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## 1999 Country Reports on Human Rights Practices

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### NEW ZEALAND

New Zealand is a parliamentary democracy, with executive authority vested in an 18-member cabinet led by a prime minister. Five seats in the 120-member Parliament are reserved for the native Maori minority population. The judiciary is independent.

The police and defense forces are responsible to and firmly controlled by civilian officials.

New Zealand is a highly efficient producer of agricultural products. The mainstay of its market-based economy is the export of wool, meat, and dairy products. An expanding manufacturing sector is engaged primarily in food processing, metal fabrication, and the production of wood and paper products. Tourism is also a significant sector of the economy, and niche industries are developing in such high technology sectors as software production. Disparities in wealth are small but increasing. Most citizens enjoy a comfortable standard of living.

The Government generally respects the human rights of its citizens, and the law and judiciary provide effective means of dealing with instances of abuse. The Government has taken steps to address the problems of overcrowded prisons, violence against women, and societal discrimination against indigenous people and Pacific islanders. Trafficking in persons is a small but growing problem.

### RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no reports of political or other extrajudicial killings.

#### b. Disappearance

There were no reports of politically motivated disappearances.

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture and other forms of mistreatment, and the Government respects these prohibitions in practice.

Prison conditions generally meet minimum international standards. The average inmate population during the year was 5,300, with a maximum capacity of 5,869. An additional 500 to 600 persons were in custody on remand at any one time. In response to complaints about overcrowding, the Government added 348 new prison cells in 1998. With the inmate population projected to increase to about 6,040 by 2002, the Government also announced plans to build three new contract-managed prisons by 2003. The first of these, the Auckland Central Remand Prison, is under construction and scheduled to open in May 2000, with capacity for up to 360 inmates. Conditions at older remand facilities in Auckland and Christchurch were a source of concern. In November a new 184-cell remand facility opened in Christchurch, in which each cell is equipped with its own toilet and shower. Addington prison (where slop buckets were used in place of toilets) was closed. An 80 percent recidivism rate within the first 24 months of release is the primary penal concern.

Special issues exist concerning treatment of youth and Maori offenders. As of 1998, 18 percent of the total inmate population was under age 20. In February the Government announced plans to build seven youth units to segregate young inmates from adults, in an effort to reduce recidivism by juveniles. The first of the youth units contained 17 beds and opened October 15. An additional 35-bed unit is scheduled to open in early 2000. Maori inmates constitute over half of the prison population, although Maori make up only 15 percent of the general population. During the year, three Maori "focus units" opened in the prison system, which integrate Maori values into the rehabilitation program. A special program for sex offenders, "kia marama," has halved the rate of recidivism among those who participate. Higher Maori suicide rates are also a concern, but the most recent data indicate a declining suicide rate in the entire prison population and among Maori inmates. There were eight suicides in custody during 1998-99. Over 98 percent of prison officers are trained in suicide awareness. Assaults in custody (mostly inmate on inmate) also declined from 113 to 97 in 1998-99.

The Government permits prison visits by human rights monitors.

#### d. Arbitrary Arrest, Detention, or Exile

The law prohibits arbitrary arrest, detention, or exile, and the Government observes these prohibitions.

#### e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the Government respects this provision in practice. The judiciary provides citizens with a fair and efficient judicial process.

There is an impartial judiciary, with the right of appeal to the Privy Council in London, although this option rarely is invoked. Within the country, the Court of Appeal is the highest appellate court, and it determines appeals from the High Court, which has original jurisdiction for major crimes and important civil claims. The High Court also handles appeals from lower courts and reviews administrative actions. Remaining original jurisdiction rests with 110 judges of the district courts. Special courts include: The Employment Court; family courts; youth courts; Maori Land Court; Maori Appellate Court; and the Environment Court.

The law provides for the right to a fair trial, and the judiciary implements this provision.

There were no reports of political prisoners.

#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such practices, government authorities respect these prohibitions, and violations are subject to effective legal sanction.

#### Section 2 Respect for Civil Liberties, Including:

##### a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the Government respects these rights in practice. An independent press, an effective judiciary, and a functioning democratic political system combine to ensure freedom of speech and of the press.

During the year the nongovernmental Human Rights Commission noted an unusually high number of complaints about restrictions on free speech, often from persons who suggested that their views were censored because they were not "politically correct." For example the Auckland City Council's refusal to publish in its newsletter a column critical of the 1999 Asia Pacific Economic Cooperation summit hosted by New Zealand drew criticism.

Academic freedom is not limited.

##### b. Freedom of Peaceful Assembly and Association

The law provides for these rights, and the Government respects them in practice.

##### c. Freedom of Religion

The law provides for freedom of religion, and the Government respects this right in practice.

##### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The law provides for these rights, and the Government respects them in practice.

The Government cooperates with the U.N. High Commissioner for Refugees (UNHCR)

and other humanitarian organizations in assisting refugees. Under its own refugee quota, the Government accepts up to 750 UNHCR-approved refugees per year. During the year, the Government supplemented its quota by pledging to accept up to 600 Kosovar Albanian refugees for family reunification. There were no reports of the forced expulsion of persons with a valid claim to refugee status.

### Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens with the right to change their government peacefully, and citizens exercise this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. Parliamentarians are elected under a mixed-member proportional representation system, and general elections were held in November.

Women and minorities are accorded full opportunity to participate in political life, but are underrepresented in government. In the 120-member Parliament, 36 seats are held by women; 16 by Maori; 3 members are of Pacific Island origin; and 1 is of Asian heritage. The Executive Council has 26 ministers (20 within the Cabinet and 6 outside the Cabinet) including 11 woman (one of whom is the Prime Minister), 4 Maori, and 1 Pacific Islander. The Cabinet has seven women, two Maori, and one Pacific Islander. The Prime Minister, the opposition leader, and the Chief Justice are women.

### Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international nongovernmental organizations (NGO's) operate without government restriction, investigating allegations and publishing their findings on human rights cases. Government officials are cooperative and responsive to the views of these human rights groups. The Human Rights Commission, a U.N.-accredited national human rights institution, investigates complaints of human rights violations and unlawful discrimination and acts as a conciliator. There is also a governmental race relations conciliator.

### Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The law prohibits discrimination on the basis of these factors, and the Government effectively enforces it. The 1993 Human Rights Act prohibits discrimination on grounds of sex, marital status, religious belief, ethical belief, color, race, ethnic or national origins, disability, age, political opinion, employment status, and family status.

#### Women

Violence against women is a major problem that cuts across all socioeconomic groups. A 1997 government-sponsored academic survey indicated that 1 woman in 16 was likely to be sexually assaulted each year and that 35 percent of men have abused a female partner physically at some time in their lives. It found that Maori and Pacific Islander women were particularly at risk and that multiple, violent victimization in these communities was common. In 1998 5,054 men were prosecuted for domestic assault, and 1,000 more face less serious family violence charges.

The law penalizes spousal rape. The Government convicted individuals on this charge during the year. The National Collective of Rape Crisis groups, a private, nonprofit organization, claimed that the majority of cases go unreported each year and that, of the cases that go to the police, only 10 to 15 percent end in convictions. The group reported that husbands and boyfriends commit about 25 percent of all sexual assaults.

The Domestic Violence Act, which came into effect in 1996, broadened the definition of violence to include psychological abuse, threats, intimidation, harassment, and allowing children to witness psychological abuse. It expanded intervention measures, such as the use of protection orders; education programs for men, women, and children; stronger police powers to arrest and detain offenders; improved access to legal services for women eligible for legal aid; and tougher penalties for breach of a protection order.

The Government's strategy to prevent family violence included a range of objectives such as providing victim support, incorporating successful innovations and proven methods from family violence centers into the national family violence programs (that is, the promotion of "best practice"), ensuring safety from violence, and implementing Maori-designed and delivered programs. The Government partially funded women's refuges, rape crisis centers, sexual abuse counseling, family violence networks, and violence prevention services.

Prostitution is legal, although organizing and recruiting women into prostitution is outlawed. There were reports of abuse and the involuntary detention of women involved in prostitution during the year (see Section 6.f.).

While the law prohibits discrimination in employment and in rates of pay for equal or similar work, government documents acknowledge that in practice a gender earnings gap persists. Many statistics show that women earn 81 percent of men's average ordinary hourly wage, a rate that has been fairly static over the last decade. A 1997 report by the New Zealand Institute of Economic Research indicated that the gender pay gap was unlikely to narrow over the next 5 years based on current industry trends. The Council of Trade Unions has launched a campaign to achieve equal pay in the work force. Effective legal remedies are available for women who experience discrimination.

## Children

The law provides specific safeguards for children's rights and protection. The Government demonstrates its commitment to children's rights and welfare through its well-funded systems of public education and medical care.

Female genital mutilation (FGM), which is widely condemned by international health experts as damaging to both physical and psychological health, traditionally was not practiced. It is illegal to perform FGM or to make arrangements for a child to be taken outside the country in order to perform it. The Government has been concerned due to a continuing increase in arrivals in the immigrant communities most likely to practice FGM, that is, Somali, Sudanese, and Ethiopian immigrants. A national FGM awareness campaign organized workshops and distributed educational materials in the African refugee communities in 1998 and 1999.

While no societal pattern of abuse of children exists, the Government recognizes the

problem of violence within the family. Both government-sponsored and charitable organizations work to prevent child abuse in the home.

### People with Disabilities

The law prohibits discrimination against people with disabilities in employment, education, and the provision of other state services. Compliance with access laws, mandated by the Human Rights Act and the Disabled Persons Community Welfare Act, varies as business owners and others strive to make necessary adaptations. The Government has not complied fully with equal access laws prohibiting discrimination on the basis of disability in areas such as public transportation and public accommodation. Under legislation that became effective on October 1, the Government extended its exemption from nondiscrimination laws for 2 more years, which means that it does not have to comply with equal access laws for the disabled until January 1, 2001. In the interim, the Minister of Justice is required to report semiannually on public sector compliance with equal access laws.

### Indigenous People

Approximately 15 percent of the population claim at least one ancestor from the country's indigenous Maori or Moriori minorities. While the law prohibits discrimination against the indigenous population, a 1999 government report noted the continuing disproportionate number of Maori included on the unemployment and welfare rolls, among the prison population, among school dropouts, in infant mortality statistics, and among single-parent households. For example the official Maori unemployment rate (19 percent) is over three times that for non-Maori. Similarly Maori inmates account for over 50 percent of the prison population. Government policy recognizes a special role for indigenous people and their traditional values and customs, including cultural and environmental issues that have an effect on commercial development. The Ministry of Maori Development, in cooperation with several Maori NGO's, seeks to improve the status of indigenous people. A special tribunal continues to hear Maori tribal claims to land and other natural resources stemming from the 1840 Treaty of Waitangi.

### National/Racial/Ethnic Minorities

Pacific Islanders, who make up 5 percent of the population, are not an indigenous people, but they experience difficulties similar to Maori.

### Section 6 Worker Rights

#### a. The Right of Association

Workers have the right to establish and join organizations of their own choosing. The principal labor organization is the New Zealand Council of Trade Unions. A second, smaller national labor federation, the New Zealand Trade Union Federation, was established in 1993. There are also a number of independent labor unions.

Labor organization is rudimentary in the territory of Tokelau (population 1,800) and in the Freely Associated State of Niue (population 2,000). In the more developed Associated State of the Cook Islands (population 18,000), most workers in the public sector, the

major employer, belong to the Cook Islands Workers' Association, an independent local union inspired by New Zealand models. Industrial relations in the Cook Islands are governed by a simplified version of older national legislation.

The law protects unions from governmental interference, suspension, and dissolution. Unions, in fact, influence legislation and government policy. Some unions are affiliated with the Labor Party; others operate independently of political parties; all are free to support parties whose policies they favor. Unions often exercise the right to strike, although this right is limited to strikes related to the negotiation of a collective contract.

The Council on Trade Unions reported 35 work stoppages in 1998 involving over 15,200 workers and the loss of approximately \$1 million (\$NZ 1.9 million) in wages. Of these 19 involved the public sector and 16 involved the private sector. As of October, work stoppages occurred at a similar pace, including major disruptions involving teachers and pilots of the country's second airline, Ansett NZ. The law prohibits strikes designed to force an employer to become party to a multicompany contract. Under the Police Act of 1958 and amendments, "sworn police officers," that is, all uniformed and plainclothes police but excluding clerical and support staff, are barred from striking or taking any form of industrial action. However, police, have freedom of association and the right to organize and to bargain collectively. Issues that cannot be settled by negotiation between the Police Association and management are subject to compulsory, final-offer arbitration.

A committee of the International Labor Organization (ILO) ruled that the Employment Contracts Act of 1991 limits the right of freedom of association and the right to strike in a manner inconsistent with ILO conventions. The Labor-led Government, which came to power in December, has pledged to abolish it.

Unions can affiliate internationally. The New Zealand Council of Trade Unions is affiliated with the International Confederation of Free Trade Unions.

#### b. The Right to Organize and Bargain Collectively

The law provides for the right of workers to organize and contract collectively, and this right is observed in practice. An ILO committee ruled that the 1991 Employment Contracts Act limits the right to bargain collectively. The law prohibits uniformed members of the armed forces from organizing unions and bargaining collectively.

Unions represent fewer than a quarter of all wage earners. Under the Employment Contracts Act, employment relationships are based on contracts. Individual employees and employers may choose to conduct negotiations for employment contracts on their own behalf, or they may authorize any other person or organization to do so on their behalf. Although choosing a union is entirely voluntary, unions have remained the most common agents used by workers to negotiate with employers. Employers must recognize a representative authorized by an employee or employees. However, neither employers nor employees are required to negotiate or to agree to a contract. Decisions by the Court of Appeals during the year emphasized the parties' freedom to contract to such an extent that union officials believe that it undermines work conditions.

The Government does not control mediation and arbitration procedures. The Employment Court hears cases arising from disputes over the interpretation of labor laws. A less formal

body, the employment tribunal, is available to handle wage disputes and assist in maintaining effective labor relations. Firing an employee for union activities is grounds for a finding of unjustified dismissal and may result in reinstatement and financial compensation.

There are no export processing zones.

#### c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including forced and bonded labor by children. Inspection and legal penalties ensure respect for the provisions. However, there were reports of the involuntary detention of women involved in prostitution, and in October, in what appears to be an isolated case, seven Thai women were freed from slave labor conditions in an Auckland factory (see Sections 5 and 6.f.).

#### d. Status of Child Labor Practices and Minimum Age for Employment

The Government prohibits forced and bonded child labor and enforces this prohibition effectively (see Section 6.c.). Department of Labor inspectors effectively enforce a ban on the employment of children under the age of 15 years in manufacturing, mining, and forestry. Children under the age of 16 may not work between the hours of 10 p.m. and 6 a.m. In addition to explicit restrictions on the employment of children, compulsory education ensures that children under the minimum age for leaving school (16 years) are not employed during school hours. By law children enrolled in school may not be employed, even outside school hours, if such employment would interfere with their education.

#### e. Acceptable Conditions of Work

The law provides for a minimum 3-week annual paid vacation and 11 paid public holidays. A 40-hour workweek is traditional, but under the Employment Contracts Act employers and employees may agree to longer or shorter workweeks. While the law does not provide specifically for a 24-hour rest period weekly, management and labor accept the practice, and it is the norm. The government-mandated hourly minimum wage of approximately \$3.50 (\$NZ 7.00) applies to workers 20 years of age and older. Combined with other regularly provided entitlements and welfare benefits for low-income earners, this wage is generally adequate to provide a decent standard of living for a worker and family. In 1994 a minimum wage for younger workers was introduced at 60 percent of the adult minimum. A majority of the work force earns more than the minimum wage. The current youth minimum wage of approximately \$2.10 (\$NZ 4.20) applies to workers ages 16 to 19.

An extensive body of law and regulations govern health and safety issues, notably the 1992 Health and Safety in Employment Act. Under this legislation, employers are obliged to provide a safe and healthy work environment, and employees are responsible for their own safety and health as well as ensuring that their actions do not harm others. However, the New Zealand Council of Trade Unions has criticized the act, for not providing sufficient employee involvement in workplace decisions affecting health and safety. Under the Employment Contracts Act, workers have the legal right to strike over health and safety issues. Unions, and members of the general public may file safety complaints

on behalf of workers. Department of Labor inspectors enforce safety and health rules, and they have the power to shut down equipment if necessary. The Department of Labor standard is to investigate reports of unsafe or unhealthy working conditions within 24 hours of notification. Workers have the right to withdraw from a dangerous work situation without jeopardy to continued employment.

f. Trafficking in Persons

The law does not address trafficking in persons specifically, and the applicable related crime, aiding and abetting breach of immigration regulations, carries relatively light penalties. Laws against child sexual exploitation and slavery carry penalties of up to 14 years in prison and recently have been used to prosecute citizens working with foreign prostitutes. However, prostitution is legal.

Trafficking in women and children largely from Thailand for the sex industry is a small but growing problem. In addition in October seven Thai women were freed from slave labor conditions in an Auckland factory (see Sections 5 and 6.c.).

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