



GUEST EDITORIAL

Standing out for all the wrong reasons: New Zealand's failure to endorse the United Nations Declaration on the Rights of Indigenous Peoples

On 3 March 2010 the Canadian Government announced its intention to support the United Nation's (UN) Declaration on the Rights of Indigenous Peoples (UNDRIP). ¹ This is a positive step for the First Nations, Inuit and Metis peoples of Canada and for Canada generally. For New Zealand the move is also an important one. Canada's intention to support the UNDRIP, coupled with the Australian Government's announcement of support in April last year, ² leaves New Zealand and the United States as the only two original opponents of the Declaration who haven't since changed their position and endorsed it.



The UN General Assembly voted to adopt the UNDRIP in September 2007,³ following nearly two decades of drafting and negotiation. In a first for the UN, indigenous peoples from across the globe, including Māori, were intimately involved in its drafting. As a result, the UNDRIP is an important articulation by indigenous peoples of those human rights norms that they consider significant to them.

The UNDRIP affirms a range of rights. Key amongst these is the right to self-determination (for example, see Article 3). Indigenous peoples view self-determination as the foundation for enjoyment of all of their human rights. It is grounded in the idea that all persons have the right to determine their own destiny. The UNDRIP also affirms a number of other important rights, including the right of indigenous peoples to their traditional lands and resources (Articles 10 and 26), the right to be free from discrimination (Article 2), the right to participate in decision-making in matters that affect their rights (Article 18), the right to practice their customs (Articles 11 to 13), and the right to measures for improvement of their socio-economic conditions, including in the areas of employment, education, housing, health and social security (Article 21).

Leading international law commentators forcefully argue that the UNDRIP does not create new human rights for indigenous peoples; rather, that it simply embodies and gives content to existing human rights norms in a way that is meaningful to indigenous peoples. ⁴ Opposition to the UNDRIP thus translates to opposition to the application of fundamental human rights norms to indigenous peoples.

Although the UNDRIP itself is not legally binding, its role as a standard-setting instrument and its potential to assist in bringing about real change in the lives of indigenous peoples, including Māori, should not be dismissed. Now is no time for the New Zealand Government to be complacent. Despite some improvements in the status and socio-economic position of Māori in recent decades, much remains to be done.

In the process of its Periodic Review under the UN Human Rights Council (HRC) in May last year, the

New Zealand Government acknowledged that a number of areas required its further attention, including the socio-economic disparities between Māori and non-Māori, the status of the Treaty of Waitangi in domestic legislation and the overrepresentation of Māori in the criminal justice system. ⁵ The Government also indicated a willingness to rethink its position on the UNDRIP. However, aside from an announcement in July last year by the Minister of Māori Affairs that the Government would move to support the UNDRIP, which was then quickly retracted, ⁶ no action has since been taken to endorse the Declaration.

New Zealand's silence leaves it, along with the United States, in opposition to the UNDRIP. Although endorsing the Declaration is just a small first step towards rebuilding the relationship between Māori and the state, and the full recognition of the rights of Māori as indigenous people, it is an important one nonetheless. The New Zealand Government should act quickly to endorse the UNDRIP and give effect to its provisions. Otherwise, New Zealand will continue to stand out for all of the wrong reasons on the international stage.

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Fleur Adcock (Ngāti Mutunga) is a lawyer from New Zealand currently studying towards her PhD in international human rights and indigenous peoples' rights law at the Australian National University.

The views expressed in this editorial may not necessarily represent the views of Amnesty International or Amnesty International Aotearoa New Zealand.

Amnesty encourages editorial submissions. If you would like to submit an editorial for the Legal Network Newsletter, please contact Chris Kerr at chris.kerr@amnesty.org.nz

CORRECTION: In the February newsletter, the total population of Maori was quoted as 8%. This did not take into account individuals who identify with Maori as well as other ethnicities. The Maori population should have been quoted as 14.6%. (Statistics New Zealand: <http://bit.ly/d1Lcmd>)

LATEST NEWS

Minister of Justice presents New Zealand's report to the UN's Human Rights Council:

Amnesty International welcomes Justice Minister Simon Power presenting New Zealand's fifth periodic report under the International Covenant on Civil and Political Rights (ICCPR) to the United Nations Human Rights Committee last week in New York. The Justice Minister's presence before the committee indicates that New Zealand is serious about fulfilling its domestic human rights obligations.



The ICCPR is the principal international human rights treaty affirming fundamental civil and political rights. New Zealand is required to report periodically on the implementation of the rights the Covenant affirms. While Amnesty International welcomes the Ministers attendance in New York, there remains a range of outstanding domestic human rights concerns yet to be adequately addressed.

To read Amnesty's submission to the Office of the High Commissioner for Human Rights on New Zealand's Implementation of the ICCPR click here: <http://bit.ly/cFBH5f>

Homophobic law to enter into force in Lithuania

Amnesty International has called on the authorities of Lithuania to remove all restrictions on the distribution of public information relating to the rights of lesbian, gay, bisexual and transgender (LGBT) people decreed in a new law.

The law now classifies any information which "denigrates family values" or which "encourages a concept of marriage and family other than stipulated in the Constitution ... and the Civil Code of the Republic of Lithuania" as detrimental to children and consequently bans it from places accessible to them.



The controversial "Law on the Protection of Minors against the Detrimental Effect of Public Information" entered into force on the 1st of March.

To read more on Lithuania's suppression of freedom of expression and discriminatory laws, click here: <http://bit.ly/byyFGd>

South Korea death penalty abolition set back by Constitutional Court ruling

Amnesty International is deeply disappointed by the South Korean Constitutional Court's decision to uphold the death penalty.

Amnesty International considers South Korea to be abolitionist in practice, as it has not carried out any executions since President Kim Dae-jung took office in February 1998. President Kim himself had previously been sentenced to death in 1980. However, death sentences are still handed down with currently 57 people remaining on death row.



"Despite this ruling, we call on the South Korean government to retain the country's abolitionist position and urge them to fully abolish this practice in the law. Any move backwards on this issue is extremely damaging to South Korea's international reputation. An economic leader, the country also should lead by example by fully respecting every individual's right to life," said Roseann Rife, Asia-Pacific Deputy Programme Director at Amnesty International.

To read more on the status of the death penalty in South Korea, click here: bit.ly/9NjMzv

Egyptian man executed amid questions over murder conviction

An Egyptian man, who may have been wrongfully convicted of murder, was hanged in Cairo on Wednesday 10 March, Amnesty International has learned.

Atef Rohyum Abd El Al Rohyum was executed in Isti'naf prison. His family were not informed of his execution until they were asked to collect the body. His co-accused, Jihan Mohammed Ali, a woman convicted in the same case, was executed in the city of Giza on the same day. The two were accused of the murder of Jihan Mohammed Ali's husband in January 2004.

Amnesty International had called for the death sentence to be commuted, and for



Atef Rohyum Abd El Al Rohyum to be retried, after learning that he had been transferred to Isti'naf prison, where executions take place.

To read more on the significant rise in death sentences in Egypt, click here: <http://bit.ly/aH7DnN>

TAKE ACTION

Juan Manuel Martínez was detained in 2008 for the murder of US journalist Brad Will, but was released in February 2010 after a federal court ruled that the charges against him were baseless. While in prison he was threatened and intimidated by men who came to visit him.

At the beginning of December 2009, one of these men told him, "Tell your lawyer to keep quiet, she's overdone it, she should stop making so much noise – we know where you, she, and your relatives live." His lawyer, Alba Cruz has also been attacked and threatened repeatedly. In August, she received a text message saying, "you are on the list, bitch, you're next." (estas en la lista, perra y tu eres la siguiente).

On 26 January 2010, she saw two men standing outside her office. Shortly afterwards she received a text message saying, "We've told you and that idiot... we are watching you, you are trash, stop it with your revolution or you'll be sorry." Alba Cruz filed a complaint about the threats and other security incidents, but has received no effective protection measures. The Inter-American Commission of Human Rights has called on the Mexican authorities to provide her with protection measures, but these have not been implemented.

To take action to protect people and those who represent them from threats and violence, click here:

<http://bit.ly/cQyofe>

This is based on an Urgent Action, please send appeals by 21 April.

Legal Network News:

Legal Network Co-ordinator Lisa Young will be representing the network at Amnesty's 2010 Annual Meeting. If you have any questions, comments or suggestions you would like Lisa to raise at the meeting, please contact her at: lisyoung@gmail.com

End notes from the editorial above

¹. Canadian Government, "Speech from the Throne", 3 March 2010, available at <http://bit.ly/9f1R9X>

². Emma Rodgers, "Aust adopts UN Indigenous declaration", ABC News, 3 April 2009, available at <http://bit.ly/dwBkIn>

³. When the UN General Assembly voted to adopt the Declaration in 2007 143 countries, a significant majority, voted in its favour. Only 4 countries voted against the Declaration: New Zealand, the United States, Canada and Australia. Eleven countries abstained from the vote (two of whom have since endorsed the Declaration) and 34 countries were absent from the vote.

⁴. See, for example, Anaya S. James, "International Human Rights and Indigenous Peoples", Aspen Publishers, New York, 2009.

⁵. UN Human Report on the Universal Periodic Review of New Zealand, 4 June 2009, available at <http://bit.ly/apjVcD>

⁶. NZPA, "No final decision on indigenous rights – govt", Stuff.co.nz, 7 July 2009, available at <http://bit.ly/cLvD9x>

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