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*Aotearoa NZ CMC members:*

Amnesty International Aotearoa NZ, Aotearoa Lawyers for Peace, Auckland University Students' Association, Campaign Against Landmines, Caritas Aotearoa NZ, Christian World Service, Development Resource Centre, Disarmament and Security Centre, Engineers for Social Responsibility NZ, International Physicians for the Prevention of Nuclear War NZ, National Council of Women NZ, National Consultative Committee on Disarmament, Oxfam NZ, Parliamentarians for Nuclear Nonproliferation and Disarmament NZ, Pax Christi Aotearoa-NZ, Peace Foundation NZ, Peace Movement Aotearoa, Soroptimist International NZ, Umma Trust, UN Association NZ, UN Youth Association NZ, UNICEF NZ, Women's International League for Peace and Freedom, Aotearoa



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**Statement to the Foreign Affairs, Defence and Trade Select Committee**

By Mary Wareham, Coordinator, Aotearoa New Zealand Cluster Munition Coalition

24 September 2009

Thank you for this opportunity to provide our views in support of the Cluster Munitions (Prohibition) Bill.

The Aotearoa New Zealand Cluster Munition Coalition (ANZCMC) is a national campaign established in March 2007 in support of the international call to stop cluster munitions from harming civilians. The ANZCMC is comprised of 23 non-governmental organisations (NGOs) and networks representing a range of constituencies. A list of the ANZCMC members that endorsed our submission was annexed to the document and I need to draw your attention to two more endorsements received after we submitted: Christian World Service and the National Council of Women of New Zealand. I would like to acknowledge the presence here of ANZCMC member Richard Archer of Pax Christi Aotearoa New Zealand.

ANZCMC members have been concerned at the impact of cluster munitions, both at their time of use and the failure rates that result in dangerous duds. We were outraged at Israel's massive use of the weapon in August 2006 and deeply disturbed by the civilian casualties that continue to this day. We greatly appreciate the work undertaken by United Nations officials (including New Zealanders David Shearer, John Flanagan, Tekimiti Gilbert and Todd Hart) to clean-up the contamination.

ANZCMC members supported the September 2006 decision by then Minister for

Disarmament and Arms Control, Hon. Phil Goff, to campaign for the creation of a legally binding agreement on cluster munitions. We were greatly encouraged when Ambassador Don MacKay, known internationally for his work to establish the 2006 Convention on the Rights of Persons with Disabilities, was dedicated to help Norway launch the “Oslo Process” to ban cluster munitions that cause unacceptable harm to civilians.

When the government announced that New Zealand would hold a crucial meeting of the Oslo Process, we formed the ANZCMC. Our aim was to reinforce the government’s work to hold a successful meeting by coordinating civil society involvement, encouraging media interest, building public support for the objective of a ban on cluster munitions, and lobbying recalcitrant government to participate and endorse the Oslo Process objective. We enjoyed a strong relationship with the Ministry of Foreign Affairs and Trade in the lead-up to and execution of the Wellington Conference on Cluster Munitions, which was held at the Wellington Town Hall from 18-22 February 2008. A total of 106 governments participated, making the meeting the largest disarmament gathering ever convened in the country.

The ANZCMC was present at the Dublin negotiation of the Convention on Cluster Munitions and we came away very satisfied with the outcome. This landmark legal instrument prohibits use, production, transfer, and stockpiling of cluster munitions and establishes a robust framework for humanitarian assistance to those affected by the weapon, including clearance of contaminated areas and assistance to victims. We were proud when Ambassador MacKay signed the Convention on behalf of New Zealand on 3 December 2008 in Oslo, Norway.

In the nine months since the signing ceremony, we have campaigned New Zealand’s swift ratification of the Convention on Cluster Munitions. Entry into force is crucial to ensuring that the life-saving provisions of the Convention become binding international law. As of 1 September 2009, a total of 98 states have signed the Convention, of which seventeen have ratified. We know of several signatories that intend to ratify this week at during the opening of the United Nations General Assembly in New York.

The ANZCMC supports the intent of the Cluster Munitions (Prohibition) Bill (the "Bill") to give effect to New Zealand’s implementation of the 2008 Convention on Cluster

Munitions (the "Convention"). Overall, the ANZCMC views the Bill as appropriate legislation that could be passed with minor revisions.

Our submission identified a number of sections in the Bill, where we believes further revision or clarification would be helpful, but there are four issues that I would like to focus on today.

The Bill's definition of transfer of cluster munitions would be stronger if it also included transit of the weapon. The Convention's prohibitions on assistance and transfer should be read to prohibit the transit of cluster munitions across, above, or through national territory, and the Bill should state this more explicitly. On antipersonnel landmines, the Mine Ban Treaty contains the same language on assistance and transfer and most states parties have interpreted this as banning transit.

The Bill should directly address divestment by prohibiting investment in the production of cluster munitions. Legislation passed by Austria, Belgium, and Luxembourg explicitly states that such investments are prohibited. In August 2009, Australia's parliamentary Joint Standing Committee on Treaties recommended "preventing investment by Australian entities in the development or production of cluster munitions, either directly, or through the provision of funds to companies that may develop or produce cluster munitions.

The Bill contains extensive language exempting cluster munitions for training purposes. This contrasts starkly with New Zealand's diplomatic stance against the retention of cluster munitions. Furthermore within the Mine Ban Treaty, New Zealand has also led calls for no live antipersonnel mines to be retained for training. New Zealand does not currently retain any submunitions/bomblets for training purposes and we seek clarification that New Zealand will *never* seek to import, develop or produce cluster munitions for training.

As with the Convention, the Bill includes the prohibition on assistance with acts banned by the Convention without qualification or limitation (e.g. "direct" or "active" assistance). This reflects the nature of the prohibition on assistance as a core and absolute obligation of the Convention. While this is clear, we have several suggestions for the interoperability provisions of the Bill. We would also like to see the Bill include

reference to the Convention's positive obligations (Article 21) to promote universalisation of the Convention with states not party, "make best efforts" to discourage prohibited acts such as cluster munition use, and notify non-state party allies of its obligations under the Convention. In the National Interest Analysis (para 20), these obligations were described as potential "disadvantages," but Australia, Germany, Norway and other members of the Convention on Cluster Munitions view these provisions as obligations.

We understand that implementation of any international treaty involves a combination of legislation, policy, and practice, and ANZCMC members look forward to engaging with the government on implementation and universalisation of the Convention on Cluster Munitions in the months and years to come. Good policy implementation is however based on binding, specific rules that clarify New Zealand's treaty obligations and ensure that we uphold our commitment to the Convention on Cluster Munitions.

We support swift ratification of the Convention on Cluster Munitions. The ANZCMC has welcomed the objective set by Minister for Disarmament and Arms Control Hon. Georgina Te Heuheu to complete New Zealand's ratification by the first anniversary of treaty signing (3 December 2009). Thank you again for this opportunity to provide input on the implementing legislation.

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