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Law and Order  
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22 May 2009

Dear Secretariat,

**Corrections (Contract Management of Prisons) Amendment Bill 2009**

Please find **enclosed** our submission on the Corrections (Contract Management of Prisons) Amendment Bill 2009. We do not wish to make an oral submission to the Committee.

We would appreciate the opportunity to be consulted on this issue further, as due to capacity issues we have not been able to delve into this issue to the extent that we would have liked. Please advise us of when the oral submissions will be heard, as this may enable us to do so.

Yours sincerely,

Patrick Holmes  
Chief Executive Officer



Amnesty International Aotearoa New Zealand:

Submission to the Law and Order Select Committee  
on the Corrections (Contract Management of  
Prisons) Amendment Bill 2009

22 May 2009

**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** 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".

*“The management of prisons is primarily about the management of human beings, both staff and prisoners. This means that there are issues which go beyond effectiveness and efficiency. When making decisions about the treatment of human beings there is a fundamental consideration; the first question which must always be asked is, ‘Is what we are doing right?’”<sup>1</sup>*

Andrew Coyle  
Professor of Prison Studies, King’s College, London

*“The management of prisons involves the exercise of some of the State’s most highly coercive powers against individuals. There needs to be direct accountability for the exercise of such powers, and that can best be achieved through a Government department directly accountable to a responsible Minister.”<sup>2</sup>*

Hon Paul Swain, (NZ Parliament), 2007

## SUMMARY

- 1.0 Amnesty International Aotearoa New Zealand (AIANZ) welcomes the opportunity to make a submission on the Corrections (Contract Management of Prisons) Amendment Bill 2009. Amnesty International considers that the provisions in the Bill, which enable competitive tendering of prison management to occur, may violate prisoners’ human rights under international and domestic law.
- 2.0 New Zealand has obligations in both international and domestic law in relation to the protection of prisoners. Privatising prisons will necessarily remove elements of accountability in this core public function and as such have potential to constitute a fundamental breach of these obligations.

## NEW ZEALAND’S HUMAN RIGHTS OBLIGATIONS

### The Right to Dignity

- 3.0 The right to be treated with dignity and respect is the cornerstone of human rights law. It is enshrined in various international instruments of which New Zealand is bound by including;

Article 1 of the Universal Declaration of Human Rights (UDHR) states:

‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.’<sup>3</sup>

Section 9 of the New Zealand Bill of Rights Act 1990 (BORA) provides universal protection against any form of treatment by the State which is incompatible with the dignity and worth of the human person.

- 4.0 Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR) states:

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<sup>1</sup>Andrew Coyle, "A Human Rights Approach to Prison Management: Handbook for Prison Staff", International Centre for Prison Studies, (2002), page 13.

<sup>2</sup> Hon Paul Swain, Hansard, Legislative Assembly (NZ Parliament), 7/5/07.

<sup>3</sup>New Zealand is bound by the UDRH by virtue of membership to the United Nations.

'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'<sup>4</sup>

This provision is given effect in domestic law by virtue of Section 23(5) of BORA which is identical to the ICCPR.

### **The Right not to be tortured or subjected to other cruel, inhuman or degrading treatment or punishment**

5.0 New Zealand ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>5</sup> and the Optional Protocol to the same Convention (OPCAT).<sup>6</sup> The Convention imposes the following obligations:

#### Article 2(1)

'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.'

#### Article 10(1)

'Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.'

#### Article 16(1)

'Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.'

6.0 The UN Standard Minimum Rules for the Treatment of Prisoners 1957 set out minimum standards in relation to the following:

1. Necessities such as food, water, basic clothing; information concerning rights; grievance procedures; staff to include medical officers.
2. Access to social and cultural information including: entitlement to correspond with family and friends, and receive visits; access to adequate library; information on major news items; access to religious services.

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<sup>4</sup> Ratified by New Zealand on 28 March 1979.

<sup>5</sup> Ratified by New Zealand on 10 December 1989.

<sup>6</sup> Ratified by New Zealand on 14 March 2007.

3. Discipline: protection from cruel, inhuman and degrading treatment, including corporal punishment, solitary confinement, instruments of restraint as punishment.

### **Responsibilities of the New Zealand government**

- 7.0 The State has the primary responsibility to respect, protect, fulfil and promote human rights. Therefore whilst the private sector is legally responsible, the state continues to be primarily accountable for human rights responsibility.
- 8.0 Amnesty is concerned that the privatisation will result in diminished accountability for the government. Privatisation by definition weakens accountability.

“As the State has the power to deprive a person of their liberty, it is critical the administration of that sentence is subject to an appropriate standard of care, that human rights are observed and the actions of those vested with the control over detainees should be closely scrutinised and monitored. The further the task moves away from the State the more difficult it is to monitor and the State has more opportunity to retreat from its responsibility to ensure such conditions.”<sup>7</sup>

Jane Andrew,  
Senior Lecturer at the University of Wollongong

- 9.0 This issue was contemplated by the Law and Order Select Committee in 2003 in relation to the then Corrections Bill (now the Corrections Act 2004). This Bill proposed to prohibit any new management contracts for prisons to be entered into and the extension of the management contract for Auckland Central Remand Prison. In its Report on this Bill, the Law and Order Select Committee stated that:

‘The decision to end the private management of prisons is not based on the particulars of ACM’s performance in managing ACRP, but on the policy decision that prisons are a core public service, and should therefore be administered by the Crown. Prisoners are subject to a range of restrictions and custodial staff in prisons have extensive statutory powers. We consider that there needs to be direct accountability for the exercise of such powers and that this can best be achieved through a Government department, directly accountable to a responsible Minister.’

- 10.0 **AMENDMENT** – Paragraph omitted.

- 11.0 The Committee against Torture’s recent comments and concluding observations to New Zealand noted concerns in regard to processes in regard to complaints of torture, cruel, inhuman or degrading treatment. Of particular relevance is the status of the BOR in the domestic legal order stating;

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<sup>7</sup> J. Andrew, "Prisons, the profit motive and other challenges to accountability", in *Critical Perspectives on Accounting* 18 (2007) 877 at 883.

'The Committee notes with concern that the New Zealand Bill of Rights, while giving effect to a number of provisions of the Convention, including article 2, has no higher status than ordinary legislation in the domestic legal order, which may result in the enactment of laws that are incompatible with the Convention. The Committee further notes that judicial decisions make little reference to international human rights instruments, including the Convention. (art.2)

The State party should:

- a) enact comprehensive legislation to incorporate into domestic law all the provisions of the Convention;
- b) establish a mechanism to consistently ensure the compatibility of domestic law with the Convention; and
- c) organize training programmes for the judiciary on the provisions of the Convention and the jurisprudence of the Committee.<sup>8</sup>

The Committee also noted that under the Crimes of Torture Act 1989, "no proceedings for the trial and punishment of a person charged with torture under the Act shall be instituted without the consent of the Attorney-General," limiting the obligation to ensure prosecution under Article 12 of the CAT.<sup>9</sup>

- 12.0 Amnesty International is deeply concerned that these existing issues will be exacerbated by shifting the responsibilities of prison services to the private-sector.

#### **Training of law enforcement personnel and immigration officials**

- 13.0 Amnesty International is concerned that the training of law enforcement personnel on human rights obligations and protection of their subjects, including prison staff is inadequate. Given that the CAT Committee has expressed its concerns recently stating;

'The Committee notes that training on human rights obligations is provided for police recruits, prison personnel and armed forces. It is however concerned at the insufficient training provided to immigration officials and personnel employed at immigration detention centres. (Article 10)'

The Committee makes the following recommendations:

'The State party should ensure that education and training of all immigration officials and personnel, including medical personnel, employed at immigration detention centres, are conducted on a regular basis. The State party should also continue to ensure adequate training for personnel to detect signs of physical and psychological torture and ill-treatment of persons deprived of their liberty, and integrate the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment) in the training of all professionals involved in the investigation and documentation of torture. In addition, the State party should continue to assess the effectiveness and impact of all its

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<sup>8</sup> Concluding observations of the Committee against Torture, CAT/C/NZL/CO/5 14 May 2009

<sup>9</sup> Ibid.

training programmes on the prevention and protection from torture and ill-treatment.’

- 14.0 The Bill attempts to incorporate the requirement that international and domestic responsibilities are adhered to by the imposition of contractual obligations on any prison management contractor to comply with the relevant international and domestic obligations in Section 199(2). However, the *primary* responsibility rests with the government. Any intervention by the private-sector into this core function of the state diminishes the accountability of this responsibility.

## **RECOMMENDATIONS**

- 15.0 Amnesty International urges the Committee to advise against legislating to enable the privatisation of prisons in New Zealand. The direct accountability of the government is gravely diminished in the process of privatisation, which results in the diminishing of the fulfilment of the rights of those detained.