

**AMNESTY
INTERNATIONAL**



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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".

EXECUTIVE SUMMARY

In this submission, Amnesty International Aotearoa New Zealand (AIANZ) provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.¹

- In section B, AIANZ raises concerns over the status of ratification and implementation of international human rights treaties, customary rights of Maori to the foreshore and seabed and justiciability of economic, social and cultural rights in domestic constitutional law;
- In section C, AIANZ describes concerns about violence against women, the proposed immigration legislation, the youth justice system and the use of force against children;
- In section D, AIANZ makes recommendations for action by the government to protect human rights in the areas listed.

B. NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

Status of ratification and implementation of international human rights treaties

New Zealand has yet to ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention Relating to the Status of Stateless People and the Convention for the Protection of All Persons from Enforced Disappearances. On the Migrant Workers' Convention, government has given the explanation² that it has policy concerns with the Convention, sees problems of ambiguity in the language of the Convention, and notes a '*lack of support for the Convention amongst like minded countries to New Zealand*'. On its refusal to ratify the Convention on Enforced Disappearances, the government supported the Convention but has refused to sign it, citing inconsistencies between the Convention and international law.³

New Zealand was one of four countries to vote against the UN Declaration on the Rights of Indigenous Peoples at the General Assembly on 13 September 2007. Claims by government that the Declaration is inconsistent with New Zealand's public law and arrangements as well as its democratic processes appear irresponsible and are harmful. Further, these claims are harmful to the reconciliation of Indigenous and non-Indigenous peoples and inconsistent with New Zealand's duty to promote and protect the human rights of all. AIANZ calls on New Zealand to reverse its position and to support the Declaration.

AIANZ supports the Committee Against Torture's Recommendations on New Zealand⁴ calling on the government to ratify the 1954 Convention relating to the

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

² Response by Minister Phil Goff to AI New Zealand's Election 2008 Questionnaire to all election candidates – the question- "*Would your Party reconsider New Zealand's refusal to support and/or sign the following human rights treaties from the United Nations, which protect the rights of...*" See <http://www.amnesty.org.nz/files/011008%20Phil%20Goff.pdf-note> we will ensure that this link remains valid despite the finish of the election.

³ <http://www.un.org/News/Press/docs/2006/gashc3872.doc.htm> accessed 4 November 2008.

⁴ Report (CAT/C/CR/32/4) 11 June 2004 and Report (CAT/C/NZL/5) 17 August 2007

Status of Stateless Persons. AIANZ hopes that the government will ratify this Convention as soon as possible.

AIANZ regrets New Zealand's lack of support for an Optional Protocol to the ICESCR, which would allow the Committee on Economic Social and Cultural Rights to receive communications and complaints from individuals and groups of individuals concerning violations of ESC rights. AIANZ urges the government to reconsider its position about the proposed complaints mechanism and asks that it goes on the record as supporting the Protocol.

Customary Rights of Maori to Foreshore and Seabed

In the case *Ngati Apa v Attorney-General* [2002] 2 NZLR 661, the Court of Appeal held that the Maori Land Court had jurisdiction to determine whether the foreshore and seabed were Maori customary land. The Court decided that it could not be said that any legislation had extinguished all possible common law title to foreshore and seabed. In response to public uproar at the prospect that foreshore and seabed might be vested in Maori and the perception that people would lose their right of access to beaches, the government passed the Foreshore and Seabed Act 2004.

This Act extinguished any Maori customary title to foreshore and seabed and created a new legal scheme to deal with interests in same. It also vested title to foreshore and seabed in the Crown to ensure their preservation in perpetuity for people of NZ and provided for general rights of public access, recreation and navigation. Whilst the Act recognised ancestral connections and allowed for customary rights to the seabed and foreshore, it did not recognise Maori customary title.

The Committee on the Elimination of All Forms of Racial Discrimination (CERD) issued a decision on 11 March 2005 (under its early warning and early action procedure) highlighting its concern with the haste in which the legislation was enacted and added that insufficient consideration may have been given to alternative responses to the Court of Appeal's decision. The Committee urged the government to resume dialogue with the Maori community and to seek ways of mitigating the discriminatory effect of the legislation.

In the March 2006 report of the Special Rapporteur on the Human Rights of Indigenous People, Rodolfo Stavenhagen highlighted that government cannot unilaterally extinguish indigenous rights through any means without the free, prior and informed consent of Maori. He saw the Foreshore and Seabed Act as a backward step for Maori in relation to the progressive recognition of their rights through the Treaty (of Waitangi) settlement process over recent years. The Special Rapporteur recommended that Parliament repeal the Act and that government enter into re-negotiations with Maori on their customary rights and claims on the foreshore and seabed. AIANZ urges New Zealand to follow this course of action.

Inclusion of Economic, Social and Cultural Rights in Constitutional Law

AIANZ is concerned that economic, social and cultural rights are still not protected by NZ's domestic constitutional law, despite New Zealand's obligations

under ICESCR. The focus on civil and political rights and discrimination respectively in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 shows a general lack of support at government level for the justiciability of ESCR and a lack of recognition of this as a practical measure to ensure rights are protected. Further, AIANZ regrets New Zealand's refusal to withdraw from its reservation to Article 8 of the Covenant.

AIANZ recognises the government's effort to develop and strengthen mechanisms and institutions in the human rights area. However, there are inadequate gains on the right to non-discrimination (Article 2), women's rights (Article 3), trade union rights (Article 8), the right to family protection (Article 10), and the right to an adequate standard of living (Article 11).

Despite the government's efforts, both Maori people and migrant workers still do not fully enjoy the right to non-discrimination. This has been exacerbated by New Zealand's lack of commitment to both the Declaration on the Rights of Indigenous Peoples and the Migrant Workers Convention. Of particular concern is their limited access to healthcare and education. Also, despite a Civil Union Act, same sex partners suffer from a discriminatory law not allowing them to marry in New Zealand which violates both Articles 2 and 10.

AIANZ is further concerned about the low level of social welfare and benefit payments. These remain below minimum wages and are therefore highly deficient in the context of the right to an adequate standard of living. Child poverty statistics in New Zealand remain alarmingly high and poor people are hit hard by a Goods & Services Tax which is payable on food.

C. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Violence against women

One in three NZ women experience physical and/or sexual abuse at the hands of a partner throughout their lifetime. Moreover, with one in five women facing sexual violence combined with low conviction rates, it seems that rape can be committed with impunity. 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.)".⁵

The current legislative framework is clearly failing women. However, the proposed changes to sexual violence legislation (see Discussion Document "Improvements to Sexual Violence Legislation in New Zealand"⁶) are overall welcomed by AIANZ.

New Zealand's reputation in the international arena as a leader in human rights can be protected by adopting progressive changes to sexual violence legislation.

⁵ World Health Organisation Multi-Country Study on Women's Health and Domestic Violence November 2005.

⁶ <http://www.justice.govt.nz/discussion/sexual-violence-legislation/6064-2%20MOJ%20SV%20discussion%20document-ff-WEB.pdf> accessed on 5 November 2008.

AIANZ supports the development of such law and process. Women in New Zealand face a difficult road to justice if they suffer sexual violation, and the system needs to be improved. The current 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 men can continue as long as they believe that consent exists. This inconsistent position may be resolved to some extent by recognising that the rights of the accused to a fair trial *must* be balanced with the rights of a complainant.

Imminent Immigration Legislation

In April 2006 the government announced the most comprehensive review of immigration legislation in 20 years. An Immigration Bill to replace the existing Immigration Act 1987 was tabled in the House on 8 August 2007. The Bill then went to Select Committee and was reported back, with amendments, to the House in July 2008. It currently awaits its second reading, however the timing of this reading is now uncertain given the November 2008 General Election in NZ.

AIANZ has expressed its concern to government⁷ about the lack of independent oversight of executive power in the proposed legislation and considers that it undermines NZ's reputation as country that promotes human rights. The proposed legislation *"does not strike an appropriate balance between the government's obligation to protect New Zealanders from the risk of harm, and its obligations to ensure that asylum seekers and others protected under international law are accorded a fair hearing and are not arbitrarily detained or returned to face persecution, torture or death."*⁸

The process of passenger name screening which is outlined in the legislation (building on the current provisions in existing legislation) can prevent non-residents boarding transport to NZ at point of departure without reasons being disclosed or opportunity for judicial review. This system can seriously prejudice genuine asylum-seekers seeking protection in NZ. Owing to select committee amendments, reasons must now be given for declining visa applications or refusing entry permission. However, the screening process may lead to a violation of the principle of non-refoulement.

Further, the Bill has provision to extend detention without a warrant for up to 96 hours. Of concern too are two new provisions in this Bill, first, prohibiting the Courts taking into consideration the length of detention of an individual held under any provision in the Bill when determining whether or not they should be released, and secondly, ruling out bail for any offence under the Bill. AIANZ is intending to maintain a watching brief as this legislation is implemented.

Youth Justice System

AIANZ is concerned at the current minimum age of prosecution for children in New Zealand and recommends amendments are made to current laws to raise the minimum age of criminal responsibility to an internationally acceptable level

⁷ <http://www.amnesty.org.nz/files/AIANZ%20Submission%20on%20Immigration%20Bill%20-%20final.pdf> accessed on 5 November 2008.

⁸ Ibid

in accordance with the Human Rights Committee's 2004 recommendation.⁹ The current age of criminal responsibility for murder and manslaughter in New Zealand is 10.

New Zealand's obligations under the Convention on the Rights of the Child (CRC) require that the rights of children from 18 years and below are protected by the government. The current youth justice laws apply only to young people under the age of 17, which is in violation of the CRC.

Use of force against children

AIANZ welcomed the repeal of section 59 of the Crimes Act 1961 in May 2007. The amendment removed the defence of reasonable force for parents who physically discipline their children. However, AIANZ is concerned by plans for a referendum on this issue, expected in 2009.

D. RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

In line with the government's commitment to human rights protection, AIANZ calls on government to:

International human rights instruments

- Ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Status of Stateless People and the Convention on the Protection of All Persons from Enforced Disappearances;
- Support the Declaration on the Rights of Indigenous Peoples;
- Support the Optional Protocol on the International Covenant on Economic, Social and Cultural Rights;

Customary Rights of Maori to Foreshore and Seabed

- Repeal or amend the Foreshore and Seabed Act and engage in Treaty Settlement negotiations with Maori that would better recognise the customary rights of Maori to foreshore and seabed, alongside reasonable access protections for people in New Zealand to the foreshore;
- Implement the recommendations from March 2006 of the United Nations Special Rapporteur on the Human Rights of Indigenous Peoples;

Justiciability of Economic, Social and Cultural Rights in Domestic Law

- Implement economic, social and cultural rights as part New Zealand's Bill of Rights (or similar constitutional legislation);
- Remove New Zealand's reservation on Article 8 of the International Covenant on Economic, Social and Cultural Rights;

Violence against women

⁹ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.32.4.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.32.4.En?Opendocument) accessed 4 November 2008 and [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/73f172e77b12c842c1256df20033829f/\\$FILE/GO344655.doc](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/73f172e77b12c842c1256df20033829f/$FILE/GO344655.doc) accessed 4 November 2008.

- Enact legislation to better protect women from sexual violence;

Imminent Immigration Legislation

- Provide for independent oversight of the exercise of executive power under the Bill;
- Allow judicial review of decisions to deny a passenger from boarding an aircraft, vessel etc;
- Amend current provisions in the Bill to ensure that the principle of non-refoulment is not violated;
- Revisit proposals for detention without warrant;
- Revisit impacts on fair trial rights;

Youth Justice System

- Amend the law so that the age of criminal responsibility for children is raised from 10 to an internationally acceptable standard;
- Amend the law to ensure that the youth justice laws cover those that are 18 years of age and under;

Use of force against children

- Take a firm stand against weakening existing protection for children from physical, psychological abuse by parents and guardians.