

# NZ Labour Party plans to reverse burden of proof in rape cases

John Braddock and Tom Peters  
28 July 2014

New Zealand's opposition Labour Party is proposing to reverse the onus of proof in rape cases, doing away with the long-standing legal principle that an accused person is presumed innocent until proven guilty.

Calling it “a monumental shift” in the justice system, Labour spokesman Andrew Little outlined the plan on July 2 as part of the build-up for the September election. The proposal involves an inquisitorial system in which a judge would interview an alleged rape victim after consultation with lawyers, and the claimant would not be cross-examined by the defence. If the Crown proved a sexual encounter happened, Little advocated “shifting the burden of proof on the issue of consent to the defence.” In other words, it would be deemed rape unless the defendant could prove it was consensual.

In response to criticism from the media and legal experts of this attack on a fundamental legal principle, Labour leader David Cunliffe did not rule out Little's proposal but told *NewstalkZB* on July 10 that reversing the burden of proof was one of “a range of options on the table” to make it “easier to get a conviction” in rape cases. He said a final decision would follow a review by the Law Commission.

With all major parties pressing for changes to make it easier to secure convictions, other basic legal protections are under threat. National intends to allow courts to draw a negative conclusion if an alleged offender chooses not to give evidence. Labour's potential coalition partner, NZ First, recently announced a “hard line” law-and-order policy to expand rights around the use of “reasonable force” in self-defence, including, under certain circumstances, the right to “shoot to kill.”

Auckland University law professor Warren Brookbanks told the *New Zealand Herald* that Labour and National's policies challenged the basic principles of the right to silence, and the presumption of innocence, which are protected in the Bill of Rights Act. Both parties'

proposals, he emphasised, had the potential to “capture the innocent”—in other words, to open the door for a dramatic rise in wrongful convictions.

Criminal Bar Association president Tony Bouchier said the presumption of innocence, and the right to silence “are absolute, almost constitutional,” and condemned “political parties playing ping-pong with such important [legal] presumptions.” Criminal lawyer Jonathan Natusch described Labour's policy as “an insult to the fundamentals of justice.”

Powerful and reactionary interests are, however, pressing for sweeping law changes. Owen Glenn, a millionaire businessman and former Labour Party donor, who recently funded a \$2 million “independent inquiry” into the high rates of child abuse, welcomed both parties' policies. While commending Labour's proposed new trial processes, he also praised National's plans for electronic tagging and a conviction disclosure scheme for domestic violence offences. Glenn warned, however, that while all these measures were “useful,” they did not go far enough.

The Sensible Sentencing Trust, a right-wing lobby group which publishes an online “sex offender database,” has also applauded Labour's policy.

Labour, the Greens and the trade union funded *Daily Blog*, all assert that more convictions are needed, while cynically claiming that Labour's proposals will reduce the trauma suffered by rape victims. Little focussed entirely on victims, saying many don't lay a complaint due to “fear of the court process and the likelihood of humiliation and re-victimisation.”

Labour cites figures showing an average of 35 people killed in family violence and related homicides every year, while one in three New Zealand women experience partner violence and 20,000 women and children needed the help of Women's Refuge last year.

But far from presenting measures to resolve the deep social crisis to which these figures point, Labour is

exploiting gender-based identity politics to push a far-reaching and reactionary law-and-order agenda. In a widely-reported speech to a Women's Refuge forum on July 4, Cunliffe pledged a paltry \$15 million for the refuges and apologised "for being a man" because family and sexual violence "is perpetrated overwhelmingly by men against women and children."

Labour's supporters have seized on recent high-profile sexual assault cases to blame "men" in general for perpetuating a "rape culture" that sanctions violence against women. Columnist Chris Trotter applauded Cunliffe's "apology" and declared that rape and sexual assault "contribute to the maintenance of a patriarchal culture from which all men derive benefit."

These comments are a striking demonstration of the role of the gender-based politics that has been promoted assiduously in the universities and by pseudo-left organisations over the past four decades. The persistent undermining of any analysis of society based on its class structure, and its replacement by gender-based conceptions such as patriarchy, has greased the wheels for an attack on fundamental democratic rights.

The real underlying causes of domestic and sexual violence lie in the deep-seated social dysfunction for which successive Labour and National-led governments are responsible. The abuse of women, children, and sometimes men, is the by-product of the brutality of capitalism. Entrenched poverty and unemployment, alienation, the lack of prospects and access to culture—all of this generates immense frustration and tensions that can contribute to family breakdowns, anti-social behaviour such as alcoholism and drug abuse, and incidents of violence.

Labour's agenda is to deepen National's brutal austerity measures and deal with the inevitable increase in social despair and crime by throwing more people in prison. The party's supporters echo the rhetoric of the far right. *The Daily Blog*'s Chloe King approvingly quoted prominent broadcaster Rachel Smalley's statement: "If you look at the percentage of sexual violence cases that result in a conviction, it's pathetic. The system is not working ... Rapists walk free every week."

The notion that leniency is rampant throughout the justice system is entirely false. In fact people are being imprisoned more than ever before.

In 2012 people convicted of sexual violence made up 21 percent, the largest group, of prison inmates. Since 1999 the numbers jailed for sexual violence have surged from 1,099 to 1,809, while the total prison population expanded

from 4,917 to 8,618. Last year 833 people were sentenced for sexual assault (compared with 601 in the year 2000), which equates to 22 percent of cases reported to police. Of those, 505 received a prison sentence.

A key role in promoting Labour and its law-and-order agenda is being played by the pseudo-left groups—Socialist Aotearoa (SA), Fightback and the International Socialist Organisation. These organisations are part of the Maori nationalist Mana Party, which is campaigning to help install a Labour-led government after the election. Like Labour, they represent sections of the middle and upper class—including union bureaucrats, academics and Maori tribal capitalists—which use identity politics based on race, gender and sexual orientation in order to divide the working class and re-enforce their own position.

The pseudo-lefts have been prominent in a series of protests against "rape culture." The purpose of this slogan is to encourage women to view working-class men as potential rapists, or condoning rape, and to cover up the responsibility of capitalism for the violence prevalent in society.

While they have not commented on Labour's proposal to end the presumption of innocence, the pseudo-lefts clearly sympathise with using rape as a pretext to overturn centuries-old legal protections. Fightback bluntly contends that "we cannot start by questioning the testimony" of alleged victims—in other words, the presumption of guilt must prevail. Notably, SA and Fightback, along with the British Socialist Workers Party, endorsed the vendetta against WikiLeaks founder Julian Assange on trumped-up rape charges for exposing the criminal operations of US imperialism.

The laws proposed by Labour would facilitate the use of sex scandals for political frame-ups, a well-worn tactic in bourgeois politics. They also set a precedent for further attacks on democratic rights. Internationally the principle of innocent until proven guilty is under systematic assault—not least from indiscriminate spying on hundreds of millions of ordinary people who have committed no crime.



To contact the WSWS and the  
Socialist Equality Party visit:

**[wsws.org/contact](http://wsws.org/contact)**