

Decriminalisation of abortion in New Zealand and Australia

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Legislative efforts currently underway to decriminalise abortion in New Zealand and in Australia have generated impassioned public discussions on both sides of the issue. We are concerned to see that the views of many influential persons participating are either uninformed, misinformed or based disproportionately on ideology and/or politics, rather than reliable evidence and human rights standards. We wish to briefly recall some important facts and statements from international human rights bodies about criminalisation/decriminalisation and abortion, and encourage all parliamentarians to take an evidence- and human-rights-based approach in their deliberations.

Decriminalisation of abortion does not increase the incidence of abortion. The primary determinant of abortion incidence is unintended pregnancy, resulting from incorrect or non-use of effective contraception.¹ Based on analysis of global data, there is no statistical association between abortion incidence and abortion laws;² however, abortion laws, policies and service availability are key determinants of abortion safety.³ When abortions are legal and readily available, nearly all are safe; when restricted in law and/or in practice, unsafe abortion is much more common.³ Abortion rates are lowest in countries with ready, equitable access to sexual and reproductive health information, education and services, including effective contraception and safe abortion care.

Decriminalisation of abortion does not increase the gestational age at the time of abortion. In countries with lawful abortion and reliable data, 90% or more of abortions are performed at less than 13 weeks and two-thirds at less than nine weeks gestational age.⁴ In New Zealand in 2018, 94% of abortions were performed at 13 weeks

or less, 60.3% of abortions were performed at or less than nine weeks and only 0.7% occurred at 20 or more weeks gestation.⁵ Globally, nearly all lawful abortions performed after 20 weeks gestational age are due to serious fetal impairments or risk to the pregnant person's mental or physical health. There is no evidence that the rate of abortions performed after 20 weeks increases as a result of decriminalisation.

Decriminalisation of abortion does not increase the male-to-female ratio at birth. Prenatal sex selection and abortion, biased against female fetuses, is usually a reflection of son preference resulting from a combination of cultural practices, ideologies and social norms related to inheritance, socioeconomic wellbeing and death.⁶ Only 10 countries—Albania, Armenia, Azerbaijan, China (including Hong Kong and Taiwan), Georgia, India, Republic of Korea, Montenegro, Tunisia and Vietnam—have been identified as having strong statistical evidence of imbalanced sex ratios at birth.⁷ Most of these countries have imbalanced sex ratios despite having laws in place that prohibit or severely restrict prenatal sex selection and/or sex-selective abortion.⁸

Decriminalisation of abortion increases the proportion of abortions that are safe. A recent analysis of global data showed that the proportion of safe abortions is significantly higher in developed countries and in countries with less restrictive abortion laws.⁹ Legal abortion, performed with WHO-recommended methods (mifepristone and misoprostol pills, vacuum aspiration, and dilatation and evacuation) is one of the safest procedures that women undergo. Analysis of data collected over a 17-year period in the US showed that legal induced abortion is safer than receiving an injection of penicillin.^{3,10-11}

Human rights standards require decriminalisation of abortion in all circumstances for women and girls seeking abortion and for healthcare personnel who provide them. In 2018 alone, United Nations Treaty Monitoring Committees and Special Procedures, through 53 concluding observations and six reports that addressed abortion, overwhelmingly called on countries to decriminalise abortion.⁸ The Human Rights Committee, in its General Comment 36 on the Right to Life, stipulated that States Parties, “should not [...] apply criminal sanctions against women and girls undergoing abortion or against medical service providers assisting them in doing so, since taking such measures compel women and girls to resort to unsafe abortion”.¹² In July 2012, the Committee monitoring the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) expressed concern to New Zealand about “the convoluted abortion laws which require women to get certificates from two certified consultants before an abortion can be performed, thus making women dependent on the benevolent interpretation of a rule which nullifies their autonomy”.¹³

The Committee urged New Zealand to “review the abortion law and practice with a view to simplifying it and to ensure women’s autonomy to choose”.¹³ In July 2018, CEDAW called on New Zealand to “Remove abortion from the Crimes Act 1961 and amend the Contraception, Sterilisation and Abortion Act 1977 in order to fully decriminalise abortion and incorporate the treatment of abortion into health services legislation...”.¹⁴

We encourage people on both sides of the debate about decriminalisation of abortion to focus their discussions on the best interests of girls, women and all persons who can become pregnant, in terms of their autonomy, health and rights. Furthermore, we encourage New Zealand, Australia and the global community to follow the guidance of United Nations human rights bodies on decriminalisation of abortion, and guidance of the World Health Organization, which recommends that “Laws and policies on abortion should protect women’s health and their human rights...[and] Regulatory, policy and programmatic barriers that hinder access to and timely provision of safe abortion care should be removed”.³

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14. CEDAW/C/NZL/CO/8, para 39–40.