Submission

to the

Justice and Electoral Committee

on the

Inquiry into Victims’ Rights

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 both overseas and at home in New Zealand.

2. Caritas Aotearoa New Zealand welcomes this inquiry. We want to see greater support for victims of crime because:
   - The Catholic understanding of victims’ rights
   - We believe the New Zealand justice system is failing victims
   - We believe New Zealand must move from retributive to restorative justice

3. Our comments are focused around two aspects of the inquiry
   - Examining the concept that criminals owe a debt to individuals as well as society
   - Examining the place of restorative justice programmes in the criminal justice system

The Catholic Understanding of Victims Rights

4. The Catholic Church speaks on criminal justice not as a bystander, but as an institution that has made a substantial commitment to victims of crime. Through agencies such as Catholic social services and hospital chaplaincy we assist people who have suffered the effects of crime and people who have committed offences.

5. The Catholic understanding of victims’ rights argues that reconciliation is a two way process, involving repentance from sinners (offenders) and forgiveness from victims. Both parties therefore have a right to reconciliation which is presently not adequately provided by current criminal justice procedures. Catholicism teaches us to love our enemies, by forgiving them, not holding vengeance (Mt 5:38-48). It is a painful path for both victim and offender but without this our society can only continue to become more violent and fearful, which will inevitably create more victims. Our experience is humans have the ability to grow through the pain and suffering that crime creates. As hurt as many may be, all are capable through God’s healing grace of showing forgiveness and mercy. (Restorative Justice. Tutu, Desmond in Consedine, Jim, 1999. PP7-8)
6. As Catholics we therefore need to ask how can we protect and rebuild communities, confront crime without vengeance and defend life without taking life. “We are still a long way from the time when our conscience can be certain of having done everything possible to prevent crime and control it effectively so that it no longer does harm and, at the same time, to offer to those who commit crimes a way of redeeming themselves and making a positive return to society. If all those in some way involved in the problem tried to... develop this line of thought, perhaps humanity as a whole could take a great step forward in creating a more serene and peaceful society” (Pope John Paul II, 9 July, 2000).

New Zealand Justice System is Failing Victims

7. New Zealand’s justice system is failing victims. Ten years ago the New Zealand Catholic Bishop’s Conference spoke about the issue. “Too often, offenders repeat their crimes, regardless of the social mayhem this causes. Victims often become embittered and harbour their anger, grief and pain for a lifetime. The community hardens its heart to offenders by demanding longer and harsher penalties. As teachers of the Gospel of Jesus Christ, we hold that compassion, mercy, healing, sanction where appropriate, and forgiveness leading to reconciliation, lie at the heart of a fair and just criminal justice system. Even the worst offenders remain children of God.”

8. Many victims of crime feel further victimised through their involvement in the criminal justice system. The protection of victims’ rights is not achieved by denying the rights of prisoners, or seeing their concerns and needs as competing interests. The victim needs assistance to shed the victim identity. The longing for vengeance is often confused with justice. Justice requires that individuals be treated individually according to their needs or in other words, justice consists in the constant and firm will to give due to God and neighbour (Catechism of the Catholic Church, 1807).

9. The pain and the suffering of victims must be heard. But it must not be responded to with encouragement to seek revenge and a preoccupation with the treatment of offenders. Instead a response that may lead to reconciliation and a desire to help the victim return to full participation in society should be undertaken (Catholic Social Justice Series No. 28, Australia, 1995, P13).

10. We should love our neighbours and come to the aid of victims of crime. A useful illustration of this is the Parable of the Good Samaritan (Lk 10:25-37) in which Jesus tells us the importance of doing all one can to help a neighbour. We believe that the New Zealand justice system is not adequately supporting victims and in doing so, is not acting as a good neighbour to victims of crime.

11. In New Zealand victims often report that criminal justice proceedings leave them feeling ignored and incidental to the process. With their pain overlooked and their wounds unhealed, victims feel left alone to bear the costs of their recovery. According to Catholic Social teaching offenders are let off the hook by being imprisoned without reconciling with their victims.
Moving from Retributive to Restorative Justice

12. Caritas supports the greater involvement of victims in court process, such as those provided for in restorative justice hearings for young people and some offenders. We recognise that these systems are still developing, and that at times they have not always achieved the high standards they need if they are to provide opportunities for reconciliation.

13. However, outside these opportunities, the retributive justice system in New Zealand provides little encouragement and virtually no place for an offender to confess and admit responsibility. Most offenders are put in prison without repairing the damage or being held accountable to their victims. This arrangement fails to educate offenders and often leaves them ignorant of the harm they have done because they have not been confronted by their victims.

14. Under retributive justice the state, not the victim, is the benefactor of any compensation payments. This concept is flawed from a Catholic perspective because rather than ensuring reconciliation is achieved, let alone desired, the state is collecting fines while nothing is done to reconcile the differences between victims and offenders. “We challenge this philosophy of retribution on the basis that it is negative and usually counter productive. We believe it to be contrary to the example of Jesus in the scriptures and to the teachings of the church. It attacks the very hope and possibility of conversion that the resurrection of Jesus seeks to proclaim” (New Zealand Catholic Bishops Conference, 30 August, 1995).

15. We would like to see further consideration of the kinds of schemes suggested by the Minister of Justice and representatives of community organisations earlier this year, following their visit to Swedish prisons. We understand that they saw schemes in which offenders were required by courts to make compensation or reparation payments to victims, but at the same time were given greater vocational rehabilitation to enable them to find paid work to meet these obligations.

16. In our opinion, restorative justice is a challenge confronting everybody wanting an optimistic and fruitful justice system. Lessons can be learned from Truth Commissions used in response to conflicts and atrocities around the world. Truth Commissions focus on finding new, non-violent, ways of confronting injustice by seeking acceptance of personal responsibility, healing, forgiveness and reconciliation as primary objects. These are the same goals that Catholicism seeks. They focus on repairing the damages of crime, on victims’ needs, and on the part God’s gifts of healing, mercy and reconciliation can also play (Restorative Justice. Tutu, Desmond in Consedine, Jim, 1999. PP7-8)

17. The New Zealand Justice system can learn a lot from the traditional approaches of Pacific Island New Zealanders and indigenous peoples. Māori have a tradition of restorative justice where by the restoration of all concerned (victims, offenders, family and community) is the primary goal. (Ibid P186) This structure provides a constructive means of rebuilding after tragedy by promoting healing rather than anger and compassion rather than vengeance. In contrast, retributive justice does not offer positive contributions to the well being of communities or the development of a just society. We believe the focus of justice must be to make wrongs right by focusing on
the victim not the offender. This approach re-empowers victims, giving them the ability to heal their wounds.

18. The idea of restorative justice is nothing new. It has been practised in different parts of the world for centuries. Before the English colonised Canada, Ireland and New Zealand, restorative solutions were used to restore the well being of the victim and community by repairing the damage of the offence and starting the healing processes for both victims and offenders. Retribution and vengeance only came following colonisation with the imposition of English law (Ibid Chapters 6, 10 and 12). In the twenty first century, New Zealand is made up of more and more ethnic groups. The historical attachment to the UK is not a good reason to maintain a legal system which does not meet the needs of New Zealanders.

19. A change would likely benefit Māori, who happen to be the worst offenders statistically, by implementing a historically familiar system (Department of Corrections Census of Prison Inmates and Home Detainees, 2003).

20. Caritas Aotearoa New Zealand endorses the restorative understanding outlined in the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by New Zealand. Of particular importance is the idea that everyone has a right to an effective remedy for any violations of his or her human rights (ICCPR, Article 2: 3a). We believe that the New Zealand retributive system is in breach of this right.

Conclusion

21. Caritas Aotearoa New Zealand would like to see greater support of victims of crime, as well as greater recognition of their rights and more opportunities for their representation in criminal proceedings. We do not see a retributive justice system as a positive system for victims or New Zealand.

22. We look forward to seeing our concerns about the lack of reconciliation reflected in the decisions and recommendations of the Justice and Electoral Committee’s inquiry into Victim’ Rights.