuals create according to their perceptions of their everyday lives and their own subjective experiences”.



## Chapter 3

# Theoretical Perspectives

This chapter aims to outline theories that have underpinned the interpretation of the empirical findings of this research. In subsection 3.1 a brief clarification of common terminology linked to sex workers and their work will be described. In subsection 3.2, I will zoom in on the phenomenon of social exclusion of 'deviant' individuals and marginalized groups, in this case sex workers. In subsection 3.3, the persistent stigmatization and discrimination on sex work will be discussed. In subsection 3.4, the focus will be on the human trafficking discourse with which sex work is equated frequently. In the last part of this chapter, I will link two main visions towards prostitution/sex work, the liberal and the abolitionist approach to the decriminalization social movement.

### 3.1 Terminology: The Way You Perceive

The terminology used to name those who sell sexual services varies from (i): 'whores', 'fallen women' 'prostitutes', to (ii): 'prostituted women', 'women in prostitution', 'sex slaves', 'survivors'<sup>1</sup> to (iii): 'sex workers'<sup>2</sup>. The chosen words often indicate one's perspective on prostitution/sex work and, at the same time, could influence the extent to which stigma is applied to the occupation. The first group of names are frequently used by the general public. Pheterson (1996:65) states that the prostitute is both named and dishonored by the word 'whore', which according to her stands for 'unchaste'.<sup>3</sup> She remarks that charges of unchastity do not make a man a whore: "the word 'whore' is specifically a female gender stigma" (Pheterson 1996:65). The second cluster of names is mostly used by radical feminists and neo-abolitionists<sup>4</sup> in order to express their antipathy against prostitution. The third term 'sex worker' is particularly used

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1 Terms such as 'prostituted men', 'men in prostitution', 'fallen men' are not common.

2 The term sex worker is used since the 1980s. According to Armstrong (2011:3), the term 'sex worker' was first used by a sex worker activist named Carol Leigh a.k.a. "Scarlet Harlot".

3 According to Pheterson (1996:65), 'unchaste' is defined as "indulging in unlawful or immoral sexual intercourse, lacking purity, virginity, decency, restraint, and simplicity, defiled" (i.e. polluted, corrupted).

4 The term 'neo-abolitionist' is used in literature to describe the group of people who oppose the 'raison d'être' of prostitution/sex work and who want to decrease or abolish the trade by criminalizing clients and other involved parties.

by both liberal feminists and other advocates who consider sexual labor work and prostitutes sex workers, and by sex workers themselves who, as described by Weitzer (2005:213), often reject the attempt to strip them of agency<sup>5</sup> by labelling them ‘prostitute’ or ‘sex slaves’ and view themselves in more neutral terms. In Chapter 4, subsection 4.1, I will further discuss this ongoing domestic and international discourse regarding these competing perspectives towards prostitution/sex work, which is often indicated as the radical feminist versus the liberal feminist vision.

In this underlying study, I prefer to use the liberal feminist terms ‘sex worker’ and ‘sex work’. In my opinion, this nomenclature (i) expresses respect for sex workers’ agency to make independent choices; (ii) is less stigmatizing; and (iii) represents best the connotations regarding their sex work as work, which the women in this research themselves adhered to. However, where it is demanded by the historical context, or where in particular the moral or radical feminist visions come to the fore, I will deliberately use the terms ‘prostitutes’ and ‘prostitution’ to emphasize these different connotations. Furthermore, the words ‘prostitutes’ and ‘sex workers’ in this thesis will include all individuals – females, males, transgender persons – who operate or have operated within the sex industry.

Sex work, following Outshoorn (2004:3), is mostly considered “the exchange of sex or sexual services<sup>6</sup> for money or other material benefits”. The trade often occurs in the less visible indoor ambiances such as in brothels and parlors, clubs, bars or private escort (rented) premises (hotel rooms, client’s houses, own apartments). The more visible scenes are street-based and window sex work, on mobile phones, and specific internet websites. Some workers just operate temporarily, while others are ‘life-long’. Their ages can vary from young (minor) to elderly. Reasons to enter the voluntary sex industry vary from primary economy-related motivations to enjoying the social contacts with peers and clients. The social agency of both sex workers and their customers can vary from well-thinking, reasonable, independent, and capable persons with a lot of material and social capital/resources to deprived or addicted and/or low-educated individuals with little resources. There are no diplomas required

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5 ‘Agency’ can be interpreted as sex workers’ ability to implement their own free will and to make own decisions about their work and how to use their bodies (Sanders et al. 2011; Oude Breuil 2011).

6 These sexual services are mostly the result of commercial, consensual negotiations between female sex workers and male clients, or between transgender or male sex workers and male clients. The boundaries of the offered services are vague and can vary from vaginal, oral, or anal intercourse or masturbation techniques to the Girlfriend Experience (GFE) in many forms (Harcourt & Donovan, 2004). A GFE is a term which refers to a social and sexual relationship between a customer and a sex worker “that mirrors that of a conventional relationship” (Sanders 2008:407). Mostly, instead of brief sexual acts, GFE sexual services are provided such as “being friendly, conversational, generous with time, kissing, cuddling” (Weitzer 2005:224).

for sex work. In short, the sex industry is a segmented industry of different workers, ages, gender, ethnicities, agencies, types of work, and entry reasons (Abel & Fitzgerald 2010).

### 3.2 Including or Excluding Sex Workers?

In *The Exclusive Society. Social Exclusion, Crime and Difference in Late Modernity*, Jock Young (1999) describes the movement from an inclusive society of stability and homogeneity during the 1950s and 1960s to an exclusive society of change and division. We moved from a society in which the accent had been on assimilation of deviance and disorder and incorporating its members to a society that wants to keep out the deviants. Young (1999) characterizes the latter as a “bulimic” society, referring to Claude Lévi-Strauss’ anthropoemic society that keeps deviants out, that “vomit out deviants” (Young 1999:81).

Young’s theory is appropriate to connect to this underlying research in its viewpoint that many societies worldwide exclude or tend to exclude minorities or marginalized groups such as sex workers. We will see in Chapter 4, when discussing the three current main sex industry policies, how policymakers and other involved groups within decision processes are often led by either the dominant abolitionist vision – e.g. Sweden – or the liberal feminist vision – e.g. New Zealand – towards the sex industry. The chosen policy has far-reaching consequences for the marginalized groups, especially for the lives and working conditions of the people who are directly involved in the sex industry. In this context, Young’s (1999) theory of a modern inclusive society could refer to societies whose sex industry policies are focused on incorporating the deviant other<sup>7</sup> – here, the sex workers – whereas Young’s late modernity exclusive society theory refers to societies where cultural diversity is tolerated,<sup>8</sup> but the alleged ‘dangerous deviant’ is socially excluded and treated as ‘the other’. Here, Howard Becker’s (1963) labelling theory is relevant in which he explains the processes through which deviants become labelled as outsiders.

This also taps in to the discourse of Ulrich Beck (2002) and his ‘risk society’. Beck (2002:632) argues that “the hidden central issue in world risk society is how to feign control over the uncontrollable – in politics, law, science, technology, economy and every day life”. Whereas other countries try to control the sex industry by using increasingly repressive measures, New Zealand entered into ‘a world of uncontrollable risk’, which could have provoked public and media reaction such as stress and the ‘not-in-my-backyard’ (NIMBY) syndrome, fear for unwanted or unintended effects. According

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7 In a modern inclusive society, ‘diversity’ is considered a threat to the society.

8 Young (1999) refers to diversification of lifestyles, and consumerism such as for example exotic menus in restaurants, extensive repertoire in supermarkets, the market for music, tourism, television.

to Furedi (2007), risk is often related to a negative outcome which then people are expected to fear.

In this context, Young's late modernity 'actuarialism' principle refers to a social control approach in which the focus is on harm and risk minimization, prevention, effectiveness, and efficiency. It is an approach in which, according to Young (1999:66), "the best practices of damage limitation have been put in place". The principle is managerialist thinking focused on effectiveness, efficiency, and cost management, rather than moral condemnation of deviant behavior (Simon 1987; Young 1999). Young refers to Zygmunt Bauman who terms actuarialism as 'adiaphorization' which means "the stripping of human relationships of their moral significance, exempting them from the moral evaluation, rendering them 'morally irrelevant'" (Bauman cited in Young: 1999:67). This late modern actuarialism principle could have played a role in the PRA making process in New Zealand. In the Chapters 4 and 6, I will return to this actuarialist model in relation to the legislation change in this country.

### 3.3 The Ongoing Stigma on Sex Work

"The lack of social acceptance of sex workers, in both cultural, social, and political terms, means that women who work in all areas of the sex industry, are still affected by the social stigma that is connected to the 'whore stigma'" (Sanders et al. 2009:11).

Across the world, stigmatization is attached to sex work (Abel & Fitzgerald 2010; Sanders et al. 2011; Vanwesenbeeck 2017). Vanwesenbeeck (2017-PPP) defines stigma as an indication of shame and dishonorability that distinguishes an individual from others on the base of a social, ideological, and/or moral judgment. Armstrong (2011) points to the stigma on sex work as related to the widespread criminalization of sex workers globally and the denial of labor rights for those sex workers who have to work under repressive regulations. Her statement refers to sociologist Edwin Lemert (1967) who argues that social control and oppression lead to deviance. Lemert's theory of social control will be useful to answer the question whether the decriminalization policy in New Zealand is reflected in destigmatization of sex workers in this country.

The labelling theory of the sociologists Howard Becker (1963) and Erving Goffman (1963) is useful to interpret both the existence of stigma and its effects on people who are involved in the sex industry. These theorists focus on how deviance comes into existence and how difference is reacted to (Lanier & Henry 2010:218). With regard to sex workers, we could argue that they operate in an industry which often goes against the common norms and values. Their 'deviant' behavior frequently evokes moral disapproval, by which they become labelled as deviants who need to be controlled (see Lemert 1967). This aligns with Becker (1963:8-9), who argues that deviance is often constructed by society itself: "social groups create deviance by making the rules whose infraction constitutes



deviance". These theories help us understand the ongoing stigma that is attached to sex workers and the impact of labelling sex workers as exclusives or outsiders, and framing them as a threat to moral values and public health.

Negatively stereotyping, excluding and 'othering' sex workers increases the stigmatization of this already marginalized group which, according to Wagenaar et al. (2017:227), might result in public condemnation or distrust, rejection, and "in a generalized anxiety about prostitution's effects on marriage and community".<sup>9</sup> As we will see in Chapter 4, this fear for deviant behavior often leads to oppression policies and police control, which in turn will result in increased stigmatization of sex workers. Researchers have built on Goffman's (1963) theory to explain the concepts of felt and enacted stigma (Scambler 2004). Felt stigma addresses to members of stigmatized groups who internalize negative portrayals of their identity and are silenced and shamed by fear of judgment and discrimination.<sup>10</sup> This felt stigma may lead to emotional health problems such as personal feelings of guilt and shame, uncertainty, stress, depression, and isolation (Lanier & Henry 2010; Vanwesenbeeck 2017). Stigma often leads to secrecy or secret lifestyles as well. In fact, many scholars say secrecy is crucial to the job of sex worker (Abel & Fitzgerald 2010; Sanders et al. 2011; Weitzer 2012). Siegel (2011:108) argues that having secrets can be both attractive and dangerous.<sup>11</sup> They are attractive in that like-minded individuals will search for and meet each other to share their 'not-common' ideas and values. They are dangerous in that deviant conduct can lead to misunderstanding and speculation: "where there is a lack of knowledge, prejudice and myths prevail and this can lead to policies based on stigmatization and misconceptions" (Siegel 2011:109).

Benoit, McCarthy and Jansson (2015:S62) argue that workers in many front-line or personal service industries, such as the sex industry, experience negative images associated with their jobs, which often lead to discrimination against them. Vanwesenbeeck (2017) investigated burnout symptoms among indoor female sex workers. She found that "burnout as a measure of psychological stress is not so much associated with sex work per se as with the stigma associated with sex work" (Vanwesenbeeck 2017:4). This form of stigma also aligns with my research findings in that the majority of the interviewed sex workers refer to the disapproving and stigmatizing public attitude towards their occupation, rather than suffering from their occupation as sex workers.

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9 Abel and Fitzgerald (2010:239) argue that female sex workers in particular are framed as outsiders since they "do not conform to ideal of 'normal' sexuality with its accompanying presumptions of female passivity in the sexual domain".

10 Enacted stigma addresses to attitudes and perceptions by others toward the individual who is seen as different (Scambler 2004).

11 Secrecy can also be an important aspect of criminal activities. Siegel (2011) refers to Zaitch (2005), who uses the example that for cocaine entrepreneurs, secrecy is of importance to "minimize risks, avoid detection, and neutralize competition" (Zaitch quoted in Siegel 2011:109).

Frequently, they have to deal with public prejudices that often frame them as victims of exploitation and abuse.

In fact, this persistent stigma forces a number of sex workers into secrecy. Many of them hide their occupation from family members, friends, employers, medical institutions, financial, and government organization, afraid of the consequences of being ‘named and shamed’ (Wagenaar & Altink 2012).

Weitzer (2012:30) notes that “the deep-rooted ‘whore-stigma’ is an ongoing source of stress in sex workers’ lives and leads them to engage in coping strategies that are themselves stressful or socially isolating”. To compensate for this social isolation, the majority of them emphasize the need to and the relief of meeting peers in a peer-controlled or, in any case, in a not-biased ambiance. Here, my research findings can relate to Siegel’s ‘attractiveness of having secrets’ in that like-minded individuals, in this case sex workers, feel attracted to come together in non-discriminatory environments where they can frankly share their experiences. I will elaborate on this issue when discussing NZPC in the Chapters 6 and 7.

### 3.4 The Stigma of Sex Workers as Victims of Human Trafficking

“Auctions of sexual trafficking victims may be the most visibly egregious part of the problem, but they are the tip of the iceberg of a massive international problem of human trafficking that encompasses many diverse forms of exploitation” (Shelley 2010:2).

The stigma on sex work has increased since the beginning of the twenty-first century, when the phenomenon of human trafficking gained international attention. Due to globalization, the increasing migration between poor and rich countries, the promotion of free trade and cross-border movements,<sup>12</sup> and, finally, the rise of international conflicts, human trafficking and human smuggling are among “the fastest growing forms of transnational crime because current world conditions have created increased demand and supply” (Shelley 2010:2). Article 3a of the UN defines human trafficking as:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the [i] threat or [ii] use of force or [iii] other forms of coercion, [iv] of abduction, [v] of fraud, [vi] of deception, [vii] of the abuse of power or [viii] of a position of vulnerability or [ix] of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of

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12 For example, the Schengen Agreement in 1985 facilitated the movements without a passport within twenty-six European countries; <https://www.schengenvisa.info.com/schengen-visa-countries-list/>.

others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>13</sup>

The definition contains a broad range of means (nine), of which every single one can independently be considered trafficking. Put in another way, only one of these means is enough to constitute trafficking under the Palermo Protocol (Hoyle et al. 2011).

The global discourse on human trafficking frequently equates prostitution or sex work with human trafficking, violence, and forced prostitution (Wagenaar & Altink 2012; Vanwesenbeeck 2017; Abel et al. 2010). According to many academics (Oude Breuil & Siegel 2011, Weitzer 2012, Vanwesenbeeck 2017; Wagenaar et al. 2017), equating human trafficking and prostitution prevents an open and objective discourse about the sex industry. A part of the problem is that mapping the number of trafficked individuals is hardly possible due to lack of valuable empirical data, and in that sense provokes forms of moral panic without justification. Amnesty International strongly recommends to consider sex work distinct from human trafficking. They argue that the equation of human trafficking with sex work can result in initiatives that seek to eradicate commercial sex as a means to end trafficking, and could violate sex workers' human rights. They add that “there is a lack of evidence to suggest that such approaches are successful in addressing trafficking” (Amnesty International 2016:17).

Article 3b of the Palermo Protocol determines that “the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used”.<sup>14</sup> In other words, under certain conditions, consent to engage in prostitution/sex work will be irrelevant in determining a person a victim of trafficking (Hoyle et al. 2011). Voluntary sex work seems to be seen as similar to male violence and forced labor, and to human trafficking. Moreover, legislative regimes that initially were tolerant towards sex work, increasingly focus on the battle against human traffickers, the fear of illegal immigration, and repression and control of sex work instead of improving sex worker's rights and protection measures for the real human trafficking victims (Weitzer 2012; Wagenaar et al. 2017; Holmström & Skillbrei 2017).

This development seems to transpose sex workers into the narrative of the ‘ideal victim’ as described by Christie (1986). He argues that a person or a category of individuals, when affected by crime – here the sex workers – could get the complete and legitimate status of being a victim, although they do not consider themselves victims (Christie 1986:18). This stereotype of an

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13 This definition is considered an internationally accepted definition of trafficking (Hoyle, Bosworth & Dempsey 2011).

14 Art 3b UN Palermo protocol 2004.

ideal victim exists when – paraphrasing Christie – (i) the victim is weak;<sup>15</sup> (ii) the victim is going out of their legitimate, everyday business; (iii) the victim cannot be blamed for the offence; (iv) the victim is unknown to and unrelated to the offender; and (v) the offender is big and bad (Christie 1986). Generalizing all sex workers as weak victims or as individuals without own agency will increase the stigmatization of them. This particularly happens in criminalized sex sector environments, but it also happens in countries where sex work is legalized, such as in the Netherlands. Wagenaar et al. (2017:189) state that “(...) after decades of legalization prostitution is still discursively, morally, and emotionally connected with criminality, human trafficking and ethnically charged images of migrant victims (and perpetrators)”.

This interpretation of human trafficking seems to be based on certain stereotypes of sex work. The question arises, however, whether dominant discourses always align with the social ethnographic reality (O’Connell-Davidson 1999). For example, without denying the negative aspects of their occupation, a number of respondent sex workers of this underlying research said they enjoy the sex work, the mutual contacts with peers and clients, and the flexible work climate. These findings also correspond with Zatz (1997:291) who notes that “many prostitutes emphasize that they engage in sex work not simply out of economic need but out of satisfaction with the control it gives them over their sexual interactions, just the opposite of what the radicals argue” (Zatz, quoted in Weitzer 2005:213).

Deconstructing this morally charged concept leads to the core phenomenon: (violent) exploitation. Shelley (2010:108) describes this central element of trafficking as “coercion and deception”, in which violence, intimidation, and corruption play key roles. Kleemans and Smit (2014:381) state that trafficking and human smuggling are characterized by the fact that third parties “make use of other people’s desire to improve their lives by building up a better future elsewhere”.<sup>16</sup> Siegel and De Blank (2010: 437) describe the essence of human trafficking as “the exploitation of people under the threat or use of force or another form of control”. According to Wagenaar et al. (2017:223), exploitation “centres on the notions of taking unfair advantage of someone’s else’s work, unacceptable work conditions and/or the deprivation of worker rights”. In addition, the term ‘exploitation’ takes away the burdened symbolic meaning of ‘trafficking’ and ‘forced prostitution’, since exploitation of trafficked people (females, males, transgender people, children) also occurs in other service and labor occupations, such as agriculture, the construction industry, domestic clean work, or even for marriage, begging, adoption, service as child soldiers

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15 Sick, old or very young people are particularly vulnerable to becoming ideal victims (Christie 1986).

16 Shelly (2010:3) notes that some human smugglers and traffickers become involved in this activity not for profit but to fund a terrorist or guerilla group for example.

and for the illegal organ removal trade<sup>17</sup> (Kleemans & Smit 2014, Wagenaar et al. 2017; Weitzer 2005; Shelley 2010).

In sum, the phenomenon of ‘exploitation’, especially violent exploitation, is at the core of the human trafficking concept. Rather than the morally loaded and politically complicated concept of human trafficking, exploitation can be investigated without these invested emotions and interests. In Chapter 8, the situation in New Zealand will be explored as departing from this idea.

### 3.5 Social Movement

In this subchapter, I will link the liberal feminist approach that considers sex workers to be independent individuals with agency and sex work as work (see chapter 4) to the concept of the ‘social movement’ model. First, I will briefly introduce the concepts of social movements.

#### 3.5.1 *The Concept Social Movement*

‘Mega’ sociopolitical movements, such as the labor and democracy movements, evolved in the beginning of the twentieth century, where their political arguments were mainly focused on rebalancing powers of economic or governmental institutions (Vos 2010). The so-called ‘new social movements’<sup>18</sup> arose during the 1950s, and are less sociopolitical. ‘New social movements’ particularly focus on a new set of values, and on alternative cultural ideals to inspire people to change behavior (Vos 2010; Touraine 1985; Eskridge 2001;). Blumer (2008:64) calls this “cultural drifts”. Most prominent among these values, according to Offe (2008), are, on the one hand, autonomy and identity, on the other hand, opposition to manipulation, control, dependence, bureaucratization, and regulation. Vos (2010) claims that these small new movements at the end of the twentieth century particularly focus on personal responsibility and self-organization.<sup>19</sup>

Offering an unanimous definition of a social movement is a challenge due to a diversity of conceptualizations. Definitions could vary from “a set of opinions and beliefs in a population which represents preferences for changing some elements of the social structure and/or reward distribution of a society” (Mc Carthy & Zald 2008:109) to expounding a social movement as “consisting in networks of informal interaction between a plurality of individuals, groups

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17 Regarding numbers of trafficked people, Shelley (2010) refers to the 2006 Trafficking in Persons Report (TIP) which points to 12.3 million people worldwide. However, she also emphasizes the dubious character of such estimates because of the covert nature of this phenomenon.

18 New social movements such as the ecology movement, the peace movement, and the movement for equal treatment for people of color (Vos 2010, Blumer 2008).

19 Vos (2010) also distinguishes a third type of movements: the anti-globalization movements that question the influence of political rulers.

and/or organizations, engaged in a political and/or cultural conflict, on the basis of a shared collective identity” (Diani 2008:267).

Due to the different characteristics of social movements, it rather is more appropriate to focus on the key features that come to the fore within the variety of analyses of social movements. Then, terms such as ‘dissatisfaction’; ‘agitation’; ‘awareness’; ‘social conflict’; ‘group identity’; ‘emotions’; ‘opposition’; ‘ideal’; ‘collective involvement’; ‘solidarity’; ‘change’; ‘interaction’; and ‘collective action’ come to the fore (Vos 2010; Diani 2008; Blumer 2008; Touraine 1985). Put differently, an awareness of social injustice evolves into new collective conceptions of rights and dues, and a belief in a new ideology that is focused on reform of aspects of the social order (Blumer 2008).<sup>20</sup>

Regarding the development stages of social movements, many authors agree that in the beginning, the movement often is poorly organized, the collective behavior still is limited, and the interactions are of a more spontaneous nature (Blumer 2008; Offe 2008).<sup>21</sup> Specific movements can develop well-defined objectives, a structured organization, a recognized and accepted leadership, and a participants’ awareness of collectivity, which could make the organization strong enough to realize its objectives (Blumer 2008).

Next, I will relate this social movement concept to the process around the fight against the radical abolitionist movement and for change of repressive legislation. In this case, this means the campaign for decriminalization of the commercial voluntary adult sex industry.

### 3.5.2 *Decriminalization of the Sex Industry as a Social Movement*

The set of visions and opinions (see McCarthy & Zald 2008) in favor of decriminalization of the sex industry could be defined as a global social movement. Groups of sex workers and other involved people oppose the ongoing opposition that believes sex work needs to be controlled by repressive measures and ultimately needs to be abolished. Anger about having no rights and being subject to injustice, harassments, arrests, and to double standard approaches, mobilizes sex workers worldwide to collectivity and to search for a new identity, solidarity and commitment to the ideal of the decriminalization social movement.

However, the question arises: which factors could increase the emergence and success of a (decriminalization) social movement? According to McAdam et al. (2008:282-83), the interaction of three factors plays an especially important

20 According to Blumer (2008:71) a main difference between a reform movement and a revolutionary movement is that the first acts within the existing social order and in that sense has ‘respectibility’, while a revolutionary movement attacks the social order, which often forces them to work underground.

21 According to Diani (2008:271), not all social movement organizations are loosely structured: “even collective behavior theorists agree that a proper understanding of social movements requires principles from both collective and organizational behavior”.

role. First is the ‘political process model’, which refers to the importance of expanding political opportunities that often provide the impetus to collective action: “(...) social changes render the established political order more vulnerable or receptive to challenge”. Regarding the sex industry, however, there are significant differences in the political characteristics of the respective nation states in which sex workers are embedded (McAdam et al. 2008). Put differently, the available political opportunities vary considerably from country to country. Sex workers are mostly excluded from the political debates, often as a result of abolitionist convictions that prostitutes have no agency. In the second place, a firm organization is needed (McAdam et al. 2008). Smith (2008:318) emphasizes the role of formal social movement organizations<sup>22</sup> “in presenting movement agendas, cultivating collective identities, and mobilizing collective actions”. Here, we need to consider the role of the sex worker organizations, whose influence on political reform processes, public tolerance, destigmatization, and work condition improvements often appears to be limited or even weak, often due to a lack of structure, self-determination and self-organization of the sector itself (Sanders et al. 2011; Laverick 2013; Vanwesenbeeck 2017). Mathieu (2003) states that prostitutes’ low level of education and low pragmatic competence for collective action, the stigma on sex work, and their precarious living conditions can be considered main barriers to translating their wishes into political terms.

A third aspect is the meanings and definitions – the ‘frames’ – that not only are shared by the adherents of the burgeoning movement but also help other supporters of the social movement to organize, and to become aware of “the system’s illegitimacy and vulnerability”.<sup>23</sup> Benford and Snow (2000:614) add that the set of beliefs and meanings, called the collective action frames which are the resultant products of the framing, inspires and legitimates the activities of the social movement organization (Benford & Snow 2008).

The question will be: are sex work organizations able to effectively campaign for legislative change by realizing a needed interaction between the three factors as above-discussed? Weitzer (1991) mentions that the US prostitutes

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22 McCarthy and Zald (2008:109) define a social movement organization as “a complex, or formal, organization which identifies its goals with the preferences of a social movement or a countermovement [set of opinions opposed to a social movement] and attempts to implement these goals”. Social movements are often represented by more than one organization. To complement these concepts, a social movement industry is “the organizational analogue of a social movement” (McCarthy and Zald 2008:109); it contains all organizations operating on behalf of the goal of a social movement. In New Zealand, NZPC can be considered the social movement organization that (i) intends to implement the goals of the social movement, and (ii) operates within the broad area of the social movement industry.

23 For Benford and Snow (2000:611), framing denotes an active (something is being done), processual (a dynamic, evolving process) phenomenon that implies agency (the work of social movement organizations and movement activists) and contention at the level of construction. It is contentious in the sense that it involves the generation of interpretive frames that both differ from and challenge existing ones.



movement COYOTE<sup>24</sup> could hardly influence the public opinion toward the prostitution rights due to the small scale of political opportunities. Similarly, the sex workers union Rose Alliance (RA) in Sweden is not even recognized by the government. In the Netherlands, as we will see in Chapter 7, the sex workers union PROUD needs to resist restrictive and repressive opposition that intends to abolish the entire prostitution sector. In addition, Mathieu (2003:34) notes that rivalry and competition often prevent sex workers from cooperating.<sup>25</sup> They also often tend to lack the needed solidarity to identify with the ideals of the social movement. Fear for losing their anonymity or being recognized by family or friends could also obstruct sex workers from publicly expressing their indignation and anger (Mathieu 2003).<sup>26</sup>

McAdam et al. (2008:281) emphasize that without at least one of these three factors, people will probably not mobilize even when afforded the opportunity to do so. They note that “mediating between opportunity, organization, and action are the shared meanings and definitions that people bring to their situation”.

Using McAdam et al.’s concept is helpful in understanding why efforts to establish sex workers’ social protest movements often end in disappointment and frustration, and why, to the contrary, NZPC did manage to have a considerable impact on New Zealand’s sex work politics. Did the interaction between the three factors take place in this country and, if yes, how? What was the role of NZPC in this process? In the Chapters 5, 6, and 7, I will further elaborate on the relationship between the aspects of the social movement model and the decriminalization campaign in this country.

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24 COYOTE (Call Off Your Old Tired Ethics) is a sex workers union in the USA, aiming for decriminalization of the sex industry. This group was founded in 1973 and was the first sex workers’ rights group in the United States; <http://www.nswp.org/timeline/event/coyote-founded-california>).

25 For instance women against transgender persons, nationals against foreigners (Mathieu 2003).

26 Despite these constraints, preparedness amongst sex workers to unionize seems to be increasing. Vanwesenbeeck (2017) mentions that an estimated 250-300 sex worker organizations exist worldwide, of which over 240 are also a member of the umbrella organization Global Network of Sex Work Projects (NSWP).



## Chapter 4

# Sex Industry Policies

“Bureaucracies, management, tracking, policies, registries, unions, legalization – none of this will change what is wrong with prostitution. Prostitution is so deeply abusive and violent that it can only be abolished, not fixed” (Farley Presentation 2017).

“(…) there is nothing inherent in prostitution that would prevent it from being organized in terms of mutual gain to both parties – just as in other economic transactions” (Weitzer 2005:213).

These two quotes might represent the competing perspectives towards prostitution/sex work: the ‘radical feminist/abolitionist’ and the ‘liberal feminist’ vision. In subsection 4.1 of this chapter, the meaning of these two perspectives and their influence on sex industry policies will be explored. In subsection 4.2, the current main sex industry policies and their signification for sex workers will be discussed. I will also focus on the present discourse regarding the confusing interpretations and often overlapping classifications of these policies, and will discuss a new sex industry typology that, according to its initiator Östergren, aims “to provide a tool for comparative prostitution policy research” and “to help clarify the kinds of measures that would be most effective in alleviating the problems facing the sector, such as stigma, violence and exploitation” (Östergren 2017). In subsection 4.3, I will elaborate on both the importance of and differences between a ‘harm reduction’ and a ‘harm minimization’ policy towards the sex industry. Here, I will also pursue on collaborative governance in relation to sex industry policies.

### 4.1 State Protection or Own Agency?

The ongoing domestic and international debate about prostitution/sex work is basically about how to approach the sex industry and how to describe people who are involved in this industry. The discourse shows two competing perspectives that according to Sanders and Campbell (2007:2) “stems from the divisions between feminists and other writers on the ‘rights and wrongs’ of prostitution”. The first perspective is often shared by radical feminists, moral neo-abolitionists, and abolitionist organizations such as the Coalition Against

Trafficking in Women (CATW) who all consider prostitution as oppressive, as an extreme male violence against helpless victimized women (Raymond 1999; Farley 2004; Farley 2017) or, following Weitzer (2005:211), who sees prostitution as “the quintessential form of male domination over women – the epitome of women’s subordination, degradation, and victimization”. Prostitution is seen by abolitionists as (paid) rape and exploitation that ultimately has to be abolished<sup>1</sup> (Farley & Kelly 2000; Farley 2017). They believe, voluntary sex work cannot exist due to – in their view – the unequal power relationship between the client and the provider of the sexual service. Prostitutes are seen by them as individuals without own agency, which can be linked to the late modern exclusion theory (see Chapter 3) in its tendency to ‘other’ (see Young 1999) prostitutes. Weitzer (2005:212) notes that, according to the abolitionist vision, violence is per definition “endemic to prostitution – categorically, universally, and trans-historically”. He emphasizes that “this universalistic and essentialist reasoning [to generalize all prostitutes as victims] is not consistent with the canons of social science, which cautions against historical and global generalizations and predictions” (Weitzer 2005:213). The abolitionist perspective can be contextualized as a need for security and firm gender roles as well as to the ‘culture of fear’<sup>2</sup> for organized crime and to the control of risks, here the risk of exploitation which has to be eliminated.

Dorie Klein (1973), who has investigated the works of a number of theorists<sup>3</sup> concerning the etiology of female crime, recognizes a form of continuity between the statements related to assumptions about the inherent nature of women, although there are differences in analytical approaches (Klein 1973). She frames their works as “sexist, racist and classist” and as “assumptions that have served to maintain a repressive ideology with its extensive apparatus of control” (Klein 1973:216). Kamala Kempadoo (2003:145) writes about abolitionist policies that “(...) laws prohibiting or regulating prostitution and migration, particularly from the South, combine to create highly complex and oppressive situations for women if they become involved in sex work once abroad”.

Unfortunately, it goes beyond the scope of this research to further elaborate on this. However, it might be interesting to note an analogy with the abolitionist advocates who also promote repressive measures and state control to manage the sex industry.

The second perspective, the perspective of liberal feminists and non-abolitionist organizations such as the Global Alliance Against Trafficking in Women (GAATW), the World Health Organization (WHO), and Amnesty

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1 For a criticism of this viewpoint, see: Sanders and Campbell 2007; Weitzer 2012; Siegel 2015; Wagenaar et al. 2017.

2 According to Furedi (2007:4), culture of fear refers to ‘a culture that is anxious about change and uncertainty, and which continually anticipates the worst possible outcome’.

3 Klein refers to Lombroso, Thomas, Freud, Davis and Pollak, Konopka, Vedder and Somerville and Cowie during the period from the beginning of the twentieth century until the 1970s.

International (AI), characterize those involved in the industry as ‘inclusives’, as sex workers who are able to make their own decisions to enter or exit the industry, and who do not consider themselves to be helpless, naïve victims of brutal men. Liberal feminists believe that women should have the legal right to freely choose any legitimate occupation, sex work included (Beran 2012). Proponents of this vision prefer to use the term ‘sex work’ to emphasize not only that this occupation is work, but also that sex workers are entitled to labor rights, safe and healthy work circumstances, and judicial protection (Sanders et al. 2011; Outshoorn 2012; Siegel 2015; Wagenaar et al. 2017). I approach this liberal feminist group here as the ‘decriminalization social movement’.

Aligned with other research results,<sup>4</sup> the vast majority of the interview respondents of this underlying research follow the decriminalization social movement and agree that voluntary sex work should be considered a commercial and consented mutual agreement between two capable adults to provide and accept a sexual labor service in exchange for a financial or material benefit. In this context, the name New Zealand *Prostitutes’* Collective – instead of Sex Workers’ Collective – does not seem to be in balance with NZPC’s plea to support the liberal feminist vision. At the time it was founded, according to the NZPC National Coordinator, the founding mothers of NZPC chose a straightforward name by copying the name ‘prostitutes’ of the Australian and the English sex workers rights groups: “we didn’t want to obscure our identity using acronyms as some sex worker organizations had in the States”<sup>5</sup> (e-mail NZPC CH 19-12-2017). In this spirit, Bennachie and Linton (2011) mention that using the term ‘prostitution’ with pride could reclaim the word from its inherent social stigmatization.

Next, we will see that these different perspectives towards prostitution/sex work also influence the mindsets of policymakers and other parties who make decisions about appropriate prostitution policies on national and international level. In subsection 4.2, the main prostitution policies, their different interpretations, critical notes, and their consequences for the wellbeing of sex workers will be discussed.

## 4.2 Sex Industry Policies

Historically, prostitution has often been seen as deviant and as a threat to public order and health. It was, and often still is, morally charged (MacDonald 1986), as we have seen so far. Because of this, governments have always tried to control the sex industry with the aim “to maintain law and order, preserve morals, prevent the spread of sexually transmitted diseases (STD) or protect women

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4 Weitzer (2005:213) refers to a Miami study by Kurtz et al. (2004), where most of the 294 interviewed prostitutes preferred to be called a ‘sex worker’ or ‘working woman’.

5 The NZPC National Coordinator refers to the name of an American sex workers rights group, COYOTE (see fn 24 Chapter 3).

for exploitation” (Outshoorn 2004:6). In the past, alternating governmental approaches – varying from country to country – of, in succession, regulating, abolishing, tolerating, moralizing or more pragmatic sex industry policies have been used.<sup>6</sup> Even today, politicians and other involved parties struggle in national and international debates, questioning how to manage the complicated sex industry in a most adequate way.

Obviously, there is no singular yet. Rather, sex industry policies are often determined by one of the two above-mentioned perspectives (Harrington 2011). Wagenaar et al. (2017) note that ideological views about sex work might hinder, to a greater or lesser extent, the realization of a well-argued sex industry policy. Later, I will return to this point.

In subsection 4.2.1, the three current main sex industry approaches will be introduced. In subsection 4.2.2, I will particularly hone in on differences between two policies both based on the idea that sex work is work: ‘legalization’ and ‘decriminalization’. In the final part of this subsection, critical notes and new suggestions regarding the confusing interpretations of these classifications will be discussed (4.2.3 to 4.2.5).

#### *4.2.1 Current Main Sex Industry Policies*

In international debates, there are three sex industry policy alternatives that are often used in discussing the most adequate way to manage the sex industry.

First is criminalization of the sex industry. This policy aims to prohibit or eradicate the prostitution sector because prostitution – according to proponents of this (neo) abolitionist policy – either does not fit in the ideology of male and female equality or is morally unacceptable. Prostitution is defined as male violence against women<sup>7</sup> and, in that sense, not considered as legitimate work. The ultimate intention of criminalization is to reduce or to eliminate the sex industry by criminalizing all involved participants (see also Abel et al. 2010; Jordan 2005; Mossman 2004).

There are different forms of criminalization. ‘Prohibition’ means that (i) all forms of prostitution are unacceptable and illegal, (ii) brothel keeping is not allowed, and (iii) both the client and the prostitute are criminals (Outshoorn 2004).<sup>8</sup> There is ‘(neo-) abolitionism’, which allows the sale of sex, but bans all related activities such as brothel keeping and soliciting (Mossman 2007). Then, there is the criminalization of the demand side of prostitution, known as the

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6 In Chapter 4, I will further elaborate on specific sex industry developments in three countries – New Zealand, Sweden, and the Netherlands – each with, in the end, a different sex industry policy outcome.

7 Weitzer opposes this definition since not only it fails to take into account the many gay and transgender prostitutes, but it also ignores the self-esteem that many sex workers derive from their work (Article in *Economy Watch*, 18-02-2015).

8 Many states in the USA have adopted this prohibitionist policy (Outshoorn 2004; Mossman 2007).

Swedish Model,<sup>9</sup> which is a ban on purchasing commercial sexual services.<sup>10</sup> The Swedish Sex Purchase Act does not criminalize the prostitutes since they are seen as victims, but criminalizes their clients. The latter are labelled as deviants, an outgroup that then becomes a scapegoat for the troubles<sup>11</sup> caused by the existence of prostitution. Swedish (potential) clients become labelled as folk devils (see Cohen 1972), as possible exploiters of women. Notwithstanding the fact that the Swedish Model might be inclusive in its moral principle of ‘fixing’ and reintegrating the deviant person, in practice this has an exclusionary effect on the prostitutes. In addition to repressive measures that limit their working circumstances, we also see that not only the buying of sex but also the selling of sexual services is seen as a criminal activity in the public opinion (Holmström en Sklibrei 2017). The Swedish Model does not aim to support prostitutes or to improve their rights and working conditions (Östergren 2017); as such prostitutes have to operate as outsiders.

The abolitionist approach presented in radical feminist literature is often criticized by scholars in that there is lack of scientific evidence for its efficacy (Weitzer 2005; Wagenaar et al. 2017; Abel et al. 2010; Östergren 2017). Weitzer (2005:214) argues that, apart from selecting the “worst available examples” of prostitution and presenting this as representative,<sup>12</sup> “anecdotes are generalized and presented as conclusive evidence, sampling is selective, and counterevidence is routinely ignored. Such research cannot help but produce questionable findings and spurious conclusions”.

The second policy, legalization of the commercial consensual sex industry, is not so much morally-based but rather based on pragmatic terms within a climate of law and order and risk-reduction<sup>13</sup> (Vanwesenbeeck 2017). It recognizes sex work as labor. However, to keep a grip on the industry and to protect public order and health – particularly against HIV and other STD – and to limit sex industry-related practitioners to certain areas, it occurs under certain state-specified regulations, such as a minimum sex workers’ age, mandatory registrations, and geographical locations (Mossman 2007; West 2000; Jordan 2015; Vanwesenbeeck 2017). This policy considers sex workers to be full-blown citizens with agency and, as such, does not exclude them or construct them as deviant from the rest of the population. However, not every country that has

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9 Some typical background and features of the Swedish Model will also be brought up in the Chapters 6 and 7. Countries which have adopted this approach besides Sweden are Norway (2009), Iceland (2009), Canada (2014), Northern Ireland (2015), France (2016), and Ireland (2017) (ICRSE Coordinator 2017).

10 This ban on the purchase of commercial sex (in place since 1999) is part of more sex work-related laws, measures, and regulations in Sweden (Östergren 2017).

11 Östergren (2017:4) emphasizes that in Sweden, “commercial sex is an obstacle to gender equality”. Therefore, according to her, the ultimate aim in the country is to eradicate the prostitution sector, regardless of the interests of the prostitutes themselves.

12 Here, Weitzer refers to Rubin (1984: 301).

13 Germany, the Netherlands, Nevada, and a number of Australian states are examples of countries that have adopted this form of policy (Mossman 2007).

legalized the consensual sex industry has treated or treats sex workers as real inclusions. Increasing repressive measures, as I will argue further in subsection 4.2.2, might lead to a climate in which sex workers become exclusives.

The third policy, decriminalization, recognizes – similar to legalization – those who provide sexual services as sex workers, and sex work as labor. However, this policy is quite different from legalization in practice. In subsection 4.2.5, these differences will be explored. New Zealand is the only country so far that has adopted this approach. Advocates of this policy prioritize fact-finding and evidence-based arguments on the reality of sex work (Barnett et al. 2010).<sup>14</sup> In Chapter 6, the development of this policy in New Zealand will be explored as well as the consequences this policy has regarding the working conditions, health and safety of sex workers.

Next, I will focus on recent developments that critically expose vulnerabilities of prostitution policies and their ambiguous terminology.

#### *4.2.2 Critical Notes on Terminology and Meaning of Sex Industry Policies*

“When researchers do not share an understanding of which general policy models exist, or even what constitutes a particular model, any comparison of specific policies becomes fruitless” (Östergren 2017:1).

In line with other studies (Mossman 2007; Weitzer 2012),<sup>15</sup> Östergren (2017) criticizes the current categories and classification systems for sex industry policies which, according to her, are confusing in that their underlying elements are unclear. She argues that, firstly, there are shortcomings on a semantic level. The concepts ‘decriminalization’ and ‘legalization’ refer to laws or policies regarding activities that were previously criminalized, in this case commercial sex work. According to her, if sex work is not illegal anymore, then a new legal particular regulatory regime – labor and commercial law – has to come into force. She adds that these concepts have to be seen as foundations of such a regulatory regime (Östergren 2017:2). Secondly, the naming of the prostitution sector as ‘criminalized’ or ‘prohibited’ is confusing in that it is unclear which sex work-related activities exactly are criminalized. Is the buyer criminalized? Or the provider? Or both? Thirdly, an abolitionist prostitution policy also confuses since abolitionism is not a policy. Rather, it has to be considered an

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14 The ideals of a decriminalization policy are supported by United Nation agencies such as United Nations Development Programme (UNDP), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Population Fund (UNFPA), the United Nations Joint Programme on HIV/AIDS (UNAIDS), and by the World Health Organization (WHO), and Amnesty International (AI) (Global Network of Sex Work Projects (NSWP) 2016; Radačić 2017).

15 Unfortunately, it goes beyond the intentions of this underlying research to extensively discuss all existing critics on the types, nomenclature, and classifications of the different sex industry models and regimes.

ideological approach upon which a policy is based (Östergren 2017). Fourthly, using the term ‘Swedish Model’ to indicate a typical criminalized prostitution policy evokes confusion as well, since countries who have adopted this model differ in the way they have enacted this specific policy.

Östergren (2017:3) also criticizes the unclear usage of terms in literature to indicate prostitution policies. In particular the terms ‘abolitionism’, ‘prohibitionism’, ‘neo-abolitionism’, and ‘neo-prohibitionism’,<sup>16</sup> but also terms such as ‘regulationism’ (an equivalent for legalization), and ‘neo-regulationism’ (non-punitive towards sex workers) are unclear (Östergren 2017). She underpins her critiques by analyzing the results of the three policy categories in three countries. Firstly, Sweden, where its prostitution policy can be called ‘criminalization’ or ‘prohibitionism’, but also ‘abolitionism’ or ‘neo-abolitionism’. However, regarding the latter, prostitutes – instead of feeling supported which ideologically is the intention of neo-abolitionism – in practice frequently feel depressed due to an increasing stigma, police surveillance, and fear of losing custody (Östergren 2017). Secondly, she refers to Germany where, on the one hand, sex work is considered labor and sex workers ought to work independently, on the other hand, bylaws at local level regularly restrict the sex industry which in turn limits the ability of sex workers to operate legally (Östergren 2017). In these terms, I also point to the sex industry developments in the Netherlands where its policy, as above-discussed, shifts to increasing oppression<sup>17</sup> (Wagenaar et al. 2017; Siegel 2015). In the Chapters 6 and 7, I will review this in more depth. Thirdly, Östergren (2017) analyzes New Zealand. She argues that ‘decriminalization’ also could be interpreted as ‘regulation’ since the PRA not only decriminalized the entire voluntary sex industry, but also implemented regulations such as the license requirement for brothel operators (PRA Part 3), the health and safety requirements for operators, sex workers, and clients (PRA, Part 2 sections 8, 9, 10), and advertising<sup>18</sup> and signage<sup>19</sup> limitations. In next chapters, I will explore this nuance of decriminalization.

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16 Neo-abolitionism and neo-prohibitionism both refer to the criminalization of the demand side of prostitution (Östergren 2017).

17 In the Netherlands, the sex industry policy since 2000 shifted from decriminalization to legalization and regulation, to increasing repression and even to forms of recriminalization (no ‘tippelzones’ (street-based sex work areas)).

18 PRA, Part 2, Section 11(1) requires that “advertisements for commercial sexual services may not be broadcast on radio or television; or published in a newspaper or periodical, except in the classified advertisements section of the newspaper or periodical; or screened at a public cinema. Here, advertisement means “any words, or any pictorial or other representation, used to notify the availability of, or promote the sale of, commercial sexual services, either generally or specifically”.

19 PRA Part 2, Section 12(1-3) mandates that “a territorial authority may make bylaws for its district that prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services. Bylaws may be made under this section only if the territorial authority is satisfied that the bylaw is necessary to prevent the public display of signage that is likely to cause a nuisance or serious offence to ordinary members of the public



Weitzer (2012:49) also criticizes the classification of the common sex industry policies. Regarding decriminalization, he distinguishes three types: (i) ‘full decriminalization’ which removes all criminal penalties and, according to him, ‘leaves prostitution unregulated’, (ii) ‘partial decriminalization’ which still includes some penalties, and (iii) ‘de facto decriminalization’ which means that an offense still falls under the penal code. Regarding legalization, he distinguishes (i) ‘de jure legalization’ which refers to decriminalization and some regulations, and (ii) ‘de facto legalization’, by which sex work is illegal, but nonetheless regulated by authorities (Weitzer 2012:76-80). According to him, the sex industry in New Zealand has to be defined as ‘de jure legalization’.

Defining the New Zealand sex industry policy as ‘regulation’ or as a ‘de jure legalization’ policy – and placing it under the same theoretical umbrella as the Netherlands and Germany might be confusing. The bottom line here is that even though this research has unveiled attempts to restrict parts of the New Zealand sex industry (PRA Part 2 Sections 12, 13, 14), the PRA arms sex workers against such attempts, and gives them a strong position to legally oppose them.

#### 4.2.3 Sex Industry Morality Politics

Apart from Östergren’s and Weitzer’s critical reflections on confusing policy terminology, Wagenaar et al. (2017:34) add another aspect, which is related to the strong relationship between sex work and morality:

“The uninitiated observer will quickly discover that there is no neutral ground when it comes to discussing prostitution and prostitution policy. Even the most basic terms such as ‘prostitution’ or ‘sex work’ suggest a moral position towards the provision of sexual services for money” (Wagenaar et al. 2017:33).

These authors argue that prostitution policy has to be considered “an instance of morality politics” since it “has moved from the realm of policy-making (...) to that of deep and intractable conflict” (Wagenaar et al. 2017:34-35). In other words, policy-making aims to resolve or improve a collective problem, whereas morality politics embrace a symbolic moral position about what is good or bad on a certain issue (Wagenaar & Altink 2012). According to them, six characteristics of morality politics determine altogether its distinction with more established policy domains<sup>20</sup> such as health, education, and social welfare (Wagenaar & Altink 2012). Instead of using supporting arguments, morality

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using the area; or is incompatible with the existing character or use of that area. Bylaws made under this section may prohibit or regulate signage in any terms, including (without limitation) by imposing restrictions on the content, form, or amount of signage on display”.

20 “The term ‘policy’ attempts to capture the idea that policy-making is a techno-political process of defining and matching goals and means among constrained actors” (Howlett et al. 2009:4, quoted in Wagenaar & Altink 2012:19).



politics are driven by a specific ideology through which they can “turn into an ideologic moral crusade for one or another position”<sup>21</sup> (Wagenaar et al. 2017:36). Furthermore, according to Wagenaar and Altink (2012), morality politics are highly emotionally charged, resistant to facts, sensitive to abrupt changes, and their symbolic message seems to be more important than their instrumental aspect. The authors refer to Sweden’s criminalization policy, where an optimistic evaluation study of the Sex Purchase Act ultimately appeared to be based on poor academic evidence (Wagenaar et al. 2017; Wagenaar & Altink 2012).

Here, these authors highlight the complexity that has surrounded the prostitution policy discourse for decades and which, as described above, is particularly caused by the conflict between abolitionist and liberal feminist perspectives. The abolitionist perspective seems to hit the heart of the morality politics, as argued by Wagenaar et al. (2017:49):

“(…) if policies are explicitly ideological, a proxy for a larger cause, almost exclusively owned by the general public, impervious to facts, discussed in emotionally highly charged language, concerned more with the symbolism of strong measures than the details of implementation, and prone to sudden policy reversals, we designate them as an instance of morality politics.”

Pragmatic sex industry policies such as legalization and decriminalization are also vulnerable to abrupt changes (Wagenaar & Altink 2012). These policies can easily switch to a neo-abolitionist approach – which is what gradually seems to happen in Germany and the Netherlands. As Wagenaar and Altink (2012) argue, morality politics are characterized by uncertainty regarding their future and can change quickly. I refer to the narrow parliamentary vote ‘victory’ of the advocates of a decriminalization policy in New Zealand: sixty to fifty-nine votes with one abstention. It actually shows the complexity, vulnerability, and potential impermanence of sex industry policy. Borrowing the words of Wagenaar et al. (2017:22):

“Legitimization and decriminalization are easily reversed, and revert back to criminalization and heavy-handed regulation and control. This is a complex process that largely occurs at the local level, thereby deviating from, and even undoing, national policy-making.”

Despite the close result of New Zealand’s 2003 vote, the next chapters will illustrate that the decriminalization policy in this country was not established on an ephemeral and moral-dominant decision-making process, but rather

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21 In this context, Wagenaar et al. (2017) refer to abolitionists who, according to them, frequently refer to dark numbers of trafficked women and abusive clients.

on evidence-based arguments and in close collaboration with academics, politicians, and the sex workers and NZPC themselves.

#### 4.2.4 Repressive, Restrictive, and Integrative Sex Industry Policies

“What is the sum of what the policy is intending to accomplish?” (Östergren 2017:9)

The confusing interpretations and often overlapping classifications of the existing sex industry laws as well as differences between law-on-paper and law in reality, motivated Östergren (2017) to introduce a new sex industry policy typology. She aimed “to provide a tool for comparative prostitution policy research” and “to help clarify the kinds of measures that would be most effective in alleviating the problems facing the sector, such as stigma, violence and exploitation” (Östergren 2017:25). Analyzing policy intentions, the specific policy instruments, their implementations and their impact on the sector and on participants, she defines three sorts of policy regimes to indicate how sectors could be approached and governed: (i) repressive; (ii) restrictive; and (iii) integrative policies.

Table 1 shows the main differences between these three policy types as they are (mainly) presented by Östergren (2017) in DemandAT Working Paper No. 10: 17. It shows that repressive and restrictive policies both consider commercial sex a negative social phenomenon. They differ in that the first intends to eradicate the sex industry and to exclude the deviant individuals involved, and the latter aims to limit the industry without totally excluding sex workers. An integrative policy acknowledges negative components within the sex industry, but encounters it as a multifaceted social phenomenon and prioritizes including the people involved and improving sex workers’ rights (Östergren 2017).

*Table 1 New Sex Industry Policy Types (Östergren 2017:17)*

	REPRESSIVE	RESTRICTIVE	INTEGRATIVE
<b>Under- standing of commercial sex</b>	Negative social phenomenon	Negative social phenomenon	Multifaceted social phenomenon containing negative elements
<b>State intention</b>	Eradicate sex work → aim: to protect society and/or those selling sex from harm	Restrict sex work → aim: to protect society and/or those selling sex from harm	Integrate sex work sector into societal, legal, and institutional framework → aim: to protect those selling sex from harm
<b>Ideology</b>	Religious, moral harm, or radical feminist	Religious or moral harm	Rights-based

<b>Policy instruments</b>	Criminal law, prohibiting selling and/or purchasing sex and third party facilitation. Campaigns to abolish the commercial sex sector. Exit or behavior rehabilitation programmes. Dominant discourse: condemning sex work. Symbolic rather than pragmatic.	Criminal and administrative law, and/or local regulation, e.g. zoning and licensing system. Might prohibit third party involvement. Exit or behavior rehabilitation programmes. Multiple discourses on sex work.	Labor, commercial, and administrative law regulating sex workers' employment rights and obligations, and specific legislation protecting them from exploitation. Detailed implementation directives and codes of conduct for authorities, social agencies, and operators. Campaigns and initiatives aiming to combat stigma and violence. Promoting collaborative approach. Dominant discourse nuanced.
<b>Impact on the sex industry</b>	Sex work is illegal. No self-regulation.	Sex work legal but under specific sex work-related restrictive conditions. Self-regulation possible, but might be difficult.	Sex work is legal under same conditions as other service providers. Self-regulation encouraged.
<b>Impact on legal situation of participants</b>	Sex workers have no access to labor rights and have no or difficult access to social security systems. Mental and/or medical assistance on own terms. Self-organization difficult. Difficult to collaborate with third parties to prevent or report crimes.	Sex workers have no or partial access to labor rights and access to social security systems might be difficult. Might seek mental and/or medical assistance on own terms. Self-organization might be difficult. Collaborative activities to prevent or report crime possible but might be difficult.	Sex workers have full access to labor rights, social security and mental and/or medical assistance. Self-organization if wanted. Good collaboration with other parties to prevent or report crimes. Possible to develop and integrate codes of conduct and ethical standards for authorities and agencies dealing with sex workers.
<b>Mode of governance</b>	Adversarial	Adversarial/Managerial	Collaborative

Applying this typology on the sex industry policies in Sweden, Germany/the Netherlands, and New Zealand reveals that

- (i) Sweden's 'sex industry-abolishing approach' correlates with the repressive policy type;
- (ii) Germany and the Netherlands use the restrictive policy type (repressive specific sex industry-related regulations within an initially sex work-allowing ambience);
- (iii) New Zealand uses the integrative policy type in that the policy intends to destigmatize the sex industry, reduce violence, and minimize harm.

In this underlying research, I will regularly apply Östergren's typology when discussing sex industry policy-related issues.

#### 4.2.5 Restrictive and Integrative Policies

Proponents of restrictive (legalization) and integrative (decriminalization) policies moved away from a dominant, morally-based approach toward a pragmatic, rationally-based, and – to a certain extent – actuarial policy of sex industry management. These policies both focus on the improvement of the human rights, health and safety of sex workers, such as access to social insurance and police protection. In the beginning, both policies also intended to destigmatize the sex sector by acknowledging sex workers' agency.<sup>22</sup> However, as Östergren already mentioned, these two types of policies also differ significantly. Next, two main differences that have a considerable impact on sex workers' lives will be explored.

##### 4.2.5.1 Sex Industry Policies: Rule-Heavy or Rule-Light?

An important feature of integrative sex industry policy is that it makes the regulation of the commercial consensual sex sector part of the same rules as those under which other businesses operate (Mossman 2007; Abel et al. 2010; Vanwesenbeeck 2017). It primarily focuses on sex workers' interests, or, following Vanwesenbeeck (2017:1), "has the explicit ambition to support the empowerment of sex workers as workers and to reduce the stigma on sex work". Moreover, it intends to limit the existence of a two-tier system of a legal and illegal circuit.

On the contrary, restrictive policies such as the legalization in the Netherlands include repressive prostitution-specific regulations on the national and local level. Here, one can note not only mandated registrations of sex workers on top of the already obligatory KvK<sup>23</sup> subscriptions and limitations of licenses, but also repressive measures such as closures of 'windows' in Red Light Districts (RLD) on alleged human trafficking, as happened in Utrecht (Siegel 2015). Regarding these specific sex industry-related regulations, Wagenaar et al. (2017:32) argue that "measures or conditions that would be unacceptable when imposed on, or suffered by, members of another occupational group under the rule of law, are met with unconcern by politicians, officials, the media, or the public, when foisted on sex workers". In addition, the new government coalition in the Netherlands (since October 2017), which includes the religious Christen-

22 A second similarity between these two policies concerns obstacles regarding its implementation. On both sides, there are efforts on the local level to enact bylaws intending to recriminalize certain aspects of the industry, even if this contravenes the original goals of the legislation. In Chapter 8, I will extensively discuss this dilemma of theoretical policy-making vs practical implementation.

23 KvK: Kamer van Koophandel – National Chamber of Commerce.

Democratisch Appèl (CDA) and Christen Unie (CU),<sup>24</sup> intends to submit more repressive bills to restrict the industry. The initially adopted liberal feminist ideology seems to be moving towards the neo-abolitionist vision, which could pave the way for more social control and the imposition of deviance. Here, it might be questioned whether the original theoretical goals of the legalization policy are still served. After all, the cumulation of restrictive regulations often harms the interests of sex workers, not least through its increasing stigmatizing effects. In fact, this leads to an important second difference between these policies: their different harm reduction strategies towards sex workers.

#### 4.2.5.2 *Reducing or Minimizing Harm within the Sex Industry*

“It is not the nature of sex work that causes harm. Rather, it is the laws and policies applied to sex workers in a criminalized environment that cause real harm” (NZPC 24).

Levy and Jakobsson (2014:600) define harm reduction strategies as “initiatives and interventions designed to decrease the harm that can surround sex work, such as the provision of condoms, safer sex selling information, rape alarms, without actively seeking to decrease levels of sex work”. The sex industry policies of the Netherlands and New Zealand both aim to reduce harm within the sex industry, but the outcomes of their policies differ. Here, I will particularly focus on the difference between the concepts of ‘harm reduction’ and ‘harm minimization’ towards sex workers.

By legalizing the voluntary sex industry and adopting the liberal feminist perspective, the work circumstances for sex workers in the Netherlands have substantially improved. This was in line with the intention of this policy to reduce harm for sex workers. However, the Netherlands’ specific sex industry-related regulations often harm the industry in that it increasingly limits sex workers to operate freely and independently. A number of sex workers might even ignore these regulations that push them into the unprotected illegal circuit, which then makes them more vulnerable to becoming subject to exploitation and abuse. In addition, rule-heavy legislations and repressive measures also decrease sex workers’ means to find appropriate work places. Siegel (2011:111-12) notes that, due to an increasing oppression, “many women (...) will leave the legal sector to disappear into illegal brothels, or to work from home or in clandestine settings. This increases their risk of becoming victims of exploitation by organized crime networks”. Csete and Cohen (2010) emphasize that restrictive policies, the penal sanctions or the persistent threat of them, lead to increasing discrimination and social disdain.

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24 Since October 2017, a new coalition of liberal parties (VVD and D66) and confessional parties (CDA and CU) lead the country. In particular, the CU is a fervent proponent to limit and, by preference, abolish the prostitution sector.

Legalization, at least in the Netherlands, seems to increasingly sympathize with the abolitionist aims, even if this approach harms the agency of sex workers and other involved sex-industry-related parties.<sup>25</sup> In this sense, I follow Wagenaar et al. (2017:73) who argue that “(...) justice officials as well as municipal actors have attached much more significance to the control of what they see as unlawful or immoral behaviour than improving the rights of sex workers”. Here, I conclude that a restrictive policy both reduces harm and – despite its initial intentions – reproduces harm. It certainly does not minimize harm.

The decriminalization policy of New Zealand on the other hand was and is focused on improvements to sex workers’ rights, welfare, and occupational health and safety, and on protecting them from exploitation and abuse, instead of focusing on prosecution. The PRA is considered a harm and risk minimization model for both the public and the sex workers. Put differently, it exceeds the aim of harm reduction in that it constructively focuses on harm minimization<sup>26</sup> (Perez-y-Perez 2003; Östergren 2017).

However, would an integrative sex industry approach as in New Zealand be appropriate to destigmatize sex work? Due to the stigma attached to sex work, sex workers have to protect themselves against disapprovals, misunderstanding, and moral judgments of abolitionists and stereotyped media presentations. Agustin (2013) thinks that the stigma attached to sex work could indeed decrease slowly but steadily under a policy of legalization and decriminalization, as also happened with homophobia.<sup>27</sup> In Chapter 8, this relationship between integrative policies and stigma will be further explored with a particular focus on the New Zealand sex industry.

At this point, it is important to distinguish between the harm minimization measures towards those involved in the sex industry and the harm and risk reduction policies in favor of the society. The latter touches on the late modern actuarialism principle. This principle, as explained in subsection 3.2, accepts the existence of crime and deviancy, and is uninterested in causes of crime and deviancy, or the question ‘right or wrong’. The principle primarily focuses on pragmatism, on managing the social problem rather than solving it, on risk

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25 Unfortunately, it goes beyond the aims of this research to further elaborate on this interesting topic. Here, I refer to the research of Wagenaar, Altink and Amesberger and to their book *Designing Prostitution Policy, Intention and Reality in Regulating the Sex Trade* (Wagenaar et al. 2017).

26 Here, I need to mention the PRA ban on non-residents to provide or intend to provide commercial sexual services or (intend) to operate or invest in commercial sexual business (PRA Section 19) that could provoke an illegal sex industry circuit in this country. Chapter 8 will extensively elaborate on this dilemma.

27 In 1986, New Zealand already decriminalized sexual relations between men aged sixteen and over. From that time on, consensual sex between men was not liable anymore to prosecution and a term of imprisonment. Sex between women was never illegal. See New Zealand Homosexual Law Reform Act 1986. <http://www.legislation.govt.nz/act/public/1986/0033/latest/DLM93151.html>.

prevention in a ‘cost-efficient’ way, and on harm minimization for society (Young 1999) (see also Chapter 6).

In this last subsection 4.2.5, I have discussed the difference between the harm reduction strategy under restrictive sex industry policy and the harm minimization strategy under integrative sex industry policy, focusing on the sex workers. The next subsection zooms in on the question of whether repressive sex industry policies also aim to reduce or minimize harm for those involved in the sex industry.

#### *4.2.6 Repressive Policies: No Harm Reduction Strategies for Prostitutes*

“Harm reduction drives towards re-humanizing the dehumanized, de-demonizing the demonized, normalizing and welcoming back to the human fold the outcast person, and the outcast behaviour and reclaiming them as part of our humanity, so we can confront and deal with them in properly human ways” (Crofts 2012:ix).

The effects of the Swedish sex industry policy regarding harm reduction for prostitutes clearly differ from those of the policies in the Netherlands and New Zealand. Sweden’s repressive policy primarily focuses on both a control-through-crime-policy and on offering exit and rehabilitation programs for prostitutes and education programs for clients (Sanders et al. 2011). Combating harm to prostitutes appears to be relegated to a secondary role. Yttergren and Westerstrand (2016) argue that this attitude stems from a moral condemnation of prostitution due to a gender inequality philosophy. Vanwesenbeeck (2017:7) confirms that sex work could reflect gender inequality “as many other (professional and sexual) phenomena do”. But she adds that “it [sex work] is not unequal in and out of itself”. Often based on economic reasons, many sex workers make well-considered rational choices to enter the industry (Vanwesenbeeck 2017). She emphasizes that repressive policies do not result in harm reduction for sex workers. Rose Alliance (RA), the Swedish sex workers’ collective, also highlights that in order to realize harm reduction for sex workers, policy methods of controlling and/or eliminating the sex industry will have a counterproductive effect on their lives.<sup>28</sup> This aligns with Östergren (2011) who argues that when working under the repressive Swedish Model, it is hardly applicable to use the concepts of harm reduction, let alone harm minimization for prostitutes. Rather, she emphasizes that this policy undercuts their work and exposes the sex workers to stress and danger (Östergren 2011). Agustin (2013) states that under repressive policy, prostitutes “perceive themselves to be disempowered in that their actions are tolerated but their will and choices are not respected” (Agustin 2013:5-8).

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28 See: <http://www.rosealliance.se/en/information/>.



Sweden decriminalized the prostitutes, which means that ideologically they became included within the society. In practice, however, the prostitutes' status continues to be one of 'exclusion' in that harm reduction within a criminalized sex industry climate refers instead to the idea of harm decrease *for society* and its ideal of gender equality.

Next, I will elaborate on a form of governing that intends to realize harm reduction or harm minimization for all parties, marginalized groups included.

### 4.3 Sex Industry Policies and Collaborative Governance

Working together in decision-making processes in a way that all involved parties feel presented and are being heard is not always equally obvious. In this context, Wagenaar et al. (2017) distinguish three traditional forms of governance. Firstly, adversarial politics by which the most powerful party imposes its will on the weaker parties. Secondly, coalition politics in which parties have to come to decisions by bargaining among themselves since no party has a majority. Thirdly, managerial governance, "in which management processes, often but not always outsourced to corporate actors, function as means for collective problem solving and service delivery"(Wagenaar et al. 2017:243).

According to Ansell and Gash (2007), during the last decades, another form of governing called 'collaborative governance' has emerged. They state that in collaborative governance, public and private stakeholders/actors work collectively and use "particular processes to engage in consensus-oriented decision-making processes (...)" (Ansell & Gash 2017:545). Wagenaar et al. (2017:244-48) emphasize that, in order to realize the stage of collaborative governance, of realizing 'governing capacity', one has to apply to five characteristics. First, involved nonstate stakeholders – minority or marginalized groups included – have to participate in the governing arrangement, despite differences in language, other clothing, deviant customs, or distrust. Second, the participating partners have to be authorized and must have the legitimacy to make direct decisions. Third, the collaborative arrangement must have a formal character and meet collectively.<sup>29</sup> Fourth, the collaborative process needs "authentic dialogue",<sup>30</sup> meaning that the stakeholders together – face to face and with mutual respect – determine the joint problem definition and joint fact-finding, such as (i) how do parties see the central issues; (ii) what are agreements; and (iii) where are the

29 For example, there must be a structured organization and institutionalization, in which appointments have been made about rules and procedures for meeting and decision making. Furthermore, as Wagenaar et al. (2017:245) note, "a contractual arrangement with accountability procedures for situations where services are delivered, transparency (meetings are reported), an insistence on exclusivity (no forum hopping), and the sharing of resources".

30 Referring to Innes and Booher (2010:97-9), Wagenaar et al. (2017:245) describe authentic dialogue as "a technical term that signifies a process of communication that observes the requirements of accuracy, comprehensibility, sincerity and legitimacy".



differences. Fifth, collaborative governance requires facilitative leadership, not only to mediate between the conflicting parties, but also to empower the weaker groups and “to protect the democratic rights of the weaker parties to influence decisions that affect them, but also to guarantee the requisite diversity that is required to ‘think outside the box’ and arrive at genuinely creative solutions”.<sup>31</sup> Ansell and Gash (2007) add the concepts ‘trust’, ‘interdependency’, and ‘time’ as key elements of collaborative governance.

These features of collaborative governance show that all of the involved partners have to be taken seriously. Collaborative governance hinges on the extent to which policymakers are prepared to collaborate with people – here, those involved in the sex industry – to make them participants in the decision-making and policy implementation processes, as well as in the collaborative monitoring and evaluation of the policies. In Chapter 7, we will see that within the repressive Swedish prostitution policy, there was and still is little place for collaborative governance, at least not through involving prostitutes or their representatives in the discourse. Wagenaar et al. (2017) argue that the pre-existent political culture could be decisive regarding the emergence of collaborative governance.

Jonsson and Jakobsson (2017) assert that the type of prostitution regime will influence the way people view prostitution. Laura Agustin states, on the contrary, that “actors involved in prostitution operate mostly outside the law, everywhere” and that “all policy regimes are a failure” (Agustin cited in Weitzer 2015:83). Weitzer (2015:83) criticizes her statements by arguing that Agustin “reduces law to repressive control”, which omits the efforts of other policies to provide rights and protection to sex workers:

“There is a stark difference – both practical and symbolic – between nations where prostitution is officially condemned and participants demonized and criminalized (e.g., Sweden, the USA, and China) and nations where workers and clients are legally free to engage in sexual commerce (e.g., the Netherlands, New Zealand, Germany, and Australia)” (Weitzer 2015:83).

However, the effectiveness of building collaborative governance capacity around sex industry issues will not only depend on the current pre-existent political sex industry policy. Collaborative arrangements, following Wagenaar et al. (2017), are also fragile when political and/or public visions of what is good or bad on a certain issue change. It actually underscores the vulnerability of some policies for the invasion of morality politics as discussed above. The emergence of collaborative governance will also depend on national cultural traditions of suppression or freedom of expression, on moral and religious

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31 See also the video on <https://sekswerkerfgoed.nl/prostitutiebeleid-een-nieuw-boek-over-een-lastig-onderwerp/> ‘Prostitution Policy and Collaborative Governance’.

convictions, on objective or moral panic creating media-reporting (see Cohen 1972), and, not least, on the strength of a sex worker collective.

In the next chapters we will see to what extent restrictive and especially integrative policies – contrary to repressive policies – facilitate effective collaboration with all involved parties, including sex workers.

In conclusion, the international and domestic debates about prostitution/sex work are often defined by the radical feminist/abolitionist perspective versus the liberal feminist perspective. National sex industry policies are mostly inspired by one of these ideologies. The ‘rule-heaviness’ of the policy choice often determines sex workers’ freedom and work circumstances to a great extent. Legislation that primarily focuses on risk and harm reduction for society and on control of the sex industry by repressive measures rather than prioritizing harm minimization for sex workers often results in increasing stigmatization and discrimination towards prostitution. On the contrary, legislation that (i) considers sex work as labor; (ii) accords the sex workers the same rights as within any other occupational service industry; (iii) focuses on harm minimization for all parties; (iv) facilitates self-organization; and (v) involves sex workers in policy-making processes, could result in destigmatizing effects on sex work and could also improve sex workers’ health, safety, and self-determination.

The fact that New Zealand decided in 2003 to decriminalize the entire voluntary sex industry prompts the question of which sociopolitical and cultural factors contributed to this unique decision. In the next three chapters, the development of the New Zealand sex industry will be explored along a macro, meso, and micro level. In Chapter 5, I will discuss the macro level which includes the historical developments from its beginning in the nineteenth century through 1987, the year of the establishment of NZPC, and – related to NZPC – the start of the decriminalization social movement in New Zealand. In Chapter 6, the focus will be on the meso level. Here, I will firstly elaborate on the New Zealand culture within which the policy debates between the opponents and proponents of the NZPC campaign occurred. Secondly, I will take into account three elements which together were of crucial importance for the NZPC campaign: the HIV/AIDS epidemic, the support from academics, and support from politicians, as well as parliamentary developments. Finally, in Chapter 7 the micro level will be outlined. Here I will particularly focus on NZPC. In the chapters 6 and 7, I will also relate the characteristics of a social movement development to the decriminalization social movement in New Zealand. Here, I will investigate whether – and, if so, how – the interaction model of the three social movement factors, discussed in Chapter 3, has taken place in this country.

## Macro Level: The Development of New Zealand's Sex Industry: History and Context

The aim of this chapter is to look back and discuss historical, cultural, social, and political developments of the New Zealand sex industry from its development until the 1980s. Since many scholars<sup>1</sup> have already eloquently described (parts of) the history of the New Zealand sex industry, I will confine myself to history that is related to my research and that was crucial to the development of the sex industry in this country.

After the introduction of a brief sociohistorical review of the precolonial Maori sexual culture, the impact of the Euro-American prostitution style on the native Maori sexual tradition will be explored. Next will follow the development of the New Zealand sex industry until 1910, a period that was characterized by a radical change regarding the toleration of prostitution. Then, I will outline the developments of the sex industry from 1910 through 1987 – the year of the establishment of NZPC – in which the resistance against the injustice of double standards increased.

In this chapter, I will regularly refer to European sociocultural and sex industry-related processes that also influenced New Zealand sex work policies.

### 5.1 Sexual Intercourse in Precolonial Maori Tradition

In his research on the New Zealand Maori culture, Donne (1927) notes that within the majority of Maori population prior to colonization, polyamory for the common married man was not accepted. He was required to respect the norm of fidelity. Both females and males were in immediate danger of a sudden and violent death, if they were discovered to be unfaithful (Donne 1927). However, within the Maori rangatira<sup>2</sup> class, which was the more wealthy class, polyamory was often a valid and accepted choice (Donne 1927). In line with the Maori custom, the pregnant wife of a chief remained in a separate house until her child was born. During this period of 'loneliness' for the chief, slave girls<sup>3</sup>

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1 E.g. Donne 1927; Eldred-Grigg 1984; Levesque 1986; Brooks et al. 1986; Macdonald 1986; Macdonald 1990; Jordan 1991; Belich 1996; Dalley 1996; King 2003; Eldred-Grigg 2008; Abel et al. 2010; Barnett et al. 2010; Jordan 2010; Healy et al. 2010.

2 Rangatira means a person of good breeding, man or woman, ranked as nobles (Donne 1927:98).

3 Slaves, mostly prisoners of another tribe, had no standing in the tribe (Donne, 1927).

often had to function as a substitute, or could become the chief's subordinate wife (Donne 1927).

Prostitution-resembling activities were unknown in the precolonial Maori society (Jordan 2010). However, this changed when James Cook<sup>4</sup> discovered the country in 1769. A confrontation with Europeans who, according to Root (1996:33), could imagine cultural differences “only as something existing in relation to and at the pleasure of the West”. Certainly, these Maori natives became affected by another perception on the norms of sexual relationships.

According to Eldred-Grigg (1984:26), the offering sexual services to travelers by hosts was quite common within the Maori tradition. As such, sexual hospitality had also been offered to the first European sailors who charted the Pacific waters, which is illustrated by the words of a Pakeha British major at the time:

“While a ship anchored in the Hauraki Gulf in 1820, a large canoe full of women came alongside. A chief informed the Pakehas that the women were wives for the white men and very politely and individually asked the officers to select what number of wives they wanted. Afterwards, the women danced and sang till a late hour” (British major cited in Eldred-Grigg 1984:29).

So, no payment was required. The foreign sailors became included within Maori society. The sexual service seemed to be meant as a welcome hospitality. On the one hand, this aligns with Chappell's opinion (1992:132) that the term ‘prostitution’ in that early period is not an accurate description of female Islanders' eagerness to seek the company of foreign sailors. Rather, this attitude of hospitality appears to correspond to Lévi-Strauss' world of anthropophagy, which he, according to Young (1999:56), describes as “primitive” societies that “deal with strangers and deviants by swallowing them up, by making them their own and by gaining strength from them”.<sup>5</sup> On the other hand, Pheterson (1996:28) states, that “the relation between prostitute and customer is frequently mediated by a third party or establishment”. He refers to ancient societies where “third parties have controlled the sexual-economic system for their own social or material benefit by recruiting women and by selling, transporting, or offering them as gifts to (other) men” (Pheterson 1996:28). By these terms, although no payment was required, here, commercial features of prostitution could already be identified as well.

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4 Captain James Cook (1728-1779) was a British explorer, navigator, cartographer, and captain in the Royal Navy. Cook made three voyages to the Pacific Ocean, during which he achieved the first recorded European contact with the eastern coastline of Australia and the Hawaiian Islands, and the first recorded circumnavigation of New Zealand in 1769.

5 Anthropophagic versus antropoemic societies; the latter, following Lévi-Strauss theory, are modern societies “who vomit out deviants, keeping them outside of society or enclosing them in special institutions within their perimeters” (Young 1999:57).

## 5.2 From Sex as a Gift to Sex as Commerce

### *Settlers' Influence on the Indigenous Maori*

Euro-American style of prostitution, with all its pejorative connotations, started to develop in New Zealand in the course of the 1830s. This was the period during which not only the number of visiting foreign traders (sealers, whalers) and settlers (gold diggers) grew spectacularly, but also the number of sexual interactions (Chappell 1992; Jordan 2010). As a result, the traditional Maori sexual hospitality slowly turned into an informal sort of commercial prostitution as gifts began to be exchanged. Maori tribes became interested in the Pakeha textiles, arms, metal ware, and other goods for which they were prepared to not only offer flax, food, but also younger or captive Maori women.<sup>6</sup> In this context, Donne (1927:223) mentions the commercial ship visits of single Maori girls who remained on board overnight: “[their] recompense being a nail, gimlet, hammer, saw, axe or gun”.

Some chiefs began to organize a form of prostitution on a larger and more systematic scale with the intention to gain benefits for the tribe rather than a bonus for the prostitute (Eldred-Grigg 1984; Belich 1996). As Chappell (1992:133) argues, step by step “sex-as-intercultural exchange would seem to have transmuted into sex-as-barter and finally into sex-as-prostitution”.

According to the New Zealand History Online (2013), Europeans of all types and classes<sup>7</sup> arrived by then in New Zealand.<sup>8</sup> By the 1830s, the seaport of Kororāreka<sup>9</sup> had become the largest whaling port in the southern hemisphere with a vital trade (Jordan 2010). At the same time, this city was given a sordid reputation: it was known as the “hell-hole of the Pacific”, and the region as “islands of sex in a vast sexless ocean” (Jordan 2010:27; Fischer 2012:38).

In this environment, the New Zealand sex industry developed. Chappell (1992) comments on early interaction between indigenous Pacific Island women and Euro-American men, related to the offering of voluntary sexual services. In contrast to Eldred-Grigg (1984:31) who writes that “most Maori prostitutes were voluntary casual workers rather than unwilling professionals”, Chappell (1992) nuances this female voluntarism. He points out that in the 1820s, most women had to obey their male chiefs, kinsfolk, or captors to whom they remitted their earnings. He adds that slave women were beaten by Maori men “if they had not earned enough from sleeping aboard a ship” (Chappell 1992:136). In this context, he quotes a French captain:

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6 Maori married women were not sexually available for the most part.

7 For instance whalers, other seafarers and merchants mixed with adventurers, deserters and escaped convicts from Australia.

8 British, French, Russian, German, Spanish, Portuguese and Dutch, as well as North Americans.

9 Kororāreka, later renamed Russell, was the first permanent European settlement and seaport in New Zealand. The place is situated at the Bay of Islands, in the far north of the country.

“Every day, the chief brought on board several women who, whether they liked it or not, were passed on to everyone in turn, but always for payment that they had to hand over to the chiefs, unless he himself was waiting at the door for it” (French captain cited in Chappell 1992:136).

However, sexual intercourse with Maori females was not always a one-off action. A number of sailors agreed to a sexual contract with a Maori woman for the whole duration of the Europeans’ visit. It was a sort of a temporary marriage by which the couple, according to the Maori law, was seen as man and wife, though from the white men’s legal perspective, she was not considered a legal wife at all (Belich 1996:153). The custom of sexual hospitality, being transferred to a temporary marriage, was not really experienced as a radical step by most Maori women since sex before marriage was not loaded with stigma (Belich 1996). At the time, the fact that the tribe got a gift (often a gun), and the bride a dress appeared to be an improvement of women’s status (Belich 1996).

Pakeha males could also fall in love with Maori females and then try to desert in order to remain with them. Chappell (1992:139/140) terms these forms of voluntary relationships between Maori women and Pakeha men as examples of mutual liminality.<sup>10</sup> Belich (1996:154) clearly indicates the double-sided character of the New Zealand sex industry at that time by mentioning that while offering sexual services could revalue women’s work and status, men could also reduce women’s status by forcing them to sex work for their own or their tribe’s benefit. In the present sex work and human trafficking discourse, these practices of forced sex work would refer to as severe forms of sexual and economic exploitation.

Meanwhile, after the important signing of the Treaty of Waitangi,<sup>11</sup> more ships arrived at the Bay of islands.<sup>12</sup> The sex trade became one of the main local industries. The traditional sexual hospitality had definitely been replaced by commercial sexual trade and the number of short-term ‘marriages’ between

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10 Turner (1969:95) notes that “liminal entities are neither here nor there; they are betwixt and between the positions assigned and arrayed by law, custom, convention, and ceremonia”. Horvath, Thomassen, and Wydr (2015:2) note that “liminality captures in-between situations and conditions characterized by the dislocation of established structures, the reversal of hierarchies, and uncertainty about the continuity of tradition and future outcomes”.

11 Every year on 6 February, New Zealand honors the signing of the Treaty of Waitangi in 1840. This Treaty is an agreement between the British Crown and about 540 Māori rangatira (chiefs) by which the nation state became founded. It promised to protect Māori culture and to enable Māori to continue to live in New Zealand as Māori. At the same time, it gave the Crown the right to govern New Zealand and to represent the interests of all New Zealanders (Sources: New Zealand History; Ministry of Justice New Zealand). <https://nzhistory.govt.nz/politics/treaty/the-treaty-in-brief>; <https://www.justice.govt.nz/about/learn-about-the-justice-system/how-the-justice-system-works/the-basis-for-all-law/treaty-of-waitangi/>.

12 A record of 1840 shows over seven hundred ships that year (Jordan 2010, Kororarake New Zealand History on line).

Maori women and Pakeha-men increased (Jordan 2010). Cities developed and western-orientated sex houses and brothels became more and more a component of the street view. And so, the market for prostitutes<sup>13</sup> increased in this mainly male community<sup>14</sup> which, according to Jordan (2010:28), “suffered” a severe women shortage.

Nevertheless, a change became increasingly visible. The shortage of women attracted a high number of white European<sup>15</sup> prostitutes to temporarily or permanently migrate to the growing cities of New Zealand in order to seek their fortune by working in the sex industry. Although Maori women continued to sell sexual services, their systematic enslavement and prostitution decreased after the 1840s. European prostitutes took the lead and finally became the majority. The Pakeha prostitution slightly came to dominate the Maori sex trade (Eldred-Grigg 1984:31).

### **The Netherlands and Sweden: From Intolerance to Necessary Evil**

Contrary to New Zealand, the prostitution sector in the Netherlands and in Sweden dates from the Middle Ages, and until the nineteenth century, the developments in both countries are largely similar. Initially, the prostitution sector was tolerated and seen as a needful evil, though some medieval cities developed regulations regarding prostitution (Bossenbroek & Kompagnie 1998).

During the sixteenth century, through the moral influence of religious reformers and contra-reformers in these countries, the approach toward prostitution changed. Prostitution became considered a sin and a crime (Pirelli & Jonsson 2008). In some areas, the former regulations of prostitution even had to make way for a ban on brothels and social exclusion of prostitutes. However, despite the moral disapproval, prostitution never stopped. Rather, it developed further, especially in the growing cities during the seventeenth century (Bossenbroek & Kompagnie 1998). In the course of the eighteenth century, the approach toward the sex sector returned from intolerance to an attitude of tolerance.

By then, contrary to New Zealand where European style of prostitution at the time did not yet exist, prostitution in the Netherlands and Sweden, as in other European countries, was again considered a necessary evil that had to be regulated. Here, we could note that prostitutes in this period had to operate in a climate of exclusion.

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13 The term ‘sex worker’ in its present connotation did not exist at the time.

14 131 males to every 100 females (Jordan 2010:28).

15 Most immigrant European women came from England, Wales, Scotland, and Ireland (Macdonald 1990).



### 5.2.1 *Female Immigrants*

Historian Charlotte Macdonald (1990) explored the women's life histories and life patterns both prior to and after emigration in nineteenth-century New Zealand. She argues that from the beginning of the settlers' history, there was a shortage of women and, in that context, of household help. Consequently, many immigrants were forced to manage the household alone or had to work together with a servant. In this respect, Brooks et al (1986:vii) mention that "the relatively unstructured nature of colonial society allowed fluidity in social roles".

In order to balance the disproportion of the sexes in the settler population, the New Zealand Government offered free emigration passages to "eligible single females" above twelve and not exceeding thirty-five years of age, provided they could demonstrate that they were persons "of good moral character" and potentially suited to become good workers and wives (Lévesque 1986; Macdonald 1990). After a months-long voyage full of risks, many thousands of single immigrant women entered New Zealand hoping for a better life and higher wages. To facilitate the chance to get a job, barrack officers in New Zealand acted as intermediaries between employers and the new immigrants (Belich 1996).

Brooks et al. (1986) argue that many immigrant women came to the new world to get rid of the rigid gender problems of the old society. Lévesque (1986) highlights that women actually entered in a new social environment by leaving Britain, where women numerically speaking lived in a largely female world, and entering New Zealand where they encountered a predominantly male atmosphere. Their new occupations varied from working in the gold mines or bars to settling the land (Brook et al. 1986).

The majority of the women who came to New Zealand as government immigrants got married or settled in the colony and spent the greater part of their adult lives bearing and raising children (Macdonald 1990).<sup>16</sup> Macdonald (1990:172) states that at the time, the choice for children did not deal with individual determination: "sexuality was largely confined to marriage, and, within that, was not separable from reproduction". Apart from the more obvious choice to find work as a household servant, a number of young immigrant women also became involved in the commercial sex sector.

## 5.3 The Nineteenth Century: From Tolerance and Regulation to Intolerance and Abolishment

"Where there was gold, there were men, and where there were men, there was the equivalent of gold for the prostitutes" (Jordan, 2010:29).

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16 Many young immigrant women married in their mid-twenties and had, in the pre1880s period, an average of six or seven children (Macdonald 1990).



The discovery of gold in New Zealand in the 1860s attracted many fortune-seekers who in turn were followed by white immigrant women. According to Eldred-Grigg (2008), a number of them considered prostitution an attractive alternative to poorly paid domestic work,<sup>17</sup> which was additionally characterized as boring, with exhausting working conditions. Macdonald (1986:24) states that, despite risk factors, prostitution was in many instances deliberately chosen “as a means of employment to afford a degree of independence and a somewhat higher income”. In addition, other reasons to take up prostitution could have been “scarcity of work, a desire to escape the confines of home and family, a need to move away from family members to find work, the absence of family or relatives, or a combination of these”(Macdonald 1986:24; Macdonald 1990:188).

Sex work flourished along with the growth of the cities.<sup>18</sup> By 1864, most sizeable towns throughout the colony had their red-light districts (Jordan 2005). For instance, in Dunedin around two hundred full-time prostitutes tried to earn their living (Belich 1996; Jordan 2005). Eldred-Grigg (1984:40) mentions that in this city:

“during a single week in 1864, at least fourteen thousand sexual acts involving money might have occurred, and since the number of males aged fifteen or more in the city at the time was about 7900, a large proportion of men were obviously making use of whores.”

At the time, selling sexual services was legal in New Zealand and prostitution was accepted within the national law. However, owning or keeping a brothel was illegal under provincial or city bylaws (Eldred-Grigg 2008). Despite this prohibition, brothels were tolerated to a certain extent.<sup>19</sup>

Although prostitutes seldom worked alone, a genuine male-controlled Pakeha sex industry was not really evident (Belich 1996). Belich (1996:426-427) quotes an 1891 Christchurch survey that suggests that one out of three prostitutes worked with some sort of male associate, while probably most brothels were run by madams. Regarding the prostitutes' customers, little has been documented about their number, identity, or character. According to Macdonald (1986:25-26) “most of the brothels however were probably visited by men of the laboring class (...)”.<sup>20</sup>

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17 A quick shilling by giving a digger a hand job, a pound for twenty quick tricks (Eldred-Grigg 2008:388).

18 Between 1860 and 1870, the population increased from 100,000 to 250,000. The sex ratio number of males per hundred females was 160,9 in 1861 and 141,8 in 1871 (Macdonald 1986).

19 For instance in Dunedin, around twenty-six brothels existed in 1869 (Jordan 2010).

20 Sailors, laborers, farm workers, shepherds, sawyers, bushmen, and the like (Macdonald 1986:25-26).

The relationship between female immigration and sex work was somewhat paradoxical in New Zealand during the middle of the nineteenth century. Young single women were sought to reduce the sex imbalance and improve the men's behavior, while at the same time, a number of these women immigrants were blamed for providing prostitution services when they arrived (Jordan 2010; Macdonald 1986). The general opinion toward prostitution was ambiguous in the nineteenth century: on the one hand, prostitution was generally referred to as the 'Social Evil', and on the other hand, the existence of prostitution was accepted as 'inevitable' and tolerated in that sense (Macdonald 1986:19). Eldred-Grigg (2008:399) illustrates this phenomenon of relative tolerance towards the growing prostitution market by opining that "any whore who stayed sober on the streets, who paid rates, who held her tongue instead of letting rip to choice obscenities while trawling the diggers for clients, could live and thrive in a quiet, tidy way".<sup>21</sup> Scholars mention a variety of reasons concerning this tolerance. Jordan (2010:29-38) states that it can be understood in the social context of the nineteenth century where women were in the minority in New Zealand. Prostitutes could provide sexual services that men could not easily obtain elsewhere. Furthermore, premarital sex was not socially accepted, and women, both married and unmarried, feared pregnancy as well. Eldred-Grigg (1984:29-43) refers to the early Victorian moral code which considered prostitution a complement to marriage and prostitutes rather seen as 'colleagues' than rivals of wives.<sup>22</sup>

### 5.3.1 *From Tolerance to Regulation: Control the Women, Leave the Men*

In order to get more control on the people's everyday life, public health and the physical condition of individuals became subjects of debate (Macdonald 1986). In these terms, authorities also focused on the regulation of sexual behavior, especially with regard to prostitution. According to Macdonald (1990), the discussions at the time showed a double standard: women risked being labelled a bad character if they did not comply with certain standards while men who "drank, swore and slept with them were either ignored or dealt only passing rebuke" (Macdonald 1990:174-75).

Opponents<sup>23</sup> of the sex industry in New Zealand – concerned about the increasing 'social evil' of prostitution – started to lobby for legal regulations

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21 The main objective of police and courts was to keep prostitutes, in particular street-based workers, orderly. Disorderly behavior would count on severe punishment (Eldred-Grigg 1984; Jordan 2010).

22 Eldred-Grigg (2008:387) notes that "as long as respectable women in this Victorian Society were told to consider sex a distasteful necessity, prostitution would flourish".

23 Christians who wanted to reform prostitutes and who were concerned with the spread of diseases (Lévesque 1986).

to control the prostitution sector. Following legal developments in England,<sup>24</sup> the Vagrant Act, the first regulation act in New Zealand, came into force in 1866. From that time on, every common prostitute<sup>25</sup> who acted disorderly, could be imprisoned for up to three months (Jordan 2010; Eldred-Grigg 1984). According to Eldred-Grigg (1984), more than three thousand women throughout the country, most of them prostitutes, were convicted under this Vagrant Act during the 1870s. The fear of venereal disease stimulated the belief that repressive measures such as registration, police supervision, obliged medical examinations, and rescue homes<sup>26</sup> could result in better control over prostitutes. It finally led to the enactment of the Act for the Better Prevention of Contagious Diseases<sup>27</sup> (CD Act) in 1869, an imitation of the British CD Act 1864 (Macdonald 1986).<sup>28</sup>

Walkowitz (1980:3-4) relates the basis on which the CD acts came into existence to “the obsessive preoccupation with and codification of sex during the Victorian period”. She refers to a statement of the French philosopher Michel Foucault (1926-1984), who distinguished Victorian sexuality from the official sexual code of earlier epochs:

“The modern debate over sex was a strategy for exercising power in society. By ferreting out new areas of illicit sexual activity, a new ‘technology of power’ and ‘science of sexuality’ were created that facilitated control of an ever-widening circle of human activity. The new ‘science of sexuality’ identified sex as a public issue; rigidly differentiated male from female sexuality; focused attention on extramarital sexuality as the primary area of dangerous sexual activity; and ‘incorporated’ perversions in individuals who, like the homosexual, were now accorded an exclusive and distinct sexual identity” (Foucault cited in Walkowitz 1980:4).

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- 24 The New Zealand Vagrant Act was based on the English Vagrancy Act 1824. It could be invoked against a prostitute wandering in the public street or in any place of public resort and behaving in a riotous or indecent manner (Eldred-Grigg 1984).
  - 25 The term ‘common prostitute’ was not intended to convey a sense of her being ‘common’ or ‘public’ property (Knight 1987).
  - 26 Magdalen institutes were set up to uplift the ‘fallen’ women, to get them into a job, usually in domestic service (Lévesque 1986:8). After treatment, about half of them went into domestic work in another center, married, or went to live with relatives (Lévesque 1986).
  - 27 This CD Act aimed to regulate prostitution by forcing any woman deemed to be a common prostitute to medical examination and detention (Eldred-Grigg 1984; Knight 1987; Lichtenstein 1997; Macdonald 1986; Jordan 2005).
  - 28 The first CD Act in Britain made women liable for inspection if suspected of diseases (Lévesque 1986). Macdonald (1986:16) argues that an important difference between the British and the New Zealand CD Act is “that the legislation in the latter was designed from the outset to suppress prostitution rather than to limit the spread of venereal disease”.

Lévesque (1986) considers the New Zealand CD Act<sup>29</sup> the start of the regulation of prostitution in this country since prostitutes, from then on, became subject to repressive measures and control.<sup>30</sup> For example, police officers were allowed to order any prostitute to undergo a genital examination by a police surgeon, by which, according to Macdonald (1986), their personal freedom was removed.

The consequences of more regulation in Britain as well as in New Zealand were multisided. Not only did the CD Act – according to Macdonald (1986) and Walkowitz (1980) – split the ranks of the poor,<sup>31</sup> it also created severe double standards. For example, prostitutes were blamed for the spread of venereal diseases. However, no rules were included concerning the health status of the men, who, following Jordan (2010), presumably initially infected the prostitutes. Furthermore, the New Zealand government facilitated the free immigration of women to the country due to the imbalance of sexes. At the same time, a number of them were doubly blamed for both bringing prostitution to the country and for entering into prostitution while there were enough opportunities to find alternative work or to marry (Macdonald 1990). The feelings of injustice about these double standards provoked increasing resistance among feminists.

#### **The Netherlands and Sweden: Controlling the Risks**

From the second half of the eighteenth century up to the second half of the nineteenth century, a clear approach of toleration and regulation toward prostitution further developed in both countries, as well as in a number of other European countries (Pirelli & Jonsson 2008; De Vries 1997). The focus was on public health and prevention of venereal disease and prostitutes were no longer seen as criminals as long as they behaved in an orderly manner (Boutellier 1991; Pirelli & Jonsson 2008). Prostitution was often seen by then as a normal effect of male sexuality, as a necessary evil which had to be regulated<sup>32</sup> (Bossenbroek & Kompagnie 1998; Boutellier 1991; Mooy 1997; Svanström 2006). Prostitutes, who often were considered vagrants,<sup>33</sup> were obliged to submit to strong restrictions, such as medical inspections,

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- 29 The various provincial governments could decide whether or not they wished to incorporate the CD Act.
- 30 According to the New Zealand CD Act, a prostitute was liable to periodical medical examination for one year, and if she was found STI infected, she had to remain under medical control in a female reformatory until discharged by the visiting surgeon (Lévesque 1986).
- 31 The prostitutes became the unrespectable while their poor working-class neighborhoods were not labelled as ‘unrespectable’ (Macdonald 1986; Walkowitz 1980).
- 32 Prostitution regulation laws in Sweden date from 1859, the Vagrancy Law dates from 1885 (Svanström 2006).
- 33 According to Svanström (2006:144), vagrants were persons who loitered from place to place, did not have any means of subsistence or honest living, and were considered a danger to public safety, order, and vice. Prostitutes had also to be treated as vagrants, regardless of whether they had means of subsistence or not. Money from prostitutes was not legitimate money (Svanström 2006).

prohibition from public spaces, and a ban on leaving the city<sup>34</sup> (Svanström 2000). In Sweden, from 1847 most prostitution was illegal but tolerated and regulated. Prostitutes risked high sanctions if they refused to undergo weekly health inspections (Baldwin 1999). Brothels in this country were also illegal but persisted under police surveillance. In both countries, prostitution was regulated by local city councils rather than national legislation (Vincenten 2008).

During this period, we can trace an analogy with the New Zealand sex industry approach where prostitution was tolerated and regulated, as well as considered a necessary evil. A substantial difference between the three countries is that in Sweden medical control was gender-neutral: both women and men (mainly soldiers) were subject to medical examination for venereal disease, the so-called 'Swedish Sonderweg' (Svanström 2000:117).

Unlike other countries, Sweden eschewed a double standard. Svanström (2000) correlates this difference to the rural character of the country. Venereal diseases were associated with the poor rural people, not primarily related to prostitutes, or to the urban class (Svanström 2000).

### 5.3.2 *Increasing Resistance Against the Double Standards*

With the indignation about double standards, efforts expanded throughout the British Empire to repeal CD acts and challenge male dominance, in particular towards prostitutes. Opponents wanted to establish a new and fair regulation policy. Josephine Butler played a key role. As the leader of the British Ladies' National Association for the Repeal of the Contagious Diseases acts (LNA-1869), her view would have an impressive national and international impact on sex industry policies. According to Walkowitz (1980), her main aim was to dismantle the regulationists<sup>35</sup> by both demonstrating the failure of the state intervention, the registration system, and the police brutality toward prostitutes to fairly restructure the industry, and by drawing attention to medical reports that stated that the CD acts had not affected the incidence of venereal diseases.<sup>36</sup> Butler's campaign finally resulted in the abolition of all British CD acts in 1886.

With regard to New Zealand, Lévesque (1986) emphasizes the irrationality of the CD Act since the law was unfair to women who contracted the disease

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34 The regulation of prostitution was technically in force until 1918 (Svanström 2006).

35 Regulationists were military and medical professions and governmental groups (Walkowitz 1980).

36 Macdonald (1986) argues that there is hardly evidence to suggest that there was an epidemic of venereal disease, or that venereal disease was any more widespread in New Zealand than it was in Britain or the Australian colonies. Rather, she believes that the CD Act was introduced as a measure to suppress prostitution and to punish prostitutes.

from men, as infected men were free from inspection.<sup>37</sup> Influenced by Butler's campaign, a variety of women – feminists as well as Christian groups<sup>38</sup> – mustered together to repeal the New Zealand CD Act. Macdonald (1986:15) distinguishes two major groups within this campaign: “those who argued on the basis of moral conviction and/or religious belief, for a single code of morality and against any acceptance of prostitution, and those who were incensed by the injustice of the legislation and regarded the act as a gross symbol of sexual exploitation, sanctioned by the state”. Both groups strongly believed that the CD Act limited the rights of women “only to make it safer for men to sin and condoning prostitution by ensuring prostitutes were free of venereal disease” (Laurie 2010:86). At this spot, we can identify both the ‘based-on-morality-opponents’ and the ‘fighting-for-equal-rights-opponents’.

Although the fight for repeal had to overcome a number of hurdles,<sup>39</sup> the resistance slowly grew. The New Zealand campaign – though following a different path than in Britain<sup>40</sup> – mobilized a wide range of social purity groups, temperance organizations, and pietistic churches. By the end of the nineteenth century, new attitudes arose in New Zealand with regard to the sex industry (Jordan 2010). Interventions came to be motivated by public health concerns. In addition, resistance to the double standards expanded. Jordan (2010) highlights that these changes could be considered modest forerunners to the final decision to decriminalize prostitution in New Zealand in 2003.

Finally, after a long struggle, the campaign to abolish the regulation system based on the CD Act led to its repeal in 1910. Commercial extramarital sex became a question of state policy and repressive social legislation<sup>41,42</sup> (Eldred-

37 Lévesque (1986:11) notes that New Zealand prostitutes at the time were considered to be a menace but not necessary to banish, just control. They were not simply engaging in an occupation that exploited them or that provided a needed service; they were seen as a serious physical threat to the country, to domestic bliss if they indirectly infected dutiful wives, and to future generations of New Zealanders.

38 Feminist leaders in New Zealand such as Kate Sheppard, Anna Stout, and Margaret Sievwright (the New Zealand Woman's Christian Temperance Union – NZWCTU) (Macdonald 1986; Lévesque 1986).

39 According to Lévesque (1986), the Canterbury medical branch upheld the Act long after England repealed the CD Act.

40 The English 1864 CD Act was initially introduced as a temporary measure to combat epidemics of venereal disease in the British Army, especially in garrisons towns (Macdonald 1986). In New Zealand, there was not a strong military presence. Here, the CD Act was not intended as a temporary measure and it was applied to the whole civilian population of an area rather than just local communities. Furthermore, the British CD Act was repealed in 1886, while in New Zealand the CD Act maintained forty-one years (Macdonald 1986).

41 Eldred-Grigg (1984:161) notes that, despite legal reforms such as the Police Offences Act 1884 and 1901 and the Criminal Code Act 1893, which restricted prostitutes' former freedom of movement, tolerance of the industry actually remained a basic principle in New Zealand law.

42 Appendix XVIII shows an overview of the start and the end of the prostitution regulation policies in New Zealand and in several other countries.

Grigg 1984; Macdonald 1990; Lévesque 1986), and prostitutes became more and more labeled as deviants.

### **The Netherlands and Sweden: Flowers from the Same Garden**

Influenced by Butler's anti-regulation campaign, abolitionist groups in the Netherlands, such as Christian protestant puritans,<sup>43</sup> feminists,<sup>44</sup> and some socialists, wanted to dismantle the existing prostitution regulation system (Bossenbroek & Kompagnie 1998; Vincenten 2008).<sup>45</sup> Their reasons varied from belief in abolition on moral grounds, in the unfairness of the double standards and the failure of the system to decrease venereal diseases, to the increasing nuisance caused by the expanding business of prostitution (Boutellier 1991; Bossenbroek & Kompagnie 1998). The perception of prostitution slowly changed from a necessary complement to marriage to a perversion to blaming men instead of the prostitutes: "the men, who organized their work, the brothel keepers, and the men that visited them should be held responsible" (Boutellier 1991:203). Here, we can see that not only prostitutes but also the clients of prostitutes became deviants and outsiders. Finally, the Dutch Morality Acts<sup>46</sup> of 1911 outlawed brothels and made pimping a criminal offence<sup>47</sup> (Altink 2014). However, prostitutes and clients were never liable to prosecution (Outshoorn 2004; Boutellier 1991; De Vries 1997). Remarkable is that from that time on, the state directly interfered with the personal lives of its citizens and prescribed what was decent and what was not (Toolen 2008).

As in the Netherlands, in Sweden feminists and social puritans tried to abolish the regulation system and, by preference, the entire prostitution sector in their country. According to Svanström (2000), their moral, judicial, and sanitary motivations were based on: (i) the idea that regulation admitted the practice of vice as a profession by which the moral of the society became infected; (ii) the fact that there was no proof that regulation should reduce venereal diseases. In 1918, Sweden became one of the last countries to abolish the state regulation of prostitution by enacting its *Lex Veneris*<sup>48</sup> (Pirelli et al. 2008; Svanström 2006; Månsson 2017). As in the Netherlands, prostitution policy became part of national policy. In this country, however, as mentioned above, both men and women were legally responsible for the spreading of STD (Vincenten 2008). In this context, the *Lex Veneris* was

43 Nederlandsche Vereeniging tegen de Prostitutie (since 1879)

44 Nederlandsche Vrouwenbond tot Verhooging van het Zedelijk Bewustzijn (since 1884).

45 Towards the end of the nineteenth century, the repression was supported by Catholics, social democrats, several medical specialists, and liberals (Bossenbroek & Kompagnie 1998; Boutellier 1991).

46 Wet tot Bestrijding van Zedeloosheid (1911). This Morality Act also criminalized abortion, contraceptives, and homosexuality (Outshoorn 2012).

47 Zedelijkheidswetten, article 250bis in the Dutch Penal Code.

48 Control of prostitution in Sweden became a national responsibility under two laws, the *Lex Veneris* (1918), and the Vagrancy law (1885).



a unique law in Europe because it was gender-free and class-free. It was meant for every citizen.

In sum, there are some eye-catching differences between the nineteenth century prostitution policies of New Zealand, the Netherlands, and Sweden, despite clear similarities. Looking at New Zealand, there are two contradictions in attitude towards prostitution that do not exist in the Netherlands and Sweden. First, the immigration schemes to entice young women to the country with free passage were meant to correct the imbalance of the sexes and the features of a male-dominated society. Many of these women, however, were blamed for bringing prostitution to the colony. Second, men's resort to prostitution was excused by the shortage of women, while women who entered into prostitution were doubly blamed, because they had the option to marry or find a decent job. In Sweden, the discussion about the unfair double standards was of a lesser influence since this country did not practice a gender-based medical control system ('Swedish Sonderweg'). Furthermore, nineteenth century prostitution in the Netherlands and New Zealand was legal, in Sweden, however, prostitution never acquired an official recognition.

#### 5.4 The Twentieth Century: Prostitutes as Criminals

The repeal of the New Zealand CD Act did not eradicate prostitution in this country. Although soliciting, procuring, and brothel keeping remained illegal, providing sexual services continued during the early twentieth century (Dalley 1996; Healy, Bennachie & Marshall 2012).<sup>49</sup> However, the increasing suppression forced prostitutes to find new ways to earn money legally. Dalley (1996:3) describes how this temporarily resulted in a new type of prostitution, the legal 'one-woman brothels'.<sup>50</sup> These brothels were tolerated, though morally disapproved, since the women often combined their work as a prostitute (in the invisible backroom) with the selling of products (tobacco and lolly shops) in the front room (Dalley 1996).

This tolerance, however, did not last long. Influenced by the fear of venereal disease infections during World War One, one-woman-brothels became subject to suppression regulations as well:<sup>51</sup> "no longer were one woman-brothels described as public nuisances and moral dangers; they had become a source of contamination to the public health, and a moral threat to the military" (Dalley

49 The law judged that it was not illegal to be a prostitute (Healy, Bennachie & Marshall 2012).

50 One-woman brothels existed from 1908 through 1916 (Dalley 1996).

51 Dalley (1996:4) describes a verdict about brothel-keeping in which the Supreme Court judgment made a distinction between a 'one-woman' brothel and any premises which were used for the purposes of habitual prostitution. As the name indicates, the condition was that no more than one woman worked in the premises (Cassells v. Hutcheson and another, *New Zealand Law Reports*, vol. 27, 1908, 763-8).



1996:13).<sup>52</sup> Additionally, the acceptance of prostitutes was not helped by the fact that during wartime young prostitutes could earn their money by selling both merchandise and sexual service while soldiers' wives, as Dalley (1996:5) states, "served the nation at home". Under the War Regulations Act of 1916, it became an offence for any person to be involved in prostitution.

Subsequently, the opportunities for New Zealand prostitutes to keep working became reduced. There was the increasing public rejection of prostitution through the course of the twentieth century,<sup>53</sup> and the government strengthened its policy toward the sector with three new repressive acts. These were the 1961 Crimes Act, the 1978 Massage Parlours Act (MP Act), and the 1981 Summary Offences Act (SO Act). By enacting new repressive legislation, the government tried to get a tighter grip on the industry. For example, the Crimes Act made it an offence to keep or manage a brothel,<sup>54</sup> to live wholly or on part of the earnings of a sex worker, and for any third party to procure sexual intercourse for another person (Abel et al. 2009).<sup>55</sup> As a consequence, police control became easier to implement. In fact, even the possession of condoms or health promotion resources could be used as evidence to convict operators and prostitutes.

Brothel operators responded to the 1961 Crimes Act by transforming their businesses to 'massage parlors', which were legal at the time (Abel et al. 2009:516). Within these establishments, prostitutes tried to earn their money under the guise of masseuses (Healy, Bennachie, & Marshall 2012). In turn, this practice provoked the enactment of the MP Act in 1978, which determined that both owners and managers of a massage parlors were required to have a license and that a registration system for the involved women was needed (Abel et al. 2009; Pérez-y-Pérez 2009).<sup>56</sup> The MP Act protected the operators with a license, but prostitutes in massage parlors could be arrested for soliciting by undercover police who acted as clients (Jordan 2010; Healy et al. 2010).<sup>57</sup>

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- 52 Dalley (1996:5) comments that in "New Zealand's First World War ethos of service and efficiency", the state wanted a more interventionist role in people's lives in the name of national safety. He adds that all forms of prostitution were considered to threaten the health of the soldiers because of the danger of venereal disease infections.
- 53 Jordan (2010) argues that not only the fear for STD and growing feelings of prostitution as an immoral activity grew, but also the existence of better contraceptive devices and a more relaxed sexual mores – by which men could more easily find willing sexual partners outside of prostitution – could declare the growing stigma against prostitution. Eldred-Grigg (1984) adds that prostitutes also lost their jobs since wives were easier to find, and were increasingly willing to regard sex as a recreation.
- 54 The term 'brothel' means in this section any house, room, set of rooms, or place of any kind whatever used for the purposes of prostitution, whether by one woman or more.
- 55 Section 147,148,149 Crimes Act 1961.
- 56 The MP Act prohibited the employment of people under the age of eighteen years and of individuals with drug- or prostitution-related convictions (Abel et al. 2009).
- 57 A conviction could carry the prohibition from working in a massage parlors for ten years and the criminal record could prevent the prostitute to obtain other employment (Jordan 2010).

Prostitutes working in the private escort sector were less vulnerable. They worked alone or in a small group without obligation to third parties and were difficult to locate. However, to gain more control, cities such as Christchurch and Wellington introduced a ‘voluntary’ registration system, meaning that only prostitutes who registered could advertise in local newspapers (Pérez-y-Pérez 2009). This so-called voluntary system weakened the position of escort workers. In fact, they had no choice other than to register, as the advertisements were their ‘raison d’être’, “despite the disadvantage of losing their anonymity and obtaining the prostitute-label indefinitely” (Pérez-y-Pérez 2009:143).

By consequence, these acts and the registrations<sup>58</sup> forced a number of prostitutes to the work environments of the streets, despite the higher risk of violence, exploitation,<sup>59</sup> and police arrests<sup>60</sup> (Healy et al. 2010; Healy, Bennachie & Marshall 2012). Due to the stigma and their outlaw status, prostitutes remained reluctant to bring experiences of exploitative conditions to the attention of authorities, which in fact made them more vulnerable (Pérez-y-Pérez 2009; Healy, Bennachie, & Marshall 2012).<sup>61</sup> Additionally, the policy towards sex workers still was far away from efforts to destigmatize or improve rights. Rather, the policy was focused on risk and harm minimization in favor of the society.

With regard to the clients of sex workers, the enactment of the SO Act demonstrated the ongoing androcentric<sup>62</sup> strategy to condemn only the providers of sex services. This law prohibited sex workers from offering sex for money in a public place,<sup>63</sup> but did not criminalize the clients.<sup>64</sup> In 1991, Jordan (1991:10) indicates that “the soliciting laws in particular reflect a double standard of morality: it is against the law for sex workers to solicit clients but not for clients to solicit sex workers”. In my interview with Jordan, she emphasizes the unfairness of the double standard at the time:

“The big thing was (...) around ending the double standard,(...), men’s access to buy sex was protected, (...) while the women were the most vulnerable in society. She was the one who was likely to end up with a conviction and being

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58 According to Plumridge and Abel (2000), police policy at the time was focused on maintaining a cumulative register of workers, but this list has never been complete since sex workers who already had left the industry remained registered and an unknown number of women had never been registered.

59 According to Jordan (2010) the street prostitution scene became increasingly dominated in the 1960s and 1970s by transgender prostitutes.

60 Healy et al. (2010) describe the consequences of a conviction, such as named and shamed in the newspapers, a two hundred NZ dollar fine, by which they had to find a more risky work place in order to pay, and – with a criminal record – problems in finding other employment.

61 Not only were they named and shamed, but authorities could also use detrimental information against them, “including questioning their suitability as parents” (Healy, Bennachie & Marshall 2012:254).

62 Oriented around the masculine perspective.

63 Section 26 Summary Offences Act 1981.

64 At the time, it was not an offence to pay or to offer to pay for sex (Abel et al. 2009).

penalized. And that impacted on their children, that she might be trying to support” (RA2JJ).

#### 5.4.1 *The Wheels for Change Start in Motion*

The repressive legislations toward prostitution, the growing public stigma, the injustice of the androcentric double standards, the unfair one-side blame and penalties,<sup>65</sup> and the ‘exclusive’ status of prostitutes all gave rise to deep frustrations within the prostitution sector. Healy et al. (2010) emphasize that sex workers were frustrated with the negative public perceptions and the portrayal of them as irresponsible disease providers. Sex workers at the time had no opportunity to seek legal redress to fight exploitation. In addition, more difficulties came up with the worldwide outbreak of HIV/AIDS. Jordan (2010:37) notes that “sex workers and gay males found themselves at the center of another moral panic, blamed and scapegoated once more as disease carriers threatening society’s health and stability”. The injustice stimulated women’s rights and gay liberation movements of the 1970s to combat the abuses of human rights (Jordan 2010).

At this point, it is important to mention a crucial phase within the New Zealand sex industry. Referring to Chapter 3 in which I elaborated on the emergence and development of social movements, here, we can note the initial phase of the emergence of the decriminalization social movement in New Zealand. Vos (2010) argues that social movements belong to the basic forms through which people give voice to their indignation and concern about rights, prosperity, and well-being of themselves and others. In the next chapters, we will see how dissatisfaction and frustration amongst sex workers motivated a small group of them to come together and to formulate their ideals in order to improve their rights.

### 5.5 “Decriminalization, Nothing Else”

“We met on beaches, sat at round pub tables, huddled in doorways, and spoke on the telephone to unseen, like minded, sex workers throughout the country. Sex workers were on the move. People started to talk about us as if we were a force to be reckoned with. This is really when we realised we were becoming an organization” (<http://www.nzpc.org.nz>).

In 1987, a core group of nine Wellington sex workers who – inspired by ideas on how to proceed from the Prostitutes’ Collective of Victoria (PCV) in Australia and the English Collective of Prostitutes (Statement of NZPC: in

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65 Soliciting for the purposes of prostitution: up to \$ 200 fine; keeping a brothel or living on the earnings of prostitution: up to five years in prison; procuring anyone for the purposes of prostitution: up to seven years in prison (<http://www.nzpc.org.nz/page.php?page name=law>).

Jordan 1991:271) – were determined to form an organization for all indoor and outdoor New Zealand Maori and Pakeha sex workers, women, transgender, male and gay sex workers (Barnett et al. 2010; Healy et al. 2010). This group came together on beaches and in pubs to discuss their aims. They wanted to create awareness – both within and outside<sup>66</sup> the sex industry environment – about the injustice of the prostitution suppression laws, the double standards, the stigma, the framing of them as irresponsible individuals, or as threatening reservoirs of disease, in short, as outsiders and social outcasts (Healy et al. 2010; Barnett et al. 2010; Laverick 2013). Former Labour MP Barnett<sup>67</sup> believes that “it was ridiculous that the main relationship between the sex industry and the government at the time was the police. It should have been the public health and safety, human rights, and employment items” (RNP1).

The founding mothers realized that establishing a collective for sex workers would enable them to fight for “a more supportive social environment where sex workers would have a full spectrum of rights and protections” (Healy, Bennachie, & Marshall 2012), and – as stated by one of the NZPC founding members– to counter the negative stigma and prejudices on the sex industry:

“(…) fighting for the day when there will be no more stigma attached to writing ‘sex worker’ on our CVs than there would be had we spent three years as a teacher or an accountant” (Statement of an NZPC member 1991:274).

NZPC identified criminalization of sex workers as being a major impediment to their safety, health and well-being and the cause of significant harm and stigma (Healy, Bennachie, & Marshall 2012:225). They also strongly rejected the option to legalize the sex industry since this policy – as discussed in Chapter 4 – still includes state control. This could again push – like criminalization – parts of the industry underground:

“We [NZPC] would oppose any attempt to have a legalized but more tightly state-controlled sex industry, which would actually have the effect of driving further underground those workers and clients who were outside the state-controlled sector” (Statement of an NZPC member 1991:273).

In order to minimize harm (i.e., coercion, bullying, violence) against sex workers, Bennachie and Linton (2011) note that “we [NZPC] needed to ensure sex workers had the right to refuse to have sex for any reason (or no reason),<sup>68</sup>

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66 Members of Parliament and local politicians, NGOs, the media, and the public had to be confronted with the ongoing unfairness against sex workers (Barnett et al. 2010).

67 Tim Barnett became an important political advocate for NZPC’s decriminalization campaign (see also Chapter 6).

68 This wish to ensure that sex workers could always refuse to provide sexual services became regulated in the PRA Section 17(1-3). This section states that “despite anything in a contract for the provision of commercial sexual services, a person may, at any time, refuse to provide,

that sex workers were covered by laws governing health and safety matters, and those laws governing employment protections also protected sex workers in the same way those laws protect workers in other occupations”.

NZPC's ultimate goal was to campaign for decriminalization and nothing else (NZPC 4). They persisted to be clear that sex work is labor and that sex work in and of itself is not harmful (RA2JJ), or, quoting Abel (2010:12) “that it is work that should be respected and protected like work in any other service occupation”. In 1987, NZPC started to operate.

### **The Netherlands and Sweden: Conflicting Legislations Revealed**

As in New Zealand, new opinions towards the conceptualization of the prostitution sector became evident in the Netherlands and in Sweden, however in a different way.

Through the course of the twentieth century in the Netherlands, a gradual shift took place from an abolitionist sex industry approach to an emphasis on the social aspects of prostitutes. According to Outshoorn (2012), unofficially, regulation came in place since prostitution activities in certain areas and ‘private houses’ became tolerated. Instead of a primary focus on law enforcement and prosecutions, supportive measures such as education and mental care got greater attention (Boutellier 1991). Outshoorn (2012) points out that prostitutes were never criminalized under the Dutch law. They never lost their civil rights or the right to basic state benefits of social security and statutory old age pension. Here, the first steps towards legalization of the sector are visible.

In Sweden, as in the Netherlands, there have been many different forms of state intervention approaches towards the sector. Prostitutes went from ‘being normal’ to women who had to be sanctioned. The state went from treating prostitution as a matter of hygiene to considering prostitutes as psychologically abnormal (1930s and 1940s) to seeing them as antisocial (1960s) (Svanström 2006).<sup>69</sup> Criminalizing prostitution as a whole was not really considered to be an option anymore. However, an important change took place in 1950, when the demand side was named the prime mover behind prostitution in the Swedish parliament (Svanström 2006).<sup>70</sup> According to Svanström (2006:159), prostitution in Sweden might here

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or to continue to provide, a commercial sexual service to any other person. The fact that a person has entered into a contract to provide commercial sexual services does not of itself constitute consent for the purposes of the criminal law if he or she does not consent, or withdraws his or her consent, to providing a commercial sexual service”.

- 69 Svanström (2006:158) clarifies that in 1964, an antisocial individual was “anyone who neglects to after his or her capacity try to honestly support themselves, and leads such an antisocial life that there is an obvious danger for public order and safety”.
- 70 A Swedish MP argued that “the primary reason for this phenomenon [prostitution] is, however, the demand side, and as long as society refrains from trying to reach the customers through information, it is highly probable that any action against the women will be useless” (Swedish Member of Parliament cited in Svanström 2006:155).

be placed – for the first time – “in the framework of a societal patriarchal structure since now male demand was what caused prostitution”. This event could be seen as the forerunner towards criminalization of the clients, which ultimately became the Swedish Model.

In sum, after periods of tolerance, regulation, intolerance, and repression towards prostitution in the course of the twentieth century, resistance grew to both the injustice of the double standard and the increasing stigmatization of sex work. In retrospect, this can be seen as the initial phase of the decriminalization social movement in New Zealand. This was embodied by a group of sex workers who established NZPC in 1987 and started a unique campaign to fight for the decriminalization of the sex industry, for equal rights, and for harm minimization for both sex workers and society. The interaction between important key factors played a significant role in the process towards legislative change in New Zealand. In the next chapter, I will explore – on meso level – the cultural and sociopolitical context in which NZPC’s campaign to decriminalization took place. The social movement concept of McAdam et al. (2008) will be applied in the next chapter as well.

## Chapter 6

# Meso Level: The Path to Decriminalization

“No matter how momentous a change appears in retrospect, it only becomes an ‘opportunity’ when defined as such by a *group* of actors, sufficiently well-organized to act on this shared definition of the situation” (McAdam et al. 2008:283).

In this chapter, elements of the New Zealand culture in which the policy debates between the opponents and proponents of the NZPC campaign took place will be outlined. In subsection 6.1, the focus will be on three ethical values that are rooted in New Zealand society. In subsection 6.2, I will elaborate on the question of whether New Zealand should be considered an inclusive or exclusive society. In subsection 6.3, four key sociopolitical events will be discussed that took place between the 1980s and 2003 and that were crucial in NZPC’s fight towards decriminalization: (i) the influence of the HIV/AIDS epidemic on NZPC’s establishment; (ii) the preparedness of academics, NGOs and other parties to advocate for NZPC’s ideals; (iii) the willingness of politicians to get involved in the parliamentary PRA process; and (iv) the influence of the late modern actuarialist thinking on the policy decision process. In this chapter, I will also take into account how political opportunities, as part of the decriminalization social movement, played a role in the eventual collective action.

The second part of this chapter (subsection 6.4) will give the floor to the sex workers themselves. How do they experience the effects of the integrative sex industry policy?

### **6.1 “We All Have the Same Accent”: Fairness, Equity, and Justice**

According to historian David Hackett Fischer (2012), the dominant characteristic of New Zealand’s culture is its deeply rooted feelings of fairness, equity, and justice. In the research in which he compared sociocultural developments in the USA and New Zealand, he discovered that although the former settlers in both countries could be considered dissenters and non-conformists, values in the two countries developed differently. Whereas from the start the settlers of the USA

considered liberty and freedom<sup>1</sup> to be the most important values,<sup>2</sup> settlers in New Zealand were primarily focused on the values of fairness and justice.<sup>3</sup> He believes that the latter wanted a new world without the social injustice, inequity, and deep unfairness of their homeland.<sup>4</sup> They wanted an equal and fair chance (Fischer 2012).<sup>5</sup> This aligns with Jordan who argues that from the beginning, many New Zealand settlers rejected the British class system and advocated for an open and more egalitarian society. In our interview, she adds that within this tradition, equity, fairness, and social justice were driving forces (RA2JJ). Although indicating that the development of this tradition has occurred within a tradition of delays, errors, and hesitations,<sup>6</sup> Fischer (2012) emphasizes the growth and power of this cultural development, which he describes as:

“an organic process that derived its dynamics from the creativity that is embedded in its history. The longer it continued, the deeper were its roots, the more potent its strength, and the greater its resilience” (Fischer 2012:169).

He also refers to the ontological features of being an open society according to the theories of Popper,<sup>7</sup> in which individuals get the chance to think for themselves and to make meaningful choices for their lives (Fischer 2012).

Here, the foundation for New Zealand’s characteristic cultural tradition was laid. A tradition in which, according to the far majority of the respondents of this research, the values of fairness, equity, and social justice have played, and still do play, a prominent role. An example is the signing of the Treaty of Waitangi in 1840 as well as the Waitangi Tribunal in 1975, which was set up to help rectify

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- 1 Fischer (2012:483-4) distinguishes the concepts ‘Liberty’ and ‘Freedom’: “Liberty is about the rights and responsibilities of independence and autonomy. Freedom is about the rights and responsibilities of belonging to a community of other free people”. As examples, he mentions the right to vote, or the right to participate freely in a community.
  - 2 These primarily British settlers (seventeenth century) felt themselves to be victims of British tyranny and persecution (Fischer 2012). The great ethical questions then centered on power, liberty, and freedom (Fischer 2012).
  - 3 Fischer (2012) argues that for nineteenth century British NZ settlers, liberty and tyranny were no longer hot issues in the United Kingdom. Rather, they experienced that social injustice, gross inequity, and deep unfairness had taken over the entirety of British society.
  - 4 Fischer (2012) argues that ‘justice’, ‘equity’, and ‘fairness’ – although all refer to ideas of right conduct – have fundamentally different core meanings in English usage. According to him, “justice refers to an idea of law, equity to principles of even or equal treatment, and fairness to not taking undue advantage of other in rivalry, conflicts, or competitions” (Fischer 2012:497).
  - 5 The New Zealand government founded programs of assisted migration with the explicit purpose of giving the incoming people a fair chance that was denied to them in Great Britain (see also chapter 4).
  - 6 For example, the Maori wars in the nineteenth century and fraudulent land claims (Belich 199; King 2003). Fischer (2012:169) refers to “a complex process of invention and rejection, achievement and failure, assertion and denial, reinvention and defeat, transformation and revival”.
  - 7 See Popper (1945).



the different understandings that had led to debate and conflict over the years. The New Zealand Government also supports the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which is focused on “cooperation, mutual respect, good faith, consultation, and partnership between indigenous people and the state” (New Zealand Human Rights Commission 2010).<sup>8</sup>

Other examples include the Women’s Rights Movements in New Zealand that during the first feminist wave succeeded in gaining women’s access to universities in the early 1870s, and during the second feminist wave – as the first country in the world – gained female suffrage<sup>9</sup> in 1893.<sup>10</sup> In the 1930s, women also entered into politics.<sup>11</sup> A third feminist wave in the 1960s resulted in new women’s rights such as the Equal Pay Acts.<sup>12</sup>

However, the fact that New Zealand functions as an open society, though it certainly contributed to the adoption of the sex industry decriminalization model, cannot be considered ‘the’ reason, since there are many open societies that have chosen an alternative policy option. Sweden and its Swedish Model is an example. In addition, the above-mentioned values can to a certain degree also be present in other countries with repressive regulations.

So, the question remains: are there other characteristics of New Zealand, apart from the ethical values of fairness, equity, and justice, that contributed to its unique decision to decriminalize the sex industry? To answer this question, we have to consider whether a typical New Zealand cultural authenticity exists at all. Following Root (1996:78), authenticity in any absolute pure form does not exist: “any notion of cultural authenticity carries with it a notion of inauthenticity, against which the former is evaluated”. Rather, it might be better to focus on elements that contributed through the years to New Zealand’s uniqueness. Then, we can trace within the frame of the ethical values of fairness, equity, and social justice a typical mixture of social developments in this country. From its beginning, there was more or less self-evident equal treatment for women, a desire to avoid British class-based society with its old hierarchical traditions, the mutual efforts of the Maori and Pakeha populations to integrate, the acceptance of female suffrage and women’s rights, and the respect for free choice and diversity.

Many New Zealanders considered these cultural values to be natural. They contributed to the current open liberal culture in this country, which led to a legal framework focused on gender equality, human rights, and comprehensive protection against all forms of discrimination or criminalization of marginalized and powerless people. Within this climate, important social reforms such as the

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8 See: [https://www.hrc.co.nz/files/8814/2369/9281/RRR\\_Treaty\\_chapter\\_web.pdf](https://www.hrc.co.nz/files/8814/2369/9281/RRR_Treaty_chapter_web.pdf).

9 Appendix XIX shows an overview of the dates in a number of countries in which organized feminism started and led to women suffrage.

10 A consequence of women’s empowerment was the repeal in 1910 of the CD Act which, as argued in Chapter 4, discriminated against women (Fischer 2012).

11 In 2002, thirty-one percent were women in NZ parliament (Fischer 2012).

12 Government Service Equal Pay Act 1960; the private part in 1990 (Fischer 2012).

female suffrage act in 1893,<sup>13</sup> women's access to universities (1870s), the 1898 Old Age Pensions Act, the decriminalization of homosexual sex in 1986,<sup>14</sup> the nationwide Health Needle and Syringe Exchange Programme 1988<sup>15</sup> (NSEP),<sup>16</sup> and, not least, the decriminalization of the sex industry (2003) could take place. Abel highlights that

“New Zealand was the first to do such kind of social reforms, and it is all about social justice and fairness” (RA5GA1).

Here, the question arises whether New Zealand could then be considered an inclusive or exclusive society – referring to Young's Exclusive Society (1999). Or is it neither?

## 6.2 New Zealand: Inclusive or Exclusive Society?

Young (1999:5) argues that the role of the welfare state was “to assimilate the deviant from the margins into the main body of society”. Although New Zealand sex workers<sup>17</sup> ultimately became included citizens with rights after the PRA was installed, nevertheless the comparison to the features of an inclusive society is problematic. The impetus to ‘cure’ deviants or to assimilate them, which was a crucial aspect of Young's inclusive societies, is not applicable to New Zealand. As we have seen, in this country sex workers are seen as individuals who are able to make their own choices, whether or not they fit within public moralities. Through New Zealand's values of justice, equity, and fairness, the sex industry was able to self-organize and sex workers did not need to become ‘one of us’, per se. Respect for diversity, thus, seems more in place than an inclusiveness built on assimilating deviant others.

Does New Zealand, then, rather corresponds to features of late modernity exclusive societies? New Zealand is a pluralistic society. Late modernity social features such as immigration of people from other societies, a rising individualism, and the demolition of community and family traditions also took place in this country in the last part of the twentieth century. However, instead of excluding its deviants, as often happened in late modern exclusive societies

13 See: <https://nzhistory.govt.nz/politics/womens-suffrage>.

14 See: <https://nzhistory.govt.nz/culture/homosexual-law-reform/homosexual-law-reform>.

15 The New Zealand Needle and Syringe Exchange Program (NSEP) is a health education and health promotion service for people who inject drugs. In May 1988 the Department of Health was ready to implement the NSEP. The initial programme allowed purchase of a pack containing ten 3ml×26g needles and syringes, a sharps container, condoms and AIDS information. In addition, in 1993 NZPC started provision of NSEP from their drop-in center in Auckland and Christchurch (Kemp and Aitken 2004).

16 See: <http://www.legislation.govt.nz/regulation/public/1998/0254/latest/whole.html>.

17 Here, I mention ‘New Zealand’ sex workers since the PRA has excluded sex workers without a permanent residency to work in the New Zealand sex industry (see Chapter 8).

(see Young 1999), New Zealand introduced social reforms (see subchapter 6.1). Thus, the anxiety, evoked by ‘difficult people and dangerous classes’ – which could lead to the exclusion of marginalized people – might have happened on an individual level, but it did not result in exclusive policies.

New Zealand does not fit into the features supposedly belonging to a modern inclusive society, nor does it relate well to all features of an exclusive late modern society. It includes marginalized groups, in this case sex workers, without aiming to socialize, rehabilitate, or cure them, by accepting different lifestyles, focusing on harm minimization for both the society and the sex workers.

Taken together, the decriminalization social movement in New Zealand could take place in a very unique social and cultural context. Although, as we will see in the next chapters, not all parties are always happy with the behavior of certain groups of sex workers, they nevertheless were, and are, not ‘vomited out’ by New Zealand society.

### 6.3 Sociopolitical Backgrounds

Alongside this cultural climate as above discussed, what other elements contributed to NZPC’s decriminalization plans? In this subsection, four sociopolitical events will be explored that have also influenced the decriminalization social movement.

#### 6.3.1 The HIV/AIDS Epidemic

“We felt if AIDS was to be kept out of the industry, the sex industry would have to be brought out of hiding” (Statement of an NZPC member 1991:272).

In the 1980s, the worldwide HIV/AIDS epidemic provided the impetus for the New Zealand Department of Health to appoint a representative of NZPC<sup>18</sup> to the National Council of AIDS in 1988.<sup>19</sup> Healy, Bennachie, and Marchall (2012:253) highlight the importance of this appointment since “this was the first appointment of a recognized sex worker to an official body which was charged with advising government”. Furthermore, NZPC was asked – and funded by government – to run an HIV prevention program specific to the needs of sex workers (Healy et al. 2010).<sup>20</sup> This invitation to present an HIV/AIDS prevention program impacted the functioning of NZPC for three main reasons.

18 An NZPC founding member, Catherine Healy, became one of the twenty-two members of the National Council on AIDS in order to make HIV prevention and control recommendations to the Minister of Health (MoH) (Healy et al. 2010).

19 According to Laverick (2013), the government targeted in particular gay men, injecting drug users, and sex workers as risk groups in the spreading of the HIV/AIDS epidemic.

20 According to Harrington (2012:340), “public health funding targeted community groups, run ‘by and for’ populations at risk, regardless of their legality, as a key technique in preventing the spread of HIV”.

First, the associated funding meant that, following Barnett et al. (2010:59), “politicians saw a sex worker-driven organization as a valid holder of public funds”. Second, NZPC, by presenting an action plan, could demonstrate both its preparedness and credibility to cooperate, as well as its responsibility and role as participants in society (Healy et al. 2010). It anticipated on a socio-political opportunity to come forward. Third, it facilitated NZPC’s objective to distribute information and education about safe sex practices to sex workers.<sup>21</sup>

NZPC agreed to run a HIV/AIDS prevention program under the condition that the coordination with the government would not constrain its autonomous nature: “the group was keen to avoid an overly rigid approach and being controlled by a government agency” (Healy et al. 2010:47). Rather than having indirectly-involved people commenting on sex workers’ issues, NZPC preferred to present their own ideas on items such as HIV prevention and law reform (Healy et al. 2010). It wanted to implement sex worker cultures into these prevention programs.

The HIV/AIDS prevention program NZPC presented was based on the Ottawa Charter<sup>22</sup> (Healy, Bennachie, & Marshall 2012) and contained a number of suggestions, such as the establishment of community drop-in centers where sex workers could meet and receive all information needed about safe sex practices. This resulted in the creation of six NZPC community centers (see Appendix XI). Other suggestions resulted in the development of a condom distribution program in the bigger cities, the distribution of information and education flyers about STI prevention,<sup>23</sup> the needle exchange (see above), the realization of a wide cooperative network with sex workers, operators, health professionals, local and national authorities, and NGOs (Healy, Bennachie and Marchall 2012). Also, NZPC continues to prioritize media presentations and the preparation of submissions to parliament on relevant acts (Healy et al. 2010; Chetwynd 1996). In sum, the developments, as above discussed, supported NZPC to bring the social movement decriminalization ideology to the society.

Next, I will analyze to what extent other parties got motivated to add their voice to NZPC’s call.

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21 This funding allowed the group to focus on issues including the legal environment of prostitution and public health standards in the sex industry (New Zealand Parliament, Prostitution Law Reform in New Zealand, published 10 July 2012).

22 The Ottawa Charter refers to the first International Conference on Health Promotion in Ottawa 1986 (World Health Organization – WHO).

23 NZPC distributed a magazine, *Siren* (Sex Industry Rights and Education Network). It provided information about HIV/AIDS prevention as well as on other sex industry-related issues (Jordan 1991). This magazine has been replaced by NZPC’s ‘bible’, named *Stepping Forward*, containing extended information on sex industry-related issues such as safe sex practices, health checks, and national and local legislation.

### 6.3.2 The Preparedness of Academics and Other Parties to Step In

“(...) churches, community organizations, friendship networks, and professional associations provide resources for movements and often engage in similar kinds of protest-oriented activities, even though these are not their principle purpose” (Smith 2008:318).

Mathieu (2003:41) emphasizes the importance for sex work (decriminalization) social movement organizations to link with other communities in society, especially since sex workers often “constitute a population without any protest tradition or experience”. They could bring the resources the sex workers lack. Smith (2008:318) also highlights the significance of involving other groups in the social movement strategy: “extra movement’ groups have routine contact with broad segments of society, they promote wider social movement participation and legitimacy”.

To underpin its decriminalization arguments, NZPC searched for evidence-based backing of its principles (Chetwynd 1996; Barnett et al. 2010). Apart from regular evaluations of its own activities,<sup>24</sup> NZPC started to build relationships with academics from the Department of Public Health and General Practice, University of Otago, the Christchurch School of Medicine (CSoM).

NZPC’s contacts resulted in increasing academic interest in research<sup>25</sup> on NZPC process evaluations and on public health topics in the sex industry, such as research on sex workers’ opinions on their health and safety and HIV prevention knowledge from both sex workers’<sup>26</sup> and clients’ perspectives<sup>27</sup> (Barnett et al. 2010; Harrington 2012).

Pérez-y-Pérez (2009:141) emphasizes that NZPC’s proactive attempts to work with academics and researchers contributed to the reframing of sex workers as sex professionals instead of as irresponsible individuals. She adds that this collaboration replaced “deviance and criminal discourses with health, work and rights discourses” (Pérez-y-Pérez 2009:141). Harrington (2012:340) argues that NZPC’s willingness to submit its own research and to cooperate with academics produced important knowledge regarding the risks within the New Zealand sex industry: “NZPC’s ability to shape academic research derived

24 As a response to the Department of Health contract (Chetwynd 1996).

25 Jordan 1991; Chetwynd 1992; Chetwynd 1996; Chetwynd & Plumridge 1993; Chetwynd & Plumridge 1994; Plumridge & Abel 2000; Plumridge & Chetwynd 1994; Plumridge et al. 1996; Plumridge 2001; Plumridge & Abel 2000.

26 A finding of this pilot study was that sex workers were aware of how to prevent the spread of HIV; for instance, they reported extensive use of condoms in their sexual contacts with clients (Chetwynd 1996).

27 Chetwynd (1996) reports that clients knew about HIV prevention and practiced safe sex in their commercial sex encounters, but less frequently with their casual girlfriends or with their wives. She adds that many clients demonstrated a passive attitude to condoms, probably due to a lack of fear of HIV, the absence of a sense of personal risk, or a more generalized inability to communicate and initiate condom use (Chetwynd 1996).

not from rigid gate-keeping, control or suppression but rather from providing access to a rich research field along with a particular perspective on that field”.

In turn, NZPC could offer its support in connecting scholars with sex workers, which enabled academics to directly interview sex workers and hear their voices, instead of only writing about them: “it gave sex workers a platform to represent their lives from their point of view” (Harrington 2012:340). Abel, Fitzgerald and Brunton (2010:160) mention that by cooperating with marginalized populations such as sex workers and making them partners in academic research, sex workers actually became “active players in the social construction of knowledge, empowerment and social change”. Here, we can note the significance of building up an environment of collaborative governance (as discussed in Chapter 4), meaning the importance of including sex workers in the debate. As Abel states:

“Policies can only work when you have the information from the community itself. That’s why so many interventions fail. It sounds like a good idea but when you put it into practice, it does not work. The majority of NZPC have worked in the sex industry, so they understand what can work and what don’t work” (RA7GA2).

NZPC felt empowered by academic research that provided arguments to repeal the existing legislation. Research into the sexual and personal safety of female sex workers at the time showed that it was important not only to educate sex workers about the risks of being around violence and personal strategies for avoidance of violence, but also to revise the existing policy, occupational health, and social attitudes towards sex workers (Plumridge & Abel 2000). Plumridge and Abel (2000:83), writing before the PRA, comment that new legislation was considered because “some measures of decriminalization may be needed to bring the sex industry into the open, and eradicate coercion, violence, and exploitation”. Academic research was an important impetus to further scrutinize the repressive and controlling law and order policy.

In the 1990s, NZPC also succeeded in developing an extensive network within government and NGOs (Healy, Bennachie & Marshall 2012). Women’s groups, such as the National Council of Women, the Business and Professional Women’s Federation and the Young Women’s Christian Association (YWCA), aligned with NZPC’s goals to eliminate the repressive sex industry legislation.<sup>28</sup> The injustice of the double standards was the biggest thorn in their side. As quoted in Jordan (2010:38), the Executive Director of the YWCA stated:

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28 In this context, Barnett et al. (2010:61) also mention the Venereological Society, the NZ Aids Foundation, the Public Health Association, the Massage Institute, the National Council of Women, the Maori Women’s Welfare League, the Council of Trade Unions, but also individual Catholic nuns and church leaders who advocated for decriminalization.

“The law is structured so that it acknowledges that the act of prostitution occurs, but ensures that it occurs only on the clients’ terms. It labels sex workers as the criminals and their customers as victims. Allowing women to work without fear of prosecution would at least help provide a safer working environment.”

These ‘conscience constituents’ particularly focused on the aims of the social movement to end repression and to strive for better working and living conditions for sex workers. Their support did not primarily intend to abolish nor promote prostitution. As Mathieu (2003:43) states: “different people, belonging to different social worlds, who are involved in the same social movement do not necessarily share the same goals or definitions”.

Abel and Fitzgerald (2010) emphasize the “smart” strategy of NZPC’s decriminalization campaign. Instead of radical street protest demonstrations that could have led to unfavorable public moral panic through the visibility of demonstrating sex workers, NZPC negotiated at the highest level with involved organizations and politicians (Abel & Fitzgerald 2010). Within a climate of collaborative governance, NZPC advocated for the understanding that (i) harm was caused not by the nature of sex work, but rather by the repressive laws applied to sex workers in a criminalized environment; and (ii) decriminalization would minimize harm since it could provide a legal work climate for sex workers (Healy, Bennachie & Marshall 2012).

Could this determination of the NZPC leaders which academic Radačić (2017:8) describes as “a key factor for the law change” (see also Chapter 7) also inspire politicians to actively participate in the debate? After all, they had to express their opinion about the Prostitution Reform Bill (PRB)<sup>29</sup> in the final vote.

### 6.3.3 *The Parliamentary Process Towards Decriminalization*

“The formulation and adoption of national law is the result of coalition politics – coalitions of stakeholders within, between and outside parties. Groups of stakeholders, loosely organised in networks of more or less likeminded actors, develop and try out ideas and solutions. Key players, often those who occupy veto points, introduce these ideas in parliament. Based on the composition of parliament, a winning majority for a particular proposal is more or less likely. In this sense national policy-making is remarkably fragile” (Wagenaar et al. 2017:189).

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29 The parliamentary process (New Zealand has one single Chamber of 120 Member of Parliament) of a Bill, here the Prostitution Reform Bill, involves four steps in the Chamber: three readings and the vote taken after each. If the Bill passes the First Reading, it goes to the Select Committee (represented by a number of political parties), which treats the submissions. Then, the Second Reading in parliament follows. After changes, votes follow on parts or clauses of the Bill in a stage called the Committee of the Whole House. After the Third Reading, the final vote ends the process (Barnett et al. 2010).



In Chapter 3, we discussed the significance of the interaction between the three aspects that could influence the development of the (decriminalization) social movement. In addition to the important political opportunity that was offered through the fight against the HIV/AIDS epidemic, other political opportunities could empower the ongoing development of the decriminalization social movement in New Zealand. NZPC aimed to transfer the growing understanding of the inevitability of sex work and the necessity of a pragmatic human rights-based approach into a parliamentary campaign. In 1989, the organization presented its first submission for decriminalization in parliament to the Select Committee on Justice and Law Reform on the Crimes Amendment Bill (Healy et al. 2010). The main reason for this submission was NZPC's genuine concern about the consideration to further criminalize sex workers, which according to its staff members, would have been detrimental to the battle against HIV/AIDS (Healy et al. 2010).

Next, I will elaborate on four political events/opportunities that came to the fore during the campaign.

#### *6.3.3.1 From First-Past-The-Post to Mixed-Member-Proportional*

During NZPC's lobbying process, an interesting change took place in New Zealand's electoral parliamentary system. In 1993, its First-Past-The-Post (FPP) system which normally meant a dominant position for only two parties – National and Labour – had been replaced by the Mixed-Member-Proportional (MMP) system.<sup>30</sup> This electoral change stimulated the inter-party deliberations and brought “a diversity of politicians from different positions into a mix” (Abel & Fitzgerald 2010:260). For NZPC, the support from smaller parties such as the Progressive Party and United Future suddenly gained more significance.<sup>31</sup>

#### *6.3.3.2 From Unawareness to Awareness*

Conservative as well as liberal politicians became more and more interested in the goals of the intended law reform.<sup>32</sup> In addition, motivated by the unfairness of the existing prostitution laws, Labour MP Barnett decided to adopt decriminalization as his own political project which, as he believes, “was a justification within the values of the party” (RNP1).

Here, we can identify another political opportunity in favor of NZPC's decriminalization campaign: the active support from a politician on MP level. The NZPC National Coordinator argues that this accessibility of a passionate politician meant “an important boost” in the lobbying process to achieve more

30 Barnett et al. (2010:58) clarify that “the MMP system made institutionalized multiparty politics possible, as well as the formation of coalition and minority governments as a matter of course”.

31 The 47th New Zealand Government (since the election of 2002) was a coalition between Labour and the small Progressive party with United Future.

32 For instance, the Labour MP Trevor de Cleene wrote a newspaper opinion piece titled “The case for a legalized sex industry” (*The New Zealand Evening Post* 05-09-1989).



political support since this MP could mobilize his own party, and, in its stream, perhaps MPs from other parties (NZPC 4).

### 6.3.3.3 *A Conscience Vote Instead of a Party Vote*

NZPC could also benefit from the fact that the upcoming PRB was introduced as a conscience bill, as a Private Member's Bill, which meant that individual MPs of all parties could investigate the public health and human rights arguments of the Bill on its values and on their own behalf (Abel & Fitzgerald 2010). With the help of lawyers, academics, and others, NZPC presented a model reform law in 1994 (New Zealand Parliament 10 July 2012). Its core aims, not surprisingly, concerned the protection of public health and the prevention of STD and HIV, the improvement of sex workers' human rights, and new legislation to eliminate the existing double standard (Barnett et al. 2010; RA5GA1).<sup>33</sup>

NZPC aimed to shape public and policymaker perception of the decriminalization social movement. During the lobbying process, it organized public debates and built up a profile in the media (Healy, Bennachie & Marshall 2012). It introduced its ideals to the Select Committee, wrote submissions, and expanded its contacts with national politicians. Radačić (2017) emphasizes the importance of those private meetings, by which sex workers were able to clarify to MPs their worries and anger about the injustice of the existing laws. Abel also highlights the importance for politicians to hear the voices of the involved people themselves when considering changing policies:

“Policies can only work when you have the information from the community itself. That's why so many interventions fail. It sounds like a good idea but when you put it into practice, it does not work. The majority of the NZPC have worked in the sex industry, so they understand what can work and what don't work” (RAGA2).

In this process of changes and opinion-forming, parties – from sex workers and NZPC to NGOs and policymakers – were prepared to hear and inform each other in order to be able to make well-balanced decisions about renewing sex industry policies. Here, we can again note that the decriminalization social movement in New Zealand took place within an atmosphere of cooperation and collaborative governance (See Chapter 4).

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33 A professor of Law at Victoria University of Wellington wrote the final draft of the Prostitution Reform Bill. According to Barnett et al. (2010), much of the original text of this draft was incorporated in the final PRB 2000.

In October of 2000, the PRB<sup>34</sup> received its First Reading<sup>35</sup> and was passed by eighty-seven votes to twenty-one. Subsequently, the Justice and Electoral Select Committee needed two years to hear and read all of the public submissions.<sup>36</sup> It meant the beginning of an intense debate between the advocates of the Bill who mainly were sex workers, public health authorities, human rights groups, students, progressive religious/rationalist groups, and women's organizations, and opponents of the Bill who mostly came from radical feminist and Christian fundamentalist groups (Barnett et al. 2010).

Researcher Alison Laurie (2010), who analyzed fifty-six submissions<sup>37</sup> on the PRB based on feminist arguments, concludes that most feminist submissions supported NZPC. These women based their arguments on liberal feminist ideas of equality and fair treatment for women<sup>38</sup> and believed that not only could decriminalization challenge the double standard or stimulate sex workers to leave the industry, but also that criminalization of the sex industry might create an environment in which sex workers could be more easily abused (Laurie 2010).

On the other side, a small group of New Zealand feminists opposed NZPC's ideas, in particular the New Zealand Women's Health Action Trust (WHA).<sup>39</sup> They shared the ideals of the international radical feminist<sup>40</sup> vision to eliminate prostitution, which could lead to fierce debates between opponents and proponents of the PRB.<sup>41</sup> An NZPC staff member describes a pre-law reform public debate meeting that was organized by the opposition:<sup>42</sup>

“The audience treated us (NZPC) like outcasts, it reminded me of a witch hunt. The audience booed and heckled at us, called us names. On that evening,

34 The purpose of the PRB was to decriminalize prostitution-related activities and make prostitution subject to special provisions in addition to the laws and controls that regulate other businesses. This purpose was not intended to endorse prostitution as an acceptable career option but instead to enable sex workers to have and access the same protections afforded to other workers (New Zealand Parliament, 10 July 2012).

35 The term 'reading' dates from the time when bills were read aloud in the House of Commons in Great Britain. Only the title is read aloud in the New Zealand House of Representatives.

36 Of 221 submissions to the Justice and Electoral Committee, approximately forty-one percent generally supported the Bill, fifty-six percent were generally opposed and three percent were neutral (New Zealand Parliament, 10 July 2012).

37 See Laurie 2010:101.

38 Only a few submissions mentioned male and transgender sex workers (Laurie 2010:99).

39 Women's Health Action is a social change organization, working to improve the health and well-being of women, their families and whanau, and communities; <https://www.womens-health.org.nz/about-us/>.

40 Radical feminists such as Andrea Dworkin, Catherine A. Mackinnon, Kathleen Barry, Janice Raymond, and Sheila Jeffreys (Laurie 2010:88-9).

41 Some feminists from abroad who opposed decriminalization of sex work and actively campaigned or still campaign for the abolishment of prostitution, such as USA neo-abolitionist activist Melissa Farley, supported the anti-decriminalization campaign by expressing fear for the public health if the PRA would become realized (Dominion Post 25-06-2003).

42 NZPC and a member of parliament (Green MP) debated against Sandra Coney and Denise Ritchie (NGO *Stop Demand*) who both opposed the PRB (e-mail AP NZPC 19-02-2015).

individual NZPC representatives stood up, holding placards with the slogans Sandra Coney<sup>43</sup> had used years earlier for Abortion rights: ‘My Body, My Choice’. We marched up and down the aisles, holding the placards over our heads. The hatred in the room was so indescribable. I can’t remember if we won the debate. I remember holding the placard over my head, yelling at the top of my voice: “My Body, My Choice” with other sex worker peers. I didn’t know who Sandra Coney was at that time, I had heard of her earlier through my European peers. All Sandra Coney represented to me was a white woman who stood strongly against sex workers feminist arguments, and did not support decriminalization. She argued that the Swedish Model would solve sex workers problems. At that moment, I remember thinking, ‘she is talking about my life, and the lives of other sex workers’. We had to do something about this opposition idealism. Come out of the closet (meaning, come out as a sex worker publicly) (NZPC e-mail AP 19-02-2015).”

WHA activist Coney clearly disapproved prostitution:

“I would like women to not have to do work like that [prostitution]. It’s degrading work, harmful work, it’s not just psychologically harmful, but there can be long term physical consequences. To me, in a country like New Zealand that is prosperous and egalitarian, we can provide jobs for women that give them dignity and that they can be proud of doing and that their families can be proud of what they’re doing” (RWHA).

According to Harrington (2012:343), WHA activist Coney feared that decriminalization “would lead to an expansion of the sex industry and the forms of masculinity and femininity hegemonic in that industry”. This aligns with the opinions of the group of politicians who feared an influx of non-resident sex workers and sex tourists, which eventually would transform New Zealand into a country for sex tourism (RA3LA; RA5GA1). National politician Steward (NZ First) who voted against the PRB, argues now that:

“we did want it to be more liberal than that what was. One of our big concerns was that, once it [sex work] was decriminalized, the sex workers could legitimately go along to schools, to school career evenings, and say ‘Hi, this is a real job that you can actually get’. We thought, we all liked people to aspire higher. (...). The other thing (...) was the lack of control for sex workers and the impact what it would have on our communities (...)” (RNP2).

Here, we can note a fear for the impact of decriminalization on the society. Fear in contemporary societies, according to Furedi (2007:5) ‘(...) is unpredictable and free-floating. It is volatile, often because it is unstable and not focused on

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43 Sandra Coney was a leading New Zealand health activist and city council politician who opposed the decriminalization ideals (Harrington 2012:343).

any specific threat'. This fear for the unknown came also to the fore in readers' letters to the media:

“Sir. Concerning the proposed legislation to decriminalize prostitution, are we ready to have the local brothel next door to the local dairy or school, or for the advertising in newspapers, television or radio? Would you like sales calls to your home? Would New Zealand benefit from decriminalizing prostitution? Would we promote New Zealand as the 24/7 red light district family tourist destination? Can the medical system afford to care for the people who will contract STD and be infected with HIV? Prostitutes who become pregnant? Will they seek recognition from the NZQA [New Zealand Qualifications Authority]? Imagine that. We don't understand the logic of MPs who wish to decriminalize prostitution, but wish to make criminals from parents who spank their children. Frankly, we see no benefit for the country, families or our children. Nothing good ever comes from immorality” (The Press 21-11-2002).

Meanwhile, the political process continued. The Second Reading of the PRB followed in 2002 and was passed by a personal vote of sixty-four to fifty-six, which according to Barnett et al. (2010) reflected the influence of a stronger opposition and the more conservative composition of the parliament at the time. Amendments in the Committee of the Whole House followed.<sup>44</sup> However, efforts of opponents to promote criminalization of sex workers' clients (the Swedish Model) or of both clients and sex workers<sup>45</sup> all failed.

National politician Logan (New Zealand Green Party) mentions two “quite persuasive” arguments that arose for many people to support the PRB as the process went on: (i) the public health issue and the safety and well-being of workers under criminalization, which, as she emphasizes, created an unsafe environment for workers as well as for the general public;<sup>46</sup> (ii) the importance of the relationship between the sex work industry and some communities of disabled people, who through decriminalization suddenly became able to legally receive sex services (RNP3).

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44 For instance, a system of certification for brothel operators was included along with prohibiting sex workers without a permanent residency license to work in the New Zealand sex industry (New Zealand Parliament 10 July 2012).

45 The amendment to criminalize the client was defeated by nineteen to ninety-six votes. The amendment to criminalize both the client and the prostitute was defeated by twelve to one hundred three votes (Barnett et al. 2010).

46 For instance, the possession of condoms were used as evidence to arrest sex workers, but condoms were needed in relations to safe sex practices.

After the Third Reading<sup>47</sup> in June of 2003, the final vote ended in a victory for the NZPC advocates by sixty to fifty-nine votes, with one abstention.<sup>48</sup> New Zealand became the first country in the world to decriminalize the entire consensual sex industry.<sup>49</sup> According to Barnett, by enacting the PRA,<sup>50</sup> New Zealand distanced itself from being a “nanny state”:

“New Zealand is the only country in the world where two adults who are both legally able to give consents – neither has a mental disability – can have sexual relationships without the law affecting them” (RNP1).

Nevertheless, fact is that the vote was a very close finish in favor of the decriminalization social movement. This raises the question: what arguments could NZPC and its advocates have used during its lobbying campaign to convince those MPs who were not aligned with the liberal nor the abolitionist vision. In the next subsection, I will explore several possible answers.

#### 6.3.3.4 Political Arguments Behind Voting for PRA

Considering the views of the MPs who voted on favor of the Bill, we see that they had a variety of reasons. Following ex-Labour MP Barnett, who played a key role in the decriminalization campaign process (see above), the libertarian MPs (ACT) liked the PRB because it removed the state influence from people’s lives and freedoms, since commercial sex work is an adult consensual activity. A group of conservative National Party MPs saw it as “a liberal and progressive cause, and also appreciated the increased freedom of the individual”. The socialist MPs (Labour) voted for the bill based their beliefs, according to Barnett, in women’s rights and public health reasons.<sup>51</sup> Green MPs also argued in favor of women’s rights (e-mail TB 24-03-2018; RNP1). Here, we can recognize the liberal feminist ideology.

Could other ideologies have played a role in the debate as well? After all, sixty votes to fifty-nine does not indicate a clear majority for the liberal feminist vision nor for the radical feminist/abolitionist vision. Here, I refer to the subsections 3.2 and 4.2.5.2, in which I already described the late modern actuarialism thinking. Could this managerialist, risk-preventive, efficiency-

47 This Third Reading is usually a summing-up debate on a bill in its final form. The vote at the end of the debate is the final vote in the House to either pass the bill or reject it. If the bill is passed, there is one final step before it becomes law: the Royal assent, the signature by the Sovereign or the Sovereign’s representative in New Zealand, the Governor-General (<http://www.parliament.nz/en-nz/about-parliament/how-parliament-works/laws/>).

48 The Labour MP who abstained was the New Zealand’s first Muslim MP, Ashraf Choudhary.

49 Appendix X shows an overview of the PRA main aspects.

50 The enactment of the PRA meant the repealing of the MP Act 1978 and provisions relating to soliciting and brothel keeping under the CA 1961 (Ministry of Justice 2009).

51 The opponents came from right across spectrum (National) as well as from conservative Labour (RNP1).

oriented argumentation<sup>52</sup> have had an additional impact on the parliamentary PRA decision process? In fact, this actuarialist ideology of excluding deviants strongly conflicts with the NZPC humanitarian ideology, which is particularly focused on elements such as inclusion and harm minimization for both public and sex workers. So, one could ask, within an environment of collaborative governance, could the NZPC campaign, consciously or unconsciously, have brought together elements of their humanitarian-based approach and actuarial/managerial thinking to meet the concerns of the parliamentary doubters? In theory, decriminalizing the sex industry could have been perceived as advantageous through arguments of effectiveness, efficiency, and lowering social costs; after all, it probably did lead to lower costs for unnecessary extensive court cases, incarcerations, and other prison costs. However, according to key negotiator MP Barnett, the political PRB deliberations at the time did not really deal with issues such as efficiency or financial advantages (e-mail TB 24-03-2018).

Rather, we should here focus on three other elements of actuarialist thinking. We will first examine the factor ‘neutral morality’, since this element comprises the essence of the NZPC campaign. Next is the factor ‘managerialism’, since this element focuses on pragmatism and is found in the pragmatic approach of the decriminalization social movement and its advocates. In addition, the NZPC decriminalization campaign had already demonstrated the bankruptcy of the existing repressive exclusion policy (see previous chapter) and opted for self-organization for sex workers. Self-organization could influence the ongoing unproductive and expensive enforcement efforts by police and other authorities, which then could become dispensable.<sup>53</sup> Apart from this, pragmatism also correlates with the (international) tendency of shared responsibility strategies that transfer administrative tasks to local communities, NGOs, and individual citizens (Oude Breuil & Siegel 2012). In the third place, the factor ‘harm minimization’ corresponds with NZPC’s objective to advocate for harm minimization in favor of both society and sex workers. Here, it is important to realize that the debate took place within the frame of the deep-rooted New Zealand ethical values of ‘fairness, equity, and social justice’ (see above). The actuarialist idea of excluding deviants, here the sex workers, did not really align with these ethical values, nor did the idea to realize a harm minimization strategy only regarding society (and not marginalized groups). Abel clarifies

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52 Late modern actuarialist thinking is not interested in moral condemnation of sex work. Rather, its main focus is on the control of the risks, on minimizing the harm for the society, improving its safety, and – not least – lowering costs (see Young 1999). Late modern actuarialists do not advocate for rehabilitation or re-education programs for the ‘other’ either. They accept that certain deviants do not comply to the norms of the community and, depending on the risks, exclude them (see Simon 1987:85).

53 According to Barnett, “MPs thought the sex work act was not inherently criminal, and to make it illegal wasted police and court time” (e-mail TB 24-03-2018). His statement refers to the considerations at the time to search for a pragmatic solution for the complex sex industry.

that gradually the arguments to support the PRA showed a shift in focus from social injustice to the benefit of harm minimization (RA5GA1).

So, within the collaborative negotiations, these arguments could have had a conscious or subconscious influence on the pragmatic actuarialist thinking of some MP doubters in favor of the NZPC campaign, through which the PRA narrowly became a reality. This is illustrated by a quote from MP Smith, who stated that he made up his mind around three hours before the vote:

“You don’t condemn someone just because they may be sinners in your eyes, even if you don’t agree with some of the things they do (...). So long as they are not hurtful to others, they should be treated with decency” (MP Smith in *Dominion Post* 27-06-2003).

Taken together, the actuarialist concept is incorporated in the New Zealand thinking, but is separated from the idea of exclusion.<sup>54</sup>

#### 6.3.4 *The Role of the Media*

Opinion-forming public debates between opponents and proponents of the PRB are visible when reading national and regional print media articles around the vote in 2003. In New Zealand, the media played an important role in influencing the decriminalization campaign. Not least due to the hidden and marginalized nature of the sex industry, both the public and politicians are often dependent on media articles to get informed about the industry (Fitzgerald & Abel 2010:198). This includes, at the same time, the power of the media. For example, stereotyping sex workers as dirty and as a threat for public health can not only further stigmatize the occupation but can also influence the opinions of the public and politicians about the industry. Such articles, however, did not appear so much in the New Zealand media. Fitzgerald and Abel (2010) note that the majority of the investigated articles<sup>55</sup> described the PRA “in a neutral tone” (see also Appendix XVII which shows several article headlines). This aligns with the opinion of former Labour MP Barnett who writes that “all through the campaign there were ‘reality’ media stories which focused on what

54 Sections of the PRA foreground a number of these elements. PRA’s core goal – decriminalization – meant the inclusion of sex workers and brothel operators. Furthermore, the PRA includes harm reduction/minimization for both society and the sex workers (PRA Part 1 Section 3(a)-(d)). Additionally, Parts 2-4 of the PRA determine risk control regulations. For example, TAs are allowed to enact bylaws to regulate the local sex industry (PRA Part 2, section 12-14). Furthermore, there is the ban that restricts non-resident sex workers from working in the New Zealand sex industry, which is also related to risk control (PRA Part 2 Section 11) (see also Chapter 8). Finally, the repeal of all previous prostitution acts not only relates to a transfer of responsibilities to NZPC, but could also lead to fewer police and judicial intervention and, in turn, to lower social costs.

55 Fitzgerald and Abel (2010) investigated 218 news articles, 115 published letters to the editor, and 28 editorials related to the PRA from 2003 to 2006.



really happens in the sex industry. More than a few highlighted these issues. The ‘moral’ issue was too philosophical for our media, and they preferred to reflect real life and pragmatic approaches” (e-mail TB 24-03-2018).

A considerable number of articles, however, were focused on moral disapproval of the existence of sex work or demonstrated feelings of fear for public health or for expansion of the sex industry due to the decriminalization (see again Appendix XVII). Although the opponents’ impact increased in the course of the campaign, their messages, according to Barnett et al. (2010), actually remained not evidence-grounded. The arguments of proponents, supported by academic research (as discussed above), got more foothold. As argued by Barnett:

“Whatever you [politicians] choose, you [sex workers] want to be protected, to have rights and not to be abused, and to be able to leave the industry. The fact that people [sex workers] were trapped in the industry, trapped by discrimination, trapped by the bonds and the fines they had to pay. There was no power balance between the sex worker and the manager. That was persuasive [in the opinion-forming]. If you want people to leave the sex industry, then you [the sex industry] have to be as open as possible” (RNPI).

In sum, the decriminalization social movement in New Zealand – which was, and still is, particularly embodied by NZPC – did achieve its aim, contrary to efforts of other decriminalization social movement organizations. The interaction of the three aspects – political opportunities, strong sex workers collective, and collective adherent awareness of injustice (see Mc Adam et al. 2008) – took place within New Zealand’s cultural ethical values of fairness, equity, and social justice. This appears to have played an important role in the decriminalization process that ended with the enactment of the PRA in 2003. Despite obstacles such as (i) the stigma on sex work and discrimination against sex workers; (ii) the resistance of domestic and international abolitionists; and (iii) the presumed incapability of a ‘marginalized’ social movement organization, NZPC succeeded in reshaping the terms of the public and political discourse, contrary to many of its allies abroad.<sup>56</sup> For a small decriminalization social movement organization, the legislative change was a unique success. In Chapter 7, I will further elaborate on the structure and functioning of this organization.

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56 A comparative research with the aim to further investigate the developments of decriminalization social movement organizations in other countries could be helpful to understand the impact of national policies on the work circumstances of sex workers.



#### **6.4 Working in a Decriminalized Environment: The Sex Workers' Views**

“You don't rescue people by criminalizing them. It doesn't work” (SW23).

Sex workers were unanimously positive in their opinions about the effects of the law change regarding their work circumstances. Hardly any respondent sex worker seems to doubt the benefits to the sex industry that were realized after the enactment of the PRA. Moreover, no one desires a return to the clandestine pre-PRA period, with no rights nor legal protection. Some of them still remember the unfair double standards and repressive measures:

“Street-working-wise, it [the PRA] was a relief. It was very nice actually to just be able to do what you wanted to do, not being hassled, and just carry on, no pressure, no stress, no fear. Because that is what it [pre-PRA] was, it was fear of getting arrested. I mean, a lot of people were behind on the streets and in parlors just to survive, so if you got arrested and you needed that money the next day (...) That's another good point about it, you know, that you feel safe and you can actually work without being arrested, yeah” (SW14).

New or skilled sex workers who entered the industry after 2003 also see clearly the benefits that the present legislation provides to the sex industry:

“Probably many of my colleagues in the past may have been treated quite badly by their employers, in a brothel or agency, and since the PRA, sex workers enjoy the same level of protection than people that work in other professions” (SW13).

These sex workers' experiences also align with the findings of the Prostitution Law Review Committee (PLRC) who concluded that after five years of decriminalization, “the PRA had been effective in achieving its purpose and that the majority of people involved in the sex industry were better off under the PRA than they were under a criminalized system” (Fitzharris 2010:114; Government of New Zealand PLRC 2008).

The views of the interviewed sex workers seem to be in accord with an important initial objective of the PRA: safeguarding the human rights of sex workers, protecting them from exploitation, and promoting the welfare, occupational health, and safety of sex workers (PRA Section 1.3).

However, could the PRA genuinely improve sex workers' occupational health, and at the same time challenge the violence in the sex industry? To answer this question, I will particularly focus on the perceptions of the respondent sex workers themselves regarding their health and safety. The PLRC already mentioned in 2008 that there was little the PRA could do to ‘totally’ prevent abuse or even severe violence in the sex industry (Fitzharris 2010:113). Unfortunately, it must be said that the four dramatic murders of street-based

sex workers in Christchurch<sup>57</sup> confirm that the New Zealand sex industry is not ‘guaranteed-abuse-and-violence-free’. However, at the same time, the PLRC acknowledged that ‘the improving relationship between sex workers and the police made it easier for sex workers to make complaints following violent encounters’ (Fitzharris 2010:113).

Indeed, the vast majority of the participant sex workers experience a safer work environment. Even street-based sex workers indicate that the ability to report abuse and violence gives them a feeling of justice and police protection, although a number of them remain reluctant in reporting violence “as a perception of bias” (Abel & Sweetman 2018). In fact, most of the current sex workers appear to be used to their ‘self-evident’ rights. And although not every participant sex worker has a detailed awareness of alternative (repressive) sex industry policies, most of them realize that the present legislation offers them a great deal of safety, as noted by one participant sex worker:

“In a lot of countries, there are a lot of victims of homicides of sex workers. They have no rights, you know, no one speaks for them. They look to New Zealand and think (...), we would want what you have worked for” (SW3).

Curiously, two of the forty-one participant sex workers did opt for the Swedish Model:

“No, I don’t support it [decriminalization]. (...). It would be great if the law is doing for what it is meant to do, for the safety and what decriminalization meant for the sex worker, but it hasn’t. It didn’t do what it meant to do” (SW22).

These two sex workers are disappointed by the incapacity of the PRA to prevent all exploitation and abuse of sex workers. They support the Swedish Model ideology as promoted by some NGOs in New Zealand, such as *Freedom from Exploitation* and *Stop Demand*. Often inspired by conservative Christian or radical feminist visions of eliminating prostitution, representatives of these NGOs do not expect good results from decriminalization (RNGO2; RNGO3).<sup>58</sup> Just as opponents of the Swedish Model argue that criminalization results in a deterioration of the work circumstances for sex workers, these NGOs suggest that the decriminalization policy results in increased vulnerability for sex workers. If both views are true, it would mean that state prostitution policies have no relevance. As discussed in Chapter 4, however, I agree with Weitzer (2015:83) that ‘law and state policy can and do impact the social organization of sex work, power relations among participants, and their lived experiences’.

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57 See also Chapter 7.

58 Some opponents of decriminalization tried to force the government to have a referendum to overturn decriminalization. However, they did not succeed in collecting enough signatures (the minimum was ten percent of enrolled electors) (Fitzharris 2010).

In fact, the majority of all participant respondents – whether directly or indirectly involved in the sex industry – are convinced of the advantages that the decriminalization offers regarding both health and safety of the New Zealand sex workers. An MP who voted against the PRA, admits:

“I rather live in a society where prostitution didn’t exist – but that it exists, it’s better that we legislate for it, that it’s visible. Because, when it’s visible, we can deal with the issues, whereas if it’s invisible, and goes underground, that’s when you open yourself up to trafficking women, underage prostitution, and the crimes against women by brothel owners or pimps. (...). So when it’s underground those things can’t be regulated, and the protection of the people involved in the industry is pretty at risk. So I’m convinced now that the more visible something is, the easier it is to monitor and insure that women are not being enslaved, that women are not being trafficked here to New Zealand, that young people are not being lured into criminal behavior (...) and that our legislation is adequate” (RNP5).

Jordan declares that the decriminalization policy already does and will continue to empower those who are providing services and will limit the ability of those who run these businesses to abuse and exploit them. She realizes that the law is not able to automatically prevent all violence, but she agrees with many respondents by opining that the decriminalization will contribute to “a climate where that [the fight against exploitation] is more possible” (RAJJ2).

Next, I will discuss *de facto* opinions of sex workers regarding their health, safety, and self-determination. According to them, what are positive and negative elements regarding their work circumstances?

#### *6.4.1 Health, Safety, and Self-Determination*

Although NZPC spread information amongst sex workers about safe sex practices and the prevention of HIV and other STDs prior to the PRA, all respondent sex workers agree that decriminalization certainly contributed to better healthcare and led to safer work circumstances. NZPC’s aim, a harm minimization approach, has also been reflected in the Occupational Workplace Health and Safety guidelines 2004, for which standards for safe sex work were developed by the Department of Labour (DoL) in consultation with NZPC and brothel operators. Fitzharris (2010) refers to research into the effects of these standards on sex workers that showed that during the following years the new rules became more and more implemented in the behavior of all parties in the sex industry.<sup>59</sup> In terms of the health, safety, and well-being of sex workers, these research findings also reported “high use of condoms and high levels

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59 Research by the University of Otago, Christchurch School of Medicine (CSoM), Crime and Justice Research (CJRC) and the Ministry of Justice (MoJ) (Fitzharris 2010).

of safe sex within the industry, and awareness by the majority of sex workers of occupational safety and health requirements” (Fitzharris 2010). McAllister et al. (2008) found no HIV infections among the 298 female, 32 male and 13 transgender sex workers who attended sexual health clinics in 2006 (McAllister et al. in Godwin 2012:194)

The findings of this underlying research regarding sex workers and their ability to work safely strongly align with the above outcomes. Without exception, all interviewed sex worker respondents claim to be aware of the importance of practicing safe sex:

“Prior to the PRA act, a lot of guys including myself were probably engaging riskier behavior without condoms and stuff. Now, it’s clearer with the legislation what is expected for the best practice. So I think, nowadays, just anecdotally, that people are more likely to use condoms as opposed as to the past, both clients and sex workers. For instance, street working, a lot of oral sex were always be done without condoms. Nowadays, I suspect that a lot more oral sex is done with condom on. (...). So a culture change in relation to safe practices since decriminalization” (SW 13).

“I’ve never worked before the law change, but what I’ve heard from other ladies talking about it is that now you can be hundred percent clear before you go into the room, you know: what you want do, what you won’t do (...). Safe sex is mandatory now, it is illegal not to use a condom, and if you have a client that is being annoying you, you can say: ‘well this is what it is in this country, if you don’t like it, get out’. (...). The laws back you up. And if there is any issue and you have to call the police, then you have got everybody behind you saying: ‘Yes, you must use a condom, you have to practice safe sex’. (...). For what I understand before the law, you could not clearly say what you did, what you did not” (SW 20).

Medical health checks have a high priority as well. Besides their visits to GPs, many sex workers prefer to regularly visit the Sexual Health Clinics or the free and confidential NZPC medical clinics<sup>60</sup> which enable them to remain anonymous if they want to:

“I would rather use a service here [NZPC community center], where ..., they know what I do and they don’t ask too many questions that could make me feel uncomfortable. Like here [at the NZPC community center], I don’t feel uncomfortable answering questions about work, where as a GP, I feel really weird about, you know, if they ask like how many sexual partners I have had (...)” (SW 11).

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60 NZPC community centers in Auckland, Wellington, and Christchurch, referrals in other areas: <http://www.nzpc.org.nz/>.

“I still feel, despite sex work has been decriminalized, that there’s stigma attached to it. So in a medical setting, I have my experiences of uncomfortableness about disclosing my status as a sex worker” (SW 13).

The decriminalization took away the burden of being outlaws without rights, which, according to many participant sex workers, makes them now not only less reluctant to use the offered healthcare services, but also raised increased feelings of security, self-esteem, and self-determination. Within this integrative policy, they could make their own choices regarding work circumstances. For example, many sex workers decided to leave the third-party management tier (Abel et al. 2007, quoted in Healy, Bennachie & Marshall 2012:255-6) and start working for themselves, alone or with other sex workers as equals. According to Healy, Bennachie & Marshall (2012), sex workers, believe their occupational safety and health was best served by determining and managing their own conditions.

The right to self-determination, following Östergren (2017:10), involves respecting the agency of sex workers and believing that they have the right to express their experiences. The vast majority of the participant sex workers, especially the independent contractors working in brothels or parlors, agree that working in a decriminalized environment facilitates them to indicate and follow their own wishes regarding their working hours and working conditions, as illustrated by the next three quotes:

“Yes, definitely [self-determination]. And the determination ranges from how much I want to charge, if I do want to do a job with a client at all, the hours that I work, the way that I advertise, yeah, I feel very self-determined” (SW 13).

“If I [independent contractor] decide to quit tomorrow, I just need to call her [the operator], and saying: ‘no planning’. If a girl decides to quit for whatever reason, she does not need to explain. She just can say: ‘I’m not gonna work anymore’” (SW 34).

“I know what I’m getting into. I know what is expected of me. (...). I’m someone who likes very clear-cut boundaries. I like to know what is ok and what isn’t ok. And for me this works very well, because I could say: ‘Ok, this is the kind of money, this is my time, I’m providing these services, anything outside of that is No, anything inside of that is as long as you are respectful is Yes. For me that works, that’s fine’” (SW 7).

For NZPC, sex workers’ self-determination is a priority. Only sex workers can decide to enter or leave the sex industry, which sex services they do not want to provide, or whether they want to go to court or settle a claim informally. In addition, the fact that NZPC, from its beginning, could participate – within an environment of collaborative governance – in sex industry-related decision making processes and could bring in its ideas on how to improve the human

rights for sex workers also indicates that there is space for self-determination within an integrative ideology.

The PLRC committee expressed the hope in 2008 that the increased confidence, well-being, and sense of validation amongst sex workers would result in a ‘positive spin-off’ in the improvement of employment conditions and better safe sex practices (Government of New Zealand 2008; Godwin 2012). Here, my research findings are in accord with the 2016 report of the International Committee on the Rights of Sex Workers in Europe (ICRSE). This report mentions that in New Zealand after 2003, sex workers’ working conditions in the managed sector have significantly improved. This committee referred to the introduction of health and safety measures, the illegality of forcing sex workers to accept clients, and sex workers’ right to redress when mistreated by managers (ICRSE 2016:16).

However, not all sex workers enjoy the same extensive freedom. An independent contractor expressed negative experiences about alleged self-determination at her workplace:

“By law we don’t fit into being an independent contractor or an employee, because they use that as like employees when it suits them (...). So we can’t choose how we do it or whatever, hours, we have no employee rights, no sick pay, we have no healthcare, we have no even no funny lunch break like, you know” (SW 21).

Abuse, exploitation, coercion – as we will see in Chapter 8 – are problems that also occur within a decriminalized sex industry, as they do to a certain extent within other service industries (NZPC 25). Not all illegal practices have been eradicated. A brothel operator explains:

“For me as a madam, I see decriminalization as the first huge step. (...). Next thing is trying to make people realize (...) to work smarter (...), not making girls working for fourteen hours shifts, not making girls take ten clients in a row, (...), just looking after people’s human rights, (...), treating the clients better as well, some clients get ripped off” (OP1).

### **The Netherlands and Sweden: Different Policy Outcomes**

#### *The Netherlands*

From the 1960s onwards, the differences between the Netherlands and Sweden in how to approach the prostitution sector increased. In the Netherlands – despite the existent ban on brothels (Penal Code) – local control over the sector became more difficult due to the expanding exhibitionistic sex industry.<sup>61</sup> Opponents

61 Outshoorn (2012) indicates that the religious political parties, after having lost the parliamentary majority in 1967, no longer could control the values of the Morality Act.

of the 1911 Morality Act pointed at the undesirability of state intervention in the private life (Outshoorn 2012). Municipalities gradually started to condone and regulate brothels – as long as this did not contravene the public order (Outshoorn 2004; Doorninck 2002).<sup>62</sup> In addition, the Association of Dutch Municipalities<sup>63</sup> opted for a pragmatic approach towards the sex industry and started to recommend the repeal of the brothel ban<sup>64</sup> so that local authorities could better regulate the local sex industry (Doorninck 2002; Outshoorn 2012).

Between 1977 and 1999, the political discourse became influenced by the strong feminist movement and its perspective changed from a radical abolitionist to a liberal sex work approach (Outshoorn 2012).<sup>65</sup> In 1997, influenced by the failure of the regulated toleration policy,<sup>66</sup> a proposed bill suggested a realistic approach according to the liberal feminist perspective (Outshoorn 2004).<sup>67</sup> In 1999, the political debates,<sup>68</sup> supported by Dutch women movements,<sup>69</sup> finally led to the abolishment of the Morality Act (Outshoorn:2004). In 2000, after two decades of debate, the revised law came into legal force: sex clubs and brothels became decriminalized,<sup>70</sup> the age of consent was raised to eighteen years, and sex workers got the right to choose

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- 62 Prostitution in the Netherlands, both sale and purchase, has been legal since the early twentieth century. Although exploitation of prostitution (a brothel or a window) was illegal, the Netherlands had an estimated 510 sex clubs, 620 establishments that exploited windows, 300 escort services, and a number of other sex houses such as massage parlors or couple clubs (Wagenaar 2006:207).
- 63 Vereniging van Nederlandse Gemeenten (VNG) (Association of Dutch Municipalities).
- 64 In this, the VNG followed the vision of the De Graaf Stichting, an interest group that supported the legalization of sex work (Outshoorn 2004).
- 65 Wagenaar et al. (2017:150) emphasize the important role of a new policy network around women's emancipation that had emerged in the 1980s and was led by the Directorate for Coordination of Emancipation Policy (Directie Coördinatie Emancipatiebeleid DCE). They note that this network, in which politicians, officials, academics, advocates for sex work and representatives of sex workers participated, would significantly influence the debate whether to repeal the ban on brothels (Wagenaar et al. 2017).
- 66 Due to its legal inconsistencies, this toleration policy demonstrated a failure with regard to enforcement and guarding public safety in prostitution environments (Wagenaar 2006).
- 67 Outshoorn refers to a poll in 1997 that showed that 74% of the Dutch population supported the liberal feminist vision to regard prostitution as work and that 73% were in favor of lifting the ban on brothels.
- 68 In 1997, the cabinet Kok I (the Liberal party [VVD], the Social Democrat Party [PvdA], and the Social Liberals [D66], drafted the new bill to lift the ban on brothels (HTK, 1996-1997,25437 (*Opheffing Algemeen Bordeelverbod*).
- 69 De Graaf Stichting, De Rode Draad, Stichting tegen Mensenhandel, Nederlandse Stichting tot Bestrijding van Seksueel Overdraagbare Aandoeningen, all united in the Landelijk Platform Prostitutie.
- 70 Sex clubs and brothels became subject to laws that apply to all business (Altink 2017).



sex work.<sup>71</sup> Forcing a person into sex work remained a criminal offence (Outshoorn 2012).<sup>72</sup>

The original intention of the law, following Wagenaar et al. (2017:163-64), was “to decriminalize prostitution by removing the sale of sexual services and its management from the Penal Code and transform (...) into a regular business sector, regulated by labour law, administrative law, immigration law, the tax code and local health and safety regulations”. However – and here we note an important difference with New Zealand – the linking of specific repressive sex work-related regulations<sup>73</sup> determined a transition from an intended integrative to a restrictive policy, regulated by the municipalities. Sex work in the Netherlands became legally accepted in society, but the restrictive repressive regulations still created a two-tier system of a legal and illegal or not-licensed circuit since a number of those involved simply refuses to submit to those regulations and subsequently go ‘underground’.

In addition, although the pragmatic political culture created “a positive space for the advocacy of sex worker interests” (West 2000:115), the significance of the Dutch sex work union(s) is hardly comparable with the influence NZPC had on the policy process. In Chapter 7, I will further elaborate on this point of difference.

### *Sweden*

In Sweden, the expanding sexual revolution went hand in hand with the growing consensus among radical feminists in Sweden that prostitution was oppression rather than work (Svanström 2005).<sup>74</sup> Harrington (2012:343) notes that in Sweden, as in other countries, “much anti-male violence

71 Sex workers’ obligations were that they would have to pay taxes and social security contributions (Outshoorn 2012).

72 Pimping (extorting money from sex workers by means of violence and force) has always been and still is forbidden (Altink 2017).

73 Wagenaar et al. (2017) mention: (i) amendments that excluded immigrant sex workers from outside the EU or EEA (European Economic Area) from working in the Dutch sex industry (*Wet Arbeid Vreemdelingen* Law – Regulating Work for Aliens, and *Mensenhandelartikel 250a Wetboek van Strafrecht* – Criminal Code Trafficking Clause); (ii) the complex labor relations between proprietors and sex workers which legally had to be regulated by the parties themselves, however often resulted in inadequate labor contracts; (iii) the introduction of the well intentioned ‘opting-in’ arrangement by the taxes office, which means that the business owner pays the sex worker, but after deducting the amount of the taxes. Wagenaar et al. (2017:166) emphasize “the unintended effect of removing the issue of labour rights from the political agenda”; and (iv) the *Wet Bibob* (Integrity Assessment Act) allows authorities to withdraw, revoke, or refuse (new) licenses on suspicion of criminal activities (a proof is not needed). By using this Bibob law, one hundred windows in Amsterdam were closed between 2006 and 2012, which actually reduced the possibility for sex workers to find a workplace.

74 From the mid 1970s, gender norms such as women’s right to work and equal payment, and sexual traditions in Sweden became increasingly determined by the Swedish gender equality ideology. This also implied a revision regarding men’s role in prostitution (Månsson 2017).



feminist organizations mounted significant opposition to liberalization of the sex industry". In line with these perspectives towards prostitution, in 1993 a state commission on prostitution based its view on a gender equality framework and recommended to criminalize both the prostitute and the client, which was rejected (Svanström 2005).<sup>75</sup>

The idea to only criminalize the demand side (the Swedish Model) originally came from the Swedish women's movement (Ekberg 2004).<sup>76</sup> Along with radical feminists worldwide, they believed that prostitution was a patriarchal tool of oppression that has a detrimental effect on the involved women, as well as an extreme form of male violence used to control female human beings as a class (Ekberg 2004). In 1998, a new commission submitted a bill<sup>77</sup> that was focused on criminalizing the purchase of sexual services. The idea to consider prostitution as work never got any real support within the parliament (Svanström 2006).<sup>78</sup> Rather, the goal was to combat prostitution and to support prostitutes by social interventions such as offering assistance to exit the industry (Månsson 2017). The moral entrepreneurs<sup>79</sup> created a 'moral panic' strategy by equating prostitution with human trafficking and defining prostitutes as passive victims of brutal men.

Sex workers in Sweden differ from their peers in the Netherlands and in New Zealand in that they were never consulted nor took part in the making process of the law (NSWP undated).<sup>80</sup> Additionally, NSWP emphasizes the systematic 'modes of silencing' of the socially deviant and disruptive groups such as prostitutes by anti-prostitution activists,<sup>81</sup> which refers to a feature of ideological (morality) politics as argued by Wagenaar et al. (2017:36): "all argument in policy is aimed at persuading the opponent, but the overt

75 Only two of sixty-four involved organizations (Womenfora and Stockholm Police Authority) supported this vision.

76 Among others ROKS, an abolitionist Swedish feminist organization.

77 The Bill on Women's Peace (Månsson 2017).

78 Svanström (2004) remarks that this option has only seriously debated outside the parliament.

79 Howard Becker (1991:147) describes moral entrepreneurs as people who initiate ('rule creators' crusading reformers') and enforce ('rule enforcers') new rules/laws.

80 NSWP relates this "patronizing" attitude to the radical feminist perspective and to Sweden as a "social engineering" state which means that groups who tried to destabilize Sweden's objective to be a "homogeneous unified welfare state" have been subject to control and interventions (NSWP:2 undated). As examples, the NSWP mentions forced incarceration of people with venereal diseases, forced treatment of drug-addicted people during the nineteenth and twentieth century, and through the mid 1970s, sterilization of transgendered people (NSWP:2).

81 The NSWP notes four examples of silencing: (i) prostitutes are speaking from a false consciousness when saying that their work is freely taken and claiming to enjoy work; (ii) an assertion that sex workers lie and/or put on a brave face, and the undermining of the validity of research that focuses on sex workers' agency; (iii) a self-aware and critical of the law perspective is not representative of the majority of sex workers; (iv) caricaturing and/or demonizing testimony and discrediting the speaker's perspective instead of engaging with the content of counter-arguments (NSWP:2-8 undated).

goal of ideological politics is to become hegemonic in that it effectively attempts to crowd out other ideas and positions to the point that these appear dubious, wrong, or even utterly intelligible". In this context, Ann Jordan (2012:4) notes that instead of consulting prostitutes themselves on how to improve their situation, the government and feminist leaders intentionally excluded and marginalized their voices. Levy and Jakobsson (2014:594) emphasize that the liberal case was simply rejected. In other words, forms of collaborative governance between Swedish policymakers and sex industry-related stakeholders hardly occurred. According to Östergren (2017:8), "(...) the policy [Swedish Model] does not consist of measures that help, protect, or empower those who sell sex. Instead, it consists of laws, discourses, and practices that exclude sex workers' participation, interests, and articulated needs". Put differently, the Swedish policy is based on an ideology, that despite its feminist rhetoric, is part of a long tradition of repressive criminalization policies that have and continue to affect sex workers negatively. In that sense, the alternatives of a restrictive or an integrative policy never have had a realistic chance (Levy & Jakobsson 2014). As discussed in Chapter 4, harm reduction strategies in Sweden are primarily applied to the idea of less harm for society under the ideal of gender equality instead of harm reduction for sex workers.

The neo-abolitionist ideology finally resulted in the Swedish prostitution law 'Sexköpslagen', that on the first of January 1999 was enacted by hundred-eighty-one to ninety-two votes. From that moment on, the purchase of sex and all third-party involvement became prohibited (Östergren 2017).<sup>82</sup> Moreover, clients of prostitutes became criminals. The sale of sex is decriminalized, since sex workers are considered to not be responsible for transactional sex (Månsson 2017).

Opponents of this law believe that due to this legislation, sex workers have no choice other than to work in difficult circumstances.<sup>83</sup> Pye Jakobsson (2015), a founding mother of the Swedish sex worker union Rose Alliance,<sup>84</sup> frames it as: "what's left is to work on the street or going to the client's house".

This chapter has demonstrated the important context in which NZPC's campaign for decriminalization of the sex industry has occurred. Particularly New Zealand's cultural-historical features and the occurrence and the opportunity

82 Östergren (2017:5) clarifies that the Swedish prostitution policy is an entire system of sex work-related laws, measures and regulations, so the sex purchase ban has to be seen as only one element of them.

83 Swedish sex workers are not allowed to work together, to advertise, nor allowed to rent or buy an apartment (Jakobsson 2015). According to Ann Jordan (2012:5), they are also not allowed to cohabit with a partner since this partner could be suspected of sharing income derived from sex work.

84 Rose Alliance started in 2001, but started to expand only around 2010 (Eriksson, Jakobsson & Agustin 2013).

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of four sociopolitical key elements during the last decades of the twentieth century have played an important role in NZPC's decriminalization campaign to change the law.

A critical reflection on the de facto experiences of sex workers who operate(d) within an integrative sex industry policy predominantly showed positive outcomes regarding aspects such as their health, safety, and self-determination.

Here, we have elaborated on the cultural and sociohistorical context. Next, the role of NZPC itself, as a solid organization, in the entire campaign process will be further discussed.



## Micro Level: An Analysis of the Role and Impact of NZPC

“It seems that founding a social movement organization is a way to overcome the difficulties inherent to the weak cohesion and inability to mobilize within the world of prostitution” (Mathieu 2003:38).

In Chapters 5 and 6, the influence of cultural-historical and sociopolitical key elements which contributed to NZPC’s goal to change the legislation of the sex industry were discussed. I also outlined NZPC’s unique campaign strategies to realize its main aim: the decriminalization of the sex industry. In this chapter, I will discuss an important aspect of McAdam et al.’s social movement model: the necessity of a firm organization that could realize the social movement deals. Here, I will focus on the key player within the New Zealand decriminalization campaign: NZPC.

NZPC started as a small, powerless group of only nine sex workers. It was the beginning of the development into a strong and influential organization that could provide a collective status.<sup>1</sup> Mathieu (2003:38) notes that “a formal organization, even if composed of a very small number of activists or sometimes amounting to just the person of its leader, is one of the only ways to give a collective status to a cause that would appear ridiculous or illegitimate if it was defended by isolated individuals”. Although the NZPC National Coordinator defines NZPC as “just a regular sex workers organization” (NZPC21), scholars, politicians, and people involved with the sex industry consider NZPC a unique organization of and for sex workers. They attribute to NZPC a significant influence on the developments of New Zealand’s sex industry policy, not only prior to 2003, but also after the enactment of the PRA up to the present (Abel et al. 2010; Armstrong 2011; Barnett et al. 2010; RA2JJ, RA4CH; RA5GA1):

“Its [NZPC’s] role in initiating the call for decriminalization cannot be overstated, as undoubtedly this legislation would not have been on the agenda without its commitment” (Abel & Fitzgerald 2010:259).

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1 The founding mothers were inspired by the Prostitutes Collective of Victoria (PCV), an Australian organization that existed since 1984 and aimed to decriminalize the sex industry (Rowe 2006; NZPC 21).

In subsection 7.1, eight key NZPC elements will be explored that not only played a dominant role in the decriminalization campaign, but also determine the uniqueness of NZPC in relation to its allies in the Netherlands and Sweden. In subsection 7.2, the de facto opinions of sex workers themselves will come to the fore regarding the existence of NZPC and its services. In subsection 7.3, I will focus on their suggestions to improve the functioning of NZPC.

### 7.1 ‘They Are Somebody Here’. Eight Distinguishing Factors

“This organization [NZPC] was formed for the protection and the safety and privacy of the sex workers (...).NZPC is really strong focused on the independence, and empowering the sex worker (...). They are somebody here. (...). It’s an organization where they [sex workers] can come to, talk on any issues they have regarding their sex work” (SW3).

NZPC is a national NGO that aims to advocate for the human rights, health and well-being of New Zealand sex workers (NZPC New Workers’ Kit – *Stepping Forward*; Chetwynd 1996, Healy et al. 2010). It is recognized as a Charitable Trust,<sup>2</sup> and it is a peer-run organization. The NZPC staff members are permanently, semi-permanently, or temporarily working on a paid (wage worker) or voluntary basis (NZPC7; *Stepping Forward*). Most NZPC community centers have their own regional coordinator<sup>3</sup> and the organization employs an equivalent of thirteen fulltime employees (NZPC7).<sup>4</sup>

In itself, these features do not make this organization exceptional. However, when comparing NZPC with allies abroad such as PROUD (the Netherlands) and Rose Alliance (RA) (Sweden), NZPC does stand out in several aspects, or should we say: in the combined effects of these aspects. In the next table, similarities and dissimilarities between these organizations will be presented.

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2 Registered as a Charitable Trust in 1991, but not registered as a Charity. In contrast to a Charity which has no tax obligation, NZPC is tax-obliged (NZPC21).

3 Since 2016, after the departure of the former Regional Coordinator, the NZPC community center in Christchurch is led by two NZPC staff members, supervised by the NZPC National Office (NZPC21; NZPC22).

4 An equivalent of thirteen collaborators fulltime (fte’s) means eighteen to twenty individual full or part-time wage workers. Furthermore, around ten regular volunteers and around fifty people are in regular contact with NZPC (NZPC7; Radačić 2017).

Table II NZPC, Proud, And Rose Alliance – A Comparison

NZPC (New Zealand)	PROUD (The Netherlands)	Rose Alliance (Sweden)
<p>Since 1987 Main aims: = Decriminalization - achieved in 2003 = Harm minimization First organization Officially recognized One united NZ organization</p> <p>Six community centers Peer-run<sup>5</sup> Full time equivalent (fte's): thirteen (paid) Easy access for sex workers in cities No membership Annual Government funding: € 670,000 (1,000,000 NZ\$) Substantial second source of income Providing free street packs<sup>6</sup> Free medical clinics in the main NZPC centers Evaluations: - Outdoor: street outreach - Indoor: permanent survey Partly independent from Ministry of Health Political climate: - Sex work = work</p> <p>- Integrative policy No repression Collaborative governance and strong influence on policy making</p>	<p>Since 2015 Main aims: = Decriminalization - campaigning = Harm minimization Third organization<sup>7</sup> Officially recognized Two organizations: Proud and Liberty (The Hague) One community center each Peer-run Full time equivalent (fte's): eight (paid) Limited access for sex work- ers outside of Amsterdam Membership Annual Government funding: € 200,000 Small second source of income No free street packs Medical care to other social parties (GGD;P&amp;G) Evaluations: - No street outreach - No permanent survey High dependency on Ministry J&amp;V<sup>8</sup> Political climate: - Sex work = work</p> <p>- Restrictive policy Increasing repression Collaborative governance but small influence on policy making</p>	<p>Since 2003 Main aims: = Decriminalization - campaigning = Harm minimization Third<sup>9</sup> organization No recognition One organization</p> <p>Three community centers Peer-run Full time equivalent (fte's): No Information Limited access for sex workers Membership No Government funding Funding by Mama Cash</p> <p>No free street packs Medical care to other social parties (Prostitution Units) Evaluations: No information</p> <p>No collaboration with government Political climate: - Prostitution = rape + violence - Repressive policy Abolitionism No collaborative governance and no influence on policy making</p>

Source: NZPC staff members; PROUD staff members; interview Jakobsson/Knoll 2013

5 Apart from two non-sex workers.

6 Street packs or New Worker Packs for both new and experienced sex workers, containing condoms, lube, other safer sex supplies, and essential reading (the manual Stepping Forward, tips for transgender and male sex workers, and information about working in New Zealand – in English and Chinese. <http://www.nzpc.org.nz/Information-for-sex-workers-in-New-Zealand-Aotearoa>.

7 The Red Thread (1985-2012); Geisha (2012-2105).

8 J&V: Justitie en Veiligheid (Ministry of Justice and Safety).

9 The Front for Sexual Politics (1970s) // Rosea (1990s) // National Organization of Sex and Erotic Workers (since 2003) (interview Jakobsson/Knoll 2013).

Regarding the similarities, we see that all of the organizations (i) adopt the ideal to decriminalize the sex industry; (ii) strive for harm minimization; and (iii) are mainly peer-run. In addition, NZPC and PROUD are comparable in that they both are officially recognized and work within a political climate that considers sex work labor, although in the Netherlands the increasing repression within its restrictive policy is considered a threat to the industry by decriminalization campaigners (see also Chapter 4).

Focusing on the most remarkable differences between these three organizations, eight key aspects can be highlighted:

*1: NZPC has already operated for decades*

NZPC started in 1987. From then on, it built a reputation of being a reliable and stable organization. In addition, as a Charitable Trust, it became more than just a group of sex workers.<sup>10</sup> It became a formal and legal organization, recognized by the government (NZPC7).<sup>11</sup> The pragmatic political culture of the Netherlands created “a positive space for the advocacy of sex worker interests” (West 2000:115). However, the influence of the Dutch sex work unions<sup>12</sup> on the national sex industry as a whole was never comparable to NZPC. The first Dutch sex workers organization, the Red Thread, was forced to close.<sup>13</sup> The second, Geisha, went bankrupt.<sup>14</sup> The third, PROUD, still is ‘in progress’, as we will further see. The Swedish sex workers organizations – RA is the third – have never been recognized by the government.

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10 Trust Board members (7) represent all types of sex workers, including both Maori and Pakeha (NZPC7; NZPC27). The NZPC National Coordinator has a seat on the Trust Board, mainly to assist the Board on specific sex industry-related topics such as local or national policy, sexual harassment policy, sex workers’ labor-related issues, and sex workers’ medical health issues (NZPC7; NZPC e-mail CH 29-09-2016).

11 See Appendix XI for NZPC’s organizational structure.

12 Between 1985 and 2012, the *Red Thread* was the main representative of sex workers in the Netherlands. Between 2012 and 2015, *Geisha* represented the sex workers. Since 2015, a new Dutch sex workers organization, *PROUD*, has been established in Amsterdam and is funded by the Ministerie van Justitie en Veiligheid (Ministry of Justice and Safety). *PROUD*’s ultimate objective is the decriminalization of the Dutch consensual sex industry (RPNL1). The Board consists of five former or current sex workers. The organization employs twenty-five part-timers – an equivalent of eight full timers – all of whom are current sex workers. A number of them – like in NZPC – have an academic background (RPNL1).

13 Wagenaar et al. (2017) mention that, in 2005, the *Red Thread* received a small grant from the Ministry of Social Affairs and Labour Relations to visit all sex facilities in the Netherlands. However, after they criticized the appointment of some advisors on prostitution policy in Amsterdam, an important state subsidy was withdrawn, which forced the organization to stop its activities (Wagenaar et al. 2017).

14 Due to a lack of money and alleged mismanagement, *Geisha* finished its activities (RPNL1; DCNL e-mail 05-12-2014).



## 2: The cooperation between the sex worker organization and the government

Since 1988, NZPC and the Ministry of Health (MoH) built a legal framework that includes sex workers. The threat of the AIDS/HIV epidemic played an important role in this (see previous chapter). Instead of focusing on more repressive measures to reduce the risks and harm for the society, as happened in the Netherlands and especially in Sweden – the leading strategy in New Zealand was to involve the main parties in the battle against the epidemic.<sup>15</sup> In fact, the government took a risk by spending public money on a group of people who had always been considered deviants and outsiders without agency. Cooperation with the MoH was an excellent (political) opportunity for NZPC to demonstrate sex workers' responsibility and role as participants in society (Healy et al. 2010:47). Within this climate of collaborative governance, NZPC received MoH funding to develop a proposal about how to promote safe sex practices to the sex workers (Healy et al. 2010). This funding also enabled NZPC to establish its first NZPC community center in Wellington.<sup>16</sup> Barnett et al. (2010:59) emphasize that “the government funding of NZPC was significant because it indicated that politicians saw a sex worker-driven organization as a valid holder of public funds and it also enabled isolated sex workers and their local advocates to form a loose national network”. NZPC is involved in sex industry-related policy affairs and functions as an advisor on sex work laws and policies both nationally and internationally (NZPC7; Armstrong 2018). Armstrong (2018:86) states that “one of the strengths of the organization is their willingness to engage with people with diverse ideological positions, which has enabled them to rationalize debates regarding trafficking” (see also Chapter 8).

In the Netherlands, the collaboration between PROUD and authorities is different in that the approach towards sex work differs from city to city. In some cities sex workers have to register. In others there is no obligation to register. According to a PROUD respondent, PROUD does not yet have sufficient means, power, and trust to become a main partner in sex work-related negotiations (RPNL1). The fact that many organizations in the Netherlands are involved in sex work-related issues does not imply that sex workers' voice is heard: “people talk about sex workers, not with them” (RPNL1).

In Sweden, effective collaborative cooperation between RA and the government hardly occurs due to its abolitionist legislation. According to a founding mother of the RA, Pye Jakobsson, the Swedish Sex Purchase Act does not intend to protect sex workers in any way. She states that sex workers are considered by the government to be a threat to the values of the Swedish society (Jakobsson 2015).

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15 See also Wagenaar (2017), Video *Prostitution Policy. Collaborative Governance*; <http://sekswerkerfgoed.nl/prostitutiebeleid-een-nieuw-boek-over-een-lastig-onderwerp/>.

16 NZPC received the first funding in 1988 (NZPC e-mail CB 07-12-2017).

### 3: Different financial revenues

Each organization faces a different financial landscape. NZPC's financial stream mainly consists of (i) a government-related funding which is an annual funding from the MoH to an extent of one million NZ dollar<sup>17</sup> (NZPC e-mail CH 19-07-2016; NZPC21); (ii) a commercial income source (Healy et al. 2010; NZPC7; e-mail CH 19-07-2016; NZPC21). The latter is the sale of water-based lubricants to sex workers and related organizations,<sup>18</sup> and is valued by NZPC because it enables the organization to operate independently of the restrictive conditions that come with government funding (Healy et al. 2010; NZPC7; NZPC21).<sup>19</sup> Being partly independent from the MoH means that NZPC does not have to justify its policy with regard to staff affairs, community center issues, and connections with other NGOs. Healy et al/ (2010) emphasize that receiving government funding may never obstruct NZPC's autonomy, "not then, not now"<sup>20</sup> (NZPC7). Like NZPC, PROUD also has a second source of income, but this financial resource is only a very small part of the whole (RPNL1).

Heemskerk<sup>21</sup> (2016) compared New Zealand and the Netherlands in respect to government funding for (national) sex worker organizations. After having extrapolated the one million NZ dollars funding,<sup>22</sup> the New Zealand MoH funding would come out to an annual funding of 2,700,000 euros for the Dutch sex worker organization PROUD<sup>23</sup> (Heemskerk 2016). In reality, PROUD receives an annual state funding of only 200,000 euros<sup>24</sup> (RPNL1). Heemskerk (2016) notes that this extrapolation demonstrates an annual financial plus of 2,500,000 euros for NZPC.

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17 According to the NZPC staff members, this government funding is mainly used for sexual health promotion programs and education, NZPC community center leases and maintenance, salaries, community building, conflict mediation, outreach to sex workers at their work venue, and organization of workshops (NZPC21; NZPC e-mail CB 07-12-2017).

18 For example, brothels, gay clubs, adult shops, and agencies that are related to sexual health such as Family Planning (Healy et al. 2010; NZPC7; NZPC21).

19 NZPC is allowed to provide information on certain issues, but lobbying with the help of government funding money to achieve a goal is not allowed since it could conflict with interests of third parties, such as anti-decriminalization NGOs (NZPC4; NZPC6; NZPC21).

20 The MoH could dissolve its contract with NZPC, but the MoH has no authority to stop NZPC organization as a whole (NZPC7).

21 Marijn Heemskerk is a freelance journalist. She investigated human trafficking in the Netherlands, the USA, and Ghana (De Correspondent – <https://decorrespondent.nl/marijnheemskerk>).

22 A funding of one million NZ dollars represents an equivalent of circa € 675,000 (exchange rate July 2016). New Zealand has 4,5 million inhabitants versus the Netherlands 16,8 million. Extrapolating this difference would mean an annual amount of € 2,700,000 (4 x 675,000) for the Dutch sex workers organization.

23 Heemskerk (2016) comments that before 2005, the Red Thread did receive an annual government funding of € 200,000. From 2005 till 2012 this funding had been reduced to € 100,000.

24 Since 2015.

RA does not receive any funding from the Swedish government. This organization received its first core funding only in 2011 from Mama Cash,<sup>25</sup> which they used to strengthen the internal organization (Eriksson, Jakobsson & Agustin 2013).<sup>26</sup> This means that NZPC – at least in comparison with PROUD<sup>27</sup> and RA – has substantially more government-related financial resources to work with. As we will see later, this enables the organization to operate effectively, to perform openly, and to reduce harm and risks in favor of health and safety of both public and sex workers. In fact, this method of working could have convinced MP actuarialists – who had to make up their minds regarding their PRA vote – to finally agree with the pragmatic decriminalization policy, as discussed in Chapter 6.

#### *4: No membership*

NZPC, as a peer-based organization, encourages sex workers to disclose their concerns to them (NZPC7). As is common in sex worker organizations, NZPC fosters a bias-free community center ambiance within which anonymity is of high importance. NZPC differs from others in that it avoids any form of formal group registration or official membership for sex workers, as it could provoke stigma-related fear of privacy loss which – in turn – could discourage sex workers from entering the community centers and disclosing their worries (NZPC7).<sup>28</sup>

PROUD, on the other hand, is more or less obliged to implement a system of membership. Dutch staff members point out that since there is only one community center nationwide, addresses or e-mail addresses are needed to contact sex workers throughout the country. Furthermore, the member fee<sup>29</sup> provides the organization a financial support essential to function (RPNL1). Here we see how the interests of the Dutch organization – the financial imperative of membership fees – to a certain extent contravene the interests of sex workers in that they could limit sex workers' access.

#### *5: Decriminalization: a shared objective*

This aspect deals with the shared social movement aim 'decriminalization'. Where NZPC has already succeeded in realizing this objective, other social movement organizations such as PROUD and RA appear to be far away from this goal. PROUD, according to staff members, is still at a preliminary stage and not yet ready to start an active advocate campaign for decriminalization:

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25 Mama Cash supports women, girls, and transgender people who actively campaign for protection and improvement of their rights; <https://www.mamacash.org/nl/homepage>.

26 RA strongly opposes the Swedish law criminalizing the purchase of sex. RA advocates for self-determination and rights for sex workers. Political lobbying is not its main focus (Eriksson, Jakobsson & Agustin 2013).

27 In addition, PROUD mainly uses its government funding for fieldwork, mediation in conflicts, information, education, community building, and organizing workshops (RPNL1).

28 Membership only takes place at the Board level (NZPC21).

29 Annual member fee € 30.

“we rather have to mobilize all our forces to change policymakers’ focus from seeing prostitution as human trafficking to an approach that focuses on the needs and rights of sex workers” (RPNL1). It is still highly dependent on the Ministry. The Swedish RA has to work within a repressive sex industry climate in which the road to decriminalization only exists in a virtual stage.

#### *6: Permanent evaluations*

NZPC also differs from other sex worker organizations regarding its permanent monitoring process, by which the organization tries to get feedback from sex workers about the effectiveness of NZPC’s services and about sex workers’ awareness of those services (NZPC e-mail CH 02-03-2017). According to the National NZPC Coordinator, the evaluation process is “not ad-hoc, but ongoing, and instantly available” (NZPC e-mail CH 02-03-2017).

The way of evaluating the outdoor sex workers differs from the way the indoor sex workers are being evaluated, although there is some overlap (NZPC7). The evaluations of the outdoor sector usually happen through nocturnal street outreaches. These enable NZPC to monitor both unexperienced and skilled street-based sex workers and to inform them through face-to-face conversations about safe-sex practices, legislation, and other sex-industry-related issues (NZPC7; NZPC10; NZPC17).<sup>30</sup> To illustrate the way NZPC operates, next, I present an example of an event that happened during one of my street outreach observations:

“Driving around during a street outreach participation in a southern suburb of Auckland, we<sup>31</sup> searched for street-based sex workers to whom we could offer free street packs (New Worker Packs). We discovered two very young women sitting on a bank at the corner of a park. We suspected that they were soliciting and we tried to make contact over a distance of around twenty meters. The NZPC coordinator, while sitting in the car, introduced herself and NZPC and asked whether the women needed free condoms. Initially, they seemed frightened and they did not dare to approach our car. Later, it turned out that they did not trust us because they suspected us to be undercover police officers. They thought that sex work was still illegal in New Zealand and in that they believed they were doing a criminal job: ‘Yeah, we were afraid you could be police, because it [sex work] is illegal’. After an explanation by the coordinator about the decriminalized sex industry provisions in New Zealand, they calmed down a bit. This enabled the coordinator to introduce NZPC’s services. She

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30 Street outreach activities include: evaluating sex workers’ good and bad experiences; noting their worries; building up relationships of trust; and informing them about the PRA legislation.

31 Research observations in close cooperation with the NZPC Auckland Coordinator and a staff member of Homelessness Project Auckland.

provided the young women practical safety advice.<sup>32</sup> She also emphasized that sex workers always have the ultimate right to say NO to clients, even if clients have already paid for services.<sup>33</sup> She gave them the NZPC information leaflet *Stepping Forward* and explained the content of NZPC street packs. Finally, the young women declared this was their first night doing sex work. They were relieved, not only because of learning that sex work was not illegal work, but especially because they felt the support from a group of former and current sex workers (NZPC) who look out for them and to whom they can go in case of emergency' (Research Observations Auckland Street Outreach 27-02-2015).

Regarding indoor sex workers, a special NZPC evaluator<sup>34</sup> appraises the extent to which sex workers are aware of the existence and NZPC's services (NZPC7; NZPC14). Her main task is to (i) regularly analyze all main newspapers on sex worker advertisements all over the country;<sup>35</sup> (ii) search through the special internet websites of sex workers, and enter their phone numbers and new names on an excel data base (NZPC14; NZPC7).<sup>36</sup> (In Appendix XIII, this NZPC Survey Procedure is described). Most of those contacted admit their occupation (NZPC14). Non-English speaking sex workers might be in the country illegally and worry that the phone call was a trap by an undercover police or immigration officer and might refuse further contact (NZPC14). In that case, a staff member who speaks Mandarin and Cantonese,<sup>37</sup> tries to contact the potential immigrant sex worker to provide information about NZPC and its services (NZPC14) (see also Chapter 8). The NZPC evaluator never asks if the person has a legal right to work because "start asking those questions is pushing them further away" (NZPC14).

Finally, the NZPC community centers are good places to meet both outdoor- and indoor sex workers, spontaneously or by appointment. Sex workers often drop in to ask for a service or just to chat (NZPC7, NZPC10, NZPC16, NZPC17, NZPC18), as I observed multiple times:

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32 During my street outreach observations in Auckland as well as in Christchurch, I could witness how NZPC staff members often provide street-based sex workers advice such as: (i) how to put on and remove a condom safely'; (ii) 'do not work alone: use a friend or minder, or work in pairs'; (iii) 'always give your client the impression that someone knows where you are and is keeping an eye on you'; (iv) 'trust your instinct: if it looks dodgy, don't do it; it's not worth the case'; (v) 'work in a well-lit area'; (vi) 'never step into a car with more than one client'; (vii) 'leave a trace in the car (chewing gum, finger prints)' and (viii) 'consider the option of working off the street' (Multiple Research Street Outreach Observations in Auckland and Christchurch in 2015 and 2016).

33 See PRA Part 2 Section 17(1-3).

34 NZPC Survey Evaluator contracted since April 2014.

35 Regional NZPC Coordinators scan advertisements and subsequently e-mail these data to the NZPC evaluator. Adverts, placed in smaller local newspapers, are collected from the library (NZPC14).

36 Between April 2014 and February 2016, around six hundred sex workers (new and experienced sex workers) were contacted all over the country in this way (NZPC14).

37 She is NZPC's Migrants Investigation and Information Coordinator.

“During my visits to NZPC community centers across the country, I could observe how sex workers dropped in just for an informal chat or for a private conversation. Others entered the community center with the intention to pick up free condoms, lubricants, or information flyers. When sex workers entered the building, I observed the attitude of NZPC staff, the relaxed, friendly, and respectful way they welcomed sex workers” (Multiple Research Observations during visits in NZPC regional centers in Auckland, Wellington, Christchurch and Dunedin 2015, 2016).

Interregional staff meetings to mutually interchange ideas, innovation plans and worries do not occur regularly (NZPC2; NZPC4; NZPC10; NZPC16; NZPC17).<sup>38</sup> Although most regional coordinators express satisfaction about the National Office support, its accessibility during day and night, and the annual symposium – the so-called Hui,<sup>39</sup> they indicate to wanting a more structured plan to meet each other<sup>40</sup> (NZPC2; NZPC4; NZPC10; NZPC16; NZPC17).

In the Netherlands, these evaluations are rare for PROUD due to a lack of money and available (wo)man power (RPNL1).<sup>41</sup>

#### *7: NZPC as the only sex workers organization*

NZPC represents the interest of the entire and diverse sex workers population, female, male, and transgender sex workers of all genders and ethnicities (Healy et al. 2010).<sup>42</sup> According to the NZPC National Coordinator, this diversity of identities strengthens the organization. She particularly refers to the presence of the indigenous Maori population in NZPC, since they are “very relevant to our New Zealand context” (NZPC21). Being one coherent sex worker collective, instead of multiple sex workers groups with different ideals, also strengthens NZPC’s negotiation position towards third parties (NZPC16; NZPC18; NZPC21). Abel and Fitzgerald (2010:259) consider this ‘a particular strength’ for NZPC, especially during its earlier efforts to change the sex industry policy. They argue that philosophical differences between two or more organizations could have obstructed the objective “to work cohesively towards a goal of policy change” (Abel & Fitzgerald 2010:259). An additional effect of this monopoly position is that NZPC can create similar ambiances in its

38 According to an NZPC staff member, the frequency of interregional meetings is limited often due to a lack of funding (NZPC e-mail CB 07-12-2017).

39 Once a year, NZPC organizes a Symposium where former and current sex workers, coordinators, academics and other involved people throughout the country can meet (NZPC2; NZPC4; NZPC10; NZPC16; NZPC17).

40 At the present, consultations often happen on an ad-hoc manner by telephone or by e-mails since these forms of contact are both less time-taking and cheaper.

41 I was not able to receive information about the Swedish monitoring and evaluation program.

42 PUMP – which stands for Pride and Unity among Male Prostitutes – is the male sex worker project for NZPC. ONTOP – the abbreviation for Ongoing Network Transgender Outreach Project – focuses on serving the transgender sex workers in New Zealand. The Maori Action Group represents Maori sex workers of all genders (Healy et al. 2010).



community centers. Due to the flexible nature of the sex work occupation, a number of sex workers only work temporarily in one city and then move to another city. According to NZPC staff members, a recognizable NZPC presence countrywide improves sex workers' access to NZPC's services (NZPC7). Next follows my experienced impression regarding these NZPC ambiances:

“The centers are all located as close as possible to the heart of the cities<sup>43</sup> since they need to be accessible for all sex workers, especially those who are not able – or do not want – to travel long distances (NZPC4; NZPC10). The interiors are spatial, in no way overdesigned or trendy, and are all easy approachable places where people can meet each other. Walking through the spaces, one sees open or half-open ‘heart-to-heart-easy-second-hand-chair’ conversation places, as well as separate rooms in which privacy is totally guaranteed. The office is either part of the collective space or, when needed, separated. Moreover, each center has an administration corner (or room), a basic kitchen, and some have a clinic for the free medical sexual health checks. A long table encourages a shared coffee or lunch. People can just chat or discuss relevant issues in small or large groups. The centers have shelves containing information leaflets on a variety of items<sup>44</sup> and materials such as packages of condoms and plastic lubricant bottles. The walls show photographs and drawings, often related to sex industry subjects. The relaxed atmosphere feels welcoming to the sex workers” (Multiple observations during visits at NZPC community centers in Auckland, Wellington, Christchurch and Dunedin in 2015 and 2016).

In the Netherlands, there are two sex worker organizations. In Sweden, RA is the only organization, but due to the repressive policy, the organization has limited operational possibilities compared to NZPC. In New Zealand, NZPC has a monopoly position, which could raise the question of whether this had negative consequences for the development of the domestic decriminalization social movement. Radačić (2017) argues that “the literature on sex workers' rights movements identifies a lack of solidarity as one of the key hurdles for successful political organizing, and one of the key factors for the failures of the movement”. She refers to Gall (2007) who argues that hierarchies within an organization could frustrate collectivism and solidarity. So, could NZPC's monopoly position lead to lack of solidarity and/or the existence of hierarchical structures within the NZPC organization? Here, two aspects play a role. The first is noted by Mathieu (2003:40) who emphasizes the importance of a social movement organization leader, a representative and spokesperson of the sex worker population, who is able to effectively carry out the decriminalization ideal, and who is prepared to lead this organization

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43 NZPC community center in Christchurch has temporarily moved to the periphery of the city because of earthquake damage.

44 Information leaflets, from occupational safety and health issues, to alcohol and drug support, victim support after sexual abuse or sexual assault, and justice services.

over a longer period: “One of the major causes of the failure of deprived or marginalized people’s movements is that those within their ranks who can best lead a collective protest are also those who are the first to withdraw from it and to adopt an individualist strategies”. The second aspect is Marion et al.’s (2016:242) belief that leader-centric individuals “fail to anticipate or to explain leadership influence by informal and emergent groups of workers”. Rather, they argue for a leadership “beyond, or even without, presuming leader-centrism” (ibid:243).<sup>45</sup> NZPC presents itself as a non-hierarchical collective of coordinators, employees and volunteers: “NZPC does not aspire a top-heavy management structure” (NZPC21). Nevertheless, the National Coordinator holds a powerful and responsible job<sup>46</sup> that actually could have developed into a ‘leader centric’ position. This then – following Marian et al. (2016) – would be detrimental to the organization. Rather, the leadership of the National Coordinator corresponds to ‘pluralized leadership’, which is defined by White et al. (2016:280) as “a collective product of actors’ interactions that emerges in social relations”.<sup>47</sup> This aligns with a statement from the NZPC National Coordinator who emphasizes that the NZPC management strives to have more spokespersons in each branch in order to “be operating on an even keel, to mitigate against that kind of dominant power” (NZPC15).

How is NZPC’s central management experienced by the regional NZPC coordinators? Are they able to independently operate from the NZPC National Office as well? These questions lead to the next point of difference between NZPC and its allies: the existence and functioning of the regional NZPC community centers.

#### *8: Partial autonomous NZPC community centers, and a unique accessibility for sex workers*

NZPC established six community centers in the main cities and districts throughout the country<sup>48</sup> which not only significantly increases sex workers’ access to NZPC countrywide, but facilitates them to use NZPC’s services. PROUD has to support sex workers across the Netherlands from only one community center in Amsterdam. Establishing more community centers across the country is frustrated by a lack of money and available hours (RPNL1).

45 Collectivism, according to Marion et al. (2016:243), has to be considered “the interaction of people, information, and structures (...) that influence organizational outcomes”. They argue that leadership is never isolated from the collective, it rather is distributed across numerous informal leaders.

46 The National NZPC Coordinator is not only NZPC’s national spokesperson since 1987, she also has a main function in coordinating the organization. Apart from this, she mostly represents NZPC in national and international meetings, at fora, and in front of politicians, media and other involved groups. She also liaises with the MoH.

47 In this context, White et al. refer to Balkundi & Kilduff 2006, Carson et al. 2007, Kilduff & Tsai 2003, Uhl-Bien 2006, Yammarino et al. 2012).

48 NZPC National Office is located in Wellington.



RA has subsidiaries in three cities: Stockholm, Malmö and Gothenburg. These centers, however, operate under a difficult repressive sex industry climate.

The regional NZPC Coordinators could be seen as informal leaders, which Marion et al. (2016:247) define as “agents who are in positions to process information in a network and who are thus proximal drivers of information flow in the system”. They also contribute to the functioning of NZPC as a whole. However, how do informal regional NZPC leaders experience the leadership of NZPC National Office? Are they allowed to adapt to local circumstances within its common profile of equality and unambiguity? According to the National NZPC Coordinator, the National Office in Wellington does not interfere with regional NZPC activities, as long as they do not take too much money or hurt the image of NZPC:

“You know, it is informal pretty much. It just happens naturally, so we talk. (...). But if it was going to be a money-breaker issue, then we [the NZPC National Office] would say: ‘actually, (...) can you [regional NZPC Coordinator] take consideration with the budget?’ So, there is discussion about how much money it’s gonna cost and whether it is going to be a good image, an appropriate activity for the organization to be associated with” (NZPC21).

Next, I will explore the autonomous scope of the NZPC community centers by analyzing specific regional NZPC activities.

#### *NZPC Community Center in Christchurch*

Due to recent heavy earthquakes,<sup>49</sup> the local NZPC had to react to changed circumstances. The NZPC community center itself had to leave the damaged inner city for a more peripheral location,<sup>50</sup> which as a consequence weakened its accessibility, especially for the street-based sex workers who often hesitate or refuse to travel long distances, usually because of cost (NZPC10).<sup>51</sup> Additionally, according to an NZPC staff member, “most of the area where street-based sex work occurred in Christchurch was closed following the September 2010 quake, as were many of the buildings that housed brothels” (NZPC e-mail CB 07-12-2017). Many of the sex workers were forced to relocate to residential areas, which provoked resistance amongst citizens who felt threatened by this type of work in their neighborhood (NZPC10; NZPC23).

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49 On the 22nd of February 2011, an earthquake with the magnitude of 6.3 (Richter) struck the Christchurch region and killed 185 people. It also affected Christchurch’s central city and eastern suburbs, with damage to buildings and infrastructure. The region was already weakened by the magnitude 7.1 Canterbury earthquake of 4 September 2010 and its aftershocks. Although enormous renovation projects characterize today’s city image, the inner city still shows many damaged buildings.

50 NZPC is well-advanced with its planning to buy or rent an own NZPC premise in Christchurch city (NZPC18; NZPC26).

51 NZPC strives to locate its community drop-ins near to the work places of sex workers.

This resistance has been described in the literature as the ‘Not In My Back Yard’ (NIMBY) syndrome. Moreover, the local sex industry was confronted with a group of new clients from mostly India, China, South Korea, Japan, who came to Christchurch to assist rebuilding the city. According to the former NZPC Regional Coordinator, many of them were construction workers with different cultural backgrounds, norms, and values. Sex workers in Christchurch suddenly had to deal with clients who were ignorant of the New Zealand sex industry legislation and the rights of sex workers (NZPC10). So, for NZPC, it was important to educate the new group of foreign clients (NZPC10).<sup>52</sup> Under these new circumstances in the immediate aftermath of the earthquakes, sex workers were in need of extra ad hoc NZPC support. Some local NZPC staff members started to operate from their homes in order to provide NZPC supplies and information on the new circumstances (NZPC21). NZPC also provided general support about new work options within the city or elsewhere and about the consequences and risks of working privately (NZPC23). Due to the earthquakes, the sex industry in this city had shifted from mostly working in big massage parlors to working more privately in own little businesses, the Small Owner Operated Brothels (SOOBs) (NZPC23).<sup>53</sup>

Apart from these earthquake-related NZPC activities, three other specific NZPC Christchurch activities can be mentioned:

- (i) Its counseling program: Contrary to the other community centers, the Christchurch community center employed a professional counselor for weekly six hours (NZPC10).<sup>54</sup> According to the former Regional Christchurch Coordinator, mental health care is a necessity due to the stigma attached to sex work. In subsection 7.3.1, I will elaborate on the physical and mental NZPC support aspect.
- (ii) Its collaboration with the local police: NZPC Christchurch participated in a special workshop, called *Prevention First Workshops* (NZPC10; NZPC23).

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52 Letters were distributed with practical information and facts with regard to safe sex issues, the New Zealand sex industry legislation, and the way it protects the rights of the sex workers. In one of the letters, one could read that “using condoms are obliged, sex workers have the right to always say ‘No’ to any sexual act, they have the right to report an act of violence to the police, such as threats, not payments, harassments, and removing a condom” (Information letter NZPC Christchurch).

53 Solo or SOOB sex workers are allowed to legally work from home without any licenses provided they do not exceed the maximum of four sex workers. It becomes a larger commercial sexual service premises the moment a manager gets involved (this could also be one of the four). In that case, the operator/manager needs to have a license (PRA Section 3). Sex workers, working in a managed brothel, mostly are independent contractors who do not need a license either. On the contrary, the operator has to be licensed (PRA Part 3).

54 In Auckland, there is an Alcohol and Drug counselor who also offers general counseling at times when there are not enough A&D patients. In Wellington, there are counselors available on call (NZPC e-mail CB 07-12-2017).

At the request of the police, the local NZPC and the local YCD<sup>55</sup> arranged periodic workshops<sup>56</sup> for the Police Patrol Group to improve the relationship between police and sex workers, particularly street-based sex workers (NZPC10). These workshops enable sex workers to refer to police conduct issues on the street. Or, as the former NZPC Regional Coordinator notes, “just letting them know the realities of how it is for a lot of people [street-based sex workers] if the police get involved with them” (NZPC10).<sup>57</sup> Additionally, NZPC together with the police and other stakeholders<sup>58</sup> participate in a Collaborative Working Group since October 2017 which aims to collaboratively deliberate on how to solve tensions between local residents and street-based sex workers (Abel & Sweetman 2018).

In fact, this form of collaboration demonstrates the huge difference in the relationship between sex workers and the police before and after the PRA. Due to the law change, instead of being controlled by repression, and harassed or arrested by police, sex workers became ‘inclusives’. At the same time, NZPC was empowered to build up interactions with other parties such as the police and NGOs.<sup>59</sup>

- (iii) Finally, the Protxt Alert System is a typical Christchurch activity in that it covers something that is not NZPC’s responsibility in theory. Rather it has to be considered as a sort of private service for sex workers by staff members. This system is a special text alert service for the local sex workers relating to their safety, health, and other sex industry issues (Protxt leaflet). According to the former local NZPC coordinator, Protxt is an appropriate and unique alert system against violent clients due to the collaboration with the local police (NZPC10). However, the system also led to a dilemma which occurred due to the conflicting interests of NZPC as a national institute and the local NZPC community center. In Appendix XII, this dilemma is further outlined.

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55 YCD is a specialized NGO organization to support youth under the age of twenty-five according to NZ law (NZPC10; NZPC e-mail CB 07-12-2017).

56 The last session in 2014 took place weekly for fourteen weeks. New sessions will follow in the future (NZPC10).

57 For instance, if a sex worker reports an offence and the policeman in charge discovers outstanding warrants for unpaid fines and then arrests her for that, this will discourage sex workers from reporting crimes in the future. Such a contra-productive attitude is in strong contrast with NZPC’s efforts to encourage sex workers to report these crimes (NZPC 10).

58 Councils, agencies, community members, NZPC, and police.

59 NZPC Christchurch cooperates closely with NGOs such as the SA and YCD. NZPC provides street outreach one night per week. The SA offers an evening drop-in center providing food and hot drinks for street-based sex workers three nights per week and an outreach van three nights per week when the drop-in center is closed. YCD runs a project for young people who have been involved or are perceived to be at risk of becoming involved in sex work on the streets and does street outreach three nights per week. In addition, NZPC and SA run a weekly drop-in one night per week where young people can come along for a meal to socialize and access washing facilities and other assistance from youth workers.

*NZPC Community Center in Auckland*

Auckland, with 1,5 million inhabitants, is by far the biggest city in New Zealand. It is a multicultural<sup>60</sup> community with the positive as well as dramatic dynamics often found in cities of this or larger size. As in Christchurch, the NZPC Auckland community center has developed a number of activities that do not occur in other NZPC community centers, or occur in a different form. Here, we will focus on two main activities. First, its extensive Street Outreach Project is by far the biggest in the country. This service is an interagency approach in which NZPC Auckland works in partnership with the appropriate representative in the Homeless sector (NZPC e-mail AP 28-06-2016). At least two times a week, an NZPC staff member – alone or with a representative of another supporting agency – distributes free street packages to street-based sex workers (NZPC e-mail AP 28-06-2016). Furthermore, the remoteness of some street-based areas in this city (compared to the compact cities of Christchurch and Wellington) determines that NZPC staff members not only do outreach the inner city street-based area, but also have to travel long distances to the street-based sex work regions in the suburbs of Auckland (Multiple Research Observations during visits in Auckland 2015, 2016).

A second specific NZPC Auckland activity concerns the Auckland Rough Sleepers Initiative (ARSI). According to the local NZPC Coordinator, NZPC Auckland works together with government and non-government agencies to support marginalized people, particularly people who are rough sleeping in the Auckland CBD area (NZPC e-mail AP 28-06-2016).<sup>61</sup> Its mandate is to actively advocate on behalf of the interests of the homeless sex workers by assisting them with social housing needs, housing assessments, access to health care, and referral to the appropriate services (NZPC e-mail AP 28-06-2016). Ensuring this vulnerable group access to health care and social support also occurs in other cities. However, due to the extensiveness and complexity of Auckland, this service needs special NZPC attention.<sup>62</sup>

*NZPC Community Center in Wellington*

Wellington is New Zealand's capital and governmental city. The city and its suburbs house around 400,000 inhabitants. In this city, the foundations were laid for the decriminalization of the New Zealand sex industry. Wellington became the first place to operate an NZPC community center in 1988 and became

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60 Around forty percent of the Auckland population has an Asian or Pacific ethnic background; <http://worldpopulationreview.com/world-cities/auckland-population/> retrieved 25-07-2018.

61 NZPC Auckland also manages a clothing bank for sex workers, with the support of clothing donations from local vintage businesses. Besides this service, NZPC Auckland provides food for sex workers who are dealing with social or individual hardship, relying heavily on donations from outside agencies as well as on key contact people in the community (NZPC e-mail AP 28-06-2016).

62 NZPC Auckland also hosts a clinic of Work and Income advisors to assist sex workers in trouble or to advise sex workers who want to exit sex work (Armstrong 2018).

NZPC's National Office. During my research in New Zealand, I often visited the community center in this city. I could observe a notable difference with the other NZPC centers, namely its national coordination assessment. NZPC Wellington activities are not only focused on the regional sex industry interests, but are more than elsewhere focused on the coordination of NZPC community centers across the country, developing and promoting NZPC's national policy, liaising with Ministries, in particular the MoH and the Ministry of Labour (MoL), NGOs, Police, and NZ Immigration Service on issues, related to sex work, and with the media (NZPC7). The NZPC community center in Wellington functions as the heart of the organization (Research multiple observations at NZPC National NZPC in Wellington in 2015 and 2016).

The street-based sex industry sector is quite small in the city (NZPC7).<sup>63</sup> Here, the street outreach is managed by the street-based workers themselves and – unlike in Auckland and Christchurch – not by NZPC key persons (NZPC e-mail CH 10-05-2016). The National NZPC Coordinator notes that about five outreach sex workers distribute safer-sex-information, lubricants, and free condoms.<sup>64</sup>

#### *NZPC Community Centers in Dunedin, Tauranga and Palmerstone North*<sup>65</sup>

The sex industry in these middle size cities differs from the three bigger cities in that: (i) from the late 1990s, street-based sex work, though allowed, did not really occur anymore in these cities, mostly because of stigma on sex work and bigger social control in these smaller cities (NZPC17; NZPC19; NZPC20); (ii) there are fewer sex workers,<sup>66</sup> fewer brothels, and, in line with this, fewer exploitation cases (NZPC17; NZPC19; NZPC20); (iii) most sex workers are private workers, either operating within a SOOB by renting a house together or just working single at home or in a motel; (iv) these three NZPC community centers do not offer free medical clinics, nor office hours for a mental healthcare counselor. According to the local coordinators, sex workers are reluctant to enter the community centers due to the attached stigma and social control. That is why free condom packages are often sent on request by post to the users in the cities or transferred by a courier to the users in the regions (NZPC17; NZPC19; NZPC20). According to the Regional Tauranga Coordinator, the only difference between NZPC Tauranga and the other NZPC community centers in the country is its dedicated needle exchange program (NEP) (NZPC19; NZPC20). Although every community center – to a certain degree – provides

63 The estimate of the number of street-based sex workers in Wellington does not exceed twenty (NZPC7).

64 Street-based workers in Wellington, who are in charge of distribution street packs, earn around twelve euros an hour (NZPC e-mail CH 10-05-2016).

65 I was not able to visit Tauranga and Palmerstone North. Instead, data were gathered through two extended skype-interviews with regional NZPC Tauranga coordinators.

66 There are around 250 sex workers in Dunedin, and another 200 in catchment areas as Invercargill, Alexandra and Queenstown (NZPC 17).

this service, she notes that the NEP in Tauranga is the most extended across the country in that this center is the only city location for this purpose (NZPC19; NZPC20).

In sum, we have seen that the interactions between the NZPC National Office and the staff, the Board, and the regional NZPC leaders seem to occur under the umbrella of ‘pluralized leadership’ while applying the collaborative governance model within the organization in terms of no hierarchy, no ranks in functions, and sharing responsibilities (NZPC7; NZPC21). Reflecting on the opinions of a majority of the respondent interviewees with regard to the leadership of the National Coordinator, their critiques do not reflect a leader-centric leadership. The next quote summarizes and illustrates their overall opinion:

“It is really good. Anything we need, any advice we need, (...). We can ring [the NZPC National Office] any time, even when it is late at night and something is coming up and we’re not sure how to deal with. I would not hesitate to ring” (NZPC17).

A next question, however, comes to the fore: what criticism do the sex workers express regarding the functioning of the NZPC? Could their opinions confirm or put into perspective this image of NZPC as an exceptional social movement organization? In the following subsection, their perspectives will be outlined.

## 7.2 Sex Workers’ Voice about NZPC

Above, we have seen how NZPC succeeded in building an influential organization with distinguishing features. The support from its core group, the sex workers themselves, seems to be indispensable. In the next subsection, sex workers’ opinions about the existence of NZPC, their perspectives with regard to its services, and the extent of ‘concerted spirit’ towards the organization will be explored.

### 7.2.1 NZPC as Sex Workers’ Interest Group

Gathering sex workers’ opinions about the value of NZPC’s existence resulted in unanimously positive reflections. All participants, whether they had a critical note or not, acknowledge the importance of having an active organization that represents their interests. In addition, nearly all respondents claim they feel strongly supported and heard by the NZPC’s staff members when needed:

“One of my concerns was, that no one would listen to a sex worker. Who cares? But coming here [at an NZPC community center], I learnt that it’s different here. They [NZPC staff] listen to you, and when I had my troubles, I felt comfortable coming here alone, because I knew that they would listen” (SW28).

“I think we [the sex workers] are so lucky, and I’m so grateful, that we live in a country where we can come to a place like this [NZPC community center], where we don’t have to hide, where we can get all the supplies we need for very reasonable costs, where it’s friendly and welcoming. (...). It does feel like you’re coming home to your family, never ever judgmental or anything like that” (SW20).

“We wouldn’t have decriminalization without NZPC. Yeah, I mean, the existence of peer-based organizations are crucial to giving people a sense of safety, of community, of skill-sharing, of sharing resources” (SW23).

“A key part of NZPC’s work is advocacy work that it does for the sex workers, on governmental level. (...). And also important work on micro level: the one to one level. A range of work, stemming from macro to the meso to the micro” (SW13).

Actually, from the forty-one interviewed sex workers, only one participant expressed her dissatisfaction regarding the functioning of NZPC:<sup>67</sup>

“I think they [NZPC] are just propaganda, they are nothing else but betrayers. I don’t like them at all, they’re nasty (...). They brainwash us. They should test the men, before they come in and infect us” (SW21).<sup>68</sup>

Apart from this exceptional critique on the functioning of NZPC and on the decriminalization policy as a whole – I will come back to this critique further on – nearly all research participants in New Zealand (n=119) – from sex workers and brothel operators, NZPC members, police, academics, anti-prostitution NGOs, to MPs – do not question the value of NZPC in any way. Despite the resistance some parties feel towards sex work, NZPC as a sex workers’ forum is widely recognized, valued, and considered self-evident. Indeed, while stigma continues to be a burden on sex work, there does not seem to be a stigma on the existence of NZPC. The respondents experience NZPC as very useful for sex industry-related information, support, cooperation, and mediation when needed. Their statements reflect one of NZPC’s main objectives, namely “to liaise with

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67 Despite her criticisms, this respondent acknowledged the importance of NZPC as an interest group for sex workers (SW21).

68 Since her view toward the functioning of NZPC highly contradicted the opinion of the other sex workers, I re-interviewed this sex worker by e-mail one year later. On my question ‘how is your relationship with NZPC at the present?’ she answered: “NZPC is not interested in anyone who doesn’t agree with their decriminalization stance. They have abused me online for questioning what they do. I go in there for discount condoms still, but I do not speak to them and I don’t let them know that I support the Nordic model and am against decriminalization when I go in” (e-mail iv 02-02-2016 SW41).



government and non-government agencies that engage with sex workers and to assist these agencies to do so in an effective, culturally appropriate, way”.<sup>69</sup>

However, do sex workers also unanimously qualify NZPC’s services? In the next subsection, their perspectives on this item will be further outlined.

### 7.2.2 NZPC’s Services and Stigma

“[Tell sex workers] what is safe, what not? Tell them what their role is. What you [NZPC] provide, and what you don’t have to provide” (SW25).

This quote of a sex worker respondent summarizes the importance sex workers attach to an adequate NZPC distribution of information about the sex industry legislation and about sex work-related issues such as safe sex practices and relationships with brothel operators and clients. Although not every sex worker uses all NZPC services,<sup>70</sup> almost all interviewed sex worker participants expressed their appreciation for this form of support which, as they indicate, benefits their health, safety, and self-confidence:

“We are safe in a fact that we know there are places we can come to for advice on certain things. Like, if I had to leave now, I’m pretty sure there will be a pack of provisions for what I need, condoms whatever, that is why the NZPC is here for” (SW6).

“The importance of the NZPC is: they are very good in enforcing. So, if there is any complaint about working conditions or standards, they will talk to the operator. And education as well for girls [new sex workers]. Personally I never needed it, but I appreciate it’s there. Some girls are well educated, or don’t have that much health knowledge” (SW10).

In particular, NZPC’s distribution of free condoms and other supplies, the free medical clinics at the NZPC community centers, and the support to help or to mediate in case of financial, judicial, or social need are considered very meaningful. The distribution of free street packs supplied during the regular street outreaches are experienced by both indoor and outdoor sex workers as essential and conducive for the health and safety of the street-based sector:

“I [street-based sex worker] found out about NZPC at age of fifteen. They came down to street, providing hot drinks (...), and condom packs. Its really good that we have them here. (...). I use them now, they have always been around since my time on the streets” (SW14).

<sup>69</sup> See: <https://nzpcweb.wordpress.com/>.

<sup>70</sup> NZPC services: see website <http://www.nzpc.org.nz/>.



“Looking for the [NZPC] services, it has changed a lot, it’s out be more, the services. (...). They [NZPC-staff] come out to the streets, and visit, and maybe once or twice a week they come out with condoms and stuff and so (...), providing, which is really good. You need that sort of service, because otherwise you would not really know, would not know where to go” (SW14).

Regarding NZPC’s medical clinics and mental health care services, almost all interviewed sex workers approve of these facilities, not only since these services are free, but also since anonymity – if wished – is guaranteed.

This demonstrates NZPC’s objective to minimize harm within the sex industry by providing information and support to sex workers that enables them to work safely.<sup>71</sup> One consequence of the stigma as discussed in Chapter 3 is that many sex workers prefer to remain anonymous. The semi-annual NZPC Evaluation Surveys<sup>72</sup> show that around thirty-five percent of the participating sex workers use the free NZPC medical clinics.<sup>73</sup> This percentage could be higher if the community centers were able to provide more clinic time on different days and hours (RA5GA1). The bias-free peer environment encourages a number of sex workers to make appointments with doctors and nurses at these clinics:

“I can most of the time afford to go to the other doctor [GP], but I have not told him that I work [as a sex worker]. So I come here for that. But then some people who really don’t have money, or have other issues about stuff, they can come here, they don’t have to pay and nobody ask questions. I think it’s an amazing resource to have” (SW7).

“It’s just amazing, the free medical checks, (...). A place to come here and just talk, have a coffee, have a cry, whatever, the option of buying your stuff here, which is a lot cheaper than normally through your boss. The NZPC is great” (SW26).

However, according to a medical professional at one of the NZPC community centers, some sex workers decide not to attend the NZPC medical clinics, because they do not want to be associated with the sex industry:

“Some people do not want to go to the NZPC clinic, because they do not want to be associated as a sex worker” (RHC4).

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71 See: <https://nzpcweb.wordpress.com/>.

72 Section 3 of the NZPC’s Evaluation Surveys, dated July 2014 – December 2014, January 2015 – December 2015, January 2016 – June 2016 (e-mail NZPC 24-11-2016).

73 Other sex workers regularly visit the Sexual Health Clinics (not only for sex workers) or their own General Practitioner (GP) (Source: NZPC: Charts NZPC Evaluation Results July 2014 – December 2014, January 2015 – December 2015, January 2016 – June 2016 (e-mail NZPC 24-11-2016)).

They are not searching for an environment of peers. The stigma on sex work plays an important role in this choice. Some of them prefer to do their health checks at Sexual Health Clinics which are open for everybody, by which they are able to remain anonymous both in name and as a sex worker (RHC4).

Another important NZPC service that is considered by sex workers a welcome contribution to their health, safety, and self-esteem – and at the same time aligns with NZPC’s objective to assist sex workers ‘in trouble’ – is NZPC’s mediation between sex workers and conflicting parties. A respondent sex worker highlights that NZPC often solves the problem before it can come to trial. For example, cases of financial exploitation – such as illegal imposed fines and bonds (see Chapter 8) – can be quickly solved through mediation of NZPC:

“NZPC can help to get you [the sex worker] that money back, because the brothel knows, they’re not allowed to get that money, they know it’s your [sex worker’s] money. The success is almost a hundred percent of the time (...), because the law [PRA] says ‘they are not allowed to take it’” (SW9).

Another sex worker respects NZPC’s efforts to mediate, but is sceptical about the results if the case is related to ‘trouble-brothels’:

“NZPC can talk to them to mediate and get involved in that way, but they [bad-willing operators] are gangsters, they will be polite, (...) playing nice guys, but they don’t give a shit. [Then] we really don’t have the power” (SW2).

However, when exploitation, abuse, violence, or harassment lead to trial, NZPC supports the sex workers, if they want aid. A sex worker reflects on the mental and judicial support she experienced when she decided to take her boss to court:

“I actually don’t think this would have happened if NZPC was not here. Me with my friend came in [at the NZPC community center] and had a talk, deciding what to do. If it wasn’t for NZPC guiding me, and saying ‘hello, this is what you can do, (...) these are your rights in this industry’, I’d’ve been lost, or probably just left” (SW28).

According to Abel, there still are a lot of sex workers who do not disclose to family and friends that they are working in the sex industry which sometimes dissuades them from pressing charges (RA7GA2). She indicates a number of reasons for this reluctance to search for justice: (i) a number of sex workers are totally ignorant of their rights; (ii) other sex workers might be aware of their rights, but unfamiliar with the way to take a client or operator to court; and (iii) they might be well-informed, but afraid to be identified as a sex worker in that they want to keep their work separate from their private life: “They just

do not want to have their name splashed in the newspaper” (RA7GA2).<sup>74</sup> Here, stigma, secrecy, and insecurity around sex work again reflect back on the sex worker and limits her to fight for justice. They fear detrimental effects on their privacy, despite the fact that they are able to remain anonymous. In addition, referring to other studies,<sup>75</sup> Abel and Fitzgerald (2010:227) add that a number of sex workers also believe that they will not be taken seriously by the police and the courts because of their occupation. For instance, that police believe sex workers get what they deserve when they are attacked. Sex workers might also fear reprisal from perpetrators. Other sex workers fear the consequences of unpaid taxes when going to a Tribunal in case of violence (SW21; SW22). This correlates to the dilemma of not paying taxes, which will be discussed in the next chapter.

Other participant sex workers mention – in line with findings from Abel and Fitzgerald (2010) – that both the decriminalization and NZPC’s information and education programs about legislation and rights increasingly encourage them to consider an official report of violence or abuse, on their own or through the help of NZPC. This also furthers NZPC’s objective to “assist sex workers to overcome barriers that impact negatively on their rights, health, and well-being”.<sup>76</sup>

Regarding sex workers’ perspectives on the NZPC services, a comparison between the data of this underlying research and the results of the semi-annual NZPC Evaluation Surveys<sup>77</sup> shows similar outcomes (See also Appendix XV).

### **7.3 Sex Workers’ Ambitions for the Future**

Apart from approvals explored above, a number of sex workers also have critical suggestions which, according to them, could improve the NZPC’s services. Their main suggestions fall into five categories: NZPC’s mental health care service; the education and information programs related to the financial consequences of an eventual exit; the cooperation with police; NZPC’s approach toward minor sex workers; and finally, improved education for sex workers.

#### *7.3.1 Access to Mental Health Care*

“A sex worker in some ways is a counselor, they need supervision” (RHC6).

This quote from a professional counselor who worked at NZPC refers to sex workers’ need for better mental or emotional health care at the NZPC community

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74 Despite the fact that sex workers have the right to remain anonymous if they want to.

75 Campbell & Kinnell, 2000/2001; Lewis & Maticka-Tyndale 2000.

76 See: <https://nzpcweb.wordpress.com/>.

77 This research focuses on information, gathered by NZPC during the periods July 2014-December 2014, January 2015-June 2015, July 2015-December 2015, January 2016-June 2016.

centers. She acknowledges the mental pressure which goes hand in hand with sex work, due to both the stigmatization and occasional discrimination of sex work and conversations with regular clients who suffer from mental health issues.<sup>78</sup> Vanwesenbeeck (2017) discovered that burnout – though not unique to sex work – is often related to sex workers’ experiences of social negativity toward their occupation and to a lack of support (see also Chapter 3, subsection 3.3). In line with other studies,<sup>79</sup> Abel and Fitzgerald (2010:232) note that “although the work environment and the shift nature of the work are important contributors to mental and emotional exhaustion, the stigma attached to sex work also has an important part to play in the mental health of sex workers”.

According to a participant mental counselor, the NZPC staff does not seem eager to extend these services. She criticizes the organization for its moderate action around mental health and notes that this does not align with the view of its funder, the MoH. She states that this vision is based on the four pillars of the Maori Health Models (RHC6).<sup>80</sup> The idea is that those pillars have to be in balance. According to her, however, NZPC’s mental health pillar section might be revalued (RHC6). She might argue in her own interest or from a professional bias that all sex workers should need mental health care, but her call for more mental health care at the community centers aligns with the main suggestion of participant sex workers who indicate that mental assistance is needed, both for new and experienced peers:

“It needs to be more hours [for professional mental counselors], because quite a few people in the sex industry have underline mental health problems (...) which might have to do with their past of what has happened” (SW27).

“It isn’t just sex work when you have a client (...). They [clients] are often there because of loneliness, or just broken up with their wife, or they might have sexuality issues (...). For someone [sex worker] who is between eighteen and twenty-one (...) as in any counseling profession, you should have supervision” (SW8).

“Mental health [support] would be good, because you can get mental issues of being a working girl, like trauma, listening to other people’s stories” (SW14).

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78 These issues can include divorce, the death of family members or friends, severe quarrels, and medical problems.

79 McKeganey 2006; Day & Ward 2007.

80 Māori Health Models (Te Whare Tapa Whā): The Māori philosophy towards health is based on a wellness or holistic health model, which refers to the four cornerstones of Māori health. These four pillars are physical health (Taha tinana), spiritual health (Taha wairua), family health (Taha whānau), and mental health (Taha hinengaro) (Ministry of Health – found 15-08-2017). The thesis is that a lack of or a damage to one or more of the four dimensions could lead to imbalance and unwellness of persons or a collective.

“Mental health care would be a very good idea. There is always so much to talk to your colleagues about it, because every girl has an experience somewhat similar. That [counselling] would be very good to happen” (SW11).

“I think that mental health services are too expensive and we all need trauma counseling and support. I used to see a psychiatrist and a psychologist to try and get my problems sorted out, so I could one day exit prostitution and study and get a decent job. But it cost so much money to see a psychologist regularly that I had to prostitute myself even more and now in hindsight, its no surprise to me that the help was limited while my trauma experiences in life was not only ongoing but actually increased to cover cost” (e-mail SW 02-02-2016; SW41).

Further investigation into the present mental health services at the NZPC community centers provides nuance to the above-mentioned critical note. Indeed, only the NZPC Christchurch community center has employed a professional counselor.<sup>81</sup> However, the other NZPC centers also refer sex workers in mental need to counselors, although these counselors are not directly employed by NZPC.<sup>82</sup> An NZPC medical staff member in Wellington clarifies her approach to sex workers with mental health issues:

“If I think a person needs mental help, then I use NZPC staff who have done so much counseling for sex workers. If I think the NZPC staff is not qualified for, then I will ask for counseling at the NZPC, so anonymity guaranteed (...) Mental health care is incredibly important” (RHC3).

This NZPC support aligns with its objective “to assist sex workers in finding strategies to overcome situations that are detrimental to their occupational safety and health”.<sup>83</sup> However, the call for better access to mental health care for sex workers is also supported by one of NZPC’s medical sexual health professionals. She promotes having a non-judgmental GP working part time at the center to also support sex workers with mental health problems (RCH2).

Worth mentioning is that mental health problems are not so much associated with sex work itself, but rather with the stigma that is a burden on the occupation. Weitzer (2005:217) notes that “prostitution does not have a uniform effect on workers’ self-images and psyches”. He refers to studies that compared psychological stress between prostitutes and non-prostitutes.<sup>84</sup>

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81 According to the counselor and the former Christchurch Regional Coordinator, more available hours to respond to sex workers’ requests would certainly improve the mental support at the community center (NZPC10; RHC6).

82 The NZPC community center in Wellington maintains relationships with members of the regional Mental Health Service Team who are prepared to come to the NZPC community center and meet there with people when needed (RHC2).

83 See: <https://nzpcweb.wordpress.com/>.

84 El Bassel, 1997; Romans et al. 2001.

These studies revealed that drug-addicted street-based sex workers were more likely to have psychological problems than an age-matched sample of addicted non-prostitutes (El Bassel 1997), while a research among indoor sex workers and an age-matched sample of non-sex workers did not show differences in physical health, self-esteem, mental health, or the quality of their social networks. Weitzer (2005:219) concludes that “in sum, although certain aspects of the work are disliked, indoor workers are more likely than street prostitutes to describe positive aspects of their work”. This aligns with Daalder (2004:34) who argues that the majority (three-quarters) of indoor workers in the Netherlands report enjoying their work. This also aligns with my research findings as already mentioned in subsection 3.4.

Additionally, a number of street-based workers might already be considered to be at the bottom of the socioeconomic scale and so might already be at risk for mental health problems. Unfortunately, this interesting subject lies beyond the scope of this research.

### 7.3.2 *The Financial Consequence of Exiting*

“Ways of getting out of the industry. (...). Transitioning out of it can be quite hard. (...). You have got a huge gap in your employment. Despite the legality of it [sex work], employers probably won’t hire ex-prostitutes (...), even knowing it’s quite common. It’s a job that doesn’t really give you ..., it unskills you. (...). You can’t transfer the skills” (SW10).

According to the NZPC National Coordinator, sex workers who decide to exit the industry often arrange their exit by themselves (NZPC6). However, as illustrated in the above quote from a respondent sex worker, most experience huge obstacles when trying to find a mainstream job. Normally, NZPC tries to support them through its exiting programs.<sup>85</sup>

Yet, a number of participant sex workers experience a lack of knowledge about personal finances, which rebounds on them during their career or when they want to leave the industry. They indicate that an important barrier to exiting the sex industry is the financial risks. A participant sex worker refers to the high incomes of sex workers in comparison to the much lower hourly rates in the mainstream jobs. She emphasizes that this loss of income prevents many sex workers from exiting the occupation. Some participant sex workers would like to see NZPC improve its financial advice to sex workers, preferably at the NZPC community centers itself. They argue that it is difficult to access financial advisers outside of NZPC because of reciprocal bias and distrust.

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85 NZPC’s exiting support such as CV writing assistance, mediation to change a work place, offering temporary consensual work at an NZPC community center, mental assistance (NZPC6; NZPC7).

They highlight that NZPC mediation between sex workers and non-judgmental finance professionals would be very valuable:

“I would personally like to see more material available in regards to taxations, enlisted tax accountants, working friendly. So you can go there [to an NZPC community center] and be very open without worrying about being judged” (SW20).

In particular, the ‘long-term’ sex workers appear to need financial advice in terms of how to budget and how to control their spending (SW20).

Here, we see that not only the stigma – writing the occupation ‘sex worker’ on the CV does not really benefit the worker yet – but also the high earnings, lack of financial knowledge, and their alleged tax privileges (see Chapter 8) hinder sex workers from an easy exit.

### *7.3.3 “We Use Them and They Use Us”*

Some sex workers suggest NZPC to improve information and education for the benefit of drug- and alcohol addicted street-based sex workers, in particular regarding their street attitude. They fear that regular expressions of anti-social behavior such as noise and nuisance will further jeopardize the relationships between sex workers and local residents, councils, and police, which consequently could increase the stigma towards their occupation. They encourage NZPC’s efforts to create a better cooperation with the police which, according to them, could result in an improved mutual understanding (SW24). They suggest periodic meetings between sex workers/NZPC and the police to talk about behaviors on the streets, mutual engagements, and efforts to minimize discrimination. According to a participant sex worker:

“The police has to try to get to the girls and then they, ... the girls go to them for help and not being discriminated because of what we [street-based sex workers] do” (SW24).

A police respondent<sup>86</sup> recalls the impact the policy change had on the relationship between the police and the sex industry. Before 2003, the police needed to control the industry and tried to register the ‘deviant’ sex workers. He said that the big difference after 2003 was that the police no longer knew who was in the industry since “the New Zealand sex industry became more and more self-regulated” (RPOL4).

Sex workers became included within the New Zealand society which not only enabled parties to improve their mutual collaboration but also furthered PRA’s intention to destigmatize the occupation. Both police officers and NZPC

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86 Harvey: Detective Senior Sergeant Canterbury Police District Head Quarters.



point to the importance of maintaining a mutually honest and transparent relationship. Sex workers feel protected by the police and the police can use relevant knowledge of sex workers and NZPC:<sup>87</sup>

“We [NZPC Christchurch] use them [police] and they use us. We share information if it is important for the safety” (NZPC10).

#### 7.3.4 NZPC's Approach Toward Minor Sex Workers: Opposing Views

“So, if I'm sixteen and I don't have a house, I can't work from home. Maybe I want to get a motel room and work, but if the motel knows that I'm doing sex work, they can get in trouble with the law, so they can't rent me a room to work from. If I go to a friends' house and I want to use their room, if they know I'm doing sex work and they can go to jail, so they can't help me with a room (...). I can't put an ad in the paper, because if they know I'm under eighteen (...). I can't put my ad on the internet, because the owner of the website will go to jail, so I can't put my ad anywhere (...). My only option to find clients, my only option to work from somewhere is that I have to go on the street, you know and there is a lot more risk on the street” (SW9).

As illustrated by this quote of a respondent sex worker, minor sex workers not only often enter the street scene from troubled backgrounds – many of them are runaways (NZPC12) – they also often have little choice other than to earn their money outdoor on the streets due to the prohibition on underage sex work (NZPC12).<sup>88</sup> This NZPC statement is confirmed by sex worker respondents:

“I did not actually decide to go into [the sex industry]. I had been kicked out of home on an early age, I had no act for supporting myself. So I met some working girls, that I became friends with, and they told me about this – what you call it – profession, then bringing me up here and then I started from there (SW14).

87 The workshops 'Prevention First' (see subsection 7.1) is an example of such an improving collaboration between the parties. Another example is a serious incident in which a policeman in Christchurch threatened a street-based sex worker to arrest her for outstanding offences if she would not provide him with free sexual services. By mediation of NZPC, the man was quickly convicted by the police for breaching the Police Act, and was sent to jail for three years (NZPC3).

88 Watkin, manager of the YCD in Christchurch clarifies that in New Zealand, minors (< 18) cannot get a social welfare benefit or any other government money at all. Without their parents' consent, this benefit only starts at eighteen. If minors run away from family home because their environment is abusive, they can apply for a benefit, but to receive that benefit, there has to be an interview with a parent or guardian. The minor will not get a benefit if this person says that the minor can come home, then regardless of the child's safety at home. So, the minor can receive a benefit, only if the parent admits that the relationship has broken down to the point where the child can't live at home (RNGO9).



From my own experience, young people who are in the [sex] industry don't have many alternatives or they don't have the skill base to go and work in a café or the social skills or the knowledge to have an interview. Sometimes they even don't have a home" (SW40).

The vulnerability of minor sex workers is also increased by the fact that many of them have social problems related to sexual identity (transgender or gay/lesbian), poverty, and drugs. In addition, they usually lack any family protection (NZPC12). In many cases, NZPC knows who they are thanks to the help of several adult street-based sex workers who inform NZPC staff members during the weekly street outreaches (NZPC12).

NZPC uses a specific non-judgmental approach toward these young sex workers, which some sex worker respondents suggest should better explained to the outside world. They do not disagree with the theory – “you do need that space, you know, where's no judgment” (SW22) – but they argue that “since it contrasts those of non-peer support organizations, it might evoke ambivalent public reactions” (SW23). Non-peer organizations such as the YCD often directly involve authorities, whether the police or Child Youth and Family Services (CYFS),<sup>89</sup> to support minor sex workers (NZPC12). Watkin, chief of the YCD, emphasizes that

“What we [YCD] do is trying to work toward an actually exiting the sex industry. I could see, the philosophy [is] very different. NZPC promotes sex work as an acceptable career path and that is legal. But for young people, we don't believe they [minors] can make a fully informed decision when they're entering the sex industry. And a lot of young people don't have their safety at the forefront, when they start sex working. So, they're really putting themselves at risks” (RNGO9).

However, NZPC believes in the right of young persons to decide to work in the sex industry. Rather, they will ask them whether they need help. For instance, whether they want NZPC to inform authorities or parents:

“[NZPC] ensures that they [minor sex workers] have a variety of options, are able to make informed decisions about these options, and that these options include the ability to leave sex work.”<sup>90</sup>

In case of extreme doubts about the well-being of the minor, NZPC will first consult its key peer members before calling other experts (NZPC12; RHC3). The NZPC National Coordinator clarifies that NZPC does not promote minor sex work, but it strives to build up an adequate relationship of trust in order

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89 Contrary to NZPC, social workers dealing with an underage street-based worker are obliged to call the police or Child and Family Services (NZPC6).

90 See: <https://nzpcweb.wordpress.com/>.

to keep an eye on the young workers and to prevent them from disappearing into illegality, invisibility, and vulnerability (NZPC6). Medical professionals at the NZPC community centers in Wellington and Christchurch also follow this NZPC ‘no-moral-sanctioning approach’ (NZPC12):

“It is not my role what she [a minor sex worker] has to do. I’m not here to moralize what they are doing. I’m here because they have human rights to look after them” (RHC3).

“I would never say: ‘you should not be working’. That’s not my role to say this. Might talk about how to keep safe. I will prevent that they do not want to see me anymore because they think they have let me down” (RHC4).

According to a respondent sex worker, prohibiting minor sex workers from sex work might also result in unintended, diametrically opposed effects:

“The law [PRA] is there to help protect people who are under eighteen, but in some ways it can make it more dangerous for them, because if I’m sixteen and my only option is to work on the street, I can’t screen clients, (...), can come in trouble with the police, or they gonna stop me from working (...). So, I have to do my work in their [clients’] car or I have to go to their house. There is much more risk in that” (SW9).

### 7.3.5 *The Collaboration between NZPC and Operators*

Sex workers suggest that more collaboration with brothel and parlor operators could improve their working conditions and mutual relationships. However, not all operators are the same. They might be considered a segmented group of individuals who run specific businesses. According to respondent sex workers, operators often differ in their intentions to look after the interests of the sex workers or differ in their willingness to collaborate with NZPC.<sup>91</sup> Some operators, particularly owners of poorly-managed or illegal brothels, often avoid any contact with the organization (NZPC4). They see NZPC as an organization that only fights for the interests of sex workers, which they – according to an NZPC staff member – ‘by definition’ consider contrary to their interests (NZPC6). They might even try to forbid their sex workers from entering NZPC community centers. This often puts sex workers in a difficult position since ignoring their boss might lead to job loss, or lost income from clients who management refer to other sex workers under the same roof.

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91 I experienced that getting into contact with operators for an interview was not always easy. Some operators refused. Some seemed to be initially willing to answer questions but then broke off the conversation. Others (n=7) were prepared to extensively talk about the New Zealand sex industry, about their relationship with sex workers, and about their collaboration with NZPC (Multiple observations in Auckland, Wellington, and Christchurch 2015-2016).

Others, especially owners of well-managed brothels, are certainly willing to maintain a healthy relationship with NZPC (OP1; OP2; OP5). A respondent brothel operator expressed his appreciation for the existence of NZPC for workers:

“Very important. Without them [NZPC], there is no way for the girls to go. (...). This is the people who will fight for them. If you don’t have that, you have those girls, who think: ‘what do I have to do?’ Because a lot of them are like nineteen, twenty, they don’t know how to go to the right authorities. (...). In any other industry, you always have someone to go to. They [NZPC] fight for the girls’ rights. It’s a good place for us, because every time a girl comes to work for us, we used to say: ‘you need to go to the NZPC and talk to them, they can tell you about your rights’. I can tell you your rights, but go to an independent person” (OP5).

A number of operators are also willing to send unskilled sex workers to NZPC in order to provide them with information and education about important issues such as health care and safe sex practices or to ask support in case of social or mental problems. They also regularly promote the NZPC’s free medical clinic services:

“They [NZPC] do health checks. A lot of girls don’t want to go to their own doctor (...), they can come there [NZPC center], non-judgmental, (...), they can say just their working name, and they feel safe” (OP5).

Operators also express appreciation for what NZPC can provide for their own interests. A parlor operator said:

“When I have doubts [in case of troubles with sex workers], or I don’t know what to do, I go to her [NZPC Coordinator], and she gives me the right answers” (OP7).

Officially scheduled appointments between NZPC and brothel/parlor operators<sup>92</sup> do not really exist. The contact mostly occurs on an informal and spontaneous basis. Sometimes an operator visits an NZPC community center to buy resources (condoms or lubricants) and starts to chat. NZPC can also request a conversation in case of problems between the operator and one or more sex workers. One example of an effort to improve their mutual collaboration is the creation of the rather unique ‘All Business Code of Conduct’ (CoC) – the Business ABC – which was created through cooperation between NZPC and some operators and was launched in February 2016 during NZPC’s annual

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92 A brothel only supplies rooms and sex workers to provide sexual services. The difference between a brothel and a parlor is that the latter often has a bar as well where people can have a drink and buy sexual services if they want to – there is no obligation to.

symposium. The goal of this CoC is to improve sex workers' safety by making acceptable conduct guidelines for operators regarding seven items and which they should adhere to. These items deal with (i) upholding rights and conditions through following the PRA rules; (ii) the prevention of violence; (iii) rules about hiring and contracting sex workers; (iv) improvements to protection of sex workers' privacy; (v) improvements of work place practices; (vi) advice on alcohol and drug addiction; and (vii) suggestions to reduce the potential of stigma to harm a sex worker's life<sup>93</sup> (See Appendix XVI for a detailed description of the CoC). The ultimate goal of the CoC designers is to spread the CoC across the brothels in the country, to ask the operators to discuss the content with their workers, and to hang up the papers on a visible place on the wall of the brothel or parlors (NZPC7; NZPC Comments on Symposium 2016). The CoC is in process. NZPC staff members expect that a number of operators will accede to this request and will try to improve their relationship to their workers in accordance with the advice. However, they also fear that a some will refuse and continue their own strategy towards the sex workers (NZPC Comments on Symposium 2016).

### *7.3.6 Improved Education: A Sex Work Degree*

A rather original improvement suggestion came from a participant sex worker who refers to the idea of a 'practice-sex work-education' course run by NZPC. This would be a professional training for sex workers which is targeted on a better understanding of legislation and sex work-related issues, not least of which is safe sex practices. This course could then result in a certificate of having demonstrated the ability to practice the occupation on a professional and safe way:

"A diploma or a degree in 'Sex Work-tarism', learning how to do a good massage, how to work safe, (...), use one hand for you, one hand for the client, how to put a condom on properly, how to use a dental dam" (SW20).

The idea is not based on the belief that sex work is a normal occupation and should be taught at schools. Rather, according to this sex worker, an adequate education might result in a number of advantages. First, a better safe sex practice will improve the safety of the industry. Second, the clients could note the level of sex workers' 'degree'. Third, improved skills might lead to better payment scales for the 'certified' sex workers. Fourth, it might increase the status of the sex industry.

Here, she advocates for an education that could improve both sex workers' safe sex practices and public health and at the same time contribute to the decrease of stigmatization. This could diminish the 'NIMBY'-syndrome.

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93 See: <http://www.nzpc.org.nz/For-Brothel-Operators>.

Although interesting, it is beyond the intentions of this underlying research to further elaborate on this suggestion.

### **The Netherlands and Sweden: Increasing Focus on Repression**

#### *The Netherlands*

“Decriminalization can generate a popular backlash, legislation that dilutes the original law reform, or even full recriminalization if, say, an abolitionist political party gains power” (Weitzer 2012:153).

An important aim of the Dutch 2000 sex industry law was to make a distinction between consensual and forced sex work in order to protect sex workers’ position. Voluntary sex workers obtained a legal status with all related rights and obligations included and consensual sex work became considered as work.<sup>94</sup> To the contrary, forced sex work, the illegal sex industry, and criminal elements within the sector had to be combated (Outshoorn 2012; Weitzer 2012; Siegel 2015; Wagenaar et al. 2017).<sup>95</sup>

After 2000, the national discourse on sex work became increasingly focused on human trafficking and on the appearance of forced labor within the sector, due to several remarkable publications and phenomena. First, there were the publications of Karina Schaapman. In her writing, this former sex worker and Amsterdam Social Democratic Party city councilor not only described drug addiction as crucial to the sex industry, she also described sex work as mainly forced work (Schaapman & Asante 2005). She considered the buying of sexual services to be counter to societal norms and declared the 2000 Law as bankrupt (Schaapman 2007; Outshoorn 2012).<sup>96</sup> Her abolitionist publications influenced a number of politicians<sup>97</sup> at the local and national level to seriously combat sex work. Here, we can identify a push towards a dominant moral approach to prostitution which Weitzer (2012) calls the oppression paradigm. Second, an article by

94 In the Netherlands, native as well as citizens of EU countries are allowed to legally work in the sex industry. However, non-EU-sex workers are not licensed and have no rights nor protection (Outshoorn 2012).

95 The implementation of the 2000 Act was delegated to the municipalities. Most cities did introduce a licensing system for brothels. Prohibiting sex work in communities – the so-called zero option – was not possible since this would contravene the intentions of the Act. Many communities refused licenses for new brothels (Outshoorn 2012; Weitzer 2012; Siegel 2015; Wagenaar et al. 2017).

96 Recommendations were to license the escort service, to criminalize pimping as traffickers of humans, and to raise the age to 21 (Outshoorn 2012).

97 Major of Amsterdam Job Cohen and alderman Lodewijk Asscher. Weitzer (2012:160) writes that Asscher “has stoked the fire repeatedly – calling business owners ‘pimps’ on television, advocating raising the minimum age to 23, closing windows between four and eight a.m., mandating psychological screening of sex workers, and claiming that trafficking is a big problem in Amsterdam”.

journalist Ruth Hopkins in the newspaper *NRC Handelsblad* criticized the approach of authorities to trafficking<sup>98</sup> (Outshoorn 2012). Third, there was the National Reporter's report on Human Trafficking in 2009. She noted a remarkable increase of human trafficking cases: from 284 in 2001 to 909 in 2009 (Mensenhandel 2010 NRM).<sup>99</sup> The idea that most prostitutes had to be seen as victims of human trafficking was furthered by another report, called *Schone Schijn* (KLPD 2008) (Outshoorn 2012; Wagenaar et al. 2017; Weitzer 2012). This report showed many human trafficking cases within the licensed sex work sector (Siegel 2015). Known as the *Sneep Case*,<sup>100</sup> it concluded that between fifty to ninety percent of the sex workers in Amsterdam were forced to work in the sex industry (KLPD 2008). The discovery that trafficking also took place in the licensed sector – putting it differently, that legalization could not prevent abuse in the legal sector – can be considered, according to Siegel (2015), a turning point in how authorities viewed sex work: not only unlicensed sex work, but all sex work became associated with organized crime.

Meanwhile, the public opinion was also influenced by media attention and TV broadcasts about the “out-of-control and outrageous prostitution sector” (Wagenaar et al. 2017) and about the modus operandi of the so-called loverboy practices.<sup>101</sup> Outshoorn (2012) emphasizes that the reports, books, articles, and events got significant media attention that influenced the public opinion about the way prostitution was regulated in the 2000s.

The dominance of the trafficking debate had – and still has – an impact on sex workers' privacy and autonomy. The sex industry was complicated by new repressive measures such as mandatory registrations, intake interviews by police or health services, obliged intake interviews by brothel operators to check for indications of trafficking, the closing of sex work windows, and the reduction of licenses.<sup>102</sup>

To improve the struggle against trafficking, crime, and abuse in the sex industry, a new Bill, the WRp,<sup>103</sup> was introduced in 2009. Originally, this

98 *NRC Handelsblad*, M Bijlage, 07-11-2005.

99 This increased number could be related to a new definition in 2005 that also included trafficking cases and forced labor in other branches such as horticulture and horeca (Outshoorn 2012; Wagenaar et al. 2017).

100 The *Sneep Case* or *Saban B. Case* is about three Turkish traffickers who had illegally been active in the licensed prostitution sector.

101 Bovenkerk et al. (2006:78) define ‘loverboys’ as a special category of pimps: they use their love-relation with a woman – after having introduced her into the prostitution sector – to exploit her. However, contrary to suggestions of both media and anti-prostitution groups, these authors argue that regular pimping rather than loverboy practices happened within the legalized sex industry (Bovenkerk et al. 2006).

102 For example the review of the Amsterdam Red Light District and the closing of one hundred prostitution windows at the Zandpad in Utrecht.

103 Bill introduction by the cabinet Balkenende IV in november 2009 (TK 2009-2010, 32211): Wet Regulering prostitutie en bestrijding misstanden in de seksbranche (Law for the Regulation of Prostitution and Suppression of Abuse in the Sex Industry).

Bill proposed a uniform licensing system for all forms of prostitution which would mean the registration of all sex workers, including independent sex workers.<sup>104</sup> It also raised the age from 18 to 21 years<sup>105</sup> and criminalized unregistered workers and their clients. This Bill would criminalize all sex workers except those in possession of a license. However, doubts about the compatibility of mandatory registration with Dutch and EU privacy laws made the First Chamber reject the Bill in 2012 and 2013.<sup>106</sup> It resulted in a new submission to Parliament in 2016 in which mandatory registration and the obliged licenses for private independent sex workers were omitted.

In October 2017, a new government with Christian political parties<sup>107</sup> announced further repressive measures against the sex industry with the stated goal combatting trafficking. Again, mandatory registrations, mandatory licensing for independent home-based sex workers and escorts on top of the already obliged KvK registrations, and a new pimping rule<sup>108</sup> were suggested. At the writing of this thesis, this Bill still is in progress.

As discussed in Chapter 4, these policy movements underline the vulnerability of sex industry policies, or, following Wagenaar et al. (2017), indicate the instability of sex industry morality politics (see Chapter 4). The legislation started in 2000 with a pragmatic and realistic focus on better protecting sex workers' rights and increasing their self-esteem. It developed, however, into more repression – for example limiting their workplaces<sup>109</sup> – and further stigmatization of the occupation (Wagenaar et al. 2017; Weitzer 2012; Siegel 2015). The coalition partner CU campaigns for the introduction of the Swedish Model with its ultimate goal to abolish the entire prostitution sector. In fact, it is a reminiscent of Weitzer's quote above. The repressive measures seem to become increasingly dependent on arbitrary decisions of municipalities to yes or no get a license to work. Obligated registration can violate the privacy of sex workers and might push them into the unprotected and illegal underground scene. These factors could raise the question to what extent the aim to reduce harm still applies?

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104 Obligated registration through which local authorities could control sex workers' free will to work in the industry.

105 Communities keep the right to specific local measures such as a local ban on sex work (Outshoorn 2012; Siegel 2015).

106 Moreover, since 2009, sex workers in the legal sector were already obliged to register with the KvK (Chamber of Commerce) for tax purposes, so opponents consider a separate registration needless (Weitzer 2012).

107 The government coalition since November 2017: liberal parties (VVD and D66) and Christian parties (CDA and CU).

108 Anybody who provides services to unlicensed sex workers will be criminalized. This also concerns the taxi-driver, the accountant, the landlord, a minder, or a partner who shares sex worker's income.

109 As mentioned, the closing of windows in Amsterdam and Utrecht and street-based areas unemployed hundreds of sex workers.



Wagenaar et al. (2017:240) argue that “the political climate in which sex workers operate determines the possibilities of constructive collaboration”. The New Zealand culture (as we have seen in Chapter 6) and the tradition of the Netherlands are based on cooperation or – borrowing the words of Wagenaar et al. (2017:253) – are “striving for consensus and respect for minorities”. Within this arena, NZPC can operate within a political and social climate of acceptance of the presence of sex work. Its counterpart, PROUD (and earlier the Red Thread) also cooperates with local and national agencies, but its success and the extent of effective ‘collaborative governance’ negotiations depend on the preparedness to either accept the presence of sex work<sup>110</sup> or to combatting it. The current WRp Bill partly developed without the input of any sex work collective. The Red Thread was bankrupt and PROUD did not yet exist. PROUD aims to (i) combat further repression measures; (ii) to stand up for destigmatization and improvement of sex workers’ civil and labor rights; and (iii) to unravel the equation of sex work and human trafficking:

“we have to make clear that not all sex workers are victims of human trafficking” (RPNL1).

*Sweden:*

“Bureaucracies, management, tracking, policies, registries, unions, legalization – none of this will change what is wrong with prostitution. Prostitution is so deeply abusive and violent that it only can be abolished, not fixed” (Anti-prostitution activist Melissa Farley at a presentation at De Balie, Amsterdam, 08-11-2017).

An evaluation of the Swedish Sex Purchase Act in 2010 (Government of Sweden Report SOU 2010) claimed positive effects such as a decrease in human trafficking<sup>111</sup> and prostitution,<sup>112</sup> a reduction in clients’ interest in visiting prostitutes, and a clear positive public opinion for the ban (Månsson 2017).<sup>113</sup> Månsson (2017:9) claims that “the marked shift in attitudes (...)

110 For instance, the Red Thread maintained an adequate relationship with Tax authorities and the Ministry of Social Affairs and Labour Relations, but cooperating with local authorities in Amsterdam was ‘antagonistic’, while at the same time the relationship with Rotterdam authorities was less complex (Wagenaar 2017:241).

111 The Swedish National Policy Board Report 2014 states that the ban on purchasing sex contributed to the prevention of trafficking (Holmström & Skilbrei 2017).

112 A street-based prostitution reduction of fifty percent. Figures for overall levels of sex work nationally were estimated around 2500. However, according to Levy and Jakobsson (2014), this figure is unreliable due to the hidden, marginalized, stigmatized, and criminalized character of prostitution in Sweden.

113 Holmström and Skilbrei (2017) refer to studies of, among others, Kuosmanen between 1999 and 2012 that show an increase of respondents’ approval for criminalizing clients. However,



must be interpreted as a sign that it [the law] has had a significant normative effect (...)"

These positive claims were challenged by a number of scholars who argued that the evaluation reports<sup>114</sup> showed bias, inconsistencies, and a lack of scientific backing (Östergren undated; Levy & Jakobsson 2014; Östergren & Dodillet 2011).<sup>115</sup> Levy and Jakobsson (2014:597) emphasize that the decreased figures of street sex work cannot be indicative of overall levels of sex work. Rather, they note a shift from the outdoor to the indoor sector and internet (spatial switching<sup>116</sup>). Holmström and Skilbrei (2017) argue that regarding assessments of trafficking in Sweden, international comparisons must be considered questionable since not every country has the same research systems. They also refer to a study<sup>117</sup> which showed both an increase in the number of escorts ads between 2006 and 2014<sup>118</sup> and a stable figure for indoor prostitution. However, they emphasize the relativity of these figures in that the prostitution market is both flexible and international. Östergren (undated) emphasizes that "most of the female Swedish sex workers (...) voice a strong critique of their legal and social situation". She emphasizes that this law not only forces all prostitution to take place in the shadows, but moreover that sex workers seriously suffer public marginalization, discrimination, and stigmatization (Östergren 2010). Levy and Jakobsson (2014) state that the repressive law did not contribute to harm reduction within the sex branch.<sup>119</sup> These authors also mention (i) inappropriate competition between (street) sex workers due to fewer clients; (ii) conflicts over clients; (iii) the theft of cash earned earlier in the day; and (iv) less negotiating time with clients since they fear getting caught: "[sex workers] are thus in great need of assistance and service provision" (Levy & Jakobsson 2014:600).

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according to these authors, Kuosmanen's study in 2012 showed that fifty percent of male respondents supported the ban on clients and eighty percent of women respondents did.

114 SOU 2010: first political evaluation of the *Sexöplagen*.

115 A new evaluation, *Prostitution in Sweden 2014. The extent and development of prostitution in Sweden*, by the County Administrative Board of Stockholm (in the role of National Coordinator for combatting prostitution and human trafficking) in cooperation with experts and researchers (among others Charlotta Holmstrom and Sven-Axel Månsson) was published in 2015. It intends to survey and gather knowledge about the extent of prostitution in Sweden.

116 'Spatial switching': a term used by Hubbard, Matthews & Scoular (2008) to explain the replacement of the sex branch from visible to less visible markets such as indoor and internet.

117 A study conducted by the County Administrative Board of Stockholm 2014.

118 From 304 to 6,956 ads.

119 According to Levy & Jakobsson (2014), in particular the displacement of sex workers – due to this prostitution law and improvements in telecommunications technology (mobile phones and internet) – is worrisome since it frustrates adequate contact, intervention, and protection between service and healthcare provision, the police, and sex workers.

Although sex workers are decriminalized in Sweden, the Sex Purchase Act does not seem to focus on improving their rights. Levy and Jakobsson (2014) argue that sex workers experience difficulties with evictions (prejudice), immigration authorities (deportation), child custody (losing custody), and tax authorities, all of which could destabilize their lives. Moreover, the government evaluation (SOU 2010) stated that, although criminalization has increased the stigmatization of sex workers, these negative effects have to be considered positive since the act aims to combat prostitution. This would mean that increased stigmatization of sex workers is acceptable as long as it forwards the abolition of prostitution, with gender equality in mind.

Referring to studies on public's acceptance of the Sex Purchase Act, Holmström and Skilbrei (2017:87) note that "taken together, these findings indicate that, while there is a great public support for criminalization as a tool to combat prostitution, the intended message behind the law – that prostitution is demand-driven and a form of violence against women – does not seem to resonate".

Regarding the rights' of sex workers' clients, Kulick (2005) argues that the Swedish Sex Purchase Act denies men the freedom and right to self-determine who to have sex with. Månsson (2017: 13) disagrees Kulick's statement: "what he [Kulick] tends to overlook is that this freedom often entails the exploitation of another person's well-being, at least in prostitution". Månsson's statement seems to deny the existence of sex workers with their own agency and self-determination.

Contrary to its allies, RA has to function within an abolitionist national sex industry policy. Östergren (undated) reports sex workers' overall opinion that they feel excluded: "they feel incapacitated by the state and not respected". Although pessimistic about an eventual law change – "it won't change in my lifetime" – Jakobsson sounds combative regarding RA's objectives: "we [RA] always get accused that we are this policy group that is against the Swedish Model. And obviously, we do that as well, but our main goal is to support each other" (interview Jakobsson/Knoll 2013).

In sum, within a cultural context of the traditional New Zealand ethical values of 'fairness', 'equity', and 'social justice', NZPC developed into a stable, independent, and strong social movement organization for sex workers. It monitors and protects the achieved rights of sex workers, but also remains committed to improving their work circumstances. Additionally, it became – within a collaborative governance environment – an ongoing influential and reliable negotiation partner in sex industry-related affairs. Unlike its counterparts in the Netherlands and Sweden, NZPC could succeed in:

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- (i) creating the conditions for an integrative sex industry policy;
  - (ii) claiming an influential role in the decision-making process around the decriminalization of the sex industry;
  - (iii) realizing a sex industry work environment with the same labor rights as any other service occupation;
  - (iv) unionizing all New Zealand sex workers within an informal, recognizable, and non-hierarchical organization;
  - (v) making the organization accessible to all sex workers by establishing strong regional NZPC community centers with their own identity; and
  - (vi) becoming a reliable negotiating partner in local and domestic collaborative sociopolitical policy processes related to the sex industry.

The interaction of the three social movement aspects played an significant role in realizing the ideals of the (global) decriminalization social movement. The enactment of the PRA and NZPC's influence on the policy process are developments remarkably distinguished from the efforts of its allies abroad to realize a legislation change.

However, as some respondents mentioned, the decriminalization of the New Zealand sex industry is not finished yet. The next chapter will outline a critical analysis of a number of PRA aspects that still frustrate NZPC and other involved parties.



## Inconsistencies and New Quandaries: Legal Principles Versus Practical Implementation, A Critical Reflection

Laws intend to (positively) influence empirical reality, while empirical reality in its turn provokes the creation of (new) laws. The same applies to New Zealand's sex industry: decriminalization laws intend to reduce the public stigma attached to prostitution, while the stigma in its turn complicates the application of the laws. Once decriminalization laws are in place, they lead to new questions and quandaries. For instance, can sex work really be treated as any other industry? Can we expect sex workers to comply with the same rules applied to non-sex workers, for example on taxes paying, nuisance and night work? Are the PRA rules in combination with other sex work-related legislation<sup>1</sup> concrete enough to regulate local sex industries? Does decriminalization automatically result in destigmatization of sex work? Does the decriminalization policy apply to all sex workers or are some groups of sex workers still subject to discrimination and criminalization? In short: is the PRA effective in promoting its stated intentions?

Since the pursuit of solutions for quandaries of this nature is often troubled by the persistent stigmatization on sex work, I will start this chapter with a brief review of the still existing stigma as experienced by New Zealand sex workers (subsection 8.1), despite decriminalization. In subsection 8.2, the PRA ban on non-residents to provide commercial sexual services or to operate or invest in commercial sexual business will be discussed. In subsection 8.3, applications of local bylaws on parts of the indoor and outdoor sex industry, which could be considered as non-consistent with the PRA, will be outlined. In subsection 8.4, I will focus on the occurrence of human trafficking and sex workers' de facto experiences of exploitation within the New Zealand sex industry. In subsection 8.5, I will discuss the PRA rule that criminalizes sex workers and their clients for commercial unsafe sex practices. Finally, in subsection 8.6, a rather unexpected consequence of the stigma on sex work which might illustrate sex workers' exceptional position will be explored.

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<sup>1</sup> Sex workers are also subject to other laws, such as the Health and Safety At Work Act 2015 (HSWA) which came into effect in April 2016. A guiding principle of HSWA is that workers and others need to be given the highest level of protection from workplace health and safety risks as reasonable (Worksafe. Law and Regulations); retrieved 18-06-2017; <https://worksafe.govt.nz/laws-and-regulations/acts/hswa/>.

## 8.1 Decriminalization: A Push Towards the Destigmatization of Sex Work

“We have seen stigma and discrimination, hate speech towards sex workers and [brothel] operators who challenge the Council. Once a public notification is open to the public for feedback and submissions, many neighbors, schools, and other businesses come out of the woodworks to give their opinion on how the sex industry ruins communities. The moral ideology ‘NIMBY’ – not in my backyard – opinion from the wider public takes effect and threatens sex workers, their families, businesses, and clients who pay for sex. People start to target residential brothels, sending hate mail campaigns, protesting outside residential brothels, and media coverage plays negative impact on the issue” (NZPC staff member, e-mail 17-04-2016).

In Chapter 4, I discussed the effect of stigmatization under repressive and restrictive policies. Many studies carry out that repressive regulations feed the stigma on sex work (Sanders 2009; Csete & Cohen 2010; Agustin 2013; Siegel 2016; Vanwesenbeeck 2017; Östergren 2017; Wagenaar et al. 2017). This highlights a core question: could decriminalization (or integrative policy) reduce or even eliminate the stigma on sex work as Agustin (2013) suggested in subsection 4.2.5.2?

Abel and Fitzgerald (2010:241) advocate a rights-based approach as “the only viable option” to influence the stigma and discrimination towards the sex industry. Indeed, their research results show positive shifts in social perceptions towards sex workers within New Zealand society (Abel & Fitzgerald 2010:256). They notice that “many of our participants discussed how decriminalization and the realization of employment, legal and health and safety rights, had provided them with a legitimacy that had aided their resistance of stigmatization” (Abel & Fitzgerald 2010:256).

Corresponding with these findings, a number of respondent sex workers of this underlying research perceived decreasing stigma and more social acceptance:

“The stigma is less than it was twelve years ago. Decriminalization of sex work has contributed massively to be able to have public social dialogues about sex work, that humanize sex workers in the public eye, (...), that makes it clear that sex work is work. Might be a different kind of work (...), but it’s work in the same way that other people’s work is” (SW23).

“It [stigmatization] has decreased a little bit (...). People feel more comfortable to go into it, because it’s legalized now, you don’t have to worry about it” (SW6).

An example, which received a broad media attention worldwide,<sup>2</sup> might perhaps illustrate the ongoing destigmatizing tendencies that occur within a decriminalized sex industry environment. In May 2018, Catherine Healy – a former sex worker, one of the founding mothers and spokesperson of NZPC, and still an enthusiastic lobbyist both nationally and internationally for decriminalization and improvement of sex workers' rights – was awarded the honor of 'Dame' by Queen Elizabeth. It's highly questionable whether this event would have been possible within a repressive policy climate that aims to abolish prostitution.

Despite the improvements, however, Abel and Fitzgerald (2010) recognize that sex workers remain subject to stigma and discrimination, which also corresponds to outcomes of this research. For example, many participant (former) sex workers and NZPC indicate reservations about revealing their (former) occupation:

"I still feel, despite that sex work has been decriminalized, that there's stigma attached to it. So in a medical setting, I have my experiences of uncomfortableness about disclosing my status as a sex worker (SW13).

"When ex-sex workers are working in the mainstream, the last thing they want is any contact from the other world [the sex industry]. And when they have contact to NZPC, it's only to talk about where they are now, post sex work" (NZPC5).

Armstrong (2011:58), who investigated violence against New Zealand street-based sex workers, states that the perceived association between street sex work and injecting drug use "led to a moral panic over the perceived health risks posed by these women, and has increased the stigma attached to street work as a result". In particular the street-based sex sector still often deals with stigmatizing approaches of clients and passers-by, as illustrated by this quote of a respondent sex worker:

"Decriminalizing or criminalizing, it does not change anything. You can experience danger with or without it from clients (...). And having a look like from the society, you can experience that as well. You still get the stigma, the prejudices, and all the comments and everything, you know, when they drive around and see you (...)" (SW13).

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2 BBC News 4 June 2018, <https://www.bbc.com/news/world-asia-44354829>; The Guardian 4 June 2018 <https://www.theguardian.com/world/2018/jun/04/new-zealand-former-sex-worker-becomes-a-dame-in-queens-birthday-honours>; NZ Herald 4 June 2018 [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12062840](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12062840); The Washington Post 7 June 2018. [https://www.washingtonpost.com/news/morning-mix/wp/2018/06/07/queen-elizabeth-ii-makes-woman-who-fought-to-decriminalize-prostitution-a-dame/?utm\\_term=.ffe77ac65f43](https://www.washingtonpost.com/news/morning-mix/wp/2018/06/07/queen-elizabeth-ii-makes-woman-who-fought-to-decriminalize-prostitution-a-dame/?utm_term=.ffe77ac65f43).

Armstrong's opinion aligns with the findings of Easterbrook-Smith (2018), who examined news media representations of sex work (and sex workers) from 2010 to 2016 within a decriminalized environment. She concludes that the media plays a regulatory role in that it often indicates which modes of sex work are acceptable. Representations in the media are influenced by factors such as agency, choice, enjoyment, public visibility (outdoor sex work) or invisibility (indoor sex work), but also the type of sex workers and their narratives. She adds that "predominantly young, white, cisgendered, middle or upper-class women" appear to be more accepted than street-based workers, especially transgender sex workers. Despite their legal status, this group is often publicly stigmatized through media expressions of racism and transmisogyny.

Armstrong (2011) states that a decriminalized context will help change negative attitudes towards these street-based sex workers. Actually, the Collaborative Working Group in Christchurch is an example of how involved stakeholders can work together to solve frictions between local residents and street-based sex workers (see Chapter 7). As Easterbrook-Smith (2018:196) notes, "(...) decriminalization may assist with reducing but not eradicating stigma against some sex workers".

In sum, despite the intentions behind the PRA, the destigmatization of the sex industry has not yet fully permeated into New Zealand's society and ways of thinking of people. This actually implies that the implementation of the legal PRA principles still is at odds with the ongoing stigmatization of sex work. People might support the ideal to decriminalize the entire consensual sex industry, but that does not mean that all involved groups are willing and able to take the new rules for granted and live by them. As Becker (1963) highlights, legal principles are social constructs. They result from opposing opinions and difficult negotiations. Some people might not be ready yet to accept the consequences of certain legal decisions. In the words of a participant sex worker:

"The law can't change stigma. It's people, they need to change stigma. You can change the law but that doesn't mean that everything is going to change. You know, when the law changed in 2003 (...) it's good, but it's only the beginning of the battle. (...). When the real work starts, is when it [the stigma] changes" (SW3).

Next, I will examine a complicated PRA inconsistency that undermines the main intentions of the integrative policy.

## 8.2 The Law Created the Criminal

"If you make something illegal, it means that they [the illegal sex workers] cannot speak out. The relationship between an illegal sex worker and a legal brothel operator upsets the balance and provokes exploitation. Recently, an operator



offered the illegal sex worker to save her money (five thousand NZ \$), however, he refused to refund the money and threatened her to inform Immigration Service” (NZPC9).

The PRA decriminalized the entire adult consensual sex industry in New Zealand with one exception: only New Zealand or Australian citizens<sup>3</sup> or permanent residents without conditions on their visa<sup>4</sup> are allowed to provide commercial sexual services.<sup>5</sup> Non-residents who possess a temporary working visa, tourist, or student visa are allowed to work in any industry in New Zealand, but not in the sex industry (PRA Section 19).<sup>6</sup> The progressive sex industry decriminalization policy does not extend to providing temporary entrants to New Zealand a visa on the basis of sex work. They are banned to own, operate, or work in this industry.<sup>7</sup>

During the progress of the PRB, the provisions around immigration status and sex work were introduced via a Supplementary Order Paper (SOP). According to Lianne Dalziel, then Minister of Immigration, this SOP:

“relates to amendments in respect of the Immigration Act to ensure that our obligation under the United Nations Convention Against Transnational Organised Crime and its protocols on the smuggling of migrants and trafficking of persons can be fully engaged in respect of prostitution and commercial sexual services. That is to ensure that in decriminalizing the laws on prostitution, we do not unwittingly allow people to be brought into the country for the purposes of prostitution.”<sup>8</sup>

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- 3 An Australian citizen in New Zealand is treated exactly the same as a New Zealand citizen (RIM1).
- 4 Is applied to permanent citizens for at least two years.
- 5 PRA Section 19 Application of Immigration Act 2009:  
 (1) No visa may be granted under the Immigration Act 2009 to a person on the basis that the person—  
 (a) has provided, or intends to provide, commercial sexual services; or  
 (b) has acted, or intends to act, as an operator of a business of prostitution; or  
 (c) has invested, or intends to invest, in a business of prostitution.  
 (2) It is a condition of every temporary entry class visa granted under the Immigration Act 2009 that the holder of the visa may not, while in New Zealand,—  
 (a) provide commercial sexual services; or  
 (b) act as an operator of a New Zealand business of prostitution; or  
 (c) invest in a New Zealand business of prostitution.
- 6 Non-residents without a working visa are not allowed to work in any New Zealand industry (PRA section19). After receiving a work visa, the person is only allowed to work in the area that was granted under the application. (RA7GA2).
- 7 Newspaper *The New Zealand Herald* reported that between 2012 and 2015, Immigration New Zealand has found forty-two foreign nationals who were illegally working in the New Zealand sex industry. Twenty-five came on visitors' visas, eight on student visas and seven on work visas. Two of the prostitutes were overstayers (*The New Zealand Herald* 08-10-2015).
- 8 See: [https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD\\_20030514\\_00001525/prostitution-reform-bill-in-committee](https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20030514_00001525/prostitution-reform-bill-in-committee) accessed 12-03-2016.

This statement demonstrated a concern about human trafficking and human smuggling along with the fear that by legitimizing visas to carry out this work, the government would incentivize people to be brought to New Zealand to unwillingly engage in the sex industry. NZ Labour Party member Yates mentioned that this amendment:

“borders somewhat on racism and protectionism. It says it is OK for New Zealanders born here to work as prostitutes, but it is not OK for someone to come here on a work permit and work as a prostitute. That is a very strange amendment, and it is inconsistent if we are thinking that prostitution is a valid job, which, I understand, it would become under this bill [PRB]”.<sup>9</sup>

Fear for undesirable effects of decriminalization (an influx of non-resident sex workers) evokes measures to minimize the risk and harm for society. Through the ban, non-resident sex workers became socially excluded, outsiders within New Zealand society. This contributes to the argument (see section 6.2) that New Zealand should, to some extent, be considered an ‘exclusive society’ (see also Young 1999).

The controversial ban is inconsistent in that it seems to be at odds with the PRA objective to achieve harm minimization for all sex workers. An inventory of ideas among the respondent participants regarding the existence of this ban shows three categories of answers. The first category of respondents support the ban for a variety of reasons. Some MPs and members of the NZ Immigration Service argue that the ban was necessary to avoid an influx of foreign sex workers and sex tourists after the decriminalization of the entire consensual sex industry (RMoJ; RNP4). The idea that New Zealand would become a sex tourism country after the enactment of the PRA had been considered “being far from desirable” by the government (RMoJ). One MP refers to an important sentence of the PRA claiming that “New Zealand is not seeking to encourage prostitution” (e-mail MPBS 27-01-2015).<sup>10</sup> Other respondents fear that allowing, through visas, foreign sex workers to work in the industry could incentivize the trafficking of these sex workers into the country for the purpose of forced prostitution. Another argument for supporting the ban is that the market is glutted: “If we have jobs that very few people want to do or able to do, then we will import those people. Sex work just is not one of them” (RNP2).

A contingent of the interviewed sex workers also accept the ban, mostly due to economic or health care reasons. They fear a “dishonest competition” since foreign sex workers could offer lower prices and unsafe sex practices:

9 See: [https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD\\_20030514\\_00001525/prostitution-reform-bill-in-committee](https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20030514_00001525/prostitution-reform-bill-in-committee) accessed 12-03-2016.

10 PRA Part 1:3.

“They all bringing in the price down, you know. If they gonna make a fifty dollars and the rest of us try to get a hundred plus, that is no good for our industry. When the Asians are coming in and putting in to do it cheap, that isn’t good” (SW25).

“They [illegal migrant sex workers] bring their social practices, and what they would consider normal in their country, to New Zealand. (...). It damages the credibility and the security and safety of other sex workers. (...). Not [using] a condom, that person is putting himself at risk, but more so, they put a client at risk and spread a disease: if that client being to me (...), I am then put at risk” (SW32).

Another argument put forward by respondents of the New Zealand Immigration Service is that the ban was needed to avoid exploitation of non-resident sex workers and to protect the many thousands of international students and thousands of tourists who might consider temporarily working in the sex industry (RIM1; RIM2).<sup>11</sup> But to protect them from what? In the words of a sex worker:

“I don’t see why a migrant worker or people on visa can’t be a sex worker. I mean, if you’re on a visa and you’re allowed to work, any kind of work anywhere, I don’t understand why that differs” (SW33).

The New Zealand Immigration Service respondents acknowledge that the intention of the PRA is to safeguard the human rights of all sex workers and to be conducive to public health (RIM2). They also agree that sex work is legal and all sex workers must be able to claim their rights (RIM1). However, according to one of these respondents, prohibiting foreign sex workers from operating in the New Zealand sex industry will avoid the introduction of different STD and other sources of illnesses (RIM2). He adds that the majority of these sex workers are vulnerable because they (i) do not understand the New Zealand labor legislation; (ii) will not tend to approach the police; (iii) do not have social supports; (iv) do not speak English; and (v) mostly cannot afford the public health systems. According to him, excluding this foreign group promotes the health and welfare of both New Zealand citizens and these non-resident sex workers, which aligns with the PRA (RIM2). A certain bias underlies the assumption that foreign sex workers – by definition – are vulnerable (victimization) or disease carriers (discrimination).

The second category of respondents might be framed as the ‘in-betweens’. People in this group, mostly police officers and policymakers, show ambivalent opinions regarding the legitimacy of this ban. On the one hand, they share

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11 Immigration NZ Compliance staff occasionally does visit brothels, and occasionally find people, like temporary students or people on working holiday visas, however, according to her, “it does not seem to be on a huge scale” (RIM1).

arguments of the ‘pro ban’-group. On the other hand, they recognize that the illegal status of foreign sex workers contributes to their vulnerability. For instance, brothel operators could employ them as a receptionist while letting them work as a sex worker,<sup>12</sup> which actually puts them at risk (RIM1). In addition, some of these respondents also understand that a number of these foreign sex workers will find temporary work in a brothel anyway, since some brothel operators simply take the risk and let them work in their premises (RIM1).<sup>13</sup>

The third category unequivocally opposes the ban. This group, which includes most of the interviewed New Zealand sex workers, NZPC staff members, and a number of New Zealand scholars who have made the sex industry part of their research (e.g. Abel 2010; Abel & Sweetman 2018; Armstrong 2011; Harrington (RA4CH); Jordan 2010; Roguski 2013), claim to follow the intentions of the PRA more strictly. Many (former) sex workers associate the illegal status of their banned foreign peers with the sex industry environment prior to 2003:

“It reminds me of the bad old days. The disappointment and anger with authorities and bad policies does not work in good faith for migrant sex workers” (SMS message AP 17-01-2016). (NZPC staff member 3).

The opposition also argues that migrant sex workers from Asian countries are (extra) vulnerable to exploitation (NZPC13). Their argument against the ban, however, is that these non-resident sex workers should *thus* be protected through a decriminalized sex work environment (RA4CH; RA7GA2; RA2JJ). Due to their illegality and fear of deportation, they do not dare to report abuse or enter Sexual Health Clinics or NZPC’s medical clinics. In fact, their illegal, unprotected status creates high risks for both their and public’s health and safety (NZPC3; SW3; SW9):

“They may practice their sex work like more underground. (...). If we think about just public health, everybody, non-sex workers, it’s in everybody’s interest that people have access to safer sex equipment, doctors, STD clinics. (...)” (SW13).

“If they [migrant sex workers] don’t wanna say that they are sex workers, maybe they don’t wanna go to the Sexual Health Clinics so often (...). So it’s also a public health issue, for their health and for the health of everyone. (...). Access to support service is important if anything should happen. (...). I think migrants’ sex work have to have more protection, (...) and they need to have more rights” (SW9).

12 A non-resident with a working visa is allowed to work as a receptionist in the sex industry.

13 According to the Principle Advisor at MBIE, exploiting a non-resident without a working visa can be punished with a fine up to 100,000 NZ \$ or seven years in jail. Exploiting a non-resident with a temporary working visa can be punished with a fine up to 10,000 NZ \$ or five years in jail (RIM1).

Remarkable is that anti-prostitution activist Sandra Coney does not agree with the ban either:

“We have had bad situations in Auckland. (...). Chinese / Thai women had their passports taken, were kept in brothels, could not leave. I think, if you have the right to work in New Zealand – we got the law that legalized it – you should not have restrictions on particular groups. They may become particularly vulnerable to being exploited” (RWHA).

Another counter argument deals with the fear of an influx of foreign sex workers, as stated by supporters of the ban. Opponents, however, argue that the New Zealand immigration system actually already does prevent an influx of sex workers from abroad, since a work visa application will usually be refused if the immigrant does not already possess a job offer: “not just anybody can come to New Zealand”.<sup>14</sup> Some scholars argue that the proposal to ban foreign sex workers might have functioned to calm the opponents of the PRA during the political process at the time, as it eliminated their fear of New Zealand becoming a sex tourist country (RA7GA2).

Roguski interviewed more than one-hundred-thirty sex workers without a permanent residency. His research indicates that most interviewed sex workers have entered New Zealand on their own free will. In other words, they were not trafficked: “they have a plan, they come, work and leave and earn as much money as possible” (RA1MR). His findings also give rise to concerns, however. For instance, although the majority of illegal workers seem to be satisfied with their workplace conditions and revenue,<sup>15</sup> he also emphasizes the existence of poor workplaces or managerial practice: “there are indications that some managers are not allowing workers to refuse clients” (Roguski 2013:57). Additionally, around five percent of his participants experienced problems with having access to their passports.<sup>16</sup> Finally, he refers to the imposition of financial fines by operators which “can have a detrimental effect on the individual’s well-being” (Roguski 2013:57).

### *NZPC Mediation*

NZPC is deeply concerned that banned sex workers are vulnerable to exploitation (NZPC7). This contravenes NZPC’s main objective to protect the

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14 The person that offers the job has to prove to the government that there is no other person in the country that can or will do that job; there should, then, be an identified need for sex work (RNP2; RNP4).

15 Eighty percent of the participant group seemed to be satisfied with their income. Most sex workers operate between six and ten hours a day for five or six days a week. Their clients number between ten and nineteen per week. Ten percent works seven days a week. Over a third of the participants [thirty-six percent] would like to see more clients, twenty percent agrees with the number of clients, one quarter would prefer to see less (Roguski 2013).

16 Roguski’s survey did not analyze the reason for having a lack of access to their passport.

human rights of all sex workers, without exception (NZPC7; NZPC's *Stepping Forward*):

“Migrant sex workers are very vulnerable of being tricked or coerced, (...) they may not know the law precisely. They [clients] probably know that what they're doing is illegal for them [the migrant] and that means they can be exploited easily” (NZPC8).

NZPC staff members try to reach and inform illegal sex workers (NZPC9). However, their frustration is that the implications of the PRA ban problematize the access to this group as they often work in hidden environments, and make it difficult for workers to visit NZPC community centers. The organization has established the Migrant Education and Information (MEI) project and employed a staff member<sup>17</sup> who speaks Mandarin and Cantonese. Her task is to locate these workers by investigating ads and websites. (NZPC6; NZPC9). She then provides information about NZPC and its services, about safe sex practices and legal rights, and about the free and anonymous medical clinics at the NZPC community centers (NZPC9). In an interview, this NZPC respondent highlights a prominent dilemma for (illegal) non-resident sex workers, which is that they are allowed to go to a Disputes Tribunal or the police in case of abuse or exploitation, but the risk of deportation or loss of money often retain them from reporting to police or other authorities (NZPC13).

What upsets the NZPC National Coordinator most is the fact that these illegal sex workers are made vulnerable as a result of this PRA section. She argues that the PRA intended to *abolish* the existence of a two-tier system of a legal and an illegal circuit by decriminalizing the sex industry, but the ban actually stimulates this illegal sex industry circuit and makes the sex workers more vulnerable (NZPC9).<sup>18</sup> She also emphasizes the unbalanced working relationship between an illegal sex worker and a legal brothel operator. The latter could refuse or postpone compensation for the sex workers' services while pressuring them with the threat of sending a report to the New Zealand Immigration Service (NZPC9).<sup>19</sup>

#### *The Ban: A False Tone in the PRA?*

The question remains unanswered of whether the ban was necessary to avoid an influx of foreign sex workers and sex tourists or was instead based on political

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17 NZPC's Migrants Investigation and Information Coordinator.

18 Opponents' concern regarding this PRA ban actually aligns with the concern in Europe to refuse licenses for non-EU sex workers. According to Outshoorn (2012), academic research shows that not granting work permits to them makes them vulnerable to blackmail and coercion into poor working conditions and bad pay.

19 According to the NZPC National Coordinator, these problems often occur between migrant brothel operators who do have a license to work in New Zealand, but then take advantage of illegal sex workers (NZPC9).

appeasement to opponents of the PRA. However, fact is that these sex workers, due to their illegal status, are forced to work in an underground circuit which not only makes them vulnerable to exploitation and abuse, but increases the stigma towards this group.<sup>20</sup>

### 8.3 City Council Bylaws: Reversing Decriminalization Principles

The PRA determines that interfering into certain aspects of the sex industry is not allowed. As earlier mentioned, however, legal principles do not always match with the reality. Local Councils might have their doubts about the new legislation in terms of its feasibility and practicality. They often have to deal with the conflicting interests of involved groups. As Wagenaar et al. (2017:64) note: “elected officials tend to keep their distance from its real-world manifestations to avoid becoming embroiled in technical complications. Administrators do not have that luxury”. In an effort to keep control over (parts of) the sex industry in their cities, TAs rather could feel the need to enact bylaws.<sup>21</sup> It is debatable whether these bylaws should be interpreted as a fine tuning of national legislation or as disputable measures that might even contravene PRA’s objectives and make sex workers vulnerable again to exploitation (Abel 2010).

According to an Auckland City councilor, the government’s decision to decriminalize the entire consensual sex industry in 2003 actually saddled local authorities with implementation problems and a lot of discomfort:

“We [councilors] were still the ones that were required to (...) work out not whether, but where these [sex work] businesses could actually be located. That was a difficult place for both the community and for the Council. They were forced because of the decision of the government” (RC1).

This councilor notes that there is resistance from the community regarding sex work in their neighborhood – the NIMBY-syndrome. This syndrome often arises when residents of a neighborhood rebel against unwanted developments. According to Dear (1992), their concerns might relate to the perceived threat to property values, personal safety and security, and neighborhood ambiance, for instance the physical appearance of stigmatized individuals, antisocial behavior such as loitering, public urination or defecation, or aggressive public attitudes. Opponents often express their concerns through neighborhood petitions, letter-writing campaigns to involved parties, local politicians, and

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20 The website <http://stopgettingstiffed.blogspot.co.nz> provides an example of a stigmatizing effect which is related to the ban on non-resident sex workers.

21 Territorial Authorities (TAs) are allowed to pass local bylaws under the Local Government Act 2002 in order to regulate where businesses of sex work can operate and to promote the well-being of their communities (Knight 2010; Ministry of Justice 2009).



the media, or in court cases. As we will see further, opposition might even become very emotional with actions that could escalate in violent or illegal means (Dear 1992).

With the enactment of the PRA, TAs suddenly had to deal with sex workers who were free to legally work without constraints on the one hand and residents who did not want sex work next door on the other (RNP2; RC1). To protect the interests of residents, City Councils seized the legal opportunity to enact local bylaws with the aim to regulate or even restrict parts of the sex industry. We can recognize a tendency towards risk management therein. These bylaws, however, can be challenged in Court (Knight 2010).<sup>22</sup> As such, sex industry-restricting bylaws have been subject to multiple interpretations, which resulted in long drawn-out procedures between TAs and representatives of the sex industry.

NZPC, in turn, strongly opposes legislation that hinders its prominent objective to avoid any form of recriminalization of the New Zealand sex industry:

“The main concern for NZPC today is to ensure that these gains are not lost by the implementation of inadequate bylaws, or attempts to pass legislation that makes some aspect of sex work an offence (be that sex workers, brothel operators, or clients), or attempts to amend the Prostitution Reform Act” (NZPC e-mail CH 10-04-2014).

In the next subsection, two examples of such local bylaws will be explored. The first is related to the indoor and the second to the outdoor sex industry.

### 8.3.1 *Controversial Regulations: Size Does Matter*

The PRA contains regulations regarding restrictions on advertising sexual services (PRA Section 11). Indoor sex industry-related bylaws often concern signs advertising commercial sexual services<sup>23</sup> and/or brothel location restrictions.<sup>24</sup> For instance, brothels are allowed to open around churches or schools except where banned by local bylaws. These bylaws generally do not provoke many heated discussions. The problem does arise when Councils enact local restrictive bylaws that inhibit the establishment of legal SOOBs.<sup>25</sup> According to Fitzharris<sup>26</sup> et al. (2010), after 2003, local councils repeatedly ignored this distinction between SOOBs and larger commercial premises

22 Prostitution Reform Act 2003, section 11-14.

23 PRA, Section 12.

24 PRA, Section 14.

25 See fn 53 Chapter 7.

26 Former chairman of the 2008 PLRC. The PLRC has analyzed the results of the PRA and finished its second report in 2008 (Fitzharris 2010).



which contravened the PRA.<sup>27</sup> Barnett et al. (2010:70) confirm that councils introduced bylaws that forbid individual private sex workers “to operate legally if they wished to work from their home”.

We thus see how the PRA determines that private or SOOB sex workers are allowed to legally operate from their homes, whereas local councils try to prevent a SOOB establishment in a residential area. NZPC considers these restrictive bylaws disputable:

“Some local authorities have written bylaws that are contrary to the Prostitution Reform Act. (...). Most of the arguments they have used to put these bylaws in are based on a ‘not in my backyard’ argument” (NZPC e-mail CH 10-04-2014).

The legal status of sex workers also regularly conflicts with the interests of residents<sup>28</sup> or other parties, such as landlords who refuse sex workers as tenants (NZPC8; NZPC18). It is not illegal in New Zealand to discriminate against others on the basis of occupation under the Human Rights Act 1993 (NZPC e-mail BS 8-12-2017). NZPC considers such an approach towards sex workers pure stigmatization and occupational discrimination:

“We [NZPC] cannot engage with that [approach]. We can go to a building and say: Look, how dare you to allow a criminal lawyer to practice in this building because he is respectable, and yet you discriminate about a sex worker?” (NZPC8).

Though a SOOB can operate as a legal home business, acceptance by the community does not always follow. This will be further illustrated by addressing to a case in Auckland.

### *The Auckland Indoor Case*

In South Auckland – the Counties Manukau region<sup>29</sup> – a local bylaw<sup>30</sup> restricted larger commercial sexual service premises and SOOBs from operating in residential areas. It limited them to the expensive Manukau industrial and

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27 A MoJ Report in 2009 indicates that three brothel bylaws have been challenged in court (Christchurch, Hamilton and Auckland Councils). These bylaws had been overtuned since they prohibited brothels operating within the city rather than regulated their location (Ministry of Justice 2009).

28 An example of such a protest is visible at <https://www.stuff.co.nz/national/97844187/prostitute-in-upmarket-christchurch-suburb-plagued-by-vandals>. Here, a photo shows how a member of the public graffitied a sex worker’s property.

29 At that time, Auckland was divided in seven Council districts. Contrary to the other six legacy Councils in Auckland region, the Waitakere City Council was the only Council that permitted four or fewer sex workers (SOOBs) to work from home (NZPC e-mail AP 02-11-2016)

30 Manukau City Consolidated Bylaw 2008, Chapter 3, Section 4.

commercial zones (NZPC e-mail AP 12-11-2016).<sup>31</sup> This bylaw pushed private sex workers to cheaper work environments such as the streets (NZPC e-mail AP 28-01-2016) or forced them to ignore this bylaw by establishing their home working businesses in residential areas in Manukau area despite the prohibition (Barnett et al. 2010). According to an NZPC staff member, this bylaw contravened the PRA guidelines since a SOOB is a legal home business (NZPC e-mail AP 12-11-2016). Theoretically, the bylaw could even have been challenged by sex workers, although this did not often happen due to expensive judicial procedure costs (NZPC e-mail AP 12-11-2016).<sup>32</sup>

However, a remarkable Auckland Council decision in October 2015 worked out in favor of the indoor sex industry in the city. Due to a large municipal urban reorganization,<sup>33</sup> all bylaws that regulated the sex industry expired (NZPC e-mail AP 02-11-2016). This removed the controversial Counties Manukau-bylaw which canceled the restriction on SOOB sex workers running their business outside of the expensive Central Business District (CBD). They were free to go to other areas as well, provided they adhered to certain requirements (NZPC e-mail AP 28-04-2016).<sup>34</sup>

The Council was concerned about the expiration of all sex industry-related bylaws. In the first place, they worried that sex workers might pretend to work unmanaged (like a SOOB) while actually working under a management environment, in which case the business had to be treated as an official commercial enterprise (RC1).<sup>35</sup> In the second place, frictions could arise between sex workers and residents who would be confronted with a sex work business in their environment (RC1). Their complaints often concern nuisance, such as

31 Zones 4,5,6 (NZPC e-mail AP 14-04-2016).

32 Knight (2010:145-147) describes two court cases in which several topics of sex industry-related bylaws had been challenged (*Willowford v Christchurch City Council* [2005], and *JB International v Auckland City Council* [2006]). In both cases, the judge argued that treating SOOBs as a larger commercial sexual service premises undermined the purpose of the PRA. SOOB workers were allowed to work in residential areas without needing an operator's certificate (Knight 2010). Knight (2010) adds that in particular NZPC's uncontested argument that SOOB sex workers would be forced to operate illegally under the bylaws had influenced the judgment.

33 An urban reorganization in Auckland transformed the seven legacy Councils – each with their own bylaws – into a one Super City Council construction.

34 Commercial sexual service premises that sell alcohol do need a liquor license (NZPC e-mail AP 02-11-2016). SOOB sex services can be carried out in an accessory building not exceeding forty square meters. Next, at least one person must reside permanently at the residence and not more than two other persons at any time, with a maximum of four sex workers. Compliance both with health and safety Acts and relevant bylaws including brothels bylaw, and with traffic, parking, advertising and signage restriction (NZPC e-mail AP 28-04-2016).

35 Although my research could not investigate the importance of this distinction, one answer might be that an operator of a larger commercial sexual service premises still needs that Operators Certificate from the District Court; the reason might also be of financial nature, related to taxpaying.

clients that turn up at exceptional hours, people yelling outside, or clients who knock on someone else's door. Other complaints include sex workers visibly sitting in front windows in lingerie, exposing themselves to young boys and girls going to school (RC1). The Auckland City Councilor also refers to businesses operating within poor complexes, not adequate for providing the degrees of privacy that some of the neighbors felt necessary (RC1).

SOOB sex workers, like everyone else, must comply to general noise rules, following the Public Safety And Nuisance Bylaw 2013.<sup>36</sup> Interested and involved parties such as neighbors and shop owners could send a submission to the Council in support or against the operation of a SOOB (or against a larger commercial sexual service premises). However, according to an NZPC staff member, such an appeal can only be considered on its legal content, not because someone has moral objections to sex work/prostitution (NZPC e-mail AP 02-11-2016).<sup>37</sup> The Auckland City Councilor adds that residents who discover sex work in their environment actually do not care whether the brothel is a SOOB or a larger commercial sexual service premises, nor whether the business is legal or not. He adds that their reason to object simply has to do with the establishment of a brothel in their backyards:

“So the [sex] sector is saying: we're allowed to be here because we are a SOOB. And you get the community saying: really regardless whether it is a SOOB or not, we're not comfortable with prostitution next door” (RC1).

This quote refers to the before-mentioned stigmatization that is related to sex work and to the 'NIMBY'- phenomenon and the wish to minimize risk.

Due to the expiration of the former bylaws, the Auckland Council had to make new provisions with the intention that sex work “did not become intrusive or offensive on the general public, that may not want to engage with it [sex work]” (RC1). The Council decided to henceforth treat a SOOB as a home-based business<sup>38</sup> which, according to the Auckland NZPC Coordinator, makes it a permitted activity in rural and residential zones and subject to compliance with performance and development controls (NZPC e-mail AP 28-04-2016). In fact, this bylaw enabled the Council to apply the same rules to SOOBs as to other home occupations (RC1). From that moment on, sex workers had to comply with rules such as the volume of traffic, hours of operation, and signage that is appropriate for all forms of home occupation (RC1).

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36 Auckland Council, Information for the commercial sex industry. A guide to commercial sex industry regulations (2014:10).

37 The NZPC Regional Auckland Coordinator adds that she is unaware of any appeals against larger commercial sexual service premises so far (NZPC e-mail AP 02-11-2016).

38 The Auckland Unitary Plan Guidelines (UPG) which cover Adult Entertainment, treat home occupations/home businesses like any other business such as a hairdresser, an accountant, or a lawyer.

The home-based businesses regulation for private and SOOB sex workers seems to give clarity to all involved parties. According to Zangger (2015: 181), after 2003 private workers experience “greater work-life balance and increased decisions over the operations of their work”. She adds, however, that renting a house or apartment remains problematic for private workers and especially for sex workers within a SOOB:

“restrictive bylaws, including the home-occupation regulations, and discrimination in the sex industry and in the rental market, contribute to rather than minimize the risks faced by private workers by limiting their work opportunities to specific sectors or work spaces, and hindering their ability to form worker-run cooperatives contrary to the objectives of the Prostitution Reform Act” (Zangger 2015:182).

In sum, she also notes that finding a workplace for indoor private sex work remains difficult.

### 8.3.2 *The Outdoor Sex Industry: To Zone or Not To Zone?*

According to many scholars, street-based sex work is among the most vulnerable of all types of sex work (Armstrong 2011; Armstrong 2016; Sanders 2011, Abel & Sweetman 2018; RA7GA2). It is often considered the dark and dangerous side of prostitution (Armstrong 2016). According to Abel (2010:10), this sector experiences more violence, is more often involved in drug use, and street-based sex workers are “less likely than their indoor counterparts to use condoms in every commercial transaction”. Often, they are labelled as the most troubled. An Auckland City Councilor cited a Council report in which street-based sex workers were portrayed as “the over-ages, the ones that got drug and alcohol issues or mental health issues, or maybe the older sector who are no longer attractive to brothel operators, transgender sex workers (...)” (RC1). They are often associated with drug use and judged as bad woman who openly reject female sexual norms in exchange for personal gain (Armstrong 2011).

The fact that street-based sex work is also decriminalized by the PRA – despite the realities of these ‘dark’ elements – makes the New Zealand sex industry policy unique.<sup>39</sup> In addition, findings of the PLRC 2008 regarding the effects of the PRA showed that after 2003, street-based sex workers felt more protected by the police instead of the permanent fear of being arrested or harassed (PLRC 2008). This motivated the PLRC to reject a proposal to criminalize the street-based sector, since it could drive the activity underground (PLRC 2008, Fitzharris et al. 2010).

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39 New South Wales (NSW) in Australia decriminalized the sex industry, but the street-based sector remained criminalized.

Two years later, however, the PLRC-authors reported that – despite the PRA rules<sup>40</sup> – a number of TAs had tried to prohibit the street sex work. For instance, the Council in Auckland tried to partially outlaw the street-based sector, since street-based sex work remains an issue for many citizens in this city (Fitzharris et al. 2010).<sup>41</sup> Furthermore, a bylaw in Hamilton<sup>42</sup> was enacted stating that “no person shall solicit within the Hamilton City Council or in any street, road, foot path, road service, public place or area”.<sup>43</sup> This bylaw, although counter to the PRA, did not provoke significant resistance from sex workers since street-based sex work had never occurred in this city (NZPC6).<sup>44</sup> It can thus be considered a proactive measure.

Efforts to manage the street-based sector in particular seem to stem from residents’ dissatisfaction with the presence of sex-related commercial activities in their neighborhoods. According to an Auckland Council respondent, the PRA failed to regulate the street-based sex industry, particularly how this sector interacts with the residential environments (RC1). He added that the existing hypothesis at the time was that legalizing brothels would mean a move off the street into brothels, and this did not occur (RC1). To better protect the interests of the involved residents, the Auckland Council prefers to zone a part of the local street-based sex sector. Sex workers and NZPC strongly oppose this vision and consider restrictive zoning bylaws to be illegal local efforts to recriminalize parts of the sex industry and as a step backwards (NZPC8).

Here, different interests and views clash. Legal principles – the decriminalization of the entire consensual New Zealand sex industry – clash with locally-felt realities. This conforms with Scoular’s (2010) statement that national prostitution policy regulations are often far from an easy match with the local circumstances. Wagenaar et al. (2017:63) indicate a number of reasons why local implementation may deviate from national policy formulation goals. For example, local circumstances may not allow an implementation ‘to the letter of the law’. Moreover, local actors may fear the implications of one law “as it contradicts established laws in relevant other areas”. Wagenaar et al. (2017) also argue that “national politicians are further removed from the everyday reality of prostitution than local administrators” (Wagenaar et al. 2017:63). Regarding prostitution for instance, local administrators are much more confronted with

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40 Taking relevant bylaws into account (no street-based sex work near to schools and churches), street workers are free to choose their work environments.

41 The regulatory tools relevant to street-based sex work include the PRA, the Public Safety and Nuisance Bylaw 2013, and the Summary Offences Act 1981. There are no specific regulations that apply to street work (Auckland Council, Information for the Commercial Sex Industry. A guide to commercial sex industry regulations 2014:21).

42 Hamilton: a middle-size city on the Northern Island of New Zealand.

43 Prostitution Bylaw 2009 Hamilton City Council.

44 This bylaw has never been tested by the courts. The NZPC legal advisor suspects that “if it was, it would be found to be illegal” (NZPC e-mail BS 08-12-2017).

“the immediate consequences of their and others’ interventions on the actors in the field” due to their proximity (Wagenaar et al. 2017:63).

In the Auckland street-based scene, nuisance, complaints of residents, stigma, and the ‘NIMBY’ syndrome cause tensions between the public, the council, and the local sex industry. They provoke local decision making to restrict this part of the sex industry, which seems to contravene the provisions of the PRA. To illustrate the complexity of this quandary, in the next part, I will focus on recent developments around the street-based sex industry in Auckland.

### *The Auckland Outdoor Case*

The outdoor sex industry in Auckland<sup>45</sup> is located in multiple regions (NZPC4; RC1; RPOL1). In addition to indoor brothels and strip clubs, parts of the inner city are traditionally known as street-based commercial sex sectors.<sup>46</sup> According to the Council, police, and NZPC, the residents who live in this area are used to the effects of this industry (NZPC4; RC1; RPOL1). On the contrary, other street-based sex industry regions in South Auckland, particularly in the suburbs,<sup>47</sup> have evoked resistance in the past and from time to time still do (NZPC4; RC1; RPOL1). Often, these frictions come from different forms of nuisance such as noisy clients, antisocial behavior, traffic, sexual acts occurring in public places, and left litter (used condoms, syringes, bottles and human waste) (NZPC4; RC1; Research Observations Street outreach Auckland 2015). Obviously, the interaction between street-based sex workers and residents in these areas can be problematic. Although they are convinced that some residents exaggerate the nuisance, some street-based sex workers do acknowledge the existence of street problems and understand resident’s complaints to a certain extent. One street-based sex worker said:

“Not good. It’s noisy, rubbish, you know, girls not tidy, or the public, driving around, and screaming, yelling. It brings a lot of antipathy, not wanted, and attention to that area. I mean, it’s ok in a fully city where everything is open, you know, but not in the suburbs (...) because it’s more housing there (...). I can understand the residents, because I wouldn’t like that on my area either, where I live so yeah” (SW14).

45 According to the PLRC report 2008, around 230 street-based sex workers were known to be working in the Auckland region (research undertaken by the CSoM (Ministry of Justice 2009).

46 K-Road (Karangahape Road) and its surroundings have brothels, strip clubs, and street-based sex workers (Research observations in Auckland 2015 and 2016).

47 South Auckland: Manukau, Papatoetoe - Hunters Corner, Northcrest Park.

Another street-based sex worker relates the street problems with drug addictions:<sup>48</sup> “new generations don’t care for the residents, they only take care for the drugs” (SW18).

According to an Auckland police respondent, local residents occasionally take their own measures to combat the presence of street-based sex workers in their areas by trying to name and shame clients, filming them, or by publishing the registration numbers of vehicles (RPOL1). A member of New Zealand’s Parliament understands the community – “a lot of stress if you cannot sleep” (RNP3). However, she also noticed prejudice in public communications:

“A strong degree of transphobia. People were just describing the sex workers very much in detail and pointing out. (...). There were photos taking which was supposed to illicit horror from those they were lobbying and they got me wrong, just a transgender standing on a corner, I found that offensive” (RNP3).

The local NZPC warns street-based sex workers to not engage with provocations from resident activist groups.<sup>49</sup> NZPC also appeals to sex workers’ social behavior towards residents: “Consider the feelings of others who live and work in the area – pick up litter, keep it tidy” (Power Point NZPC). However, as MP Logan argues, “nobody can expect NZPC to transfer from an effective collective to an enforcement agency or a monitoring body to pull street-based sex workers in line just because they receive state funding; that is ridiculous and entirely inappropriate” (RNP3).<sup>50</sup>

In an effort to get more control over the street-based sector, the Auckland Council introduced the Manukau City Council Bill (MCCB)<sup>51</sup> in 2010<sup>52</sup> because the local bylaw that regulated the street-based sector had proved to

48 Plumridge and Abel (2000:81) investigated female sex workers in different sectors, focusing on differences in personal circumstances and risk exposure. With regard to drug use, they conclude that “there was a significant difference between the proportion of street workers (seventy-six percent) and indoor workers (thirty-three percent) who did use drugs at work, either rarely, sometimes, most times or every time”. They add that street-based sex workers mention to use drugs because it helps to “get through work”, whereas indoor workers were more likely to state they “like the feeling” or it was “part of the social life”.

49 Resident activist groups in South Auckland, for example the Papatōetoe Residents Reclaiming Our Streets (PROS) and the Papatōetoe Community Patrol (PCP), could breach the law under the Crimes Act 1991, the Harassment Act 1997, and the Summary Offences Act 1981 when practicing illegal actions such as filming sexual activities in client’s cars, recording of vehicles license numbers, sending clients letters, and intimidating or being abusive to workers or clients (Ministry of Justice 2009).

50 This MP refers to NZPC as an organization that plays a role in terms of safe sex education and negotiation skills, health care, and influence in policy making with their experience (RNP3).

51 Manukau City Council Bill: Regulation of Prostitution in Specified Places 197-1.

52 In 2009, an Auckland working party recommended a number of amendments to the PRA 2003 such as making prostitution outside of licensed brothels and SOOBs illegal (Ministry of Justice 2009).



be ineffective (RC1, RPOL1; RPOL5).<sup>53</sup> The intention of the MCCB was to (i) address the problems related to this sector as a national (under the Ministry of Justice) rather than as a local responsibility; and (ii) enable police to arrest a suspected person without having committed an offence, and to stop and search a vehicle, both without a warrant (Report of the Local Government and Environment Committee [LGEC:4]).<sup>54</sup> In short, national legislation was required to be legally able to move street-based sex workers to areas that were collectively considered to be the most suitable for them to operate in; or even to prohibit them from operating in certain areas,<sup>55</sup> in case of repeating conflicts and problems with residents (RC1, RMoJ).

NZPC, however, strongly rejected any effort to – in their words – ‘recriminalize’ parts of the NZ sex industry. Zoning the street-based sector is regarded as such (NZPC15). They argue that (i) street-based sex workers will break the law rather than lose their free way of working; (ii) these sex workers mostly do not have any options for alternative indoor work – they are more or less obliged to work in an area that had been traditionally their workplace; (iii) NZPC fears creating conflicts, as the appointed space might be too confined and limiting to work easily for all sex workers in one area; and (iv) they suggest a practical problem:

“If you have zoning, and you are in breach and you work outside your zone, then you might just be doing your daily business [for example shopping]. You might be walking home after having worked all night or day. Then, somebody sees you, (...) and thinks, you’re working out of your zone, and then you become criminalized again, and people<sup>56</sup> arrest you” (NZPC15).

NZPC emphasizes that restricted areas could stimulate the illegal circuit, since not only street-based sex workers but also their clients might be reluctant to go to restricted areas as well (NZPC e-mail CH 14-04-2016).<sup>57</sup> Abel states that legal street workers might become illegal workers with all disadvantages this entails:

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53 According to the Report of the LGEC (NZ House of Representatives), “authorizing a council-generated bylaw to restrict street prostitution in certain places without specific national legislation, would be open to legal challenge, and might be inconsistent with the NZ Bill of Rights Act 1990 and the PRA 2003”.

54 Under Clause 13 en 14 of the MCCB.

55 The councilor emphasizes that street-based sex workers always have to be free to work at places where it does not create problems (RC1).

56 Council staff would have enforcement powers (NZPC e-mail BS 08-12-2017).

57 The PLRC had already stated that banning street-based sex work could drive it underground, which could lead to further impairing the health and safety of the workers, reducing access for support services to them, and displacing the activity to other potentially more problematic locations (Ministry of Justice 2009).



“Zoning them [street-based sex workers] in an industrial area might scare off clients. Fewer clients implicates that these sex workers will move back to their areas, they will break the rules: they’re not gonna stay there, they will come back to their old areas where they were happy” (RA7GA2).

Here, we can trace developments that are inconsistent with the PRA rules which actually were meant precisely to avoid a two-tier system of a legal and illegal circuit by decriminalizing the entire New Zealand sex industry. In addition, zoning might imply that a group of street-based sex workers (and clients) do not want or will not be able to follow this restrictive measure.

*Zoning: Just a Regulation or an Effort to Recriminalize?*

Forbidding street-based sex workers from operating in certain areas evokes the discussion of whether this measure has to be interpreted as a specific local regulation or as a recriminalization of parts of the sex industry. Opinions differ on this. Local councils and police consider these measures to be legal regulations which, according to them, do not diverge in any way with the approach toward other industries:

“The position that councilors have is that every industry that operates anywhere has a degree of regulations (...). We will continue to push back on everybody, claiming that regulations mean recriminalization. (...). We see regulations as treating the industry exactly the same as any other industry” (RC1).

The Auckland City council promotes a technical solution by focusing on the ‘legal principle’: “if every occupation has its limitations and its regulations, why would this not apply to the street-based sex industry?” (RC1). A councilor realizes the vulnerability of the street-based sex workers, but counter poses:

“Giving them carte blanche to do whatever they like to do because they have social issues [deprived background, addictions], that does not make sense” (RC1).

The NZPC National Coordinator, however, argues that street-based sex workers must be distinguished from other street traders: “it will be difficult to treat them as equal identities since many street-based sex workers have social limitations, like homelessness and mental ones, and a number of them are addicted to drugs and alcohol” (NZPC15). She adds that they have limited choices: the alternatives aren’t there as that would be for someone who is used to negotiate their way officially” (NZPC15).

The National Coordinator acknowledges that, although the occupation might be considered normal, it does require for an exceptional treatment due to its specific nature.

### *A Bizarre Epilogue in South Auckland*

After long-term consultations with the Auckland Council and the local police, the final conclusion for NZPC was to accept, though very reluctantly, the proposed zoning plans (NZPC6).<sup>58</sup> In 2014, a number of places were identified in the Auckland suburbs by the three parties<sup>59</sup> as being appropriate for street-based sex work (RC1). However, to everyone's surprise and after a confusing pathway of submissions and negotiations, the MCCB in question, was suddenly rejected by the Government on February 2015. This meant that the draft to zone the street-based sex industry in some areas was not relevant anymore (RC1; NZPC6; RPOL1). The MoJ acknowledged issues around the outdoor sex industry, but considered them to be local Auckland problems rather than something for which new national legislation was required (RC1; RMoJ; RNP4; Ministry of Justice 2009).<sup>60</sup> The Report of the LGEC<sup>61</sup> recommended using local bylaws and focusing on non-legislative measures.

Due to this – for all parties – unexpected decision, the Auckland Council reconsiders its policy towards the street-based sex industry. According to the Council respondent, if the problems between street-based sex workers and the residents worsen, the Council might act as they did with the indoor SOOBs, namely treating the street-based sector as any other business: “we have a Trading and Events in Public Places Bylaw which sets down rules for how businesses can provide a product or a service from a public place which includes the licensing process” (RC1). He does acknowledge that it would be very complex to apply this bylaw to the street-based sex industry, but because of the lack of effective national legislation, “we will simply have no other choice” (RC1).

Applying this Trading and Events Bylaw to the street sector would mean that (i) all street-based sex workers would need a license (and have their license on them at all times); (ii) they would not be allowed to operate their businesses outside of the standard Street Trade hours; and (iii) street-based sex workers in ‘no-problem-areas’ might have to submit to new rules as well.

Here, we are confronted again with the issue of a purely technical solution whose intention will probably conflict with its practical implementation and enforcement. According to insiders, this intended measure not only seems to ignore the ‘raison d’être’ of the occupation – street sex work generally occurs

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58 The only thing left for NZPC was to make clear that zoning would not become generalized to the part of the entire country and that sex workers' fines for breaching the law had to be limited to a minimum (NZPC6).

59 The Auckland Council, the police, and the NZPC.

60 The final report of the government argued that (i) both the powers, provided in MCCB's clauses 13 and 14, were already available in existing legislation, such as under the Summary Offences Act 1981, and the existing bylaws already cover the regulation of street prostitution (Report of LGEC:4-7): (ii) the report mentioned that converting a local bill to a National bill would not be possible anyhow.

61 Report of the LGCE (NZ House of Representatives) - LGEC 5-6).

until deep into early morning<sup>62</sup> – it also encourages more stigma and moral judgments, might lead to problematic enforcements, and to new arrests of sex workers who breach the bylaw.

*The Street-Based Sector in Wellington and Christchurch: Flowers from the Same Garden?*

Aspirations to zone street-based sex work seem to be responsive to local circumstances and visions. In Wellington, for instance, the street-based sector has been reduced to a very small scale (see fn 63 Chapter 7). The reasons for this decrease are not clear. NZPC suggests that most street-based workers either decided to start working indoors, or decided to exit the occupation (NZPC7). Zoning the street-based sector appears to be not relevant anymore in this city.

On the contrary, street-based sex work still exists in Christchurch, and differs from Auckland at some points. Here, street-based sex work occurred in traditional places for many years. The earthquakes in 2010 and 2011, however, resulted in a transfer of a number of sex workers from the city to residential areas (see Chapter 7). Their unexpected presence certainly provoked active resistance amongst home owners, but requests to implement ‘zoning bylaws’ related to the street-based sector were never acceded to (RPOL 4).

In 2016, however, an involved resident re-opened the discussion to remove street sex workers out of the area due to regular nuisance. The Council was requested to enforce Christchurch’s Trading in Public Places Bylaw, which restricts commercial activities in a residential area.

For similar reasons as discussed in the Auckland case, NZPC is objecting this zoning effort (NZPC e-mail BS 22-04-2017; NZPC10; NZPC16).<sup>63</sup> The Christchurch Council, in turn, acknowledges the ambiguous interpretations of the Trading in Public Places Bylaw and the challenges around effective enforcement. It admits that the Council has limited capacities to reduce street-based sex work since sex work is legal (Stuff.co.nz May 22 2017).

A Christchurch police respondent, although convinced that zoning might decrease the nuisance and improve the sex workers’ safety, considers zoning “a little bit discriminatory [to sex workers]” (RPOL3) and unrealistic since “outdoor sex work just is not an offense” (RPOL4). He believes that only national policy on the outdoor sex industry could affect these complex issues since the existing local bylaws do not provide a legal base for zoning (RPOL2).

NZPC’s legal advisor puts the problem in another perspective. She argues that the real problem is not street soliciting during the night, this is inherent

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62 The PRA does not regulate hours of street-based sex work (Ministry of Justice 2009).

63 NZPC argues that: (i) the sex workers are not in breach of a bylaw since soliciting is not engaging in a commercial activity; (ii) the Trading in Public Places Bylaw does not apply to street based sex work at all; (iii) it is inappropriate to create a bylaw specific to sex workers for legal and ethical reasons; and (iv) NZPC refers to the social poverty and addictions of this vulnerable group which makes them an ‘hors-category’ (NZPC e-mail BS 22-04-2017; NZPC10; NZPC16).

to street work's nature. Rather, people's maladaptive behavior causes the agitation and the headaches. Instead of focusing on bylaws that are inconsistent to the PRA, people should focus on the national and local (by)laws that already treat disorderly behavior, "for everybody, not only for sex workers" (NZPC22; RA6BS). She refers to the appropriate limits to the rights to freedom of expression which, as she believes, is the one right that is acceptable to limit.<sup>64</sup>

Abel also promotes alternative non-legislative measures – community toilets, more garbage cans – to control rather than criminalize nuisance, in this case, by zoning street-based sex work (RA7GA2). National politician of the Green Party Logan agrees with the suggestion to solve the problem environmentally. Besides adding local resources, she would add a paid position for somebody to act as an intermediary that residents could contact (RNP3).

NZPC, Abel and Logan agree with the above-discussed report of the LGEC which recommended to use both the existing bylaws, such as the Public Safety and Nuisance Bylaw, and to apply non-legislative measures (Report of LGEC).

The discussions are still in progress.<sup>65</sup> According to NZPC's legal advisor, the Christchurch council is no longer considering the application or enforcement of the Trading in Public Places Bylaw because their legal advice is that soliciting for sex work does not amount to 'trading' under the bylaw. She adds that, contrary to initial ideas to draft a new local bylaw specific to sex workers,<sup>66</sup> the Christchurch Council now trust the effectiveness of a Collaborative Working Group (since October 2017) (Abel & Sweetman 2018). Put differently, it will focus on collaborative governance with all agencies<sup>67</sup> instead of enacting legal measures (NZPC e-mail BS 20-08-2017; NZPC25). She also highlights that NZPC's efforts to mediate are successful in that many street-based sex workers did move their workplaces from the residential areas back to city areas (NZPC25).

We encounter here the tensions between the law and its implementation, with important roles for the existing stigma on sex work, the 'NIMBY'-syndrome, the fear for undesirable effects, and the strive to reduce risk and harm for society. The main contributors to this tension seem to be this stigma on sex work, together with the ambiguous interpretations of some parts of the PRA legislation, the different interests of the involved parties, and the experienced inadequate technical bylaws.

Returning to the questions posed at the beginning of this chapter, the deep sense of necessity to realize bylaws is a signal that the sex industry – despite

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64 PRA Section 11.

65 As of May 14 2016, there have been four murders on street-based sex workers in Christchurch within the last eleven years. The expectation might be that this could further pressure the street-based local sex industry policy.

66 The Christchurch Council voted against this plan on 11-10-2017 (NZPC e-mail BS 08-12-2017).

67 Members of the Collaborative Working Group in Christchurch: councils, agencies such as the SA and YCD, NZPC, police, and community) has been formed for this purpose (NZPC e-mail BS 07-08-2017; NZPC e-mail BS 08-12-2017; Abel & Sweetman 2018).

the decriminalization of the sector – is still not seen as a normal job. It seems that stigma still is deeply rooted in the surrounding society which makes sex workers vulnerable to exploitation (Abel 2010; Vanwesenbeeck 2017; Abel & Sweetman 2018). The efforts to zone the street-based sex industry and to circumvent the PRA by local administrators are in fact a corollary of the continuing belief that sex work is a deviant occupation.

Policymakers in Christchurch seem to follow the available legislation that already covers ‘disorderly behavior’ instead of primarily focusing on zoning. According to NZPC’s legal advisor, this approach would not only be a logical solution to residents’ nuisance complaints in relation to sex workers, but it also has a destigmatizing effect: “this law applies to everybody, not only sex workers” (NZPC25). She also highlights the willingness of all involved agencies to work together and to find a solution by following the collaborative governance approach instead of enacting new repressive regulation (NZPC25).

Taken together, the integrative sex industry policy does not automatically remove the social experience of deviance, nor does it automatically result in a destigmatization of the trade, nor to a problem-free implementation of national rules on a local level. Integrative policy, however, facilitates interagency cooperation between all involved parties, sex workers included.

#### **8.4 Exploitation and Vulnerability Within a Decriminalized Sex Industry**

In Chapter 3, we saw that in the human trafficking discourse, human trafficking and sex work are often equated. Moreover, this discourse readily identifies prostitutes/sex workers as victims without agency. The question arises whether the human trafficking discourse in New Zealand changed form under the influence of an integrative sex industry policy. To answer this question, we have to focus on New Zealand’s current regulation regarding human trafficking.

New Zealand adopted the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organised Crime. The Trafficking Protocol was signed by New Zealand on 14 December 2000 and ratified on 19 July 2002. According to Miller,<sup>68</sup> “Section 98D of the Crimes Act 1961 was inserted on 18 June 2002 in order to introduce a transnational definition of people trafficking into New Zealand legislation and establish the offence of trafficking in people by means of coercion or deception” (NZPC e-mail RM 21-04-2018).<sup>69</sup> This legislation was amended in 2015 with the Crimes Amendment

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68 Rebecca Miller is the programme manager for People Smuggling and Trafficking in Persons at Immigration New Zealand, Ministry of Business, Innovation & Employment.

69 Human trafficking is not mentioned in the PRA (e-mail RM 21-04-2018).

Act<sup>70</sup> (see Appendix XX) following the passing of the Organized Crime and Anti-Corruption Legislation Bill (Armstrong 2018; e-mail RM 06-05-2018).

Prior to this change, human trafficking in New Zealand was defined as an entirely transnational crime (e-mail RM 22-04-2018). Domestic exploitation was covered by other Crimes Act offences such as slavery or kidnapping (e-mail BS NZPC 12-03-2018). The fact that during the PRA decision process in 2003 domestic exploitation was not yet interpreted as human trafficking – and in that sense not charged with the current loaded human trafficking debates abroad – might have positively influenced the PRA vote.<sup>71</sup>

Miller clarifies that the interpretation of human trafficking in New Zealand is closely aligned with the UN Trafficking Protocol definition.<sup>72</sup> The New Zealand definition implies “the reception, recruitment, transport, transfer, concealment, or harbouring of a person, through coercion or deception, for the purposes of exploitation” (e-mail RM 21-04-2018). She emphasizes that “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” (e-mail RM 21-04-2018).<sup>73</sup> The essence here is that domestic trafficking has been included in the definition. This means that individuals within New Zealand who are moved, harboured, recruited, or received for the purpose of exploitation can be identified as victims of human trafficking.<sup>74</sup>

Miller adds that “human trafficking involves the manipulation of the victim, resulting in the serious undermining of an individual’s personal freedom and ability to make choices for themselves through the use of threats, forms of coercion and/or deception” (e-mail RM 06-05-2018). She emphasizes that New Zealand has comprehensive legislation that covers offences associated with human trafficking crimes. This includes measures to punish abduction, assault, kidnapping, rape, engaging underage prostitutes, coercing prostitutes, and exploiting labourers under the Crimes Act 1961 and Immigration Act 2009. She clarifies that human trafficking is seen as an extreme form of exploitation in this country. This opinion aligns with Abel’s statement:

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70 Parliamentary Counsel Office, Crimes Amendment Act 2015, retrieved 05-04-2018, <http://www.legislation.govt.nz/act/public/2015/0095/latest/DLM6150617.html>.

71 It went beyond the extent of this research to examine this causal relation.

72 See: <http://www.gatw.org/publications/SWorganising/SWorganising-complete-web.pdf> retrieved 05-04-2018.

73 Miller emphasizes that “the definition of exploitation also includes forced labour (and other forced services), slavery and like practices, and servitude” (e-mail RM 21-04-2018).

74 The maximum penalty on the exploitation, false and misleading information and aiding and abetting charges is seven years’ imprisonment and/or a fine not exceeding NZ \$100,000. The maximum penalty for attempting to pervert the course of justice is seven years’ imprisonment. Trafficking in persons is punishable under the Crimes Act 1961 with imprisonment for up to 20 years, a fine of NZ \$500,000 or both. (e-mail RM 21-04-2018) <https://www.immigration.govt.nz/about-us/media-centre/media-releases/convicted-people-trafficker-sentenced>.

“When I [Abel] was in the Netherlands, any exploitation was seen as trafficking. Here [in New Zealand], it is just something that happens somewhere else. It does not happen here. Yes, there is exploitation, but that is not trafficking. And yes, there is underage sex working but they are not trafficked. And yes, we have migrant [sex] workers but they are not trafficked” (RA7GA2).

Transnational human trafficking in New Zealand rarely occurs. Officially registered human trafficking or human smuggling cases as well as the existence of an organized crime network associated to human trafficking is very rare in this country (RIM2; RIM4; RIM3).<sup>75</sup> In this research, I have not met victims of transnational human trafficking either. However, exploitation in New Zealand exists in a range of industries – such as fisheries, agriculture and hospitality – including the sex industry. Putting it in another way: trafficking is not framed nationally as a main sex work issue.<sup>76</sup> This is a remarkable fact that raises the question whether the occurrence of (transnational) human trafficking in New Zealand has been influenced by the decriminalization policy. In Chapter 4, it is argued that there might be a relationship between sex industry policies and the

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75 Some might think that because of New Zealand’s geographic isolation, migration hardly occurs, and in that sense makes human trafficking not realistic. The 2013 Census QuickStats about culture and identity, however, shows that twenty-five percent of the New Zealand population is born overseas; <http://m.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-culture-identity/birthplace>. Retrieved 05-04-2018.

76 The first people trafficking charges in New Zealand were brought by INZ in August 2015. Two men were charged for arranging by deception the entry of Indian nationals into New Zealand. They were both found not guilty of the trafficking charges, but one was convicted on other charges. A third person was found guilty of other charges at the same trial but did not face trafficking charges. The first person to be convicted of human trafficking was sentenced in December 2016 to a total of nine years and six months in jail and ordered to pay a total of \$28,167 reparation to his victims. Faroz Ali, also known as Feroz Ali, a Fijian national with New Zealand residence, was convicted of 15 human trafficking charges in a scam that enticed and exploited Fijians to work in New Zealand. He was also found guilty of 15 charges of aiding and abetting a person to unlawfully enter New Zealand and one charge of aiding and abetting a person to remain unlawfully in New Zealand. Ali had earlier pled guilty to 26 charges of helping people breach their visa conditions and exploiting them by not paying them the minimum wage and holiday pay. A third case is currently before the court. Immigration New Zealand (INZ) reported on 16 November 2017 that people trafficking charges have been brought by INZ against a Bangladeshi couple who are New Zealand citizens. They have been jointly charged under the Crimes Act 1961 for arranging by deception the entry of two Bangladeshi nationals into New Zealand. Trafficking in persons is punishable under the Crimes Act with imprisonment for up to 20 years, a fine of NZ \$500,000 or both. An additional 28 charges have been laid against a defendant relating to the exploitation of five workers on temporary entry visas, the provision of false and misleading information to an immigration officer, aiding and abetting to breach visa conditions, and attempting to pervert the course of justice. The other defendant faces a further 11 charges relating to the exploitation of five workers on temporary entry visas, the provision of false and misleading information to an immigration officer and aiding and abetting to breach visa conditions (e-mail RM 21-04-2018); <https://www.immigration.govt.nz/about-us/media-centre/media-releases/convicted-people-trafficker-sentenced>.



prevalence of human trafficking. Within an integrative policy sex workers do not have to hide (Armstrong 2018:104). Even illegal non-resident sex workers can safely disclose in case of exploitation and abuse. Barnett notes that:

“the best way to avoid trafficking is to make the sex industry as open as possible, because then sex workers will be able to go to police, saying they are trafficked without being afraid of getting arrested” (RNP1).

On the other hand, none of the participant respondents of this underlying research explicitly declare that transnational human trafficking cases or exploitation do *not* occur in New Zealand. The above-discussed PRA ban on non-residents to provide commercial sexual services or to operate or invest in commercial sexual business could be an incentive for individuals to illegally profit from illegal sex workers, who are in a vulnerable position due to this illegality. Moreover, Miller remarks the phenomenon of students from abroad who – although their visa do not allow them to provide commercial sexual services – might choose to temporarily work in the sex industry, which makes them vulnerable to exploitation due to the illegality of their work (RIM4).

In sum, in New Zealand, human trafficking is seen as an extreme form of exploitation. Respondents emphasize that it is important to focus on the real nature of domestic exploitation – coercion and deception – rather than primarily focus on transnational human trafficking which, thus, rarely occurs in New Zealand (multiple NZPC interviews).

Next, I will particularly focus on forms of exploitation that occasionally happen in the brothels within the New Zealand sex industry.

### *Ongoing Exploitation*

Although the PRA Section 3(a) aims “to safeguard[s] the human rights of sex workers and protect[s] them from exploitation”, forms of exploitation still occur within the New Zealand sex industry. In previous chapters, we have already noted the vulnerability of street-based sex workers, even in a decriminalized environment. Although they are able, due to their protected status, to better negotiate with their clients (Fitzharris 2010), their harsh outdoor working environments, their often traumatized background, and their eventual drug or alcohol addictions push them into a ‘high-risk-group’ where abuse and exploitation can occur (Abel & Fitzgerald 2010). In particular transgender street-based workers regularly have to deal with physical problems of a different nature. As described by a respondent sex worker:

“A lot of people think: ‘a man shouldn’t assault a woman, (...) it’s ok to get mean, but it’s not ok to hurt women’. Then they see transwomen and they think: ‘Oh, you’re sort of a man, so it’s ok for me to be mean, or to be physical, or to be violent or something’. But they also think: ‘You look like a woman, (...) so it’s



ok for me to sexual harass you'. So I think, transwomen are in a position, even if they are not sex workers, (...) they are in a special vulnerable position" (SW9).

Indoor sex workers, particularly those who operate in a brothel or parlor,<sup>77</sup> occasionally encounter problems with managers, receptionists, and clients. Several participant independent contractors state that despite the improvements due to decriminalization, the practice is not always a 'blank slate':

"A lot of people are working in situations that are quite exploitative. (...). Working conditions are not ideal. And that's not because the law is bad, the law is good, and provides a really good base. (...). One of the problems in New Zealand is possibly that people are independent contractors (...). Realistically, people are often treated more as employees, you know, they still have to turn on at x time, leave at light time" (SW23).

"Because I was in a decriminalized environment, I was able to go to the police. (...) and made a right complaint. I feel more betrayed by the manager than I do by the client who assaulted me. (...). She [manager] was not very helpful. (...). I think this is really common unfortunately" (SW23).

Although the vast majority of the respondents acknowledge that the decriminalization policy led to significant improvements for New Zealand sex workers, in particular regarding their safety, health, and self-determination, they also indicate that there still are vulnerable situations where sex workers can be subject to exploitation.

So what exactly does 'exploitation' mean in New Zealand sex industry? In a report on exploitation<sup>78</sup> in the sex trade, the ICRSE notes that "engaging in the debate over exploitation in sex work is a challenging task, as it requires confronting misconceptions about the nature of sex work, which are deeply rooted in various legal frameworks and the public's imagination" (ICRSE 2016:5). In particular, the report refers to the misconception of neo-abolitionists who claim that all sex workers are forced into an inherently and exceptionally exploitative industry and that subsequently, "prostitution should be defined as the ultimate form of 'sexual exploitation', to which no woman could ever

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77 These workers are considered independent contractors, which actually differs from an employee status since the operator has no financial employment or insurance obligation towards them. They are independent, meaning they are free to come and go whenever they want to. In theory, they ought to determine their working dates and hours themselves. The operators, in turn, make the appointments with the clients, take care for the rooms, the laundry, the drinks, the clothes, the toys, and in some cases for the condoms and lubs. As a compensation, they request a part of the financial deal between the sex worker and the client.

78 Exploitation is defined by the ICRSE as "labour arrangements that enable one person to take unfair advantage of the work of another person" (ICRSE 2016:5).

consent” (ICRSE 2016:5).<sup>79</sup> The report adds that the nature of exploitation in the sex industry is a complex affair: “there is no formal definition of exploitation in sex work, nor are there any internationally binding standards that could help to determine what constitutes exploitative or just conditions of work and employment in the sex industry” (ICRS 2016:8). Wagenaar et al. (2017:223) argue that elements of exploitation are for example “taking unfair advantage of someone’s else’s work”, “unacceptable work conditions” and/or “the deprivation or disqualification of worker rights”. These authors distinguish sexual from economic exploitation.

### *Sexual Exploitation*

Sexual exploitation occurs when sex workers are not able to refuse clients, refuse certain sexual services, or to determine the sex service conditions themselves (Wagenaar et al. 2017). Some respondent sex workers indicate they have been subject to sexual exploitation in terms of physical harassment, assault, or rape, or have heard of others who have experienced such forms of abuse. Most refer to clients who were either too rough, or who tried to have sex without a condom, or who tried to remove the condom during sex.

Although the majority of the respondents claim to be aware of their rights, including the possibility to ask judicial and police protection, they often solve the problem by calming the client, refusing the service, or sending them out. Brothel operators emphasize sex workers’ ability to ring the room alarm bell or to go to the receptionist in case of trouble:

“If you [the sex worker] have a client that has been rough, so to speak, the girls is being told that they warn the client nicely first. Then is told, if he continues, you need and come and say: “if you do that again I’ll have to get management” and then anything you just walk strait out the door and come mentioning” (OP5)

“If you have processes [guidelines] in place, everything works. And the thing is, when it’s illegal, none of that is there. When it’s legal, you can put these things in place, you can tell the girls: ‘condoms are by law’. When a client asks to not use a condom, they got a legal standing. They say: ‘Sorry, we don’t want to be fined for x number of dollars, because it’s against the law’. And that then takes the pressure of the curls and puts in on the law. (...). And the girl can turn around quite comfortably and say: ‘Sorry, I’m not going to do that’. (...). That’s the law.

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79 Instead of ‘othering’ sex work as a slavery-like phenomenon, the ICRSE argues that “selling sex represents a complex and dynamic labour market shaped by many different factors, such as the location in which sexual services are sold, the presence of different third parties, legal regulations governing sex work, economic trends, or different business practices” (ICRSE 2016:6). The ICRSE pleas to consider sex workers individuals who “just like any other people living in capitalist societies”, sometimes can face unfavorable legal, social, and economic environments, and then have to use the available resources and opportunities “to shape their lives and earn an income needed for subsistence” (ICRSE 2016:5).

And if he starts pushing, she can just say: ‘I’m gonne call the police if you don’t get out’. And that back-up is a reason not to go any further” (OP5).

However, despite their awareness of the PRA rules, some sex workers might also be reluctant to claim their rights for fear of losing their job and/or additional inland revenue tax assessments:

“We have to keep them [clients] happy or the boss can give them their money back. We can’t go to police about any of the men that use us, and even though, we are supposed to be protected by law to not have to do anything that can transfer STD like kissing or non-condom. We can’t press charges against these men, how could we? They don’t tell us their names and addresses when they buy us. So how can we do anything? In my brothel, anyone who calls the police, gets fired, so no one does, not even the receptionists/managers. (...). We are scared to take our boss to court over anything. The decriminalization was supposed to make us able to do this by removing our fear that we will be charged with prostitution, but now we are scarred about the possibility we will be found liable to pay IRD taxes instead” (SW41 e-mail iv 02-02-2016).

### *Economic Exploitation*

Economic exploitation is defined by Wagenaar et al. (2017) as working under the minimum wage, as being subject to extremely long working hours, and operating under an economic dependency on third parties. There are several forms on economic exploitation:

#### *= Shift fees*

Brothel operators normally receive a part of sex workers’ earnings as a compensation for their mediation in providing them with clients, working rooms, and measures. However, some managers also charge extra shift fees.<sup>80</sup> According to respondents, this method is a form of extortion whereby sex workers – under the threat of losing their job – have no other choice than to accept an unfair fee:

“Managers or the owners don’t treat the girls as people. (...). They charge the girls shift fees. That’s against the law in this country, but they still do, because the girls don’t have work, and the owners know this. (...). They sell them to make money off” (SW19).

#### *= Finings*

Another example of economic exploitation is the practice of some operators fining sex workers who arrive too late or who refuse to finish their shifts. It is a powerful form of control over sex workers which does not occur in any other

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80 For example twenty dollar for every shift.

industry in New Zealand according to NZPC's legal advisor (NZPC e-mail BS 08-12-2017). Sex worker respondents emphasize the illegal nature of this kind of control since they operate as independent contractor:

"If you [the sex worker] were too tired to complete the shift, they [operators] could say: we're not gonna pay you for the jobs you've already done" (SW2).

"She tried to force me, and she said that if I don't come to work, I have to give her money, because you know, if the client has to pay four hundred dollar for one hour, if I don't go to work, then she is gonna lose her half. So she said: 'if you don't come, you have to pay me 200 dollar'. And I knew that's not legal" (SW9).

"It [the fining] is manipulation, you know, and it's definitely coercion. And the purpose of that is controlling, you know, the purpose is: You have to do what she [the boss] says, and if you don't do what she says, you have to give her money. The reason is, so that you will always do what she says. (...). If you don't wanna go to work, it doesn't matter, you have to go to work!" (SW9)

"They [operators] need to stop fining girls. They need to stop charging them the shift fees. (...) You can't keep charging them [sex workers] more money for something they don't making you money for. That has got to stop, really does" (SW19).

Sex workers are also disadvantaged through a hidden form of financial punishment when managers or operators deliberately decide to systematically refer clients to peer sex workers in the same building:

"I got many sick and I remember (...), though it was my choice to go in, I definitely felt that like I was expected do at least do a couple of shifts this week and I know I tried to go home earlier a couple of times and nobody believed me. (...). At the same time, you don't want to create too much friction between yourself and the receptionist, because they do help to get you the jobs (...). She introduces you to the client (...) and if the receptionist do not getting on with you, she might not mention you or she might push forward the current favorite at the time" (SW20).

Another form of economic exploitation occurs when managers or operators misuse sex workers who are addicted to drugs or alcohol by forcing them to work more hours than wanted or to offer unsafe sex practices on pain of withholding drugs:

"The other area where it could be forced is again in an illegal situation, for instance the girls on drugs. (...). They're being supplied the drugs by the people in the industry. They may need drugs and the guy or woman [the operator] says: 'no, I want you to work right away around in a shift, then I give you your gear'.

That again is an illegal situation. That's the only way they [sex workers] can be forced. (...). If you're not an illegal worker, not on drugs, if you're asked to work longer out, you can just say 'No'. (...). Not different in another job" (OP5).

= *Bonds*

A last example of economic exploitation concerns the system of bonds. This is a procedure whereby operators systematically hold back a part of sex workers' earnings. They promise to pay the savings out at the end of every month or when sex workers decide to exit the brothel. Often, this procedure is introduced as a financial support, to create a 'piggy bank' for the upcoming tax bills. However, a number of sex workers have experienced this as a trick to force them to stay in the brothel, even if they wish to leave. They also indicate that in poorly-managed brothels or parlors, the savings are regularly not paid out at all:

"We had to pay a bond, that's illegal, (...). Twenty dollar for every job and that is tax money. (...). She says: 'You gonna get that money back, because it's your tax', but nobody ever gets that money back, so she keeps that money. (...). If you're a sex worker, it's your own responsibility to pay tax. (...). Actually, if you don't go to work, she can keep that money. That's a bond and that's illegal" (SW9).

"In a way it [fines and bonds] is a kind of bullying and threatening technique in order to get girls to come into work and stay at work" (SW11).

"I think it is just a technique to make sure we come back and have an eye and so that they can earn interest while they don't pay us out, and they can drop it over a long time, you know, if you don't keep asking them for your credit and pay it out" (SW21).

= *Shifts and forced labor*

Many respondent sex workers indicate that cases of forced sex work are often related to the level of experience of sex workers. Managers could misuse ignorance to encourage unskilled sex workers to work more hours or to apply to 'shifts' that oblige them to stay and work at the brothel or parlor during a certain period:

"After six or seven [clients], sometimes, you're tired (...), you wanna go home. But no, your shift hasn't finished yet, and then they will still tell you your bookings" (SW26).

"If you're an independent contractor (...), it isn't actually legal to require people to sit at work for a ten till twelve hours-shift, and not pay them" (SW23).

One of NZPC staff members emphasizes the illegality of these practices:

“They [managed sex workers] are independent contractors. They don’t work during that period. And if you’re taking money of them in order to force them to work for that period, that means forcing to have sex when they don’t want to have sex. That’s coercion” (NZPC6).

Here, we can note that three of the four examples of economic exploitation are money related and contravene the intentions of the PRA as stated in Section 16(1b).<sup>81</sup> Regarding the shifts, however, the question might be whether or not an operator is legally allowed to require an independent sex worker to remain and to be available at the workplace during a certain period since both parties have an interest and mutual dependency.

This illuminates not only the complex difference in responsibilities between the operator and the employee or the independent contractor, but also the complex labor arrangements within the sex industry. It goes beyond the scope of this research to elaborate on this issue in depth. Regarding exploitative labor arrangements in prostitution, however, I refer to Wagenaar et al. (2017:216) who mention a number of factors that could determine exploitative labor arrangements. For example, the prevailing business model in the sex industry. According to the authors, “in its essence [this model] is an informal relationship that, on the one hand, serves the interests in freedom and cash payments of the sex worker, but, on the other hand, deprives her of her rights and earnings” (Wagenaar et al. 2017:216). This could, for example, lead to the charging of fees as above-mentioned. Another factor refers to the status of the sex workers (are they operating illegally?), the current policy (severe repressive regulations where clients and/or sex workers are criminalized?), and whether or not they are covered by employment laws.

Regarding self-regulation and self-employment, the authors argue that “out of fear of losing control over the sex trade, most governments have made it illegal for sex workers to start their own business and/or work from their own house, or treat such arrangements as similar to large commercial sex clubs or even as a form of pimping or trafficking” (Wagenaar et al. 2017:218).

Focusing on the integrative sex industry policy in New Zealand, we have seen that sex workers in this country are allowed self-employment without a license. They can start their own business – the SOOBs – and are allowed to self-organize<sup>8</sup>, both of which reduce the risk of exploitation. In addition, both private sex workers and independent contractors have to take care of their own assurances and tax-paying obligations. Nonetheless, the practice regularly shows that some independent contractors are treated as employees, as described by one of them:

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81 PRA Section 16(1b): No person may do anything described in subsection (2) with the intent of inducing or compelling another person (person A) to provide, or to continue to provide, to any person any payment or other reward derived from commercial sexual services provided by person A.

“We are not sure who is supposed to be paying tax. If we were independent contractors, it would be our responsibility, but [then] we would also have the freedom to choose what we charge, what we do, and who we will decline – which we don’t have, these freedoms. We are controlled! But if we were employees, we would have employee rights which we don’t have either. We aren’t even allowed to leave for a lunch break or anything, no sick pay, etc.” (SW41 e-mail iv 02-02-2016).

Friction seems to particularly arise on the basis of financial disagreements. However, most participant sex workers highlight the benefits of working within a decriminalized sex work industry and the advantage of having the right to protect themselves against exploitative operators:

“She [the operator] was very upset, and she harassed me, sending me e-mail or text, you know, trying to say, she knows my real name, and something is gonna happen (...), threaten me, but I wasn’t scared. (...). I knew, the law says: she can’t force me to work” (SW9).

“I guess my summary would be that issues of economic and sexual exploitation do exist for sex workers in New Zealand, but that, now that we have decriminalization, we have the option of addressing those issues to our workers’ rights framework, which is a great thing to have such an instrument (...). That’s the big advantage of decriminalization” (SW23).

For sex workers without a permanent residency, this legal recourse is often considered out of reach. As earlier discussed, they are not allowed to operate in the New Zealand sex industry and therefore they could end up in illegal circuits, which make them vulnerable to exploitation.

### *Mental Exploitation*

A third form of exploitation refers to mental exploitation. Public prejudices and incomprehension regarding sex workers’ occupation, the felt stigmatization and discrimination, clients who repeatedly try to have sex without a condom, operators who try to influence sex workers to provide unsafe services under the threat of withholding new clients, the imposition of fines, mental harassments through denigrating insults, the pressure of managers or operators to make them work more hours than wanted – all of these are forms of mental exploitations which can occur, particularly on the streets or in (poorly-managed) brothels.

In Chapter 1 of this thesis, I describe the case of the ‘Landmark girl’ who sued her boss because of mental harassment over a long period. Physical abuse did not happen. The case dealt with months of verbal insults and severe humiliations. The sex worker was fed up with it and, supported by NZPC, decided to take her boss to court. In her words:

“Stand up and say: hey look, this isn’t right. The way I see it, it’s like any job. Your boss can’t just go along and harass you as a sex worker. Even if you work in a brothel, they still can’t do that. So, you know, it’s like any other work place, it’s not accepted. It does not matter whether it is a brothel or a restaurant or a café (...). You know, it’s just, I suppose, they’re spoking about in brothels and sexual harassment from the bosses, because, well, it’s a brothel you’re going to have sex, that sort of thing. But we still needed to be treated like people, not like objects. So, yeah, I’m pleased, I’ve done it” (SW28).

This sex worker decided to assert her rights, which resulted in the defendant being sentenced to a payment of twenty-five thousand NZ dollars to the sex worker (NZHRRT 6:33). Other sex workers might also experience psychological pressure from operators and clients, but they often indicate a reluctance to go to court. They are afraid of losing their jobs or their privacy:

“The risks involved in sex work are often to do with stigma and discrimination. So if I’m a sex worker, I probably don’t tell my family, so I don’t have my family support, (...). People don’t know what I do for a job. So I have to keep it secret. So that’s put me in a vulnerable position, because everyone who does know what I do can threaten me or can threaten me to tell other people” (SW9).

Severe cases of misuse could result in lawsuits at a DT or a HRRT or might even become a Court affair. However, sex workers often prefer to first ask NZPC for support:

“I went to NZPC (...) because the owner (...) used to take so much money of you [the sex worker], each time you come and worked for him, as a bond. So if you make a one hundred, he might take a thirty dollars of that and put it towards a bond. And then, when you left, you get it back, but he didn’t really. Luckily for us, because we had all that stuff go down to NZPC. They managed to get it out of him” (SW26).

According to a Wellington Regional Coordinator, most conflicts between sex workers and operators are solved through mediation by NZPC before the case becomes a Tribunal affair:

“We do know that in each case we [NZPC] have assisted with, the operator has paid out, either as a result of the decision, or prior to the decision being made” (NZPC e-mail CB 02-10-2015).

According to this NZPC Coordinator, mediation within the private SOOB workers group hardly ever occurs. He adds that problems within a SOOB are mostly solved by mutual agreement because nobody is in charge (NZPC7).

In sum, in New Zealand human trafficking is considered a severe form of exploitation. There are no officially registered transnational human trafficking



cases related to the sex industry. Forms of domestic exploitation exist as we have seen above.

### **8.5 The Offense of Unsafe Sex Practices: A Burning Issue**

The PRA determines that providing or receiving commercial unsafe sex would be in breach of the law and will be punishable on conviction by a fine not exceeding two thousand New Zealand dollars. The sex workers, brothel operators, and clients<sup>82</sup> have to take:

“all reasonable steps to ensure a prophylactic sheath or other appropriate barrier is used if those services involve vaginal, anal, or oral penetration or another activity with a similar or greater risk of acquiring or transmitting sexually transmissible infections” (PRA, Section 9(1)).

According to sex worker respondents, decriminalization could not prevent clients from regularly requesting unsafe sex services, despite this PRA rule:

“It’s very rare, that someone [client] is not trying to do something you said ‘No’ to, trying to argue with you, forcing themselves on you (...). It’s rare that anyone not just do what you tell him like. It’s a constant struggle” (SW21).

Another sex worker respondent emphasizes the importance of being clear about the rules:

“I definitely had bad experiences. In fact, it’s the truth of the job. You always gonna have unpleasant clients. (...). It’s fine, as long as you are firm to clients, telling them: ‘this is the way it is’, then you’re pretty good (...), especially when it comes to protection (...). Somehow, they will try any trick” (SW26).

Although none of the interviewed sex workers admitted to working without a condom, a number of them acknowledge that they are aware of or know peers who are prepared to accede to clients’ demands for sex without condom:

“I know about a lot of girls who do things without condoms, or who see clients outside of work and not get paid for kind of things (...), they just do it because they have no self-worth. (...). I know of a few girls who do blow jobs without a condom, every single time, and then their clients come back and their girl isn’t there, then they speak us to do exactly the same thing. (...). Just for a little bit of extra cash they’ll do it” (SW11).

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82 There is an obligation for operators of sex work businesses to adopt and promote safer sex practices (PRA Section 8), as well as for sex workers and clients to adopt safe sex practices (PRA Section 9) (see also previous chapter).

A number of sex workers are worried about an increase in unsafe sex services and indicate that not only some private sex workers promise sex without condom on their websites or at their workplaces, some managed sex workers might also be prepared to (occasionally) provide unsafe sex services, probably attracted by the economic benefits or money-need due to for example drug and alcohol addiction problems. They could also be pressured by a client or operator trying to abuse the inexperience or uncertainty of a new or non-resident sex worker. In addition, ignorance about the legislation or on the existence of supporting NGOs could make minor or (non-English speaking) non-resident sex workers vulnerable to unsafe sex practices as well. A medical professional at an NZPC Clinic notes regarding unsafe sex and young sex workers:

“New girls ‘in the first flush’ have their mistakes. They don’t know how to negotiate condoms, or someone offers them a huge money not to use it. (...). They could go further than they should, (...), putting themselves more at risks, are more naïve, a broken condom is more common” (RHC3).

Respondents’ worries regarding providing unsafe sex partly deal with public health risks (STD) and partly with the providing of illegal competitive sexual services. But these practices also cause irritation and anger since ‘safe-working’ sex workers are confronted with clients requesting for the same service:

“Those clients who want that [unsafe sex] come to an agency or brothel where they know there are one or two girls who offer that sex. They come back for these girls and they will tip for that, for that service, and the girls will not declare that tip, make twice as much money, have regular clients to come for that reason. Other guys coming in, assuming that we do that: ‘No, sorry’” (SW35)

A medical professional at a Sexual Health Clinic encounters clients of sex workers at the clinics who say that they have had unprotected sex with a sex worker, but she seldom encounters sex workers who admit to delivering unprotected sex; “but it will happen” (RHC4).

According to the NZPC National Coordinator, it sometimes happens that a sex worker requires more money for providing *safe* sexual services. In this curious case, the sex worker offers the client the choice between cheaper but riskier sex – so without a condom – or more expensive but safe sex (NZPC24).

### *The dilemma*

Although convinced of the importance of safe sex practices, NZPC staff strongly objects to this PRA Section that holds sex workers liable for this offence (NZPC e-mail CH 06-04-2016):

“There is widespread opposition to mandatory safe sex in sex worker activist arenas, because it creates a vigilant culture where people set each other up for

entrapment both within and without the sex industry” (NZPC e-mail CH 14-04-2016).

Their rationale is that the most vulnerable sex workers – those who are not informed about the law or who are not able to appropriately understand the law because of limitations such as lack of education might become victims of injustice. Both brothel operators and clients could misuse this ignorance by insisting that the sex worker provide illegal condom-less sex services. The NZPC National Coordinator points to an example of a migrant sex worker who was prosecuted for providing unprotected oral sex:

“She [the migrant sex worker] didn’t know about the requirements to provide safe sex. So, she was vulnerable and should have been supported in a voluntary non-coercive way and taught [by the brothel operator] how to provide protected oral sex” (NZPC e-mail CH 14-04-2016).

She refers to the obligation of brothel operators to support ignorant sex workers:

“He [the operator] really should be held into account under Work Safe Labour legislation for not protecting her [the sex worker] if she felt her safety had been compromised” (NZPC e-mail CH 14-04-2016).

Abel discusses another aspect concerning this PRA ‘Unsafe Sex’ Section which could be detrimental to both the sex worker and the client (RA7GA2). She notes that the rule enables a client to blackmail a sex worker by claiming that the sex worker offered him sexual services without a condom. According to her “you can get police using that as an entrapment of the sex worker in the sense that she was willing to provide unsafe sex. And then she is in breach of the PRA” (RA7GA2). She adds, however, that the misuse could also be the other way around. For instance, a sex worker could extort a client for forcing her to provide unsafe sex or taking off a condom during sex. Abel emphasizes the vulnerability of the enforcement of this PRA section:

“How can you ensure that they are using condoms all time? So, how do you know that a client tells the truth or has other reasons? Also the sex worker can get on the client to accuse them in order to get money back. So, how are you going to enforce that?” (RA7GA2).

According to an NZPC staff member, the unsafe-sex law has only been enforced seven times since the PRA was passed in 2003. The first Court case happened in 2005 and got a lot of media attention (NZPC e-mail BS 06-04-2016). The Mail Online reported that:

“A New Zealand man who was charged with putting a prostitute’s life at risk by removing a condom during sex has been fined in a groundbreaking case, which has been welcomed by civil rights groups and sex workers” (Mail Online News 15 July 2005<sup>83</sup>).

The client was sentenced to a fine of four hundred NZ dollars plus the costs of the District Court. The latest unsafe sex case in court happened in Wellington in 2015. The newspaper Dominion Post headlined: “Man charged with failing to use condom with prostitute”.<sup>84</sup> He was sentenced to pay a fine as well (Dominion Post 21 March 2015).

According to Abel, it will take time for sex workers to become familiar with their right to sue violators (RA7GA2). The National NZPC Coordinator remarks that the culture of respect around the safe sex rules by clients is gradually changing, but “every sex worker will have a story related to a request for unsafe sex” (Dominion Post 21 March 2015). She considers knowledge and repeated education on both HIV/AIDS and STI prevention and safe sex practices to be crucial for both sex workers’ and clients’ well-being. According to NZPC Coordinators and NZPC staff, sex workers have to be convinced that providing unprotected sexual services against their will is never compulsory, not by a client, nor by a brothel operator (NZPC7; NZPC12; NZPC17; NZPC19). They emphasize that all sex workers, illegal sex workers included, have to understand their right to always say ‘NO’, even if the client has already paid for the service (NZPC7; NZPC9; *Stepping Forward*, OSH guidelines 2004).

## 8.6 Willing or Not, Stigma Occasionally Offers a Helping Hand

In the previous subsections, we have seen that the stigma around sex work and the discrimination of sex workers regularly provokes tensions between sex workers and NZPC, on the one hand, and residents and local authorities on the other. The stigma also places the sex work occupation into a negative position in comparison with other occupations and professions. Sex workers, often still labelled as a deviant group of individuals, are in some cases, subject to exceptional treatment, which frequently works out to their detriment.

However, it also lets in a very small ray of light. Here, we will look into two financial aspects of the occupation which might place sex workers in a privileged position compared to most other occupations.

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83 See: <http://www.dailymail.co.uk/news/article-355879/NZ-man-fined-removing-condom.html> 15-07-2005.

84 See: <http://www.stuff.co.nz/national/crime/67464897/Man-charged-with-failing-to-use-condom-with-prostitute> 21-03-2015.

*Tax-Paying and Sex Workers: Let's Look the Other Way*

“You can be totally anonymous. (...). If I want to pay taxes as an independent contractor, there is a specific sex work form that you have to fill out. (...). And I just don't want to. (...). I mean, there is no repercussions for not doing it, so why would I bother? Unless I really wanna pay tax, which is a bit ridiculous” (SW7).

New Zealand sex workers who operate as independent contractors or as private workers should take care of their own financial administration and obligations such as tax paying. The above quote from a New Zealand sex worker reflects the delicate connotation that arises when discussing both the compliance of sex workers in paying taxes and the ostensible acquiescence of the Inland Revenue Department (IRD). According to a participant spokesperson from the IRD, “a sex worker, like anyone who earns income in New Zealand, is obliged to voluntarily declare their income and pay their fair share of tax” (IRD e-mail 05-03-2016). At the same time, he admits that “due to [the industry's] very nature, it is extremely difficult to quantify the scale of income tax not collected because people don't voluntarily declare their full income” (IRD e-mail 05-03-2016). The IRD respondent also clarifies that the IRD has no specific comments to make about sex workers, as “they [the IRD] haven't done any research into the tax status of private workers in the sex industry” (IRD e-mail 05-03-2016). He adds that the IRD has no data insights on this group since the information is not collected in a way that would allow them to single out this group of tax payers for analysis (IRD e-mail 05-03-2016).

Research efforts to collect information on this topic from the perspective of sex workers apparently demonstrate limitations. Due to the delicate nature of the topic, sex worker respondents might experience questions on their tax paying awareness and compliance as an infringement on their privacy. The question could also damage the quality of the interview since it might provoke sex workers' feelings of distrust and insecurity (Research Observations 2015/2016). Nevertheless, while discussing sex industry-related financial affairs, such as common prices for sexual services, some sex workers spontaneously started to talk about tax obligations. Their answers, although on a paltry scale, could be sorted out into three categories. The first category clearly demonstrates a refusal to pay tax because of the tax forms, which are considered to take too much time or to be too complex to fill in:

“We are not sure who is supposed to be paying tax. If we were independent contractors, it would be our responsibility but we would also have the freedom to choose what we charge, what we do and who we will decline, which we don't have, these freedoms; we are controlled [by the operator]” (SW41 e-mail 02-02-2016).

The second category appears to not feel an ethical obligation to follow the requirement of a tax declaration since inspections almost never happen. This attitude also evokes some ambivalent feelings. Some of them realize that by not paying taxes they put themselves in an outlaw position which, as a consequence, will not contribute to normalize the occupation:

“Even now it [the sex industry] is legal, you do feel being on the wrong site of the law, because of the ‘no taxes, no ACC’ (...). It’s very hard when you earn one hundred New Zealand dollars an hour, it sounds like a lot, but you do a lot for it. (...). But for what you’ve done, you really don’t wanna pay thirty-three percent (...), even if you know you should. And that does make you feel like an outlaw, sort of it” (SW10).

Finally, the third category are willing to pay taxes, but are reluctant to fill in their occupation ‘sex worker’, due to the attached stigma on sex work.<sup>85</sup>

NZPC also has some reservations to discuss this subject. Although staff members acknowledge sex workers’ obligation to pay taxes and a number of sex workers in fact do pay their taxes,<sup>86</sup> they believe that the IRD will probably not be very eager to invest expensive hours to inspect all sex workers; the revenues of their inspections might neutralize the incomes:

“You’re looking at people [sex workers] between the ages of twenty and thirty. We know what happens to this money with young people, and we don’t think you would find a lot there. I think that’s a realistic situation. They [the IRD] occasionally will go in to try to get a revenue, but they don’t seem to be making concerted efforts that sustained” (NZPC9).

Due to the privacy-related nature of the topic and the reluctance of parties to discuss this subject, there is not much data collected on this topic. The IRD does not appear to have a high incentive to change the current situation, despite the fact that the institution seems to realize that a number of sex workers are not complying with their obligation to pay taxes. At the same time, the data, although limited, show a fragile compliance by a group of sex workers to paying taxes.

In fact, there are several aspects to this unwillingness or reluctance to pay taxes. It could financially favor sex workers, since IRD inspections hardly occur. However, it not only might jeopardize the efforts of those who advocate for destigmatization or normalization of the occupation, but also confirm the

85 As a substitute, the IRD allows descriptions as ‘casual worker’ or ‘independent worker’ (NZPC9). According to the NZPC legal advisor, an alternative might also be to fill in ‘contractor’, ‘entertainer’, or ‘masseur’ (NZPC e-mail BS 08-12-2017).

86 The NZPC National Coordinator notes that nobody, nor NZPC, nor the IRD, exactly knows the number of sex workers who comply with the obligation to pay taxes. Moreover, a number of them will be IRD-registered under another occupation (NZPC9).

belief of those who consider sex work an exceptional occupation. Additionally, apart from the fact that sex workers risk a fine, not paying taxes could also prevent them from going to court in case of abuse, which in turn could be misused by bad willing operators or clients by forcing sex workers to provide unsafe sex practises.

*Benefits: A Remarkable Privilege for Sex Workers*

A dominant objective of the PRA is to treat the sex industry similarly to any other industry, however, with a clarification that prostitution or its use will not be endorsed nor morally sanctioned (PRA Section 3). Regarding the payment of unemployment benefits, we see how the PRA actually puts sex workers unforced in an exceptional position. The fact that sex work ‘will not be endorsed’ seems to imply that the occupation ‘sex worker’, although decriminalized, is not considered to be like other occupations. Harrington indicates that this distinction deals with the way sex work is culturally constructed (RA4). She addresses the fact that, contrary to any other occupation, sex workers who want to quit their job are entitled to immediately receive their unemployment benefit.<sup>87</sup> This is contrary to the common procedure in which – depending on the situation – applicants (non-sex workers) normally have to wait for two (minimum) to thirteen weeks (standard) before the Ministry of Social Development (MSD) transfers the first payment (MSD, Work & Income; NZPC e-mail BS 08-12-2017). Harrington clarifies that the reason for this speed is the simple fact that “it would be very wrong to force anyone to do sex work” (RA4). In fact, no authority has the right to obligate an individual to do sex work or to find a job in the sex industry. Contrary to the earlier discussed issues, both the flexible IRD attitude in terms of paying taxes and the unemployment benefit without a stand-down period for sex workers work out in favor of their financial capacities.

Harrington adds that this exception exposes something about people’s assumptions about sex work and sex (RA4). Not endorsing sex work places the trade out of the mainstream and encourages a deviant treatment towards sex workers.

This is a consequence of the social stigmatization of the sex occupation. Per the PRA, nobody can be forced to enter or return to the sex industry if they do not want to. This point might evoke two questions. If this PRA rule is due to worries about mental or physical health, then why would not this special Work & Income benefit also apply to other hazardous jobs such as working in a mine or on an oil platform? If the underlying vision of this rule is only to determine that institutions can never oblige individuals to seek a job in the sex industry, then does this imply that sex work is an occupation set apart? Is it an occupation that through its specific stigmatized nature is not comparable to other occupations? NZPC’s legal advisor replies on these questions that “the

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87 The benefit runs under the NZ Ministry of Social Development, Work & Income. The sex worker needs to possess an ID and a bank account.

right to sexual autonomy is protected by various Crimes Act provisions which make non-consensual sex a criminal offence. This is how it is different” (NZPC e-mail BS 08-12-2017).

In sum, we have seen that the PRA led to many improvements to the working circumstances and human rights of sex workers in New Zealand. This chapter demonstrates, however, that tensions still exist between the legal PRA principles and its practical implementation. Involved parties are frustrated by the ongoing stigmatization of the occupation, the ban on non-residents to provide commercial sexual services or to operate or invest in commercial sexual business, local Council efforts to recriminalize certain parts of the industry, the occurrence of exploitation, and the controversial unsafe sex rule, as these are at odds with the intention of the PRA. Decriminalization appears to be a huge step forwards, however, realizing an integrative sex industry policy is a dynamic process that goes on. In fact, quandaries will always be there.



## Chapter 9

# Conclusion

National sex industry policies are mostly shaped by ideology; sex workers' choices and safety are of secondary importance – notwithstanding political discourse to the contrary. Policies are often inspired by the radical feminist vision that considers prostitution as an extreme form of male violence against victimized women, moral fundamentalism, or the liberal feminist vision that considers prostitutes as sex workers who are able to make their own decisions to enter or exit the industry.

Contrary to prevailing tendency to adopt the Swedish Model policy that advocates criminalization of the clients of sex workers, New Zealand decriminalized the entire voluntary sex industry in 2003. It is the only state in the world to do so as of 2018. All criminal prostitution laws were repealed by the enactment of the Prostitution Reform Act (PRA). The new legislation adopted the liberal feminist vision that acknowledges sex workers' agency. It caused the sex industry to operate under the same legal rights as any other occupational service group. Whereas prostitutes who have to operate under repressive policies such as in Sweden often experience severe forms of enacted or felt stigmatization and discrimination, sex workers who operate within a climate of restrictive or integrative policies – like in New Zealand – are considered to be included in society. Under this legislative and policy initiative, sex work is seen primarily as work.

Given that (i) the much-studied reality of prostitution policies being unable to effectively counter stigmatization and discrimination of sex work; (ii) the uniqueness of the New Zealand integrative sex industry policy; and (iii) the call for more research into the effects of this integrative policy on sex workers, the research question of this study was:

*What are the consequences of the sex industry decriminalization policy in New Zealand, and what is the de facto experience of sex workers in this country?*

In the following pages, I will summarize the conclusion I draw from the findings.

## 9.1 A Decisive Start to Decriminalization

In order to historically embed the uniqueness of the New Zealand sex industry policy, I reviewed the historical and cultural context in which the New Zealand sex industry developed. On a macro level – which refers to the development of the New Zealand sex industry from the pre-colonial epoch until 1987, the year of the establishment of the New Zealand Prostitutes' Collective (NZPC) – the foundation of NZPC marked a new phase in the development of the New Zealand sex industry. Motivated by the existing approach to sex workers, which they perceived as unfair and unequal, the founding mothers of NZPC started a campaign for the decriminalization of the sex industry.

It should be emphasized that neither repressive policies, like the criminalization of clients in Sweden, nor restrictive sex industry policies, like the legalization in the Netherlands, were ever considered realistic policy options by NZPC. They argued that both policy types include state control, which not only could push parts of the industry underground, but could also reinforce the stigma on sex work. NZPC was motivated to adopt the ideals of the decriminalization social movement that acknowledge both sex work as work and sex workers' agency, and that seek for harm minimization and improvement to working conditions of sex workers.

## 9.2 Aspects of Decriminalization

An analysis of the policy process toward decriminalization shows that a number of factors played an important role. Firstly, there is the New Zealand cultural-historical context, here described as the meso level. Characteristic social structures based on liberal ideology and driven by the ethical values of 'fairness', 'equity', 'social justice', and 'inclusion' played a significant role in the process towards decriminalization. Secondly, the outbreak of the HIV/AIDS epidemic allowed NZPC to demonstrate its preparedness, ability, and credibility to cooperate with other involved parties, as well as its responsibility and role as participant in society by enacting a HIV prevention program. Thirdly, the supportive interaction between NZPC and academics provided NZPC evidence-based arguments to underpin its call for decriminalization. Fourthly, several political opportunities not only contributed to the impetus to collective action, but could also be used by the social movement organization NZPC in its efforts to realize the ideals of the decriminalization social movement. A parliamentary process instituted a change in the electoral system that led to more interparty deliberations. Next to that, the Prostitution Reform Bill was introduced as a Member of Parliament (MP) conscience bill or private member's bill, through which individual MPs of all parties could investigate the public health and human rights arguments of the Bill on its values and vote according to their conscience. In addition, certain MPs firmly supported NZPC in its lobbying process. Finally, the late modern actuarialism thinking

correlated with NZPC's strive for a transparent, efficient, and pragmatic sex industry policy.

As a fifth factor in the process, I argue that the idea of decriminalization opened up the opportunity on a micro level for NZPC to self-organize and to build a united, peer-run, strong, and well-structured collective. That collective succeeded in building awareness amongst sex workers and other involved social movement supporters about the existing system's illegitimacy and vulnerability and the desire in building a new identity that was focused on human rights and harm minimization. Moreover, it successfully claimed a legal and social voice in the sex work debate.

The decriminalization in New Zealand – which was and still is particularly embodied by NZPC – eventually achieved its aim. The interaction of the three social movement aspects being (i) the presence of political opportunities; (ii) a strong sex workers collective; and (iii) collective adherent awareness of injustice (Mc Adam et al. 2008) could take place within New Zealand's cultural ethical values, as mentioned above.

The enactment of the PRA and NZPC's influence on the policy process meant a development that remarkably distinguishes itself from the efforts of its allies abroad. NZPC was and still is considered by stakeholders to be a reliable and capable partner in negotiations. It is the first port of call for other stakeholders. This is remarkable, given that worldwide, sex worker organizations encounter considerable barriers to effectively organize themselves in a way that sex workers have a successful impact on policy, public tolerance, destigmatization, or improvement of working conditions. For example, the fact that in the Netherlands, the sex worker union *PROUD* is not (yet) able to inhibit increasingly repressive measures – for example the closure of several red light districts in the country – demonstrates the relative powerlessness of the Dutch sex workers organization.

I have addressed the question how we can explain this success of New Zealand's sex workers collective. Eight NZPC features were outlined that distinguish NZPC from its allies in the Netherlands and Sweden: (i) its stable existence over decades; (ii) the cooperation with the government within a climate of collaborative governance; (iii) the substantial government funding, which not only expresses the legitimacy of the collective but, moreover, enables NZPC to realize a part of its objectives in practice;<sup>1</sup> (iv) high priority of anonymity – meaning no membership is required – to facilitate sex workers' entrance into its community centers; (v) the achieved legal empirical reality of a decriminalized sex industry; (vi) the ongoing extensive evaluation strategies for both the indoor and outdoor sex sector through which cases of violence, abuse, or exploitation could be traced in time; (vii) its monopoly position as the

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1 The funding facilitates local sex workers to use NZPC services such as the free medical clinics, consultations and mediation, the distribution of free condoms and lubricants, and the education and information about safe sex practices and legal affairs.

only sex workers organization countrywide; and finally, (viii), the existence of six accessible NZPC community centers in the main cities and districts.

The great majority of the interviewed New Zealand sex workers experienced the functioning of NZPC as positive. They indicate almost unanimously that NZPC's efforts strongly contribute to the improvement of their agency, well-being, and self-esteem. Additionally, other parties such as academics, NGOs, brothel operators, and politicians – even some who initially opposed decriminalization – consider NZPC essential to protecting the interests of the sex workers across the country. Alongside praise, sex worker respondents also presented improvement suggestions regarding NZPC's services such as easier access to mental health care.

### **9.3 Collaborative Governance**

The form of collaboration between the involved parties – with NZPC as a main actor – often occurs within a climate of collaborative governance in New Zealand. We have seen that the integrative sex industry policy led to a social debate about sex work based on real-life experiences of sex workers. It has been argued here that, contrary to countries where cooperation between the prostitutes and the government is uncommon (like in Sweden), collaboration in New Zealand frequently occurs through partnership with all involved stakeholders, sex workers included. This allows for timely identification and discussion of domestic flashpoints related to the sex industry, and to realize effective regulation/policy outcomes. NZPC is considered to be a key advisor in sex industry-related issues in New Zealand. On the local level, the presence of sex work occasionally still provokes new or continued tensions between the involved parties. However, the starting point of the mutual negotiations is respect for the interests of both the sex workers and residents who experience nuisance. Unlike other countries, dialogue occurs with sex workers, not about them.

The role of the media in these developments is important as well. New Zealand print media generally reported neutrally about the PRA developments, although there also were stories that were casted in a moral light. After 2003, sex work-related representations in the media are often influenced by factors such as agency, choice, enjoyment, public visibility or invisibility (Easterbrook-Smith 2018). Despite their legal status, street-based (transgender) workers are more often publicly stigmatized through media expressions than indoor sex workers (Easterbrook-Smith 2018).

### **9.4 De Facto Experiences of Decriminalization Policy**

The pragmatic decriminalization of the sex industry in New Zealand meant a change in sex workers' lives. Instead of being deviants who could be harassed and arrested by police, as was the case prior to 2003, sex workers suddenly experienced – and still experience – cooperation with, and protection by the

police and justice system. In addition, this integrative policy focuses on harm minimization for both sex workers and society instead of only focusing on risk control and harm reduction for society. The successful implementation of the PRA from 2003 onwards in New Zealand meant a political shift from a criminal framework of risk control and repression – as was rather the case in European countries following the Swedish model – to a pragmatic policy focused on improvement of sex workers' rights, occupational health, and safety.

In New Zealand, we have seen that the attitude toward a new legislation was never based on a 'let's-get-rid-of-prostitution' vision. Repressive or restricting sex industry policies have never been cogent options in this country. Rather, the policy was, and still is, focused on finding a pragmatic solution and on a liberal feminist vision that accepts the existence of sex work and is based on sex workers' agency. The approach was confined to questions of health, safety, risk, and harm minimization. Personal moral convictions do not seem to have played a decisive role for a number of MPs in the national policy choice. Rather, by adopting decriminalization, parliamentarians focused on improvement of human rights for sex workers, and, at the same time, accepted eventual new risks. This is contrary to the culture of fear that can be recognized in repressive policies.

Regarding the effects of the decriminalization policy, sex workers in this research were nearly unanimously positive, particularly regarding the improvement of aspects such as sex workers' working conditions, occupational health, safety, and self-determination. Older sex workers praised the change from being outlaws prior to 2003 to being members of society who are protected by the police and justice system and who have the same occupational rights as any other occupational service group.

However, national prostitution policies are changeable. A restrictive policy could easily become a policy that incorporates special repressive measures such as mandatory registrations, as is currently happening in the Netherlands. In this research, it is discussed that framing the sex industry as 'status aparte' might not only reinforce the stigma on sex work but could also lead to illegality, criminality, and exploitation. The extent to which sex workers are able to work freely often depends on hegemonic domestic approaches towards the sex industry. Wagenaar et al. (2017) calls this phenomenon 'the vulnerability of morality politics'.

The PRA did not (yet) succeed in eliminating the stigma on sex work in New Zealand. In this study, it is outlined that NZPC's services, as well as the impact of the decriminalization policy in general, are still affected by the ongoing stigmatization of sex work. After nearly two decades of pragmatic decriminalization policy in New Zealand, it appears that sex work is not yet considered a 'normal' occupation. However, the integrative sex industry policy might give a push in the right direction. Queen Elizabeth's awarding the honor of 'Dame' to a former New Zealand sex worker, founder, and spokesperson of NZPC in 2018 might be considered a remarkable example of the destigmatizing effect on sex work through decriminalization policy.

Nonetheless, many of NZPC services are offered in a way that allows sex workers to remain anonymous – a wish that is directly related to the ongoing stigmatization towards being a ‘prostitute’. Sex workers still regularly feel the mental pressure of being labelled as deviants and outsiders, even within a decriminalized arena, which thus contravenes the PRA objective to strive for destigmatization of the occupation.

### **9.5 The Legal PRA and Its Practical Implementation**

Moreover, notwithstanding its relative success and uniqueness, argued here, New Zealand’s integrative policy still reveals quandaries related to the legal PRA and its practical implementation. Four quandaries in particular came to the fore, besides the mentioned ongoing experience of secrecy, stigma, discrimination, or disapproval. In the first place, the PRA 2003 makes it a condition of temporary visa that the holder may not work in the sex industry. This controversial and contested ban on non-resident sex workers contravenes the PRA objectives in that it not only creates a two-tiered system of a legal and illegal circuit, but also puts sex workers in danger of exploitation, which plays havoc with PRA-intended harm minimization for all sex workers. NZPC fights strongly for the abolition of this ban and for the integration of non-resident sex workers.

In the second place, the aim of totally decriminalizing the sex industry is met by local attempts to redefine the PRA by enacting new local bylaws that control the location of brothels and/or the workplaces of private sex workers, and/or intend to recriminalize certain aspects of the outdoor sex industry by zoning measures. NZPC challenges these bylaws, as they claim that zoning the street-based sector equals recriminalization and is at odds with PRA aims. They add that fear of prosecution will result in sex workers moving ‘underground’.

In the third place, even though the PRA intends to safeguard the human rights of sex workers, exploitation and violence still occur within the New Zealand sex sector, especially in poorly-managed brothels and parlors or on the streets. As far as domestic forms of exploitation are concerned, these are generally not discursively constructed as human trafficking incidences, but rather as transgressions of labor laws, comparable to incidences of exploitation in other legal sectors. Human trafficking is seen as a severe form of exploitation and is covered under the Crimes Act 1961 and the Immigration Act 2009. In New Zealand, however, there have been no officially registered sex industry-related cases of transnational human trafficking since 2003. In this research, cases of this form of exploitation have not been found either. Whether this is a result of the decriminalization policy is hard to establish. However, fact is that the decriminalized sex industry influences the extent of illegal practices in that it provides sex workers with the legal ability to work privately, and to protect themselves by appealing to labor laws or by using the common procedures against unlawful actions. Contrary to the repressive conditions that

increasingly thwart the working conditions of sex workers in the Netherlands and Sweden, in New Zealand sex workers' working conditions and lives have mainly been improved.

Fourth and finally, the PRA rule stating that sex workers are in breach of the law when providing unsafe sex practices might emerge from the logic of rights and obligations of sex workers, but nonetheless provokes serious concern. Opponents of this rule believe that the most vulnerable sex workers – those who are not informed about the law or who are not able to appropriately understand the law because of limitations such as lack of education or deprivation – can become a victim of injustice. Brothel operators or clients could misuse ignorant sex workers by insisting they provide illegal, condomless sex services.

Despite the existing quandaries, we can hardly ignore the positive results for sex workers and society in the decriminalization of the sex industry. In sum, within a cultural tradition of fairness, equity, and social justice, the decriminalization social movement was able to establish a strong legislative basis. Firstly, the liberal policy encourages a minimal intervention in consensual adult sexual agreements where the Swedish legal model considers commercial sexual service a vice. Secondly, tentative societal acceptance of sex work seems to be taking root. It appears that the public stigma on sex work – although it has not disappeared – has been reduced to a certain extent. Sex work is starting to be seen as an integrated part of society. Thirdly, a strong sex workers collective, NZPC, developed into a social movement organization that, together with other involved partners, searches for pragmatic solutions of sex work-related issues within a climate of collaborative governance. Since 2003, sex workers in New Zealand became legally included in society. The sex industry moved into the open. Through decriminalization, sex workers received the means to exert their agency. They are not required to register, nor do they need licenses. Private sex workers, alone or in a small group, are allowed to operate without a license as long as none of them functions as a manager. Rationalism and pragmatism generally prevail over morality in political debate. Actually, the prostitution/sex work debate is not a hot and contested political item anymore. This might be considered a remarkable achievement in itself in a time where the international public and political sex industry debate seems to increasingly advocate for risk control and repression of the sex industry.

The New Zealand Model advocates a pragmatic and destigmatizing approach to sex work. One that, according to the result of this research, combines harm minimization with a non-paternalizing, self-organization focused approach. Decriminalization enables sex workers to operate without required registrations or licenses and focuses on equal rights, while simultaneously protecting vulnerable workers against abuse. Stakeholders on national and local level agree that working together within an environment of collaborative government contributes to an effective approach of sex work, and sex workers themselves believe that their lives have been immensely improved by decriminalization.

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Future studies should evaluate whether this integrative policy will have a long-term positive effect. Most importantly, however, this research shows that the New Zealand Model practices what other policies mainly preach: the voices of the people most involved – the sex workers – are heard and taken seriously.



# Samenvatting

## *Decriminalisering van sekswerk: het Nieuw-Zeelandse Model Een analyse van het integratieve seksindustriebeleid in Nieuw-Zeeland (Aotearoa)*

“I know what I’m getting in to. I know what is expected of me. (...). I’m someone who likes very clear-cut boundaries. I like to know what is ok and what isn’t ok. And for me this works very well, because I could say [to a client]: ‘Ok, this is the kind of money, this is my time, I’m providing these services, anything outside of that is “no”, anything inside of that is, as long as you are respectful, (...) “yes”. For me that works, that’s fine”’(SW 7).

In 2003 trad in Nieuw-Zeeland de Prostitution Reform Act 2003 (PRA) in werking waardoor sekswerk werd gedecriminaliseerd. De nieuwe wetgeving betekende dat alle voorgaande repressieve prostitutiewetten kwamen te vervallen. Sindsdien wordt vrijwillig commercieel sekswerk in Nieuw-Zeeland – als enige land ter wereld – erkend als legitiem dienstgericht werk, worden sekswerkers gezien als zelfstandige individuen met ‘agency’ (kort gezegd: autonoom denkend en handelend vermogen) en gelden binnen de seksindustrie dezelfde rechten en plichten als voor elke andere dienstverlenende industrie. Daarentegen, gedwongen seks en seksuele handelingen met minderjarigen (<18 jaar) zijn strafbaar.

De beslissing van het Nieuw-Zeelandse parlement om te kiezen voor een nieuw nationaal seksindustriebeleid had en heeft nog steeds grote consequenties voor zowel het leven van sekswerkers als voor de omstandigheden waarin zij kunnen werken. Vóór 2003 was prostitutie weliswaar legaal in Nieuw-Zeeland, echter alle prostitutie-gerelateerde handelingen waren illegaal. Het toenmalige repressieve beleid was vooral gebaseerd op morele en/of religieuze overtuigingen; prostitutie werd eerder beschouwd als een zonde dan als werk. Sekswerkers kenden geen politiebescherming. Ook konden zij geen beroep doen op het justitiële systeem. Zij werden gezien als een sociale onderklasse en als potentiële ziekteverspreiders die schade zouden kunnen aanrichten aan de volksgezondheid. Het bezitten van condooms kon al voldoende reden zijn om gearresteerd te worden op verdenking van het (willen) uitvoeren van prostitutie. De klanten van sekswerkers hoefden daarentegen niet te vrezen voor

vervolgving. Zij gingen vrijuit. Dit eenzijdig beleid leidde niet alleen tot toenemende stigmatisering van het beroep en verdere discriminatie van betrokkenen in de seksindustrie, het maakte sekswerkers ook kwetsbaar voor uitbuiting, misbruik en geweld.

Voortslepende frustratie als gevolg van deze dubbele-standaardbenadering was voor een aantal sekswerkers aanleiding om zich te organiseren. In 1987 richtten zij het New Zealand Prostitutes' Collective (NZPC) op met als belangrijkste doelstellingen:

- decriminalisering van sekswerk;
- het minimaliseren van schade en kwaad binnen sekswerk;
- het verbeteren van de rechten, gezondheid en veiligheid van sekswerkers;
- educatie en informatieverstrekking;
- effectieve samenwerking met alle betrokken partijen.

Voor NZPC gold volledige decriminalisering als enige acceptabele beleids-optie. Legalisering van sekswerk zou de speciale en gestigmatiseerde positie van het beroep onvoldoende oplossen. De kern van decriminalisering is dat de regulering van sekswerk niet langer geschiedt via sectorspecifieke repressieve wetgeving. Vanuit een gestructureerde, niet-hiërarchische organisatie en gesteund door andere partijen zoals academici en vrouwenorganisaties, slaagde het collectief er in korte tijd in om een legitiem moreel leiderschap aangaande sekswerkbeleid te verwerven waardoor de organisatie uitgroeide tot een volwaardige partner in besluitvormingsprocessen.

De campagne voor decriminalisering van de Nieuw-Zeelandse seksindustrie duurde bijna zestien jaar. Op 25 juni 2003 stemde het Nieuw-Zeelandse parlement met één stem meer en één onthouding voor acceptatie van de PRA. Nieuw-Zeeland werd daarmee het eerste en tot nu toe enige land in de wereld dat de gehele vrijwillige commerciële indoor en outdoor seksindustrie heeft gedecriminaliseerd. Het doel van de PRA is om de mensenrechten van sekswerkers te beschermen, hun welzijn, veiligheid en gezondheid te verbeteren en de volksgezondheid te bevorderen. Sekswerk wordt beschouwd als een regulier beroep. Geweld tegen sekswerkers, arbeidsomstandigheden, gezondheid, veiligheid, sociale rechten en fiscale aspecten vallen onder het algemeen strafrecht.

Dit voorliggende verkennende en beschrijvende onderzoek heeft als doel om diepgaande kennis te verkrijgen over de totstandkoming van de PRA en over de effecten van dit unieke seksindustriebeleid op de leef- en werkomstandigheden van sekswerkers. Daarnaast beoogt dit onderzoek om inzicht te verschaffen in de belangrijke rol die NZPC – als een ‘social movement organization’ – tijdens de campagne heeft gespeeld om decriminalisering van sekswerk te realiseren. Ook levert dit onderzoek een bijdrage aan de bestaande literatuur over de Nieuw-Zeelandse seksindustrie door een kritische analyse van de PRA te presenteren waarin vooral de ingewikkelde implementatie van de wettelijke PRA-principes op lokaal niveau wordt bestudeerd.

De centrale onderzoeksvraag luidt:

*Wat zijn de consequenties van het seksindustrie-decriminaliseringsbeleid in Nieuw-Zeeland en wat is de de facto ervaring van sekswerkers in dit land?*

De subvragen betreffen:

- 1: Wat was de historische en culturele context waarbinnen de Nieuw-Zeelandse seksindustrie zich ontwikkelde?
- 2: Welke sociale, politieke en culturele push factoren na de jaren 1980 waren beslissend voor de totstandkoming van de PRA?
- 3: Wat was de rol van NZPC in het pad naar decriminalisering?
- 4: Welke onzekerheden en inconsistenties komen naar voren in de pogingen om de PRA te implementeren?
- 5: Wat is het de facto effect van de decriminalisering vanuit het perspectief van de Nieuw-Zeelandse sekswerkers?
- 6: Wat betekent het bestaan van NZPC voor de Nieuw-Zeelandse sekswerkers?

Deze vragen werden beantwoord middels een kwalitatief onderzoek (zie hoofdstuk 2). De methoden waren, naast literatuuronderzoek, semi-gestructureerde diepte-interviews (met onder andere: sekswerkers, bordeelhouders, NZPC-stafleden, medewerkers van gezondheidsinstellingen en NGO's, politieambtenaren en leden van het justitieel systeem, parlementsleden en lokale politici, academici, media, en representanten uit de bank- en belastingsector) en observaties. Het veldwerkonderzoek vond plaats in 2015 en 2016 en was vooral in de grote steden van Nieuw-Zeeland gelocaliseerd. Ter verhoging en ter verificatie van de interne validiteit vond triangulatie van data plaats door gebruik te maken van verschillende databronnen. In totaal zijn er 119 interviews gehouden. Observaties betroffen indoor en outdoor sekswerk en de modus operandi van de belangrijkste NZPC-vestigingen in de grote steden. De externe validiteit is verhoogd door mijn bevindingen te vergelijken met de meningen van de respondenten en de bevindingen van andere onderzoekers, maar ook door peerconsultatie en verificatie van tekstdelen van dit onderzoek door deskundigen in Nieuw-Zeeland ('member validation').

In hoofdstuk 3 van dit proefschrift komt onder meer het internationale discours aangaande prostitutie/sekswerk en prostituees/sekswerkers aan de orde, waarin twee dominante en elkaar bestrijdende visies gelden: de radicale feministische visie die de eliminering van prostitutie wereldwijd beoogt versus de liberale feministische visie die sekswerk als werk bestempelt. Acceptatie dan wel veroordeling van sekswerk/prostitutie heeft vergaande consequenties voor het bestaan en de werkmogelijkheden van sekswerkers. Is er sprake van uitsluiting of worden gemarginaliseerde groepen opgenomen binnen de maatschappij? Becker (1963) beschrijft hoe individuen of groepen vanwege hun afwijkend gedrag onderhevig zijn aan morele afkeuring en daardoor door de

maatschappij gebrandmerkt kunnen worden als buitenstaanders, als ‘outsiders’ (zie ook: Lemert 1967, Goffman 1963). Vanuit politiek en publiek perspectief wordt het beroep prostitutie/sekswerk nog steeds overwegend als afwijkend beschouwd. Uit het werk van andere academici kunnen we concluderen dat repressief beleid resulteert in toenemende stigmatisering en discriminatie van sekswerkers (Vanwesenbeeck 2017; Wagenaar et al. 2017).

In hoofdstuk 4 worden de belangrijkste beleidsvormen voor de seksindustrie besproken. Hier zien we hoe repressief beleid (zoals criminalisering in Zweden), restrictief beleid (zoals legalisering in Nederland) en integratief beleid (zoals decriminalisering in Nieuw-Zeeland) de seksindustrie en de werkomstandigheden van sekswerkers danig kunnen beïnvloeden. Een centrale, achterliggende vraag bij de keuze voor een specifiek beleid is of sekswerkers in staat zijn om autonome besluiten te nemen over hun leven. Zijn zij vooral slachtoffers, die door de staat beschermd moeten worden? In Zweden vindt men van wel. Hier werd in 1999, vanuit een feministische insteek die uitging van onderdrukking van vrouwen door patriarchale machtsstructuren, de klant van de prostituee gecriminaliseerd in de hoop dat daarmee de prostitutiesector langzaam zou worden uitgebannen. Volgens Månsson (2017) blijkt uit evaluaties van het beleid dat mensenhandel en prostitutie zouden zijn afgenomen en dat klanten minder geïnteresseerd zouden zijn in het bezoeken van prostituees. Andere onderzoekers geven daarentegen aan dat sekswerkers door dit repressieve beleid werden gedwongen hun werkzaamheden te verplaatsen naar het ondergrondse circuit waar weinig zicht is op de sector, sekswerkers makkelijk geïsoleerd raken en het stigma op het beroep toeneemt (Dodillet & Östergren 2011; Jordan 2012; Östergren 2017; Vanwesenbeeck 2017). Criminalisering van de klant lijkt aldus eerder een klimaat te scheppen waarin rechten van sekswerkers gemarginaliseerd raken.

In Nederland is in 2000 het bordeelverbod opgeheven. De vrijwillige sekssector werd gelegaliseerd en tegelijkertijd gecontroleerd door specifieke prostitutie-gerichte regulering. Echter, de landelijke discussie over mensenhandel en de associatie met prostitutie heeft ertoe bijgedragen dat repressieve maatregelen de sector toenemend aan banden leggen. Amsterdam sloot prostitutieramen, Utrecht sloot op verdenking van misstanden de raamprostitutie op het Zandpad en ook andere steden beperkten de raamprostitutie. Honderden sekswerkers verloren plotsklaps hun baan en een aantal van hen verdween noodgedwongen in het illegale circuit. Landelijk wordt overwogen om de leeftijdsgrens voor sekswerk te verhogen naar 21 jaar. In het herzien van het Nederlandse prostitutiebeleid wordt het Zweedse Model binnen bepaalde politieke stromingen gepromoot als het ideale seksindustriebeleid. Ontdaan van politieke retoriek zou zulk beleid erop neerkomen dat de staat dan bepaalt dat (volwassen) individuen geen vrijwillige seks op basis van een commerciële afspraak met elkaar mogen hebben. Nederlandse sekswerkers vrezen, gesteund door hun belangenvereniging PROUD, dat hun rechten en werkmogelijkheden hierdoor ernstig beperkt worden.

Een blik op Nieuw-Zeeland geeft een heel ander beeld. De seksindustrie werd gedecriminaliseerd “while not endorsing or morally sanctioning prostitution or its use” (PRA Section1). De decriminaliseringscampagne in dit land kan beschouwd worden als een onderdeel van de mondiale sociale beweging die decriminalisering van sekswerk als doel heeft. Dit voorliggende onderzoek gaat in op de vraag waarom (tot nu toe) alleen in Nieuw-Zeeland decriminalisering van sekswerk is gerealiseerd. Na op macroniveau de cultuurhistorische ontwikkeling van de Nieuw-Zeelandse seksindustrie vanaf het begin van de negentiende eeuw tot 1987 – het jaar van de oprichting van NZPC – te hebben behandeld (zie hoofdstuk 5), komen (op mesoniveau) vijf factoren aan de orde die een dominante invloed hebben gehad op het decriminaliseringsproces (zie hoofdstuk 6). Op de eerste plaats is daar de culturele achtergrond van Nieuw-Zeeland die vooral gekenmerkt wordt door traditionele ethische waarden zoals billijkheid, gelijkheid en rechtvaardigheid. Als tweede factor geldt de uitbraak van de HIV/AIDS epidemie in de laatste decennia van de twintigste eeuw. Deze epidemie gaf NZPC de kans om haar bereidheid, capaciteit en verantwoordelijkheid te tonen om niet alleen een samenwerkingsverband aan te gaan met andere betrokken partijen, maar ook door een HIV-preventieprogramma te presenteren. Als derde factor geldt de interactie tussen NZPC en academici waardoor NZPC met onderbouwde argumentaties haar roep om decriminalisering kon versterken. Op de vierde plaats openbaarde zich een aantal politieke mogelijkheden die bijgedragen hebben aan de doelen van NZPC om als organisatie de decriminaliseringsidealen van de sociale beweging te realiseren. Vooral de wijziging van het electorale systeem, het wetsvoorstel als een ‘conscience bill’, de bereidheid van parlementsleden om zich actief te bemoeien met het lobbyproces, en het laat-moderne actuarialisme-gedachtegoed kunnen beschouwd worden als voorbeelden van dergelijke politieke gelegenheden. Als vijfde factor refereer ik in dit onderzoek, op microniveau, aan de ontwikkeling van NZPC als organisatie (hoofdstuk 7). In tegenstelling tot veel sekswerkorganisaties elders in de wereld slaagde NZPC in haar streven om het directe aanspreekpunt te worden voor zowel sekswerkers als wetshandhavers en politici als het gaat om seksindustrie-gerelateerde vraagstukken. Hierdoor was de organisatie in staat om naast het benutten van de politieke mogelijkheden als boven beschreven bewustwording te scheppen onder sekswerkers en andere betrokken partijen over de noodzaak om samen te strijden voor een wetswijziging die aan sekswerkers gelijke rechten en verantwoordelijkheden biedt. De combinatie van deze factoren stelde NZPC in staat om het decriminaliseringsideaal van de sociale beweging als enige sekswerkorganisatie ter wereld te realiseren.

De op morele principes gebaseerde wetgeving maakte plaats voor een pragmatisch en rationeel beleid, gericht op verbetering van de mensenrechten voor sekswerkers en op ‘harm minimization’ binnen de sekssector. Critici van deze Nieuw-Zeelandse decriminalisering beargumenteren dat het land niet vergelijkbaar zou zijn met landen in Europa of Amerika vanwege de geogra-

fische verschillen; zo zou het land geen last hebben van migratieproblemen. Inderdaad, Nieuw-Zeeland wordt omringd door zeeën, het inwoneraantal is klein, een equivalent van het Schengen-verdrag bestaat niet waardoor het voor buitenlandse sekswerkers complexer is om in dit land te werken. Echter, de stadsdynamiek is te vergelijken met menig andere multiculturele stad elders. Vraag naar en aanbod van commercieel sekswerk is hier niet veel anders. In die zin gaat het argument van een totaal andere context slechts gedeeltelijk op. Ondanks de op het eerste gezicht positieve resultaten van het decriminaliseringsbeleid, baart een aantal aspecten die gekoppeld zijn aan (de implementatie van) de PRA een groep respondenten in dit onderzoek zorgen (zie hoofdstuk 8). Een permanente hoofdbreker voor de beroepsgroep zijn de voortdurende stigmatiserende vooroordelen over en/of discriminatie van sekswerkers en sekswerk. Veel respondenten geven aan vanwege dit stigma hun beroep in geheimhouding uit te oefenen, angstig voor nadelige gevolgen van publieke onthulling van hun beroep (zie ook hoofdstuk 3). Een ander aspect betreft de controversiële PRA-bepaling die bepaalt dat buitenlandse sekswerkers zonder permanente verblijfsvergunning niet gerechtigd zijn te werken in de binnenlandse seksindustrie. Dit verbod is een doorn in het oog van veel voorstanders van decriminalisering. NZPC argumenteert dat deze ban indruist tegen een belangrijke intentie van de PRA namelijk 'harm minimization' voor *alle* sekswerkers. Tegenstanders geven aan dat dit verbod niet alleen sekswerkers stigmatiseert, maar ook buitenlandse sekswerkers zonder permanente licentie aanmerkelijk kwetsbaarder maakt voor uitbuiting. De vrees is dat veel van hen, uit vrees voor deportatie, misbruik of uitbuiting niet durven te melden bij politie of justitie. Een derde aspect heeft betrekking op de implementatie van de PRA-regelgeving op stedelijk niveau. Beïnvloed door bijvoorbeeld protesten van bewoners kunnen lokale beleidsmakers overwegen om toch bepaalde facetten van de seksindustrie, zoals straatsekswerk, te re-criminaliseren. Deze interventies stuiten op fel verzet van NZPC omdat ook hier de intenties van de PRA – decriminalisering van de gehele sekssector – in het gedrang komen. Een volgend aspect is dat in de Nieuw-Zeelandse seksindustrie gevallen van misbruik van sekswerkers voorkomen, ondanks de doelstellingen van de PRA om uitbuiting te minimaliseren. Hier geldt de kanttekening dat uitbuiting niet is voorbehouden aan deze industrie alleen. Misbruik of uitbuiting kan bijvoorbeeld ook voorkomen in de agrarische, wijnbouw- en horeca-industrie. Respondenten geven aan dat vooral straatgerelateerde sekswerkers kwetsbaar zijn voor geweld en vernedering. Maar ook zzp'ers werkzaam in bordelen kunnen slachtoffer zijn van fysieke, economische en/of mentale uitbuiting (zie ook hoofdstuk 8).

Opvallend is echter dat daar waar sekswerk in het internationale discours vaak in één adem genoemd wordt met mensenhandel, deze vergelijking niet of nauwelijks wordt gebruikt in Nieuw-Zeeland. Eerder wordt mensenhandel in dit land beschouwd als een ernstige vorm van uitbuiting. Overigens zijn er in

Nieuw-Zeeland sinds 2003 geen officieel geregistreerde gevallen van transnationale seksindustrie-gerelateerde mensenhandel vastgesteld.

Een ander aspect dat in dit voorliggende onderzoek wordt behandeld betreft de PRA-bepaling dat onveilige seks strafbaar is voor alle betrokken partijen. NZPC bestrijdt deze regel omdat hierdoor in haar visie vooral de meest kwetsbare sekswerkers – zij die niet in staat zijn om redelijkerwijs op de hoogte te zijn van de Nieuw-Zeelandse wetgeving – nog kwetsbaarder voor uitbuiting worden.

Ondanks deze kritische kanttekeningen kunnen we nauwelijks negeren dat het Nieuw-Zeelandse integratieve seksindustriebeleid heeft geleid tot een hoofdzakelijk doorzichtige seksindustrie waarin door het ontbreken van repressieve maatregelen illegaal werken nauwelijks aantrekkelijk is, waar plaats is voor zelfregulering voor sekswerkers, waar de staat zich niet wil bemoeien met klanten en vrijwillige sekswerkers die zelfstandig dienst en wederdienst bepalen. Het decriminaliseringsbeleid heeft sekswerkers krachtige rechten verschaft. Zo mogen sekswerkers altijd diensten weigeren, ook al is er al voor betaald. Klanten kunnen justitiële en persoonlijke consequenties tegemoet zien bij overtreding van regels. Sekswerkers hoeven zich niet te registreren en hebben geen werkvergunning nodig. Ook mogen sekswerkers, alleen of in een kleine groep – de Small Owner-Operated Brothel (SOOB) – zonder vergunning werken vanuit huis, tenzij een manager dit bordeel stuurt. Dan wordt een dergelijk samenwerkingsverband gezien als een professioneel bordeel waarvoor wel een vergunning vereist is. Sekswerkrespondenten geven unaniem aan dat door de nieuwe wetgeving aspecten als gezondheidzorg, veiligheid en zelfbeschikking sterk zijn verbeterd in vergelijking met de werkomstandigheden van vóór de inwerkingtreding van de PRA. Zij voelen zich beschermd door politie. Het markante verschil met voorheen is dat sekswerkers, vaak gesteund door belangenorganisatie NZPC, in geval van misbruik of conflict een beroep kunnen doen op het arbeidsrecht en met gebruikmaking van reguliere beroepsprocedures zich tegen onrechtmatige zaken kunnen beschermen. Dat heeft tevens een onmiskenbaar educatieve functie voor kwaadwillende bordeeleigenaren en/of klanten.

Binnen het politieke debat in Nieuw-Zeeland voert pragmatisme en rationalisme de boventoon boven moraliteit. In feite is prostitutie/sekswerk geen heet politiek hangijzer meer. Dit op zich kan beschouwd worden als een opvallend resultaat in een tijd waarin het internationaal seksindustriedebat in toenemende mate campagne voert voor repressie en controle van de industrie. In Nieuw-Zeeland zijn belanghebbenden zowel op nationaal als lokaal niveau het erover eens dat samenwerking binnen een ambiance van ‘collaborative governance’ bijdraagt aan een effectieve benadering van sekswerk. Sekswerkers geven aan dat hun leven is verbeterd door de decriminalisering.

Het decriminaliseringsproces in Nieuw-Zeeland is nog in ontwikkeling. Toekomstige studies zullen moeten bepalen of dit integratieve seksindustriebe-

leid ook een positief effect zal hebben op de langere termijn. Van groot belang is echter dat dit voorliggende onderzoek aantoont dat het Nieuw-Zeelandse Model uitvoert waar andere beleidsvormen vaak slechts over theoretiseren: de stem van de individuen waarop sekswerkbeleid betrekking heeft en die er dus ook het meest door worden geraakt – de sekswerkers – wordt gehoord en daadwerkelijk serieus genomen.



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# Appendix I-XX

## Appendix I Overview Interview Respondents

<b>Directly related to the NZ sex industry</b>	<b>Closely related to the NZ sex industry</b>	<b>Partially related to the NZ sex industry</b>
Sex workers Brothel operators NZPC staff	Health care providers NGOs	Politicians (MPs) Police Immigration Ministry of Justice Auckland Councilors Media Bank Women Health Campaigner Academics

## Appendix II Interviews in New Zealand

<b>Respondents</b>	<b>Number</b>	<b>Group</b>	<b>Focus group</b>	<b>Total interviews</b>
<b>Group 1</b>				
Sex workers	41	3		38
Brothel operators	9	2		7
NZPC staff	27			27 <sup>1</sup>
<b>Group 2</b>				
Health Care	6	1		6
NGOs	9	1		8
<b>Group 3</b>				
Nat. Politicians	8			8
Police	5			5
Immigration	5			5
Min. of Justice	1			1
Council	2			2
Media	2			2
Bank	1			1
World Health Org	1			1
Academics	9	1		8
<b>Total interviews</b>	<b>(126)</b>			<b>119</b>

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1 Twelve interviews by Skype/FaceTime.

## Appendix III Overview Sex Worker Respondents

<b>Respondent</b>	<b>Type</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
SW1 (f)	IC	Wellington	22-01-2015	
SW2 (f)	IC	Wellington	27-01-2015	Former SW
SW3 (trg)	Str	Wellington	28-01-2015	
SW4 (f)	IC	Wellington	28-01-2015	Partly together with OP2
SW5 (f)	IC	Wellington	29-01-2015	Partly together with OP3
SW6 (m)	Pr	Wellington	03-02-2015	
SW7 (f)	IC	Wellington	03-02-2015	
SW8 (f)	Pr / IC	Wellington	04-02-2015	
SW9 (trg)	Pr / IC	Wellington	05-02-2015	
SW10 (f)	Pr / IC	Wellington	16-02-2015	
SW11 (f)	IC	Wellington	20-02-2015	
SW12 (trg)	Str	Wellington	20-02-2015	
SW13 (m)	Pr	Auckland	25-02-2015	
SW14 (trg)	Str	Auckland	25-02-2015	
SW15 (trg)	Str	Auckland	25-02-2015	
SW16 (f)	Str	Auckland	26-02-2015	
SW17 (trg)	Str	Auckland	26-02-2015	
SW18 (trg)	Str	Auckland	26-02-2015	
SW19 (f)	Pr	Auckland	26-02-2015	
SW20 (f)	IC	Auckland	26-02-2015	
SW21 (f)	IC	Auckland	26-02-2015	Group interview RNGO2 and RNGO3 + SW22
SW22 (f)	IC	Auckland	26-02-2015	Idem + SW21
SW23 (f)	Pr	Wellington	03-03-2015	
SW24 (trg)	Str	Wellington	05-03-2015	Former SW
SW25 (f)	Pr	Wellington	10-03-2015	At her home
SW26 (f)	IC	Wellington	21-03-2015	
SW27 (f)	Pr / IC	Christchurch	23-03-2015	
SW28 (f)	IC	Wellington	07-04-2015	Former SW
SW29 (f)	IC	Auckland	26-01-2016	+ OP6 (tel)

<b>SW30 (f)</b>	Str + IC	Auckland	28-01-2016	Former SW / together with RNGO7
<b>SW31 (f)</b>	Pr	Wellington	13-02-2016	At her home
<b>SW32 (trg)</b>	Pr	Not applicable	14-02-2016	By mobile tel
<b>SW33 (fs-4)</b>	ICs	Wellington	15-02-2016	Group interview (4 SWs together with OP8)
<b>SW37 (f)</b>	Pr	Christchurch	17-02-2016	
<b>SW38 (f)</b>	Str	Christchurch	17-02-2016	Campervan Street-outreach (not recorded)
<b>SW39 (f)</b>	Pr	Not applicable	19-02-2016	By mobile tel
<b>SW40 (f)</b>	Ex Str	Christchurch	23-02-2016	Together with RNGO9
<b>SW41 (f)</b>	IC	Auckland	02-02-2016	Questionnaire

IC: Independent contractors, working in a larger brothel or parlor:	17
Pr: Private sex workers, working alone or in a non-managed group (SOOB):	9
Str: Street-based sex workers:	10
Sex workers who both work as independent contractor and private:	4
Sex worker who had worked street-based and as an independent contractor:	1
Cisgender sex workers:	30
Transgender sex workers:	9
Male sex workers:	2
(Former sex workers: 4)	

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**Appendix IV Overview Brothel/Parlor Operator Respondents**

<b>Respondent</b>	<b>Type</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>OP1</b>	Brothel	Wellington	27-01-2015	
<b>OP2</b>	Brothel	Wellington	28-01-2015	Partly together with SW4
<b>OP3</b>	Brothel	Wellington	29-01-2015	Partly together with SW5
<b>OP4</b>	Brothel	Wellington	02-02-2015	
<b>OP5</b>	Brothel	Wellington	05-03-2015	
<b>OP6</b>	Parlor	Auckland	26-01-2016	Iv by tel + SW29 at brothel
<b>OP7</b>	Parlor	Wellington	08-02-2016	
<b>OP8</b>	Brothel	Wellington	15-02-2016	Group iv with 4 sex workers
<b>OP9</b>	Parlor	Christchurch	23-02-2016	

### Appendix V Overview Respondents NZPC

<b>Respondent</b>	<b>Function</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>NZPC1 CH (1)</b>	National coord.	Not applic.	01-04-2014	Skype interview
<b>NZPC2 CH (2)</b>	National coord.	Wellington	21-01-2015	+ CB NZPC staff
<b>NZPC3 CH (3)</b>	National coord.	Wellington	23-01-2015	Group iv: + CB + RA1MR
<b>NZPC4 AP (1)</b>	Reg. coord. Ackl	Wellington	05-02-2015	
<b>NZPC5 AP (2)</b>	Reg. coord. Ackl	Auckland	27-02-2015	
<b>NZPC6 CH (4)</b>	National coord.	Wellington	02-03-2015	Group iv: CB + A NZPC staff
<b>NZPC7 CH (5)</b>	National coord.	Wellington	04-03-2015	+ CB NZPC staff
<b>NZPC8 CH (6)</b>	National coord.	Wellington	09-03-2015	+ CB NZPC staff
<b>NZPC9 CH (7)</b>	National coord.	Wellington	12-03-2015	Group iv: +RNP7 + AP NZPC staff
<b>NZPC10 AR (1)</b>	Reg. coord. Cc	Christchurch	23-03-2015	
<b>NZPC11 CH (8)</b>	National coord.	Wellington	03-04-2015	+ CB NZPC staff
<b>NZPC12 AP (3)</b>	Reg. coord. Ackl	Auckland	25-01-2016	
<b>NZPC13 X1</b>	NZPC staff	Auckland	26-01-2016	Migrants
<b>NZPC14 X2</b>	NZPC staff	Auckland	28-01-2016	Surveys
<b>NZPC15 CH (9)</b>	National coord.	Wellington	15-02-2016	
<b>NZPC16 AR (2)</b>	Reg. coord. Cc	Christchurch	22-02-2016	
<b>NZPC17 KP/</b>	Reg. coord. Dun	Dunedin	26-02-2016	
<b>NZPC18 CH (10)</b>	National coord.	Not applic.	03-08-2016	Skype interview
<b>NZPC19 SF (1)</b>	Reg. coord. Tau	Not applic.	12-10-2016	Skype interview
<b>NZPC20 SF (2)</b>	Reg. coord. Tau	Not applic.	13-10-2016	Skype interview
<b>NZPC21 CH (11)</b>	National coord.	Not applic.	31-01-2017	Skype interview
<b>NZPC22 BS (1)</b>	Legal advisor	Not applic.	15-02-2017	Skype interview
<b>NZPC23 T</b>	Staff Cc	Not applic.	13-03-2017	Skype interview
<b>NZPC24 CH(12)</b>	National coord.	Not applic.	20-11-2017	Skype interview
<b>NZPC25 BS (2)</b>	Legal advisor	Not applic.	29-11-2017	Skype interview
<b>NZPC26 BS (3)</b>	Legal advisor	Not applic.	01-08-2018	Facetime interview
<b>NZPC27 CH (13)</b>	National coord.	Not applic.	19-08-2018	Facetime interview

## Appendix VI Overview Respondents Closely Related to the Sex Industry

**Table 1: Health Care**

<b>Respondent</b>	<b>Organisation Function</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>RHC1</b>	Med Officer of Health	Not applic.	17-02-2015	Iv by tel.
<b>RHC2</b>	Doctor/GP	Wellington	11-03-2015	At NZPC center
<b>RHC3</b>	Nurse	Wellington	07-04-2015	At NZPC center
<b>RHC4</b>	Nurse Sexual Health Clinic	Christchurch	18-02-2016	At NZPC center
<b>RHC5</b>	Counselor (1)	Christchurch	17-02-2016	At NZPC center
<b>RHC6</b>	Counselor (2)	Christchurch	18-02-2016	City

**Table 2: NGOs**

<b>Respondent</b>	<b>Organisation Function</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>RNGO1</b>	'Justice Acts'	Auckland	25-02-2015	
<b>RNGO2</b>	Director 'Stop Demand'	Auckland	26-02-2015	Group iv together with RNGO3 and SW 21 and 22
<b>RNGO3</b>	Director 'Freedom from Exploitation'	Auckland	26-02-2015	Group iv together with RNGO1 and SW 21 and 22
<b>RNGO4</b>	General manager 'DHDP'	Wellington	02-03-2015	Drugs Health & Development Pr
<b>RNGO5</b>	Director 'Rosalie's Haven'	Wellington	09-03-2015	
<b>RNGO6</b>	Director 'Streetreach'	Auckland	27-01-2016	
<b>RNGO7</b>	Director 'Freedom from Exploitation'	Auckland	28-01-2016	
<b>RNGO8</b>	Manager 'Salvation Army'	Auckland	29-01-2016	
<b>RNGO9</b>	Gen. Manager Youth & Cultural Development	Christchurch	23-02-2016	Together with SW 40

## Appendix VII Overview Respondents Partially Related to the Sex Industry

**Table 1: Politicians**

<b>Respondent</b>	<b>Organisation Function</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>RNP1</b>	General Secr. Labour Party (1)	Wellington	20-01-2015	Former MP
<b>RNP2</b>	MP NZ First	Wellington	21-01-2015	
<b>RNP3</b>	Green Party	Wellington	11-02-2015	
<b>RNP4</b>	General Secr. Labour Party (2)	Wellington	20-02-2015	
<b>RNP5</b>	MP Maori Party	Wellington	23-02-2015	
<b>RNP6</b>	National Party	Wellington	12-03-2015	Former MP
<b>RNP7</b>	General Secr. Labour Party (3)	Wellington	12-03-2015	Group iv: NZPC9 + A
<b>RNP8</b>	Parliamentary Service MP Support	Auckland	27-01-2016	Labour Party

**Table 2: Police**

<b>Respondent</b>	<b>Organisation Function</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>RPOL1</b>	Inspector	Auckland	27-02-2015	Area Commander Manukau W.
<b>RPOL2</b>	Detective Senior Sergeant	Christchurch	23-03-2015	Christchurch Central Police
<b>RPOL3</b>	Detective Superintendent	Wellington	01-02-2016	National man. Organised Cr.
<b>RPOL4</b>	Detective Senior Sergeant	Christchurch	19-02-2016	Canterbury Distr
<b>RPOL5</b>	Sergeant	Auckland	27-02-2015	Headquarters Area Manukau



**Table 3: Immigration**

<b>Respondent</b>	<b>Organisation Function</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>RIM1</b>	Manager	Wellington	07-04-2015	Immigration Policy
<b>RIM2</b>	Manager Tactical Intelligence Unit Compliance Risk & Intelligence Services	Auckland	25-01-2016	Min of BIE
<b>RIM3</b>	Director TDA	Auckland	26-01-2016	Ex-Minister of Immigration
<b>RIM4</b>	Manager Immigration Programme	Wellington	15-02-2016	People smuggl & traff in pers.
<b>RIM5</b>	Manager Immigration Programme	Not applic.	April 2018	People smuggl & traff in pers. Iv by e-mail

**Table 4: Ministry of Justice**

<b>Respondent</b>	<b>Organisation Function</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>RMOJ</b>	Manager NZ-IM	Wellington	10-03-2016	

**Table 5: Council**

<b>Respondent</b>	<b>Organisation Function</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>RC1</b>	Principle Adv.	Auckland	18-03-2016	Soc. Policy Bylaws and Community
<b>RC2</b>	Chair	Auckland	18-03-2016	Reg. Strategy & Policy Committee

**Table 6: Media**

<b>Respondent</b>	<b>Organisation Function</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>RM1</b>	Reporter Sunday Star T.	Wellington	03-03-2015	
<b>RM2</b>	Senior Reporter NZ Herald	Auckland	26-01-2016	Immigration & Ethnic Affairs

**Table 7: Bank**

<b>Respon- dent</b>	<b>Organisation Function</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>RB</b>	BNZ	Wellington	04-02-2016	Store manager

**Table 8: Women's Health Action**

<b>Respon- dent</b>	<b>Organisation Function</b>	<b>Place of in- terview</b>	<b>Date</b>	<b>Comment</b>
<b>RWHA</b>	Women Health Campaigner	Auckland	27-02-2015	

**Table 9: Academics**

<b>Respon- dent</b>	<b>Organisation Function</b>	<b>Place of interview</b>	<b>Date</b>	<b>Comment</b>
<b>RA1MR</b>		Wellington	23-01-2015	Group iv: + CH + CB NZPC staff
<b>RA2JJ</b>		Wellington	16-02-2015	
<b>RA3LA</b>		Wellington	17-02-2015	
<b>RA4CH</b>		Wellington	04-03-2015	
<b>RA5GA1</b>		Christchurch	23-03-2015	
<b>RA6BS</b>		Wellington	15-02-2016	
<b>RA7GA2</b>		Christchurch	22-02-2016	
<b>RA8RN</b>	Director NZ Centre for Human Rights Faculty of Law	Auckland	18-03-2016	Amnesty Int. NZ + Former Human Rights Comm
<b>RA9GA3</b>		Not applic.	20-06-2018	Skype interview

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**Appendix VIII Overview Respondents In The Netherlands**

<b>Respondent</b>	<b>Organisation</b>	<b>Place</b>	<b>Date</b>	<b>Comment</b>
<b>RGNL</b>	Geisha	Amsterdam	11-07-2014	
<b>RPOLNL1</b>	VVD	Not applicable	02-10-2013	Iv by telephone
<b>RPOLNL2</b>	D66	Den Haag	07-10-2013	
<b>RPOLNL3</b>	PvdA and CU	Den Haag	30-05-2013	Together with copromotor
<b>RPNL1</b>	PROUD	Amsterdam	20-02-2017	
<b>RGGDNL</b>	GGD en P&G	Amsterdam	17-08-2017	
<b>RP&amp;GNL</b>	P&G	Amsterdam	29-09-2017	

## Appendix IX Regulation Acts of Sex Work prior to 2003

### 1961 Crimes Act

*Section 147:* Brothel keeping: This section determined that it was an offence to keep, or manage (or assist in the management of) a brothel. Everyone was liable to imprisonment for a term not exceeding five years. (Section 147: repealed, on 28 June 2003, by section 48(1)(a) of the Prostitution Reform Act 2003 (2003 No 28).

*Section 148:* Living of earnings of prostitution: This section prohibited to live of the earnings of a sex worker. (Section 148: repealed, on 28 June 2003, by section 48(1)(a) of the Prostitution Reform Act 2003 (2003 No 28).

*Section 149:* Procuring for prostitution: This section prohibited to procure sexual services for another person. (Section 149: repealed, on 28 June 2003, by section 48(1)(a) of the Prostitution Reform Act 2003 (2003 No 28).

*Section 149A:* Being client in act of prostitution by person under 18 years of age: This section prohibited to have sexual prostitution acts with minors. (Section 149A: repealed, on 28 June 2003, by section 48(1)(a) of the Prostitution Reform Act 2003 (2003 No 28).

<http://www.legislation.govt.nz/act/public/1961/0043/latest/whole.html#DLM329276>.

### 1978 Massage Parlours Act

This Act arranged the conditions of owning massage parlours (Repealed on June 2003). The providing of commercial sexual services was not mentioned, however: *Section 18:* prohibited persons under the age of 18, or previous convicted persons, or persons with an offence against narcotics or drugs misuse to work in a massage parlours.

[http://www.nzlii.org/nz/legis/hist\\_act/mpa19781978n13218/](http://www.nzlii.org/nz/legis/hist_act/mpa19781978n13218/).

### 1981 Summary Offences Act

*Section 26:* This section made it an offence for sex workers to offer commercial sexual services (repealed, on 28 June 2003, by section 48(1)(b) of the Prostitution Reform Act 2003 (2003 No 28).

[https://www.parliament.nz/mi/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand/#footnote\\_25\\_ref](https://www.parliament.nz/mi/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand/#footnote_25_ref).

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**Appendix X Major Aspects of the PRA 2003****Purpose of the PRA**

To decriminalize 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.

**Health and safety requirements:**

Operators of prostitution businesses must adopt and promote safer sex practices (section 8). Every person convicted of an offence is liable to a fine not exceeding \$10,000. Sex workers and clients must also adopt safer sex practices or be liable to receive a fine not exceeding \$2,000 (section 9). The Act provides powers of entry to premises for the purpose of inspection for compliance with health and safety requirements (sections 24 to 29).

**Advertising restrictions:**

No advertising for commercial sexual services (radio, television, cinemas, print media) with the exception of the classified advertisement sections (section 11).

**Territorial authorities:**

These authorities can make bylaws regulating the location of brothels, and the signage and advertising associated with commercial sexual services (sections 12 to 14).

**Protections for sex workers**

It is an offence to induce or compel another person to provide, or continue to provide, commercial sexual services, or claim any earnings derived from sex work (section 16).

Section 17 determines that despite anything in a contract for the provision of commercial sexual services, a person may, at any time, refuse to provide, or to continue to provide, a commercial sexual service to any other person.

**Application of Immigration Act 2009**

(1) No visa may be granted under the Immigration Act 2009 to a person on the basis that the person—

- (a) has provided, or intends to provide, commercial sexual services; or
- (b) has acted, or intends to act, as an operator of a business of prostitution; or
- (c) has invested, or intends to invest, in a business of prostitution.

(2) It is a condition of every temporary entry class visa granted under the Immigration Act 2009 that the holder of the visa may not, while in New Zealand,—

- (a) provide commercial sexual services; or
- (b) act as an operator of a New Zealand business of prostitution; or
- (c) invest in a New Zealand business of prostitution.

(section 19).

**Under-age sex workers**

Prohibitions on use in prostitution of persons under 18 years of age. Every person convicted of an offence is liable to a maximum penalty of seven years' imprisonment. It is not an offence for a person under 18 to provide commercial sexual services as they are considered to be a victim (sections 20 to 23).

**Brothel operator certification system:**

Every operator of a prostitution business must hold a valid operator's certificate. To be eligible for a certificate, applicants must be over the age of 18, be a citizen or permanent resident of New Zealand or Australia, and not have any disqualifying convictions. Every operator who does not hold a certificate is liable to a fine not exceeding \$10,000 (sections 34 to 41).

**Small owner-operated brothels (SOOBs):**

These brothels have no more than four sex workers, and each individual sex worker retains control over their earnings. SOOBs are deemed not to have operators and therefore a brothel operator's certificate is not required (section 4).

**Prostitution Law Review Committee:**

This Committee of eleven members appointed by the Minister of Justice was charged with assessing the number of sex workers in New Zealand at the time of decriminalisation, and reviewing the PRA's operation three to five years after its enactment. This review focused on whether the Act was achieving its purpose (sections 42 to 46).

<https://www.parliament.nz/en/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand>  
Retrieved at 20-08-2018.

see Prostitution Reform Act:

<http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>  
Retrieved 20-08-2018.

## Appendix XI NZPC Organization Structure

<p><b>NZPC TRUST BOARD</b>  <b>CHAIR – Board Members</b></p> <p><b>NZPC National Coordinator</b></p>
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<b>Regional NZPC Coordinators</b>					
<b>Auckland</b>	<b>Christchurch</b>	<b>Wellington</b>	<b>Dunedin</b>	<b>Tauranga</b>	<b>Palmerst. N.</b>
Community Center + Community liaison	Community Center + Community liaison	Community Center + Community liaison	Community Center + Community liaison	Community Center + Community liaison	Community Center + Community liaison
<b>Community Outreach</b> Auckland and the suburbs (Manukau)	<b>Community Outreach</b> Christchurch Nelson Blenheim Timaru	<b>Community Outreach</b> Wellington Hawera Wanganui Hawke's Bay Hastings Napier	<b>Community Outreach</b> Dunedin Queenstown Lakes Invercargill Oamaru	<b>Community Outreach</b> Tauranga Waikato Bay of Pl. Rotorua Taupo New Plymouth Poverty Bay	<b>Community Outreach</b> Napier Hastings Whanganui

<b>LOCATION</b>	<b>AREA OF COVERAGE</b>	<b>COMMENT</b>
NZPC Wellington	Wellington, and up to the north to the center of the island and to the east coast of the cities Hastings and Napier	National Head Office.
NZPC Auckland	Auckland, including all suburbs	North Island
NZPC Tauranga	Tauranga, including the cities Hamilton, New Plymouth, Rotorua and Taupo	North Island
NZPC Christchurch	Christchurch, including other parts	South Island
NZPC Dunedin	Dunedin, including Queenstown Lakes, Invercargill, Oamaru	South Island
Districts: Waikato Hawkes Bay	Regional NZPC support by telephone and outreach services	North Island
Palmerstone North	Napier, Hastings, Whanganui	North Island

(Source: e-mail NZPC 04-03-2015)

## Appendix XII The Protxt Case in Christchurch

To better protect the local sex workers against misuse and assault, the Christchurch NZPC community center created a hand-written “ugly mugs book” that in 2009 changed into a locked online data system, named ‘Protxt’ (NZPC 10). This system is understood as a text alert service for all sex workers, and is in particular related to their safety and health issues (Protxt leaflet).<sup>2</sup> It can also be shared by Christchurch police detectives who are professionally involved in local sex industry issues (NZPC 16; RPOL4).<sup>3</sup> Sharing mutual information with the police not only enables sex workers to trace bad clients in due time, it also creates a data-base which is useful in case there is a new offence (NZPC 10). Meanwhile, hundreds of subscribers directly read relevant Protxt news (NZPC 10; NZPC 16). The dilemma is that the book was set up despite the disapproval of the NZPC National Office which initially frustrated the former Christchurch NZPC Coordinator (NZPC 10). The NZPC National Coordinator clarifies that the National Office feared for being sued to court in case of illegally publishing sensitive private information (NZPC 18).<sup>4</sup>

This dilemma demonstrates occasional tensions between the different interests of two NZPC parties, on the one hand, the ‘large scale’ NZPC National office, on the other hand, the ‘small scale’ NZPC Christchurch community center. A choice had to be made between (i) protecting the interests of the local sex workers and taking the risk of judicial intervention which could damage NZPC’s name (the choice of the Christchurch community center); (ii) primarily protecting the interests of the organization despite acknowledging the advantages of the system for the sex workers (the National NZPC Office choice). This dilemma also shows the impact of NZPC’s monopoly as the only sex workers collective nationwide: the stronger the organization, the more interests and responsibilities, the more sensitive for negative critics or liability claims. Here, NZPC’s name, image and interests are at stake (NZPC 18).<sup>5</sup>

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- 2 Protxt enables enrolled sex workers to receive different types of warning and information alerts about dangerous individuals by which sex workers will be able to quickly recognize them. In addition, reminders can be sent out about the NZPC medical clinic, sexual health information, arrival of stock, and upcoming meetings (Protxt leaflet).
  - 3 Although not allowed to put information on the Protxt website itself, the police can pass relevant information that might be of importance for the safety of sex workers (NZPC 10; NZPC 16).
  - 4 She refers to a case around 2001 in which a clients’ name had been published in the ugly mugs book
  - 5 Up to now, the alert system still functions separately from NZPC (NZPC 18). The National NZPC Office prefers to further analyze the system on its legal strength in order to reduce the risk for the NZPC organization to be sued (NZPC 18). According to NZPC’s legal advisor, taking into account the legal issues around privacy, carefully wording the information has to be a requisite: “that is why names are not mentioned in Protxt, rather descriptions of persons. For instance, an Indian man around forty years old in a white BMW” (NZPC 22).



### Appendix XIII Procedure NZPC Evaluation Survey

This survey aims to inform new sex workers by telephone on the existence of NZPC, and – after their permission – answer a questionnaire by them about new sex workers’ work circumstances. The NZPC evaluator also collects continuing first-line feedback information from the more experienced sex workers (NZPC 14). Face-to-face contact does not occur, she only works from her home by telephone (NZPC 14). This NZPC Survey enables the evaluator to sort out which phone number might belong to a new<sup>6</sup> private sex worker, whether this worker is new or skilled, and whether this worker already has operated in the sex industry in the past (NZPC 14).<sup>7</sup> The majority of the contacted New Zealand sex workers are willing to provide a physical street address so that the NZPC National Office in Wellington can send an information/questionnaire pack to the sex worker by courier (see Appendix XIV). According to the NZPC evaluator, mostly, the reactions of these sex workers are positive (NZPC 14). The NZPC National Office collects all data and presents the analyses of the questionnaire information in a comprehensive overview twice a year to the Ministry of Health.

The most important findings of this survey are: (i) the majority of the interviewed sex workers have insight in NZPC’s information and education book *Stepping Forward*; (ii) most of them visit NZPC drop-in centers; (iii) sex workers’ awareness of the existence of NZPC is slowly increasing; (iv) between July 2015 and June 2016, all investigated sex workers indicate to have had a form of contact with NZPC. Appendix XV shows the results of the NZPC Evaluation surveys on four periods between July 2014 and June 2016.

However, not every sex worker intends to cooperate with the survey. The reason to refuse usually remains unclear: “Then they simply hang up” (NZPC 14). If a sex worker prefers to not to go to an NZPC drop-in – for instance anxious for being recognized as a sex worker – then the NZPC explorer – as an alternative – tries to arrange meetings at a public place with an NZPC staff member (NZPC 14).

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6 Some of them may have worked in a different venue – managed or street – previously.

7 She investigates adverts in newspapers and on websites. Street-based sex workers seldom use the possibility to advert in a newspaper or on a website (NZPC 14).

## Appendix XIV NZPC Survey Questionnaire

Date: \_\_\_\_\_

### SECTION 1: STEPPING FORWARD

a) Have you ever read a copy of Stepping Forward?	Yes	No
<b>If yes, then b) and c) below</b>		
b) Do you think Stepping Forward has been useful in your work?	Yes	No
c) Do you think the information has helped keep you safe?	Yes	No

### SECTION 2: COMMUNITY DROP IN CENTRE

a) Have you ever visited the NZPC drop in centre?	Yes	No
<b>If yes, then b), c), and d) below</b>		
b) Were you happy with the support provided by the staff there?	Yes	No
c) Were you happy with the supply of condoms and other supplies?	Yes	No
d) Was the information you received there helpful to you?	Yes	No

### SECTION 3: CLINIC VISITS AT NZPC

a) Have you ever had a check-up at the NZPC clinic?	Yes	No
<b>If yes, then b), below; if no, then c), below</b>		
b) If so, was that useful?	Yes	No
c) If not, do know where to go for a check-up in your region?	Yes	No
<b>If yes, then d) and e), below, if no, offer options: NZPC, Sexual Health, FPA, GP</b>		
d) Where do you go for a sexual health check up?		
e) Do you let the person you see know you are a sex worker?	Yes	No
f) If not, why?		
<b>If the person lives in Auckland, Christchurch or Wellington regions</b>		
g) Why do you not attend the NZPC clinic?		

### SECTION 4: CONTACTS FROM NZPC STAFF

a) Have you had a visit from NZPC at your place of work?	Yes	No
b) Have you had telephone, text, or e-mail contact with NZPC?	Yes	No

<b>If yes to either a) or b), then c) below</b>		
c) Was that contact useful to you?	Yes	No
The following relate to websites NZPC operates		
d) Have you seen the NZPC website, nzpc.org.nz?	Yes	No
<b>If yes, then e), below; if no, then f), below</b>		
e) Was the information on the website useful?	Yes	No
f) Have you seen the website sexworklaw.co.nz?	Yes	No
<b>If yes, then g) and h), below</b>		
g) Was the information on the website useful?	Yes	No
h) Was the video on that site helpful?	Yes	No
(Comments re website?):		

**SECTION 5: CONFIDENTIAL INFORMATION**

Which part of the industry do you work in?	Street	Brothel/ parlour/ agency	Private	Mix of these?	(what mix?)	Other	
Which part of New Zealand do you work in?	Auckland	Tauranga	Manawatu/ Hawkes Bay	Wellington	Christchurch	Dunedin	Elsewhere (where?)
How long have you worked in the industry?	Less than one year	Between 1 and 5 years	More than 5 years?				
What is your gender?	Female	Male	Transmasculine/ Trans-man	Transfeminine/Trans-woman	Intersex		
What is your age?	18-24	25-34	35-44	Over 45			

Have you any comments you would like to make about NZPC? (Prompt if necessary: like the things NZPC does, the things you would like NZPC to do, the services NZPC provides, etc.

(Source: e-mail NZPC CB 02-10-2015)

## Appendix XV NZPC Evaluation Surveys

**Table 1: Sex workers' extent of 'happiness' with NZPC' services<sup>8</sup>**

Period	Number	Section 1 Stepp. Forw	Section 2a NZPC Support at Com. center	Section 2b NZPC Supplies	Section 2c NZPC inform.	Section 4 NZPC Contact
07-12- 2014	N=117*	100%	96,23%	99,06%	94,34%	74,55%
01-06- 2015	N=20**	100%	100%	100%	100%	100%
07-12- 2015	N=43***	100%	97,37%	100%	94,74%	97,67%
01-06- 2016	N=17****	100%	100%	100%	100%	94,12%

Source: NZPC: Charts NZPC Evaluation Results July 2014 – December 2014, January 2015 – December 2015, January 2016 – June 2016 (E-mail NZPC 24-11-2016).

\*n=117: females: 91; transgender: 15; males: 9; no reply: 2

\*\*n=20: females: 17; transgender: 3; males: 0; no reply: 0

\*\*\*n=43: females: 33; transgender: 7; males: 3; no reply: 0

\*\*\*\*n=17: females: 15; transgender: 1; males: 1; no reply: 0

The first Section shows the percentage of investigated new sex workers who found NZPC' information book *Stepping Forward* useful. Although a single sex worker gave a critical note<sup>9</sup>, all investigated sex workers (100%) report positive about *Stepping Forward*. The first column of Section Two (2a) inventories (new) sex workers' 'happiness' with the support, provided by NZPC staff at the NZPC community centers. It shows an average survey score of 98,4%. Section Two-b shows sex workers' 'satisfaction score' about the supply of free condoms and other products at the community centers (99,8%). Section Two-c which addresses to the information received at the NZPC community centers, shows that an average of 97,27% of the sex workers consider this information as helpful. Finally, Section Four denotes the opinions regarding the contact with NZPC at their private workplace or brothel, or by telephone, e-mail or text message. Here, more than ninety percent (91,58%) of the investigated sex workers classify their contact with NZPC as very useful.

8 In this scheme, I have left out Section 3 and 5 of the NZPC Evaluation Survey. Section 3 analyzes the clinic visits by sex workers. Section 5 treats the gathered demographic information.

9 This sex worker considered some of the information in *Stepping Forward* outdated and suggested a new version (NZPC Evaluation Results January 2016 – June 2016 – Survey data).

**Table 2: NZPC's survey results: opinions (new) sex workers**

Period	Number	Section 1 Read Step- ping Fw	Section 2 Sw vi- sited NZPC	Section 3 NZPC to workplace	Section 4 Contact by tel/e-mail/ text	Section 5 Other contact
07-12- 2014	N=117*	52,99%	93,98%	28,21%	35,04%	47,01%
01-06- 2015	N=20**	65%	93,98%	35%	45%	90%
07-12- 2015	N=43***	67,44%	93,98%	34,88%	53,49%	100%
01-06- 2016	N=17****	58,82%	93,98%	47,06%	41,18%	100%

Source: Charts NZPC: NZPC Evaluation Results 2014 // NZPC Evaluation results 2015 // NZPC Evaluation results 2016

\*n=117: females: 91; transgender: 15; males: 9; no reply: 2

\*\*n=20: females: 17; transgender: 3; males: 0; no reply: 0

\*\*\*n=43: females: 33; transgender: 7; males: 3; no reply: 0

\*\*\*\*n=17: females: 15; transgender: 1; males: 1; no reply: 0

An analysis of this NZPC Survey shows that around sixty percent (61%) of the investigated new sex workers indicated to have had insight in NZPC's information and education book *Stepping Forward* (Section One). The vast majority (93,98%) indicated having visited NZPC drop-in centers (Section Two). The number of private sex workers (38%) who have been visited by NZPC staff at their workplaces seems to increase (Section Three), while the contact by telephone, text and e-mail seems to increase in comparison by 2014 (Section Four). Noteworthy might be the maximal score of new sex workers who have had a form of contact with NZPC between July 2015 and July 2016 (Section Five).

## Appendix XVI All Business Code of Conduct Guidelines (CoC)

### 1: Upholding rights and conditions through following the PRA rules:

- don't accept minor sex workers;
- promote safe sex for oral, anal and vaginal sex;
- respect the right for sex workers to say 'no' to providing sex – at any time;
- respect the reason if a sex worker refuses a booking or a sex service;
- Don't fine or impose penalties for declining clients.

### 2: Prevention of violence: this item describes four basic measures, which the operator has to respect to protect the sex worker for violence:

- have a zero-tolerance approach to violence, including physical, sexual, or emotional violence;
- believe what sex workers say about bad clients, and support them in asserting their personal boundaries;
- uphold the legal right for sex workers to be able to work free from sexual harassment by people who are responsible for their occupational safety and health;
- create a workplace environment that does not pressure on a sex worker to provide services to anyone related, formally or informally, to the operation of the business;

### 3: The third item concerns rules on hiring and contracting new workers:

- no sex workers under 18 years old;
- no misleading advertisements, for instance 'seeking bar staff' instead of sex workers;
- embrace fair working conditions with respect to sex workers as independent contractors, so negotiate hours that suits them;
- allow 'brand-new' sex workers an opportunity to build up their experience before promoting them, as they are vulnerable to being manipulated into agreeing to things beyond their experience;
- ensure that new workers have been fully informed and have time to reflect;
- protect new workers who may agree to provide any sexual service without the appropriate experience;
- ensure sex workers know they have a choice to decline full facial advertising;
- create a culture of informed consent, by not being afraid to share good and bad information in order to properly inform a sex worker of the reality of sex work;
- respect the relationship: employer vs employee, or principle contractor vs independent contractor;
- explain tax liabilities;
- acknowledge that clients who complain might manipulate the truth to get free service;
- support sex workers' access to NZPC, and provide information about NZPC and its services.

**4: This item explains rules, which have to improve sex workers' privacy:**

- no passing through of personal sex workers' information to third parties without their knowledge or expressed consent;
- where possible, photos for publicity shots will be non-identifying if this is the sex worker's wish;
- delete all the photos, data etc. that the sex worker does not want on the internet or in storage;
- filming and external monitoring of workplace venues are discussed with the sex workers at the point of hiring, and screens should only be seen by people the sex worker knows and agree to.

**5: The fifth point focuses on workplace practices:**

- always pay a sex worker who provides sexual services their share of the money, despite complaints of the clients;
- support sex workers' access to sexual and reproductive health services;
- support sex workers to take time off for health and well-being;
- uphold occupational safety and health obligations as required by Work Safe;
- create a workplace environment that does not put pressure on a sex worker to provide services to anyone related, formally or informally, to the operation of the business;
- ensure there is a process for resolving disputes that respects sex workers' privacy;
- ensure workers have private space so they can talk among themselves and exchange ideas as sex workers on strategies for safe sex, and managing the clients' request;
- avoid having 'favourites' among the workers, because this often amounts to workplace bullying, which is a form of harassment;
- support workers who want to work fewer shifts or have time off.

**6: Alcohol and other drugs:**

- ensure sex workers are not encouraged to drink alcohol while working;
- ensure sex workers do not have to work with clients who are intoxicated on alcohol or other drugs.

**7: The last item concerns advices to reduce the potential of stigma upon sex workers' life:**

- ensure all sex workers are equal and all sex work experience is respected across the spectrum, self-managed indoor or street-based, private work, and managed brothel-based work;
- look across to other sex workers; don't look down on them;
- avoid comments like "I couldn't do your job", as it reinforces stigma;
- discourage bad-mouthing about other workers, or the brothels they have worked in, as it results in sex workers feeling demeaned;
- avoid discrimination on the basis of previous sex work experience, gained in other parts of the sex industry;
- when comparing sex workers and sex work, ensure the analogies used are respectful, and not reinforcing stigma; avoid comparisons to fast food restaurants, and other dehumanizing analogies.

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**Appendix XVII Print Media Articles**

MPs to vote on Prostitution Law (Dominion Post 30-11-2002)  
Prostitutes ready to come out of shadows (Sunday Star Times 01-12-2002)  
Reform will brake disabled sex taboo (Dominion Post 09-01-2003)  
Real debate from MPs consciences (BOP Times 24-02-003)  
Prostitution reform – Is it socially responsible? (Otago Daily Times 24-02-2003)  
Double Standards (The Otago Daily Times 27-02-2003)  
Time to change an unjust law (NZ Herald 01-03-2003)  
Employment or exploitation? (NZ Herald 25-03-2003)  
Prostitution Bill faces defeat (The Press ...)  
Prostitution Reform Bill toughened (The Press 27-03-2003)  
Prostitution Reform Bill strengthens workers' rights (Socialist Worker Monthly Review April 2003)  
Maori activist fights proposed changes to prostitution laws (Western Leader 24-4-2003)  
Sex Workers need protection under the law (Media Release 24-06-2003)  
Decision Time (The Otago daily Times 25-06-2003)  
Conscience the key for crucial voters in sex trade bill (Dominion Post 27-06-2003)

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Hookers' HIV risk raise (20-12-2002)  
Prostitution Bill: 'a backward step' (The Press 17-02-2003)  
If we encourage prostitution, we will get more of it (NZ Herald 18-02-2003)  
Legalizing prostitution is moral cowardice (Sunday Star Times 23-02-2003)  
Bad for NZ if Prostitution Reform Bill is passed (Whangarei Leader 25-02-2003)  
Brothel Bill "pill" will have nasty side effects (Media Release 23-06-2003)



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**Appendix XVIII Start and End Regulation of Prostitution Policy**

	<b>Start</b>	<b>Abolishment</b>
France	1802	1912
Netherlands	1811	1911
Russia	1844	1917
Belgium	1844	1877
Sweden*	1859	1918
England	1864	1886
New Zealand	1867	1910
Germany	1871	1914
Finland	1875	1907
Norway	1876	1888
Denmark	1877	1906

\* The first regulation in Sweden was in 1847, but pure on medical ground.

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**Appendix XIX Start Organized Feminism, Leading to Women's Suffrage**

	<b>Start organised feminism</b>	<b>Suffrage</b>
New Zealand	1860s	1893
Finland	1880s	1906
England	1850s	1918
Germany	1860s	1918
The Netherlands	1880s	1919
USA	1840s	1920
Sweden	1870s	1921
France	1860s	1944

Sources:

<https://www.britannica.com/topic/woman-suffrage>

<https://www.atria.nl/nl/publicatie/vrouwenkiesrecht-nederland>

After 1945: votes for women in many countries. By 1970 around 100 states.

Only traditionally-orientated Moslim states continued to resist the idea of female suffrage (Evens 1977:40)

**Appendix XX Crimes Act Section 98D**

**replaced, on 7 November 2015, by section 5 of the Crimes Amendment Act 2015 (2015 No 95).**

**Trafficking in persons**

(1) Every person is liable to the penalty stated in subsection (2) who arranges, organises, or procures—

(a) the entry of a person into, or the exit of a person out of, New Zealand or any other State—

(i) for the purpose of exploiting or facilitating the exploitation of the person; or

(ii) knowing that the entry or exit of the person involves 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both; or

(b) the reception, recruitment, transport, transfer, concealment, or harbouring of a person in New Zealand or any other State—

(i) for the purpose of exploiting or facilitating the exploitation of the person; or

(ii) knowing that the reception, recruitment, transport, transfer, concealment, or harbouring of the person involves 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both.

(2) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both.

(3) Proceedings may be brought under this section even if—

(a) parts of the process by which the person was exploited, coerced, or deceived were accomplished without an act of exploitation, coercion, or deception:

(b) the person exploited, coerced, or deceived—

(i) did not in fact enter or exit the State concerned; or

(ii) was not in fact received, recruited, transported, transferred, concealed, or harboured in the State concerned.

(4) For the purposes of this section, exploit, in relation to a person, means to cause, or to have caused, that person, by an act of deception or coercion, to be involved in—

(a) prostitution or other sexual services:

(b) slavery, practices similar to slavery, servitude, forced labour, or other forced services:

(c) the removal of organs.



# Curriculum Vitae

Joep Rottier (1949) was born in Heerlen, the Netherlands. He combined the last period of his professional career as a physical therapist with studying Cultural Sciences at the Open University of the Netherlands (Open Universiteit Nederland). He obtained his Master's degree (MA) in Cultural Sciences in 2010. His master thesis focused on the opposing prostitution policies in the Netherlands and Sweden. From 2013 to 2018 he carried out his PhD-research – as an external PhD-candidate – at the Willem Pompe Institute for Criminal Law and Criminology at Utrecht University, the Netherlands.



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11. *Strafrecht en milieu*, dr. Th.J.B. Buiting, 1993
12. *Latijnsamerikaanse drugkoeriers in detentie: ezels of zondebokken?*, Janine Jansen, 1994
13. *De overdracht van de tenuitvoerlegging van strafvonnissen*, D.J.M.W. Paridaens, 1994
14. *Hoe punitief is Nederland?*, dr. mr. M. Moerings (eindred.), 1994
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36. *Opsporing van oorlogsmisdrijven*, A. Beijer, A.H. Klip, M.A. Oomen en A.M.J. van der Spek, 2002
37. *Recht op schrift*, dr. Renée Kool, prof. dr. Martin Moerings en Willem Zandbergen, 2002
38. *Herstelrecht in jeugdstrafzaken*, Ytje Minke Hokwerda, 2004
39. *Voor wat hoort wat: plea bargaining in het strafrecht*, Chrisje Brants en Bart Stapert, 2004
40. *Het psychisch onvermogen terecht te staan*, Peter Bal en Frans Koenraadt, 2004
41. *Discretie in het strafrecht*, M. Boone, R.S.B. Kool, C.M. Pelser en T. Boekhout van Solinge (red.), 2004
42. *Dealing with Drugs in Europe*, Tim Boekhout van Solinge, 2004
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