

Indonesia Human Rights Committee,
Box 68-419,
Auckland, 1125

13 March 2009

Submission to the Consultation Draft of the New Zealand National Report to be submitted to the United Nations Universal Periodic Review: Human Rights Council

The Indonesia Human Rights Committee offers the following submission which relates to Article 2.4 of the Consultation Draft: International Commitments.

Introduction

Every United Nations member nation has a responsibility to promote peace and human rights beyond its borders. The preamble to the United Nations Charter reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". All states have an obligation to promote the observance of fundamental human rights and freedoms.

We submit that New Zealand must show evidence that it is fulfilling its responsibilities under the major international human rights instruments, such as ICCPR, ICESCR and CAT and the Genocide Convention as set out in the Consultation Draft.

1. Responsibility to promote peace and broker conflict resolution

Aotearoa (New Zealand) is blessed by relative prosperity and security from the threat of armed intervention, and therefore has a particular responsibility to take a strong moral stand in world affairs and to take "appropriate measures to strengthen universal peace". (UN Charter, Chapter 1, Article 1.2)

In the 1970s, 1980s and 1990s New Zealand took a strong stand against French nuclear testing and went on to ban the visits of all nuclear armed and powered warships. In 1998 New Zealand also helped to broker a peace agreement that ended the long-running conflict between the Government of Papua New Guinea and the people of Bougainville.

However, New Zealand has not capitalised on these successful initiatives to build a tradition of peace building and conflict resolution. Norway, a western nation about the same size as New Zealand has takes a leading role in brokering peace in conflicts in Sri Lanka, the Philippines, Haiti, the Sudan, Somali and the Middle East. Norway sees its role as rooted in its commitment to the United Nations.^[1]

We submit that New Zealand should now pledge its commitment to a new programme of peace-building and conflict resolution.

2 Human rights advocacy

New Zealand's human rights advocacy is often weak, and limited to expressions of concern that are not backed up by actions.

(a) Responsibility to protect

In the case of large scale crimes against humanity it is now recognised that where a national government fails to protect its people, the international community must take responsibility. This was clearly affirmed at the 2005 UN World Summit as a "collective international responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity".

One example where international action is now essential is Burma/Myanmar -where the people have endured decades of harsh military rule and where the authorities prevented aid from reaching the people following the devastating natural disaster of Cyclone Nargis.

The current ruling military junta, the State Peace and Development Council (SPDC) refused to honor the results of the last legitimate election in 1990, when Nobel Laureate Aung San Suu Kyi's National League for Democracy won 82% of the Parliamentary seats. The New Zealand Government has joined calls for the release of the leader of the struggle for democracy, Aung San Suu Kyi and calls for "genuine reform". But in contrast to other western governments, such as Canada, the EU and the United States New Zealand has imposed no financial sanctions or investment ban on the regime.

The conflict in Sri Lanka provides an example of a situation which is currently in desperate need of international intervention in order to protect the rights and freedoms of a minority ethnic group. In February 2008 Human Rights Watch claimed that the Sri Lankan government had been treating the ethnic Tamil population trapped in the war zone in the Vanni area as combatants, and was engaged in indiscriminate shelling of areas crowded with displaced persons. So called safe zones and remaining hospitals in the region were also coming under attack. The LTTE has also been reported to have held civilians against their will in areas still under their control. New Zealand has expressed its concern but has not, to our knowledge, taken active steps to promote a ceasefire, political negotiations involving all parties to the conflict, and humanitarian intervention.

We submit that New Zealand should commit to take action with other nations to protect peoples, such as those the Burmese and the Tamils of Sri Lanka, under threat of crimes against humanity, genocide and ethnic cleansing.

(b) Responsibility as a High Contracting Party to the Geneva Convention

High contracting parties to the Geneva Convention have committed themselves to bring to justice those persons alleged to be responsible for grave breaches of the convention.

In December, 2006, District Court Judge Avinash Deobhakta issued a warrant for the arrest of former Israeli military Chief of Staff Moshe Ya'alon who was visiting Auckland at the time. The Judge stated that a 'prima facie' case existed that he had contravened the Geneva Convention. However, Attorney-General Michael Cullen issued a permanent stay of the court proceedings.^[2]

Moshe Ya'alon has had criminal proceedings issued against him in the United Kingdom, with respect to his role in the assassination of Palestinian military leader Salah Shehadeh in 2002 - which involved dropping a one ton bomb on a populated area in Gaza, killing some 15 civilians, eight of them children. The papers lodged with the Court documented the allegations against Moshe Ya'alon and set out New Zealand's obligations as a signatory to the Geneva Convention.

The Attorney-General's intrusion into the court process meant that a person accused of war crimes was allowed to evade a just trial.

We submit that New Zealand should pledge that in future it will fulfill its responsibilities under the Geneva Convention by ensuring that persons who are credibly alleged to have committed grave breaches and who are under our jurisdiction are brought before court system.

(c) Responsibility to uphold self-determination of all peoples.

New Zealand should uphold the United Nations Charter Principle of "equal rights and self-determination of peoples" or the Declaration on the Granting of Independence to Colonial Countries and Peoples(1960) and the International Covenant on Civil and Political Rights (ICCPR)which declare that "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

The New Zealand Government does not acknowledge the right of the Tibetan people to self-determination. When the Chinese Government used force against peaceful demonstrators in Tibet in March 2008 the New Zealand Government called "for all sides to show restraint" and supported the right of people to "protest peacefully"^[3] but continued simultaneously with high level negotiations for a preferential free trade agreement with China.^[4]

New Zealand has long-established diplomatic, economic and defence ties to Indonesia. New Zealand did not use this relationship to advocate for the self-determination while East Timor was under military occupation. The people of West Papua, a Melanesian neighbour, are today in a similar situation. Indonesia "legitimated" its rule over West Papua by a so called "Act of Free Choice" carried out in 1969, but this procedure in which less than one percent of the population participated has been widely discredited.

West Papuan people are systematically denied the right to free expression of their political aspirations, and this year many people have been arrested on subversion charges for the "offence" of attempting to raise the banned Morning Star flag. At a mass ceremony to mark World Indigenous Peoples' Day, 9August 2008,^[5] at which a flag was briefly raised, a tribal leader was fatally wounded when security forces opened fire in the crowd. New Zealand has not taken a stand against this clear breach of the UN guaranteed right to "freedom of opinion and expression".

New Zealand has restored defence ties with Indonesia without insisting on an end to the entrenched impunity of the Indonesian military. No military personnel have been held accountable for the extensively documented crimes against humanity in Timor-Leste. Indonesia has ignored outstanding "red notices" or arrest warrants issued by Interpol with respect to military personnel indicted by the UN backed Special Crimes Tribunal in Timor-Leste. In the case of Col Burhanuddin Siagian a red notice issued in 2003 was ignored, and in 2007 while he held a command post in Jayapura, West Papua he threatened to "destroy" Papuan supporters of independence.^[6]

We submit that New Zealand should pledge to support the right of all peoples to self-determination and the right of all peoples to freely express their political aspirations.

Summary

It is recommended that New Zealand should reevaluate its international human rights responsibilities and obligations as set out in the United Nations Charter, the Universal Declaration of Human Rights and other international human rights instruments such as the ICCPR and the Geneva Convention. New Zealand should speak out and take action to end documented human rights abuses and breaches of fundamental freedoms and rights as in the examples above. It is also recommended that New Zealand should use its resources and its generally favourable international standing to serve as an active participant in mediation and conflict resolution.

New Zealand should take the opportunity of the Universal Periodic Review to pledge its intention to be a strong and consistent advocate for international human rights.

References

- [1] Johansen, Raymond, State Secretary, 'Norway's role in Peace and Conflict Resolution', 22 May, 2006 Second Annual Somali Peace Conference, Oslo, Norway
www.regjeringen.no/en/dep/ud/about_mfa/Other-political-staff/State-Secretary- retrieved 6 October, 2008
- [2] Hon Michael Cullen, Attorney General 'Comment on Moshe Ya'alon Case' 1 December, 2006
http://209.85.173.104/search?q=cache:x3Eb4V5z9FUJ:www.beehive.govt.nz/release/comment%2Bmoshe%2B%20ya039alon%2Bcase+Moshe+yaalon&hl=en&ct=clnk&cd=5&gl=nz&lr=lang_en retrieved 29 October, 2008
- [3] Prime Minister, Helen Clark, Motion before the New Zealand Parliament 18 March, 2008,
www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/China/index.p hp, retrieved 28 October, 2008
- [4] The New Zealand Free Trade Agreement with China was signed on 7 April 2008
- [5] Jakarta Post, 10 August, 2008
- [6] Cenderawasih Post, 12 May, 2007