

AMNESTY INTERNATIONAL'S POLICY ON ABORTION

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1. INTRODUCTION

1.1 POLICY IN BRIEF

Amnesty International recognizes the right of every woman, girl or person who can become pregnant¹ to abortion,² provided in a manner that respects their rights, autonomy, dignity and needs in the context of their lived experiences, circumstances, aspirations and views. Amnesty International's abortion policy calls for full decriminalization of abortion and universal access to abortion, post-abortion care and evidence-based, non-biased abortion-related information, free of force, coercion, violence and discrimination.

The organization's approach to abortion is principle-based and derived from international human rights law and standards and long-standing human rights principles. It is based on the recognition that decisions around pregnancy and abortion directly impact the full spectrum of human rights including the rights to life, health, privacy, liberty and security of the person; to equality and non-discrimination and equality before the law; to engage in society as full participants; to freedom from torture and other ill-treatment; to equal access to justice, evidenced-based and non-biased sexual and reproductive health information and education, and to the enjoyment of scientific progress. The policy considers abortion a key component of sexual and reproductive health care (including also, among others, post-abortion care, modern contraceptives and evidence-based, non-biased pregnancy- and abortion-related information), which is essential to achieving substantive equality.

Amnesty International's Vision

- Everyone has the right to abortion, free of force, coercion, violence or discrimination, without the need for third-party consent, and without the threat of legal sanction.
- No one should die from or be subjected to unnecessary suffering by undertaking or attempting an abortion.
- No one should be mistreated, humiliated or degraded, or be at risk of violence or social exclusion for seeking or having an abortion, experiencing a miscarriage or adverse birth outcome, or during the provision of abortion or post-abortion care.
- Abortion, post-abortion care and evidence-based, non-biased abortion-related information should be available and accessible, acceptable and of good quality, and provided with respect to a pregnant person's rights, autonomy, dignity, privacy and confidentiality, and with informed consent.
- States have a positive obligation to remove barriers to abortion; to address the root causes of discrimination in the context of abortion, including gender, racial, ethnic, class, caste, age and disability related discrimination, among others; and eliminate stigma related to sexuality, sex, disability, unwanted pregnancies and abortion.
- Laws and policies that regulate abortion must:

¹ This policy refers to women and girls, people who can become pregnant and pregnant people or individuals. This recognizes that while the majority of personal experiences with abortion relate to cisgender women and girls (that is, women and girls whose sense of personal identity and gender corresponds with the sex they are assigned at birth), intersex people, transgender men and boys, and people with other gender identities may have the reproductive capacity to become pregnant and may need and have abortions. For the purposes of this policy, references to 'women and girls' refers to those women and girls who have the capacity to become pregnant, which generally applies to cisgender women.

² Abortion is the induced or spontaneous termination of pregnancy. For the purposes of this policy, the term abortion will refer to the induced termination of pregnancy through medical (using abortion medication) or surgical methods, and the term miscarriage will refer to the spontaneous termination of pregnancy.

- Put women, girls and pregnant persons at the centre; respect and protect their sexual and reproductive autonomy, dignity, privacy and needs; and guarantee their human rights.
- In no way compel pregnant people to continue unwanted pregnancies or to undertake abortions or mistreat, humiliate or degrade people for seeking or having an abortion, or during the provision of abortion or post-abortion care.
- Address the gender discrimination and other intersectional forms of discrimination and stigma underlying laws and policies that regulate abortion. Additionally, address abortion-related practices that:
 - fail to empower women, girls and pregnant people to make autonomous and informed decisions about their pregnancies;
 - compel people to continue with their pregnancies against their will; or
 - compel people to end their pregnancies in unsafe or unsupported ways.
- Guarantee the provision of comprehensive sexual and reproductive health services and goods, including safe abortion and post-abortion care, and modern contraceptives. Also ensure equal access to evidence-based, non-biased health information, including information on one's pregnancy.
- Refrain from criminalizing abortion or otherwise punishing women, girls and pregnant people for seeking or undertaking abortion and those who assist them, as well as those who provide abortion services.
- Recognize abortion as a common practice worldwide and an essential component of sexual and reproductive health care and self-care in all contexts (that is, peace, conflict, humanitarian crises and public health emergencies, and in detention).

1.2 RATIONALE AND FRAMING

Amnesty International's policy on abortion is based on the recognition that the ability to control one's reproduction and to decide if, whether and when to have children is essential for the full realization of the human rights of women, girls and all people who can become pregnant. The ability to make decisions about one's body, sexuality and reproduction is at the core of gender, economic and social justice.

This policy is centred on the concerns, lived experiences and human rights of women and girls, and all people who can become pregnant, who have been subjected to reproductive oppression (both historically and currently)³ and suffer human rights violations under laws and policies regulating abortion and due to abortion-related stigma and discrimination. Amnesty International believes it is important to link sexuality, reproduction and human rights with social and economic rights and justice, by placing abortion and reproductive health issues in the larger context of a pregnant person's security and wellbeing. A person's ability to control their reproductive lives is impacted by the conditions of their social and physical environment. States have an obligation to ensure that these conditions

³ Asian Communities for Reproductive Justice, among one of the first organizations to define and promote "reproductive justice", defines reproductive oppression as the control and exploitation of women and girls through their bodies, sexuality and reproduction. They consider reproductive oppression "a strategic pathway to regulating entire populations that is implemented by families, communities, institutions, and society. Thus, the regulation of reproduction and exploitation of women's bodies and labour is both a tool and a result of systems of oppression based on race, class, gender, sexuality, ability, age and immigration status." Examples of reproductive oppression include forced reproduction during slavery in the USA, forced sterilization of Indigenous and minority women, human experimentation on Puerto Rican women for the contraceptive pill and the one-child policy in China, among others. The definition of reproductive justice as a counter to reproductive oppression reflects an understanding of the reproductive health and rights framework that is not limited to protecting individuals' rights and choices but also addresses broader, underlying socioeconomic factors that affect and constrain individuals' reproductive rights, actions and decisions.

enable women, girls and pregnant people to make informed and autonomous decisions in line with their life aspirations and to realize and enjoy their human rights.

Amnesty International's policy is based on a set of "key principles" adopted by its movement at its 2018 Global Assembly (see Annex II to the Explanatory Note to this policy (Index: POL 30/2847/2020)). The policy is also aligned with existing international human rights law and standards and their evolution over time. The principle basis of the policy is intended to ensure that it does not become outdated as abortion-related human rights standards continue to evolve, and to better enable application of the policy in a range of diverse contexts (see below for further discussion of Amnesty International's principle-based approach to abortion). To put this policy into practice, Amnesty International will continue to work towards gender, social, reproductive and economic justice, including in the context of abortion.

A. Forward-looking nature of the policy

Amnesty International's policy enables the organization to make recommendations to states, engage in advocacy and campaign around abortion in a manner that may go beyond existing international human rights standards, so long as such recommendations and work aligns with the policy's underlying key principles and foundational human rights principles and protections. Additionally, the organization seeks to contribute to the progressive development of international human rights law and standards and combat retrogressive normative developments around abortion.

In applying this policy throughout Amnesty International's work, the organization will not contribute to or promote judgement or disrespect of people's moral, ethical or religious beliefs around abortion, in line with the organization's policy on impartiality and independence from any political ideology or religion. However, it will remain steadfast in demanding that states guarantee access to abortion for all pregnant persons with respect for their rights, autonomy, dignity and needs.

B. Amnesty International's principle-based approach to abortion

Amnesty International takes a principle-based approach to laws and policies regulating abortion ("abortion law"), and to abortion practices more broadly. The organization analyses laws, policies and practices according to the organization's key principles adopted by our movement, as well as foundational principles of international human rights law including universality and indivisibility of human rights, fundamental justice, legality, non-arbitrariness, proportionality, non-retrogression, accountability, transparency, equality and non-discrimination.⁴ Amnesty International positions its approach within the context of working towards gender, social, reproductive and economic justice.

This principle-based approach to abortion enables the organization to advocate for the right of women, girls and all persons who can become to abortion and to shift our analytical lens from that of harm reduction to reproductive autonomy, always keeping pregnant people's rights at its centre. This approach also helps to better place the global movement to advocate for the full protection of the human rights of pregnant people in diverse contexts, as well as for the rights of people who provide abortions services, friends or family members who assist pregnant people to access abortions, and human rights defenders who advocate for sexual and reproductive health and rights, including access to abortion.

Should questions arise about the policy and its application, the law and policy advisors in the International Secretariat's Law and Policy Programme and Gender, Sexuality and Identity Team should be considered the first line of support. For issues that are not specifically addressed within the policy and its Explanatory Note, the key principles shall serve as the analytical and interpretive guide for the organization.

⁴ While there is overlap between foundational human rights principles and Amnesty International's key principles that underlie this abortion policy, the latter provides the organization's unique positioning and voice around abortion issues. The foundational human rights principles in international law can be relied upon to challenge regressive laws, policies and practices and to advocate for broader access to abortion. See the Explanatory Note to this policy (Index: POL 30/2847/2020) for further discussion of foundational human rights principles that are relevant in the context of abortion.

2. AMNESTY INTERNATIONAL'S POLICY ON ABORTION

Amnesty International's policy on abortion reflects state obligations to realize sexual and reproductive rights and enable reproductive justice for women and girls, and all people who can become pregnant, as part of states' overarching obligations to respect, protect and fulfil the human rights of all people. This includes fully decriminalizing abortion and ensuring that no one, including pregnant people, health-care providers or others, is subjected to criminal or punitive sanctions for seeking or having (or being presumed to have sought or had) an abortion, performed an abortion, or assisted others to obtain or perform an abortion.⁵

States must also ensure universal access to abortion, post-abortion care and evidence-based, non-biased abortion-related information for all pregnant people, including as part of comprehensive sexual and reproductive health services, goods and information. Legal, policy, administrative, economic, social, cultural and other barriers to abortion should be removed. In addition, states must work to combat abortion-related stigma, harmful stereotyping and gender and intersectional discrimination, which underlie the criminalization of abortion and other restrictive abortion laws and policies. They must also promote social, economic and health policies that empower people to take autonomous and informed decisions and actions regarding their sexual and reproductive lives.

The following are the key elements of Amnesty International's policy on abortion:

1. Every woman, girl or person who can become pregnant has the right to abortion, provided in a manner that respects their dignity, autonomy and needs in the context of their lived circumstances, experiences, aspirations and views
 - Every pregnant person should be able to make decisions related to their pregnancy that are in line with their own life experiences, circumstances, aspirations and views. They must have access to evidence-based, non-biased information about their pregnancy in a form and format that they can understand, non-biased and non-directive counselling, and any necessary support to facilitate autonomous decision-making.
 - Abortions must be undertaken freely with the consent of the pregnant person and without force, coercion, violence or discrimination, the need for third-party consent, or the threat of legal sanction.
 - No one should be compelled to seek or obtain an unsafe abortion or to die or be subjected to unnecessary suffering from an unsafe abortion.
 - No one should be mistreated, humiliated or degraded or be at risk of violence or social exclusion for seeking abortion care or for having an abortion.
 - No one's full status as a rights holder and equal subject before the law at all stages of their lives can be suspended, diminished or mandatorily set aside because of pregnancy or, more broadly, because of their sex, sexual orientation, gender, gender identity or expression, age, race, geographic location, nationality, ethnicity, caste, class, disability, migrant or refugee status, and minority or Indigenous identity, among other factors.
2. Abortion and post-abortion care should be available, accessible, affordable, acceptable and of good quality. They should be provided with respect for pregnant persons' rights, autonomy, dignity, privacy and confidentiality, and with informed consent

⁵ While Amnesty International's call for full decriminalization of abortion includes decriminalizing health-care workers who provide abortions, accountability for activities that contravene professional and ethical codes of conduct and standards of medical practice can be sought through general laws and administrative policies and procedures.

States must ensure:

- That abortions are available as early as possible and as late as necessary to respond to the specific needs of pregnant people.⁶
 - Available, accessible, acceptable, affordable,⁷ good quality abortion care upon request so pregnant people do not feel compelled to take unnecessary risks to terminate their pregnancies.
 - Abortion service provision with informed consent that complies with pregnant persons' rights, autonomy, dignity, privacy and confidentiality.
 - Accessible medical (using abortion medication) and surgical abortion methods based on evidence-based standards, to serve the individual needs of pregnant people.
 - Access to care in a range of settings (for example, formal health-care settings; primary, secondary and tertiary health-care centres; mobile clinics; and telehealth) and trained providers to ensure access to abortion care, particularly in remote and rural settings.
 - Access to post-abortion care for people who are managing complications from a miscarriage or abortion, regardless of the legality of abortion, and regulate refusals of care for lawful services (including based on conscience), prohibit the denial of such care on any grounds, including based on conscience or beliefs.
 - Access to comprehensive sexual and reproductive health services, goods and information, with respect for pregnant persons' sexual and reproductive autonomy, dignity, privacy and confidentiality, and human rights. Such services should be provided in an equal and non-discriminatory manner, ensuring pregnant individuals' equal access to sexual and reproductive health care, including abortion and post-abortion care, modern contraceptives and evidence-based, non-biased information, including information on their pregnancies.
 - That health-care providers receive training on providing abortion and post-abortion care and miscarriage treatment in a compassionate and ethical manner. This should include training on the social determinants and medical necessity of abortion and on ethical and acceptable care. Training for health-care providers should also cover relevant laws and policies related to abortion and the rights of all people who can become pregnant.
- 3. States have a positive obligation to create an enabling and supportive environment for people to make autonomous decisions about their pregnancies.**
- States must guarantee the right of everyone who is pregnant or can become pregnant to make autonomous pregnancy-related decisions. This should include the right to have access to evidence-based, non-biased, accessible and rights-based information about their pregnancies and support necessary to make such autonomous decisions, without the need for third-party consent.

⁶ Amnesty International acknowledges that states may regulate access to abortion, including by setting gestational limits but, like all other restrictions, gestational limits should not be considered reasonable by default. Rather, where appropriate, there should be a human rights analysis of the legal, policy and other regulatory measures on abortion in a particular country and context that is based on human rights principles and the impact of the restrictions on the human rights of pregnant people. See the Explanatory Note to this policy, Section 5.3, for further details.

⁷ This includes provision of services free or otherwise structured to ensure individuals and families are not disproportionately burdened with health expenses, and people without sufficient means should be provided with the support necessary to cover the costs. See CESCR Committee, General Comment 22 on the right to sexual and reproductive health (Article 12 of ICESCR), UN Doc. E/C.12/GC/22 (2016), para. 17.

- States must remove barriers to safe abortion services. These include laws, policies and practices that impede pregnant people from accessing safe abortion services, such as financial, social, geographic, detention-related and disability-related barriers (for example, physical barriers, lack of access to evidence-based, non-biased information and discriminatory attitudes, substituted decision-making by a guardian, parent or doctor), the need for third-party consent, biased counselling, denial of care for lawful services (including based on conscience or beliefs) and mandatory waiting periods.
- States must recognize the legal capacity of women, girls and pregnant persons with disabilities to make autonomous decisions about sexuality, reproduction and pregnancy irrespective of mental capacity and must provide any supports necessary to facilitate such informed and autonomous decision-making.
- States should take measures to ensure that nobody feels compelled to continue a pregnancy or to have an abortion, whether this is because of violations of human rights, such as gender or intersectional discrimination, or as a result of restrictions on access to abortion.
- States must ensure that all people have access to comprehensive sexuality education (CSE), both in and outside of education settings, which is evidence-based, age-appropriate, gender-sensitive and grounded in human rights.⁸ CSE programmes must promote gender equality and avoid perpetuating discriminatory stereotypes, including on gender, sexual orientation or other status. CSE programmes must also account for the evolving capacity of children and adolescents and provide them with the knowledge and skills necessary to make informed and autonomous decisions.
- States must identify and address the underlying factors that foster and promote gender, racial, ethnic, class, disability and other intersecting forms of discrimination that contribute to reproductive oppression, promote and perpetuate the restrictive and punitive regulation of abortion and fuel stigma and discrimination against people who have, or are presumed to have, sought or obtained abortions.
- States must directly confront stigma related to sexuality, sex, disability, unintended pregnancies and abortion that impedes sexual and reproductive autonomy, restricts access to safe abortion, fosters and perpetuates gender inequality and facilitates ableism.⁹
- States must ensure pregnant people have accurate, non-biased information about and access to services and support, including health care, social security and means to obtain an adequate standard of living, so that they are empowered to make free decisions, in line with their life aspirations and views, about whether to carry their pregnancy to term, and that they are not compelled to seek recourse to abortion due to denial of their economic and social rights.

4. Abortion must be fully decriminalized

- States must fully decriminalize abortion (that is, remove abortion from criminal law). They must also remove any laws or policies and end any practices that directly or indirectly punish people for seeking, obtaining, providing or assisting with securing and/or obtaining an abortion.
- States must refrain from punishing, through the enforcement of any law or policy:
 - anyone who seeks or obtains, or is suspected of seeking or obtaining, an abortion;
 - health-care providers who facilitate or provide abortion medication or services; and

⁸ Such education should be based on accurate information about sexuality, sexual and reproductive health, human rights and empowerment, non-discrimination, gender equality and gender roles, sexual behaviour, sexual abuse, gender-based violence and harmful practices.

⁹ "Ableism" is defined as discrimination or prejudice against individuals with disabilities (Merriam-Webster Dictionary) or discrimination in favour of able-bodied people (Oxford English Dictionary).

- others who assist or in any way help people obtain abortion medication or services.
 - States must immediately drop criminal charges, expunge resulting criminal records and release all individuals who have been imprisoned for having an abortion, miscarriage, or another pregnancy-related complication or for having procured abortion medication. The same must be done for health-care providers and others punished solely for performing abortions or facilitating or helping people to obtain abortion medication or services.
 - Full decriminalization of abortion is an essential component of respecting, protecting and fulfilling the human rights of all people who can become pregnant. However, it is not sufficient in itself and must be accompanied by the fulfilment of states' other positive obligations related to abortion as referenced throughout this policy.
- 5. All legal, policy and regulatory frameworks around abortion should be assessed for their human rights compliance**
- States must prioritize the concerns, lived experiences and human rights of women, girls and all people who can become pregnant in formulating laws and policies that regulate abortion and eliminate abortion-related stigma and discrimination.
 - States must ensure that women, girls and people who can become pregnant are adequately consulted and can meaningfully participate in the formulation and monitoring and evaluation of abortion-related laws and policies, in accordance with their right to full, effective and meaningful participation in law and policy-making on issues that affect their lives.
 - Legal, policy and regulatory frameworks around abortion should be assessed to ensure that they respect and protect the human rights of women, girls and all people who can become pregnant. The assessment should include the impact on the rights to life, health, privacy, education, access to evidence-based, accurate information and the benefits of scientific progress, freedom of conscience, freedom from torture and other ill-treatment, and to equality and non-discrimination.
 - States must reform all legal, policy and regulatory frameworks that relate to abortion or impact pregnancy-related decision-making to ensure that:
 - the sexual and reproductive autonomy of women, girls and all people who can become pregnant lie at their centre;
 - they respect, protect and fulfil the human rights of pregnant people;
 - they realize gender equality and economic and social rights.
 - Legal protection of human rights, including the right to life, commences at birth.¹⁰ While states may have a legitimate interest in protecting maternal and foetal health, abortion should not be regulated under criminal or punitive laws and policies, and abortion-related laws and policies must not accord legal rights to gametes, zygotes, embryos, or foetuses. Research and evidence indicate that foetal health is best protected through promoting pregnant persons' health and wellbeing¹¹ and in non-criminalized legal and policy environments.

¹⁰ Amnesty International does not take a position on when a human life begins, which is a moral and ethical issue for each individual to decide for themselves in line with their conscience, but our policy affirms that the legal protection of human rights, including the right to life, commences at birth.

¹¹ See CEDAW Article 12; see also CEDAW Committee, General Recommendation 24 on Women and Health, UN Doc. A/54/38/Rev.1 (1999), para. 31(c).

- **States must ensure that women, girls and people who can become pregnant have timely access to justice, and meaningful and effective remedies when their sexual and reproductive rights have been violated, including access to legal aid and information about the existence of such remedies. In cases where third parties violate individuals' sexual and reproductive rights, states must ensure that such violations are investigated and that perpetrators are held to account and those who suffered such violations are provided remedies.**

ENDS//