



Amnesty International Aotearoa New Zealand

**Submission in response to the
Consultation on a Plan of Action
To Prevent People Trafficking**

August 2008

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Amnesty International, 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.

Amnesty International's New Zealand section has approximately 7,500 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 Amnesty International's New Zealand members is supported by paid staff and volunteers based in offices in Wellington and Auckland, and the movement's International Secretariat based in London.

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Introduction

1. Amnesty International Aotearoa New Zealand (AIANZ) welcomes the opportunity to make a submission in response to the Interagency Working Group on People Trafficking's discussion document 'Consultation on a Plan of Action to Prevent People Trafficking' (May 2008)¹.
2. The scope of this submission is largely limited to the treatment and protection of women and girls who are trafficked for the purpose of sexual exploitation. However many of the problems and needs referred to in this submission are likely to be relevant to all trafficked persons.
3. This submission draws extensively on the submission² made by Amnesty International United Kingdom (AIUK) in response to the UK Home Office's discussion document 'Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan' (January 2006). The AIUK submission offers insights from a country that has a well-documented people trafficking issue, and provides valuable suggestions on how to future-proof New Zealand's policy on this issue.
4. Amnesty International wishes to recognize the lobbying by the Dunedin-based 'Group 9' affiliate of AIANZ towards bringing about this consultation process. This was undertaken as part of Amnesty International's 'Stop Violence Against Women' Campaign. They have made a submission in their name, i.e. as individuals rather than on behalf of AIANZ, but AIANZ draws on their submission in the present document.
5. As it stands, the discussion document suggests an outline for the structure and content of a Plan of Action. It does not offer any concrete proposals by which the measures contained therein may be implemented. Amnesty International would welcome confirmation that another consultation period will follow the release of the draft Plan of Action, and that there will be another opportunity to make a formal submission on the content of such a draft document.
6. The purpose of a Plan of Action is stated in Paragraph 3 of the discussion document as being *inter alia*

¹ Hereafter referred to as the 'discussion document'.

² **Tackling Human Trafficking – Response to the Consultation on Proposals for a UK Action Plan** by Amnesty International United Kingdom and Cathy Zimmermam 10th April 2006

a) to 'assist New Zealand to meet [its] international obligations as outlined in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children' (which New Zealand ratified in July 2002)³, and

b) 'to maintain New Zealand's reputation as a safe country'

Amnesty International believes that, *above all other considerations*, the purpose of a Plan of Action should be to prevent grievous human rights abuses being perpetrated on vulnerable individuals, often including children, and to alleviate the subsequent suffering, both physical and psychological, that most victims will experience.

7. Whilst recognising the discussion document's claim in Paragraph 5 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 Coppedge⁴ 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 (if it is not already) it will become an issue with which New Zealand will ultimately have to engage.
8. In this submission, we will address the essential issues that need to be included in a Plan of Action under the following headings:
 - Human Rights
 - Identification and Referral
 - Immigration and Asylum
 - Provision of Medical Care
 - Support Services
 - Reflection Period

Human Rights

9. Amnesty International welcomes the explicit acknowledgement of the importance of a human rights-based approach to the issue of people trafficking, particularly in Paragraphs 31, 81 & 86 of the discussion document. For this to be effectively implemented in a Plan of Action, Amnesty International believes that the human rights of the victims should be centrally addressed *at each stage of the process* – Prevention, Prosecution, Protection and Settlement.

³ Hereafter referred to as the Trafficking Protocol

⁴ 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

Victim support and protection is essential to the individual's process of recovery, but is also key to the securing of prosecution witnesses, gathering intelligence and preventing future trafficking crimes.

10. However, Amnesty International wishes to ensure that the acknowledgement of the importance of a human rights-based approach is not merely superficial. In this regard, we wish to highlight certain aspects of the consultation process and discussion document which suggest an inconsistent application of such an approach. These include
 - the omission of human rights from the stated purpose of a Plan of Action (noted in Paragraph 6 herein)
 - the tone of the discussion document which appears to be premised on there being no trafficking in New Zealand despite some circumstantial evidence to the contrary (noted in Paragraph 7 herein and in the submission of the Dunedin-based 'Group 9' affiliate of AIANZ)
 - concerns over the breadth of consultation sought, such as the failure to consult Auckland Sexual Abuse Help, an organisation operating on the front-line, and accessing an essential source of information and experience in a human rights-based, victim-centred approach to people trafficking (noted in Paragraph 34 herein)
11. There needs to be a greater understanding and a coherent policy response to the fact that women and girls who have been trafficked are often subjected to a range of forms of violence against women before, during and after the trafficking process, including domestic violence, child abuse and child sexual abuse, rape and sexual violence, forced marriage, forced prostitution, sexual exploitation and sexual harassment. Trafficking of women and girls shares many of the same root causes and connections as these other forms of violence. Proposals regarding research, prevention, prosecution, training of professionals and support and protection for trafficked women and girls needs to be planned and delivered as part of an integrated approach to all forms of violence against women in New Zealand.
12. A Plan of Action needs to recognise the impact that this crime has upon the physical and psychological health of the victims and their vulnerability to re-trafficking/further abuse and exploitation. Specifically, it must recognise the importance of rapidly identifying and meeting the urgent medical needs of trafficked persons upon contact with them, and the need to put policies and legal provisions in place for longer term care. The breadth of care services and resources available should be adequate to address the levels of harm caused by trafficking.

13. It is essential that the immigration status of victims in no way impedes their access to suitable support services, such as those listed in Paragraphs 79-80 in the discussion document, and the funding that may be required for such access. Rapid identification of victims by suitably trained professionals is essential for this. Any subsequent claims for asylum must also only be addressed by individuals who are fully experienced in all the issues associated with trafficking, e.g. risk of return, risk of being re-trafficked, physical and psychological harm often experienced by victims.
14. AIANZ is already aware that failed asylum-seekers and, in some cases, asylum claimants are denied access to suitable support services, accessed by work permits, such as medical care and benefits. For this reason it is essential that Immigration officials are suitably trained to recognise potential victims of trafficking both in New Zealand and at overseas ports.

Identification and Referral

15. Placing the human rights of victims at the centre of a Plan of Action on people trafficking requires a commitment from the New Zealand Government and relevant agencies to correctly identify persons who are likely to have been trafficked, to recognise the level of harm sustained by most victims, and to refer them to organisations which can offer them appropriate support and assistance.
16. Amnesty International believes that a coherent, nationwide mechanism for identification of suspected victims of trafficking and their subsequent referral to appropriate agencies must be established to ensure that the human rights of trafficked persons are protected. Identification should be carried out by trained and qualified professionals to ensure that people who are reasonably believed to have been trafficked are not involuntarily removed until the identification process has been completed and they are offered assistance and protection.
17. Such a mechanism should also include systematic training for all agencies and professionals who are likely to come into contact with trafficked persons, and a comprehensive system of specialist support and access to medical care for all victims of trafficking.
18. **Amnesty International recommends that:**
 - **The New Zealand Government adopts a nationwide system of mandatory procedures for the identification of, and appropriate interaction with, suspected victims of trafficking. This should include assessment of their urgent needs and their ability to participate in questioning or interrogation, as**

well as referral to appropriately trained professional service providers. The Government should ensure that these key tasks are undertaken by trained and qualified persons within all the relevant agencies.

- Persons who are reasonably suspected of having been trafficked for sexual exploitation should be entitled to the same 'best practice' procedures from the police as other vulnerable persons, including victims of rape and sexual violence in New Zealand, at all stages including first contact, interviewing and the obtaining of forensic evidence and investigation.⁵
- In particular, New Zealand immigration authorities should adopt a victim-centred approach to trafficking. Full co-operation with appropriate support organisations is necessary to ensure that the protection of victims of trafficking is prioritised and maintained, and that opportunities for the identification of victims are not lost because of a disproportionate focus upon immigration status.
- Persons who are reasonably believed to have been trafficked should not be forcibly removed from New Zealand before appropriate identification procedures are undertaken and they have been offered access to assistance, support and protection and the opportunity to claim asylum where appropriate.
- Extensive use should be made of the expertise relating to identification and referral built up by specialist police units in countries such as the UK, where people trafficking is well-established. This could include overseas experts coming to New Zealand to provide training to local agencies.

Immigration and Asylum

19. Many, if not all, victims of trafficking will have an unlawful immigration status. This may be a cause of huge uncertainty, and it is essential that this issue is addressed as early as possible in the identification process. Amnesty International believes that the best way to do this is to provide a reflection period – see Paragraphs 39-42 of this submission.

⁵ For example, where the Police seek to obtain intelligence or forensic evidence it is essential that officers contact local Sexual Assault Support Centres to arrange appropriate locations for obtaining informed consent in the native language of the victim and obtaining forensic samples and removal of clothing.

20. Whilst the regularisation of immigration status is clearly required for victims to assist in any criminal proceedings, this must not be seen as the primary objective. The physical and mental wellbeing of victims must be the primary concern. However, we anticipate that the effect of creating a safe and supportive environment, in which the urgent needs of the victims are met first, will be a more effective participation in such proceedings.
21. Amnesty International believes all victims of trafficking should be given the opportunity to apply for asylum in New Zealand. For this process to be fair it is necessary
- a) that victims have access to lawyers with specific training in dealing with trafficking cases,
 - b) that suitable reference is made to the appropriate asylum gender guidelines,
 - c) that suitable mechanisms exist for assessing the risk of persecution/re-trafficking in the source country, and
 - d) that all staff at Immigration New Zealand, the Appeals Authority and any other agencies that take part in this process are given specific training in dealing with victims of trafficking.

Provision of Medical Care

22. Given the nature of the harm caused, and the implications that this has for women's future functioning and well-being, addressing women's health needs should be considered a priority in any human rights-based strategy addressing trafficking. Furthermore, the immigration status of victims should not adversely affect access to the support services designed to meet these needs and any funding required for such access.
23. Moreover, given that this harm took place in New Zealand and that its citizens, by employing the labour of these women, contributed to their pain, stress, illness and infections, reparations should be considered an obligation of the State, in line with Article 6(6) of the Trafficking Protocol.

24. Amnesty International wishes to draw the Working Group's attention to a recent study⁶ conducted by researchers at the London School of Hygiene & Tropical Medicine in the UK on the physical and psychological health of women trafficked into forced prostitution or sexual exploitation in the context of forced domestic work. The study found that they suffer numerous physical and mental health problems which require urgent, as well as longer-term care.
25. Women who are forced to participate in legal proceedings immediately following a trafficking experience are likely to be extremely limited in their ability to provide clear, coherent and reliable information due to the range of physical and psychological symptoms that impair their cognitive functioning. Addressing health needs will mean that women will be more physically and psychologically capable of offering relevant, consistent and reliable evidence for criminal actions and judicial proceedings against traffickers, thus making the goals of assisting women compatible with that of prosecuting traffickers.
26. For trafficked women to be able to engage in the process of recovery it is of the utmost importance that they receive services from professionals specifically experienced in addressing gender-based violence. Trafficking in women is fundamentally a crime that is gender-based, and that requires responses that recognise women's physical, sexual and reproductive health needs, and most importantly, that respond to the psychological symptoms that commonly result from violence against, and exploitation of, women. Common psychological reactions to this type of chronic abuse include, shame, guilt, stigma, major depression and post-traumatic stress disorder. Professional providers will include, for example, battered women's shelters, rape crisis centres, and psychologists experienced in supporting female victims of violence.
- 27. Amnesty International recommends that the New Zealand Government provides dedicated and ongoing support services for victims of trafficking that include comprehensive physical and psychological health care and a reflection delay period of a minimum of three months in order to give victims sufficient**

⁶ Stolen smiles: a summary report on the physical and psychological health consequences of women and adolescents trafficked in Europe. Preliminary findings on the prevalence of physical and mental health consequences (2006) Cathy Zimmerman, Mazedra Hossain, Kate Yun, Brenda Roche, Linda Morison, Rosa Angela Ciarrocchi, Vasil Gajdadziev, Jana Genunchi, Viorel Gorceag, Natalia Guzun, Silva Hove, Anna Johansson, Anna Kefurtova, Katarina Kukic, Irina Lysenko, Olga Milinchuk, Sally Montier, Stefania Scodanibbio, Simonne Sergeant, Jo Smith, Maria Tchomarova and Anne Vauthier. and Charlotte Watts. LSHTM/IOM/EU Daphne Programme. This report can be found here: <http://www.lshtm.ac.uk/hpu/docs/StolenSmiles.pdf>

time to recover, and to gain an improved level of physical and psychological health.

Support Services

28. The protection and respect of the rights of trafficked persons require states to go beyond seeing trafficked people as sources of information or potential witnesses in prosecutions. Amnesty International believes that the New Zealand Government must expressly treat trafficked persons as victims of grave human rights abuses and serious crimes, and protect them from further exploitation and harm.
29. A Plan of Action must include details concerning provision of specialist accommodation and support services for victims. Amnesty International would like to draw the Working Group's attention to the POPPY Project⁷ in the UK run by the charity EAVES and funded by the UK Government and suggests that this should be considered an example of international best practice.
30. Under no circumstances should women and children who have been trafficked into New Zealand ever be detained or suffer imprisonment for any reason which is a direct or indirect result of their situation as a victim of trafficking.
31. It is vital that any organisations/NGOs that are included in a Plan of Action for the provision of specialist care and support to victims of trafficking have proven long-term experience in sheltering and assisting women who are victims of sex crimes and gender-based violence. Amnesty International notes two organisations in particular. Auckland Sexual Abuse Help has 20 years of experience in providing support services to victims of sexual violence. They are part of a nationwide network of Sexual Abuse Support Centres. Doctors for Sexual Abuse Care (DSAC)⁸ is a professional organisation of doctors from many disciplines whose prime focus is education and support of medical practitioners to ensure maintenance of internationally recognised standards of best practice in the medical and forensic management of sexual assault.
32. Under the Adult Sexual Assault Policy 1998, police are required to contact local Sexual Assault Support Centres when a sexual assault is reported. However, not all areas of the country, eg. Bay of Plenty, have such centres⁹. This situation could seriously

⁷ See http://www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php

⁸ www.dsac.org.nz

⁹ This is particularly concerning in the case of the Bay of Plenty as Tauranga is a major port/entry point and, as such, could potentially lead to a greater problem with people

prejudice victims of sexual exploitation as a result of trafficking having their fundamental human rights respected in any subsequent investigation. Amnesty International would welcome this situation being effectively addressed as part of the government Taskforce addressing the issue of sexual violence¹⁰.

33. **Amnesty International recommends that the issue of sexual violence as a result of people trafficking be explicitly addressed within the work of this Taskforce.**
34. Amnesty International understands that Auckland Sexual Abuse Help was not contacted as a part of this consultation process and would be concerned that, if this is not an isolated case, the Working Group may not be getting the full range of expert opinion required to formulate an effective Plan of Action.
35. Services provided to women and girls by such organisations that fit the criteria in Paragraph 31 of this submission must include appropriate security measures, adequate interpreting and translation, access to legal advice, counselling, necessary health care, education and training and support throughout the court process for victims who are acting as witnesses on trafficking prosecutions.
36. Eligibility for access to such support services should not be conditional upon co-operation with the police, although women must be given every opportunity to give intelligence or evidence to the police if they wish to do so, and must be offered the support and protection necessary for such participation.
37. Amnesty International concurs with the recommendation made in the submission of the Dunedin Group 9 affiliate of AIANZ at Section 2(d) supporting the placement of mandatory information notices in brothels informing sex-workers of their rights and addresses and phone numbers where they can seek confidential help, support and advice if they feel they are being coerced.
38. Whilst not being in a position to provide any expertise on this subject, Amnesty International also supports the questions raised by the Dunedin Group 9 affiliate of AIANZ at Sections 2(b)&(c) concerning the adequacy of the current laws for brothels (including those with four sex workers or less) in relation to keeping records of employees such as age, visa status etc. With the passing of the Prostitution Reform Act (PRA) in 2003, there is clearly a danger that trafficked women and children might be more easily hidden

trafficking in the region.

¹⁰ See the Press Release at <http://www.beehive.govt.nz/node/28752>

from the authorities. It is essential that a Plan of Action addresses how the PRA (2003) might impact on the trafficking of persons into the sex industry in New Zealand.

Reflection Period

39. Amnesty International believes that all persons reasonably believed to have been trafficked should be permitted a recovery and reflection period. This would enable them to escape the influence of their traffickers, access specialist services and help them to make informed decisions about their future, both in terms of claiming asylum and/or taking an informed decision on cooperation with the authorities.
40. We believe that provision of a reflection period for victims of trafficking is vital if the New Zealand Government is committed to delivering a human rights-based victim-centered plan on trafficking. Whilst the primary intent would be to recognize the health needs of victims, regularise their immigration status and ensure correct identification, such a provision would also, most likely, lead to a more effective participation in any subsequent criminal investigations and judicial proceedings.
41. The provision of a reflection period would be in line with international best practice. For example, such a provision is specified in Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings (to which 39 states are signatory, including the UK)¹¹.
42. **Whilst the Convention provides for a period of at least 30 days, Amnesty International recommends that, in the light of the medical evidence referred to in Paragraph 24 of this submission, the minimum period should be three months, and that there should be provision for renewal on a case by case basis.**

¹¹ http://www.coe.int/t/dg2/trafficking/campaign/Docs/Convntn/CETS197_en.asp#TopOfPage