NGO 2020 mid-term report to CEDAW

July 2020

Introduction

1. In the concluding observations of the eighth periodic report of New Zealand, the CEDAW Committee requested that the State party provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 20, 26 (a), 40 (a) and 48 (a) of the report.

2. This submission provides comment on recommendation 40 (a): Remove abortion from the Crimes Act 1961 and amend the Contraception, Sterilisation and Abortion Act 1977 in order to fully decriminalize abortion and incorporate the treatment of abortion into health services legislation.

3. 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 or Māori tribes, and 'mainstream' organisations in the health, education and research sectors.

4. Family Planning is New Zealand's largest provider of sexual and reproductive health services and information and is an abortion provider. 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 has an international programmes unit focused on increasing access to sexual and reproductive health information and services for people in developing countries, primarily in the Pacific region. Family Planning New Zealand is committed to increasing health equity as a strategic priority. Family Planning is ECOSOC accredited.

The Abortion Legislation Act 2020

5. In March 2020, New Zealand modernised its abortion laws after 40 years. Abortion is now regulated under health legislation and is nearly completed decriminalised. The only aspect of abortion law which remains under the Crimes Act 1961, is where a person other than a health practitioner performs or procures an abortion. This is still a crime. The person having or seeking the abortion is not subject to this offence.

6. The Abortion Legislation Act 2020[1] amends the Contraception, Sterilisation and Abortion Act 1977[2] and other relevant legislation. Under the new law, a qualified health practitioner can provide an abortion to a woman or pregnant person up to and including 20 weeks of a pregnancy. After 20 weeks of pregnancy, a qualified health practitioner may only provide an abortion to a woman or pregnant person if the health practitioner believes that the abortion is clinically appropriate in the circumstances. The health practitioner must consult with at least one other health practitioner and consider: legal, professional, and ethical standards; the pregnant person's physical health, mental health and overall well-being; and the gestational age of the foetus.

7. Under the new law, women and pregnant people can self-refer to abortion, and abortions are no longer required to be performed in specially licensed facilities. Abortions can be provided by any qualified health practitioner, such as nurse practitioners and midwives, not only doctors. Abortion provision in a primary care setting is enabled under the law.

8. The law puts in place a number of other provisions including a requirement for national standards of care for abortion provision and reporting requirements for contraception, sterilisation and abortion.

9. Under the new law, health practitioners are still allowed to conscientiously object to providing abortion, contraception or sterilisation, however, the law puts slightly greater emphasis on the needs of the patient by requiring the objecting health practitioner to tell the person how to access the nearest provider who can help them with the service.

10. While the proposed law included provisions to establish 150 metre safe zones around abortion clinics to protect people seeking abortion and staff from being harassed or intimidated by protestors, an amendment removing this aspect of the law passed during debate so is not included in the final legislation.

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[1] Abortion Legislation Act 2020.
http://www.legislation.govt.nz/act/public/2020/0006/latest/LMS237550.html#LMS237600
[2] Contraception, Sterilisation and Abortion Act 1977
http://www.legislation.govt.nz/act/public/1977/0112/latest/DLM17680.html

Implementation and equitable access to abortion

11. Te Whāriki Takapou and Family Planning strongly supported the new abortion legislation and congratulate the Government on abortion law reform. The new law provides a modern and fit for purpose legal framework for abortion. The law also creates an enabling environment for equitable access to abortion in New Zealand by removing unnecessary legal barriers to abortion and allowing abortion to be – for the most part – regulated like other health issues.

12. Given that the new abortion legislation passed just days before New Zealand entered a strict lockdown to prevent the spread of COVID-19, it is not surprising that the implementation of the law is slow to date.

13. Moving forward, a number of key changes to policy and systems must be prioritised in order to realise the intention of the law and improved, equitable access to abortion.

14. There will need to be policy and funding changes that enable improved access to abortion through both primary and secondary providers across all regions, including associated services like scans and blood tests. Currently, all funding for abortion service provision remains with existing services primarily in secondary care, with no funding for abortion provision in primary care settings such as Family Planning clinics, General Practice or Māori primary health providers.

15. There is a need for adequate data collection on abortion provision to ensure equity of access, including waiting times to receive an EMA and surgical abortion once requested, and pregnancy gestation at the time of the abortion, as well as geographical spread of services. This data should be collected in both primary and secondary care settings.

16. There is a need for professional development for health practitioners in all levels of abortion provision – from EMA in primary care to surgical abortions post 12 weeks in a hospital setting. There is also a need to ensure the timely availability of suitably trained counsellors for women and pregnant people who opt for counselling.

17. Culturally appropriate national best practice guidelines for medical and surgical abortions and counselling must be developed. Interim guidelines which were quickly updated to reflect the new law must be comprehensively updated based on international best practice standards and in consultation with the health sector and Māori.

18. Improving abortion outcomes and access for Māori must be prioritised. Two recent reviews, the New Zealand Health and Disability Review[3] and the Hauora Report (Wai 2575)[4] of the Waitangi Tribunal are a mandate for all health services to deliver culturally appropriate services so as to improve Māori health outcomes.

19. While the new law includes a requirement that the Director General of Health report every 5 years on whether there is timely and equitable access to abortion services, there will be a need for independent research to inform policy and funding decisions, particularly around equity.

Conclusion

20. The changes made through abortion law reform in New Zealand are both practical and symbolic. Removing abortion from the Crimes Act and treating it as a health issue acknowledges the right of women and pregnant people to make decisions about a pregnancy, and consequently, about their lives and future. The new law better reflects that reproductive decisions are human rights and fundamental to good health and wellbeing.

21. It is important that the new law is implemented in a way which supports timely, equitable access to abortion. This will require a number of policy and systems level changes. Reproductive rights will only be realised for all women and pregnant people in New Zealand where there is timely, equitable access to abortion.

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[3] New Zealand Health and Disability Review (2020) https://systemreview.health.govt.nz/final-report/download-the-final-report/

[4] Waitangi Tribunal / Te Rōpū Whakamana i te Tiriti o Waitangi (2019) *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry (prepublication version – Wai 2575)*. Wellington: Waitangi Tribunal.https://www.waitangitribunal.govt.nz/inquiries/kaupapainquiries/health-services-and-outcomes-inquiry/