

NEW ZEALAND

Role of the Human Rights Commission

FEBRUARY 2004

**Statement to the 7th Asia Pacific NGO Forum
Kathmandu, February 2004
prepared by the Human Rights Network Trust of Aotearoa/New Zealand**

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1. National Plan of Action for Human Rights – Te Ritenga o te Motu Mo Nga Tika o te Tangata

Our NHRI, the Human Rights Commission, is making good progress on drawing up the New Zealand Action Plan on Human Rights (NZAPHR). The Commission is slightly under resourced by Government for this activity, however, extra staff are in place and a strategy has been developed and implemented. A National Advisory Committee (NAC) has been established made up of civil society representatives with a breadth of experience in human rights. The Convenor of the Human Rights Network Trust, Ced Simpson, serves on the NAC. Thematic sub-committees are to be established also, as well as a Government Liaison Committee.

The project to develop the NZAPHR was launched in December 2002. The human rights civil society community sees this as an important development in creating a whole of government approach to human rights.

When completed, the National Action Plan will provide a strategic direction for further promoting fundamental civil and political human rights such as freedom of expression. It is hoped that the NZAPHR will also provide a framework for the integration of economic, social and cultural rights into the political decision-making process.

The NZAPHR will have a medium term focus, aiming to set the human rights agenda for the next five-to-ten year period by showing where New Zealand is doing well and by providing a set of recommendations on areas that need improving.

Public opinion surveys have been conducted, a survey was also undertaken through the Commission's website and civil society consultation meetings were held during the second half of 2003.

The Plan is due for completion by the end of 2004.

Information on the National Plan of Action is available on the Human Rights Commission's website www.hrc.co.nz or the Human Rights Network website www.humanrights.net.nz.

2. Terrorism Legislation

Human rights organisations and individuals have been publicly expressing grave concern during the past year over the on-going detention of Ahmed Zaoui, which they consider to be a breach of his human rights.

Ahmed Zaoui has been detained as a result of heightened security fears leading on from the World Trade Centre attack on September 11, 2001. Mr Zaoui is an Algerian national, professor of religion and a political activist. He fled Algeria in 1993 because of increased harassment from the Algerian military that blocked Algeria's first and

only democratic election after his party, the FIS, gained a majority in the first round of voting. Ahmed Zaoui has been detained since he entered New Zealand in December 2002 despite being granted refugee status in August 2003. Mr Zaoui's detention is on the basis of security intelligence information that neither he nor his lawyers have yet been allowed to see.

Amnesty International has stated that (despite heightened security concerns) the New Zealand authorities must take human rights safeguards seriously given the death sentences passed against Mr Zaoui in Algeria by both the repressive government and the armed opposition group of which he has been alleged to be a member.

According to Amnesty International, "If the government has classified information implicating Ahmed Zaoui as a threat to New Zealand's national security, he must be given a fair trial. It is a red herring to suggest that this is not possible because a full disclosure of the sources of specific classified information would endanger New Zealand's security. How a fair hearing can be conducted within national security constraints has been clearly established in Canada and, in cases before and since 11 September 2001, by the European Court of Human Rights."

In December 2003 a High Court review of the case found that the Inspector-General of the Security Intelligence Service (SIS) must consider human rights when he reviews the Security Risk Certificate on Ahmed Zaoui. Advice given to the Minister of Immigration by the Inspector-General will determine Mr Zaoui's fate. The High Court also found that Mr Zaoui should be given access to a summary of the information held against him by the SIS.

The High Court judge conducting the review, Justice Williams, found that provision of a summary of allegations was not prohibited under New Zealand law. He also found that human rights obligations "mandate the provision of such a summary consistent with overseas practice."

The Human Rights Commission appeared before the High Court during the review in support of Mr Zaoui's human rights.

More information on Ahmed Zaoui is available on the Network's website www.humanrights.net.nz.

3. Update on disability human rights developments in Aotearoa-NZ

Since APF7, where one of the main themes related to disability rights, NZ has continued active involvement. Prior to APF7, disabled people led their disability NGOs to take an active part in the issue, notably in lobbying government to formally support a Convention.

The government has moved towards active support and in May 2003 gave formal notice via Cabinet that it would be actively involved through its diplomatic representatives. The lead policy agency, the Office of Disability Issues (ODI) and the Human Rights Division of the Ministry of Foreign Affairs and Trade (MFAT) have ongoing involvement at a governmental level and close consultative linkages with

disability-HR NGOs. The Minister of Disability Issues lobbies for a disability Convention within Cabinet.

The NHRI has continued active involvement/support with disabled commissioner Robyn Hunt taking primary responsibility. It has continued to be involved in:

- Supporting the network of disability (and sometimes other human rights) NGOs who work to progress a disability convention.
- Representation at a British Council and APF organised disability workshop in India in May 2003, and at an ESCAP meeting of experts in Bangkok in June 2003.
- Representation at the 2nd ad hoc committee meeting about a disability convention at the United Nations in July-August 2003.

Given the very constructive climate of mutual support, NZ participation at the 2nd ad-hoc committee meetings was very much a team effort. Two disabled people who were the NGO representatives (fully funded by the government) were included as active participants in all aspects of delegation activities and attended country meetings, briefings etc to the fullest extent possible. NZ took a lead with Mexico and the EU in brokering a resolution that meant the meeting agreed that the work of drafting a convention would go ahead, and how that drafting committee would be constituted. Work is now in progress to finalise those representatives, of whom a substantial proportion will be disabled people, who are recognised to have primary expertise in disability.

The Human Rights Network Trust has been involved, via its trustee with disability expertise in informing, educating and lobbying on this matter. The constituency is broad: disabled people in disability NGOs, human rights NGOs other civil society NGOs, professional groups, universities and government agencies. Politicians are a further significant constituency. The NZ experience has been that constructive alliances sometimes coalesce and advance human rights.

4. Indigenous Rights

In June this year the Human Rights Commission produced a draft discussion document on Te Mana I Waitangi: Human Rights and the Treaty of Waitangi. The discussion document is aimed at developing a better understanding of the human rights dimensions of the Treaty and their relationship with domestic and international human rights law. The document is available from www.hrc.co.nz or www.humanrights.net.nz.

New Zealand has strongly supported the establishment of the international Indigenous Rights Forum and is providing financial and technical assistance to the recently established Secretariat. Māori involvement in the official process still appears to be less than adequate despite Māori having been active in advocating for a Convention on indigenous rights for decades. A series of special meetings to exchange views between Māori and Government are being planned.

An area of concern noted by the CEDAW Committee when considering New Zealand's fifth report, was that the Human Rights Act 1993 does not explicitly cover non-discrimination on the basis of language and culture. Efforts will be made to

ensure that activities to address these areas emerge from the National Plan of Action consultations.

5. Women's Rights

In July 2003 New Zealand made its 5th report on the implementation of CEDAW. Women's civil society groups collaborated on a shadow report. The CEDAW Committee welcomed positive developments in areas such as:

- the commencement of work on a Women's Action Plan
- the adoption of the Employment Relations Act 2000
- the establishment of a paid parental leave scheme
- the establishment of the Equal Employment Opportunities Commissioner within the Human Rights Commission
- New Zealand's ratification of the Optional Protocol to CEDAW in September 2000.

However, the Committee expressed concern and issued recommendations on a number of themes such as:

- CEDAW has not been enacted into law to achieve domestic implementation
- low numbers of women in Parliament, local government, as chief executives in the public service, on Crown company boards
- the disadvantages faced by women in the paid labour market
- gender discrimination in the workplace, including sexual harassment
- the risks of exploitation and violence faced by prostitutes
- the prevalence of gender-based violence and the lack of systemic data collection on violence against women
- discrimination against women with disabilities, including access to loans, employment and childcare, and economic hardship
- the persistent inequalities faced by Māori and Pacific women and girls in the areas of employment, political participation, decision-making in the public and private sectors, the justice sector, tertiary education, economic independence, health status and access to health services, and domestic violence
- discrimination against refugee and migrant women in New Zealand particularly with respect to education, health, employment, violence, and residence status.

Clearly there is a good deal of work to be done before the next report in 2006. The CEDAW Committee's report is available from www.humanrights.net.nz or www.un.org/womenwatch/daw/cedaw/29sess.htm#comments.

6. Torture

In September 2003 New Zealand signed the Optional Protocol against Torture. The Convention covers all cruel, inhuman or degrading treatment or punishment of people who are deprived of their liberty in a place under state jurisdiction or control.

In New Zealand the protocol will apply to the treatment of people in prisons, police cells, residential facilities for children and young people, psychiatric and other medical institutions, some aged residential care facilities (eg, for people with dementia), immigration detention centres, and Defence Force detention facilities.

Ratification obliges the Government to authorise a national body to undertake regular inspections. Civil society representatives will actively seek involvement in this body once ratification is complete.