
New Zealand’s substantial loss before the United Nations Human Rights Committee

A landmark decision just issued by the UN Human Rights Committee (“HRC”) significantly enhances rights of approximately 850 prisoners¹ serving indeterminate sentences such as preventive detention, or life sentences for murder, and will require major legislative change.

The HRC found that in respect of both Allan Miller, and Michael Carroll, (The authors”) that their rights under the International Covenant on Civil and Political Rights (the international equivalent of the New Zealand Bill of Rights Act (“NZBORA”)) had been breached in respect of Articles 9(1) Arbitrary Detention, 9(4) Inadequate appeal rights from decisions of the Parole Board, and 10(3) Failure to provide proper rehabilitation and reintergrative provisions to help these prisoners to return to society.

The HRC also found that once the prisoner’s minimum non-parole periods were reached at 10 years,² prisoners needed to be held in non-punitive conditions, and were not. After 10 years, their detention became for the protection of the public, rather than for punitive purposes. Accordingly, since 2008 for Michael Carroll, and 2010 for Allan Miller, they had been an arbitrary detention (which in NZ terms would be a breach of s 22 NZBORA).

In addition, Mr Carroll’s recall to prison for consuming alcohol was said to be because he was an undue risk to the public. He had fled his residence whilst on parole because of being hounded by the media, twice in a 5-day period following the leaking of his address by the Department of Corrections. However, he only broke parole conditions, and did not commit a substantive crime during his 7 months of parole. This resulted in a recall to prison for 14 years, which was further found to be an arbitrary detention.

The HRC noting the authors’ right to an effective remedy meant that the Government are obligated to³

“Immediately reconsider the authors’ continued detention and taking steps to facilitate their release in light of the present Views. The [Government] is also under an obligation to take steps to prevent the occurrence of similar violations in the future. In this connection, the [Government] should review its legislation to ensure that the rights under article 9 (1) and (4) and article 10 (3) of the Covenant may be fully enjoyed in [New Zealand].”

¹ Department of Corrections numbers as at December 2015.

² Since 2002 the minimum non-parole period starts at 5 years.

³ Paragraph 10.

Dr Tony Ellis, Human Rights lawyer acting for both men said that the decision had wider precedent value, it was not just these two clients, but all prisoners on either preventive detention, or other indeterminate sentences such as life for murder, or lengthy periods of detention for the mentally ill, or intellectually disabled, and would require the Government to seriously review legislation and penal and detention practice within 180 days.



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