

10 November 2008



## **Submission**

by

**Caritas Aotearoa New Zealand**

to the

## **Universal Periodic Review of Human Rights in New Zealand**

*The Church encourages young people and adults to respond effectively to injustice and to the failure to respect human rights, some of which are either under threat in Oceania or need to be more widely respected.*

Pope John Paul II, *Ecclesia in Oceania*, 2001

### **Introduction**

1. Caritas Aotearoa New Zealand is the Catholic agency for Justice, Peace and Development. We are mandated by the New Zealand Catholic Bishops Conference to work for the elimination of poverty and injustice through development and aid work internationally, and through advocacy and education for social justice in New Zealand.
2. The basis of our submission to this Review is:
  - Our experience in working with poor and vulnerable communities in Aotearoa New Zealand and internationally.
  - The human rights considerations we have taken into account when making submissions on legislation through the New Zealand Government Select Committee process.
  - Catholic social teaching on human rights, in particular that relating to natural justice.
3. Caritas appreciates the opportunity to comment on New Zealand's record of respecting human rights. For the purposes of this submission, we will limit our comment to some key areas in which we have publicly expressed our views in recent years.

### **Rights of indigenous peoples**

4. Catholic voices were among many raised to express concerns that the **Foreshore and Seabed Act** in 2004 was discriminatory. It removed property rights from only one group of New Zealanders – Māori as the original and traditional owners of land.
5. The then Attorney-General Margaret Wilson, in her Bill of Rights consideration of the legislation, acknowledged that the Bill was potentially discriminatory because the only rights to title being removed were customary rights - only available on the basis of a claim to be indigenous. However, we strongly disagreed with her view that the discrimination was justified in the circumstances.
6. Undoubtedly, this review will receive more detailed submissions on this matter from a range of organizations that are better qualified to explain the circumstances of this legislation. However, it appeared to Caritas and at least another 38 Catholic groups and individuals that made submissions opposing the legislation, that a key issue was the ability of the majority ethnicity to override valid claims of the minority indigenous people.
7. New Zealand was one of four countries who voted against the adoption of the **Declaration on the Rights of Indigenous Peoples**. Caritas believes New Zealand should sign and implement this new human rights instrument. We believe that domestic political concerns have overridden the New Zealand government's usually principled approach to human rights matters.

### **Natural justice and the right to a fair hearing**

8. Caritas and the New Zealand Catholic Bishops Conference jointly expressed concern in 2007 at the removal of natural justice provisions in the **Immigration Bill**, which is still before Parliament.
9. In our opinion measures such as the extension of the use of undisclosed, classified information, and the limiting of communication between a defendant and a special advocate, very much limit the rights recognised under Article 10 of the Universal Declaration of Human Rights and Article 14 of the Covenant on Civil and Political Rights.
10. Again the specific protection provided for natural justice in New Zealand's own Bill of Rights has not proved to be an effective remedy. Like the Foreshore and Seabed legislation, the Immigration Bill also underwent a formal Bill of Rights assessment by the Ministry of Justice, who said "*It is possible to argue that the failure to disclose all information constitutes a prima facie breach of section 27(1) of the Bill of Rights Act*". However, once again they also concluded that the changes were justified in the circumstances.
11. Caritas expressed concern that security concern arising from the "war on terror" is not a reason to discard natural justice and human rights standards which have been developed over centuries in response to unjust legal decisions.

12. Similarly, we also expressed concern in the 2007 **Terrorism Suppression Bill** at the removal of a defence provided that organizations that inadvertently funded groups associated with terrorist violence, could defend that if they were able to show that they intended to fund human rights advocacy or education work. Our experience of working in many societies experiencing conflict is that opposition is easily dismissed as “terrorism”, but that legal or non-violent channels of raising human rights concerns need to be provided, if there is any chance for long-term reconciliation.

### **Children’s rights**

13. **Children’s work:** Caritas has undertaken some significant research into children’s working conditions, to help us contribute to debate around New Zealand’s reservation to UNCROC article 32 (2) concerning a minimum age of employment.

14. Our surveys in 2003 and 2007 received wide media attention because of the examples they gave of serious areas of concern, including the employment of children in breach of existing legislative protections (for example, children working after 10pm, or children under the age of 15 operating heavy machinery). Serious accidents and other health and safety concerns, extremely low pay rates, and very low levels of contract or union coverage were also areas of concern.

15. While the New Zealand government has taken some positive steps this year, such as the extension of health and safety regulations to cover children employed as contractors, Caritas does not accept on the basis of our research that working children are adequately protected by New Zealand’s existing legislation and industrial relations framework.

16. **Citizenship rights:** Caritas was deeply concerned at the removal of citizenship rights for New Zealand born children of non-residents in the 2004 **Identity Act**. This decision followed some highly publicised cases in which wealthy tourists had travelled to New Zealand solely to give birth so their child would be born a New Zealand citizen.

17. However, citizenship rights were also removed from a wider group of children whose parents, while legally working or studying in New Zealand, were not citizens. Caritas expressed concern that some children may end up stateless, as there was no obligation on the country of the parents’ origin to grant citizenship, or certainty that parents would follow the necessary processes to register the birth of a child.

18. Also, since 2003 Caritas has had some cases in which parents of New Zealand born children were unable to apply for or receive benefit payments as part of their visa requirements. While it might be understood that adults are willing to accept some temporary hardship as the price of migration to New Zealand, the outcomes for the New Zealand born children were very poor. In one case, a child suffered permanent hearing loss during the period that her mother was unable to receive income and could not afford to seek medical help for an ear infection.

## **Workers Rights**

19. **Liberalisation of Easter trading hours:** Caritas has joined forces with other Church bodies and unions three times in the past 18 months to defeat two Bills and a government review, which proposed extending retail opening hours into Easter, one of the few remaining public holidays on which retail workers are entitled to some rest. This is an issue for Caritas about both religious freedom, including the ability of families to spend time with each other on religious feastdays, and as a workers' right. It was notable that the public debate focused on the rights of "businesses" to open and the rights of "consumers" to shop, while largely ignoring the rights of workers.
20. **Recognition of workers' rights in trade agreements:** Caritas is concerned that in its quest for 'free' (or more aptly named 'preferential') trade agreements with other nations, the New Zealand government tends to lower its expectations of human rights standards lived up to by its trading partners in such agreements. In the most recent example, Caritas expressed concern that labour standards relating to the China-New Zealand Free Trade Agreement (FTA) 2008 were not dealt with directly within the FTA, but through voluntary undertakings that may be made under a - potentially transitory - associated Memorandum of Understanding.
21. Neither did the Agreement nor associated documents deal with New Zealand's ability to maintain its ban on products made with prison labour. Caritas also expressed concern at the very unequal situation in workers' rights and working conditions between workers in New Zealand and China.

## **Rights of people in prisons**

22. New Zealand society has been characterised by an increasing public disregard for the welfare and rights of people in our prisons. This is particularly a matter for concern, because as prison numbers have continued to grow, New Zealand now has the second highest per capita rate of imprisonment to the United States.
23. Revelations of prison abuse in guards in early 2005, through an order for compensation to be paid to abused prisoners, did not result in a public outcry about the extent of prison abuse revealed. Instead the government introduced the **Victims and Prisoners' Claims Act** which restricted the ability of prison inmates to receive compensation for abuses received while in the care of the Crown, and additionally provided for any compensation that was in fact paid, to be able to be claimed by victims of crime.
24. Additional human rights concerns were to be found in this year's **Corrections Amendment Bill** which, while thankfully providing that communion wine could be used in prisons, however further restricted private communication, and proposed that prisoners could be detained past their release dates in a civil emergency. While Caritas accepted that some restrictions of movement may be inevitable in a civil defence situation, we did not accept that this would provide a blanket reason to continue to detain prisoners past their release date, especially if their freedom could assist the survival of their own families.

### **Social and economic rights**

25. We agree with the Child Poverty Action Group that a key cause of the enduring poverty which continues to affect many New Zealand children, is the discriminatory intent of the In-Work tax credit, which is a payment made to the parents of children in need, but only if they are in paid employment.
26. Caritas recently released a report: “The Unravelling of the Welfare Safety Net” produced with the Beneficiary Advocacy Federation of New Zealand to assist New Zealanders to understand how the basis of New Zealand’s welfare system has been continually undermined by both political parties over the past 20 years.
27. Although there has been some small improvement in reported inequality this year, and also there has been a commitment by the Labour government to increase social spending, we have been concerned that help is still not reaching many of those in greatest need.

### **Conclusion**

28. New Zealanders are generally fairly content with our human rights record, but the past few years has shown that no one can afford to be complacent about ensuring that human rights standards we have often taken for granted, continue to be recognise and respected into the future.
29. In particular we have concerns in the areas of the rights of indigenous peoples, the right to natural justice and a fair process, children’s rights, workers’ rights, the rights of people in prisons, and economic and social rights. We believe these are all areas in which further progress needs to be made.

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