19 November 2010

Submission

to the

Māori Affairs Select Committee

on the

Marine and Coastal Area (Takutai Moana) Bill

I runga i ngā tikanga me ngā kupu whakaari o te Hāhi, e tino whakaae ana e tino tautoko ana mātou: *ko ngā tino tika o te tangata whenua, ngā kaupapa-ā-iwi, me the whakahaere i a rātou anō, kia ahei ai rātou kia mau ki ō rātou ake tikanga, i te wā tonu e aronui atu ana ki ētahi atu, me tino whakarite.*
Te Huinga o Ngā Pīhopa Katorika o Aotearoa, 1990

With the tradition and teaching of the Church, we affirm: *that the right of the first occupants to land, and a social and political organisation which would allow them to preserve their cultural identity, while remaining open to others, must be guaranteed.*
New Zealand Catholic Bishops Conference, 1990

Summary of main points

- We oppose this Bill as it maintains the discrimination of the 2004 Act: it continues to treat Māori ownership of coastal land differently to those who have already been granted private title.
- We wish to recognise and acknowledge the considerable efforts made to find a political compromise on this issue: however, it falls short of what is required to find a just outcome.

Introduction

1. This submission is being made by Caritas Aotearoa New Zealand, the Catholic agency for justice, peace and development, in consultation with **Te Rūnanga o Te Hāhi Katorika ki Aotearoa,** the national Māori Catholic advisory council to the New Zealand Catholic Bishops Conference and its agencies**.**

2. Our reflection is guided by the principles of Catholic social teaching, which include the rights of indigenous peoples, the common good, and the stewardship of resources entrusted by God to us. This

includes teaching and reflection by New Zealand's Catholic Bishops on the Treaty of Waitangi, and we enclose a copy of their bi-lingual 1990 statement, in the year of its twentieth anniversary.

3. We have also drawn on the study, discussions and dialogue which has taken place both inside the Catholic Church and in our wider society over the past six years since the Foreshore and Seabed Act 2004 was introduced.

Position on Bill

4. We wish to acknowledge the considerable discussion, consultation and negotiation which have taken place around this legislation over the past two years, as part of the National-Māori Party coalition agreement. We appreciate that much effort has gone into attempts to find a political solution to the situation of injustice created by the Foreshore and Seabed Act 2004.

5. However, we cannot support this new legislation, as in its fundamentals, the basic discrimination of the 2004 Act remains: it continues to treat Māori ownership of coastal land differently to those who have already been granted private title.

6. The basic contradiction is revealed in the Explanatory note to the Bill (page 2):

   The Bill replaces Crown ownership with a model that recognises that the common marine and coastal area is an area in which all New Zealanders have interests, aside from the small portion which is already privately owned.

7. The New Zealand Catholic Bishops Conference said to the formal government consultation earlier this year:

   Removing formal ownership from the foreshore and seabed could be a radical act for the common good – but only if all claims in the foreshore and seabed are treated in the same way. The government does not propose to do that.

8. The treatment of Māori claims to ownership of the foreshore and seabed differently to the 12500 private titles known to have been awarded when the situation was investigated in 2003 is a core reason that two separate United Nations investigations found the 2004 Act to be discriminatory. This was fully acknowledged in both the Ministerial Review panel's recommendations, and in the Consultation document for the 2010 proposals.

9. This was also noted in both the 2004 and 2010 Bill of Rights assessments of the 2004 and current legislation. In both cases, the discrimination has been assessed as being justified: in 2004 because it was considered to serve a greater public interest, and in the present it appears to be justified in part because of the considerable consultation process which has taken place.

10. We have always recommended that a solution to the issues around the Foreshore and seabed could be best found through the Waitangi Tribunal's 2004 recommendation of a "longer conversation".

11. However, the process for finalising the content of this Bill does not meet our expectations of what would be required of a "longer conversation". Reasons for this include:
    - This Act results from a political compromise, in which indigenous representation has been considerably out-numbered by other interests. Therefore, despite a great deal of goodwill by those involved in the negotiations, it has not reached a just outcome.
    - Negotiation and consultation has been primarily through representatives in a political process, rather than directly with those most affected by the outcome of this legislation: iwi, hapū and whānau with customary ownership of coastal land.
    - Our own involvement in the consultation process has left us concerned about how well the final outcome has represented the views of submitters and those who participated in hui. Although we found our perspective reflected in the views of the Ministerial Review panel, and welcomed their report as having strong potential for achieving reconciliation over this issue, we did not find the 2010 government proposals adequate incorporated the recommendations of the Ministerial Review panel.

12. We acknowledge that there are some gains in this legislation, including recognition of mineral rights and greater involvement in conservation and resource consent processes, but they fall far short of the potential to recognise land ownership. In addition, the barrier to recognition even of these gains is very high, and many iwi and hapū will not be able to achieve this, precisely because of the actions of the New Zealand government over the previous 170 years, and because in most cases Māori have not sought exclusive use of coastal land but allowed reasonable access to all New Zealanders to coastal areas.

13. As a test to consider whether most New Zealanders would consider this fair and reasonable, we ask if the present 12500 private owners of coastal land would willingly exchange their ownership rights for the limited rights offered to Māori within this Bill? We believe that they would resist this as a confiscation or nationalisation of private property.

Conclusion

14. Since 2003, ownership of the Foreshore and Seabed has been one of the most difficult and contentious issues facing our society. Iwi, hapū and whānau were treated poorly by an unjust act and process in 2004, and this has been well recognised by both local and international observers. As a society we need to find a just resolution – however, that cannot occur when the core discrimination of the 2004 Act remains intact, as it does with this legislation. Therefore we oppose this Bill.