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**SUBMISSION TO THE MINISTRY OF JUSTICE REGARDING THE  
DISCUSSION DOCUMENT “IMPROVEMENTS TO SEXUAL  
VIOLENCE LEGISLATION IN NEW ZEALAND”**

**Submitted: 10<sup>th</sup> October 2008**

**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 of human rights and international campaigning to prevent some of the most serious human rights 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".

*"Violence against women is an issue that cannot wait. A brief look at the statistics makes it clear. At least one out of every three women is likely to be beaten, coerced into sex or otherwise abused in her lifetime... **Far too often, the crimes go unpunished, the perpetrators walk free.**"*

- Remarks by Secretary General Ban Ki-Moon to the Commission on the Status of Women, New York, 25 February 2008

## 1. Introduction

1.1. Amnesty International welcomes the opportunity to make submissions on the discussion document regarding "improvements to sexual violence legislation in New Zealand". Since Amnesty International's inception in 1961 we have documented that all too often violence against women is regularly ignored and rarely punished. Women and girls suffer disproportionately from violence - both in peace and in war, at the hands of the state, the community and the family.

1.2. Within our global Stop Violence Against Women Campaign we campaign for the implementation of existing laws that guarantee access to justice and services for women subjected to violence including rape and other forms of sexual violence; call for new laws to be enacted that will protect women's human rights; and demand an end to laws that discriminate against women.

1.3. Amnesty International would have preferred to make oral submissions. Oral consultation, particularly around a sensitive issue such as sexual violence, would have given greater consultative value to the overall process. We acknowledge, however, the time constraints faced by the Taskforce.

1.4. Amnesty International therefore welcomes and supports the proposed changes to sexual violence legislation, observing that:

*"Violence is a learned behaviour: part of the duty of the state to apply due diligence to prevent such crimes is to work with civil society in changing this behaviour and eradicating such violence."<sup>1</sup>*

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<sup>1</sup> Amnesty International, "Making Rights a Reality: The Duty of States to Address Violence Against Women", ACT 77/049/2004. Available at <http://www.amnesty.org/en/library/info/ACT77/049/2004/en>.

1.5. The current legislative framework is clearly failing women. With one in five women facing sexual violence, and conviction rates so low, it seems that rape can be committed with impunity.<sup>2</sup> One in three NZ women experience physical and/or sexual abuse at the hands of a partner throughout their lifetime.<sup>3</sup> A recent WHO study found that “27% of physically and/or sexually abused women in Auckland and 22% in North Waikato never told anyone about the violence they had experienced. If they had told someone, this was usually their friends or family. Only 32% of physically and/or sexually abused women in Auckland and 29% in North Waikato had ever turned to formal services (health, police, religious, or local leaders, etc.).”<sup>4</sup> To counteract societal and historical forces, which continue to foster violence against women, we need to ensure that we create “a framework where the needs of women affected by violence are in the focus of attention”<sup>5</sup>

1.6. Sexual Violence legislation, as stated in the Discussion Document, is a multifaceted issue. The isolation of a couple of issues in this way is flawed. Within this submission we have chosen to address a wider range of issues which impact on sexual violence in various ways. The UN Secretary General study on “Ending Violence Against Women” states that “vigorous arrest and prosecution policies and appropriate sentencing *make a statement to society* that violence against women is a serious crime.”<sup>6</sup>

1.7. Amnesty International has also chosen to comment on the “gender blind” Family Violence government campaign in relation to improving sexual violence outcomes. Government initiatives of this nature may mask violence directed at women, through

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<sup>2</sup> World Health Organisation statistic, courtesy of Oxfam: <http://www.oxfam.org.nz/whatwedo.asp?s1=What%20we%20do&s2=Issues%20we%20work%20on&s3=Ending%20violence%20against%20women&s4=Gender%20violence%20and%20basic%20rights>.

<sup>3</sup> Preventing Violence in the Home, Domestic Violence Factsheet. Available at <http://www.preventingviolence.org.nz/index.php?section=28>.

<sup>4</sup> World Health Organisation Multi-Country Study on Women’s Health and Domestic Violence against Women, New Zealand Fact Sheet, [http://www.who.int/gender/violence/who\\_multicountry\\_studyfact\\_sheets/New%20Zealand2.pdf](http://www.who.int/gender/violence/who_multicountry_studyfact_sheets/New%20Zealand2.pdf)

<sup>5</sup> Rosa Logar, “Good Practices and Challenges in Legislation on Violence against Women”, Expert Paper given at “Expert Group Meeting on good practices in legislation on violence against women”, 2008. [http://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2008/expertpapers/EGMGPLVAW%20Paper%20\\_Rosa%20Logar\\_.pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20_Rosa%20Logar_.pdf), p.3

<sup>6</sup> UN Report, *Ending violence against women: from words to action*, Study of the Secretary-General <http://www.un.org/womenwatch/daw/vaw/launch/english/v.a.w-fightE-use.pdf>

terminology of “family based violence”. This position is supported by statements made by Human Rights Commissioner Joy Liddicoat:<sup>7</sup>

*“[T]he language we have used to talk about violence in New Zealand has changed. But strangely it has been less, rather than more, affirming of women's human rights. We have turned the gender neutral and the gender blind into the gender bland. By gender bland I mean that we stopped talking about violence against women and we stopped talking about violence as abuse of power”*

The report of the Special Rapporteur on Violence against Women, Ms. Radhika Coomaraswamy, which was submitted in accordance with Commission on Human Rights resolution 1995/85, provides a “framework for model legislation on domestic violence.”<sup>8</sup> It must be considered that the Special Rapporteur’s Framework states that:

*“The language of the law must be **clear and unambiguous** in protecting women victims from **gender-specific violence** within the family and intimate relationships.”*

This clear statement from the UN level of governance suggests that the prevalence of sexual violence perpetrated against women must be *distinguished* from intra-family violence and legislated for accordingly. This has not been the case in the NZ government’s “Family Violence” campaign.

1.8. Considering the importance of having such a framework with regard to prevention as well as justice, the WHO Background Paper “Primary prevention of intimate-partner violence and sexual violence” states that:

*“The power of laws to act as a deterrent relies on their enforcement; if potential offenders perceive that their violent acts will be reported and they will be prosecuted, that perception might deter them.”<sup>9</sup>*

1.9. In the “WHO Multi-country Study on Women's Health and Domestic Violence against Women” the executive summary states countries should “[s]ensitize legal and justice systems to the particular needs of women victims of violence.”<sup>10</sup> A replication of the

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<sup>7</sup> Human Rights Commissioner Joy Liddicoat delivered a speech at the launch of the Women's Refuge Appeal week 21 July, 2008. Accessed at [http://www.hrc.co.nz/home/hrc/newsandissues/womensrefugeappealweeklaunchspeech .php](http://www.hrc.co.nz/home/hrc/newsandissues/womensrefugeappealweeklaunchspeech.php).

<sup>8</sup> Report of the Special Rapporteur on Violence against Women, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85 “A framework for model legislation on domestic violence”<sup>8</sup> <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/Oa7aa1c3f8de6f9a802566d700530914?Opendocument>.

<sup>9</sup> World Health Organisation, “Primary prevention of intimate-partner violence and sexual violence: Background paper for WHO expert meeting May 2–3, 2007”, [http://www.who.int/violence\\_injury\\_prevention/publications/violence/IPV-SV.pdf](http://www.who.int/violence_injury_prevention/publications/violence/IPV-SV.pdf), p.23.

<sup>10</sup> World Health Organisation “WHO Multi-country Study on Women's Health and Domestic Violence against Women” [http://www.who.int/gender/violence/who\\_multicountry\\_study/Introduction-Chapter1-Chapter2.pdf](http://www.who.int/gender/violence/who_multicountry_study/Introduction-Chapter1-Chapter2.pdf)

study was carried out in New Zealand by the University of Auckland.<sup>11</sup> Given the appalling figures revealed in this replicated study, regarding high levels of abuse, we clearly need to “sensitise” our criminal justice system. Sensitising the system means that *effective* training must be given to officials and that enforceable guidelines should be promulgated for these officials on how to deal with victims of sexual assault. This submission focuses on the issues raised in the discussion document, through the lens of sensitising the system to make it more effectively serve victims of rape.<sup>12</sup>

## 2. International Law Obligations

2.1. Amnesty International acknowledges that New Zealand has been a world leader when it comes to women’s rights. Our reputation in the international arena as a leader in human rights can be maintained through adopting progressive legislative changes to sexual violence legislation. Given the changes in other common law systems, we have fallen behind in our leadership, and need to move with the times in order to offer our citizens the best protection, and justice the state can offer with regard to sexual crimes.

2.2. Our international obligations under the Convention on the Elimination of Discrimination against Women (CEDAW) are supported by these changes. Amnesty International believes it is important that New Zealand live up to its reputation as a world leader in human rights. Article 24 of CEDAW states:

*State Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.*<sup>13</sup>

CEDAW notably lacks many provisions on violence against women, and the preventing of such violence. This treaty was promulgated at a time when the issue of violence against women was not seen as highly relevant to an international treaty. However, attitudes have changed over time, and thus this facet of discrimination against women must be read into the living document of CEDAW, and other human rights treaties.

2.3. In General Recommendation 19 (11th session, 1992)<sup>14</sup> the Committee on the Elimination of Discrimination against Women recommended that:

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<sup>11</sup> World Health Organisation “WHO Multi-country Study on Women's Health and Domestic Violence against Women” – NZ Replication Fact Sheet. [http://www.who.int/gender/violence/who\\_multicountry\\_study/fact\\_sheets/New%20Zealand2.pdf](http://www.who.int/gender/violence/who_multicountry_study/fact_sheets/New%20Zealand2.pdf)

<sup>12</sup> “WHO Multi-country Study on Women's Health and Domestic Violence against Women: Country Findings” [http://www.who.int/gender/violence/who\\_multicountry\\_study/fact\\_sheets/New%20Zealand2.pdf](http://www.who.int/gender/violence/who_multicountry_study/fact_sheets/New%20Zealand2.pdf) .

<sup>13</sup> Section 24, Convention on the Elimination of Discrimination Against Women.

- a) States parties should take **appropriate and effective** measures to overcome all forms of gender-based violence, whether by public or private act;
- b) States parties should ensure that **laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women**, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;  
[...]
- (t) States parties **should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence**, including, inter alia:
  - (i) **Effective legal measures, including penal sanctions, civil remedies and compensatory provisions** to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace” [...]”<sup>15</sup>

Also, it has earlier stated that:

“[U]nder article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, **States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.**”

2.4. Amnesty International believes that the definitions of crimes and rules of procedure of the International Criminal Court can provide a useful model for the reform of criminal law relating to violence against women in all domestic criminal jurisdictions.<sup>16</sup>

“The gender provisions [of the Rome Statute of the International Criminal Court] could help strengthen the capacity to address violence against women at the national level via the inclusion of additional crimes of sexual and gender violence, progressive definitions of existing crimes, and more gender-sensitive procedures for the trial of these crimes.”<sup>17</sup>

The following tables are provided by Amnesty International to demonstrate what full compliance with the Rome Statute would entail.

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<sup>14</sup> General Recommendation 19 (11th session, 1992), Committee on the Elimination of Discrimination against Women.

<sup>15</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation 19 (11th session, 1992)*, Specific recommendation Section 24 (a)-(c), (t).

<sup>16</sup> Amnesty International, “*Making Rights a Reality: Campaigning to stop violence against women*” ACT 77/052/2004. Available at <http://www.amnesty.org/en/library/info/ACT77/052/2004/en>.

<sup>17</sup> Pam Spees, ‘*Women’s advocacy in the creation of the international criminal court: Changing the landscapes of justice and power*’, 28 Signs: Journal of Women Culture and Society, 2003, p. 1233.

Crimes:	Part II, section
Does your country include the crime of <b>rape</b> in national law, in a way that is consistent with the ICC definition? For example: <ul style="list-style-type: none"> <li>➤ Is the definition is gender-neutral?</li> <li>➤ Does the definition include penetration by any body part or object?</li> <li>➤ Does the definition include forced oral and anal penetration?</li> <li>➤ Does the definition focus on the acts of the perpetrator?</li> <li>➤ Is there no need to prove overwhelming physical force?</li> </ul>	1 (a)
Does your country include the crime of <b>sexual slavery</b> in national law, in a way that is consistent with the ICC definition?	1 (b)
Does your country include the crime of <b>enslavement</b> in national law, in a way that is consistent with the ICC definition? Importantly: <ul style="list-style-type: none"> <li>➤ Does the national definition of enslavement include the crime of <b>trafficking</b>? Is the definition of trafficking consistent with the Trafficking Protocol definition?</li> </ul>	1 (c)
Does your country include the crime of <b>forced pregnancy</b> in national law, in a way that is consistent with the ICC definition?	1 (d)
Does your country include the crime of <b>enforced sterilization</b> in national law, in a way that is consistent with the ICC definition?	1 (e)
Does your country include crimes of <b>other forms of sexual violence</b> in national law, in a way that is consistent with the ICC definitions?	1 (f)
Does your country include the crime of <b>gender-based persecution</b> in national law, in a way that is consistent with international law? Does your country recognize gender-based persecution as grounds for claiming <b>refugee status</b> ?	1 (g)

Criminal Procedure	Part II, section
Are there rules that restrict the admission of <b>evidence of consent</b> in trials of crimes of sexual violence? Specifically: <ul style="list-style-type: none"> <li>➤ Is it impermissible to imply consent due to <b>silence</b> or a <b>lack of resistance</b> by the victim?</li> <li>➤ Can consent <b>not</b> be inferred from words or conduct of the victim where there was force, threat of force or a coercive environment?</li> <li>➤ Is the admission of such evidence considered <i>in camera</i> (closed proceedings)?</li> </ul>	3 (b)
Is evidence of <b>prior or subsequent sexual conduct</b> of the victim <b>inadmissible</b> in trials for crimes of sexual violence in a manner consistent with the Rome Statute?	3 (c)
Is <b>corroboration</b> of the victim's testimony explicitly <b>not</b> required in crimes of sexual violence?	3 (d)
Is it possible for victims of sexual violence to give their evidence in <b>closed proceedings</b> or via <b>video or audio-link</b> ?	3 (e)
Is it possible for a victim of sexual violence to be <b>accompanied</b> by another person while giving evidence in court?	3 (f)

The relevant sections in this chart for this exercise are the issues of the **evidence of consent** and the **prior sexual conduct of the victim**. These issues are addressed in the following sections of the paper, and should be considered in light of this international obligation.

2.5. In the UN expert report “Good Practices and Challenges in Legislation on Violence against Women”,<sup>18</sup> nations are encouraged to have a comprehensive and coordinated policy with regard to this area. This policy should be predicated on the needs of the victim, and incorporate legal provisions in all different areas of law, especially

<sup>18</sup> Rosa Logar, “Good Practices and Challenges in Legislation on Violence against Women” [http://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2008/expertpapers/EGMGPLVAW%20Paper%20Rosa%20Logar\\_.pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20Rosa%20Logar_.pdf).

criminal, civil and administrative law. Furthermore, international conventions and recommendations for the protection of women from violence should be fully implemented in national legislation. Alongside the harmonisation of the legal process, women-centred and human rights NGOs should be invited to participate in the drafting, implementation and evaluation of laws. Additionally, effectiveness monitoring and evaluation of laws should not be neglected. However, this process needs to be backed by a stable financial background.

### **3. The Legal Definition of Consent**

3.1. Amnesty International considers that the Crimes Act 1961 should be amended to include a definition of what consent is (a positive definition of consent) to sit alongside the legal definitions of situations where consent is not considered to be present. This definition should contain the concepts of freedom, choice, and the capacity to make the choice to consent to sexual activity.

3.2. There are two broad schools of thought as to consent at present – consent can involve either a communication with another person, or other people, or be an issue involving the inner state of the victim's mind.<sup>19</sup> This instability allows for regression towards previous attitudes about rape law. The legal trend to consider the internal point of view of the victim is one which should be promoted in order to dismiss the stereotype that consent is presumed to exist unless strongly and actively negated. In many situations of rape, women do not have this option because they fear escalating violence; women often remain silent in order not to provoke someone further in an already unwanted situation. Thus the way in which consent is presented to a jury is of utmost importance in determining a just outcome for the victim of a rape. Consent must be considered to involve a positive process, as opposed to the negation of the presumption that consent exists.

3.3. As demonstrated in the discussion document, several other common law jurisdictions have introduced a positive definition of consent. The value of this lies in assisting juries to make a just decision where value-judgments and cultural presumptions may otherwise lead to an acquittal. Providing a definition can narrow down the focus of the jury's process, and thus ensure the focus is not misplaced. The particular wording of

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<sup>19</sup> Ian Leader-Elliott and Ngaire Naffine, "*Wittgenstein, Rape Law and the Language Games of Consent*" (2000) 26(1) Monash University Law Review 48.

the definition is of importance. Consequently Amnesty International recommends that the basis for a New Zealand definition of consent be based on either the UK or NSW definitions of consent. These definitions seem to best outline that consent is a positive action which must take place, and not an existing, presumptive state.

#### **4. Adding More Guidance to the Reasonable Belief Test**

4.1. Amnesty International submits that the court should be required to take into account any steps the defendant took to discover whether the complainant was consenting when a defence of reasonable belief in consent is raised. The complex legal test of the “reasonable belief” in consent has many implications for human rights. It can assist to define a test which has consistently confused jurors, and further narrow the scope to which value-judgments can affect decisions and outcomes.

4.2. The burden of proof in sexual violence must be looked at very cautiously, as the right to liberty of the accused is at stake. However, the defence available to such an accused can lead to an unjust situation in court. Once the defence is raised, the prosecution are required to disprove that the accused reasonably believed the complainant was consenting. This step is clearly necessary, but requires further consideration given its potentially problematic application. Amnesty International supports the developments in Canada and Australia in which the court has regard to the steps taken by the accused to determine whether the complainant was consenting. This added burden on the accused could be seen to send a signal to society that people need to *ask*, and not presume consent exists. Arguably, this change also helps to redress the imbalance between complainant and accused in the courtroom, as it puts more pressure on the accused to demonstrate why he should get the benefit of the defence.

It is not unreasonable to expect that people seeking intimacy and pleasure do so in an open and respectful way, and that agreement is overt and unambiguous. This is especially the case with heterosexual penetrative sex, which can lead to serious consequences such as Sexual Transmitted Infections, and pregnancy. Thus all reform in this area must also be backed up by public information campaigns.

#### **5. Extending the Rape Shield**

5.1. Amnesty International further submits that the law which protects complainants from being questioned about their sexual history should be extended to questions about their sexual history with the defendant. When the court allows the previous sexual experiences of the accused and complainant to be considered, this can diminish the idea that consent is required on every single occasion. The fact that a woman has consented to intercourse with her partner in the past should not influence the decision over whether she did not consent on the occasion in question. Extending the rape shield in the proposed way will emphasise that consent is not a presumptive state, but rather a decision, made anew each time, which can be negated at any point.

5.2. This proposed extension to the rape shield is also an important method of improving the balance of power in the court room, which at present arguably swings in favour of an accused. This power imbalance leads to rape trials being primarily an indictment on the character of the complainant. Extending the rape shield to prevent evidence of previous sexual history with the accused renders the complainant less vulnerable to attacks on character, or inconsistent portrayals of the complainant which can come down to the word of the accused versus the word of the complainant, with no other evidence either way.

## **6. Alternative Models**

6.1. Amnesty International has chosen to address the issue of Specialist Courts, as this is arguably a realistic, practical change that could be made in our criminal justice system. Given the complex and value-laden area of sexual violence litigation, the benefits potentially available from specialist courts should not be disregarded or viewed as too fundamental a change. In fact, specialist courts are common, especially in New Zealand. We were the first nation in the world to have a specialist Environment Court, and our Family Court currently deals with instances of domestic violence and protection orders.<sup>20</sup> However, a specialist Sexual Crimes/Violence Court would be better equipped to deal with the complex nature of sexual crimes, and the societal factors which impinge on the application of the law.

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<sup>20</sup> Ministry of Justice, Family Court, <http://www.justice.govt.nz/family/what-familycourt-does/relationships/domestic-violence.asp>.

One reason why the current legal system is failing when it comes to victims of sexual violence is that courts are not equipped with the special sensitivity and care needed to protect victims, and tend to privilege the fair trial rights of the accused. This can lead to the situation where a traumatised woman is put through the ringer at the hands of the accused, because we do not allow the fair trial right of the accused to be balanced with that of the victim.

The UK report “Without Consent”<sup>21</sup> notes specialist counsel should be utilised:

*“Rape cases are **difficult to prosecute** and, by their very nature, **require sensitive and careful witness-handling skills**. They can also involve **complex disclosure issues**. Cases where the issue is one of consent are often particularly challenging to prosecute, requiring a high degree of skill and care. There is, therefore, a need to ensure that the selection of counsel is made on the basis of **full knowledge of their expertise and experience**.”*

Moreover, as noted in the discussion document Specialist Courts of Sexual Violence have been developed in many other countries including Australia, South Africa, the United Kingdom and Canada. It is evident that the development of these courts has had an impact to reduce the victim’s secondary trauma<sup>22</sup>. Due to well trained officials, collaborating role-players and special mechanisms as the consultation with the complainant, court preparation and separate witness waiting rooms can help to reduce the secondary trauma for the victim.<sup>23</sup> This was especially evident in the Sexual Offences Court in Wynberg and Cape Town South Africa. These Specialist Units have seen the conviction rate on sexual offences increase and remain higher than in other Magistrates Courts.<sup>24</sup> Arguably this is due to specialist courts enabling better evidence gathering from victims, and a less discriminatory assessment of the evidence. Amnesty International would like to stress that increasing conviction rates should not be the aim of law reform, rather the emphasis must be on achieving a more just outcome for victims.

In addition to increased convictions, reporting rates increased as a result of Specialist Prosecution Units, as can be seen in the Specialist Sex Offence Unit in the Office of

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<sup>21</sup> HM Crown Prosecution Service Inspectorate, “Without Consent”, available at [http://www.hmcpso.gov.uk/reports/Without\\_Consent\\_Thematic.pdf](http://www.hmcpso.gov.uk/reports/Without_Consent_Thematic.pdf), page 134.

<sup>22</sup> Pilot Assessment: The Sexual Offences Court in Wynberg and Cape Town and related services, Mastoera Sadan, Lulama Dikweni, Shaamela Cassiem, IDASA 2001, p.35.

<sup>23</sup> Pilot Assessment: The Sexual Offences Court in Wynberg and Cape Town and related services, Mastoera Sadan, Lulama Dikweni, Shaamela Cassiem, IDASA 2001, p.35.

<sup>24</sup> Pilot Assessment: The Sexual Offences Court in Wynberg and Cape Town and related services, Mastoera Sadan, Lulama Dikweni, Shaamela Cassiem, IDASA 2001, p.39, in: [www.idasa.org.za](http://www.idasa.org.za) -following the routing to the Children’s Budget Unit.

Public Prosecutions in Victoria, Australia<sup>25</sup> and in Sexual Assault Centres in the United Kingdom (England and Wales). A further advantage that needs to be highlighted is the increasing satisfaction of the complainant which is reached by changes in the response to victims.

Specialist courts provide a focus on the victim, through their superior expertise of personnel and coordinate and integrated service responses.<sup>26</sup> However, there are still things that need to be improved to make specialist courts more effective.

- Specialist Courts have to fight a high caseload. Further support by the state or other donors will be necessary.
- Moreover, duration of the cases is frequently remanded. Ways need to be found to shorten them.

According to the International Convention on the Elimination of Violence against Women (CEDAW) Article 7, New Zealand is requested to:

*“...take all **appropriate measures to eliminate discrimination against women** in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the rights:*

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;*
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;*
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country. “*

Amnesty International supports Specialist Courts for sexual offences as an appropriate measure to eliminate discrimination against women in the political and public life of the country. This is supported by the UN Secretary General study “Violence against Women: from words to action”, which states that:

*“Specialized courts and police units can improve efficiency, **minimize the burden on victims** and **improve case outcomes**. In the Dominican Republic, domestic violence legislation is enforced by: six prosecutor’s offices, a magistrate’s court and **a criminal***

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<sup>25</sup> HM Crown Prosecution Service Inspectorate, Without a Consent: A report on the joint review of the investigation and prosecution of rape offences, 2007, p.35. Available at [http://www.hmcp.si.gov.uk/reports/Without\\_Consent\\_Thematic.pdf](http://www.hmcp.si.gov.uk/reports/Without_Consent_Thematic.pdf)

<sup>26</sup> Australian Domestic & Family Violence Clearinghouse see, “Key issues in the establishment of specialist domestic/family violence courts in Australia” by Julie Stewart. Available at [www.aija.org.au/fv06/Presentations/Stewart%20-%20Specialist%20Courts.ppt](http://www.aija.org.au/fv06/Presentations/Stewart%20-%20Specialist%20Courts.ppt)

***court working exclusively with domestic violence cases, as well as six police squads specifically charged with protecting women from violence.***<sup>27</sup>

This study goes on to state that the “implementation of laws is enhanced by mandatory and systematic gender-sensitivity training for law enforcement and judicial officials, and by issuing guidelines and protocol.”<sup>28</sup> Thus specialized courts should utilize professionals with specialist knowledge and training in order that the benefits are fully realized.

Amnesty International supports specialist courts, and believes that the knowledge gained from their good practice should be mainstreamed across all court systems so that there is equal access to effective courts across New Zealand.

## 7. Conclusion

7.1. Finally, it is important to consider that:

*“It is essential that states continue to reassess critically the extent of human rights violations such as violence against women, as they occur. They should also continue to review their laws, policies and administration, in terms of effectiveness. Initiatives to eradicate violence against women have met with varying degrees of success – but invariably they have been partial, or not consistently followed up. **Clearer and more effective monitoring of the extent of violence against women and the effectiveness of remedies has been identified as the way forward in ensuring proper implementation of international human rights law protecting women from violence.**”*<sup>29</sup>

7.2. Amnesty International supports the development of legislation to better protect women from sexual violence. Women in New Zealand face a difficult road to justice if they suffer sexual violation, and the system needs to be transformed in order to do these women justice. The current position in legislation sends inconsistent messages to men and women; to women, it says you can say no at any point, and immediately the act becomes a rape. However for men, so long as you believe consent exists, you can continue. This inconsistent position may be resolved to some extent by including a definition of consent, and recognising that the rights of the accused to a fair trial *must* be balanced with the rights of a complainant.

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<sup>27</sup> Ending violence against women: from words to action: Study of the Secretary General, “Fighting violence against women: what works”. <http://www.un.org/womenwatch/daw/vaw/launch/english/v.a.w-fightE-use.pdf>

<sup>28</sup> UN Report, *Ending violence against women: from words to action* Study of the Secretary-General <http://www.un.org/womenwatch/daw/vaw/launch/english/v.a.w-fightE-use.pdf>

<sup>29</sup> Yakin Erturk, second Special Rapporteur on Violence Against Women, Its Causes And Consequences, Report to the Commission on Human Rights, 26 December 2003, E/CN.4/2004/66, paragraph 64-66.