NGO Report to the 70th CEDAW Session: Review of New Zealand

Submitted by Te Whāriki Takapou, the Abortion Law Reform Association of New Zealand (ALRANZ), and Family Planning New Zealand

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Introduction

1. Te Whāriki Takapou provides nationwide sexual and reproductive health promotion and research services. Formed in 1990 the Trust is governed and operated by Māori, for the benefit of Māori communities. The organisation aims to improve the sexual and reproductive health of Māori and reduce inequities. Te Whāriki Takapou has strong working relationships with Māori organisations, iwi, and 'mainstream' organisations in the health, education and research sectors.

2. ALRANZ is an Incorporated Society formed in February 1971 to seek reform of the law in New Zealand so that a woman may choose whether to continue a pregnancy or obtain an abortion. ALRANZ is a national advocacy organisation supporting sexual and reproductive health and rights (SRHR).

3. Family Planning is New Zealand's largest provider of sexual and reproductive health services and information. A non-government organisation, Family Planning operates 30 clinics as well as school and community-based services, accredited clinical courses and workshops for doctors, nurses, midwives and other clinicians working in sexual and reproductive health. Health promotion teams run professional training and education programmes in schools and the community. Family Planning New Zealand is committed to increasing health equity as a strategic priority. Family Planning is ECOSOC accredited.

4. This is a combined report from the above organisations, which is supplemental to an initial joint alternate report submitted to the Committee for the pre-sessional working group. This report updates information, as needed, and provides comment on the new Government's intentions around abortion law reform as expressed in the New Zealand Government's replies to the list of issues and questions posed by the CEDAW Committee in November 2017.

5. The CEDAW Committee posed the following questions to New Zealand in the list of issues and questions:[1]

> *Please provide information on the incidence of unsafe abortion and its impact on women's health, including maternal mortality. Please also provide information on measures being taken to amend the Crimes Act in order to expand the grounds for legal abortion to include rape, and revise the Contraception, Sterilization and Abortion Act of 1977 with a view to easing the onerous procedure for procuring an abortion, under which women are required*

[1] CEDAW Committee: Committee on the Elimination of Discrimination against Women Seventieth session (2017) *List of issues and questions in relation to the eighth periodic report of New Zealand*.

to obtain certificates from two certified medical consultants, and which reportedly creates long waiting lists for women and girls. Please further provide information on steps being taken to shift oversight of abortion laws, policies and services from the Ministry of Justice to the Ministry of Health. Please also provide an update on the status of the national sexual and reproductive health action plan being developed by the Ministry of Health, and the extent to which relevant stakeholders have been involved in its elaboration.

Government intention for abortion law reform

6. To date, New Zealand has failed to address the CEDAW Committee's earlier recommendations on reviewing - with a view to simplifying - the current abortion laws to ensure women's right to bodily autonomy, and removing punitive measures for abortion.[2]

7. In late February 2018, the Minister of Justice requested that the Law Commission provide advice to Government on how to treat abortion as a health issue in legislation. The Minister requested that the scope of the Law Commission review include "the criminal aspects of abortion law, the statutory grounds for an abortion and process for receiving services". Abortion law exists within the Crimes Act 1961 and the Contraception, Sterilisation and Abortion Act 1977, and both of these Acts are being considered by the Law Commission.

8. In early April, the Law Commission launched a consultation website[3] in order to gather comment from the public about abortion in New Zealand. The Commission is expected to report to the Government in October 2018.

Unsafe abortion

9. There is no evidence of unsafe abortion in New Zealand.

10. Research shows that abortion is safest the sooner it is done.[4] Under current abortion law, due to inequitable service provision and the need for two certifying consultants to authorize an abortion, women experience unnecessary delays in accessing an abortion. These delays result in abortions being performed at a later gestational age, which is contrary to best practice standards and can also cause considerable stress to women. For example, the percentage of abortions performed before the 10th week has not improved in any significant way since 2008[5] and is low by international standards. In 2016 in New Zealand only 57% of abortions were performed before the 10th week as compared to 81% in the UK[6] .

[2] CEDAW/C/NZL/CO/7. Retrieved from http://women.govt.nz/sites/public_files/CEDAW%20concluding%20observations%202012.pdf.
[3] http://abortionlaw.lawcom.govt.nz/
[4] Royal College of Obstetricians and Gynaecologists: Best Practice in Comprehensive Abortion Care (2015) https://www.rcog.org.uk/globalassets/documents/guidelines/best-practice-papers/best-practice-paper-2.pdf
[5] Abortion Supervisory Committee (2018) Annual Report 2017
[6] UK Department of Health (2017) Abortion Statistics, England and Wales: 2016.

Amending the Crimes Act 1961

11. Expanding the grounds for lawful abortion under the Crimes Act, such as to include rape, would leave abortion as a criminal issue, only legal under certain circumstances, and still the responsibility of the Ministry of Justice.

12. In order to treat abortion as a health issue in New Zealand, and shift oversight of abortion laws, policies and services to the Ministry of Health, abortion law must be removed from the Crimes Act.

13. Abortion should be managed under health legislation and regulations. Abortion should be a health care issue between a woman and a qualified health practitioner.

Amending the Contraception, Sterilisation and Abortion Act 1977

14. As noted by the CEDAW Committee, the Contraception, Sterilisation and Abortion Act should also be revised.

15. There should not be a certification process in order to obtain an abortion. There is no evidence that third-party authorisation of abortion is necessary or beneficial.[7] There is evidence that third-party authorisation creates barriers for women, causing delays and inequitable access to abortion.[8] Allowing abortion to be provided by a qualified health practitioner, based on a woman's informed consent, will support more timely and equitable access to abortion services.

16. Abortions should be provided by suitably qualified health professionals. Regulations, professional standards and guidelines - and disciplinary processes – are already in place in New Zealand for overseeing how health professionals practice (e.g. Health Practitioners Competence Assurance Act 2003). Abortion should be regulated in a way which allows health practitioners to follow international best practice in abortion care.

17. A new legal framework should eliminate or limit the right of a health practitioner to refuse to assist a person seeking abortion because of their personal beliefs. The rights of patients to access health care should be prioritised.

18. The Contraception, Sterilisation and Abortion Act sets out the process of obtaining a license to provide abortion services. Currently this process is managed by the Abortion Supervisory Committee, a tribunal of the Ministry of Justice.

19. There is no reason for a more stringent statutory process or requirements for facilities performing abortions than for facilities performing other comparable procedures. Abortion services should be integrated with comprehensive sexual and reproductive health services and be responsive to the needs of communities.

[7] WHO World Health Organisation (2012) *Safe abortion: technical and policy guidance for health systems*: http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf?ua=1

[8] The National Academies of Sciences, Engineering, and Medicine - The Safety and Quality of Abortion Care in the United States (2018) https://www.nap.edu/read/24950/chapter/1

20. There should not be a statutory requirement for abortions to be provided in hospitals or specially licensed facilities. Most abortions can be provided through community health care clinics, and medical abortion pills can be safely taken at home once women have been provided the information and support they need.

21. No other statutory requirements that restrict and delay access to abortion services (eg. mandatory counselling, waiting periods or parental notification) should be introduced through new legislation.

Abortion as a health issue

22. Legislative change is only one step, albeit a significant one, toward improving equitable access to abortion. Alongside legislative change, there must be adequate service provision, standards, planning, resourcing, research, and workforce training and development.

23. Abortion should be fully and effectively integrated into the draft National Sexual and Reproductive Health Action Plan (SRHAP) and provided as a component of comprehensive sexual and reproductive health services.

24. Improving equity of access to quality[9] abortion services and counselling is an action of the draft SRHAP. However, the proposed measure and goal for the action are flawed as neither are appropriate indicators for equitable access to services. Without up-to-date baseline information it is not possible to assess equity by measuring outcomes for all women with that of women from priority populations.

25. The Ministry of Health should support national guidelines and best practice standards for abortion care, training and maintaining competence of health practitioners, and adequate funding for abortion provision across regions so it meets community need.

26. Without legislative change, the current climate of fear, stigma and discrimination will continue. What should be routine reproductive healthcare procedures - such as removing IUDs from pregnant people wishing to continue their pregnancies - is prevented because health practitioners are fearful of breaking the law should a miscarriage follow removal.

27. Communities do not currently engage in healthy discussion about abortion, women's experiences of abortion, or access to abortion services because of the stigma attached to abortion and women's fear of discrimination.

Conclusion

27. We support the Government's intention to review abortion law with the aim of treating abortion as a health issue in legislation, not a crime.

28. The law must be changed to promote women's right to health, gender equality, equitable access to health care and best practice in abortion care.

[9] Including services that are close-to-home, timely, with the option of a medical or surgical abortion, and the abortion procedure to be completed as soon as possible following first referral

29. We respectfully ask that the Committee continue to press the government to:

a. Introduce legislation to remove abortion from the Crimes Act 1961 and amend the Contraception, Sterilisation and Abortion Act 1977 so abortion can be managed as an integrated component of comprehensive sexual and reproductive health services.

b. Revise the SRHAP so that abortion outcomes for women from priority populations can be reviewed against outcomes for all women and changes with regard to equity can be monitored.

c. Fund research on abortion care, access, funding and stigma, particularly on the sexual and reproductive health of priority groups of women. Research should align to the principles of the Treaty of Waitangi and with a view to improving health outcomes for all.

Thank you for the opportunity to comment.

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