

New Zealand: Universal Periodic Review of Human Rights

From Stakeholder; Sensible Sentencing Trust representing victims of crime in New Zealand

Preamble : A General comment on the matter of Human Rights

The situation regarding human rights for convicted offenders is unique in one important respect, in that there is a tension between the needs of the victims of crime and the perpetrators. To a large degree this results in the matter of the rights of convicted offenders being a zero sum game, that is, any increase or gain on one side is invariably at the expense of the other party.

This is not the case for any other group to which human rights have been extended in the last few hundred years. In every case, be it the rights of women, ethnic minorities, gays and lesbians, religious minorities etc etc, where these groups have made human rights gains, it has not resulted in any loss of rights for anyone else.

Often there has been a net gain for society as a whole, as when minority groups gain rights, they become more productive contributors to the common good, and so rather than a minority group claiming a "slice of the pie", the pie itself grows larger.

An example is in order here. If an offender who is an ongoing danger to one particular person is imprisoned, then the rights of that offender are of course compromised. Yet if he is released, the rights of his victim to personal safety and the enjoyment of life are then compromised. We are left with a situation where the rights of either one or the other must be compromised.

Another example, which often arises in the real world is that of privacy. Granting convicted offenders full privacy rights, especially after release into society at the end of a sentence, will result in the victim and their family being unable to ascertain their whereabouts, and being unable to manage their risk to themselves. This results in their feeling very disempowered and unsafe. Yet to make information about offenders freely and publically available will compromise the privacy rights of the offenders.

However there are some areas where rights for offenders are not a zero sum game, for instance rights to humane treatment while in prison, rights of access to educational courses and treatment programmes and so on. In such instances there is a net benefit to all for convicted offenders to have access to these things, especially if they result in the offenders being rehabilitated, and the victim benefits as well as the offender.

In summary, our view is that if the human rights of either side are to be compromised, and situations will regularly arise where this must be so, then the rights of the victims of crime must always take precedence over those of the perpetrators. The rights of wider society must also be taken into consideration, particularly those of vulnerable groups within it, such as children, and where a choice must be made between compromising the rights of a convicted offender and those of the rest of society, then the rights of the rest of society, especially the vulnerable members thereof, must take precedence.

Comments on the New Zealand Action Plan for Human Rights; Priorities for Action: 2005-2010

On section 2.4: Safety and Freedom from violence for children and young people

This is one area where the previously mentioned tension between the rights of society - in this case, children - and the rights of convicted offenders comes into play. In order to effectively intervene and address family violence and child abuse it will be necessary to compromise the rights of the abusers. Firstly, there will often be a need to remove children from parents that are clearly neglecting and/or abusing those children - which impinges upon the rights of those parents. Secondly, preventing violence and /or sexual abuse by persons other than their parents will impinge on the rights of the offenders to freedom of movement, freedom of association and probably their rights to privacy as well

On section 5.4 : the right to Safety for All

Here, as previously, in order to achieve the stated outcome that every person in NZ is safe and violence is not tolerated, the rights of offenders to freedom of movement, freedom of association and privacy will inevitably end up being severely compromised

Amongst the priorities for action specified is to "Take action to reduce deliberate harassment of ethnic and religious groups and gay, lesbian and transgender people, including stronger enforcement of criminal sanctions". We are of course very much in favour of stronger enforcement of criminal sanctions and would like to see the scope of this recommendation widened beyond the groups mentioned to protect women, children, the elderly and unwell, and any other groups vulnerable to the predation of criminals.

We support the other listed priorities for action

On section 5.5 : Justice

We would like to comment on the priorities for action listed;

i) *Reduce civil court fees* - agreed

ii) *Improve access (including the removal of physical, cultural, behavioural and electronic barriers) to courts, the justice sector and legal information* - we are very much in agreement with this, and would go further and say that the public should have freedom of access to criminal records (barring information on the victims concerned and information that will needlessly compromise the offenders privacy, e.g. the offenders address etc) This is something that many victims specifically have asked us to push for, and it is something we are addressing ourselves to a limited extent via our own online offender databases initiative. The feedback we receive from the victims whose offenders we have listed is that they feel that they are considerably empowered as a result of our efforts. This will of course compromise the rights of offenders as previously mentioned.

iii) *Ensure that victims of crime have the opportunity to be heard and that due weight is given to their views in court proceedings* - again we agree, but do not think that this goes far enough. We feel that the views of victims should also be given due weight, or even better, precedence, at the sentencing stage. As it stands currently, victims are still not always heard, and their views are not given due weight in a number of cases. However, things have improved considerably compared to ten or even five years ago.

iv) *Extend the availability of restorative justice in its various forms* - agreed, providing that the process is always optional for victims, and that they are never under any pressure to participate. Some victims have advised us that this has sometimes been the case.

v) *Evaluate the use of family group conferencing in youth justice* - we have had feedback from a number of victims that FGC's do not work, and sometimes make matters worse for them. We would be cautious about the use of FGC's, and feel that victims should be able to opt out of these at any stage in the process where they feel disempowered

We also have four further recommendations;

1) Protect the privacy rights of victims - too often personal data such as addresses etc have fallen into the wrong hands via defence lawyers and the legal system. At various stages in the criminal justice process victims are sometimes required to disclose information to an unnecessarily intrusive extent

2) Give victims and their families far better access to information on their offender(s) as discussed in ii) above. Many victims feel disempowered because they are told very little about the people that have offended against them, e.g. their previous offending, where they are, when they are due to come up for parole etc. This is often very distressing for victims of crime, and we have had several instances of this recently.

3) Protect victims from further victimisation - this can be implemented by tighter bail parameters, and better protection of victims privacy as above

4) An open and transparent justice system - the more victims and their families get to know, the more empowered they feel. This is also true of wider society too.

Regards
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