

Wharton School

Human Rights and Globalization

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Thirteen Lesson Modules:

Module 14 will be for group presentations.

Module 1: The Core Human Rights Treaties

International human rights law is part of American law. How does the US incur treaty obligations and what are the consequences of treaty obligations? Louis Henkin has observed famously that in the Cathedral of human rights, the United States has not been a pillar but a flying buttress- supporting them from the outside rather than subject its record to scrutiny. We will examine the Amicus brief submitted on behalf of the respondents to the Dobbs case. We will also examine the core human rights treaties (with a special focus on the (CEDAW, CRC and CRPD) , the Special Procedures and the treaty obligations and jurisprudence.

Readings:

- *Thomas E. DOBBS, State Health Officer of the Mississippi Department of Health, et al., Petitioners, v. JACKSON WOMEN’S HEALTH ORGANIZATION, et al., Respondents.*
- Dobbs Amicus by International Human Rights Experts
- Conventions:
 - CEDAW
 - Convention on the Elimination of All Forms of Discrimination against Women
New York, 18 December 1979 | OHCHR
 - CRC
 - Microsoft Word - Document1 (ohchr.org)
 - Convention on the Rights of Persons with Disabilities | OHCHR
 - International Human Rights Law | OHCHR
 - Treaty Bodies | OHCHR
 - US Ratification of the CEDAW
 - “Time Is A-Wasting”: Making the Case for CEDAW Ratification by the United States — Columbia Journal of Transnational Law

Module 2: Business and Human Rights

The Guiding Principles on Business and Human Rights is an authoritative global framework for the respective duties and responsibilities of governments and business enterprises to prevent and address business-related human rights impact. In recognition of the need to promote the investor responsibility to respect human rights, including as a key means to speed and scale up business respect for human rights, the Guiding Principles 10+ project shines a brighter light on the role of institutional investors – asset owners and managers – in Taking stock of investor implementation of the UN Guiding Principles on Business and Human Rights. It outlines how enabling environments have fostered greater investor respect for human rights over the past decade and summarizes signs of progress as well as major gaps and barriers to future progress. It wraps up by concluding that a widespread and serious embrace of long-term thinking and decision-making within investment institutions and the full spectrum of actors they work with is an essential and core component of upholding the dignity and wellbeing of individuals and communities.

Readings:

- [Stocktaking-investor-implementation-reader-friendly.pdf \(ohchr.org\)](#)
- [United Nations Guiding Principles on Business and Human Rights | United Nations Development Programme \(undp.org\)](#)
- [A/HRC/47/39/Add.2: The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders - Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises | OHCHR](#)
- Oxford University Press Article

Module 3: The Sustainable Development Goals

Readings:

- [Redefining Leadership in the Age of SDGs - Harvard Law School Center on the Legal Profession](#)
- [Women, Business and Law 2023 Report: World Bank - NEXT IAS](#)

Module 4: Trafficking in Women

Securing the protection and promotion of the human rights of women globally remains one of the major challenges of the 21st century. Notwithstanding the significant advances in international human rights norms relating to women, systemic discrimination and violence against women remain pervasive. This class will focus on the international human rights system as it relates to the protection and promotion of women, the intersectionality of human rights conventions, treaty bodies, UN Security Council Resolutions, UN special procedures, the Sustainable Development Goals.

Readings:

- Russia case study - Growing authoritarianism has impeded efforts to address trafficking or provide support to victims and survivors of trafficking. Read the case study of trafficking of women and the Climate Justice -Migrating with Dignity-The case of Kiribati
- [Historic UN Human Rights case opens door to climate change asylum claims | OHCHR](#)
- Protocol to Prevent Suppress and Punish Trafficking in Person
- [About trafficking in persons and human rights | OHCHR](#)

Module 5: Peace and Security

Considered the crowning achievement of the global women's movement, the Women, Peace and Security Agenda Resolution recognizes that peace is inextricably linked with gender equality and women's leadership by the highest body tasked with the maintenance of international peace and security. This watershed resolution maintains that women's equal and meaningful participation in peace and security efforts is vital to sustainable peace. The landmark Security Council Resolution (SCR) 1325 of 2000 spawned a series of U.N. Security Council Resolutions, each dedicated to addressing an emerging concern on Women Peace and Security. These Resolutions include: (1) S.C. Res. 1820 (2008), addressing conflict-related sexual violence as a tactic of war; (2) S.C. Res. 1888 (2009), establishing leadership to address conflict-related sexual violence; (3) S.C. Res. 1889 (2009), calling for the development of global indicators to track the implementation of SCR 1325; (4) S.C. Res. 1960 (2010), addressing sexual violence in armed conflict; (5) S.C. Res. 2106 (2013), providing further directions on addressing sexual violence; (6) S.C. Res. 2122 (2013), recommending equal and full participation of women in decision-making; (7) S.C. Res. 2242 (2015), marking the 15th Anniversary of SCR 1325 and underscoring role of women in countering violent extremism and in the prevention of violent extremism; (8) S.C. Res. 2467 (2019), addressing the root causes of sexual violence and systemic gender inequality and discrimination; and (9) S.C. Res. 2493 (2019), calling upon U.N. Member States to rededicate efforts to implement the entire corpus of WPS Resolutions.

We will watch excerpts from Pray the Devil Back to Hell in Class Required Readings:
See Resolution here: [The Resolutions | PeaceWomen UNSC Res 1325 UNSC Res 1820 UNSC](#)

Res 1888 UNSC Res 2242 UN General Assembly Plan of Action to Prevent Violent Extremism
Rome Statute Women on the Frontlines- chapter by Michele Bachelet Swedish Foreign Service

Readings:

- What is feminist foreign policy?
- Security Council Resolutions 1325, 1820, 2242
- [About Women, Peace and Security in the Security Council | PeaceWomen](#)
- [S.1141 - 115th Congress \(2017-2018\): Women, Peace, and Security Act of 2017 | Congress.gov | Library of Congress](#)
- National Action Plan – 2022
- [USG WPS Summary Report \(whitehouse.gov\)](#)
- Colombia Peace Accord
- Afghanistan - Policy Brief
- [SPIA_NaheedRangita_PolicyBrief_07.pdf \(princeton.edu\)](#)

Films:

- Pray the Devil Back to Hell
- The Uncondemned film: Both a real-life courtroom thriller and a moving human drama, The Uncondemned tells the gripping story of a group of young international lawyers and activists who fought to have rape recognized as a war crime, and the Rwandan women who came forward to testify and win justice for the crimes committed against them. This odyssey takes the crusaders to a crucial trial at an international criminal court, the results of which changed the world of criminal justice forever

Module 6: Violence Against Women

Macroeconomics of violence against women: The total cost from conflict (deaths from wars and terrorism, refugee-related costs and economic damage) adds up to about 0.2 percent of global gross domestic product each year, according to Fearon and Hoeffler. Intimate-partner violence costs the world about 25 times more: around 5.2 percent of global GDP. For every battlefield death, nine people are killed by interpersonal violence. The total cost to the United States of the almost 5 million domestic violence cases per year is about \$460 billion. In other words, if we could find a way to reduce these incidents by half, the benefits would be the same as making the country at least \$230 billion better off every year. That's nearly 10 times the entire annual Justice Department budget. According to Forbes, nearly a quarter of employed women report that domestic violence has affected their work performance at some point in their lives. Each year, an estimated 8 million days of paid work is lost in the U.S. because of domestic

violence. Domestic violence costs \$8.3 billion in expenses annually: a combination of higher medical costs (\$5.8 billion) and lost productivity (\$2.5 billion).

We will critically compare the laws below: - New Zealand's Domestic Violence—Victims' Protection Act 2018 - "Our new domestic violence bill will outlaw economic and physical abuse". The Guardian. Theresa May. Wed 7 Mar 2018 - India's 2005 Protection of Women from Domestic Violence Act. - Brazil's Maria de Penha Law - The Philippines Republic Act 9262 - The Anti-Violence Against Women Act 2004 - China's Domestic Violence Law 2016 - The UN Declaration of Elimination of Violence Against Women - CEDAW: General Recommendation 19 - CEDAW Committee General Recommendation 35 - Ms. A.T. v. Hungary CEDAW Committee. January, 2005; - UN Women Global Database on Violence against Women - Rangita de Silva de Alwis, "Domestic Violence Lawmaking in Asia, Some Innovative Trends in Feminist Lawmaking," UCLA Pacific Basin LawJournal. - Freedom from Violence: A Global Perspective in Light of Chinese Domestic Violence Law, 2015, 37 U. PA. J. INT'L L. 1 (2015) (with Jeni Klugman). Sally Engle Merry, Human Rights & Gender Violence (The University of Chicago Press) (2006).

Readings:

- [take my riches, give me justice - Harvard Law School \(yumpu.com\)](#)
- [Declaration on the Elimination of Violence against Women | OHCHR](#)

The class will examine the cross-fertilization of transnational lawmaking initiatives and some of the novel features of the second generation of anti-domestic violence lawmaking. Expanding Categories of Violence include femicide, acid attacks, child marriage and forced marriage, virginity testing, period shaming, Female Genital Mutilation (FGM) and devaluation of the girl child. Excerpts from the film Saving Face will be viewed in class. Farahnaz Ispahani -- the Pakistani lawmaker who helped to draft Pakistan's anti-acid law -- will join the class discussion. We will also be joined by Moushira Khattab who drafted the FGM Law in Egypt.

- Maria de Penha Law
- *A.T. v. Hungary*
- Emerging forms of Violence

Films:

- Provoked
 - Saving Face
 - Girl in the River
 - Period Huts
-

Module 7: Theaters of Conflict- Afghanistan, Iran, and the Sahel Region

We will examine these recent conflicts, its impact on women, and the role of women as peace builders. From the denial of women's and girl's education in the recent Taliban takeover in Afghanistan and the Mandatory head scarf in Iran to the Boko Haram in Nigeria, there is a war against girls' education. Africa's Sahel region's climate collapse which has impacted a gathering crisis in food security, access to water, migration, and the feminization of poverty. We will analyze some of the root causes of recent conflict in the Sahel region, the confluence of the 3 Cs, conflict, climate change and covid will continue to have a disproportionate impact on the lives and livelihoods of women.

Readings:

- ["Expanding the Women Peace and Security Agenda to Protect Women's Educa" by Rangita de Silva de Alwis \(upenn.edu\)](#)
 - Security Council Resolution 2601
 - Food Insecurity and Conflict
-

Module 8: Transitional Justice

Readings:

- *Akayesu* Case
 - Truth and Reconciliation
 - Sierra Leone – Peace treaty
 - Good Friday Peace Treaty
 - Peace Memorials
 - Small arms and Light Weapons treaty
 - Education, Cultural Reproduction and Peace Building
 - [Pherali_Education.cultural_reproduction_revolution_and_peacebuilding\(6\).pdf](#)
-

Module 9: Do Culture and Rights Collide?

Can Culture and Rights Co-Exist? Does culture collide with women's human rights? Must culture be changed to protect women's rights? Is this a false dichotomy? Is there one cultural truth but multiple versions of culture? How do we reconcile tensions between culture and human rights principles? Is the debate narrowly constructed? Religious communities are internally contested, heterogeneous, and constantly evolving through internal debate and interaction with outsiders. Women are demanding change within their religious communities in order to bring their faith in line with democratic norms and practices. Internal and cross-cultural dialogue are critical to a dynamic understanding of culture. Such dialogue triggers discussions on controversial issues implicating religious values and human rights norms and expels notions that there is one absolute or final notion of culture that any one person or community can claim.

Reading:

[Canetto and Burn, Chapter 8 Whose Culture \(1\) \(1\).pdf](#)

Film:

[Your fatwa does not apply here | Karima Bennoune | TEDxExeter - YouTube](#)



[Your fatwa does not apply here | Karima Bennoune | TEDxExeter - YouTube](#)

This talk was given at a local TEDx event, produced independently of the TED Conferences. One day, Karima Bennoune found herself wondering whether she could protect her father with a paring knife. She tells the stories of individual Muslims struggling against fundamentalism and terrorism. Karima Bennoune is a professor of international law at ...

www.youtube.com

Module 10: Generative AI and Human Rights

Last summer, Satya Nadella, the CEO of Microsoft, known for his love of poetry, previewed OpenAI's newest model on generative AI and asked the chatbot to translate the Persian poet Rumi into Urdu, and then English. He recalls that he exclaimed: "God, this thing." Microsoft went on to invest 10 billion in OpenAI which released in November, ChatGPT, a chatbot that now has over 100 million monthly users.

The White House's Proposed Blueprint for an AI Bill of Rights is premised on the principle that Tech companies have a responsibility to make sure their products are safe before making them public. The Bill of Rights includes an anti-discrimination provision "Algorithmic discrimination occurs when automated systems contribute to unjustified different treatment or impacts disfavoring people based on their race, color, ethnicity, sex (including pregnancy, childbirth, and related medical conditions, gender identity, intersex status, and sexual orientation), religion, age, national origin, disability, veteran status, genetic information, or any other classification protected by law." The Blueprint also calls upon "Designers, developers, and deployers of automated systems should take proactive and continuous measures to protect individuals and communities from algorithmic discrimination and to use and design systems in an equitable way."

Module 11: AI, Bias, and the Global South

We will engage with new ideas and critiques at the cutting edge of public discourse on systemic bias. Now more than ever, we need those in the digital humanities and in public policy to engage in dialogue with engineers and information technologists. We will seek to understand whether and how gender and intersectional bias, including implicit and unconscious biases are being baked into technological design and algorithms, and whether and how these biases are being reproduced in new technologies. Currently, there is gender and intersectional asymmetry in the AI workforce. Those designing, coding, engineering and programming AI technologies do not represent a diverse demographic. Our theoretical explorations will include the human rights framework, gender equality theory, post-colonial theory, critical information theory, implicit bias, in group favoritism, and affinity bias to explore subtle barriers to equality that bleed into the design of AI technologies.

Readings:

- UNESCO- I would Blush if I could
- Cambridge

Film:

- Coded Bias

Module: 11 Human Rights and the Global Marketplace: Women in the Global Economy: WTO and Women. ILO treaty 190 and the Domestic Worker Convention

Module 12: Climate Crisis: Indigenous Rights, and Colonialism

Readings:

- The Human Right to a Clean Healthy and Sustainable Environment
- [file:///C:/Users/Rangita/Downloads/A_76_L.75-EN%20\(3\).pdf](file:///C:/Users/Rangita/Downloads/A_76_L.75-EN%20(3).pdf)
- Climate Change and Human conflict
- Climate Change and Violent Conflict in West Africa

Module 13:

Module 14: Group Presentations



[Treaty Bodies](#)

www.ohchr.org

2021 WL 4427032 (U.S.) (Appellate Brief)

Supreme Court of the United States.

**Thomas E. DOBBS, State Health Officer of the Mississippi
Department of Health, et al., Petitioners,**

v.

**JACKSON WOMEN'S HEALTH ORGANIZATION, et al.,
Respondents.**

No. 19-1392.

September 20, 2021.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit




Brief of United Nations Mandate Holders as Amici Curiae in Support of Respondents

[Emma Lindsay](#), Counsel of Record, Jovana Crncevic, Joseph Gallo, Heongeun Song, Withers Bergman LLP, 430 Park Avenue, New York, NY 10022, (212) 848-9800, Emma.lindsay@withersworldwide.com, jovana.crncevic@withersworldwide.com, joseph.gallo@withersworldwide.com, hg.song@withersworldwide.com, for Amici Curiae.

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*xi U.N. Human Rights Committee, CCPR General Comment No. 28: Article 3 (The equality of rights between men and women), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000)	14
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U.N. Human Rights Committee, Concluding observations on the sixth periodic report of Spain, U.N. Doc. CCPR/C/ESP/CO/6 (Aug. 14, 2015)	32
U.N. Human Rights Committee, Draft General Comment No. 33 (2nd version, 18 August 2008), U.N. Doc. CCPR/C/GC/33/CRP.3 (Aug. 25, 2008)	8, 9
U.N. Human Rights Committee, General Comment No. 36: Article 6 of the ICCPR, on the right to life, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019)	passim
U.S. Statement during the Adoption of the Third Universal Periodic Review (UPR) of the United States (Mar. 17, 2021), https://geneva.usmission.gov/2021/03/17/us-upr-1/	32
Whelan v. Ireland, U.N. Human Rights Committee, Comm'n No. 2425/2014, U.N. Doc. CCPR/C/119/D/2425/2014 (2017)	passim
<i>Working Group on the issue of discrimination against women in law and in practice</i> , U.N. Doc. A/HRC/38/46 (May 12, 2018)	18


***1** *INTEREST OF AMICI CURIAE*

*Amici curiae*¹ are mandate-holders appointed by the U.N. Human Rights Council “with mandates to report and advise on human rights from a thematic or country-specific perspective.” *Office of the High Commissioner for Human Rights* (“OHCHR”), Special Procedures of the Human Rights Council, <https://www.ohchr.org/en/hrbodies/sp/pages/introduction.aspx> (last visited Sept. 15, 2021).

Amici serving as Special Rapporteurs are part of “[t]he system of Special Procedures” that “is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social.” *Id.* As mandate-holders, amici are independent human rights experts selected for their “(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.” Human Rights Council, *Institution-building of the United Nations Human Rights Council*, f 39, U.N. Doc. A/HRC/RES/5/1 (June 18, 2007). Special Rapporteurs “undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith” and “do not receive financial remuneration.” OHCHR, *Special Procedures of the Human Rights Council*.

Amici are also accorded certain privileges and immunities as experts on mission for the United Nations ^{*2} under Article VI of the Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 1 U.N.T.S. 15, to which the United States has been a party since 1970. This brief is submitted voluntarily without prejudice to, and should not be considered as, a waiver, express or implied, of the privileges and immunities of the United Nations, its officials or experts on missions, under the 1946 Convention on the Privileges and Immunities of the United Nations and recognized principles of international law. Authorization for the positions and views expressed herein, in accordance with the independence of the amici positions and respective mandates, was neither sought nor given by the United Nations, including the Human Rights Council, the OHCHR, or any of the officials associated with those bodies.

SUMMARY OF ARGUMENT

Mississippi asks this Court to overrule *Roe v. Wade*, 410 U.S. 173 (1973), and  *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), by arguing, in part and incorrectly, that federal constitutional protection for abortion in the United States is out of step with the rest of the world and that the “march of progress” has made abortion access unnecessary for women's autonomy and equality. *Petr. Br. 4*. Amici seek to set the record straight and explain how international human rights law protects abortion access.

The overwhelming trend for the past half-century has been toward the liberalization of abortion laws worldwide, with countries often using international ^{*3} human rights law as a basis.

See generally Int'l and Comparative Legal Scholars Br. This is because safe and legal abortion access constitutes a critical part of human rights and, in particular, the right to the highest attainable standard of health (which includes reproductive rights) as well as other human rights including the rights to non-discrimination and equality, respect for private life, the right to life, and the right to freedom from torture and cruel, inhuman and degrading treatment. See, e.g., U.N. Human Rights Committee (“HRC”), General Comment No. 36: *Article 6 of the ICCPR*, on the right to life, ¶ 8, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019) [hereinafter HRC General Comment No. 36]; Committee on Economic, Social and Cultural Rights (“CESCR Committee”), General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), ¶¶ 5, 10, 13, 45, U.N. Doc. E/C.12/GC/22 (May 2, 2016) [hereinafter CESCR Committee General Comment No. 22]; *Committee on the Elimination of Discrimination against Women (“CEDAW Committee”)*, General Recommendation No. 24: Article 12 of the Convention (Women and Health), ¶¶ 14, U.N. Doc. A/54/38/Rev., Chap. I (1999) [hereinafter CEDAW Committee General Recommendation No. 24]

The United States would contradict international human rights law by overturning its established constitutional protections for abortion access - both by failing to recognize abortion access as necessary for women's autonomy, equality and non-discrimination and by retrogressing on human rights contrary to international law.

^{*4} The United States has ratified, and is bound by, a number of human rights treaties including the International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 (“IC-CPR”) since 1992, the International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, S. Exec. Doc. C, 95-2, 660 U.N.T.S. 195, 212 (“CERD”) since 1994, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85, 113 (“CAT”) since 1994. It has signed others - namely the International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (“ICESCR”) in 1977, the Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (“CEDAW”) in 1980, the Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (“CRC”) in 1995, and the Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3 (“CRPD”) in 2009 - and must refrain from defeating

their object and purpose. See, e.g., Vienna Convention on the Law of Treaties (“VCLT”), Art. 18, May 23, 1969, 1155 U.N.T.S. 331.

Treaty bodies, created and empowered under these treaties, and the U.N. Charter-based Human **Rights** Council and the Special Procedures created by it, examine States' compliance with human **rights** obligations. These bodies have repeatedly recognized that protections for abortion access are necessary to fulfill the **rights** to equality and non-discrimination, life, privacy, health, and freedom from torture, cruel, inhuman and degrading treatment, as well as freedom from gender-based violence, among other **rights**.

***5** “Although States parties may adopt measures designed to regulate voluntary termination of pregnancy, those measures must not result in violation of the **right** to life of a pregnant woman or girl” nor “jeopardize their lives, subject them to physical or mental pain or suffering[.]” “discriminate against them or arbitrarily interfere with their privacy.” HRC General Comment No. 36, ¶f 8. “States parties must provide safe, legal and effective access to abortion” including “where the pregnancy is the result of rape or incest” and also “should not introduce new barriers” and “should remove existing barriers to effective access by women and girls to safe and legal abortion[.]” *Id.*

In May 2020, the U.N. Working Group on discrimination against women and girls (“WGDAW”), the Special Rapporteur on the **right** of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, its causes and consequences jointly decried the “pattern of restrictions and retrogressions in legal access to abortion care across” the United States through COVID-19 emergency orders suspending procedures “purportedly not immediately medically necessary [.]” Letter from the WGDAW to the United States, AL USA 11/2020 (May 22, 2020),

<https://spcommreports.ohchr.org/TMResultsBase/Down>

LoadPublicCommunicationFile?gId25279 (last visited Sept. 15, 2021) [hereinafter the Techane-Puras-Simonovi Letter] The WGDAW emphasized that “[abortion care constitutes essential health care and must remain so and available during the COVID-19 crisis” and that restrictions to abortion access “constitute human **rights** violations and can cause irreversible harm, in particular to those women experiencing ***6** multiple and intersecting forms of discrimination such as low-income women, women of color, immigrants, women with disabilities and LGBTI people.” *Id.*

In her 2021 report to the U.N. General Assembly, lead amicus Tlaleng Mofokeng underlined States' obligations to decriminalize abortion, to prevent unsafe abortion and to provide safe, legal and effective access to abortion, in a manner that does not result in the violation

of **women's rights** to life and other human **rights**. See *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng, Sexual and reproductive health rights: challenges and opportunities during the COVID-19 pandemic*, ¶¶ 22, 40-41, U.N. Doc. A/76/172 (July 16, 2021) [hereinafter Mofokeng 2021 Report].

If *Roe* and *Casey* are overturned, many U.S. states will implement bans or near-bans on abortion access that will make individual state laws irreconcilable with international human **rights** law.² This would cause irreparable harm to women and girls in violation of the United States' obligations under the human **rights** treaties it has signed and ratified.

***7 ARGUMENT**

I. INTERNATIONAL HUMAN RIGHTS LAW SHOULD GUIDE THE SUPREME COURT IN THIS CASE

Since the nation's founding, international law has infused the U.S. Constitution. See Ruth Bader Ginsburg, *Looking Beyond Our Borders: The Value of a Comparative Perspective in Constitutional Adjudication*, 22 *Yale L. & Pol. Rev.* 329, 330 (2004) (“In writing the Constitution, the Framers understood that the new nation would be bound by ‘the Law of Nations,’ today called international law.”).

The Supreme Court has followed this tradition by interpreting and applying human **rights** treaties that the United States has ratified and signed. See [Roper v. Simmons, 543 U.S. 551, 576 \(2005\)](#) (identifying prevailing legal norms regarding juvenile death penalty by looking at international agreements, including CRC and ICCPR); [Graham v. Florida, 560 U.S. 48, 81-82 \(2010\)](#) (considering CRC's prohibition of sentencing juveniles to life imprisonment without the possibility of parole in determining whether practice was “cruel and unusual” under U.S. law); cf. [Grutter v. Bollinger, 539 U.S. 306, 344 \(2003\)](#) (Ginsburg, J. and Breyer, J., concurring) (considering applicability of CERD to affirmative action policies at U.S. universities).

II. INTERNATIONAL HUMAN RIGHTS LAW PROTECTS ABORTION ACCESS

International human **rights** law is comprised of treaties that enshrine human **rights** including **rights** to equality and non-discrimination, life, privacy, ***8** health, and freedom from torture, cruel, and inhuman and degrading treatment. States - including the United States - codified these fundamental human **rights** after the horrors of the Second World War. In 1948, the U.N. General Assembly adopted the Universal Declaration of Human **Rights** reflecting States' consensus that “[a]ll human beings are born free and equal in dignity and **rights**.” G.A. Res. 217 (III) A, Article 1, U.N. Doc. A/RES/217(III) (XX/XX/1948).

These **rights** are “inherent from the moment of birth.” U.N. GAOR 3rd Comm., 99th mtg., 110-124, U.N. Doc. A/PV/98-99 (1948). In the decades that followed, several core international treaties enshrined these fundamental **rights**. Under this treaty regime, States parties cannot invoke their own domestic law to justify non-compliance with their obligations. See VCLT art. 27.

*9 Treaty bodies³ are “mandated to monitor State parties' compliance with their treaty obligations” and also provide guidance on the fulfilment of **rights**. OHCHR, Human **Rights** Bodies, <https://www.ohchr.org/EN/HRBodies/Pages/Human-RightsBodies.aspx> (last visited Sept. 15, 2021). *See also, e.g., HRC, Draft General Comment No. 33* (2nd version, 18 August 2008), ¶¶ 15-16, U.N. Doc. CCPR/C/GC/33/CRP.3 (Aug. 25, 2008) (reflecting HRC's view that it is the “authentic interpreter” of the ICCPR and that “[a] finding of a violation by the Committee engages the legal obligation of the State party to reconsider the matter”); CERD Art. 9 (empowering CERD Committee, inter alia, to “make suggestions and general recommendations based on the examination of the reports and information received from the States Parties”); CAT Art. 19 (empowering CAT Committee, inter alia, to make general comments on State Party reports submitted to it).

Over time, States and human **rights** bodies clarified that human **rights** treaty obligations encompass the reproductive **rights** of women and girls, including safe and legal abortion access. *See, e.g., HRC General Comment No. 36*, ¶ 8; CESCR Committee General Comment *No. 22*, ¶¶ 10-11, 13-14, 45, 49; *CESCR Committee, General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12), ¶¶ 34-35, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter CESCR Committee General Comment No. 14]; CRC Committee, General comment No. 20 (2016) on the implementation of the **rights** of the child during adolescence, ¶ 60, U.N. Doc. CRC/C/GC/20* (Dec. 6, 2016) [hereinafter CRC Committee General Comment No. 20]; *L.C. v. Peru*, CEDAW Committee, Comm'n No. 22/2009, ¶ 8.15, U.N.

Doc. **CEDAW/C/50/D/22/2009** (2011) [hereinafter *L.C. v. Peru*]; OHCHR, Information Series on Sexual and Reproductive Health **Rights**: Abortion (2020), https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf (last visited Sept. 15, 2021) [hereinafter OHCHR, *Information Series*].

At the 1994 International Conference on Population and Development (“ICPD”), States, including the United States, collectively acknowledged that “reproductive **rights** embrace certain human **rights**” and that ensuring safe abortion access is critical to **women's** reproductive health. ICPD, CAIRO, EGYPT, SEPT. 5-13, 1994, REPORT OF THE INTERNATIONAL

CONFERENCE ON POPULATION AND DEVELOPMENT, ¶¶ 7.3, 8.19, 8.20(a), 8.25, U.N. Doc. A/CONF.171/13/Rev.1 (1995).

In the 1995 Beijing Platform for Action (another consensus document), States recognized that “[r]eproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes[.]” including the “right to make decisions concerning reproduction free of discrimination, coercion and violence[.]” FOURTH WORLD CONFERENCE ON WOMEN, REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN, BEIJING 4-15 SEPT. 1995, ¶¶ 94-95, U.N. Doc. A/CONF.177/20, annex II (Oct. 17, 1995).

Human rights bodies also have articulated the effects of abortion restrictions and their incompatibility with rights to equality and non-discrimination, privacy, life, health, and freedom from torture, cruel, inhuman and degrading treatment. *See, e.g., HRC General Comment No. 36*, ¶ 8; CEDAW Committee, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. *11* ¶19,, U.N.

Doc. CEDAW/C/GC/35 (July 14, 2017) [hereinafter CEDAW Committee General Recommendation No. 35]; CESCR Committee General Comment No. 22, ¶ 10.

Lead amicus Mofokeng has recognized that “[v]iolence against women and girls manifests in numerous forms,” including through “denied abortions”. Human Rights Council, *Strategic priorities of work: Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng*, ¶ 53, U.N. Doc. A/HRC/47/28 (Apr. 7, 2021).

A. Prohibitions on abortion access breach the right to equality and non-discrimination

Laws restricting abortion access discriminate against women and girls on the basis of sex and engage States' obligations under the ICCPR. *See* Techane-Puras-Simonovic Letter (“[T]he failure to provide adequate access” to abortion services “constitute[s] discrimination on the basis of sex, in contravention of ICCPR article 2.”).⁴

*12 For example, the HRC found that Irish laws criminalizing abortion can subject a woman “to a gender-based stereotype of the reproductive role of women primarily as mothers” in violation of the right to equal protection of the law in ICCPR Article 26.⁵ *Mellet v. Ireland*, HRC, Commc'n No. 2324/2013, ¶¶ 7.11, U.N. Doc. CCPR/C/116/D/2324/2013 (2016) [hereinafter *Mellet v. Ireland*]; *see also Whelan v. Ireland*, HRC, Commc'n No. 2425/2014, ¶ 7.12, U.N. Doc. CCPR/C/119/D/2425/2014 (2017) [hereinafter *Whelan v. Ireland*].

Contrary to the arguments of Petitioners' *amici*, CEDAW requires the safeguarding of women's reproductive rights and health, including abortion access.⁶ CEDAW Article 12 requires States to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.” Consequently, the CEDAW Committee made clear that “[i]t is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women.” CEDAW Committee General Recommendation No. 24, ¶ 11.

*13 In 2011, the CEDAW Committee found that Peru must amend its law because it was discriminatory to deny abortion access to a girl who “was a minor and a victim of sexual abuse” and that restricted abortion access deprived her of “her entitlement to the medical services that her physical and mental condition required.” See *L.C. v. Peru*, ¶ 8.15. In 2018, the CEDAW Committee concluded that abortion restrictions in Northern Ireland constituted discrimination because they affect only women, “preventing them from exercising reproductive choice[.]” CEDAW Committee, *Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Report of the Committee*, ¶ 65, U.N.


Doc. CEDAW/C/OP.8/GBR/1 (Mar. 6, 2018) [hereinafter CEDAW 2018 UK Report].


Girls are particularly vulnerable to discrimination through restrictive abortion access. Lack of access to reproductive health services “contributes to adolescent girls being the group most at risk of dying or suffering serious or lifelong injuries in pregnancy and childbirth.” CRC Committee General Comment No. 20, ¶ 59. The CRC Committee advised that “[t]here should be no barriers to commodities, information and counselling on sexual and reproductive health and rights, such as requirements for third-party consent or authorization” and “urge[d] States to decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services, review legislation with a view to guaranteeing the best interests of pregnant adolescents and ensure that their views are always heard and respected in abortion-related decisions.” *Id.* ¶ 60.

*14 Moreover, international human rights treaties require States to take positive measures to achieve substantive equality and address inequalities faced by women and girls that a formal, gender-neutral or gender-blind approach to equality does not rectify, including by dismantling the discriminatory, racist, and xenophobic institutional structure and laws surrounding health and abortion services. *See, e.g.*, CEDAW Committee, General Recommendation No. 25, on Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against

Women, on temporary special measures, (30th Sess., 2004), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, ¶ 8-12, U.N. Doc. HRI/GEN/1/Rev.7 (May 12, 2004); CESCR Committee, General Comment No. 20: *Nondiscrimination in economic, social and cultural rights* (art. 2, ¶ 2, of the *International Covenant on Economic, Social and Cultural Rights*), ¶ 9-10, U.N. Doc. E/C.12/GC/20 (July 2, 2009); HRC, CCPR General Comment No. 28: Article 3 (The equality of rights between men and women), ¶ 3, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000) [hereinafter HRC General Comment No. 28].

States must recognize that, pursued alone, formal equality disadvantages individuals who face intersectional discrimination on multiple grounds: “groups such as, but not limited to, poor women, persons with disabilities, migrants, indigenous or other ethnic minorities, adolescents, lesbian, gay, bisexual, transgender and intersex persons, and people living with HIV/AIDS are more likely to experience multiple discrimination” and “may be disproportionately affected by intersectional discrimination in the context *15 of sexual and reproductive health.” CESCR Committee General Comment No. 22, ¶ 30. *See also, e.g. CRC Committee, General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health* (art. 24), ¶¶ 8-11, U.N. Doc. CRC/C/GC/15 (Apr. 17, 2013) [hereinafter CRC Committee General Comment No. 15]; CRPD Committee, General comment No. 3 (2016) on women and girls with disabilities, ¶ 2, U.N. Doc. CRPD/C/GC/3 (Nov. 25, 2016) [hereinafter CRPD General Comment No. 3] (noting barriers which “create situations of multiple and intersecting forms of discrimination against women and girls with disabilities”); HRC General Comment No. 28, ¶ 30; *K.L. v. Peru*, HRC, Comm’n No. 1153/2003, ¶¶ 6.3-6.5, U.N. Doc. CCPR/C/85/D/1153/2003 (2005) [hereinafter *K.L. v. Peru*]; *Mellet v. Ireland*, ¶ 7.11 (finding differential treatment where Ireland “failed to adequately take into account [woman’s] medical needs and socioeconomic circumstances”); *Whelan v. Ireland*, ¶ 7.12 (same).

Restrictive abortion laws such as the Mississippi Act exemplify the intersectional discrimination that targets marginalized communities, as noted by the District Court below. *See* 

Jackson Women’s Health Org. v. Currier, 349 F. Supp. 3d 536, 540 n. 22 (S.D. Miss. 2018), *aff’d sub nom.*  *Jackson Women’s Health Org. v. Dobbs*, 945 F.3d 265 (5th Cir. 2019).

In its report to the Human Rights Council on its visit to the United States, the WGDAW cautioned that:

The United States, which is a leading State in terms of formulating international human rights *16 standards, is allowing its women to lag behind in the respect for these standards. While all women are victims of these “missing” rights, women who are poor; Native

American, African-American, Hispanic and Asian women; women who are members of ethnic minorities; migrant women; lesbian, bisexual, transgender or intersex persons; women with disabilities; and older women are in a situation of heightened vulnerability.

Human **Rights** Council, *Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to the United States of America*, ¶ 87, U.N. Doc. A/HRC/32/44/Add.2 (Aug. 4, 2016).

African-American women and girls have historically been subjected to racism, and restrictive abortion laws subject them to intersectional discrimination that imperils their reproductive health. “The United States has the highest maternal mortality ratio among wealthy countries, and [B]lack women are three to four times more likely to die than White women[.]”

Human **Rights** Council, Report of the Special Rapporteur on extreme poverty and human **rights** on his mission to the United States of America, ¶ 57, U.N. Doc. AHRC3833Add. (May 4, 2018) [hereinafter Human **Rights** Council, Extreme Poverty and Human **Rights** SR Report on United States].

Noting “the persistence of racial disparities in the field of sexual and reproductive health, particularly with regard to the high maternal and infant mortality rates among African American communities,” the CERD Committee called on the United States to [eliminate racial disparities in the field of sexual and *17 reproductive health and standardize the data collection system on maternal and infant deaths in all states to effectively identify and address the causes of disparities in maternal and infant mortality rates[.]” CERD Committee, Concluding Observations on the combined seventh to ninth periodic reports of the United States of America, 15, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014) [hereinafter CERD Committee 2014 U.S. Observations].

Women living in poverty are vulnerable to abortion restrictions. The WGDAW observed that “in countries where induced termination of pregnancy is restricted by law and/or otherwise unavailable, safe termination of pregnancy is a privilege of the rich, while women with limited resources have little choice but to resort to unsafe providers and practices.” OHCHR, Information Series. See also *Mellet v. Ireland*, ¶ 7.10; *Whelan v. Ireland*, ¶ 7.11.

In the United States, legal and practical limitations on abortion access result in intersectional discrimination compounded by poverty:

Low-income women who would like to exercise their constitutional, privacy-derived **right** to access abortion services face legal and practical obstacles, such as mandatory waiting periods and long driving distances to clinics. This lack of access to abortion services traps many women in cycles of poverty.

Human **Rights** Council, Extreme Poverty and Human **Rights** SR Report on United States, ¶ 56.

Moreover, “rural women are more likely to resort to unsafe abortion than their urban counterparts, a situation that puts their lives at risk and compromises ^{*18} their health.” CEDAW Committee, General recommendation No. 34 (2016) on the rights of rural women, f 38, U.N. Doc. CEDAW/C/GC/34 (Mar. 7, 2016). See also OHCHR, Information Series. The CESCR Committee clarified that States are required “to eradicate practical barriers” including “disproportionate costs and lack of physical or geographical access to sexual and reproductive health care.” CESCR Committee General Comment No. 22, ¶ 46. Abortion access is a prerequisite for equal protection of the law for women with disabilities. Like all women, women with disabilities have the right to choose the number and spacing of their children, as well as the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.” CRPD Committee General Comment No. 3, ¶ 38; see also CRPD Committee, Concluding Observations on the initial report of Poland, ¶ 44(e), U.N. Doc. CRPD/C/POL/CO/1 (Oct. 29, 2018).

B. Prohibitions on abortion access breach the right to privacy

“The right of a woman or girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy, involving intimate matters of physical and psychological integrity, and is a precondition for the enjoyment of other rights.” Working Group on the issue of discrimination against women in law and in practice (today WGDAW), f 35, U.N. Doc. A/HRC/38/46 (May 14, 2018).

^{*19} Special Rapporteur Mofokeng noted recently that “[women, adolescents, girls and all persons capable of becoming pregnant have a right to make informed, free and responsible decisions concerning their reproduction, their body and sexual and reproductive health, free of discrimination, coercion and violence.” Mofokeng 2021 Report, ¶ 40.

The CEDAW Committee recommends that States “[require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice]. CEDAW Committee General Recommendation No. 24, ¶ 31(e); see also CEDAW 2018 UK Report, ¶ 65 (noting that restrictive abortion law in Northern Ireland “afronts women’s freedom of choice and autonomy and their right to self-determination”).

^{*20} The right to privacy under ICCPR Article 17 encompasses women’s reproductive autonomy. See HRC General Comment No. 36, f 8 (referencing right to privacy).

found violations of the **right** to privacy in every case before it when the State interferes with reproductive decision-making or abortion access. This was reflected first in *K.L. v. Peru* in 2005 and recently in *Whelan v. Ireland* in 2016 and *Mellet v. Ireland* in 2017, where the HRC held that the decision to seek an abortion falls within the scope of the **right** to privacy under the ICCPR. See *K.L. v. Peru*, 6.4; *L.M.R. v. Argentina*, HRC, Comm'n No. 1608/2007, 9.3, U.N. Doc. CCPR/C/101/D/1608/2007 (2007); *Mellet v. Ireland*, ¶ 7.8; *Whelan v. Ireland*, ¶ 7.9. In *Mellet* and *Whelan*, the HRC held that forcing a woman to choose between continuing an unwanted pregnancy or traveling to another jurisdiction to receive a safe legal abortion at her personal expense was an intrusive interference contrary to the ICCPR. See *Mellet v. Ireland*, ¶ 7.8; *Whelan v. Ireland*, ¶ 7.9.

The CRC mandates that “no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence.” CRC Art. 16. In *K.L. v. Peru*, ¶f 6.4, the HRC recognized that denying an adolescent girl access to abortion for a fatal fetal impairment was a violation of her **right** to privacy under the ICCPR.

C. Prohibitions on abortion access breach the **right to life**

The HRC's authoritative interpretation of ICCPR Article 6 clarifies longstanding standards developed over decades that abortion restrictions cannot imperil the **right** to life, among other **rights**, and force women and girls to undertake unsafe abortions:

Although States parties may adopt measures designed to regulate voluntary termination of pregnancy, those measures must not result in violation of the **right** to life of a pregnant woman or girl, or her other **rights** under the Covenant. Thus, restrictions on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, subject them to physical or mental pain or suffering that violates article 7 of the Covenant, discriminate against them or arbitrarily ^{*21} interfere with their privacy. States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable. States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to resort to unsafe abortions, and they should revise their abortion laws accordingly States parties should remove existing barriers to effective access by women and girls to safe and legal abortion ... and should not introduce new barriers [.]

HRC General Comment No. 36, ¶f 8.

Contrary to the assertions of several of Petitioners' amici, the **right** to life emanating from human **rights** treaties does not apply prenatally. See, e.g., **CEDAW** 2018 UK Report, f 68 (“[Analyses of major international human **rights** treaties on the **right** to life confirm that it does not extend to fetuses.”); Report by Nils Muinieks, Commissioner for Human **Rights** of the Council of Europe, Following His Visit to Ireland from 22 to 25 November 2016, f 93, CommDH (2017) 8 (Mar. 29, 2017) (“[T]he Eighth Amendment of the Irish Constitution, protecting the **right** to life of the unborn on an equal basis with the **right** to life of the pregnant woman, departs from the position consistently held by human **rights** bodies that the **right** to life, as enshrined in relevant international treaties, does not apply to prenatal life.”

); Council of Europe ***22** Commissioner for Human **Rights, Women's** sexual and reproductive health and **rights** in Europe, at 51 (Dec. 2017), <https://rm.coe.int/women-s-sexual-and-reproductive-health-> (last visited Sept. 16, 2021) (“[T]he **right** to life as enshrined in core international human **rights** treaties does not apply prior to birth and international human **rights** law does not recognise a prenatal **right** to life”; “the drafters of these treaties rejected claims that the **right** to life enshrined in those instruments should apply prenatally.”). During the drafting of ICCPR Article 6, delegations voted against adding text to the provision stating that “[t]he **right** to life is inherent in the human person. [f]rom the moment of conception[.]” U.N. GAOR, Agenda Item 33, Report of the Third Committee, 97, 113, 120(e), U.N. Doc. A/3764 (1957). The HRC has found in several cases that the **right** to life does not apply from conception, emphasizing **women's right** to life by protecting abortion access. The **CEDAW** and CRC Committees have focused on the violation of **women's** and girls' **right** to life through restrictions and punishments relating to abortion. See, e.g., *L.C. v. Peru*, ¶ 8.15; CRC Committee General Comment No. 15,70.

While the CRC's preamble refers to “legal protection before as well as after birth”, this was never intended to trump **women's** and girls' **right** to life in the context of abortion access. Supporters of this language expressly stated that “the purpose of the amendment was not to preclude the possibility of abortion[.]” U.N. Commission on Human **Rights**, Question of a Convention on the **Rights** of the Child: Rep. of the Working Group, 36th Sess., ¶ 6, U.N. Doc. E/CN.4/L.1542 (Mar. ***23** 10, 1980). This understanding is reflected by the CRC Committee, which has consistently criticized States' restrictive abortion laws and never recommended that a liberal abortion law be narrowed. See CRC Committee General Comment No. 20, ¶ .

The HRC has emphasized that States must reduce legal restrictions on family planning, which give rise to high rates of pregnancy, and illegal abortions - one of the principal causes of

maternal mortality interfering with the **right** to life. See HRC, Concluding observations on the fourth periodic report of the Philippines, ¶ 13, U.N. Doc. CCPR/C/PHL/CO/4 (Nov. 13, 2012). See also **CEDAW** Committee, Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, ¶ 47, U.N. Doc. **CEDAW**/C/OP.8/PHL/1 (Apr. 22, 2015) (“tak[ing] note of the potentially life-threatening consequences of resorting to unsafe abortion as a method of contraception and recall[ing] that there is a direct link between high maternal mortality rates resulting from unsafe abortion and lack of access to modern methods of contraception”); HRC General Comment No. 36, 8 (“States parties should also effectively protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions.”). In a joint statement, the **CEDAW** and CRPD Committees found that “access to safe and legal abortion, as well as related services and information are essential aspects of **women's** reproductive health and a prerequisite for safeguarding their human **rights** to life, health, equality before the law and equal protection of the law, non-discrimination, information, privacy, *24 bodily integrity and freedom from torture and ill treatment.” Guaranteeing sexual and reproductive health and **rights** for all women, in particular women with disabilities, Joint statement by the Committee on the **Rights** of Persons with Disabilities and the Committee on the Elimination of All Forms of Discrimination against Women (Aug. 29, 2018), <https://tbinterne.ohchrdocx> (last visited Sept. 16, 2021) [hereinafter **CEDAW** and CRPD 2018 Joint Statement].

D. Prohibitions on abortion access breach the **right to health**

Abortion access is part of **women's** and girls' comprehensive reproductive health. The **right** to health encompasses **rights** to physical health, mental health, and social well-being. ICESCR Article 12(1) enshrines “the **right** of everyone to the enjoyment of the highest attainable standard of physical and mental health.” “The freedoms [protected by Article 12] include the **right** to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health. The entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the **right** to sexual and reproductive health under article 12 of the Covenant.” CESCR Committee General Comment No. 22, ¶f 5. The **right** to health “is not to be understood as a **right** to be healthy. The **right** to health contains both *25 freedoms and entitlements. The freedoms include the **right** to control one's health and body, including sexual and reproductive freedom, and the **right** to be free from interference,

such as the **right** to be free from torture, non-consensual medical treatment and experimentation.” CESCR Committee General Comment No. 14, ¶ 8, 11.

The Report of the Special Rapporteur on Health to the Human **Rights** Council has recognized that target 3.7 of the Sustainable Development Goals, on ensuring universal access to sexual and reproductive healthcare services, must be fulfilled in part by States adopting “a comprehensive gender-sensitive and non-discriminatory sexual and reproductive health policy” that is consistent with human **rights** standards. Human **Rights** Council, Report of the Special Rapporteur on the **right** of everyone to the enjoyment of the highest attainable standard of physical and mental health, ¶¶ 89-92, U.N. Doc. A/HRC/32/32 (Apr. 4, 2016); Mofokeng 2021 Report, ¶¶ 40-43. CRC Article 24 recognizes the **right** of the child to enjoy the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health and requires that States Parties “develop preventive health care, guidance for parents and family planning education and services.”

The CRC Committee has stated that “[g]iven the high rates of pregnancy among adolescents globally and the additional risks of associated morbidity and mortality, States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including ***26** family planning and safe abortion services.” CRC Committee General Comment No. 15, ¶ 56.

The **CEDAW** Committee, jointly with the CRPD Committee, has framed abortion access as a component of the **right** to reproductive health, stating that “access to safe and legal abortion, as well as related services and information are essential aspects of **women's** reproductive health and a prerequisite for safeguarding their human **rights** to[...]health[...].” **CEDAW** and CRPD 2018 Joint Statement, 1.

Special Rapporteur Mofokeng notes that “[a]ccess to family planning, contraception including emergency contraception, safe abortion services and post-abortion care is a component of the **right** to health and, in particular, the **right** to sexual and reproductive health.” Mofokeng 2021 Report, ¶33. The Special Rapporteur on the **right** of everyone to enjoy the highest attainable standard of physical and mental health has stated that “[t]he **right** to sexual and reproductive health is a fundamental part of the **right** to health. States must therefore ensure that this aspect of the **right** to health is fully realized,” and that “[s]ome and other legal restrictions in each of those areas, which are often discriminatory in nature, violate the **right** to health by restricting access to quality goods, services and information” and “infringe human dignity by restricting the freedoms to which individuals are entitled under the **right** to health, particularly in

respect of decision-making and bodily integrity.” U.N. *GAOR, Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, at 2, U.N. Doc. A/66/254 (Aug. 3, 2011).*

*27 The CESCR Committee notes that “[h]ealth facilities, goods, information and services related to sexual and reproductive health care should be accessible to all individuals and groups without discrimination and free from barriers.” CESCR Committee Comment No. 22, ¶ 15. The requirement of accessibility is made up of four overlapping dimensions: non-discrimination, physical accessibility, economic accessibility (affordability), and information accessibility. CESCR Committee, General Comment No. 14, ¶ 12(b). Accordingly, the CESCR Committee recommends that to enable the realization of a woman's right to health, States Parties should remove “all barriers interfering with [a woman's] access to health services, education and information including in the area of sexual and reproductive health.” *Id.* ¶ 21, Exhibit 40. The Report of the Working Group on the issue of discrimination against women in law and practice to the Human Rights Council states that “[w]omen's non-discriminatory enjoyment of the right to health must be autonomous, effective and affordable” and makes clear that criminalizing behavior attributed only to women is discriminatory and risks their lives and health. Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice, at 1, U.N. Doc. A/HRC/32/44 (Apr. 8, 2016). See also World Health Organization, Fact Sheet: Preventing unsafe abortion (Sept. 25, 2020), <https://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion> (last visited Sept. 16, 2021) (listing restrictive abortion laws as a barrier to safe abortion, with attendant risks to health and life of women).

*28 The CERD Committee has addressed “the persistence of racial disparities in the field of sexual and reproductive health, particularly with regard to the high maternal and infant mortality rates among African-American communities[.]” CERD Committee 2014 U.S. Observations, ¶ 15.

The CRPD Committee has also emphasized that women and girls with disabilities face burdensome barriers “with regard to health care, including sexual and reproductive health services[.]” CRPD General Comment No. 3, ¶ 2.

E. Prohibitions on abortion access breach the right to be free from torture and cruel, inhuman or degrading treatment

CAT Article 1 defines “torture” as “any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person ... for any reason based on discrimination of any kind” and the CAT Committee has consistently found that prohibitions on legal abortion can

constitute a violation of the prohibition on torture. The CAT Committee has “expresse[d] concern at the severe physical and mental anguish and distress experienced by women and girls regarding termination of pregnancy” due to a State's policies. CAT Committee, Concluding observations on the second periodic report of Ireland, f 31, U.N. Doc. CAT/C/IRL/C/2 (Aug. 31, 2017). The CAT Committee found that Poland's restrictive 12-week gestation abortion laws combined with a lack of guidelines on abortion access “will result in physical and mental suffering so severe in pain and intensity as to amount to torture” and “engage the international responsibility *29 of the State party under the Convention.” CAT Committee, Concluding observations on the seventh periodic report of Poland, ¶¶ 33-34, U.N. Doc. CAT/C/POL/CO/7 (Aug. 29, 2019).

The CAT Committee clarified that States parties must refrain “from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture[.]” CAT Committee, General Comment No. 2: Implementation of article 2 by States parties, ¶f 17, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008). This obligation requires States to take effective legislative, administrative, judicial or other measures to prevent violations of reproductive **rights** amounting to torture or other cruel, inhuman or degrading treatment, including denial of abortion and post-abortion care. See Human **Rights** Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mndez, ¶ 46, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013).

The Special Rapporteur on torture and other forms of cruel, inhuman and degrading treatment or punishment has highlighted that “the denial of safe abortions and subjecting women and girls to humiliating and judgmental attitudes in such contexts of extreme vulnerability and where timely health care is essential amount to torture or ill treatment.” Human **Rights** Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 44, U.N. Doc. A/HRC/31/57 (Jan. 5, 2016). “International human **rights** law increasingly recognizes that abuse and mistreatment of women seeking reproductive health services cause tremendous and lasting physical and emotional suffering” *30 which can constitute cruel and degrading treatment. See *id.* ¶ 42.

ICCPR Article 7⁸ protects both the dignity and physical and mental integrity of the individual, and the HRC has made clear that mental suffering violates this article. HRC, CCPR General Comment No. 20: Article 7 (*Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment*), f 5 (Mar. 10, 1992), <https://www.refworld.org/docid/453883.html> (last visited Sept. 15, 2021). The HRC has viewed restrictions on abortion as a violation of the **right** to be free from torture, cruel, inhuman and degrading treatment since the first case on

abortion decided in the U.N. system, K.L Peru, f 6.3. The HRC held in Whelan and Mellet that Irish laws restricting abortion access exacerbate physical and mental suffering and can constitute cruel, inhuman or degrading treatment in violation of ICCPR Article 7. *See Mellet . Ireland, 7.4-7.6; Whelan . Ireland, ¶¶ 7.4-7.7.* Upon the HRC's recommendations, in 2018 Ireland successfully voted on a referendum to remove from the Irish Constitution the article prohibiting abortion, enabling Ireland to comply with its international human **rights** obligations. *See generally* European Law Scholars Br.

The **CEDAW** Committee has identified a direct relationship between abortion access and the prohibition on torture and found that “ of **women's** sexual and reproductive health and **rights**” such as “criminalization of abortion, denial or delay of safe ***31** abortion and/or post-abortion care, [and] forced continuation of pregnancy. are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.” **CEDAW** Committee General Recommendation No. 35, ¶ 18. In the **CEDAW** 2018 UK Report, ¶ 65, the Committee found that the abortion restrictions in Northern Ireland “involve[d] mental or physical suffering constituting violence against women and potentially amounting to torture or cruel, inhuman and degrading treatment[.]”

III. THE COURT SHOULD UPHOLD EXISTING CONSTITUTIONAL PROTECTIONS FOR ABORTION ACCESS AND REFUSE THE RETROGRESSION OF **RIGHTS, CONSISTENT WITH INTERNATIONAL HUMAN **RIGHTS** LAW**

Overturning or curtailing constitutional protections to abortion access established in Roe and Casey constitutes retrogression in violation of human **rights** law. See HRC General Comment No. 36, ¶ 8 (“States parties should remove existing barriers to effective access by women and girls to safe and legal abortion. and should not introduce new barriers.”). The United States should not regress and contravene human **rights** standards:

Retrogressive measures should be avoided and, if such measures are applied, the State party has the burden of proving their necessity. This applies equally in the context of sexual and reproductive health. Examples of retrogressive measures include imposition of barriers to information, ***32** goods and services relating to sexual and reproductive health[.]

CESCR Committee General Comment No. 22, ¶f 38. See also HRC, Concluding observations on the sixth pe-riodic report of Spain, ¶f 13, U.N. Doc. CCPR/C/ESP/CO/6 (Aug. 14, 2015) (expressing con-cern over proposed legislation that “could increase the number of illegal abortions and put **women's** lives and health at risk in the State party”).

During the Universal Periodic Review of the United States, several States recommended the United States to improve, protect, and ensure equitable access to comprehensive sexual and

reproductive health, **rights**, services and information. See Human **Rights** Council, Report of the Working Group on the Universal Periodic Review: United States, at 21-22, U.N. Doc. A/HRC/46/15 (Dec. 15, 2020). In response, the United States supported these recommendations concerning reproductive **rights** and health services. See U.S. Statement during the Adoption of the Third Universal Periodic Review (UPR) of the United States (Mar. 17, 2021), <https://geneva.mission>. (last visited Sept. 16, 2021).

Petitioners' amici invoke the 2020 Geneva Declaration, but this non-binding, ideologically-motivated political declaration only serves to show how few countries seek to increase restrictions on abortion access, with just 34 out of 193 States signing. Geneva Consensus Declaration on Promoting **Women's** Health and Strengthening the Family (October 2020). The United States withdrew its sponsorship and signature, and notified other countries of its withdrawal, in favor of a ***33** policy **women's** and girls' sexual and reproductive health and **rights** in the United States, as well as globally.” The White House, Memorandum on Protecting **Women's** Health at Home and Abroad (Jan. 28, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/memorandum-on-protecting-womens-health-at-home-and-abroad/> (last visited Sept. 16, 2021).

Dismantling the U.S. framework that has protected abortion access for nearly 50 years will lead to further violations of **women's** and girls' human **rights**. Many states have “trigger” abortion bans in place that would come into force if the Supreme Court overturns Roe and Casey. Resp'ts. Br. 43.

As a party and signatory to human **rights** treaties, the United States must ensure that individual states comply with treaty obligations, since a breach by any U.S. state engages the legal responsibility of the United States as a whole. *See Int'l Law Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Art. 4*, U.N. Doc. A/56/10 (2001).

CONCLUSION

Upholding the Mississippi Act and thereby over-turning nearly 50 years of constitutional protections for **women's** and girls' reproductive **rights** would con-travene the United States' international human **rights** obligations.

***34** Respectfully submitted,

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Footnotes

1

No counsel for any party authored this brief in whole or in part, and no person other than counsel for amici made a monetary contribution to fund its preparation or submission. Counsel for Petitioners and Respondents filed blanket consents to the filing of amicus curiae briefs.

2

U.S.-ratified treaties are binding on individual states and are the “supreme Law of the Land”. [U.S. CONST. art. VI, cl. 2](#). For example, the United States noted its understanding that the IC-CPR shall be implemented “by the state and local governments; to the extent that [they] exercise jurisdiction over such matters.”

3

These bodies include: the HRC monitoring the ICCPR, the Committee on the Elimination of Racial Discrimination (“CERD Committee”) monitoring the CERD, the Committee against Tor-ture (“CAT Committee”) monitoring the CAT, the CESCR Com-mittee monitoring the ICESCR, the **CEDAW** Committee monitor-ing **CEDAW**, the Committee on the **Rights** of the Child (“CRC Committee”) monitoring the CRC, and the Committee on the **Rights** of Persons with Disabilities (“CRPD Committee”) monitor-ing the CRPD.

4

ICCPR Article 2 states: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the **rights** recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

5

ICCPR Article 26 states: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

6

CEDAW Article 1 states that “discrimination against women” means “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human **rights** and fundamental freedoms in the political, economic, social, **cultural**, civil or any other field.”

7

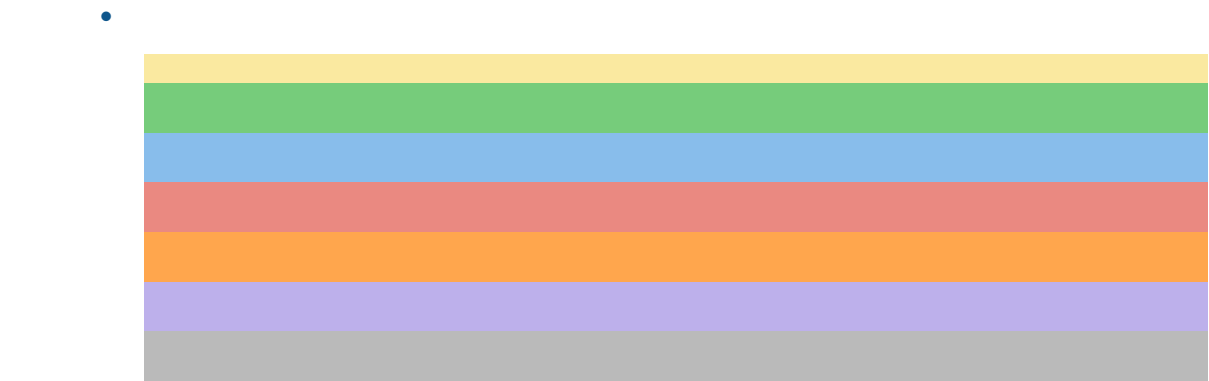
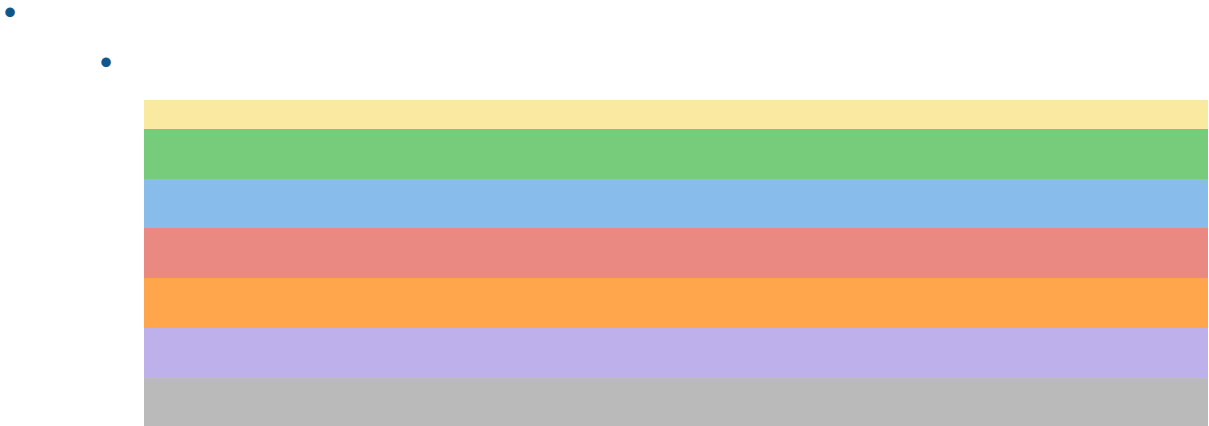
ICCPR Article 17 states: “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the **right** to the protection of the law against such interference or attacks.”

[8](#)

ICCPR Article 7 states in relevant part: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

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