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**INITIAL SUBMISSION TO THE MINISTRY OF FOREIGN
AFFAIRS AND TRADE ON A NEW ZEALAND, AUSTRALIA
AND THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS
FREE TRADE AGREEMENT**

Amnesty International 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.

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 Aotearoa 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 Amnesty International's New Zealand members is supported by paid staff and volunteers based in Auckland, and the movement's International Secretariat based in London.

Amnesty International 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

Amnesty International'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 Council Meetings). In New Zealand their implementation is managed by the Chief Executive Officer overseen by an elected Governance Team. Between International Council Meetings the international affairs of Amnesty International are managed by the Secretary General, who reports to an elected International Executive Committee of members from at least seven different countries.

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

Amnesty International 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.

Amnesty International 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".

Introduction

1. Amnesty International welcomes the opportunity to raise human rights concerns about a Free Trade Agreement (FTA) between New Zealand, Australia and the Association of Southeast Asian Nations (ASEAN) (this FTA is hereafter referred to as the AANZFTA). This paper details Amnesty International's key labour rights issues, backgrounds Amnesty's most pressing wider human rights concerns, and makes recommendations about how New Zealand could usefully engage at every level on these issues within the AANZFTA process.
2. Amnesty International is not opposed to this proposed FTA, nor any other preferential trade agreement that New Zealand signs. Rather, Amnesty International seeks to ensure that such agreements adequately incorporate and endorse human rights and, in particular, international labour rights obligations.

Labour Rights

Fundamental labour principles

3. Amnesty International welcomes the government's commitment to addressing human rights concerns and, in particular, its International Labour Organization (ILO) obligations within its Framework for Integrating Labour Issues into Free Trade Agreements.¹ The 2001 Framework acknowledges the connection between the ILO's fundamental labour principles and free trade agreements. It includes the four core principles that are *binding* on all ILO member states.² These are:

¹ 2001 Framework for Integrating Labour Issues into Free Trade Agreements.

² Adopted in 1998, clause 2 of the International Labour Organization Declaration on Fundamental Principles and Rights at Work "[d]eclares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the

- Freedom of association and the effective recognition of the right to collective bargaining;
 - The elimination of all forms of forced or compulsory labour;
 - The effective abolition of child labour; and
 - The elimination of discrimination in respect of employment and occupation.
4. The Framework comments that "...as a minimum, the outcomes of all trade agreements to which New Zealand is a party must be generally consistent with and not undermine these core principles, the promotion of decent work, and the promotion and protection of universal human rights standards."³ Thus the Framework recognises New Zealand's obligation to uphold the ILO's core principles, irrespective of whether they have ratified the relevant Conventions.⁴
5. As such, any AANZFTA *must* incorporate and uphold the ILO's core principles. In order to do so, any FTA should expressly commit all participating countries to uphold the ILO's fundamental Conventions and to incorporate them into domestic law and practice. For that commitment to be a meaningful protection for labour rights, binding compliance mechanisms should be included within the AANZFTA. A failure to uphold and implement the ILO core Conventions would leave all nations in breach of their ILO obligations.

Forced Labour

6. Amnesty International is concerned about the use of forced labour within a number of ASEAN countries. Forced labour, in the form of child soldiers, child labour and people trafficking, is widespread in many ASEAN countries. Out of the 12.3 million people the ILO estimates (as a minimum) are forced to work globally, the Asia Pacific region contributes 9.49 million to that total,

effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation."

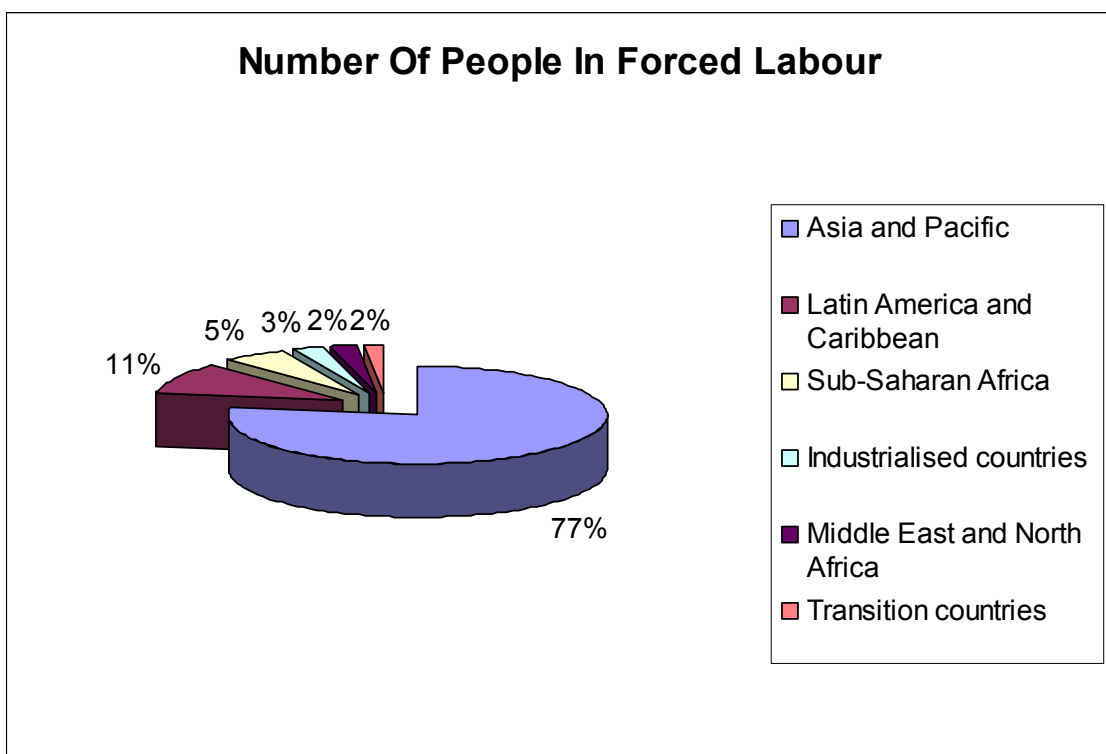
³ 2001 Framework for Integrating Labour Issues into Free Trade Agreements.

⁴ Refer to footnote 2.

accounting for over 77% of all forced labour.⁵ Furthermore, “[a]bout 20 per cent of total forced labour in Asia and the Pacific is state-imposed, concentrated in a few countries in the region, including Myanmar.”⁶

7. Amnesty International therefore strongly recommends the New Zealand government identify this issue as a key concern within the AANZFTA as a means to urge Australia and ASEAN nations throughout this process to take steps to address this vast and growing problem.

Graph 1



⁵ A global alliance against forced labour, Global Report under the Follow-up to the International Labour Organization Declaration on Fundamental Principles and Rights at Work 2005, p 13. Available at: http://www.ilo.org/global/What_we_do/Publications/Officialdocuments/Director-Generalsreports/lang--en/docName--KD00012/index.htm.

⁶ A global alliance against forced labour, Global Report under the Follow-up to the International Labour Organization Declaration on Fundamental Principles and Rights at Work 2005, p 13. Available at: http://www.ilo.org/global/What_we_do/Publications/Officialdocuments/Director-Generalsreports/lang--en/docName--KD00012/index.htm.

⁷ Ibid.

People Trafficking

8. While reliable evidence is very difficult to obtain, all countries within ASEAN are either source, transit or destination countries for people trafficking. As a minimum, the following people trafficking issues exist within ASEAN countries. Cambodia is a source and destination country for trafficked persons for commercial sexual exploitation and forced labour, including forced child begging.⁸ Indonesia is a source country for people trafficked for commercial sexual exploitation.⁹ Laos is a source and destination country for commercial sexual exploitation and forced labour, including forced marriage and child begging.¹⁰ Malaysia is a destination country for sexual exploitation and forced labour.¹¹ Myanmar is a source and transit country for forced labour, including forced marriage and child begging, and commercial sexual exploitation.¹² The

⁸ United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region, Available at: <http://www.no-trafficking.org/content/FAQ/faq.htm>; Trafficking in Persons: a Gender and Rights Perspective, United Nations Development Fund for Women and the United Nations Inter-agency Project on Human Trafficking in the Mekong Sub-region, p 4. Available at: <http://www.unifem-eseasia.org/resources/others/traffkit.pdf>; A global alliance against forced labour, Global Report under the Follow-up to the International Labour Organization Declaration on Fundamental Principles and Rights at Work 2005, p 51-52. Available at: http://www.ilo.org/global/What_we_do/Publications/Officialdocuments/Director-Generalsreports/lang--en/docName--KD00012/index.htm; and 2008 US Department of State Trafficking in Persons Report, p 82.

⁹ 2008 US Department of State Trafficking in Persons Report, p 141 and A global alliance against forced labour, Global Report under the Follow-up to the International Labour Organization Declaration on Fundamental Principles and Rights at Work 2005, p 52. Available at: http://www.ilo.org/global/What_we_do/Publications/Officialdocuments/Director-Generalsreports/lang--en/docName--KD00012/index.htm; United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region, Available at:

¹⁰ Trafficking in Persons: a Gender and Rights Perspective, United Nations Development Fund for Women and the United Nations Inter-agency Project on Human Trafficking in the Mekong Sub-region, p 4. Available at: <http://www.unifem-eseasia.org/resources/others/traffkit.pdf>; 2008 US Department of State Trafficking in Persons Report, p 160.

¹¹ 2008 US Department of State Trafficking in Persons Report, p 173 and A global alliance against forced labour, Global Report under the Follow-up to the International Labour Organization Declaration on Fundamental Principles and Rights at Work 2005, p 71. Available at: http://www.ilo.org/global/What_we_do/Publications/Officialdocuments/Director-Generalsreports/lang--en/docName--KD00012/index.htm.

¹² United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region, Available at: <http://www.no-trafficking.org/content/FAQ/faq.htm>; Trafficking in Persons: a Gender and Rights Perspective, United Nations Development Fund for Women and the United Nations Inter-agency Project on Human Trafficking in the Mekong Sub-region, p 4. Available at: <http://www.unifem-eseasia.org/resources/others/traffkit.pdf>; 2008 US Department of State Trafficking in Persons Report, p 79 and A global alliance against forced labour, Global Report under the Follow-up to the International Labour Organization Declaration on Fundamental Principles and Rights at Work 2005, p 51-52. Available at: http://www.ilo.org/global/What_we_do/Publications/Officialdocuments/Director-Generalsreports/lang--en/docName--KD00012/index.htm.

Philippines is a source country for commercial sexual exploitation.¹³ Singapore is a destination country for people trafficking.¹⁴ Thailand is a source, transit, and destination country for men, women, and children trafficked for commercial sexual exploitation and forced labor, including forced child begging.¹⁵ Vietnam is a source and destination country for women and children trafficked for commercial sexual exploitation and forced labor, including forced marriage and child begging.¹⁶ Finally, a lack of reliable evidence means that it is unclear whether people trafficking is a significant issue in Brunei.¹⁷

9. These issues are of particular concern in relation to this FTA process given that, out of the 11 countries the United Nations has listed as the main source, transit and destination countries for people trafficking, seven countries are

¹³ 2008 US Department of State Trafficking in Persons Report, p 208 and A global alliance against forced labour, Global Report under the Follow-up to the International Labour Organization Declaration on Fundamental Principles and Rights at Work 2005, p 52. Available at: http://www.ilo.org/global/What_we_do/Publications/Officialdocuments/Director-Generalsreports/lang--en/docName--KD00012/index.htm.

¹⁴ United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region,. Available at: <http://www.no-trafficking.org/content/FAQ/faq.htm>; Trafficking in Persons: a Gender and Rights Perspective, United Nations Development Fund for Women and the United Nations Inter-agency Project on Human Trafficking in the Mekong Sub-region, p 4. Available at: <http://www.unifem-eseasia.org/resources/others/traffkit.pdf>; 2008 US Department of State Trafficking in Persons Report, p 224 and A global alliance against forced labour, Global Report under the Follow-up to the International Labour Organization Declaration on Fundamental Principles and Rights at Work 2005, p 71. Available at: http://www.ilo.org/global/What_we_do/Publications/Officialdocuments/Director-Generalsreports/lang--en/docName--KD00012/index.htm.

¹⁵ United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region, Available at: <http://www.no-trafficking.org/content/FAQ/faq.htm>; Trafficking in Persons: A Gender and Rights Perspective, United Nations Development Fund for Women and the United Nations Inter-agency Project on Human Trafficking in the Mekong Sub-region, p 4. Available at: <http://www.unifem-eseasia.org/resources/others/traffkit.pdf>; 2008 US Department of State Trafficking in Persons Report, p 243 and A global alliance against forced labour, Global Report under the Follow-up to the International Labour Organization Declaration on Fundamental Principles and Rights at Work 2005, p 51-52 and 71. Available at: http://www.ilo.org/global/What_we_do/Publications/Officialdocuments/Director-Generalsreports/lang--en/docName--KD00012/index.htm.

¹⁶ United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region,. Available at: <http://www.no-trafficking.org/content/FAQ/faq.htm>; Trafficking in Persons: A Gender and Rights Perspective, United Nations Development Fund for Women and the United Nations Inter-agency Project on Human Trafficking in the Mekong Sub-region, p 4. Available at: <http://www.unifem-eseasia.org/resources/others/traffkit.pdf>; 2008 US Department of State Trafficking in Persons Report, p 260 and A global alliance against forced labour, Global Report under the Follow-up to the International Labour Organization Declaration on Fundamental Principles and Rights at Work 2005, p 51-52. Available at: http://www.ilo.org/global/What_we_do/Publications/Officialdocuments/Director-Generalsreports/lang--en/docName--KD00012/index.htm.

¹⁷ 2008 US Department of State Trafficking in Persons Report, p 269.

11. Amnesty International notes with concern that, while New Zealand, Australia and all ASEAN countries have committed to the United Nations Convention against Transnational Organized Crime,²² a number of countries within ASEAN have not committed to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol). Brunei, Malaysia, Singapore and Vietnam have not committed in any way to the Trafficking Protocol supplementing the United Nations Convention against Transnational Organized Crime.²³

12. Amnesty International acknowledges Australia, New Zealand and ASEAN nations' considerable involvement in the Bali Process to combat people trafficking. Amnesty International welcomes Australia, Indonesia, New Zealand and Thailand's contribution to the Steering Group for the Bali Process.²⁴

13. Despite these efforts, any FTA that will result in an increase in migration between Australia, New Zealand and ASEAN nations will have to develop safeguards to prevent the future trafficking of people from or through ASEAN countries and Australia to New Zealand. Whether through targeted increases in visas and permits (as occurred in the New Zealand-China FTA), or simply as a result of the consequential increase in trade between the countries, Amnesty International believes that migration between ASEAN nations and New Zealand will increase under an FTA.

14. Amnesty encourages all governments involved to share their knowledge, resources and expertise on people trafficking. Amnesty International also notes and welcomes that the New Zealand Interagency Working Group on People Trafficking is currently consulting on the development of a Plan of

²² Australia, Cambodia, Malaysia, New Zealand, Philippines and Singapore have signed and ratified the Convention. Brunei, Laos and Myanmar have accepted the Convention. Indonesia, Thailand and Vietnam have signed, but have not ratified, the Convention. For details see: <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist.html>.

²³ Australia, Cambodia, New Zealand and the Philippines have all signed and ratified the Trafficking Protocol. Indonesia and Thailand have both signed the Protocol. Laos has accepted the Trafficking Protocol. For details see: <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>.

²⁴ For more information, please see: <http://www.baliprocess.net>.

Action to Prevent People Trafficking. A copy of Amnesty International's submission to the Interagency Working Group on People Trafficking is attached. In the context of negotiating this FTA, it is essential that the New Zealand government future-proof any resulting trade agreement and this country's immigration system in order to prevent people trafficking into New Zealand.

Child labour

15. One of the most destructive forms of child labour is forced military service for children. The Coalition to Stop the Use of Child Soldiers, of which Amnesty International is a founding member, has indicated that three countries within ASEAN present significant concern in relation to the use of child soldiers.



In late 2003, former child soldier Aike Tun (not his real name) escaped from three years enforced conscription into the Burmese army. He was 16 when the Coalition To Stop The Use Of Child Soldiers interviewed him in March 2004.²⁵

16. For more than a decade repeated reports from the United Nations and independent sources have documented widespread recruitment and use of

²⁵ See <http://www.child-soldiers.org/library/photo-view?id=25>.

children as soldiers in Myanmar.²⁶ Although in smaller numbers, child soldiers are also present in Myanmar's 30 non-state armed groups. The UN secretary-general [sic] has identified Burma's [sic] armed forces as a consistent violator of international standards prohibiting the recruitment and use of child soldiers, listing the Tatmadaw Kyi in four consecutive reports since 2003. Several armed opposition groups have also been listed for recruiting and using child soldiers."²⁷ See also the United Nation Secretary-General's 2007 report to the UN Security Council on children and armed conflict in Myanmar.²⁸

17. Additionally, there continues to be sporadic reports of child soldiers in both Laos²⁹ and the Philippines. Children in the Philippines are being used by government-linked paramilitaries and armed opposition groups.³⁰ "The UN Secretary-General's 2003, 2005 and 2006 reports on children and armed conflict referred to the situation in the Philippines. The Abu Sayyaf Group, the Moro Islamic Liberation Front and the New People's Army were included in the Annex II list of parties that recruited and used children in situations of armed conflict."³¹ See also the United Nations Secretary-General's latest report to the Security Council on children and armed conflict in the Philippines.³²

18. Amnesty International acknowledges New Zealand's early and influential involvement in the Optional Protocol to the Convention on the Rights of the

²⁶ See for example, the UN Secretary-General's reports to the Security Council on children and armed conflict, S/2002/1299 (November 26, 2002), S/2003/1053 (October 30, 2003), S/2005/72 (February 9, 2005), and S/2006/826 (October 26, 2006); Rachel Brett and Margaret McCallin, *Children: The Invisible Soldiers, Save the Children Sweden*, 1998; *Adult Wars, Child Soldiers: Voices of Children involved in Armed Conflict in the East Asia and Pacific Region*, United Nations Children's Fund (UNICEF), October 2002; *My Gun Was as Tall as Me: Child Soldiers in Burma's Armed Forces*, Human Rights Watch, 2002. Available at: <http://hrw.org/reports/2002/burma>; *Despite Promises: Child Soldiers in Burma's Armed Forces*, Human Rights Education Institute of Burma, 2006; and *Child Soldiers, Global Report 2008*. Available at: <http://www.childsoldiersglobalreport.org/content/myanmar>

²⁷ *Sold to Be Soldiers: The Recruitment and Use of Child Soldiers in Burma*, Human Rights Watch, 2007, p 6. Available at: <http://hrw.org/reports/2007/burma1007>.

²⁸ Dated 16 November 2007 (S/2007/666).

²⁹ *Child Soldiers, Global Report 2008*. Available at: <http://www.childsoldiersglobalreport.org/content/laos> and Roger Arnold, *Laos: Still a secret war*, *Digital Journalist*, October 2006. Available at: <http://digitaljournalist.org>.

³⁰ *Child Soldiers, Global Report 2008*. Available at: <http://www.childsoldiersglobalreport.org/content/philippines>.

³¹ *Ibid* and Reports of the Secretary-General on Children and Armed Conflict, 26 October 2006, UN Doc. A/61/529-S/2006/826, and 9 February 2005, UN Doc. A/59/695-S/2005/72.

³² Dated 24 April 2008 (S/2008/272).

Child on the involvement of children in armed conflict (Child Soldiers Convention). Amnesty also acknowledges that Australia, Cambodia, Indonesia, Laos, Philippines, Singapore, Thailand and Viet Nam have committed to the Child Soldiers Convention. Nevertheless, it is deeply concerning that Brunei, Malaysia and Myanmar have not committed to the Convention.

19. If New Zealand is to pursue an FTA with countries such as Myanmar, Laos and the Philippines that use child soldiers, it must use the AANZFTA process to demonstrate its resolve to eradicate this particularly destructive form of child exploitation. Furthermore, given the lack of transparency surrounding this issue, any FTA signed by New Zealand must include mechanisms to ensure thorough and accurate reporting of the use of child soldiers and of the progress towards the eradication of their use.

20. While child soldiers are particularly concerning, goods produced by children also present another issue for consideration within the AANZFTA.³³ While reliable figures are difficult to acquire for some countries, the International Labour Organization estimates that 45% of Cambodia's children between the ages of five and 14 are already working.³⁴ Similarly, the Organization estimates that one in every four children in Laos are already in work.³⁵ While child labour is very likely a significant issue for a number of other ASEAN countries, child labour figures are unavailable for Brunei, Malaysia, Myanmar and Singapore.

21. Although the importation of goods produced by prison labour is prohibited under New Zealand domestic law,³⁶ there is no comparable prohibition on the importation of goods manufactured by child labour. The prohibition on the

³³ Amnesty International is not necessarily opposed to child labour. Rather, our work related to child labour falls primarily within our promotional activities. This includes promotion of the Convention on the Rights of the Child which, in Article 32, states that children should be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

³⁴ The State of the World's Children 2008: Child Survival, UNICEF, p 146-147. Available at: http://www.unicef.org/publications/index_42623.html.

³⁵ Ibid.

³⁶ Section 54 and the First Schedule of the Customs and Excise Act 1996.

importation of goods manufactured by prison labour clearly also covers child prison labour.³⁷

22. Additionally, following ratification of the Worst Forms Of Child Labour Convention, an amendment to the Crimes Act in 2001 made it a criminal offence to induce somebody to “sell, let, or give any other person into debt-bondage or serfdom.”³⁸ Although this amendment criminalises child slavery, it provides no protection against the importation of goods produced with child labour. As one of the International Labour Organization’s fundamental principles, the New Zealand government is bound to promote the effective abolition of child labour.³⁹

23. As the importation of goods produced in ASEAN countries will likely increase under an FTA, the New Zealand government will need to decide how it manages the importation of goods manufactured by child labour. Acknowledging that all ASEAN countries except Brunei and Myanmar have signed the abolition of child labour Conventions,⁴⁰ this may be an area of cooperation, rather than compromise, within this FTA process.

24. Amnesty International recommends that the New Zealand government implement a prohibition on the importation of goods produced by the ‘worst forms of child labour’,⁴¹ similar to that already in force for goods produced by prison labour.⁴² This could be achieved by amending the First Schedule of the Customs and Excise Act 1996 to include goods manufactured by the worst

³⁷ Section 54 and the First Schedule of the Customs and Excise Act 1996.

³⁸ Section 98(1)(e) of the Crimes Act 1961.

³⁹ International Labour Organization Declaration on Fundamental Principles and Rights at Work (1998) and the 2001 Framework for Integrating Labour Issues into Free Trade Agreements.

⁴⁰ Minimum Age Convention (No 138) and Worst Forms of Child Labour Convention (No 182).

⁴¹ Article 3 of the Worst Forms of Child Labour Convention (No. 182) defines ‘the worst forms of child labour’ as: (a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

⁴² Under Article XX of GATT 1994 the New Zealand government is entitled to implement measures (a) necessary to protect public morals; or (b) necessary to protect human... life or health.

forms of child labour. In this regard, also see Amnesty International's China-New Zealand FTA submission in relation to the Harkin-Engel Protocol.⁴³

25. Although Australia, Brunei, Myanmar, and New Zealand have not signed the Minimum Age Convention,⁴⁴ Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam have all signed it. This Convention is also consistent with the New Zealand government's own Framework for Integrating Labour Issues into Free Trade Agreements which acknowledges "the effective abolition of child labour" as a fundamental principle of the ILO.⁴⁵ Article 1 of this core Convention dictates that "[e]ach Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons."⁴⁶

26. Given the significant number of nations within ASEAN that have signed the Minimum Age Convention and given its binding status as a core ILO convention, this may be an area where the New Zealand government can offer assistance, such as suggesting the adoption of a protocol similar to the Harkin-Engel Protocol.

Independent trade unions

27. Noting that a number of ASEAN nations have not ratified the fundamental Conventions on freedom of association and collective bargaining,⁴⁷ Amnesty International is concerned about anti-union discrimination within the ASEAN region. Brunei, Laos, Thailand and Viet Nam have not signed either the Freedom of Association and Protection of the Right to Organise Convention (No 87) or the Right to Organise and Collective Bargaining Convention (No

⁴³ Text available at <http://www.cocoainitiative.org/ici/reference-documents/harkin-engel-protocol.html>.

⁴⁴ Minimum Age Convention 1973 (No 138).

⁴⁵ 2001 Framework for Integrating Labour Issues into Free Trade Agreements.

⁴⁶ Article 1 of the Minimum Age Convention 1973 (No 138).

⁴⁷ See: <http://www.ilo.org/ilolex/english/docs/declworld.htm>.

98). Even where countries have ratified the ILO Conventions on freedom of association and collective bargaining and provided for trade unions in domestic law, in practice trade unions in the ASEAN region are largely ineffective at promoting the rights of workers.

28. The International Trade Union Confederation (ITUC) reported in its 2007 Annual Survey that “[t]here was virtually no union activity in Brunei, and there is no legal basis for either collective bargaining or strikes.”⁴⁸ Amnesty International welcomes, however, Brunei’s joining of the ILO at the end of 2007.

29. While trade union membership is legal in Cambodia, “[o]nly a small proportion [about 1%] of the total labour force is unionised, and outside the garment and tourism/hospitality sectors, the trade union movement remains very weak. [Furthermore, t]here was continuing credible evidence of management interference in factory-level trade unions.”⁴⁹ Even though the Constitution guarantees citizens the right to establish and belong to trade unions, legitimate labour unions are facing severe pressure and intimidation. Three prominent leaders of the Free Trade Union of Workers of Cambodia have been assassinated in the last few years: Chea Vichea (President), in January 2004; Ros Sovannareth, (the Union’s President at Trinuggal Kormara factory), in May 2004; and Hy Vuthy, (the Union’s President at the Suntex factory), in February 2007.

30. Similarly, while workers are permitted to join trade unions in Indonesia, “[e]mployers have [increasingly been using contract workers so as to marginalise unions] with the apparent approval of both Provincial and Central Committees for the Settlement of Labour Disputes.”⁵⁰

⁴⁸ Annual survey of violations of trade union rights, International Trade Union Confederation, 2007. Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=BRN&IDLang=EN>.

⁴⁹ Ibid, Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=KHM&IDLang=EN>.

⁵⁰ Ibid, Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=IDN&IDLang=EN>.

31. In Malaysia, while the law recognises the right to form and join trade unions, “[o]nly about 8 per cent of the total workforce is unionised.”⁵¹ Furthermore, the “ILO Committee on Freedom of Association (CFA) has found that many provisions of the Trade Unions Act violate the principles of freedom of association, and has decried the fact that, despite unambiguous recommendations made to the government (in this and other similar cases filed in the past 15 years), to amend the law, no such action has been taken.”⁵²
32. In Myanmar the government has a mandatory system for the organisation and representation of workers. This is contrary to Article 2 of the Freedom of Association and Protection of the Right to Organise Convention (No. 87), under which workers have the right to form organisations of their own choosing. The ITUC has advised “[w]hatever the written law [in Myanmar], in practice, workers who fight to redress often atrocious working conditions in turn face threats, violence and murder by the authorities who equate trade unionism with treasonous behaviour.”⁵³
33. While the Philippines gives legal recognition to the right to form and join trade unions, it is common for employers to file administrative and criminal charges against union leaders and activists in order to sideline unions and vocal workers.⁵⁴ Similarly, trade unions are legal in Singapore but political affiliations and interferences makes them largely ineffectual. “With the exception of five unions representing about 2,400 workers, the rest of the country’s 64 unions are affiliated with the National Trades Union Congress (NTUC), a labour congress closely linked to the ruling People’s Action Party (PAP).”⁵⁵
34. Again, in Thailand, while trade unions are legal, “[o]nly a very small proportion of the total workforce is unionised [3.5% in 2002], which is among the lowest

⁵¹ Annual survey of violations of trade union rights, International Trade Union Confederation, 2007. Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=MYS&IDLang=EN>.

⁵² Ibid.

⁵³ Ibid, Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=MMR&IDLang=EN>.

⁵⁴ Ibid, Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=PHL&IDLang=EN>.

⁵⁵ Ibid, Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=SGP&IDLang=EN>.

levels in Asia. Furthermore, only a small minority of employed workers [estimated at 5%] are covered by collective bargaining agreements.”⁵⁶

35. Workers in Viet Nam are not free to organise or join unions of their choosing. “Any union formed must be approved by and affiliated with the Vietnam General Confederation of Labour (VGCL), and operate under its umbrella. The VGCL is proving slow to adapt to the market economy and the changing climate that it brings. It describes itself as the bridge between employer and worker, rather than the defender of workers’ rights.”⁵⁷

36. As freedom of association and the effective recognition of the right to collective bargaining are recognised by the New Zealand government as core ILO principles⁵⁸ and are binding on Australia, New Zealand, and ASEAN countries,⁵⁹ the government must ensure that the AANZFTA effectively protects and promotes the independence of trade unions. In order to do so, the AANZFTA should expressly reaffirm all parties’ commitment to the ILO’s fundamental Conventions on freedom of association and collective bargaining and New Zealand should encourage the governments involved to expressly commit to those Conventions.⁶⁰

Non-ratification

37. Via their ILO membership, Australia, New Zealand and ASEAN countries are committed to respect, promote and realise in good faith the ILO’s Declaration on Fundamental Principles and Rights at Work (1998), irrespective of whether or not they have ratified the relevant Conventions.⁶¹

⁵⁶ Annual survey of violations of trade union rights, International Trade Union Confederation, 2007. Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=THA&IDLang=EN>.

⁵⁷ Ibid, Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=VNM&IDLang=EN>.

⁵⁸ 2001 Framework for Integrating Labour Issues into Free Trade Agreements.

⁵⁹ Refer to footnote 2.

⁶⁰ See: <http://www.ilo.org/ilolex/english/docs/declworld.htm>.

⁶¹ Refer to footnote 2.

38. Nevertheless, Amnesty notes with concern that a number of ASEAN countries have not ratified many of the core ILO conventions. Table 1 (below) is a table of the ILO's fundamental conventions and their ratification status by country.⁶²

Table 1

	Freedom of association and collective bargaining		Elimination of Forced and compulsory labour		Elimination of discrimination in employment and occupation		Abolition of child labour	
	Conv. 87	Conv. 98	Conv. 29	Conv. 105	Conv. 100	Conv. 111	Conv. 138	Conv. 182
New Zealand	X	√	√	√	√	√	X	√
Australia	√	√	√	√	√	√	X	√
Brunei Darussalam	X	X	X	X	X	X	X	√
Cambodia	√	√	√	√	√	√	√	√
Indonesia	√	√	√	√	√	√	√	√
Lao	X	X	√	X	√	√	√	√
Malaysia	X	√	√	√	√	X	√	√
Myanmar	√	X	√	X	X	X	X	X
Philippines	√	√	√	√	√	√	√	√
Singapore	X	√	√	√	√	X	√	√
Thailand	X	X	√	√	√	X	√	√
Vietnam	X	X	√	X	√	√	√	√

39. Amnesty International encourages the New Zealand government to call on all governments involved in the AANZFTA to ratify these fundamental ILO Conventions.

40. Although New Zealand has not ratified the Freedom of Association and Protection of the Right to Organise Convention (No 87) and the Convention concerning Minimum Age for Admission to Employment (No 138), it has at least committed to all four core international labour standards: freedom of association and collective bargaining; elimination of forced and compulsory

⁶² Data sourced from: <http://www.ilo.org/ilolex/english/docs/declworld.htm>.

labour; elimination of discrimination in employment and occupation; and the abolition of child labour. It is of concern in this regard that half of the countries within ASEAN have not committed to either of the conventions within each of the ILO's four core labour standards.⁶³ As New Zealand has signed conventions on all four core international labour standards, it may justifiably call on Brunei, Laos, Myanmar, Thailand and Viet Nam to do the same.

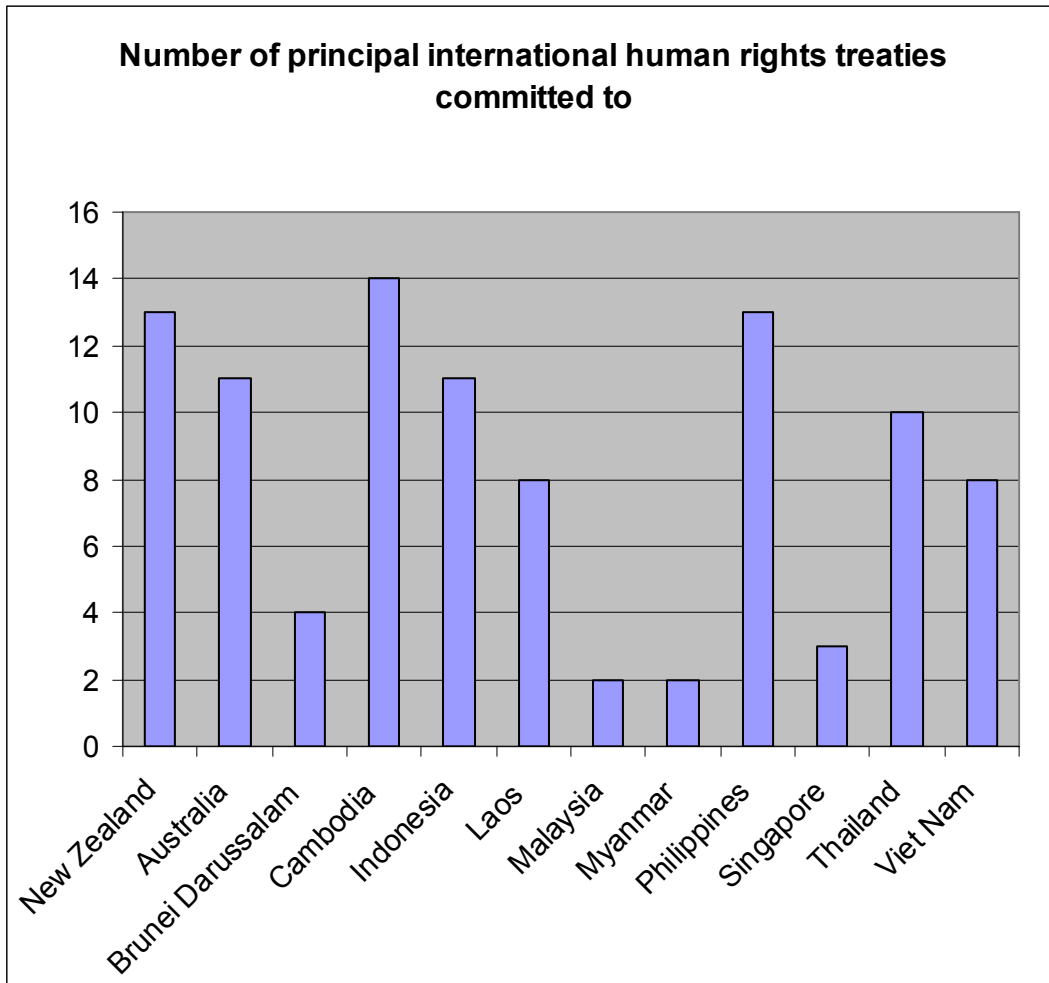
41. Furthermore, irrespective of whether Australia, New Zealand or the ASEAN countries have ratified ILO Conventions, all countries are bound to uphold the International Labour Organization's core principles of: freedom of association and collective bargaining; elimination of forced and compulsory labour; elimination of discrimination in respect of employment and occupation; and abolition of child labour.⁶⁴ Amnesty International therefore encourages the New Zealand government to raise the non-ratification of these core ILO Conventions with all governments involved in the AANZFTA. Given that all countries are bound by the core ILO principles, New Zealand is perfectly entitled to encourage nations to ratify the Conventions they are *already* bound to uphold.

42. Amnesty International is also concerned at the lack of formal commitment to international human rights within a number of ASEAN countries. Graph 2 (below) indicates the number of principal international human rights treaties⁶⁵ each country participating in the AANZFTA has committed to.⁶⁶

⁶³ There are two conventions within each of the ILO's core areas of: freedom of association and collective bargaining; elimination of forced and compulsory labour; elimination of discrimination in employment and occupation; and the abolition of child labour. See table 1 (above) for more detail.
⁶⁴ Refer to footnote 2.

⁶⁵ The principle international human rights treaties are: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with

Graph 2



43. Table 2 (below) details the status of the principal international human rights treaties for each country participating in the AANZFTA.

⁶⁶

Disabilities; the Optional Protocol to the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance. Data sourced from <http://www.bayefsky.com> and the Office of the United Nations High Commissioner For Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, June 2004. Available at: <http://www.unhchr.ch/pdf/report.pdf> and <http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet>.

Table 2

Country:	CESCR	CCPR	CCPR-OP1	CCPR-OP2-DP	CERD	CEDAW	CEDAW-OP	CAT	CAT-OP	CRC	CRC-OP-AC	CRC-OP-SC	MWC	CRPD	CRPD-OP	CPED
New Zealand	√	√	√	√	√	√	√	√	√	√	√	√	×	√	×	×
Australia	√	√	√	√	√	√	×	√	×	√	√	√	×	√	×	×
Brunei	×	×	×	×	×	√	×	×	×	√	×	√	×	√	×	×
Cambodia	√	√	√	×	√	√	√	√	√	√	√	√	√	√	√	×
Indonesia	√	√	√	×	√	√	√	√	×	√	√	√	√	√	×	×
Laos	√	√	×	×	√	√	×	×	×	√	√	√	×	√	×	×
Malaysia	×	×	×	×	×	√	×	×	×	√	×	×	×	×	×	×
Myanmar	×	×	×	×	×	√	×	×	×	√	×	×	×	×	×	×
Philippines	√	√	√	√	√	√	√	√	×	√	√	√	√	√	×	×
Singapore	×	×	×	×	×	√	×	×	×	√	√	×	×	×	×	×
Thailand	√	√	×	×	√	√	√	√	×	√	√	√	×	√	×	×
Vietnam	√	√	×	×	√	√	×	×	×	√	√	√	×	√	×	×

Abbreviation:

Convention:

- CESCR the International Covenant on Economic, Social and Cultural Rights
- CCPR the International Covenant on Civil and Political Rights
- CCPR-OP1 the Optional Protocol to the International Covenant on Civil and Political Rights
- CCPR-OP2-DP the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty
- CERD the International Convention on the Elimination of All Forms of Racial Discrimination
- CEDAW the Convention on the Elimination of All Forms of Discrimination against Women
- CEDAW-OP the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
- CAT the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- CAT-OP the Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment
- CRC the Convention on the Rights of the Child
- CRC-OP-AC) the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- CRC-OP-SC the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- MWC the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- CRPD the Convention on the Rights of Persons with Disabilities
- CRPD-OP the Optional Protocol to the Convention on the Rights of Persons with Disabilities
- CPED International Convention for the Protection of All Persons from Enforced Disappearance

For the purposes of table 2, commitment to a treat includes accession, succession, signing and ratification.

44. Amnesty International recommends the New Zealand government utilise every opportunity within the AANZFTA process to encourage all participating countries to formally commit to the principal international human rights treaties. As graph 2 (above) illustrates, Brunei, Malaysia, Myanmar, and Singapore's lack of commitment to the principal international human rights treaties is of particular concern.

Abolition Of The Death Penalty

45. Amnesty International believes that the FTA process is a unique opportunity for New Zealand to raise human rights issues generally. The 2001 Framework acknowledges this opportunity, declaring "...the outcomes of all trade agreements to which New Zealand is a party must be generally consistent with ... the promotion and protection of universal human rights standards."⁶⁷ In order to fulfil its commitments under the Framework, the New Zealand government has an obligation to raise human rights concerns with potential trade partners within every FTA process. Whether or not a party to the negotiations believes that human rights concerns are relevant to trade negotiators, New Zealand negotiators must raise New Zealand's concerns to comply with the government's Framework.

46. Amnesty International is concerned that several countries within ASEAN still employ the death penalty as a form of punishment, including Indonesia, Malaysia, Singapore, Thailand and Viet Nam.⁶⁸ Noting the global trend to end the use of the death penalty and New Zealand's strong support for a global moratorium, Amnesty International encourages New Zealand to use opportunities within the FTA process to urge these countries to formally abolish the death penalty and end its use in practice.

⁶⁷ 2001 Framework for Integrating Labour Issues into Free Trade Agreements.

⁶⁸ Death Penalty: Abolitionist and Retentionist Countries, Amnesty International. Available at: <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>.

Additional Comments

47. For further information please do not hesitate to contact us. We are more than willing to discuss the content of this submission or any other issues or questions you may have. For additional information on human rights issues specific to ASEAN countries, please see Amnesty International's briefing papers to the Minister of Foreign Affairs, which were forwarded to the Ministry of Foreign Affairs and Trade, dated 17 July 2008. For more information, please also see our website: <http://www.amnesty.org>