

**Universal Periodic Review of New Zealand
18th Session
January & February 2014**

Joint submission by:

Family Planning New Zealand (FP NZ)

<http://www.familyplanning.org.nz/>



&

Sexual Rights Initiative (SRI)

www.sexualrightsinitiative.org



Key Words: Right to health, right to non-discrimination, access to abortion information and services, access to sexual and reproductive health information and services, reproductive rights, sexual rights.

Executive Summary:

1. This report is submitted by Family Planning New Zealand (FP NZ)¹ and the Sexual Rights Initiative (SRI).² It focuses on the human rights violations of women and girls living in New Zealand who face barriers to their access to safe and legal abortion services within the State.
2. Currently, abortion is only available to women in certain circumstances. Women seeking abortion services must do so only when there is serious danger to the life or to the physical or mental health of the mother, risk that the child would be severely handicapped, physically or mentally, pregnancy as a result of incest or unlawful sex with a guardian and severe mental sub normality of the mother. Additional considerations that can be taken into account, but do not constitute grounds in themselves include: extremes of age and sexual violation (previously “rape”). After 20 weeks gestation, women’s access to abortion services is limited on the grounds of saving the life of the mother and to prevent serious permanent injury to the physical or mental health of the mother. These limitations are upheld through the *Crimes Act 1961*.
3. Reform of New Zealand’s abortion law is required in order to improve access, increase women’s reproductive autonomy, and to remove discrimination and stigma experienced by women when accessing abortion services.
4. The need for reform has been recognised domestically and internationally. The New Zealand Abortion Supervisory Committee, the group responsible for oversight of the *Contraception, Sterilisation and Abortion Act 1977*, has, on a number of occasions, called for a review of abortion law.
5. The Committee on the Elimination of All Forms of Discrimination Against Women, in reviewing New Zealand’s seventh periodical report (2012), requested, as one of their recommendations, that the New Zealand Government³ review the abortion law and practice it with a view to simplify it and to ensure women’s autonomy to choose. The Government has not yet responded to the Committee’s concluding observations. However, one Minister has signalled that there is no “appetite” for abortion law reform.⁴
6. Upholding outdated legal provisions, which restrict women’s reproductive choices, prevents women from accessing the highest attainable standard health. As such, Family Planning New

1 Family Planning New Zealand is a not-for-profit charitable organisation that has been operating for 75 years. We work to promote a positive view of sexuality to enable people to make informed choices about their sexual and reproductive health. Family Planning provides a range of services including sexual and reproductive health information, clinical services, education and training and research. We work with people of any gender, age, nationality or sexual orientation. We aim to help people make informed choices about their sexual and reproductive health.

2 The Sexual Rights Initiative is a coalition including: Action Canada for Population and Development (Canada); Coalition of African Lesbians (Africa), Creating Resources for Empowerment and Action (India), AKAHATA (Latin America), Egyptian Initiative for Personal Rights (Egypt), Federation for Women and Family Planning (Poland), and others (www.sexualrightsinitiative.com).

3 CEDAW/C/NZL/CO/7 34. (a)

4 <http://www.voxy.co.nz/politics/alranz-urges-govt-heed-un-committees-call-abortion/5/129616>

Zealand recommends that the New Zealand Government provide unhindered access to safe abortion services that meet high standards of accessibility, acceptability and affordability by conducting a full review of the suite of legislation related to abortion.

Legal Context:

7. In New Zealand, access to abortion is regulated by a number of statutes. At the centre of the suite of statutes are provisions set out in the *Crimes Act 1961*. The *Crimes Act 1961* states that:
 - **The grounds for abortions are (and amendments these include):** Serious danger to the life or to the physical or mental health of the mother, risk that the child would be severely handicapped, physically or mentally, pregnancy as a result of incest or unlawful sex with a guardian and severe mental sub normality of the mother.
 - **Factors which can be taken into account but which are not grounds in themselves:** Extremes of age and sexual violation (previously “rape”).
 - **After 20 weeks gestation the grounds are:** To save the life of the mother and to prevent serious permanent injury to the physical or mental health of the mother.
8. Provisions in the *Crimes Act 1961* are supplemented with a number of largely procedural provisions set out in the *Contraception, Sterilisation and Abortion Act, 1977* (CS&A 1977). The *Crimes Act 1961* and CS&A 1977 set out the criteria and procedural elements required to ensure that an abortion is lawful.
9. The core provisions of the CS&A 1977 relate to:
 - Establishing an Abortion Supervisory Committee.
 - The appointment of certifying consultants⁵ and procedures for approving an abortion. Certifying consultants are paid for each abortion referral – **two** consultants must approve an abortion.
 - Establishing a system of licensing institutions for abortion services.
10. The Abortion Supervisory Committee (ASC) has, on a number of occasions, called for review of the abortion provisions in the *Crimes Act 1961* abortion provisions.⁶ In 2000, the ASC called for a wide ranging review of the *Contraception, Sterilisation and Abortion Act 1977*. The ASC called for abortion to be removed from the criminal code suggesting the *1996 Code of Health and Disability Services Consumers’ Rights*, which deals with issues of safety, quality care, privacy and informed choice, would protect the right of women seeking abortion to be given accurate information to make an informed choice or give informed consent.⁷
11. The ASC accepted, amongst others, the following principles:

5 The Abortion Supervisory Committee appoints medical practitioners to the list as certifying consultants for a term of one year. at least one-half of the total number of appointees shall be practising obstetricians or gynaecologists.

6 Abortion Supervisory Committee Reports (1988 and 2000).

7 Ibid at 5.

- Abortion should be decriminalised and become an integral part of women’s health services, funded under the health system.
- The decision to have an abortion should be made only by the woman and her own medical practitioner.
- The procedures for obtaining an abortion should be simplified so that the abortion can be performed as easily as possible.

Context:

12. In the year ended December 2011, 15,863 abortions were performed in New Zealand, the lowest number since 1999 (15,501). The general abortion rate was 17.3 abortions per 1,000 women aged 15–44 years, down from 18.1 per 1,000 in 2010. Women aged 20–24 years had the highest abortion rate (33 abortions per 1,000 women). The median age of women having an abortion was 25 years. Most abortions (62 percent) were a woman's first abortion. 55 percent of abortions were performed before the 10th week of the pregnancy.⁸
13. In New Zealand women do not have to resort to unsafe abortions. Rather, reform of the law is required to improve access by simplifying the law. Doing so would increase women’s reproductive autonomy, allowing women to decide about matters relating to their bodies. Removing abortion from the criminal/punitive system would also contribute to reducing silence and stigma experienced by women who access abortion services.
14. In order to comply with CEDAW, the CEDAW Committee has noted that safe abortions also have to be accessible.⁹ In 2008, a study looked at the geographical distribution of first trimester abortion services in New Zealand. The study found that women who live in regions that do not offer local Termination of Pregnancy (TOP) services must travel on average 221km to access TOP services. This equates to an average return-trip distance of 442km. Three of the five regions that do not have local TOP services available have a higher than average proportion of Maori population. The results of this study demonstrate that first-trimester TOP services are relatively difficult to access for over one-sixth of the women in New Zealand.
15. The report concluded that as part of New Zealand’s commitment to addressing health disparities, there is need for action to be taken to ensure equity of access to abortion services for women throughout New Zealand, with means of achieving this including ensuring that all District Health Boards provide a local service (both surgical and medical abortion); and where not available, fully cover travel and other expenses incurred by women accessing services elsewhere
16. In its report of 2012, the Abortion Supervisory Committee noted that there was a shortage of certifying consultants in some large provincial towns as well as in a number of smaller towns throughout New Zealand. The Committee expressed a desire that women should be able to access abortion services locally and that the lack of consultants could adversely affect a

⁸ Report of the Abortion Supervisory Committee to December 2011.

⁹ http://reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_Hungary_Shadow_letter_CEDAW.pdf.

women's decision-making process or delay access to services. By requiring two consultants to approve an abortion the framework is discriminatory, in that only women are subjected to this scrutiny, and generates barriers to access.

17. Abortion is the only health service in New Zealand where a legally competent adult cannot autonomously consent to their medical treatment. The decision is transferred to two certifying consultants. This applies only to women and appears to be a case of *prima facie* discrimination. The CEDAW committee has noted that it is discriminatory for a State party to refuse to legally perform certain reproductive health services for women which includes laws that criminalise medical procedures which are only necessary for women.¹⁰
18. In the last decade, approximately \$36million (NZ) has been spent on certifying consultants in the 'approval' process. This money could have been spent improving access to a wide range of contraceptives including long acting contraceptives and improving sexuality education. The system is unnecessarily costly for a government that clearly understands the need for containing escalating health care costs.
19. In the year to December 2011, only 6.3% of abortions were medical abortions. The current legal framework stifles innovation and the introduction of new technologies as they were for surgical abortion. Home based administration for early medical abortion is not possible. This has a negative impact on access to new technologies and the ability of women to access services closer to their home. This results in the violation of women's right to benefit from scientific progress. Withholding such technology can have potentially harmful effects on overall health and well-being who attempt to access abortion services.
20. Rape is not automatically one of the grounds on which abortion can be approved. The *Crimes Act 1961* sets out the grounds upon which an abortion becomes lawful. Section 187 A (2) determines that sexual violation (rape), while not in itself grounds for an abortion, may be taken into account when considering if the continuance of the pregnancy would result in serious danger to her life or to her physical or mental health of the woman.
21. Combined, the legal and structural barriers constitute direct limitations on women's access to safe abortion services, which is in direct violation of women's reproductive rights, reproductive choices, and freedom of decision-making, results in women's inability to obtain the highest possible standard of physical and mental health.

UN Support for Law Reform:

22. The international community is aware that sexual and reproductive rights jurisprudence at the United Nations increasingly supports the decriminalisation of abortion.
23. Examining committees, including the Committee on the Elimination of All Forms of Discrimination Against Women, have called for measures to decriminalise abortion. For

¹⁰ http://reproductiverights.org/sites/crr.civicaactions.net/files/documents/crr_Hungary_Shadow_letter_CEDAW.pdf

example, General Recommendation 24, paragraph 31(c), (20th session, 1999) establishes that: *When possible, legislation criminalising abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion.* Similarly, in his report of October 2011, the United Nations Special Rapporteur on the Right to Health, Anand Grover, unequivocally told governments they must remove laws that criminalise abortion.¹¹

24. The Universal Periodic Review (UPR) process has also led to a number of Reviewing States (RS) requesting States under Review (SuR) to review and/or decriminalise abortion. A search of the UPR recommendations database, in March 2013, found 34 recommendations made to SuR requesting abortion-related legal, policy or programmatic changes to decriminalise or enhance access to safe abortion. Abortion law reform was not addressed in New Zealand's National UPR Report in 2009, nor was it an issue raised by NGOs.

25. In 2012, FP NZ, in partnership with the Abortion Law Reform Association of New Zealand, presented a submission to the CEDAW examining committee requesting that:

- *Abortion law be reviewed with a view to removing it from the provisions of the Crimes Act 1961 and dealt with as an integrate component of a comprehensive sexual and reproductive health service.*

26. In response, the CEDAW Committee in reviewing New Zealand's seventh periodical report (2012) requested that the New Zealand Government:¹²

- *Review the abortion law and practice with a view to simplifying it and to ensure women's autonomy to choose;*
- *To prevent women for having to resort to unsafe abortions and remove punitive provisions imposed on women who undergo an abortion;*

The Government has not yet responded to the Committee's concluding observations. However, on Minister has signaled that there is no "appetite" for abortion law reform¹³. Abortion is politically very contentious.

Recommendations to New Zealand:

27. In light of the evidence provided which demonstrates clear violations of women's human rights, specifically women's reproductive rights, right to highest attainable standard of physical and mental health, right to equality and to be free from all forms of discrimination, it is recommended that the Government of New Zealand: **Provide unhindered access to safe abortion services that meet high standards of accessibility, acceptability and affordability.** The Government of New Zealand should do this by:

- a. Removing abortion from the *Crimes Act 1961* to ensure legal access to abortion, in any circumstance, based on women's decisions as to their body.**

11 United Nations General Assembly, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health.* A/66/254

12 CEDAW/C/NZL/CO/7 34. (a)

13 <http://www.voxy.co.nz/politics/alranz-urges-govt-heed-un-committees-call-abortion/5/129616>

b. Removing administrative barriers existing in the CS&A act.

- 28.** To do this the New Zealand Government should: **Direct the Law Commission of New Zealand to conduct a full review of the suite of legislation related to abortion, with the intention of: removing abortion from the *Crimes Act 1961* to ensure legal access to abortion, in any circumstance, based on women's decisions as to their body, and removing administrative barriers existing in the CS&A act.**