

# NEW ZEALAND

**Demanding real protection:  
Strong human rights  
framework needed to address  
failures to protect**

*Amnesty International  
Submission to the UN Universal  
Periodic Review, January –  
February 2014*

**AMNESTY  
INTERNATIONAL**



# CONTENTS

Introduction.....	3
Follow up to the previous review .....	3
Violence against women.....	3
Child abuse.....	4
Equality and non-discrimination .....	4
Normative and institutional framework in New Zealand .....	4
International human rights instruments.....	4
Parliamentary processes .....	5
Promotion and protection of human rights on the ground .....	5
Asylum seekers and refugees.....	5
Economic, social and cultural rights .....	6
Child poverty .....	6
Recommendations for action by the State under review.....	7
Endnotes.....	9
Annex .....	13

## INTRODUCTION

In this submission, prepared for the Universal Periodic Review (UPR) of New Zealand in January - February 2014, Amnesty International assesses the implementation of a number of recommendations that New Zealand accepted during its previous review in 2009, including in relation to violence against women, child abuse and non-discrimination of Māori and Pacific populations.

Amnesty International notes New Zealand's failure to ratify several UN human rights treaties as well as its reservations to the Convention on the Rights of the Child. The organization is also concerned that new legislation is passed without allowing adequate time for consultation and review of the human rights impact such changes may have.

The submission also raises concerns about the rights of asylum seekers and refugees, the lack of domestic legal protections for economic, social and cultural rights, and the issue of child poverty.

Amnesty International also makes a number of recommendations to the government to address these concerns.

## FOLLOW UP TO THE PREVIOUS REVIEW

Amnesty International welcomes New Zealand's engagement with the UPR and notes that it responded favourably to a number of recommendations made by other states during its first review in May 2009, including recommendations related to the elimination of violence against women, child abuse and equality and non-discrimination.<sup>1</sup> Amnesty International notes, however, that many of New Zealand's responses were unclear as to the extent to which they supported certain recommendations,<sup>2</sup> making it difficult to ascertain what level of commitment New Zealand made to implement these recommendations.

### VIOLENCE AGAINST WOMEN

New Zealand continues to have high rates of violence against women with a 2011 UN Women report finding that between 2000 and 2010 30 percent of women in New Zealand experienced physical violence from intimate partners. These figures are even more concerning as many cases go unreported.<sup>3</sup>

While Amnesty International welcomes the government's pledge to support the UN Women's Initiative, 'COMMIT', to end violence against women and girls,<sup>4</sup> there are few government-sponsored initiatives which focus solely on ending domestic violence and other violence against women. Other government initiatives around family violence have been implemented which do not always appropriately address the issue of domestic violence.<sup>5</sup> For example, within the Family Court there have been instances where women have been forced to attend couple counselling with their abusers.<sup>6</sup> A further example is the government's proposed Family Court Proceedings Reform Bill.<sup>7</sup> While the Bill does exclude cases of domestic violence from mandatory mediation or family dispute resolution, research has shown that victims of domestic violence do not always disclose such information,<sup>8</sup> and may therefore have to take part in initiatives that are inappropriate for addressing domestic violence.

In addition, while initiatives such as Police Safety Orders, under which an alleged violent person may be removed from the home for up to five days,<sup>9</sup> are welcomed, these do not adequately address

the root causes of such violence and provide only short-term safety arrangements for those at risk.

UN Women also reported that 12 percent of women experienced sexual violence from an intimate partner between 2000 and 2010.<sup>10</sup> In view of this, it is concerning that the Taskforce for Action on Sexual Violence was disbanded in 2009 after only two years of operating. The Taskforce's 2009 report provided 71 recommendations for the prevention of and response to sexual violence.<sup>11</sup> However, four years on, many of these recommendations have not been implemented, including the implementation of the National Sexual Violence Prevention Plan and annual monitoring of progress.

## CHILD ABUSE

Levels of child abuse in New Zealand remain alarmingly high with 11,466 substantiated reports of child abuse to the Child Youth and Family service<sup>12</sup> between 1 July and 31 December 2012; up from 10,734 the previous year.<sup>13</sup>

In response to this, the government released a White Paper in October 2012 setting out a comprehensive strategy involving data collection, indicators, targets, and accountability in relation to child abuse.<sup>14</sup> A Children's Action Plan was also released by the government.<sup>15</sup>

While Amnesty International welcomes these steps, it remains concerned that the government has taken a narrow focus to addressing child abuse and not looked at the relationship between child abuse and contributing factors such as domestic violence<sup>16</sup> and poverty.<sup>17</sup>

## EQUALITY AND NON-DISCRIMINATION

Health, education, employment and income inequalities persist at alarming levels in New Zealand, with the highest nationally recorded level of income inequality among the general population recorded in 2011.<sup>18</sup> Inequalities disproportionately affect Māori and Pacific populations<sup>19</sup> and the New Zealand Human Rights Commission has raised institutional bias (structural discrimination) as a contributing factor to these inequalities.<sup>20</sup>

Following recommendations by the Committee on Economic, Social and Cultural Rights in 2012 to address institutional bias in the delivery of public services, Iwi (Tribes) and the police have developed an innovative strategy aimed at reducing victimisation among Māori.<sup>21</sup> It is regrettable, however, that similar strategies to address institutional bias are yet to be developed across all public service sectors, including health, education and justice.

These inequalities extend to civil and political rights where, for example, Māori continue to be over-represented within the criminal justice system. Māori comprise 50 percent of the total prison population, but only 15 percent of the general population.<sup>22</sup> In 2011, the Ministry of Justice refused to acknowledge and address any possible institutional bias in this regard.<sup>23</sup>

# NORMATIVE AND INSTITUTIONAL FRAMEWORK IN NEW ZEALAND

## INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

New Zealand has not ratified the Convention relating to the Status of Stateless Persons; the Convention on the Protection of All Persons from Enforced Disappearance; the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

In addition, New Zealand retains three reservations to the Convention on the Rights of the Child<sup>24</sup>

and is still considering whether to opt into the individual complaints process under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination.

## PARLIAMENTARY PROCESSES

Since 2008, the New Zealand Human Rights Commission has recorded over 70 bills which passed through at least one stage of legislative urgency.<sup>25</sup> As a result, on certain occasions Amnesty International and other organizations have been unable to put forward submissions on legislation which had significant human rights implications because of the insufficient time allowed for civil society input. The Public Health and Disability Amendment Act (No 2) is one such Act which was passed under urgency on 17 May 2013.<sup>26</sup> This Act has deeply concerning human rights implications in terms of access to an effective remedy in that it prevents people from bringing unlawful discrimination complaints about a family care policy to the Human Rights Commission or the domestic courts.

A human rights select committee would strengthen parliamentary processes and ensure that appropriate consideration is given to human rights in the passage of new legislation. While section 7 of the Bill of Rights Act 1990 (BORA) requires the Attorney-General to report any human rights inconsistencies at the introduction of the bill, there are no procedures to ensure that the member of Parliament introducing the bill respond to the Attorney-General's report and no further update from the member of Parliament is required before the final reading of the bill.

There is also no requirement for the concluding observations from UN treaty bodies to be tabled in Parliament.

# PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

## ASYLUM SEEKERS AND REFUGEES

New Zealand ratified the 1951 Convention Relating to the Status of Refugees in 1960 and the 1967 Protocol in 1973.

In June 2013, the government enacted the Immigration Amendment Bill providing for the mass detention of asylum seekers under a group warrant if they arrive in a group of thirty or more. Under this law, asylum-seekers may be detained for an indefinite period of time in violation of international human rights and refugee law. Initially a group warrant will allow detention for up to six months, with the warrant able to be renewed successively every 28 days.

The claimed purpose of the legislation is to provide an efficient processing system in the event of a mass arrival of asylum-seekers and to deter people smuggling. This is despite research indicating that community-based processing systems are an effective<sup>27</sup> and efficient<sup>28</sup> method and the fact that the Crimes Act already prohibits people smuggling.<sup>29</sup>

Amnesty International,<sup>30</sup> and a number of other organizations, including UNHCR,<sup>31</sup> the New Zealand Law Society,<sup>32</sup> and the New Zealand Human Rights Commission,<sup>33</sup> have raised concerns about the language of the Bill referring to asylum-seekers as 'illegal migrants', the fact that there is no explicit presumption against detention, the detrimental impact of detention on the mental health of asylum-seekers,<sup>34</sup> and the risk of breaching the right not to be arbitrarily detained.<sup>35</sup>

Other provisions in the Act apply to all asylum-seekers and remove existing protections and freedoms.<sup>36</sup> It includes power to suspend the processing of asylum claims (increasing the risk of arbitrary detention), limits access to judicial review and removes the obligation on the Immigration

Protection Tribunal to provide an oral hearing to subsequent asylum claims (infringing on the right to a fair trial).<sup>37</sup>

Policy changes were also announced alongside the Act which require asylum-seekers who come as part of a mass arrival to re-apply for refugee status after three years and place limits on the rights to family reunification, breaching the right to respect and protect family life,<sup>38</sup> the right to be free from discrimination,<sup>39</sup> and the right not to be penalised on account of illegal entry or presence.<sup>40</sup> At the writing of this submission, the status of these proposed policy changes is unclear.

Australia and New Zealand have announced a deal in which New Zealand will resettle 150 of Australia's processed refugees on an annual basis as part of the 750 refugees it takes within the UNHCR quota system in exchange for the option of sending asylum-seekers arriving in New Zealand to refugee detention centres in the Pacific, should there be a mass arrival of asylum-seekers in New Zealand.<sup>41</sup> Amnesty International is deeply concerned by this announcement as Australia's off-shore processing system and conditions at Nauru and Manus Island refugee detention facilities do not meet international law and standards, and have been heavily criticised including by the UN High Commissioner for Refugees.<sup>42</sup>

## ECONOMIC, SOCIAL AND CULTURAL RIGHTS

New Zealand ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1978. As a party to this Covenant, New Zealand has an international obligation to progressively realise the rights contained in the Covenant by all appropriate means, including the adoption of legislative measures.<sup>43</sup>

Despite this, economic, social and cultural rights are not fully protected in domestic legislation alongside civil and political rights in New Zealand's Bill of Rights Act 1990.<sup>44</sup> Without explicit protection within domestic law, there are no adequate remedies for a breach of economic, social and cultural rights, nor is there an obligation on New Zealand to consider economic, social and cultural rights in laws, policy and practice. The courts have found that economic, social and cultural rights are not subject to judicial review, as "[w]hether New Zealand has fulfilled its international obligations is a matter on which it may be judged in international forums but not in this Court".<sup>45</sup>

The Human Rights Commission has limited powers to investigate and resolve complaints of certain types of discrimination through alternative dispute resolution;<sup>46</sup> it should also have the powers to investigate and resolve complaints relating to the breach of economic, social and cultural rights.

New Zealand has not yet ratified the Optional Protocol to ICESCR, which would provide additional remedies through international forums.

In 2012, the Committee on Economic, Social and Cultural Rights expressed concern about the continued failure of New Zealand to fully incorporate the ICESCR into its domestic legal order. It urged New Zealand to include these rights in the 1990 Bill of Rights and to ensure that draft laws, regulations and policies are compatible with economic, social and cultural rights and make additional efforts to raise awareness of economic, social and cultural rights among parliamentarians and policy makers.<sup>47</sup> New Zealand has failed to take adequate steps to adopt these recommendations.

## CHILD POVERTY

The Ministry of Social Development has found that up to 270,000 children (up to 25 percent of all children) live in relative poverty.<sup>48</sup> These children have difficulty accessing rights to adequate housing, healthcare, food and education. The lack of an official measure of child poverty in New Zealand, the lack of co-ordination between policies, and the failure to establish a national action plan for reducing child poverty levels have been raised as concerns by the Human Rights Commission and other organizations.<sup>49</sup>

Amnesty International welcomes the creation of the Expert Advisory Group on Child Poverty by the Office of the Children's Commissioner and the government's acceptance of some of the recommendations contained in its report, *Solutions to Child Poverty*.<sup>50</sup> The report focuses on promoting paid employment; however, there is some concern that it fails to adequately recognise the responsibility of the government to provide a minimum standard of living for those who may be unable to provide for themselves. As such, the government's initiatives lack a clear, rights-based approach to addressing child poverty that centres on the best interests of the child,<sup>51</sup> and that recognise child poverty as a multi-faceted problem.<sup>52</sup>

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

### **Amnesty International calls on the government New Zealand:**

#### *UPR follow-up*

- To establish initiatives with a specific focus on tackling domestic violence and which address the root causes of violence against women;
- To develop a comprehensive system of recording and analysing data on violence against women, with data disaggregated by sex, type of violence, relationship of perpetrator to the victim and ethnicity, and to monitor the effectiveness of legislation, policy and practice relating to all forms of violence against women;
- To reinstate the Taskforce for Action on Sexual Violence and implement the recommendations in its 2009 report;
- To take a holistic approach to tackling child abuse by incorporating policies which recognise the wider contributing factors to child abuse, including domestic violence and child poverty, and ensuring these relationships are addressed in the Children's Action Plan;
- To develop strategies across all public service delivery sectors, including health, education and justice, to identify and address institutional bias against Māori and Pacific people.

#### *Normative and institutional framework*

- To ratify the Convention relating to the Status of Stateless Persons, the Convention on the Protection of All Persons from Enforced Disappearance, and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- To remove the three reservations to the Convention on the Rights of the Child;
- To ratify the Optional Protocol to the Convention on Economic, Social and Cultural Rights, including opting in to its inquiry and inter-state mechanisms;
- To ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure;
- To opt into the individual complaints process under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

#### *Parliamentary processes*

- To ensure that there are open and transparent consultations with civil society on proposed legislation which may impact on rights and freedoms, including by developing clear guidelines that limit the circumstances in which a bill may be passed urgently;

- To establish a parliamentary human rights select committee to conduct comprehensive human rights analysis of both primary and secondary legislation in line with domestic and international human rights laws and standards, and to publicly report its findings;
- To require the Attorney-General to table reports on the consistency of legislation with the Bill of Rights Act 1990 and international human rights law and standards on a bill's third reading as well as its introduction;
- To require the Member of Parliament responsible for submitting a bill to respond publicly to reports from the Attorney-General that provisions in a bill are inconsistent with the Bill of Rights Act 1990;
- To table all concluding observations from UN treaty bodies in Parliament for debate.

#### *Protection of the rights of asylum seekers and refugees*

- To ensure that adequate safeguards are put in place to ensure that the Immigration Amendment Act 2013 is interpreted so as not to breach New Zealand's domestic and international obligations under the 1951 Refugee Convention;
- To ensure that any policy changes associated with the Immigration Amendment Act 2013 do not breach domestic and international obligations;
- To prohibit the transfer of asylum seekers to detention centres in third countries which do not meet international human rights standards, including those that have not ratified the UN Convention relating to the Status of Refugees and have no existing laws or procedures to assess asylum seeker claims immediately;
- To increase the number of refugees of refugees resettled through the UN quota system from 750 to 1000 per annum.

#### *Economic, social and cultural rights*

- To incorporate economic, social and cultural rights into the Bill of Rights Act 1990;
- To take steps so that the competent authorities review draft laws, regulations and policies to ensure their compatibility with the provisions of the International Covenant on Economic, Social and Cultural Rights;
- To provide for effective and enforceable legal remedies on economic, social and cultural rights;
- To extend the Human Rights Commission's alternative dispute mandate to resolve disputes in relation to economic, social and cultural rights;
- To make additional efforts to raise awareness of economic, social and cultural rights among parliamentarians and policy-makers.

#### *Child poverty*

- To adopt a rights-based approach to child poverty by:
  - Explicitly incorporating children's rights into domestic legislation;
  - Ensuring any new initiatives to tackle child poverty take a rights-based and child-centred approach;
  - Initiating a child budgeting exercise to specify strategic allocations to implement children's rights, track this implementation, monitor results and evaluate impact;
  - Developing and implementing a holistic national action plan for reducing child poverty.



# ENDNOTES

---

<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review on New Zealand*, 4 June 2009, A/HRC/12/8

<sup>2</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review on New Zealand*, 7 July 2009, A/HRC/12/8(Add.1)

<sup>3</sup> Women's Refuge notes that Police estimate only 18% of domestic violence incidents are reported <https://womensrefuge.org.nz/WR/Domestic%20violence/Statistics.htm>. In addition, a 2010 study found that only 12.8% of women experiencing violence spoke to the police. See Fanslow, J. L. & Robinson, E. M. (2010). Help-seeking behaviours and reasons for help seeking reported by a representative sample of women victims of intimate partner violence in New Zealand. *Journal of Interpersonal Violence*, 25(5), 929-951. doi: 10.1177/0886260509336963

<sup>4</sup> Press release made by Jo Goodhew, Minister of Women's Affairs, 6 March 2013, available at <http://www.beehive.govt.nz/release/nz-commits-comprehensive-approach-towards-ending-violence-against-women-and-girls>

<sup>5</sup> The Auckland Coalition for the Safety of Women and Children (February 1013), *Submission to the Family Court Proceedings Bill 2013*, available at [http://www.awc.org.nz/userfiles/16\\_1361329606.pdf](http://www.awc.org.nz/userfiles/16_1361329606.pdf)

<sup>6</sup> The Auckland Coalition for the Safety of Women and Children (February 1013), *Submission to the Family Court Proceedings Bill 2013*, available at [http://www.awc.org.nz/userfiles/16\\_1361329606.pdf](http://www.awc.org.nz/userfiles/16_1361329606.pdf)

<sup>7</sup> *Family Court Proceedings Reform Bill 90-2* (June 2013), can be accessed at <http://www.legislation.govt.nz/bill/government/2012/0090/20.0/versions.aspx>

<sup>8</sup> The Auckland Coalition for the Safety of Women and Children (February 1013), *Submission to the Family Court Proceedings Bill 2013*, available at [http://www.awc.org.nz/userfiles/16\\_1361329606.pdf](http://www.awc.org.nz/userfiles/16_1361329606.pdf)

<sup>9</sup> Since 1 July 2010, the police are able to issue Police Safety Orders (PSO's). Further information on PSO's is available at <http://www.police.govt.nz/safety/home.domesticviolence.html#police-safety-order>

<sup>10</sup> UN Women (2011), *Progress of the Worlds Women: In Pursuit of Justice*, available at <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>

<sup>11</sup> Taskforce for Action on Sexual Violence (2009), *Report of the Taskforce for Action on Sexual Violence*, available at <http://www.justice.govt.nz/policy/supporting-victims/taskforce-for-action-on-sexual-violence/policy-and-consultation/taskforce-for-action-on-sexual-violence/documents/tasv-report-full>

<sup>12</sup> Child Youth and Family is a service of the Ministry of Social Development that works to promote and protect the safety and wellbeing of children and families. More information available at: <http://www.cyf.govt.nz/about-us/who-we-are-what-we-do/index.html>

<sup>13</sup> Further information available at <http://www.cyf.govt.nz/cyf-newsletter/awhi-mai-awhi-atu-issue-4/latest-child-abuse-statistics-tell-interesting-story.html>

<sup>14</sup> The Government's White Paper for Vulnerable Children Volume I makes a number of proposals for improving the outcomes of vulnerable children in New Zealand, with a focus on those who are at risk of maltreatment. Ministry of Social Development (December 2012), *The White Paper for Vulnerable Children Volume I*, available at <http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/policy-development/white-paper-vulnerable-children/white-paper-for-vulnerable-children-volume-1.pdf>. The White Paper for Vulnerable Children Volume II outlines the evidence and rationale for the plans. Ministry of Social Development (December 2012), *The White Paper for Vulnerable Children Volume II*, available at <http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/policy-development/white-paper-vulnerable-children/whitepaper-volume-ii-web.pdf>

<sup>15</sup> The Children's Action Plan sets out the actions to be taken in relation to the Government's plans set out in The White Paper for Vulnerable Children Volume I and the timeframes. Ministry of Social Development (October 2012), *Children's Action Plan*, available at <http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/policy-development/white-paper-vulnerable-children/white-paper-for-vulnerable-children-childrens-action-plan-summaries.pdf>

<sup>16</sup> Half of all Care of Children cases heard in the Family Court involve domestic violence. See Ministry of Justice (20 September 2011), *Reviewing the Family Court: A public consultation paper*, can be accessed at <http://www.justice.govt.nz/publications/global-publications/f/family-court-review-public-consultation-paper/publication>

<sup>17</sup> Poverty has been found to be a key risk factor in child abuse. For a discussion, see Child Poverty Action Group (June 2013), *Child Abuse: What role does poverty play?*, available at <http://www.cpag.org.nz/assets/Publications/130610%20CPAG%20Child%20Abuse%20Report%201%20June%202013.pdf>

<sup>18</sup> Perry, B. *Household Incomes in New Zealand: Trends in Indicators of Inequality and Hardship 1982 to 2011*. Wellington: Ministry of Social Development (2012). Can be accessed at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/household-incomes/>

<sup>19</sup> For example, 50% of poor children in New Zealand come from Maori or Pacific Island backgrounds. See report on Household Incomes in New Zealand at endnote 19 above

<sup>20</sup> New Zealand Human Rights Commission A fair go for all? Rite tahi tātou katoa? Addressing Structural Discrimination in Public Services (2012) available at [http://www.hrc.co.nz/wp-content/uploads/2012/08/HRC-Structural-Report\\_final\\_webV1.pdf](http://www.hrc.co.nz/wp-content/uploads/2012/08/HRC-Structural-Report_final_webV1.pdf)

<sup>21</sup> New Zealand Police *The Turning of the Tide – a Whanau Ora Crime and Crash Prevention Strategy*, (2012), available at <http://www.police.govt.nz/sites/default/files/resources/the-turning-of-the-tide-strategy.pdf>

<sup>22</sup> Corrections NZ, Over Representation of Maori in the Criminal Justice System, 2007 available at [http://www.corrections.govt.nz/data/assets/pdf\\_file/0004/285286/Over-representation-of-Maori-in-the-criminal-justice-system.pdf](http://www.corrections.govt.nz/data/assets/pdf_file/0004/285286/Over-representation-of-Maori-in-the-criminal-justice-system.pdf)

<sup>23</sup> In the New Zealand's Government's document on implementation of UPR recommendations, the Ministry of Justice state that "the New Zealand Government does not consider that this over-representation [of Māori in the criminal justice system] is due to institutional bias." The Ministry of Justice (July 2011), *UPR Progress Chart*, paragraph 33. Can be accessed at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/international-human-rights-instruments/universal-periodic-review/upr-documents-relating-to-new-zealand-1/upr-documents-relating-to-new-zealand>

<sup>24</sup> New Zealand has made three reservations to the Convention on the Rights of the Child. The first of these holds that children whose parents do not have a legal right to be in New Zealand are not entitled to education, health and welfare benefits. The second is that the Government reserves the right not to legislate further or to take additional measures as may be envisaged in article 32 (2) as it considers that the rights of the child provided for in article 32 (1) are adequately protected by its existing law. The last is a reservation of article 37(c) in circumstances where the shortage of suitable facilities makes the mixing of juveniles and adults unavoidable; and further reserves the right not to apply article 37 (c) where the interests of other juveniles in an establishment require the removal of a particular juvenile offender or where mixing is considered to be of benefit to the persons concerned regarding age mixing in prisons

<sup>25</sup> See Annex 6 of the submission of the New Zealand Human Rights Commission for this list

<sup>26</sup> New Zealand Public Health and Disability Amendment Bill (No 2) available at <http://www.legislation.govt.nz/bill/government/2013/0118/latest/whole.html> 30. For background, in 2012 the New Zealand Court of Appeal affirmed that the policy of not paying family carers to provide disability support services to disabled family members constituted unjustifiable discrimination on the basis of family status. In direct response to this decision the Government passed the New Zealand Public Health and Disability Amendment Act (No 2) under urgency on 17 May 2013. The Act effectively ousts the jurisdiction of the New Zealand Human Rights Commission to assess cases for discrimination around the Act and removes any potential domestic remedy for unlawful discrimination relating to family care policy.

<sup>27</sup> The International Detention Coalition & the La Trobe Refugee Research Centre, *There are Alternatives: A Handbook for preventing unnecessary immigration detention*. Available at <http://www.ohchr.org/Documents/Issues/Migration/Events/IDC.pdf>

<sup>28</sup> The International Detention Coalition has found that a cost saving of 93% was noted in Canada and 69% in Australia on alternatives to detention compared to detention costs, see <http://idcoalition.org/cap/handbook/capfindings/>

<sup>29</sup> Under section 98C of the Crimes Act 1961, it is an offence to knowingly arrange for an unauthorised migrant

to enter New Zealand for material benefit (with a maximum penalty of twenty years imprisonment and/or \$20,000 fine). Section 98C of the Crimes Act 1961 is available at <http://www.legislation.govt.nz/act/public/1961/0043/latest/DLM328720.html>

<sup>30</sup> For more information regarding these concerns, see Amnesty International's submission on the Immigration Amendment (Mass Arrivals) Bill (8 June 2012), available at <http://www.amnesty.org.nz/files/120608%20Submission%20Immigration%20Amendment%20Bill.pdf>

<sup>31</sup> United Nations High Commissioner for Refugees (8 June 2012), *Submission on the Immigration Amendment Bill*, can be accessed at [http://unhcr.org.au/unhcr/index.php?option=com\\_content&view=article&id=249&catid=37&Itemid=61](http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=249&catid=37&Itemid=61)

<sup>32</sup> New Zealand Law Society submission to the Immigration Amendment Bill, 8 June 2012, available at [http://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0015/53070/Immigration\\_Amendment\\_Bill-08\\_06\\_12.pdf](http://www.lawsociety.org.nz/_data/assets/pdf_file/0015/53070/Immigration_Amendment_Bill-08_06_12.pdf)

<sup>33</sup> Human Rights Commission (8 June 2012), *Submission on the Immigration Amendment Bill*, available at [http://www.hrc.co.nz/wp-content/uploads/2012/06/Submission-on-Immigration-Bill\\_NZHRC.pdf](http://www.hrc.co.nz/wp-content/uploads/2012/06/Submission-on-Immigration-Bill_NZHRC.pdf)

<sup>34</sup> The UNHCR has found detention to be seriously detrimental to the health and wellbeing of asylum seekers on Australia's offshore processing centre on Manus Island, Papua New Guinea. UNHCR's report, *UNHCR Mission to Manus Island, Papua New Guinea, 15 – 17 January 2013*, is available at <http://unhcr.org.au/unhcr/images/2013-02-04%20Manus%20Island%20Report%20Final.pdf>

<sup>35</sup> Article 9, Universal Declaration of Human Rights (UDHR), article 9, International Covenant on Civil and Political Rights and section 23, NZBORA. Also see article 31(2), 1951 Convention Relating to the Status of Refugees.

<sup>36</sup> Amnesty International Submission to the Immigration Amendment (Mass Arrivals) Bill (8 June 12), available at <http://www.amnesty.org.nz/files/120608%20Submission%20Immigration%20Amendment%20Bill.pdf>

<sup>37</sup> Amended section 233, Immigration Act 2009 as set out in the Immigration Amendment Act 2013

<sup>38</sup> Article 16, UDHR

<sup>39</sup> Article 7, UDHR and section 19, NZBORA

<sup>40</sup> Article 31, 1951 Convention relating to the Status of Refugees

<sup>41</sup> For a more detailed account of Amnesty International's concerns with this deal, see: Amnesty International Aotearoa New Zealand, *The deal with Australia: Summary of Concerns*, available at [http://www.amnesty.org.nz/files/Deal\\_with\\_Australia\\_Summary\\_of\\_Concerns.pdf](http://www.amnesty.org.nz/files/Deal_with_Australia_Summary_of_Concerns.pdf)

<sup>42</sup> *UNHCR Mission to Manus Island, Papua New Guinea, 15 – 17 January 2013*, available at <http://unhcr.org.au/unhcr/images/2013-02-04%20Manus%20Island%20Report%20Final.pdf>, *UNHCR Mission to the Republic of Nauru, 3 – 5 December 2012*, available at <http://unhcr.org.au/unhcr/images/2012-12-14%20nauru%20monitoring%20report%20final.pdf>

<sup>43</sup> Article 2, International Covenant on Economic, Social and Cultural Rights

<sup>44</sup> <http://www.legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html>

<sup>45</sup> *Lawson v Housing New Zealand* [1997] 2 NZLR 474 (HC) at [488] and [498] per William J

<sup>46</sup> New Zealand's alternative dispute resolution mechanisms can be used in relation to the prohibited grounds of discrimination set out in section 21 of the Human Rights Act 1993. A list of these is available here <http://www.hrc.co.nz/enquiries-and-complaints-guide/what-can-i-complain-about>

<sup>47</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights on New Zealand (2012) accessed at <http://www2.ohchr.org/english/bodies/cescr/cescrs48.htm>

<sup>48</sup> Perry, B. *Household Incomes in New Zealand: Trends in Indicators of Inequality and Hardship 1982 to 2011*, page 15. Wellington: Ministry of Social Development (2012). Can be accessed at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/household-incomes/>

<sup>49</sup> These concerns have also been raised by the Human Rights Commission: Media Release (December 2012), *Call for national plan to end child poverty*, available at <http://www.hrc.co.nz/2012/call-for-national-plan-to-end-child-poverty> and the Child Poverty Action Group: Media Release (May 2013), *Budget 2013*, available at <http://www.cpag.org.nz/news/media-release-budget-2013/>

<sup>50</sup> Expert Advisory Group on Solutions to Child Poverty, *Solutions to child poverty in New Zealand evidence for action*, Office of the Children's Commissioner, (December 2012), available at [http://www.occ.org.nz/\\_data/assets/pdf\\_file/0008/10151/Child\\_Poverty\\_Report\\_Web.pdf](http://www.occ.org.nz/_data/assets/pdf_file/0008/10151/Child_Poverty_Report_Web.pdf)

<sup>51</sup> Child Poverty Action Group submission on the Office of the Commissioner for Children's Expert Advisory Group' *Solutions to Child Poverty*. October 2012, page 4, *The focus on paid work*, available at [http://www.cpag.org.nz/assets/Submissions/OCC\\_EAG%20Submission%20FINAL.pdf](http://www.cpag.org.nz/assets/Submissions/OCC_EAG%20Submission%20FINAL.pdf)

<sup>52</sup> Office of the Commissioner for Children's Expert Advisory Group' *Solutions to Child Poverty*

# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>1</sup>

*New Zealand: Briefing to the UN Committee on Economic, Social and Cultural Rights, 48<sup>th</sup> Session, May 2012* (ASA 32/001/2012).

*New Zealand: Submission on the Immigration (Mass Arrivals) Amendment Bill* (PCO15375/23.0) (2012), (available at; [http://www.amnesty.org.nz/files/AIANZ\\_Submission\\_Immigration\\_Amendment\\_Bill.pdf](http://www.amnesty.org.nz/files/AIANZ_Submission_Immigration_Amendment_Bill.pdf) [accessed on 24/07/2013]).

*Amnesty International Aotearoa New Zealand: Submission on the Green Paper for Vulnerable Children* (2012). (available at; [http://www.amnesty.org.nz/files/AIANZ\\_Green\\_Paper\\_submission\\_28022012.pdf](http://www.amnesty.org.nz/files/AIANZ_Green_Paper_submission_28022012.pdf) [accessed on 24/07/2013]).

*Amnesty International Aotearoa New Zealand: Make Our Rights Law Digest on Economic, Social and Cultural Rights* (2013). (available at; [http://www.amnesty.org.nz/files/ESC\\_Rights\\_in\\_New\\_Zealand\\_Digest.pdf](http://www.amnesty.org.nz/files/ESC_Rights_in_New_Zealand_Digest.pdf) [accessed on 24/07/2013]).

---

<sup>1</sup> All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/NewZealand>

**AMNESTY**  
**INTERNATIONAL**



[www.amnesty.org](http://www.amnesty.org)