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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2502/2014*, **

Communication submitted by:	Allan Brian Miller and Michael John Carroll (represented by counsel, Tony Ellis)
Alleged victims:	The authors
State party:	New Zealand
Date of communication:	17 February 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 12 May 2015 (not issued in document form)
*Date of adoption of Vi*ews:	7 November 2017
Subject matter:	Continued detention after serving punitive sentences
Procedural issues:	Exhaustion of domestic remedies; incompatibility *ratione materiae*
Substantive issues:	Arbitrary detention; conditions of imprisonment; social rehabilitation aim of imprisonment; limited scope of judicial review
Articles of the Covenant:	2, 9, 10 and 14 (1)
Articles of the Optional Protocol:	3 and 5 (2) (b)

1. The authors of the communication are Allan Brian Miller and Michael John Carroll, nationals of New Zealand born in 1952 and 1959, respectively. They claim that the State party has violated their rights under articles 2, 9, 10 and 14 (1) of the Covenant. The Optional Protocol entered into force for New Zealand on 26 August 1989. The authors are represented by counsel.

* Adopted by the Committee at its 119th session (6–29 March 2017).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

The facts as submitted by the authors

Mr. Miller

2.1 Mr. Miller was sentenced to preventive detention (an indeterminate prison sentence) for rape on 26 February 1991. He became eligible for parole on 13 February 2001, after serving 10 years in prison. After the Committee issued its Views in *Rameka et al. v. New Zealand*, [1] the Sentencing Act 2002 reduced the minimum period of preventive imprisonment to five years. However, the authors were convicted before this, when the 10-year minimum non-parole period still applied.

2.2 On 6 March 2001 and 5 March 2002, the Parole Board considered Mr. Miller's case and denied parole without providing reasons. The Parole Act 2002 requires the Board to provide written reasons for decisions concerning the detention or release of an offender. On 5 November 2003, the Board issued a postponement order in respect of Mr. Miller, permitting deferral of his consideration for parole for a maximum of three years. On 9 December 2003, the High Court determined that the evidence only justified postponement for two years. The High Court referred Mr. Miller's application back to the Board for reconsideration. On 18 April 2004, the Board denied Mr. Miller's request for parole without providing reasons. Mr. Miller reapplied for parole on 8 March 2006 and 13 March 2007, but these applications, along with his subsequent applications for review, were rejected on the grounds that if released, Mr. Miller would pose a threat to the safety of the public.

2.3 Since 1991, Mr. Miller has repeatedly sought violence-focused treatment for his sexual and aggressive feelings towards women. Prior to his first appearance before the Board on 6 March 2001, he had participated in group and individual psychological treatment focusing on personal problems and treatment barriers. Treatment programmes that focused specifically on sexual violence did not exist. Mr. Miller was only offered the opportunity to participate in violence-focused treatment after his first appearance before the Board in 2001, and he took part in a pilot rape prevention programme seven years after his parole eligibility date. Because he had not received such treatment prior to his first appearance before the Board, he did not have a realistic opportunity to obtain parole at that time.

2.4 During his detention at Tongariro Prison, Mr. Miller worked as a gardener "outside the wire" (outside the outermost access-controlled secure prison perimeter) for a number of years, without incident. However, he had to leave this position following the implementation in 2003 of a policy that assigned high-risk status to those offenders deemed likely to reoffend and to pose a high risk to the community if released. Offenders serving preventive sentences were automatically given high-risk status regardless of their actual risk. Mr. Miller claims that, owing to this automatic designation, and to the rejection of his application for exemption from the abovementioned policy in order to continue working outside the wire, he was prohibited from engaging in work that would facilitate his reintegration and social rehabilitation. Although the policy was cancelled in 2006, the injustices experienced during the period of its implementation have not been remedied.

Mr. Carroll

2.5 On 18 March 1988, Mr. Carroll was sentenced to preventive detention for rape. He became eligible for parole on 12 March 1998, after serving 10 years in prison. On 16 October 1997, 10 September 1998, 8 September 1999, 5 September 2000 and 19 September 2001, Mr. Carroll appeared before the Parole Board. Each time, he was denied parole without being informed of the rationale behind the Board's decision. During that time, he did not receive significant treatment to address his behaviour. On 20 June 2002, the Board ordered reintegrative releases and continued counselling, but he was still denied parole. He had four escorted outings from prison, all of which took place without incident.

2.6 On 6 December 2002, the Board ordered Mr. Carroll's conditional release on 11 February 2003. Following his release to a residence in Pukerua Bay, he did not commit an offence, but drank alcohol and patronized a massage parlour. In June 2003, his identity and

[1] *Rameka et al. v. New Zealand* (CCPR/C/79/D/1090/2002).

location were leaked to the media, likely by the Department of Corrections, and the ensuing publicity forced him to relocate. He was assigned to a motel, but spent the night outdoors in Wellington, where he consumed alcohol. Mr. Carroll was asked to sign an order modifying his parole conditions. One condition required him to attend a residential treatment programme. On 1 August 2003, Mr. Carroll began a s-month treatment programme for men at the Salisbury Street Foundation, which provided drug and alcohol counselling to facilitate safe integration into the community. He was not allowed to leave the premises without a staff member. The media became aware of his presence at the Foundation too, and publicity ensued. On 7 August 2003, he spent one night away from the Foundation and consumed alcohol in violation of his parole conditions. He did not commit any criminal offences and returned to the Foundation the next day. On 8 August 2003, the acting Chairperson of the Board issued an interim recall order, and Mr. Carroll was taken into custody. The Board heard an application for Mr. Carroll's final recall on 2 September 2003. On the same date, the final recall order was issued. Since then, Mr. Carroll has appeared annually before the Board, but remains in detention because the Board considers that he would pose an undue risk to public safety if released.

2.7 Following his recall, Mr. Carroll was assigned to a maximum security facility, but over time he was assessed as being lower risk, and on 6 August 2004 he was transferred to a self-care unit. Because he had high-risk status, he was ineligible to work outside the wire. Since he felt that he was unable to fully participate in the activities at the unit, he became frustrated. This led him to assault another inmate, resulting in his transfer out of the unit.

2.8 Prior to his first appearance before the Board on 16 October 1997, Mr. Carroll had not received sufficient treatment to address his violent and sexual offending against women. Although his psychologist stated in a report in 1995 that his treatment sessions had been terminated after 20 sessions because they had had little effect, the psychologist did not consider the impact of the childhood abuse Mr. Carroll had suffered at a State-run hospital. This abuse had affected his "ability to engage". The first report by the Psychological Service of the Department of Corrections, for the Board, dated 10 September 1997, was written approximately one month prior to Mr. Carroll's first appearance before the Board, and demonstrates that the psychologists "gave up" on providing further treatment to him before that appearance.[2] On 29 March 2000, Mr. Carroll was re-enrolled in a treatment programme that targeted his offending but was administered too late to give him a realistic prospect of obtaining release at the expiry of his non-parole period.

The complaint

3.1 The authors assert that they exhausted domestic remedies, as their joint civil claims alleging arbitrary detention and lack of appropriate and timely rehabilitation treatment were denied by the High Court and the Court of Appeal on 16 December 2008 and 8 December 2010, respectively. On 23 March 2011, the Supreme Court denied the authors' application for leave to appeal.

Independence and impartiality of the Parole Board

3.2 The authors submit that New Zealand has violated their rights under articles 9 (4) and 14 (1) of the Covenant, because their requests for parole were denied by a Board that is not independent or impartial. The Board should have the independence and impartiality of a court. In the authors' case, the High Court did not take into account the fact that the Board has the fundamental features of a court, including the authority to provide timely judicial decisions regarding the lawfulness of detention.[3] Furthermore, the Board lacks elements

[2] It is stated in the report that: "Irrespective of his apparent level of motivation, it is not recommended that further treatment be attempted with our Service as it is unlikely to impact on his future risk of re-offending. This is because of Mr. Carroll's possession of a rigid personality structure which undermines his therapeutic process. However, he may benefit from an opportunity to both establish and review his post-release plans with a Department psychologist once he has received a release date."

[3] In its judgment of 8 December 2010, the Court of Appeal determined that under the Parole Act 2002, the Board is independent and impartial because, inter alia: appointments to the Board are made by the

required of an independent judiciary, namely financial security, security of tenure and administrative autonomy.

3.3 Regarding its financial security, the Board's funding is allocated by the Department of Corrections, which is not an impartial third party to parole proceedings. Board members' salaries vary and are determined by the Cabinet Appointments and Honours Committee on an ad hoc basis. Members who are judges automatically receive a judicial salary, while the salaries of members who are former judges are determined by the executive. This involvement of the executive necessarily compromises the Board's independence. The three-year tenure of Board appointments is inadequate to ensure judicial independence. Tenure is often reviewed after one year, making members even more at risk of political influence. The authors claim that: (a) the executive is involved in the Board member selection process; (b) the caucus of the majority coalition partner in the Government is involved in the selection, whereas other parties are not consulted; (c) the Department of Corrections and its psychologists each produce a report on every prisoner who is eligible for parole hearings; and (d) the Department of Corrections acts as prosecutor in recall cases.

3.4 The Board also lacks administrative autonomy, as the fact that the Department of Corrections provides it with various services (including administrative support in the form of accommodation, unconscious bias training and information technology assistance) gives the impression that the Board and the Department are a single entity. As Board members are trained by Department experts who are directly involved in individual cases, their impartiality is compromised. Before 2005, the Department also used a structured decision-making system that assigned risk ratings for parole hearings and usually based a preliminary risk rating on the prisoner's initial crime, thereby unfairly predetermining the outcome of the hearing. Preventive detainees were always awarded a D or E risk rating (E representing the highest risk). Mr. Miller was assigned a D rating on 31 January 2002, and Mr. Carroll an E rating on 5 September 2001. The same High Court judge who certified these ratings served as the Chairperson of the three-member Parole Board that denied the authors' parole. After 2005, the Board continued to partially use this system and to have new members trained by Department psychologists. The training programme was not neutral and compromised the Board's impartiality. Although in 2005 the Board assumed responsibility for training new members, the guide used by the Board before 2005 was written by the Department and was therefore partisan. The guide's 2007 edition was not publicized, thereby creating an inequality of arms to the authors' detriment. Whereas the Department could submit unlimited information to the Board, inmates' submissions were limited to four pages. Board members are discouraged from writing dissenting opinions and issue informal decisions lacking stated reasons. The authors received several informal letters (two and eight, respectively) that used standard language stating that their parole applications had been denied on the basis of the nature of their offences and to preserve the safety of the public. The letters did not indicate the documentation on which the Board had relied to reach its decisions. Parole hearings are generally not open to the public and offenders must seek leave from the Board in order to be represented by counsel at the hearings.

Governor-General, rather than the Minister of Corrections; Board members can only be removed for "just cause" and by the Governor-General; the Board reports to the Attorney-General and not the Minister of Corrections; there is substantial judicial involvement in the operation of the Board; the Board develops its own policies and is not subject to ministerial direction; the Board must act in conformity with the principles of natural justice, provide advance notice and relevant information, respect the rights to personal attendance and representation by counsel, provide reasoned decisions, and so on; there are internal rights of review along with some statutory rights to appeal to the High Court, and a general amenability to judicial review; Board members' candidacies are evaluated by assessing the attributes stipulated under the Parole Act 2002; Board policies are formulated by an executive council and adopted by the Board as a whole; the Department of Corrections provides administrative and other services to the Board under the Parole Act 2002; the Board's policies provide for a structured decision-making process based in part on methods of actuarial risk assessment; specialized training is provided by staff employed by the Department of Corrections and external experts; the Board usually sits in panels of three with judicial conveners; and decisions are reached by a majority.

Recall of Mr. Carroll

3.5 The State party breached Mr. Carroll's rights under article 9 (1) of the Covenant by recalling him to prison after he had violated his parole conditions by leaving the residential treatment programme. The recall application was filed informally and did not provide details as to the reason why the Board had found that he posed an undue risk to the safety of the community.[4] When he was released on parole, the Department of Corrections appears to have publicly disclosed his address. The Board did not attempt to investigate the reasons for the recall. Furthermore, the composition of the Board that wrongfully recalled him included the original sentencing judge. Mr. Carroll was forced to abscond from the treatment programme owing to increased media pressure caused by a second leak of information. He did not commit a crime while on parole, and although he breached a condition of his parole requiring him to remain in the treatment programme, this condition should never have been applied because the breach only arose as a result of the Department's malfeasance. The recall was disproportionate and inhumane because it had no causal connection with the offence Mr. Carroll had committed.[5] In addition, the Chairperson of the Board unlawfully attempted to contact a Department psychologist witness before the hearing.

Failure to provide timely rape-oriented rehabilitation treatment

3.6 The State party violated the authors' rights under articles 9 (4) and 10 (3) of the Covenant by failing to provide them with timely rape-oriented rehabilitation treatment prior to their first appearance before the Board. The authors requested such treatment for their sexual and aggressive feelings towards women, but were not offered sufficient programmes until they had attended their first parole hearings. Mr. Miller submits that he was only able to take part in a pilot rape prevention programme seven years after his parole eligibility date. The authors argue that the programmes that they participated in before their first hearings were inconsistent and did not focus on their offending behaviour. Detainees are generally only offered specialized treatment after they have become eligible for parole and have appeared before the Board. This policy diminishes the likelihood of success at their first parole hearing. The Department of Corrections has failed to allocate adequate resources for the treatment of adult sex offenders. This failure resulted in the authors' arbitrary detention.[6]

[4] The decision on the recall application is cited at length in the decision of the Court of Appeal, which stated that the crucial issue was whether, by breaching the terms of parole, Mr. Carroll posed an undue risk to the community, and women in particular. This risk was established taking into account Mr. Carroll's behaviour since his release, including his absconding from the treatment programme and the fact that, while living on his own, he had spent the majority of his time and money in a massage parlour and bar. The Board stated that, "it may have been expecting too much to place a person such as Mr. Carroll in an isolated community, living on his own, with a large amount of capital". The Salisbury Street Foundation could no longer provide the level of supervision and support that Mr. Carroll required. The Board stated that, "it may well be that the media pressure was the cause of some of Mr. Carroll's behaviour, but he exhibited a number of signs of instability well before the media became involved". The Court also noted that while at Pukerua Bay, concern arose from Mr. Carroll's adoption of particular roles or personas (which he had also done with a victim when offending).

[5] The Court of Appeal noted that although Mr. Carroll had not committed a sexual offence while on parole, the statutory grounds for recalling a parolee included protection of the community, the Board's concern that Mr. Carroll posed an undue risk to public safety, and Mr. Carroll's unusual position in 2003 of having been released despite being assessed as being at high risk of reoffending. The Court noted that Mr. Carroll was recalled because (a) he had absconded from a treatment programme twice in a five-day period, in clear breach of the conditions of his parole; (b) he had disappeared with no apparent support and with no means of supporting himself; (c) he had made no attempt to contact the police or others to inform them of his whereabouts; and (d) this behaviour represented an undue risk to the safety of the community if it continued.

[6] According to the Court of Appeal decision, the authors were not offered programmes targeting adult sex offending specifically (apart a 2007 pilot programme engaged in by Mr. Miller) because "there are no such programmes which have been proved to be effective". The same decision states that both authors received "individual psychological counselling and educational, vocational, and life skills programmes, and programmes which have addressed alcohol and drug abuse, violence, anger management, and straight thinking. Both men have, on occasion, refused to participate in programmes

Inability to obtain work outside the wire

3.7 By automatically assigning the authors high-risk status on the grounds that they were serving sentences of preventive detention, the State party violated the authors' rights under articles 9 (1) and 10 (1) and (3) of the Covenant. Specifically, their high-risk status aggravated their arbitrary detention conditions because it resulted in ineligibility for work opportunities outside the wire.[7] This reduced their chances of obtaining parole. Although the policy to assign high-risk status was cancelled on 1 April 2006, the injustices that resulted from its application to the authors have not been remedied.[8] It was also inhumane to discontinue Mr. Miller's eligibility to perform gardening work outside the wire.

Continued detention after period of ineligibility for parole

3.8 The authors' continued detention after the mandatory period of ineligibility for parole was arbitrary, in violation of article 9 of the Covenant, as it was not based on any fresh evidence or a new conviction. After serving the minimum mandatory period, the authors should have been detained in detention centres, not in prisons, and should have been eligible to participate in rehabilitative programmes, work outside the wire and live in separate self-care facilities. Because the State party failed to provide the authors with adequate treatment during their periods of detention, it is unable to show that any rehabilitation could be achieved with a means less intrusive than their continued detention.

Lack of an effective remedy

3.9 The State party has violated the authors' rights under article 2 (2) and (3) of the Covenant, because it has not incorporated the Covenant into domestic law and does not provide an effective remedy for violations of the Covenant. Counsel for authors may even be subjected to sanctions when raising issues under the Covenant, if the judiciary rules against them. Although the State party affirms its commitment to the Covenant in the Bill of Rights Act 1990, that Act does not pre-empt ordinary law, and inconsistent domestic laws have nevertheless been enacted.

provided by Corrections. Mr. Miller did so in 2003 when he declined to be interviewed by the Parole Board for a psychological assessment. […]. Mr. Carroll too for some years refused to engage with the treatment offered and although he has since participated in therapy sessions with a psychologist, he remains reluctant to engage with treatment which addresses the cause of his offending as he considers that this has already been dealt with". The High Court rejected the argument that the failure to ensure adequate resources for treatment relating to sex offending was a violation of article 10 (3) of the Covenant, which is silent as to resource implications, whereas domestic legislation expressly makes the connection between the provision of rehabilitative programmes, the availability of resources and the likely benefit to be obtained by the participants. The High Court also found that completion of specialist treatment was not a critical element in Parole Board decision-making. The High Court heard evidence as to the limited effectiveness of group rehabilitation programmes for adult sex offenders, and noted that this explained why individual psychological intervention was the main feature of the country's system for adult sex offenders. Because formal treatment programmes did not exist, they were not a prerequisite to release on parole.

[7] In its decision, the High Court states that the work restrictions for high-risk offenders were in place from June 2004 to April 2006, and that during this time, high-risk offenders could apply for exemptions. An affidavit provided by the Director of the Psychological Service of the Department of Corrections states that Mr. Carroll's application for an exemption was denied because he had tested positive for cannabis use in 2004 and been classified as an identified drug user with one positive drug test. The Court stated that prisoners with such a drug classification were ineligible to work outside the wire owing to the requirement for closer monitoring of such prisoners, and that this loss of privilege was due to Mr. Carroll's drug test status, and not to his high-risk status.

[8] The Director of the Psychological Service of the Department of Corrections stated in an affidavit that Mr. Miller had not applied for an exemption from the work restriction until February 2006. Following Mr. Miller's Parole Board appearance in April 2005, the Board did not make any recommendation that he be allowed to work outside the wire. The Board stated in 2005 that he had "not by any means fully addressed [his] serious offending", and noted in 2006 that reintegrative proposals, such as a referral to a self-care unit, were unlikely to be able to be progressed "until such time as Mr. Miller is prepared to address his offending".

State party's observations on admissibility and the merits

4.1 In its observations dated 12 November 2015, the State party submits that in the Board's report on Mr. Miller's hearing on 15 December 2014, the Board noted that a psychological report on him was "dismal and projects a depressing prognosis". Mr. Miller had been on a release to work programme during that year at Puke Coal and had been living in a self-care facility for four years. He had recently received extensive one-on-one counselling, but was still assessed as being at high risk of sexual and violent offending. The psychologist recommended possible further engagement in an adult sex offender treatment programme or one-on-one psychological counselling. The Board concluded that Mr. Miller was not eligible for parole. As to Mr. Carroll, the Board's decision to release him on 11 February 2003 was not based on recommendations from the Department of Corrections, which had in fact assessed Mr. Carroll to be at high risk of reoffending. The Department accepted that it was probably the source of the leak of Mr. Carroll's identity and location to the media. Mr. Carroll did not seek parole at the Board hearing on 27 August 2015. At that time, he was participating in the adult sex offender treatment programme. It was noted that he was apprehensive about returning to the community and had been disappointed in himself in relation to his recent behaviour. He accepted that he had a lot of work to do in order to be released. The Board noted that Mr. Carroll had made significant progress in recent years, and supported his engagement in reintegrative activities at an appropriate pace, including self-care, temporary release and release to work.

Independence and impartiality of the Parole Board

4.2 The State party argues that article 14 (1) does not apply to the Board, which is not involved in the determination of a criminal charge or of rights and obligations in a suit at law. According to the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the second sentence of article 14 (1) does not apply where domestic law does not grant any entitlement to the person concerned, and there is no determination of rights and obligations in a suit at law where the persons concerned are confronted with measures taken against them in their capacity as persons subordinated to a high degree of administrative control.

4.3 The Board is sufficiently independent, impartial and procedurally adequate to constitute a court within the meaning of article 9 (4), even though it does not have all the attributes of a judicial court. The drafting history of article 9 (4) clearly indicates that the use of the word "court" was an attempt to encompass a range of legal systems. The issue is whether the body meets the substantive and functional requirements in article 9 (4) of being able to make a fair and independent determination of the lawfulness of continued detention and to order release. In its jurisprudence, the Committee has accepted that the Board is a court for the purposes of article 9 (4).[9] In addition, parole assessment procedures comply with article 9 (4) because Parole Board decisions are, without restriction, subject to judicial review (no application for leave is required). Outside persons or bodies, including the executive authorities of New Zealand, are unable to direct or influence parole decisions. Board members are appointed for fed terms of three years or less, and the Attorney-General must, before recommending a person to serve as a member, ensure that the person meets specified criteria relating to knowledge and ability. In practice, the Board's membership (currently 40 individuals) includes a mixture of judicial officers and lawyers, and laypersons with certain knowledge and abilities.

Recall of Mr. Carroll

4.4 Mr. Carroll had the right to appeal his recall to the High Court under the Parole Act, but did not do so. Concerning the judge's failure to recuse himself, an examination of the transcript of the Board hearing reveals that the judge informed counsel that he was the sentencing judge, and that counsel did not take issue with the judge continuing to hear the parole matter. The Court of Appeal was correct in finding that the ordering of Mr. Carroll's release would be futile, in the light of subsequent decisions made (and not challenged) that

[9] The State party cites *Rameka et al. v. New Zealand*, para. 7.4; and *Manuel v. New Zealand* (CCPR/C/91/D/1385/2005), para. 7.3.

deemed Mr. Carroll to present too great a risk to be released on parole. Concerning the nexus between the offence and the reason for the recall, the Court noted that Mr. Carroll's position was unusual in that he had been released despite the fact that the Department of Corrections had not recommended release because he was assessed as being at high risk of reoffending. The Department maintained that he was at high risk throughout his period on parole. The Board simply based its decision to recall Mr. Carroll on this unchanged assessment.

Failure to provide timely rape-oriented rehabilitation treatment

4.5 According to the Corrections Act 2004, which provides for a comprehensive scheme for implementing rehabilitation, the Chief Executive of the Department of Corrections must ensure that, to the extent consistent with the resources available and any prescribed requirements or instructions issued under section 196, rehabilitative programmes are provided to those prisoners sentenced to imprisonment who, in the opinion of the Chief Executive, will benefit from those programmes. The State party cites several additional provisions of the Act pertaining to specific prisoner entitlements (the opportunity to make constructive use of time; work programmes and earnings; regular access to private visitors; access to news, library services and further education; access to free education and literacy skills; access to a drug and alcohol strategy; etc.) This scheme amply satisfies the requirements of article 10 (3), which does not provide an absolute entitlement to prisoners to dictate which treatment or particular rehabilitation programme they wish to benefit from, irrespective of the programme's availability, prospects of success, or cost.

4.6 The authors did receive treatment for their sexual offending and general rehabilitative treatment. They provided a large number of the psychological reports prepared for the Board, and a sample of the treatment and rehabilitative programmes they had completed or accessed while incarcerated.

4.7 The fact that Mr. Miller was not provided with relapse treatment was unremarkable because, as the Court of Appeal noted, there were no such programmes that had been shown to be successful. Moreover, the Board's assessment was not primarily premised on the completion of particular programmes.

4.8 Although Mr. Carroll claims that the examining psychologist had not considered the impact of the childhood abuse he had suffered at a State-run hospital, the full version of the relevant report from 1996 indicates that these experiences were in fact addressed prior to his first hearing before the Board.

Inability to obtain work outside the wire

4.9 The policy restricting the authors' ability to pursue employment opportunities outside the wire was discontinued. While the authors' high-risk status did prevent them from working outside the wire, it did not affect their ability to obtain work inside the wire, nor has it stopped them from undertaking reintegration activities or psychological treatment. It had no impact on their security classifications, access to temporary releases, release to work at the recommendation of the Board, escorted outings, sentence management or unit placement. It did not affect their eligibility for parole. Mr. Carroll's access to work privileges was limited because: (a) he had recurrent drug user status resulting from positive tests for cannabis use; and (b) he had assaulted another prisoner while in the self-care unit. When Mr. Miller lost his gardening job outside the wire, he was not unemployed. His ability to return to work outside the wire following the cancellation of the policy has been hampered by his own behaviour.

Continued detention after period of ineligibility for parole

4.10 There is no policy that requires that an adult sex offenders' programme be completed before a preventive detainee may be considered for release. The facts show quite the opposite: Mr. Carroll was released on parole in 2003 without having completed any such formal programme, and Mr. Miller completed a pilot treatment programme for adult sex offenders in 2007 but is still considered by the Board as too high-risk for release.

Lack of an effective remedy

4.11 The authors' claims under article 2 are inadmissible because the claims were not raised before the domestic courts. Moreover, these claims are without merit. Both the High Court and the Court of Appeal fully addressed the authors' arguments, based on the Covenant. It is therefore false that some courts in New Zealand will not even entertain claims based on the Covenant. New Zealand has in fact incorporated the Covenant through a range of measures, including the New Zealand Bill of Rights Act 1990. That Act applies to all actions taken under domestic law, and legislation must be interpreted consistently with it. Moreover, a court may issue a declaration if it finds a statute to be inconsistent with the Act. The Covenant is also incorporated by other legislative and administrative measures, including the Parole Act 2002 and the Corrections Act 2004.

Authors' comments on the State party's observations on admissibility and the merits

5.1 In comments dated 20 January 2016 and 20 February 2017, the authors informed the Committee that Mr. Miller's latest application for parole had been denied on 15 December 2014 and Mr. Carroll's on 27 August 2015. Neither author was represented by counsel at their hearing. The standard mandatory consideration period for parole is every two years.

5.2 In August 2015, the Working Group on Arbitrary Detention issued findings on *A v. New Zealand* (A/HRC/WGAD/2015/21). The State party did not respond to the complaint in question, which had been submitted to the Working Group by an individual who had spent 45 years in psychiatric and prison detention, and who had an intellectual disability. The Working Group considered that the continuation of the complainant's incarceration after 2004 for the protection of the public constituted an arbitrary deprivation of liberty and a violation of article 9 of the Covenant. The authors rely on the Working Group's reasoning, and assert that preventive detention is overused in New Zealand, where 341 individuals have been preventively detained.

5.3 The authors reiterate that it is futile to attempt to exhaust domestic remedies, because the Covenant is not directly incorporated into domestic laws, and note that the State party has in the past threatened to impose personal costs for filing additional claims under the Covenant before the domestic courts. This has a chilling effect.

5.4 Proceedings before the Parole Board may be categorized as either criminal or civil, and are therefore within the scope of article 14 (1) of the Covenant. The three-year tenure for Board members is too short. The State party did not provide observations on the issue of the apparent lack of independence, and did not adequately explain why different retired judges receive different salaries for doing the same job as Chairperson of the Board. Political patronage is common in domestic appointments to tribunals and the political opposition is "not consulted".

5.5 Mr. Carroll's recall for a minor breach, followed by detention for 13 additional years, is grossly disproportionate. According to the Committee's general comment No. 35 (2014) on liberty and security of person, preventive detention conditions must be distinct from the conditions for convicted prisoners serving a punitive sentence and must be aimed at the detainee's rehabilitation and reintegration into society. The conditions faced by Mr. Carroll during his punitive and preventive sentences have been identical.

5.6 The number and type of personal improvement courses the authors have attended is irrelevant. They did not have access to the targeted programme they needed, "as it did not exist". Even if they are deemed to be at high risk of reoffending, the authors could be supervised in the community, rather than in prison. Psychiatric and psychological reporting is not scientific and cannot be used as the gold standard for testing psychopathic personalities. The law does not allow States to deprive their citizens of constitutional rights due to a lack of resources. Mr. Miller did not attend treatment in 2004 because he did not think it was relevant.

Oral comments

6.1 Following an invitation by the Committee and pursuant to its guidelines on making oral comments concerning communications (CCPR/C/159), adopted at the Committee's

120th session, legal representatives of both parties appeared before the Committee on 31 October 2017 (the State party's representatives via videoconference), answered questions from Committee members on their submission and provided further clarifications. The authors also submitted some additional information in writing, including the Parole Board's most recent decisions denying parole to Mr. Carroll in 2016 and to Mr. Miller in 2017.

6.2. Both parties invoked before the Committee an affidavit submitted on 29 May 2008 by David Riley, Director of the Psychological Service of the Department of Corrections, in connection with the authors' legal proceedings before the High Court. The authors' counsel argued that according to the affidavit, the risk of reoffending for released sex offenders in the decade following release was 12–14 per cent, a rate which he considered to render assessments regarding any "undue risk" of reoffending and the decision to continue the authors' preventative detention unreliable and disproportional. The State party representative maintained that risk assessments used by the Board when exercising its power to release on parole under article 28 of the Parole Act[10] were based on both static and dynamic data, which was individualized for each prisoner facing a parole hearing, and which influenced the Board's evaluation of the likelihood, nature and seriousness of reoffending.

6.3. The parties also referred to another affidavit, filed in the same High Court proceedings, by James Ogloff, the Foundational Chair for Clinical Forensic Psychology at Monash University in Melbourne, Australia. According to the State party representative, that affidavit supports the scientific validity of the methods employed by the Board. The authors' counsel focused on the admission in the affidavit that, given the current state of science, risk-based assessment decisions were still not fully reliable.

6.4. The authors' counsel referred to two judicial decisions of the European Court of Human Rights in support of his position regarding the inadequacy of the preventive detention regime in New Zealand: *Weeks v. United Kingdom* [11] (dealing with the independence of a parole board) and *Hutchinson v. United Kingdom*[12] (dealing with the need to afford all prisoners sentenced to life imprisonment access to periodic parole reviews after 25 years of incarceration). The State party's representative explained that under domestic criminal law, the entire period of incarceration, including the period of preventive detention, was designed to serve punitive goals, as well as protective and rehabilitative goals. Both parties indicated that Parole Board decisions may be reviewed in the High Court, but that the review was not a "merits review" based on a full review of the facts, but rather was limited to considerations of compliance with procedure, with narrow exceptions for "unreasonableness".

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

[10] The relevant sections of article 28 of the Parole Act provide that: in deciding whether or not to release an offender on parole, the Board must bear in mind that the offender has no entitlement to be released on parole and, in particular, that neither the offender's eligibility for release on parole nor anything else in the Act or any other enactment confers such an entitlement; the Board may, after a hearing at which it has considered whether to release an offender on parole, instruct that the offender be released on parole; and the Board may give such an instruction only if it is satisfied on reasonable grounds that the offender, if released on parole, will not pose an undue risk to the safety of the community or any person or class of persons within the term of the sentence, having regard to the support and supervision available to the offender following release, and the public interest in the reintegration of the offender into society as a law-abiding citizen.

[11] See European Court of Human Rights, *Weeks v. United Kingdom* (application No. 9787/82), judgment of 2 March 1987.

[12] See European Court of Human Rights, *Hutchinson v. United Kingdom* (application No. 57592/08), judgment of 17 January 2017.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.[13] The Committee notes the State party's argument that the authors have not exhausted domestic remedies with regard to their claim under article 2 of the Covenant, and the authors' response that it is not possible to do so because the Covenant has not been incorporated into domestic law. The Committee also recalls that the provisions of article 2, which set forth general obligations for States parties, cannot in and of themselves give rise to a claim in a communication under the Optional Protocol.[14] The Committee therefore considers that these claims are inadmissible under article 3 of the Optional Protocol.

7.4 Considering that the authors' remaining claims are sufficiently substantiated for the purposes of admissibility, the Committee declares them admissible as raising issues under articles 9 (1) and (4), 10 (1) and (3) and 14 (1) of the Covenant, and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

Failure to provide timely rape-oriented rehabilitation treatment

8.2 The Committee notes the authors' claim under articles 9 (4) and 10 (3) of the Covenant that the State party failed to provide them with timely rape-oriented rehabilitation treatment prior to their first appearance before the Board, thus hindering their ability to obtain parole. The Committee also notes the authors' assertion that a lack of financial resources does not excuse the State party from meeting its obligation to provide such rehabilitation treatment. The Committee recalls that it is the duty of the State party in cases of preventive detention to provide the necessary assistance that would allow detainees to be released as soon as possible without being a danger to the community.[15] The Committee notes the domestic authorities' position that the authors were not offered, prior to the start of their period of preventive detention, programmes specifically targeting the propensity of adult sex offenders to reoffend (apart from a pilot programme that Mr. Miller participated in) because at the time there were no such programmes that had proven effective; that the authors have received treatment for their sexual offending and general rehabilitative treatment through individual psychological counselling, educational, vocational and life skills programmes, and programmes that have addressed alcohol and drug abuse, violence, anger management and straight thinking; and that the completion of rape-oriented rehabilitation treatment was not a critical element in Parole Board decision-making, as evidenced by the fact that Mr. Carroll succeeded in obtaining release on parole and that Mr. Miller participated in the pilot programme but is still considered to be too high-risk for release. The Committee further notes the State party's reference to the information contained in Mr. Riley's affidavit relating to the reasons for commencing special treatment programmes in temporal proximity to the release date, and the fact that the authors have at times refused to engage in other available treatment programmes that address the causes of their offending. The Committee therefore considers that in the particular circumstances of this case, the authors have not substantiated their assertion that the State party denied them access to available and effective rape-oriented rehabilitation treatment and that this lack of treatment impeded their ability to obtain parole. Accordingly, the Committee is not in a position to find that the State party's failure to provide timely rape-oriented rehabilitation treatment violated the authors' rights under articles 9 (4) or 10 (3) of the Covenant.

[13] See, inter alia, *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5.

[14] See *Tshidika v. Democratic Republic of the Congo* (CCPR/C/115/D/2214/2012), para. 5.5.

[15] See *Dean v. New Zealand* (CCPR/C/95/D/1512/2006), para. 7.5.

Continued detention after period of ineligibility for parole

8.3 The Committee notes that Mr. Carroll has been preventively detained since 1998 (for 19 years), apart from the period of his release on parole, which lasted about 7 months and occurred approximately 15 years ago. It is undisputed that while he breached the conditions of parole, he did not commit any criminal offence while released on parole. Mr. Miller has continuously been in preventive detention since 2001 (for 16 years). Thus, after serving 10-year punitive sentences for rape, the authors have each been serving preventive sentences for over 15 additional years on the basis of suspicions that they might reoffend, despite numerous applications for parole. The Committee recalls its general comment No. 35, according to which "an arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality".[16] In the same comment, the Committee emphasized that preventive detention must be subjected to specific limitations in order to meet the requirements of article 9. That is, preventive detention following a punitive term of imprisonment must, in order to avoid arbitrariness, be justified by compelling reasons, and regular periodic reviews by an independent body must be assured to determine the continued justification of the detention. States must only use such detention as a last resort, and must exercise caution and provide appropriate guarantees in evaluating future dangers. Moreover, detention conditions must "be distinct from the conditions for convicted prisoners serving a punitive sentence and must be aimed at the detainees' rehabilitation and reintegration into society".[17] The Committee considers that in this case, the conditions and protracted length of the authors' preventive detention raise serious concerns as to whether the requirements of reasonableness, necessity, proportionality, and continued justification and independent review, which are contained in general comment No. 35, have been met.

8.4 The Committee notes the authors' argument under article 9 of the Covenant that after serving their mandatory period of non-eligibility for parole, they were arbitrarily detained because there was no fresh evidence against them; they were not convicted of any additional offences that could justify their continued preventive detention; and their punitive conditions of detention did not change. The Committee further notes the State party's explanation that decisions of the Parole Board on whether or not to order release of prisoners incarcerated in preventive detention are based on an assessment, pursuant to article 7 of the Parole Act 2002, of whether or not they represent an "undue risk" to the safety of the community, and that detention must not be longer than absolutely necessary for the safety of the community. The Committee notes, in this regard, the authors' uncontested assertion that the Parole Board is not authorized to consider the overall proportionality of the period of detention in light of the crime for which the reviewed prisoners were convicted and that it is instructed, pursuant to article 7 of the Parole Act, to afford "paramount consideration" to the safety of the community.

8.5 The Committee considers that as the length of preventive detention increases, the State party bears an increasingly heavy burden to justify continued detention and to show that the threat posed by the individual cannot be addressed by alternative measures.[18] As a result, a level of risk that might reasonably justify short-term preventive detention may not necessarily justify a longer period of preventive detention. The State party also failed to show that no other, less restrictive means that did not involve a further extension of the authors' deprivation of liberty were available to meet the aim of protecting the public from the authors.

8.6 The Committee further recalls that article 9 of the Covenant requires that preventive detention conditions be distinct from the conditions of convicted prisoners serving punitive sentences and be aimed at the detainee's rehabilitation and reintegration into society. In this regard, the Committee notes the State party's position that the purposes of the detention remain the same. It also notes that the detention remains punitive, regardless of whether an

[16] See general comment No. 35, para. 12.

[17] Ibid., para. 21.

[18] See, mutatis mutandis, general comment No. 35, para. 15.

individual is serving the fed or preventive detention portion of his or her sentence. The Committee observes that while Mr. Miller has long been offered various forms of counselling and psychological care, he became eligible for parole in 2001 but was only transferred to the self-care unit nine years later, in 2010. Mr. Carroll became eligible for parole in 1998 but was transferred to the self-care unit only in 2004. Based on the information made available to it, the Committee considers that the authors' term of preventive detention has not been sufficiently distinct from their terms of imprisonment during the punitive part of their sentence (prior to eligibility to parole), and has not been aimed, predominantly, at their rehabilitation and reintegration into society as required under articles 9 and 10 (3) of the Covenant. Under these circumstances, the Committee considers that the length of the authors' preventive detention, together with the State party's failure to appropriately alter the punitive nature of the detention conditions after the expiration of their period of non-eligibility for parole, constitutes a violation of articles 9 (1) and 10 (3) of the Covenant.

Recall of Mr. Carroll

8.7 The Committee further notes Mr. Carroll's claim under article 9 (1) of the Covenant that the State party has detained him arbitrarily since his recall to prison, as it did not provide any reason for the recall. The Committee observes that in order to avoid a characterization of arbitrariness, the State party must demonstrate that recall to detention was not unjustified by the underlying conduct, and that the ensuing detention is regularly reviewed by an independent body. The Committee further observes that to recall an individual convicted of a violent offence from parole to continue a sentence after the commission of non-violent acts while on parole may in certain circumstances be arbitrary under the Covenant. In its Views on *Manuel v. New Zealand*, the Committee evaluated this issue by considering whether there was sufficient nexus between the conduct engaged in on release and the underlying conviction.[19]

8.8 The Committee notes the State party's argument that sections 60 and 61 of the Parole Act provide for recall when an offender is reassessed as posing an "undue risk" to the community because of breach of a release condition, or commission of a crime punishable by imprisonment. The Committee further observes that the Court of Appeal examined Mr. Carroll's argument that, contrary to the circumstances described in Manuel v. New Zealand, his own recall did not have sufficient nexus to the offence of rape. It further notes that Mr. Carroll acknowledges having breached the conditions of his parole by absconding twice from a treatment programme and by consuming alcohol during a night away from the programme. After a detailed analysis of the Board's written recall decision, the Court rejected Mr. Carroll's argument that there was insufficient nexus between his offending and the recall. The Court found that Mr. Carroll's recidivist offending had caused him to be assessed as being at a high risk of reoffending, and therefore particularly likely to be recalled; that he had disappeared from a treatment programme twice during a five-day period, with no support or means of supporting himself; that he had made no attempt to contact the police or others to inform them of his whereabouts; that he had spent the majority of his time away in a bar and a massage parlour; and that his behaviour represented an undue risk to the community. Noting these reasons, the Committee is not in a position to conclude that the change in Mr. Carroll's risk assessment following his breach of parole conditions was unreasonable, and that the recall amounted in itself to arbitrary detention (notwithstanding the alleged deplorable leaks from the Department of Corrections to the media about Mr. Carroll's whereabouts).

8.9 However, the Committee notes that Mr. Carroll was not recalled from parole to continue serving a fed sentence, and that following Mr. Carroll's recall, he was placed back in preventive detention 13 additional years. Under these circumstances, and for the reasons specified in paragraph 8.6 above, the Committee considers Mr. Carroll's lengthy period of detention following his recall to be inconsistent with his rights under article 9 (1) of the Covenant.

[19] See *Manuel v. New Zealand*, paras. 7.2 and 7.3.

Inability to obtain work outside the wire owing to automatic high-risk status

8.10 The Committee notes the authors' allegations under articles 9 (1) and 10 (1) and (3) of the Covenant that the State party aggravated their detention conditions by automatically assigning them high-risk status because they were serving sentences of preventive detention, which prevented them from working outside the wire. The Committee also notes the authors' argument that their inability to work outside the wire reduced their chances to obtain parole. The Committee further notes the domestic authorities' position that the only implication that the high-risk status had for the authors while in prison was the aforementioned work restriction for a 22-month period; that this work restriction was designed to ensure that the opportunity to work outside the wire was available only to those prisoners who had been assigned an appropriate security classification, had exhibited appropriate behaviour and attitudinal traits, and were assessed as drug and incident free; and that the authors were assigned high-risk status because the recidivist nature of their sexual offending was assessed as posing a real and ongoing risk to the community.

8.11 The Committee reiterates that while the Covenant does not preclude the State from authorizing an indefinite sentence with a preventive component,[20] the conditions of such detention must be aimed at the detainee's rehabilitation and reintegration into society.[21] Concerning the rejection of Mr. Miller's application in 2006 for exemption from the policy that assigned high-risk status to certain offenders, the Committee notes the Parole Board's finding that in 2005, Mr. Miller had not by any means fully addressed "serious offending"; that it did not recommend that Mr. Miller be allowed to work outside the wire; that during most of the relevant period, he was working inside the secure prison area and was performing well; and that there were significantly more work opportunities available to prisoners inside the secure prison area than outside. The Committee also notes that the Board did not specify the measures Mr. Miller could have taken in order to fully address his offending in order to be able to obtain an exemption from the policy. Furthermore, the Committee notes that Mr. Miller had been working outside the wire for a number of years without incident before being assigned high-risk status. Nevertheless, the Committee notes that the State party claims that other measures for rehabilitation and integration were available to Mr. Miller after he became ineligible to work outside, including rehabilitative and sexual offending-related treatment, individual psychological counselling, educational, vocational and life skills programmes, and programmes that addressed alcohol and drug abuse, violence, anger management and straight thinking. Under these circumstances, the Committee is not in a position to conclude that Mr. Miller's ineligibility to work outside the wire during the effective period of the policy violated his rights under articles 9 (1) and 10 (1) and (3) of the Covenant.

8.12 Regarding Mr. Carroll, the Committee also notes the domestic courts' finding that his application for an exemption from the work restriction was rejected due to his recurrent drug use and involvement in an assault while in the self-care unit. In the light of this reasoning, and in the light of the information on the alternative rehabilitation and integration measures available to Mr. Carroll, the Committee considers that Mr. Carroll's ineligibility to work outside the wire under the high-risk policy did not violate his rights under articles 9 (1) or 10 (1) or (3) of the Covenant.

Independence and impartiality of the Parole Board

8.13 The Committee notes the authors' allegations under articles 9 (4) and 14 (1) of the Covenant that because the Parole Board is not independent and impartial, their parole applications were unfairly rejected, resulting in their arbitrary detention. The Committee specifically notes the authors' arguments that the Board was acting in a judicial capacity by reviewing the authors' eligibility for parole and determining the lawfulness of the authors' detention, and that the Board must therefore abide by the requirements that apply to courts and tribunals under article 14 (1) of the Covenant. On the other hand, the Committee notes the State party's claim that, as determined by the domestic courts, article 14 (1) does not

[20] See *Fardon v. Australia* (CCPR/C/98/D/1629/2007), para. 7.4.

[21] See the Committee's general comment No. 35, para. 21.

apply to the Board and that the Board was not acting in a judicial capacity because it was reviewing the appropriateness (not the lawfulness) of the authors' detention.

8.14 The Committee recalls its Views in *Rameka et al. v. New Zealand*, in which it considered whether the Parole Board "should be regarded as insufficiently independent, impartial or deficient in procedure", and reached the conclusion that it was not shown that this standard was met, especially given that decisions of the Board are subject to judicial review.[22] The Committee notes, however, that both parties acknowledged before it that the powers of judicial review exercised over decisions of the Board were very limited in scope. It also notes that: (a) the Board is an administrative body, which the State party regards as not working in a judicial capacity; (b) the Board's main task in parole decisions is to evaluate whether the prisoner in preventive detention represents an "undue risk" to the community; and (c) given the indefinite length of preventive detention in New Zealand, the Board, and not the courts, determines, in effect, the ultimate length of the sentence of a prisoner serving a sentence of preventive detention.

8.15 The Committee recalls its general comment No. 35 concerning article 9 of the Covenant, which provides that:

> Paragraph 4 entitles the individual to take proceedings before 'a court', which should ordinarily be a court within the judiciary. Exceptionally, for some forms of detention, legislation may provide for proceedings before a specialized tribunal, which must be established by law and must either be independent of the executive and legislative branches or enjoy judicial independence in deciding legal matters in proceedings that are judicial in nature.[23]

Although the Committee sees no reason to deviate from its position in *Rameka et al. v. New Zealand* with regard to the independence and impartiality of the Parole Board for the purpose of the administrative task of reviewing risk classification for parole from a fed sentence, it does not consider the Board to constitute a "court" for the purposes of ensuring the authors' right to challenge the legality of their preventive detention under article 9 (4) of the Covenant. The right to appeal decisions of the Board before ordinary courts also falls short of the legal standards set out in article 9 (4), since the courts do not engage in a full review of the facts, but only monitor, from a predominately procedural point of view, factual decisions previously reached by the Board, in relation to the risk posed by prisoners in preventive detention, but not in relation to other considerations that are necessary in order to evaluate whether or not the detention is arbitrary in nature (see para. 8.5). Accordingly, the Committee considers that the State party failed to show that a judicial review of the lawfulness of detention was available to the authors in order to challenge their continued detention pursuant to article 9 (4) of the Covenant.

8.16 Having reached the above conclusion, the Committee will not examine the authors' claim under article 14 (1) of the Covenant, relating to the alleged lack of independence and impartiality of the Parole Board's review of their specific release on parole applications.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses violations by the State party of articles 9 (1) and (4) and 10 (3) of the Covenant with respect to each author.

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy in the form of full reparation. Accordingly, the State party is obligated to, inter alia, immediately reconsider the authors' continued detention and take steps to facilitate their release in the light of the present Views. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the State party should review its legislation to ensure that the rights under articles 9 (1) and (4) and 10 (3) of the Covenant may be fully enjoyed in the State party.

[22] See *Rameka et al. v. New Zealand*, para. 7.4.

[23] See the Committee's general comment No. 35, para. 45.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. In addition, it requests the State party to publish the present Views.