

**AMNESTY  
INTERNATIONAL**



**AMNESTY INTERNATIONAL AOTEAROA NEW ZEALAND**  
P O BOX 5300  
WELLESLEY STREET  
AUCKLAND 1141  
T: +64 9 303 4520 F: +64 9 303 4528

## Amnesty International Aotearoa New Zealand

Submission to the Office of the High  
Commissioner for Human Rights on New  
Zealand's Implementation of the International  
Covenant on Civil and Political Rights –

Information for consideration in the drafting of  
the list of issues to be adopted at the 96<sup>th</sup>  
session

27 May 2009

**AI is an independent movement of over 2.2 million people in more than 150 countries who contribute their time, money and expertise to the promotion human rights and international campaigning to prevent some of the most serious violations.**

**AI**, recognising that human rights are indivisible and interdependent, also works to promote all the human rights enshrined in the Universal Declaration of Human Rights and other international standards, through human rights education programs and campaigning for ratification of human rights treaties.

**AI's** New Zealand section has approximately 8,100 members and regular donors, and active members in some 30 local community groups, specialist groups and various action networks. At any one time its members are working on cases and issues in approximately 90 countries. The work of **AI's** New Zealand members is supported by paid staff and volunteers based in Auckland, and the movement's International Secretariat based in London.

**AI** is impartial. It is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect

**AI's** policies and plans are discussed and decided at general meetings of the membership and meetings of their elected representatives held every two years (International Councils). In New Zealand their implementation is managed by the Chief Executive Officer overseen by an elected Governance Team. Between International Councils the international affairs of **AI** are managed by the Secretary General, who reports to an elected International Executive Committee of members from at least seven different countries.

**AI** is financed by its worldwide membership and the public. Strict guidelines exist to safeguard its independence of the organisation; **AI** does not accept government funds for its campaigning work or organisation.

**AI** has formal relations with the United Nations Economic and Social Council (ECOSOC), UNESCO, the Council of Europe, the Organization of American States, the Organisation of African Unity, and the Inter-Parliamentary Union.

**AI** was awarded the United Nations Human Rights Prize for "outstanding achievements in the field of human rights" on the 30th anniversary of the Universal Declaration of Human Rights. The movement received the Nobel Peace Prize in 1977 for its contribution to "securing the ground for freedom, for justice, and thereby also for peace in the world".

## EXECUTIVE SUMMARY

In this submission, Amnesty International Aotearoa New Zealand (AI) provides information on the implementation of the International Covenant on Civil and Political Rights (ICCPR) in New Zealand in the following areas:

- A. Violence against women
- B. Imminent Immigration Legislation
- C. Introduction of the Taser Stun Guns
- D. The Sentencing and Parole Reform Bill
- E. Privatisation of Prisons
- F. Conditions of those awaiting deportation or decision on asylum applications
- G. Effect of counter-terrorism legislation and guarantees of terrorist suspect
- H. Trafficking
- I. The right to privacy
- J. Youth justice system
- K. Use of force against children
- L. Foreshore and Seabed Act

### A. Violence against women (Articles 3 and 7)<sup>1</sup>

- 0.0 The proposed changes to sexual violence legislation (see Discussion Document “Improvements to Sexual Violence Legislation in New Zealand<sup>2</sup>) are overall welcomed by AI.<sup>3</sup> The current legislative framework is clearly failing women; and therefore in effect women are denied access to the justice system in violation of Articles 14 and 26.
- 1.0 One in three NZ women experience physical and/or sexual abuse at the hands of a partner throughout their lifetime. Moreover, with one in five women facing sexual violence combined with low conviction rates, it seems that rape can be committed with impunity. A WHO study found that “27% of physically and/or sexually abused women in Auckland and 22% in North Waikato never told anyone about the violence they had experienced. If they had told someone, this was usually their friends or family. Only 32% of physically and/or sexually abused women in Auckland and 29% in North Waikato had ever turned to formal services (health, police, religious, or local leaders, etc.)”.<sup>4</sup>
- 2.0 New Zealand’s reputation in the international arena as a leader in human rights can be protected by adopting progressive changes to sexual violence legislation. AI supports the development of such law and process. Women in New Zealand face a difficult road to justice if they suffer sexual violation, and the system needs to be improved. The current legislation sends inconsistent messages to men and women; to women it says you can say no at any point and immediately the act becomes a rape. However men can continue as long as they believe that consent exists. This inconsistent position may be resolved to some extent by recognising that the rights of the accused to a fair trial *must* be balanced with the rights of a complainant. The experience of women shows that Articles 3 and 7 are being violated.

<sup>1</sup> Human Rights Committee’s General Comment 28 establishes that violence against women, including domestic violence is a violation of Article 7 of the ICCPR; U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

<sup>2</sup> <http://www.justice.govt.nz/discussion/sexual-violence-legislation/6064-2%20MOJ%20SV%20discussion%20document-ff-WEB.pdf> accessed on 5 November 2008.

<sup>3</sup> See our full submission on the discussion document at <http://www.amnesty.org.nz/files/Sexual%20Violence%20Submission%20October%202008.pdf>

<sup>4</sup> World Health Organisation Multi-Country Study on Women’s Health and Domestic Violence November 2005.

## **B. Imminent Immigration Legislation (Articles 6, 7, 9 and 10)**

- 3.0 In April 2006 the government announced the most comprehensive review of immigration legislation in 20 years. An Immigration Bill to replace the existing Immigration Act 1987 was tabled in the House on 8 August 2007. The Bill then went to Select Committee and was reported back, with amendments, to the House in July 2008. The Bill will shortly undergo its third reading in Parliament.
- 4.0 AI has expressed its concern to government<sup>5</sup> about the lack of independent oversight of executive power in the proposed legislation and considers that it undermines NZ's reputation as country that promotes human rights. The proposed legislation does not strike an appropriate balance between the government's obligation to protect New Zealanders from the risk of harm, and its obligations to ensure that asylum seekers and others protected under international law are accorded a fair hearing and are not arbitrarily detained or returned to face persecution, torture or death.
- 5.0 The process of passenger name screening which is outlined in the legislation (building on the current provisions in existing legislation) can prevent non-residents boarding transport to NZ at point of departure without reasons being disclosed or opportunity for judicial review. This system can seriously prejudice genuine asylum-seekers seeking protection in NZ. Owing to select committee amendments, reasons must now be given for declining visa applications or refusing entry permission. However, the screening process may lead to a violation of the principle of non-refoulment, in violation of Article 6 of the ICCPR.
- 6.0 Further, the Bill has provision to extend detention without a warrant for up to 96 hours. Of concern too are two new provisions in this Bill, first, prohibiting the Courts taking into consideration the length of detention of an individual held under any provision in the Bill when determining whether or not they should be released, and secondly, ruling out bail for any offence under the Bill in violation of Articles 7 and 10(1) of the ICCPR.<sup>6</sup>
- 7.0 AI notes that this extension of detention in the Bill violates Article 13; the Human Rights Committee's General Comment 15, 'The position of aliens under the Covenant'<sup>7</sup> states that Article 13 applies "to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise". It also observes that, although this Article only protects aliens lawfully in the territory of the State, in situations where the legality of an alien's entry or stay is in dispute, "any decision on this point leading to his expulsion or deportation ought to be taken in accordance with Article 13" and that discrimination may not be made between different categories of aliens.

## **C. Introduction of the Taser Stun Guns (Article 7)**

- 8.0 In August 2008, the police commissioner approved the introduction of Taser stun guns to be used by the police in situations where they fear physical injury to themselves or others. This approval was given without an independent and impartial inquiry and despite concerns raised by civil society organisations and the objections

<sup>5</sup> <http://www.amnesty.org.nz/files/AINZ%20Submission%20on%20Immigration%20Bill%20-%20final.pdf> accessed on 5 November 2008.

<sup>6</sup> See recent recommendations by the CAT Committee, CAT/C/NZL/CO/5

<sup>7</sup> (1986) HRI/GEN/1/Rev.7

to the use of Taser stun guns of the UN Committee against Torture.<sup>8</sup> Furthermore Amnesty's report, *Less than Lethal? The use of stun weapons in US law enforcement*<sup>9</sup> details how "conducted energy devices" (CEDs) are potentially lethal and open to abuse; it found that in while most cases coroners have ruled that deaths were due to other factors, medical examiners have found CEDs to be a cause or contributory factor in more than 40 deaths in the United States. AI believes that the introduction of Taser stun guns in New Zealand is a violation of Article 7, and potentially of Article 6.

- 9.0 AI has consistently raised concerns about the roll-out of Taser stun guns and will continue to do so with the Government's recent announcement that it will provide funding to speed up the rollout of Taser stun guns.<sup>10</sup>

#### **D. The Sentencing and Parole Reform Bill (Articles 7 and 10)**

- 10.0 The Sentencing and Parole Reform Bill is currently before the Law and Order Select Committee. AI has made a public submission.<sup>11</sup> The Bill creates a three stage regime for repeat offenders of "serious violence offences" (as defined in the interpretation section of the Bill (clause 86B(3)) and includes a range of sexual offences, and offences associated with assault and robbery. The three stage regime is as follows;
1. When an offender receives a sentence of five years or more(a qualifying sentence) for a serious violent offence he or she is given a first warning;
  2. When an offender who has been given a first warning receives a qualifying sentence for a subsequent serious violent offence he or she is given a final warning;
  3. When an offender who was been given a final warning commits another serious violent offence for which the court would have imposed a qualifying sentence, the court must instead impose a sentence of life. The court must also impose a minimum non-parole period of 25 years unless satisfied that it would be 'manifestly unjust' to do so (clauses 86D(2) and 86E).
- 11.0 The current sentencing regime which allows for a nuanced response to serious offending that recognises the circumstances of the crime and the offender is significantly curtailed.
- 12.0 AI believes that clauses 86D and 86E are in contravention of Article 7 (and the domestic provision giving effect to Article 7, Section 9 of the New Zealand Bill of Rights Act 1990 ("BORA")) and Article 10(1) (Section 23(5) of BORA) because, in some circumstances, the court will be constrained to impose a sentence that is not proportionate with the offending.

#### **E. Prison Management (Article 10)**

- 13.0 The Corrections (Contract Management of Prisons) Amendment Bill 2009 is currently before the Law and Order Select Committee. The provisions which enable

<sup>8</sup> Ibid

<sup>9</sup> AI Index Number: AMR 51/010/2008, Published 16 December 2008

<sup>10</sup> See AI website at <http://www.amnesty.org.nz/tasercampaign>

<sup>11</sup> Available at

[http://www.amnesty.org.nz/files/AIANZs\\_Submission\\_Sentencing\\_and\\_Parole\\_reform\\_Bill\\_April%2009.pdf](http://www.amnesty.org.nz/files/AIANZs_Submission_Sentencing_and_Parole_reform_Bill_April%2009.pdf)

competitive tendering of prison management to occur may violate prisoners' human rights under Article 10(1).

- 14.0 Concerns have also been raised about the human rights training of immigration officials and personnel employed at immigration detention centres.<sup>12</sup>

#### **F. Conditions of those awaiting deportation or decision on asylum applications (Article 10 and 13)**

- 15.0 AI is concerned about the disparity in services available to individuals who are granted refugee status under the quota system and those that are granted refugee status from within New Zealand (successful asylum seekers). A number of mostly failed asylum seekers (or those which take longer than a year for their case to be heard)<sup>13</sup> are, for a variety of reasons, falling outside the system because they cannot access a work permit which is the doorway to that system, they therefore exist in a limbo outside any support system pending either their return home (which can be an extensive period) or the outcome of a humanitarian bid to the Associate Minister of Immigration. Of particular concern to AI are those asylum-seekers from such countries where any return is unsafe.
- 16.0 This practice is in violation of Article 13, and the Committee's General Comment 15 which specifically asserts that in the application of Article 13 discrimination may not be made between different categories of aliens.<sup>14</sup>

#### **G. Effect of counter-terrorism legislation and guarantees of terrorist suspect (Article 26)**

- 17.0 On 15 October 2007, the police began raids and home searches which resulted in the arrest of 17 Māori as suspects of terrorism-related offences around NZ. The individuals are social activists, members of Māori organisations and other social/environmental support groups. The group were accused of taking part in paramilitary-style training camps run by Tuhoe activist, Tame Iti in the Urewera Range. AI believes there may have been violations of Article 26. Complaints were made to the United Nations Special Rapporteur on Human Rights while Countering Terrorism.
- 18.0 In October 2008, the Solicitor-General, who is required to authorise prosecutions under the Terrorism Suppression Act, decided there was not enough evidence to prosecute in the case of 12 domestic terrorism suspects. The 12 suspects, plus six other suspected of related incidents, were instead charged with firearms under criminal law, and in November five of them were also charged with participating in a criminal gang.

#### **H. Trafficking (Articles 3 and 8)**

- 19.0 AI made a submission<sup>15</sup> on the discussion document for a Plan of Action to

<sup>12</sup>See recent recommendations by the CAT Committee, CAT/C/NZL/CO/5

<sup>13</sup>Successful asylum seekers are able to access a resettlement grant of \$1000 if their claim has been settled within a year of their application.

<sup>14</sup>(1986) HRI/GEN/1/Rev.7

<sup>15</sup>[http://www.amnesty.org.nz/files/AINZ%20Submission%20on%20People%20Trafficking%20\(Final\).pdf](http://www.amnesty.org.nz/files/AINZ%20Submission%20on%20People%20Trafficking%20(Final).pdf)

Prevent People Trafficking in May 2008 to the Interagency Working Group on a People Trafficking.<sup>16</sup> Despite some reference in the discussion document to the need for a Human Rights context, it was notably absent from the statement of purpose.

- 20.0 AI raised concerns about the assumption that trafficking is not yet a problem here: “Whilst recognizing the discussion document’s claim that there is, as yet, no firm evidence that people trafficking is a problem in New Zealand, it is highly unlikely that there has not been a single instance here. A report by Susan Coppedge<sup>17</sup> details several cases that predated New Zealand’s ratification of the Trafficking Protocol (and the accompanying domestic law changes) that could well now be prosecuted under trafficking legislation. People trafficking is a growing global trend, and a Plan of Action must proceed on the basis that it will become an issue with which New Zealand will ultimately have to engage.”
- 21.0 Furthermore, with the increased free trade agreements New Zealand is entering, particularly with ASEAN and Korea, we also queried if there is the possibility of increased trafficking into New Zealand as Asia is such a trafficking hub.

### **I. The Right to Privacy (Article 17)**

- 22.0 The Criminal Investigations (Bodily Samples) Amendment Bill 2009 is currently before the Justice and Electoral Select Committee. AI made a submission<sup>18</sup> raising concerns on the right to privacy. AI considers that the provisions in the Bill, allowing the expanded collection and retention of DNA samples and profiles, place an unjustifiable and disproportionate limit on New Zealander’s right to privacy.

### **J. Youth Justice System (Articles 24 and 14.4)**

- 23.0 AI is concerned at the current minimum age of prosecution for children in New Zealand and recommends amendments are made to current laws to raise the minimum age of criminal responsibility to an internationally acceptable level in accordance with the Human Rights Committee’s 2004 recommendation.<sup>19</sup> The current age of criminal responsibility for murder and manslaughter in New Zealand is 10. The current youth justice laws apply only to young people under the age of 17

### **K. Use of force against children (Articles 24 and 7)**

- 24.0 AI welcomed the repeal of section 59 of the Crimes Act 1961 in May 2007. The amendment removed the defence of reasonable force for parents who physically discipline their children. However, AI is concerned by the announcement that there will be a referendum on this issue, to take place mid 2009.
- 25.0 AI notes that General Comment 20 establishes the Committee’s position that corporal punishment is a violation of Article 7.

<sup>16</sup> The Working Group is driven by the Dept. of Labour, but includes the Ministries of Women’s Affairs, Social Development, Justice, and Customs and the Police

<sup>17</sup> Susan Coppedge People Trafficking: An International Crisis Fought at the Local Level July 2006, This report can be found at [http://www.fulbright.org.nz/voices/axford/2006\\_coppedge.html](http://www.fulbright.org.nz/voices/axford/2006_coppedge.html)

<sup>18</sup> [http://www.amnesty.org.nz/files/090401\\_Criminal\\_Investigations\\_Bodily%20Samples\\_%20Amendment%20Bill%202009.pdf](http://www.amnesty.org.nz/files/090401_Criminal_Investigations_Bodily%20Samples_%20Amendment%20Bill%202009.pdf)

<sup>19</sup> [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.32.4.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.32.4.En?Opendocument) accessed 4 November 2008 and

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/73f172e77b12c842c1256df20033829f/\\$FILE/G0344655.doc](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/73f172e77b12c842c1256df20033829f/$FILE/G0344655.doc) accessed 4 November 2008.

## L. Foreshore and Seabed Act (Articles 2, 26 and 27)

26.0 AI is welcoming the Ministerial Foreshore and Seabed Review on the Foreshore and Seabed Act, particularly in light of UN Recommendations and the scale of opposition to the Act. AI's submission<sup>20</sup> details how the Act extinguishes the customary Māori property rights to the coastal areas and provides a burdensome statutory process for the recognition of customary or aboriginal title. Violations of the ICCPR are detailed below. AI has recommended the Act is repealed in whole and the Government enter into re-negotiations, in particular with Māori on their customary rights and claims to the foreshore and seabed, in line with the March 2006 report of the Special Rapporteur on the Human Rights of Indigenous Peoples.<sup>21</sup>

27.0 Violations of the Right to freedom of discrimination (Article 26) are as follows:

27.1 Giving effect to the object of the Act which is to 'preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders' (Section 3), Section 4 (a) vests the 'full legal and beneficial ownership of the public foreshore and seabed in the Crown' and at (c) enables 'applications to be made to the High Court to investigate the full extent of the rights that may have been held at common law.'

27.2 The reference to "public foreshore" as defined in Section 5 of the Act excludes areas that are already privately owned, of which most are in non-Māori hands. Protecting non-Māori, but not Māori, rights in the Act constitutes prima facie discrimination. It fails to recognise the status of Māori in Aotearoa New Zealand, and Iwi connection to tangible or future benefits. This discrimination breaches international law and is in violation of the ICCPR and CERD.

28.0 Violations of the right to a remedy (Article 2(3)):

28.1 The Act provides no guaranteed compensation for Māori groups for loss of customary title. Section 37(1) of the Act provides that if the High Court finds that but for the vesting of the foreshore and seabed in the Crown, a group would have held territorial customary rights to a particular area under Section 33 then the Attorney-General and Minister of Māori Affairs 'must enter into discussions with the applicant group for the purpose of *negotiating* an agreement' (emphasis added) under Section 37(1). The absence of a statutory criterion to guide negotiation with Ministers about compensation fails to provide a possible safeguard against arbitrariness. The failure to provide guaranteed compensation is in breach of the right to a remedy.<sup>22</sup>

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[http://www.amnesty.org.nz/files/Final\\_Submission\\_on\\_Foreshore\\_Seabed\\_Review\\_Version\\_19\\_May\\_2009.pdf](http://www.amnesty.org.nz/files/Final_Submission_on_Foreshore_Seabed_Review_Version_19_May_2009.pdf)

<sup>21</sup> Special Rapporteur Rudolfo Stavenhagen highlighted that government cannot unilaterally extinguish indigenous rights through any means without the free, prior and informed consent of Māori. He saw the Foreshore and Seabed Act as a backward step for Māori in relation to the progressive recognition of their rights through the Treaty (of Waitangi) settlement process over recent years. The Special Rapporteur recommended that Parliament repeal the Act and that government enter into re-negotiations with Māori on their customary rights and claims on the foreshore and seabed.

<sup>22</sup>Note: Committee on the Elimination of Racial Discrimination, Decision 1 (66) New Zealand Foreshore and Seabed Act 2004, CERD/C/66/NZL/Dec.1, 21 February – 11 March 2005, paragraph 6. Furthermore the CERD Committee further requested the Government monitor closely the implementation of the Act, and particularly requested 'broadening the scope of redress available to the Māori.'

- 28.2 There is no guaranteed right of a remedy for removal of property rights. To obtain legal recognition of the non-exclusive interests under the Act, Māori need to meet very high evidential standards.
- 29.0 Violations of the rights of minorities, including the right to 'enjoy their own culture' (Article 27):
- 29.1 The effect of the Act places cultural constraints on Māori; the foreshore and seabed has been alienated from its related ancestral connection and territorial customary right. As noted by the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the foreshore and seabed have 'long been a part of Māori environment, culture, economic activity and way of life...'<sup>23</sup> In Amnesty International's view this right to enjoy the culture has been limited, in breach of New Zealand's international obligations and New Zealand's BORA.

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<sup>23</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, 13 March 2006, E/CN.4/2006/78/Add.3, para.45