

Explanatory Notes to Accompany the Draft Policy Statement on Abortion

The sections below clarify the scope and content of the proposed positions contained in AI's draft policy statement. The numbering refers to the relevant paragraph of the policy statement. Extensive additional background information can be found in the ICM circulars and other papers that are listed in *Sexual and reproductive rights – further consultation and decisionmaking*.

Paragraph 1: Situating abortion within the framework of sexual and reproductive rights.

The focus on women's right to exercise their sexual and reproductive rights, including the right to make decisions regarding their sexuality and reproductive capacity free from coercion, discrimination and violence reflects the language of relevant human rights treaties and other international instruments.¹

Paragraphs 2-5: Abortion in the context of broader sexual and reproductive health services.

Unwanted pregnancy and unsafe abortion are a major public health concern and a key cause of maternal illness and death. The comprehensive range of services that states have committed themselves to provide to address these problems are specified in various international instruments including the Cairo Program of Action and subsequent international instruments.²

AI's policy on abortion recognizes that access to safe and legal abortion in the circumstances listed in paragraph 9 is only one aspect of a comprehensive range of interrelated sexual and reproductive health services, which should be aimed at the prevention of unwanted pregnancy and the reduction of the need for abortion:³ the Cairo Program of Action urges states to improve and expand access to contraceptive services and to sexual health information in order to reduce recourse to abortion.⁴

In addition to addressing specific violations of physical and mental integrity which arise in the context of abortion, AI's work in this area could also address the public health and development dimensions of unsafe abortion, particularly in the context of the Millennium Development Goals process.

¹ See the *Platform for Action* adopted by the International Conference on Population and Development in Cairo, 1994, para. 7.3.; the *Program of Action* adopted by the UN World Conference on Women, Beijing 1995, paras. 95, 96 and 107(d); the *Convention on the Elimination of All Forms of Discrimination against Women*, Article 16 (1) (e); and *General Comment 19 (Violence against Women)* of the CEDAW Committee.

² See, for example, the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* paras 14(1)(g) and (2)(a); *CESCR General Comment 14*; *CEDAW General Recommendation 24*; *CRC General Comment 3* Concepts such as "safe motherhood" and "fertility regulation" have been defined, see WHO Reproductive, Maternal and Child Health European Regional Office, *Definitions and Indicators in family planning, maternal and child health and reproductive health*, www.euro.who.int/document/e68459.pdf

³ ICM Decision 3 (2005) highlighted that "the need for abortion in a large number of cases is a consequence of violence against women, a lack of empowerment of women as well as of a lack of access to education and health services like contraception".

⁴ Cairo Program of Action, paragraph 8.25

Paragraph 6: Women’s right to make decisions freely

Women’s right to make decisions freely is a central tenet of human rights, and is based on non-interference by the State in the family and in decisions of a deeply personal nature. A concern for free and informed decision-making and autonomy in decision-making lies at the heart of relevant international human rights instruments,⁵ and medical ethical principles promoted by the World Health Organization (WHO)⁶. It is also consistent with AI’s traditional approach of protecting freedom of individual conscience against the coercive power of the state, as well as its concern to tackle violence against women by addressing its roots in women’s lack of agency and empowerment.

The only difference between the two versions of paragraph 6 is the second sentence in the second version. Supporters of this sentence argue that it states women’s privacy and decision-making autonomy as a guiding principle at the centre of AI’s approach. Furthermore, it also recognizes that a right to health is realized when a woman is being given the best information by a medical service provider. Opponents of this sentence argue that AI has not yet developed a general approach to privacy and autonomy. Furthermore, precisely because the right to privacy is often used to defend a broad right to access abortion, use of this terminology could give the impression that AI is staking out a broad “pro-abortion” position here.

Paragraph 7: Removing unreasonable restrictions

This paragraph introduces the demands and recommendations that AI would make under the new policy. These are aimed at removing the interference of the state in sexual and reproductive decision-making, and hence at removing those abortion-related restrictions in law, policy and practice which lead to grave human rights violations of concern to AI. The reference to “unreasonable restrictions” reflects an acknowledgement by AI that regulation in law and policy may place certain restrictions on access to abortion services, but only where these restrictions fulfill a human rights or public health goal⁷, and where the restriction is strictly necessary and proportionate. Reasonable restrictions could include those related to gestational limits (see section 3.5.1 below).

Restrictions AI would not consider legitimate are those which do not pursue a legitimate human rights or public health goal, and those which go against human rights principles, including restrictions premised on discriminatory attitudes to women’s rights and health. Such restrictions would include, for example, spousal consent requirements or bans on advertising by reproductive health service providers.⁸

⁵ For example, the Cairo Platform for Action states that “The empowerment and autonomy of women and the improvement of their political, social, economic and health status is a highly important end in itself.” (para 4.1)

⁶ WHO, *Safe abortion: Technical and policy guidance for health systems*, 2003, www.who.int/reproductive-health/publications/safe_abortion/safe_abortion.pdf

⁷ See further discussion at 3.5.1, *infra*.

⁸ See Center for Reproductive Rights, *Crafting an Abortion Law that Respects Women’s Rights: Issues to Consider*, March 2000, http://www.reproductiverights.org/pub_fac_atklegal.html

This position is consistent with that of the WHO, which has stated that “national norms, standards and regulations should support both women’s ability to exercise their reproductive and other rights, and health care workers’ fulfillment of their ethical obligations. Within the framework of national abortion laws, norms and standards should include protection for: informed and free decision-making, autonomy in decision-making, confidentiality and privacy.”⁹

Paragraph 8: Decriminalization

The formulation of laws relating to abortion varies widely across countries, reflecting their diverse historical, political and religious roots. Provisions regarding abortion may be found in the criminal code, in civil law, or in both. In some countries, public health codes or medical ethics codes may contain special provisions that clarify how to interpret an abortion law but in many countries, no formalized interpretation or enabling regulation exists. In other countries, abortion may not be governed by an enacted law, but by a court interpretation.

According to the Center for Reproductive Rights, the legal position regarding abortion is as follows:

Of 196 states for which data is available:

- 38 states prohibit abortion altogether.
- 104 countries permit legal abortions for a limited range of reasons.
- 54 states (covering approximately 40% of the world’s population) permit legal abortions without restriction as to reason.

Of the 104 states which permit legal abortions for a limited range of reasons:

- 35 states permit it only to save a woman’s life;
- 35 states additionally make exceptions to the general prohibition on abortion to preserve a woman’s physical health;
- 20 states additionally also allow abortion to preserve the woman’s mental health;
- 14 states additionally allow abortion on socio-economic grounds.

In a significant number of countries where abortion is available on a range of different grounds, criminal penalties continue to exist for abortions carried out beyond a legally specified gestational limit, and for other reasons, such as the fact that the abortion provider is not licensed, or that the premises on which the abortion is carried out are not licensed.

⁹ WHO, *Safe abortion: Technical and policy guidance for health systems*; see also CEDAW Committee General Recommendation 24.

Two options on decriminalization

AI could call for abortion to be entirely decriminalized, or AI could call for abortion to be decriminalized except for reasonable gestational limitations. The second option would mean that AI would *not* oppose criminal sanctions that are applied to those who transgress laws that impose gestational limitations on legal abortions. At present, all but four countries (Canada, China, North Korea and Vietnam) regulate gestational recourse to abortion.¹⁰

In either case, AI's call for decriminalization would only relate to laws that apply *solely* to abortion, and the purpose of decriminalization would be to remove what is sometimes called "abortion exceptionalism." AI would not, therefore, oppose the continued criminalization of actions that apply to abortion in exactly the same way that they apply to other medical procedures, e.g., requirements that doctors must be licensed, must exercise due care for their patients, and must only operate with the informed consent of their patients. In calling for decriminalization, AI would be calling for abortion to be legally regulated in the same ways as other medical procedures.

The rationale for the first option is that a human rights approach to abortion implies women's decisions to terminate pregnancies are conscientious decisions made in the best interests of their own lives and health, and those of their families, that women should be allowed to make without coercion from the criminal law.¹¹ This view finds support, for instance, on the Committee on the Rights of the Child, which has stated that it is "concerned at the impact that punitive legislation regarding abortion can have on maternal mortality rates for adolescent girls. The Committee suggests that a comprehensive and multi-disciplinary study be undertaken to understand the scope of adolescent health problems, including the negative impact of early pregnancy and illegal abortion. ..."¹²

The rationale for the second option is that the legal framework governing abortion needs to take into account the evolving capacities of the fetus, and the fact that the fetus, as a potential human life, has a status that deserves legal protection as it approaches viability and birth. This view finds support in the preamble to the Convention on the Rights of the Child which quotes the UN Declaration of the Rights of the Child to state that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." Hence, on this view, abortion cannot simply be treated in the same way as other medical procedures, and criminal sanctions may be an appropriate way of protecting the interests of the potential life.

If AI adopted the first option, then it would oppose almost all laws that impose gestational limits since these almost invariably specify criminal penalties for those who perform abortions in violation of the limits. If AI adopted the second option, it would need to decide what it means by "reasonable gestational limitations." AI could interpret the phrase in one of the following ways:

¹⁰ Center for Reproductive Rights, "The World's Abortion Laws" (2005) www.crlp.org/pub_fac_abortion_laws.html

¹¹ Cook et al., *Reproductive Health and Human Rights – Integrating Medicine, Ethics, and Law*, Oxford University Press, 2003, p. 351

¹² Committee on the Rights of the Child *Concluding observations on Chad*, CRC/C/15/Add.107 (1999), para. 30.

- (i) AI could take no position on specific gestational limits. It could, however, map out the human rights considerations that are relevant to assessing the reasonableness of gestational limits, including the evolving protection needs of the fetus, and the health needs and autonomy entitlements of the woman.
- (ii) AI could state that a particular range of gestational limits (e.g., 12 weeks – 24 weeks) is, in its opinion, consistent with human rights standards.
- (iii) AI could state that any gestational limit up to the age of fetal viability is consistent with human rights standards.

Under this option, AI would also need to decide whether gestational limits should be waived in certain circumstances, e.g., when the life of a woman is at risk.

Opposing imprisonment for abortion

AI's position would be based on the inherently discriminatory nature of criminal abortion laws. As the Committee on the Elimination of Discrimination Against Women has noted,¹³ such laws criminalize procedures only required by women, and therefore constitute a form of gender-based discrimination. The former Special Rapporteur on Violence against Women has suggested that the imprisonment of women for abortion constitutes a form of gender-based violence against them, within the definition of the Declaration on the Elimination of Violence against Women.¹⁴ In AI terms, such laws could be seen as effectively resulting in imprisonment on grounds of gender, within the prisoner of conscience definition.

Opposing all criminal penalties applied to women for abortion

Criminal laws restricting abortion have consequences for women's human rights in ways that go beyond imprisonment because criminalization can have a dramatic impact on the safety of abortion procedures. The highest rates of unsafe abortion in the world occur in countries where abortion is criminalized under most or all circumstances¹⁵ and unsafe abortion¹⁶ is one of the leading causes of maternal mortality worldwide, resulting in some 70,000 preventable deaths each year. Injuries and deaths caused by unsafe abortion harm more than women alone, as they have numerous ill-effects on families, children and communities.

Because of the broader impact of laws criminalizing abortion, AI's position would not be limited to opposing imprisonment of women under criminal abortion laws, but would extend to support the removal of all criminal penalties in relation to abortion.¹⁷

This position finds support in a variety of international documents, including the following:

¹³ See its *General Recommendation 24* (1999).

¹⁴ UN Special Rapporteur on Violence Against Women, *Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, UN Doc. E/CN.4/1999/68/Add.4, 21 January 1999, para. 57.

¹⁵ WHO 2003, Millennium Project, Cook

¹⁶ The World Health Organization defines abortion as unsafe when it is performed by "persons lacking the necessary skills or in an environment lacking the minimal standards or both."

¹⁷ It has also been suggested that criminal sanctions for abortion are inherently not proportional to the sanctioned conduct.

- (i) **The Beijing Platform for Action**, calls on States to “consider reviewing laws containing punitive measures against women who have undergone illegal abortions.” In its General Recommendation 24 (1999), the Committee on the Elimination of Discrimination Against Women stated that “it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women.” It identified “laws that criminalize medical procedures only needed by women” as a barrier to women’s access to appropriate health care, and stated that “[w]hen possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion”.
- (ii) **Other UN treaty bodies and special procedures** have also made repeated calls on states to lift criminal penalties for abortion.¹⁸ In particular, these have expressed concern regarding the failures of states to decriminalize abortion on certain grounds (see below) rather than calling for decriminalization in all cases.

Opposing criminal penalties for service providers

AI’s opposition to the application of criminal sanctions to women who seek or have had abortions extends logically to opposing criminal sanctions against health service personnel who provide abortions.

The primary conscientious duty of health service providers is at all times to treat, or provide benefit and prevent harm to, the patients for whose care they are responsible.¹⁹ AI would therefore oppose the imprisonment of - or other criminal penalties against - any health service provider who has provided information about or carried out abortions in contravention of criminal law prohibitions, where this action has been carried out with the full and informed consent of the woman in order to serve her reproductive health and well-being.

From a public health perspective, criminalizing the actions of medical service providers who carry out abortions as described above, i.e. in the woman’s best interest and with her informed consent, is likely to drive abortions underground and subject women seeking abortions to the services of people who may not be trained or have adequate facilities to ensure a safe abortion, significantly raising the risk of serious health consequences including death.

Health service providers may be subjected to criminal penalties in accordance with the law when they have contravened reasonable regulations (see the options above) and medical norms relating to the provision of abortion information and services, for instance where they have subjected women to any form of coercion, violence or deception.

Decriminalization and legalization

¹⁸ For example, the February 2004 report of the UN Special Rapporteur on the Right to the Highest Attainable Standard of Health stated that “[p]unitive provisions against women who undergo abortions must be removed.”

¹⁹ FIGO Committee for the Ethical Aspects of Human Reproduction and Women’s Health, ‘Ethical Guidelines on Conscientious Objection’, <http://www.figo.org/content/Conscientious%20Objection.doc>

“Decriminalization” refers to the removal of all criminal penalties (including imprisonment, fines and other punishments) against those seeking or obtaining abortions, and against those carrying out abortion or providing information about it.

Decriminalization takes different forms depending on whether the country follows the civil law tradition of relying upon a code or the country relies upon statutes and judge-made law in the common law tradition. In some countries, decriminalization may involve repeal of a specific law that criminalizes abortion or introducing a specific law that permits it. In other countries judges may also interpret existing law or even decide that abortion may not be the subject of criminal sanction.

Sex-selective and disability selective abortion

AI believes that, in order to address sex-selective abortion as a manifestation of gender discrimination, states must take all necessary steps in terms of social policy and regulatory reform towards gender equality and the elimination of gender discrimination.

Similarly, AI believes that, in order to address selective abortion on grounds of the potential disability status of the fetus where this is a manifestation of discrimination on the basis of disability, states must take all necessary steps in terms of social policy and regulatory reform towards the elimination of such discrimination. Such steps include creating an enabling environment for people with disabilities, and combating stereotypes and prejudices relating to persons with disabilities.

State intervention at the point of individual decision-making must not, however, criminalize women who seek or have sought abortions because of their knowledge of the fetus’ sex or of the potential disability status of the fetus. Neither must the providers of abortions in such cases be criminalized.

Paragraph 9: Access to safe and legal abortion in case of rape, sexual assault, incest and pregnancy which endangers the life of the mother

AI will call for abortion to be made legal, safe and accessible in cases of rape and where pregnancy endangers the life of the mother.

The grounds enumerated in wording of 2005 ICM Decision 3 (“legal, safe and accessible abortion in cases of rape, sexual assault, incest, and risk to a woman’s life”) echo the formulation in the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa.²⁰ The Protocol is the first human rights instrument to include an explicit reference to access to abortion, recognized in the context of women’s “right to control their fertility” and their “right to determine the number and spacing of their children”.

²⁰ The protocol entered into force on 25th November 2005; by June 2006 there were 19 state parties to the protocol.

Under the Protocol, States parties must “protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus”.

It should be noted that the language of the Protocol goes beyond the formulation in Decision 3 by including danger to the mental and physical health of the mother and risk to the life of the fetus. These additional grounds have also been the subject of comment by the treaty bodies.

At the national level, a May 2006 ruling by the Constitutional Court of Colombia reflects the application of human rights-based judicial thinking to the issue of decriminalization on certain grounds. The decision overturned legislation outlawing abortion in all circumstances and set out the following grounds on which abortion should be permitted in light of the human rights principles enshrined in the Colombian constitution: when a pregnancy threatens a woman’s life or health, in cases of rape, incest and in cases where the fetus has malformations incompatible with life outside the womb.²¹

Rape, sexual assault and incest

Denying a rape survivor access to abortion represents one of the most extreme forms of coercion, nullifying women’s autonomy to decide over her body and reproduction.

AI believes that where women have been subjected to non-consensual sexual intercourse, they must be able to access safe abortion services legally, in a timely manner. The manner in which such services are provided must also ensure that rape survivors are not exposed to secondary traumatization.

In addition to those states which permit abortion on grounds of rape or incest, there are others in which “mental health” exceptions are interpreted to include psychological distress suffered by a woman who has been raped. The UN treaty bodies have made repeated recommendations to states to reform abortion laws to include rape as a ground on which abortion is legal and accessible. The Human Rights Committee, for example, has explicitly called for the liberalization of abortion laws to include rape as ground for access to legal and safe abortion services.

AI’s policy covers access to legal and safe abortion services in all cases where women have become pregnant as a result of non-consensual intercourse. This includes pregnancy as a result of rape, including rape in wartime, marital rape, statutory rape; or as a result of incest.²²

AI would call on states to remove access requirements that are not medically required and to develop and implement clear protocols to facilitate prompt referral and access to appropriate care. In order to prevent juridical requirements from delaying or standing in the way of necessary care and increasing the likelihood of unsafe abortion, they must also train police, court officials and health care providers to understand the need for prompt and compassionate action and to coordinate their services.

²¹ Colombian Constitutional Court, May 2006

²² Incest is defined as sexual activity between closely-related family members who may be, but need not be, related by birth.

Norms governing provision of abortion services should be part of the body of comprehensive professional standards for the overall management of survivors of rape, covering physical and psychological care, emergency contraception, treatment for sexually transmitted infections or injuries, collecting forensic evidence, and counseling and follow-up care.²³

Risk to life

Beyond its importance as a remedy for women who have survived torture in the form of rape, denial of access to safe and legal abortion in situations where continuation of pregnancy endangers a woman's life is also a grave violation of their fundamental right to life and to the highest attainable standard of health.

The vast majority of countries around the world allow abortion to be performed to save the life of the pregnant woman. In those countries where criminal laws make no explicit exception on any grounds, the law is often interpreted to permit abortion under life-threatening circumstances on the grounds of "necessity". Such an exception may also be recognized in national norms of medical ethics.

Abortion laws and policies in some countries provide detailed lists of what they consider life-threatening situations. These lists are generally meant to provide illustrations of situations that are considered life-threatening, but they are not meant to preclude the doctor's clinical judgement of what is life-threatening for a particular woman. Such lists, however, may be interpreted restrictively, for example excluding mental health conditions that are life-threatening. Even where protecting a woman's life is the only allowable reason for abortion, it is essential that providers are trained, that services are available and known, and that treatment for complications of unsafe abortion is widely available along with family planning services.²⁴

Differing interpretations of "risk to life"

The phrase "risk to life" is interpreted differently in different countries, and there are also evident differences of interpretation within AI's membership. For this reason, the draft policy offers three alternative interpretations – limiting the term strictly to immediately life-threatening situations; extending the term to cover grave physical health risks that will impact on the woman's quality of life; and the term further to cover also grave mental health risks that will impact on the woman's quality of life. National and international standards on this issue are piecemeal and do not give unambiguous guidance to AI.

As a general rule, a health exception is not thought to be implied by a life exception unless a court has explicitly interpreted it in this way. In some jurisdictions, however, risk to life is read as including risk to mental or physical health: courts in some jurisdictions have interpreted concern for the life of the mother as encompassing her quality of life (i.e., her mental or physical health)²⁵.

²³ World Health Organization, 'Safe abortion: Technical and policy guidance for health systems', 2003, www.who.int/reproductive-health/publications/safe_abortion/safe_abortion.pdf

²⁴ World Health Organization, 'Safe abortion: Technical and policy guidance for health systems', 2003, www.who.int/reproductive-health/publications/safe_abortion/safe_abortion.pdf

²⁵ R. v. Bourne (UK 1939)

Health service providers may interpret life exceptions broadly to permit abortion in cases where a woman's health is at risk even in absence of a clear statement of applicable law. However, where health ministries or other relevant authorities have failed in their obligation to clarify the situations in which abortion is not against the law through development of regulations or treatment protocols, providers offering services put themselves at risk of prosecution.²⁶

According to the Center for Reproductive Rights, the interpretation of "mental health" in some jurisdictions includes psychological distress suffered by a woman who is pregnant as a result of rape or severe strain caused by social or economic circumstances²⁷.

The Human Rights Committee has expressed concern with regard to denial of access to abortion in cases where a woman's life is at risk from continued pregnancy, although it dealt with the risk to health without mentioning risk to life.²⁸

Barriers to Access

In addition to making access to abortion legal on certain grounds, AI would call on states to make all reproductive health services available, accessible, acceptable and of good quality as required under the General Comment 14 of the UN Committee on Economic, Social and Cultural Rights on the right to health. In particular, AI would seek to ensure that, in the cases covered by this policy, barriers such as proof of crime, authorization/parental consent requirements, waiting periods, and fees and other costs, do not prevent access to safe and legal abortions.

Paragraph 10: Access to services for complications arising from abortion

AI believes that states must offer access to services for complications arising from abortion to all women in need in any circumstance, regardless of legal status. Regardless of what causes a medical emergency, no medical condition should go untreated.

At Cairo, governments agreed that "reproductive health care in the context of primary health care should, inter alia, include: ... the management of the consequences of abortion" (para. 7.6) and that governments should "in all cases provide for the humane treatment and counseling of women who have had recourse to abortion" (para 7.24).

The Cairo Program of Action stated that "all countries, ... must expand the provision of maternal health services in the context of primary health care. These services, based on the concept of informed choice, should include ... referral services for ... abortion complications" (para. 8.22).

The Program and its five-year review also stated that in "[p]ost-abortion counseling, education and family-planning services should be offered promptly, which will also help to avoid repeat

²⁶ Cook et al., *Reproductive Health and Human Rights – Integrating Medicine, Ethics, and Law*, Oxford University Press, 2003, p. 347

²⁷ Center for Reproductive Rights, 'The World's Abortion Laws', 2005, www.crlp.org/pub_fac_abortion_laws.html

²⁸ See *Concluding observations of the Human Rights Committee: Argentina*, 03/11/2000, CCPR/CO/70/ARG, paragraph 14.

abortions” (para 8.25).

Treaty bodies have also made comments on the management of complications. The Human Rights Committee, in its General Comment 28, said that “[a]nother area where States may fail to respect women’s privacy relates to their reproductive functions, for example, ... where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion.”

Paragraphs 9 and 10: Characterizing denial of abortion as cruel, inhuman or degrading treatment

Paragraphs 9 and 10 use the phrase “cruel, inhuman or degrading treatment.” They deliberately do not use the term “torture” for two reasons.

Firstly, the definition of torture in Article 1 of the Convention Against Torture states that “the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” This does not appear to be an accurate description of what is involved in denial of abortion or denial of medical services for complications, in part because the courts have ruled that the *intent* to cause pain is crucial.²⁹

Secondly Article 4 of the Convention states that “Each State Party shall ensure that all acts of torture are offences under its criminal law.” Hence, if AI were to describe denial of abortion as torture, it would have to call for this denial to be criminalized, which would not be compatible with the broad call for the decriminalization of abortion.

What kind of work could AI undertake within this draft abortion policy?

AI has increasingly had to confront the human rights implications of restrictive reproductive health laws and policies in three core areas of its human rights strategy:

- the Stop Violence against Women (SVAW) campaign;
- women in the criminal justice system;
- emerging work on economic, social and cultural rights, in particular the right to health.

This new policy on abortion, combined with AI’s broader policy on SRR will provide the human rights underpinnings of the movement’s work in these areas. AI’s actual research, campaigning and advocacy will be determined by the organization’s mission and strategic priorities, and will be shaped by what ICM Decision 3 called “a strategy for action consistent with AI’s mission, core values, and strategic goals, as reflected in the ISP.”

²⁹ See, for example, *Ireland v United Kingdom*, European Court of Human Rights, 1978.

The following provides an illustration of the kinds of research and campaigning work AI could decide to undertake under each of the three main points within the scope of its abortion policy.

Decriminalization of abortion

To date, AI has used death penalty and fair trial grounds to address the situation of women imprisoned on abortion charges (as in recent campaigning on Nigeria). Under this policy, AI will be able to argue that these women should not be imprisoned at all on abortion-related grounds. AI will be able to work on behalf of individual women as prisoners of conscience on grounds of gender. AI will also be able to join abortion law reform movements calling for the decriminalization of abortion.

Access to quality services for the management of complications

Following on from research and campaigning on maternal health services as a component of women's health rights (for instance in relation to Peru), AI will be able to recommend the decriminalization of abortion and unconditional access to health services for the management of abortion complications as central factors in reducing maternal mortality rates in some countries. AI will also be able to contribute its research and human rights analysis of aspects of unsafe abortion as a cause of maternal mortality and morbidity to multi-faceted campaigning efforts around the UN Millennium Development Goals, creating synergies with the development community and those working in the field of health and human rights.

Calling for decriminalization will also enable AI to call for more effective action in support of the points below.

Denial of access to abortion for rape survivors

Many of the rape survivors interviewed by AI in the course of its work have indicated that they see access to abortion services as part of a range of remedies and services essential for their rehabilitation. In countries where the law criminalizes women and service providers who seek or provide abortions in cases of rape, AI could, therefore, support law reform in addition to working on behalf of individual women and providers affected. AI could also press for the provision of a full range of medical, psychological, legal and social services to facilitate rehabilitation.

In situations where women pregnant as a result of rape are unable to access abortion service safely, AI would seek to analyze the causes and consequences of lack of access and draw out the human rights obligations of duty holders at international, national and sub-national levels. This may involve AI in joining broad-based policy reform campaigns in favor of the establishment of appropriate guidelines and regulations for health service providers and effective referral systems between health facilities. AI may also make relevant recommendations to international organizations and humanitarian and donor organizations.

Where access to abortion depends on a woman being able to "prove" that she was a victim of rape, women may face an insurmountable set of challenges. AI will work to overcome these challenges by changing cultures that discourage women from reporting crimes of sexual violence

and by challenging systems that fail adequately investigate and prosecute these crimes. AI will also press for removal of obstructive access requirements in order to qualify for legal abortion within the window of time in which abortion is legally accessible. These requirements typically include pressing charges against the perpetrator, obtaining police reports or court authorizations, providing forensic evidence of involuntary intercourse or completing other medically unnecessary steps.

Research on and recommendations in relation to decriminalization and access to post-abortion services as well as women's access to abortion services in cases of rape or risk to their lives will strengthen AI's broader agenda on women's access to the full range of sexual and reproductive health services and information.

Clarification on the scope of this policy

2005 ICM Decision 3 called for "fast-track" decisionmaking on the three points described in this policy and also stated that "all other decisions related to possible AI positions should be taken to the 2007 ICM." In the interests of clarity, and to assist sections and structures in their preparation of ICM resolutions (which need to be submitted by 13th January 2007³⁰), this section therefore identifies some of the possible AI positions that fall outside the scope of this policy. (The work which AI would be able to do within this policy is explained in the previous section.)

If this policy is implemented, AI will **not** be able to:

- (a) Assert that a woman's right to physical and mental integrity includes her right to terminate her pregnancy, subject to reasonable limitations, and that abortion should therefore be legal, safe and accessible to all women.
- (b) Assert that abortion should be legal, safe, and accessible in any cases except where women have suffered rape, sexual assault or incest, or their life/health is at risk.
- (c) Assert that non-state actors, such as organizations of medical professionals, should not impose sanctions on their members for carrying out abortions, except in the cases covered by paragraph (b) above.³¹

If **decriminalization except for gestational limitations** is adopted, then AI will not be able to:

- (d) Oppose criminal penalties against those who seek or provide abortions in contravention of gestational limits.

If a **narrow interpretation of risk to life** is adopted, then AI will not be able to:

³⁰ See *2007 ICM Circular 1: Call for nominations of Facilitators and Working Party Chairs and Rapporteurs* (ORG ORG 50/001/2006, 11 August 2006).

³¹ 2005 ICM Decision 2 only authorizes AI to oppose criminal sanctions against those who seek or provide abortions; it makes no provision for AI to oppose non-criminal sanctions, either imposed by states or imposed by third parties.

- (e) Assert that that abortion should be legal, safe, and accessible when a woman's health is at risk.

The scope of this policy will depend very substantially on the choice of options in paragraphs 8 and 9. If the broader options are chosen in both cases, then AI will be in a position to call for access to legal and safe abortions in almost all cases since the courts and medical practice in many countries have recognized that very many factors (ranging from fetal abnormalities to socio-economic pressures) can adversely affect a woman's mental and physical health.

Conversely, if the narrower options are chosen in both cases, then AI will be limiting the scope of this abortion policy to the narrower range of grounds that are explicitly stated in 2005 ICM Decision 3.