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**HUMAN RIGHTS CONCERNS  
RELEVANT TO THE  
JOINT STUDY GROUP FOR THE  
NEW ZEALAND – INDIA 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 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 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 its 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".

## **Background<sup>1</sup>**

India and New Zealand are currently considering whether to enter negotiations for a Free Trade Agreement (FTA). As part of this process, a Joint Study Group (JSG) has been established. The JSG will review the current bilateral relationship between New Zealand and India, discuss the issues that would normally be included in an FTA, and identify any other issues that would need to be covered in the FTA negotiation. As part of this process, the JSG is seeking consultation with stakeholders. Subsequent to a meeting with the JSG, Amnesty International presented this submission to the Joint Study Group. It is expected that the study will be completed in October and referred to the two governments before the end of 2008.

## **Introduction**

Amnesty International is not opposed to this proposed Free Trade Agreement with India, nor any other preferential trade agreement that New Zealand signs. Rather, we seek to ensure that such agreements adequately incorporate and endorse human rights and, in particular, international labour rights obligations. This paper details specific labour rights issues, backgrounds Amnesty International's wider human rights concerns with India, and makes recommendations about how New Zealand could usefully engage at every level on these issues within this FTA process.

## **Labour Rights**

### **Fundamental labour principles**

1. Amnesty International welcomes the government's commitment to addressing human rights concerns and, in particular, labour commitments within its Framework for Integrating Labour Issues into Free Trade Agreements.<sup>2</sup>

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<sup>1</sup> The 'Background' section is an addition to this submission and was not included in Amnesty International's submission to the Joint Study Group.

<sup>2</sup> 2001 Framework for Integrating Labour Issues into Free Trade Agreements

2. The 2001 Framework acknowledges the connection between the International Labour Organisation's (ILO) fundamental labour principles and free trade agreements, detailing the following as core principles:
  - 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.
  
3. That 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."<sup>3</sup> As such, any New Zealand-India FTA must incorporate and uphold the ILO's core principles.

## **Child labour**

4. India has the largest number of children in work in the world. Although information is difficult to obtain, estimates suggest that between 60 and 115 million children are working in India.<sup>4</sup> We encourage the New Zealand government to identify this issue as a key concern within this FTA as a means to urge India throughout this process to take steps to address this vast and growing problem.
  
5. Although the importation of goods produced by prison labour is prohibited under New Zealand law,<sup>5</sup> there is no comparable prohibition on the importation of goods manufactured by child labour. The prohibition on the importation of goods manufactured by prison labour clearly also covers child prison labour.<sup>6</sup> Additionally, following ratification of the Worst Forms Of Child Labour

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<sup>3</sup> Ibid.

<sup>4</sup> The Small Hands Of Slavery: Bonded Child Labour In India, Human Rights Watch, September 1996. Available at <http://www.hrw.org/reports/1996/India3.htm>. The Indian government's official child labour figure is significantly lower than these estimates, however.

<sup>5</sup> Section 54 and the First Schedule of the Customs and Excise Act 1996

<sup>6</sup> Ibid.

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.”<sup>7</sup> 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 Organisation’s fundamental principles, the New Zealand government is bound to promote the effective abolition of child labour.<sup>8</sup>

6. As the importation of Indian manufactured goods will 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 the Indian government is eager to confront the issue of child labour, this may be an area of cooperation, rather than compromise, within the FTA process.
7. Amnesty International recommends that the New Zealand government implement a prohibition on the importation of child labour goods, similar to that already in force for goods produced by prison labour.<sup>9</sup> This could be achieved by amending the First Schedule of the Customs and Excise Act 1996 to include goods manufactured by child labour. In this regard, also see Amnesty International’s China-New Zealand FTA submission in relation to the Harkin-Engel Protocol.<sup>10</sup>
8. Although neither New Zealand nor India has signed the Minimum Age Convention,<sup>11</sup> as a fundamental human rights convention, it is binding on both countries irrespective of whether they have signed or ratified it.<sup>12</sup> This

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<sup>7</sup> Section 98(1)(e) of the Crimes Act 1961

<sup>8</sup> International Labour Organisation Declaration on Fundamental Principles and Rights at Work (1998) and 2001 Framework for Integrating Labour Issues into Free Trade Agreements.

<sup>9</sup> 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.

<sup>10</sup> Text available at <http://www.cocoainitiative.org/ici/reference-documents/harkin-engel-protocol.html>

<sup>11</sup> Minimum Age Convention 1973 (No 138)

<sup>12</sup> Adopted in 1998, clause 2 of the ILO 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

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.<sup>13</sup> 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."<sup>14</sup>

9. Amnesty International welcomes India's policy towards eradicating child labour, and their legislative and judicial action in pursuit of this policy. However, as reported in the Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour (Draft),<sup>15</sup> there is an increasing trend of migration and trafficking of children for labour in India. Within our meeting of 4 July 2008, the Joint Study Group acknowledged this divide between India's political and legal position on the one hand and the reality of the situation on the other. This may be an area where the New Zealand government can offer assistance, such as the adoption of a protocol similar to the Harkin-Engel Protocol.

### **Independent trade unions**

10. Noting that India has not ratified the fundamental Conventions on freedom of association and collective bargaining,<sup>16</sup> Amnesty International is concerned about anti-union discrimination within India. Amnesty notes on-going harassment of union activists including the filing of criminal charges against

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

<sup>13</sup> 2001 Framework for Integrating Labour Issues into Free Trade Agreements

<sup>14</sup> Minimum Age Convention 1973 (No 138), Article 1

<sup>15</sup> Available at [www.labour.nic.in/cwl/DraftProtocolPreventionMigrantChildLabour.pdf](http://www.labour.nic.in/cwl/DraftProtocolPreventionMigrantChildLabour.pdf)

<sup>16</sup> See: <http://www.ilo.org/ilolex/english/docs/declworld.htm>

such activists and that the Indian authorities have repeatedly failed to take action to prevent this practice.<sup>17</sup>

11. As freedom of association and the effective recognition of the right to collective bargaining are recognized by the New Zealand government as core ILO principles<sup>18</sup> and are binding on New Zealand,<sup>19</sup> the government must ensure that an FTA with India effectively protects and promotes the independence of trade unions. In order to do so, New Zealand should encourage India to expressly commit to the fundamental Conventions on freedom of association and collective bargaining.<sup>20</sup>

### **Non-ratification**

12. Via their ILO membership, New Zealand and India are committed to respect, promote and realize in good faith the ILO's Declaration on Fundamental Principles and Rights at Work (1998), irrespective of whether or not they have ratified them.<sup>21</sup>

13. Amnesty notes with concern that India has not ratified:

1. the Freedom of Association and Protection of the Right to Organise Convention (No 87);
2. the Right to Organise and Collective Bargaining Convention (No 98);
3. the Minimum Age Convention (No 138); and
4. the Worst Forms Of Child Labour Convention (No 182).

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<sup>17</sup> Amnesty International Urgent Action, AI Index: ASA 20/017/2007, 2 October 2007, India: Continued Harassment of Defenders of Women workers' rights and campaigners abroad

<sup>18</sup> 2001 Framework for Integrating Labour Issues into Free Trade Agreements

<sup>19</sup> Adopted in 1998, clause 2 of the ILO 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 effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation."

<sup>20</sup> See: <http://www.ilo.org/ilolex/english/docs/declworld.htm>

<sup>21</sup> Ibid.

14. Although New Zealand has not ratified the Freedom of Association and Protection of the Right to Organise Convention (No 87) nor the Minimum Age Convention (No 138), it has at least committed to eradicating the worst forms of child labour and to protect collective bargaining.<sup>22</sup> Acknowledging New Zealand's progress towards ratifying the Minimum Age Convention,<sup>23</sup> Amnesty International encourages the New Zealand government to raise India's non-ratification of these core ILO conventions with the Indian government.

### **General Human Rights Concerns**

15. Amnesty International believes that the FTA process is a unique opportunity for New Zealand to raise human rights issues generally with the Indian government. 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."<sup>24</sup>

16. Amnesty remains concerned at India's continued use of the death penalty. In 2007 India sentenced 100 people to death, although no executions were carried out.<sup>25</sup> That same year, India also voted against a United Nations General Assembly resolution calling for a moratorium on the death penalty.<sup>26</sup> 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 comment on and encourage India to affect a change in policy.

17. The apparent impunity of police, military and paramilitary who commit human rights violations in India is also concerning.<sup>27</sup> Amnesty International

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<sup>22</sup> New Zealand has signed, and is bound by, the Worst Forms Of Child Labour Convention 1999 (No 182) and the Right to Organise and Collective Bargaining Convention 1949 (No 98).

<sup>23</sup> See: <http://www.mfat.govt.nz/Treaties-and-International-Law/03-Treaty-making-process/International-Treaties-List/07-Labour.php>

<sup>24</sup> 2001 Framework for Integrating Labour Issues into Free Trade Agreements

<sup>25</sup> Amnesty International Report 2008: The State Of The World's Human Rights, p 154

<sup>26</sup> United Nations General Assembly, 18 December 2007, GA/10678. available at <http://www.un.org/News/Press/docs/2007/ga10678.doc.htm>

<sup>27</sup> Amnesty International Report 2008: The State Of The World's Human Rights, p 153-154

encourages the New Zealand government to utilise the FTA process to encourage and assist the Indian government to hold state and non-state actors to account for such violations.

18. Similarly, New Zealand should employ the FTA process to encourage the Indian government to engage with Myanmar authorities. Amnesty welcomes, in this regard, the Indian government's statement stressing the need for greater urgency in bringing about political reforms and national reconciliation in Myanmar and stopped arms exports to Myanmar in November 2007.<sup>28</sup> Amnesty International acknowledges New Zealand's principled stance towards Myanmar and encourages it to prompt the Indian government to engage more consistently with Myanmar on its human rights concerns.

19. Amnesty International notes that India has not signed the Convention on Cluster Munitions.<sup>29</sup> Given that New Zealand is "[d]etermined to put an end for all time to the suffering and casualties caused by cluster munitions,"<sup>30</sup> and that New Zealand has taken such a lead on this Convention, Amnesty believes opportunities exist within these negotiations to encourage India to sign the Convention and end the use of cluster munitions.

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<sup>28</sup> See: [http://news.bbc.co.uk/2/hi/south\\_asia/7168492.stm](http://news.bbc.co.uk/2/hi/south_asia/7168492.stm)

<sup>29</sup> India has not yet signed the Convention on Cluster Munitions. See: <http://www.clusterconvention.org/convention/participants/states>

<sup>30</sup> Preamble of the Convention on Cluster Munitions