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Amnesty International Aotearoa New
Zealand:
Submission to the New Zealand
Government on their Draft Report for
the Universal Periodic Review

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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".

- 1) Amnesty International (AI) welcomes the opportunity to make a submission on the New Zealand Government's draft report for the Universal Periodic Review 2009, as well as the opportunity to attend and contribute to the respective consultations in Auckland, Wellington and Christchurch recently.
- 2) The following concerns and recommendations are in addition to our submission to the Universal Periodic Review in Geneva dated 10 November 2008. This submission responds to the Government's draft report and notes key issues of concern with that report.

Background of Country (Section 2)

- 3) **Paragraph 2.1:** In terms of New Zealand's constitutional and political structure, the Treaty of Waitangi does not form part of New Zealand's legal system until it is explicitly referred to in legislation. Maori rights are not constitutionally protected in New Zealand and are able to be extinguished by an Act of Parliament. This vulnerability was demonstrated clearly by the Foreshore and Seabed Act 2004 (see point 10).
- 4) **Paragraph 2.2:** Amnesty International would welcome this paragraph explicitly noting that because the Cook Islands and Niue are not United Nations member states, and New Zealand has only limited responsibility, these self-governing states, and their peoples, are in practice excluded from the Universal Periodic Review mechanism. This could be useful in shortening the section.
- 5) **Paragraph 2.3:** The report does not discuss the workload and overburdened complaints mechanism of the New Zealand's Human Rights Commission, the Office of Human Rights Proceedings.
- 6) **Paragraph 2.4:** Amnesty International recommends the international conventions and declarations that New Zealand is not a State Party to, be noted in Paragraph 2.4; including the:
 - i) Convention Relating to the Status of Stateless Persons;
 - ii) Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
 - iii) Convention for the Protection of All Persons from Enforced Disappearances;
 - iv) ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries.

AI would welcome brief explanations as to why New Zealand has not signed the said Conventions, and the current Government's position on these.

- 7) **Paragraph 2.4:** Amnesty International also notes that New Zealand has not made the necessary declaration under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) that would allow individual communications by New Zealanders to the Committee on the Elimination of Racial Discrimination (CERD).
- 8) **Paragraph 2.4:** Amnesty International welcomed the comments in the consultations as to the updating of the last paragraph in Paragraph 2.4 in relation to NZAID. AI recommends there is mention of the civil societies' concerns as to the possible reintegration of NZAID into the Ministry of Foreign Affairs. The paragraph currently states that NZAID funds human rights institutions and educators and is committed to "mainstreaming human rights into its development assistance programmes." Amnesty International is concerned that reintegrating NZAID into the Ministry of Foreign Affairs and Trade may threaten this commitment to human rights work in development and would welcome these concerns being included within the paragraph.
- 9) **Paragraph 2.6:** Amnesty International notes that the paragraph is primarily concerned with civil and political rights and suggests that a separate paragraph on legislation of economic and social rights is included. We further note that with the Bill of Rights and the Human Rights Act focussing on civil and political rights and discrimination respectively, the general lack of support at government level for the justiciability of economic, social and cultural rights is reinforced.

Promotion and Protection of Human Rights (Section 3)

- 10) **Paragraph 3.1:** Amnesty International welcomes the review of the Foreshore and Sea Bed Act 2004 (FSA). The FSA effectively expropriated all Maori customary interests in the foreshore and seabed, and replaced them with a statutory framework that provides for the recognition of non-exclusive Maori interests in the New Zealand foreshore and seabed. To obtain legal recognition of these non-exclusive interests under the FSA, Maori need to meet very high evidential standards; much higher than those set out in other common law countries, like Canada and Australia. The New Zealand Government also fails to adequately note that The Committee on the Elimination of Racial Discrimination (CERD) considered the FSA to contain 'discriminatory elements' and asked the New Zealand government to enter into a discussion with Maori tribes to address these deficiencies.
- 11) **Paragraph 3.1:** Amnesty International supports the recommendations made by the Special Rapporteur on the Human Rights of Indigenous People (March 2006 report) 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.
- 12) **Paragraph 3.1:** Amnesty International recommends that the comments on the United Nations Declaration on the Rights of Indigenous Peoples (DRIP) in paragraph 3.1 include the position on DRIP of the new Government.
- 13) **Paragraph 3.3:** This paragraph fails to mention the minimum age of prosecution for New Zealand which do not meet the internationally acceptable level in accordance with the Human Rights Committee's 2004 recommendation. The current age of criminal responsibility for murder and manslaughter in New Zealand is 10. It also fails to include the current youth justice laws which apply to young people under the age of 17, in contravention of the Convention on the Rights of the Child which requires that the rights of children from 18 years and below are protected by the government.
- 14) **Paragraph 3.3:** In relation to the repeal of section 59 of the Crimes Act 1961 Amnesty International recommends the paragraph is updated with the plans for referendum on this issue, expected in 2009.
- 15) **Paragraph 3.7.1:** Amnesty International welcomes the statement on migrants in paragraph 3.7.1, however expresses concerns on the non-ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their families, particularly given that New Zealand is entering into Preferential Trade Agreements with numerous countries. Furthermore, Amnesty International would welcome an explanation of non-ratification of the said Convention.

Identification of Achievements, Best Practices, Challenges and Constraints (Section 4)

- 16) **Paragraph 4.1.1:** Amnesty International acknowledges New Zealand's ongoing commitment in accepting refugees for resettlement within a formal annual quota. However Amnesty International still has human rights concerns regarding refugee and asylum seeker related issues, namely:
 - i) The fulfilment of the annual quota of 750 refugees which it has only met four times in the last ten years; it has not been increased since its implementation in 1987 despite the increasing numbers of refugees due to civil and international conflicts globally.
 - ii) There is disparity in services available to individuals who are granted refugee status under the quota system and those that are granted refugee status from within New Zealand (successful asylum seekers), for example access to housing, education and healthcare.
- 17) Another area of concern is the imminent immigration legislation that will fail to protect asylum seekers from arbitrary detention, persecution, torture or death.

18) Amnesty International urges the inclusion of these concerns in the report to ensure that the report reflects the true situation on the ground for quota refugees and other refugee groups.

19) **Paragraph 4.2:** Amnesty International would welcome the inclusion of the recent introduction of stun-guns as a policing tool.

Key Human Rights Priorities (Section 5)

20) Amnesty International is concerned that the listed priorities of the Government are too general and vague. AI recommends greater detail into time-lines, what will be prioritised within the list given and details on how the priorities will happen to be included in this section to avoid the vague and general nature of the listed priorities.

General Comments

21) Amnesty International is concerned that the report primarily addresses civil and political rights, excluding economic, social and cultural rights. We suggest greater discussion of these rights within the report generally, for example the low level of social welfare and benefit payments, which remain below minimum wage, the persistent gap in wages between men and women and the high rate of domestic violence against women.

22) Amnesty International recommends that Section 2 (Background on Country) be shortened, in order to provide greater room for discussion in other sections.