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**STATUS OF HUMAN RIGHTS IN NEW ZEALAND
FOR THE 46TH SESSION OF THE
UNIVERSAL PERIODIC REVIEW**

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Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to discuss the status of human rights in New Zealand for the 46th Session of the Universal Periodic Review (UPR).

Background

2. New Zealand is located in the South Pacific Ocean, southeast of Australia, with a population of approximately 5.1 million people.¹ Of the population, 10.1% identify as Catholic, 6.8% as Anglican, 5.2% as Presbyterian and Congregational, 1.8% as Pentecostal, 1.6% as Methodist, 1.2% as Church of Jesus Christ, 10.7% as other Christian, 2.7% as Hindu, 1.3% as Maori, 1.3% as Muslim, 1.1% as Buddhist, 1.6% as other, and 48.6% as no religion.²

3. New Zealand's previous review was held on January 21, 2019.³ As a result of the review, New Zealand received 194 recommendations, 160 of which New Zealand supported.⁴ New Zealand noted a recommendation by Uruguay to "[e]liminate, in accordance with the recommendation by the Committee on the Elimination of Discrimination against Women, abortion from the Crimes Act 1961 and amend the Law on Contraception, Sterilization and Abortion of 1977 in order to completely decriminalize abortion by amending legislation through the implementation of Recommendation A of the Legal Committee on 'alternative approaches to the Law on Abortion.'"⁵ Additionally, since New Zealand's previous UPR, the government legalized euthanasia.⁶

Legal Framework

Abortion

4. Under Section 8 of New Zealand's Bill of Rights Act 1990, "[n]o one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice."⁷ However, in 2020, the government expanded access to abortion through the Abortion Legislation Act 2020.

5. Section 10 of the Abortion Legislation Act 2020 states that "[a] qualified health practitioner may provide abortion services to a woman who is not more than 20 weeks pregnant."⁸ Abortion is permitted beyond twenty weeks "if the health practitioner reasonably believes that the abortion is clinically appropriate in the circumstances."⁹ Under Section 11 (2) of this Act:

In considering whether the abortion is clinically appropriate in the circumstances, the qualified health practitioner must—

- (a) consult at least 1 other qualified health practitioner; and
- (b) have regard to—
 - (i) all relevant legal, professional, and ethical standards to which the qualified health practitioner is subject; and
 - (ii) the woman's—
 - (A) physical health; and
 - (B) mental health; and
 - (C) overall well-being; and
 - (iii) the gestational age of the fetus.¹⁰

6. Prior to this expansion, abortions were only permitted after two doctors certified that continuing the pregnancy would result in physical or mental harm to the mother.¹¹

7. New Zealand is a party to the International Covenant on Civil and Political Rights (ICCPR).¹² Under Article 6 of the ICCPR, “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹³ New Zealand also has a responsibility to protect the lives of preborn babies under other international agreements such as the UN Charter, the Universal Declaration of Human Rights (UDHR), and the 1994 Cairo Conference on Population and Development.

Assisted Suicide

8. New Zealand passed the End of Life Choice Act 2019, which became effective on November 7, 2021. The Act provides that people “who have a terminal illness and who meet certain criteria [have] the option of lawfully requesting medical assistance to end their lives . . .”¹⁴ Under Section 5 of the law:

- (1) In this Act, person who is eligible for assisted dying or eligible person means a person who—
 - (a) is aged 18 years or over; and
 - (b) is—
 - (i) a person who has New Zealand citizenship as provided in the Citizenship Act 1977; or
 - (ii) a permanent resident as defined in section 4 of the Immigration Act 2009; and
 - (c) suffers from a terminal illness that is likely to end the person's life within 6 months; and
 - (d) is in an advanced state of irreversible decline in physical capability; and
 - (e) experiences unbearable suffering that cannot be relieved in a manner that the person considers tolerable; and
 - (f) is competent to make an informed decision about assisted dying.
- (2) A person is not a person who is eligible for assisted dying or an eligible person by reason only that the person—
 - (a) is suffering from any form of mental disorder or mental illness; or
 - (b) has a disability of any kind; or
 - (c) is of advanced age.¹⁵

9. However, as a party to the ICCPR and the Convention on the Rights of Persons with Disabilities (CRPD),¹⁶ New Zealand, is required to protect human life. Again, Article 6 of the

ICCPR requires that no human being be arbitrarily deprived of his life.¹⁷ And Article 10 of the CRPD requires that “States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”¹⁸

Abortion

10. Abortion is one of the gravest of all offenses against human life because it entails the deliberate killing of innocent life. Despite this fact, on March 24, 2020, the Abortion Legislation Act 2020 went into effect and permits abortion on demand through the first twenty weeks of pregnancy.¹⁹ After twenty weeks, a pregnant woman will require a test and two doctors will have to agree that an abortion is the right decision.²⁰ Prior to this, abortion was only permitted within twenty weeks under conditions specified in the Crimes Act 1961 and required the certification of two doctors.²¹ In 2020, the same year abortion was permitted on demand through twenty weeks, 13,246 abortions were carried out and 18.6% of known pregnancies ended in abortion.²² This was an increase from the 12,948 abortions performed in 2019,²³ but even under the old legislation the number of reported abortions reached as high as 18,382 in 2007.²⁴ The 2020 number stayed consistent the following year with 13,257 abortions being performed in 2021.²⁵

11. The easing of abortion restrictions in New Zealand is done in direct contravention to a number of international documents. In fact, since the 1994 Cairo Conference on Population Development, U.N. Member States have had an affirmative commitment to “reduce the recourse to abortion”²⁶ and to “take appropriate steps to help women avoid abortion, *which in no case should be promoted as a method of family planning.*”²⁷ “Family planning” is simply the process of planning when to have children. Once a child is conceived, though, the unnatural termination of that pregnancy cannot be said to fall into that category. However, from 2015 to 2019, almost thirty percent of unplanned pregnancies in New Zealand resulted in abortions.²⁸ This can hardly be considered consistent with an affirmative commitment to helping women avoid abortion.

12. Additionally, the UDHR requires “recognition of the inherent dignity and of the equal and inalienable rights of *all* members of the human family [as] the foundation of freedom, justice and peace in the world,” and provides that “[e]veryone has the right to life”²⁹ As stated above, Article 6 of the ICCPR likewise states that “[e]very human being has the inherent right to life. This right shall be protected by law.”³⁰ Similarly, the preamble to the United Nations Charter states that “the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person”³¹ Despite none of these documents containing a “right to an abortion,” New Zealand has seen fit to grant on demand abortion up to when the baby is halfway to full term, and actually only one week prior to when a baby has been born and survived,³² and still allows them under loose restrictions after that point. New Zealand’s policy decisions are not consistent with every person’s right to life enumerated in these international documents.

13. Furthermore, when compared with other U.N. Member States, the extreme permissiveness of New Zealand’s abortion law becomes even more apparent. There are 193 U.N. Member States, a majority of which (109) have strict limits on abortion.³³ The sixty-seven other countries allow on demand abortion at varying gestational limits.³⁴ However, of that minority, fifty-two countries only allow abortions up to twelve weeks with some allowing abortion between twelve and fourteen.³⁵ This makes New Zealand one of only a small number

of countries to allow elective abortion so late in the developmental timeline.³⁶ Not only is New Zealand's twenty week limit an extreme position, its broad permission for abortion after twenty weeks is also extremely concerning.

14. In addition to causing the death of the preborn baby, abortion can also result in physical and psychological harm to the mother. One study conducted in New Zealand found that women who had abortions experienced elevated rates of suicidal behavior, depression, substance abuse, anxiety, and other mental health problems.³⁷ Abortion can also mask other dangerous symptoms like an undiagnosed ectopic pregnancy.³⁸ Physical complications can include the perforation of the uterus or the laceration of the cervix.³⁹ There are also many health benefits that come from continuing a pregnancy that abortion eliminates, like the protective effect a full-term pregnancy has against breast cancer.⁴⁰ It's important to note that even the World Health Organization acknowledges the complications of abortion in its 2022 pro-abortion guidelines.⁴¹ The government of New Zealand should take seriously the dangers and negative consequences of abortion on women, including physical and mental suffering. It should especially consider the New Zealander women who suffer suicidal behavior, depression, and other mental health detriments caused by abortion.

Assisted Suicide

15. On November 7, 2021, the End of Life Choice Act 2019 went into effect in New Zealand and officially legalized assisted dying.⁴² In the three months following this law going into effect, thirty-two people were euthanized.⁴³ During the first full year of this practice being legal, the government received 661 formal applications to be euthanized.⁴⁴ Of those that applied, 399 applications were deemed eligible for euthanasia and 257 assisted suicides were carried out.⁴⁵ It is without doubt that these numbers will only continue to climb year after year. We only have to look at Canada to see how these number will increase. In its first year of legalization in Canada, 1,018 people were killed by euthanasia.⁴⁶ Just five years later, the number of people killed by euthanasia jumped to a staggering 10,064 and accounted for 3.3% of all deaths in 2021.⁴⁷ Additionally, since Canada legalized euthanasia in 2016, more than 30,000 people have been euthanized.⁴⁸

16. New Zealand's End of Life Choice Act is also problematic because it assumes that it is better to die than to live with a disability. In fact, the Disability Commissioner of New Zealand expressed these concerns: "I'm deeply troubled by the fact that this conversation is taking place in the absence of having a wider discussion about adequate disability support services in New Zealand."⁴⁹ In January 2021, several Special Rapporteurs also expressed concern over what they deem is "a growing trend to enact legislation enabling access to medically assisted dying based largely on having a disability or disabling conditions, including in old age."⁵⁰ As they noted:

These assumptions, which are grounded in ableism and associated stereotypes, have been decisively rejected by the Convention on the Rights of Persons with Disabilities. Disability is not a burden or a deficit of the person. It is a universal aspect of the human condition.

Under no circumstance should the law provide that it could be a well-reasoned decision for a person with a disabling condition who is not dying to terminate their life with the support of the State.⁵¹

17. Yet another troubling consequence of legalized assisted suicide is the uncertainty now facing the disabled members of New Zealand's citizenry. The End of Life Choice Act does not "make firm distinctions between personal illness and disability or between terminal illness and chronic conditions, or between terminal illness and depression or other mental illness."⁵² With very little in the way of safeguards, vague and unspecific language, and no strong protections against coercion, competency, or consent abuses, disabled New Zealanders are plagued with worry about what the future holds for them and their chances of receiving adequate treatment.⁵³ In fact, many made their voices heard before the passage of the bill when 39,000 public submissions were submitted through the parliamentary process with ninety percent voicing strong opposition to legalized euthanasia.⁵⁴ Out of a population of five million, it was the largest number of submissions to any proposed law in New Zealand's history at the time.⁵⁵ Disabled or chronically ill people should not have to worry about whether they will be coerced or even asked to simply die instead of receiving the care they need to thrive in society. And those struggling with mental illnesses should receive support and counseling, not a lethal injection.

18. The elderly citizens of New Zealand have sweeping concerns about this law as well. One of the major issues with the End of Life Choice Act, and assisted suicide in general, is pressure or coercion for a person to seek euthanasia as opposed to actual medical treatment.⁵⁶ In one study, almost eighty-six percent of adults over sixty were opposed to the legalization of assisted suicide.⁵⁷ For those who were against legalization, the top three reasons were (1) the expectation that the elderly and other vulnerable groups would be pressured to use the Act to save resources, (2) the expectation that the vulnerable alleviate the burden they cause to others via assisted suicide, and (3) the belief that a doctor's role is to heal.⁵⁸ Moreover, along with the individual pressures from caregivers or doctors, there is a concern of cultural and societal pressure that may induce more people towards euthanasia than would otherwise consider it.⁵⁹ It is important to note that the broadest support for legalization came from a much younger age group of age thirty-one to forty-five; with eighty-one percent in favor of legalization.⁶⁰ Elderly New Zealanders should not have to entertain these kinds of concerns, nor should they ever have to find themselves in such situations.

19. Sadly, these concerns are not unfounded. Between November 2021 and March 2022, seventy-four percent of assisted suicides were performed on people aged sixty-five years or older.⁶¹ Sixty percent of all assisted suicides in that time were performed on people with a cancer diagnosis.⁶² Likewise, between April 2022 and March 2023, almost sixty percent of assisted suicides were aged sixty-five or older; with the next highest percentage of twenty-two percent being performed on people aged forty-five to sixty-five.⁶³ Sixty-seven percent of all assisted suicides during this time were also cancer patients.⁶⁴ In this same period, the Ministry of Health noted a complaint of a health practitioner initiating a conversation about assisted suicide with a suicidal young person.⁶⁵ Death is not and should not be considered treatment for the elderly, those diagnosed with cancer, or people struggling with suicide. Their lives ought to be cherished and their ailments ought to receive actual medical care.

20. Furthermore, the practice of allowing euthanasia is in itself a flagrant violation of Article 6 of the ICCPR and Article 10 of the CRPD, both of which require States Parties to respect and protect the lives of all people, without exception. New Zealand has an obligation not to take part in an intentional killing by a third person, either by providing the means or by not preventing it when possible.

Recommendations

21. New Zealand must protect the life of the preborn. To accomplish this, New Zealand must immediately adopt legislation restricting abortion in order to protect the life of the mother and the preborn baby from the dangerous effects of abortion. New Zealand must join the majority of U.N. Member States who have taken the pro-life position to protect the life of the preborn.

22. New Zealand must also reform its laws to respect and value innocent human life. To do this, New Zealand must ban the practice of euthanasia under the End of Life Choice Act or any other law.

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² *Id.*

³ *Universal Periodic Review – New Zealand*, OHCHR, <https://www.ohchr.org/en/hr-bodies/upr/nz-index> (last visited Sept. 1, 2023).

⁴ *New Zealand Infographic 32nd*, OHCHR, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session32/NZ/Infographic_NewZealand.pdf (last visited May 26, 2023).

⁵ OHCHR, UPR of New Zealand (3rd Cycle – 32nd Session): Thematic List of Recommendations, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session32/NZ/UPR32_NewZealand_Thematic_List_Recommendations.docx (last visited June 19, 2023).

⁶ Phil Mercer, *New Zealand Voluntary Euthanasia Law Comes Into Effect*, VOA NEWS (Nov. 8, 2021), <https://www.voanews.com/a/new-zealand-voluntary-euthanasia-law-comes-into-effect-/6304189.html>.

⁷ *New Zealand Bill of Rights Act 1990* §§8, https://constituteproject.org/constitution/New_Zealand_2014.pdf?lang=en.

⁸ *Abortion Legislation Act 2020* §10, <https://www.legislation.govt.nz/act/public/2020/0006/latest/LMS237600.html>.

⁹ *Id.* §11.

¹⁰ *Id.*

¹¹ *New Zealand Passes Historic Law to Decriminalize Abortion*, REUTERS (Mar. 18, 2020), <https://www.reuters.com/article/us-newzealand-abortion/new-zealand-passes-historic-law-to-decriminalize-abortion-idUSKBN2153YN>.

¹² *Ratification Status for New Zealand*, OHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=124&Lang=en (last visited Sept. 5, 2023).

¹³ *International Covenant on Civil and Political Rights* art. 6, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [hereinafter ICCPR].

¹⁴ *End of Life Choice Act*, § 3, <https://www.legislation.govt.nz/act/public/2019/0067/latest/whole.html#DLM7285905> (last visited Sept. 5, 2023).

¹⁵ *Id.* §5.

¹⁶ *Ratification Status for New Zealand*, *supra* note 12.

¹⁷ ICCPR art. 6, *supra* note 13.

¹⁸ *Convention on the Rights of Persons with Disabilities* art. 10, *adopted* Dec. 13, 2006, 2515 U.N.T.S. 3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

¹⁹ *Abortion Legislation*, MINISTRY OF HEALTH (Nov. 16, 2022), <https://www.health.govt.nz/our-work/regulation-health-and-disability-system/abortion-services-information-health-practitioners/abortion-legislation>.

²⁰ *New Zealand Passes Historic Law to Decriminalize Abortion*, *supra* note 11.

²¹ *Contraception, Sterilisation, and Abortion Act Passed*, NEW ZEALAND HISTORY (Feb. 23, 2021), <https://nzhistory.govt.nz/page/contraception-sterilisation-and-abortion-act-passed>.

²² *New Zealand's Abortion Statistics*, FAMILY FIRST (July 13, 2022), <https://familyfirst.org.nz/2022/07/13/new-zealands-abortion-statistics/>.

²³ *Abortion Services Aotearoa New Zealand*, MINISTRY OF HEALTH (2021), https://www.health.govt.nz/system/files/documents/publications/abortion_services_aotearoa_new_zealand_annual_report_2021_8_oct.pdf.

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²⁵ *Abortion Services Aotearoa New Zealand*, MINISTRY OF HEALTH (2022), <https://www.health.govt.nz/system/files/documents/publications/abortion-services-aotearoa-new-zealand-annual-report-2022-oct22.pdf/>.

²⁶ International Conference on Population and Development, *Report of the International Conference on Population and Development*, ¶ 8.25, U.N. Doc. A/CONF/F.171/13/Rev.1, https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/icpd_en.pdf.

²⁷ *Id.* ¶ 7.24 (emphasis added).

²⁸ *Country Profile: New Zealand*, GUTTMACHER INSTITUTE, <https://www.guttmacher.org/regions/oceania/new-zealand#:~:text=In%20New%20Zealand%20in%202015,preserve%20the%20pregnant%20person's%20health> (last visited Aug. 29, 2023).

²⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, pmbl., art. 3 (Dec. 10, 1948) (emphasis added).

³⁰ ICCPR art. 6, *supra* note 13.

³¹ U.N. Charter pmbl.

³² Hannah Echols, *UAB Hospital Delivers Record-Breaking Premature Baby*, UAB NEWS (Nov. 10, 2021), <https://www.uab.edu/news/health/item/12427-uab-hospital-delivers-record-breaking-premature-baby#:~:text=World%20record%20holder&text=Guinness%20World%20Records%20%E2%80%93%20The%20most,making%20him%20132%20days%20premature>.

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³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ David C. Reardon, Ph.D., *New Zealand Study on Mental Health Problems May Force Doctors to Refuse Abortions*, RACHEL'S VINEYARD MINISTRIES, <https://www.rachelsvineyard.org/PDF/Articles/New%20Zealand%20Study%20on%20Mental%20Health%20-%20David%20Reardon.pdf> (last visited Sept. 7, 2023).

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³⁹ *Women's Right to Know: Abortion & Pregnancy Risks*, LA. DEP'T OF HEALTH, <https://ldh.la.gov/page/915> (last visited Sept. 7, 2023).

⁴⁰ *See* Justin D. Heminger, *Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco*, 54 CATH. U.L. REV. 1273, 1288-89, 1290 n.119 (2005).

⁴¹ *Abortion Care Guideline*, WORLD HEALTH ORGANIZATION & HUMAN REPRODUCTION PROGRAMME 79 (Mar. 8, 2022), <https://www.who.int/publications/i/item/9789240039483>.

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⁴⁵ *Id.*

⁴⁶ Wesley J. Smith, *10,000+ Canadian Euthanasia Killings in 2021*, NATIONAL REVIEW (Aug. 3, 2022, 10:56 AM), <https://www.nationalreview.com/corner/10000-canadian-euthanasia-killings-in-2021/>.

⁴⁷ *Id.*

⁴⁸ Anna Mehler Paperny, *Canada Prepares to Expand Assisted Death Amid Debate*, REUTERS (Dec. 12, 2022, 5:00 PM), <https://www.reuters.com/world/americas/canada-prepares-expand-assisted-death-amid-debate-2022-12-11/#:~:text=More%20than%2030%2C000%20Canadians%20have,to%20their%20%22natural%22%20death>.

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⁵¹ *Id.*

⁵² Wendi Wicks, *New Zealand's Euthanasia Bill is a Step Into the Unknown for Disabled People*, THE GUARDIAN (Nov. 14, 2019), <https://www.theguardian.com/society/2019/nov/14/new-zealands-euthanasia-bill-is-a-step-into-the-unknown-for-disabled-people>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Rosemary Frey & Deborah Balmer, *The Views of Aotearoa/New Zealand Adults Over 60 Years Regarding the End of Life Choice Act 2019*, 61 J. OF RELIGION AND HEALTH (ISSUE 2) 1605 (2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8340805/pdf/10943_2021_Article_1359.pdf.

⁵⁷ *Id.*

⁵⁸ *See Id.* at 1610-1612.

⁵⁹ *Id.* at 1607.

⁶⁰ *Id.* at 1606.

⁶¹ *Registrar (Assisted Dying) Annual Report to the Minister of Health— June, 2022*, MINISTRY OF HEALTH 12 (2022), <https://www.health.govt.nz/system/files/documents/publications/registrar-assisted-dying-annual-report-jun22.pdf>.

⁶² *Id.*

⁶³ *Registrar (Assisted Dying) Annual Report to the Minister of Health— June, 2023*, MINISTRY OF HEALTH 8 (2023), <https://www.health.govt.nz/system/files/documents/publications/registrar-assisted-dying-annual-report-2023-july23.pdf>.

⁶⁴ *Id.*

⁶⁵ *Id.* at 19.