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Critiques of Abortion Criminalization

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Acknowledgements:
This resource was prepared by the O'Neill Institute for National and Global Health Law and the State Innovation Exchange (SiX). Support was provided in part by the Robert Wood Johnson Foundation. The views expressed do not necessarily reflect those of the Foundation.

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1. Introduction

Unlike other health services, abortion is commonly regulated to varying degrees through criminal law (i.e., criminalized).[1] The U.S. Supreme Court decision in *Roe v. Wade* limited states' ability to criminalize abortion and, as a result, lawmakers in many states used non-penal laws to restrict abortion care; health codes - rather than criminal codes - contained the majority of provisions regulating abortion care (including onerous and medically unnecessary restrictions).[a] The Supreme Court's overturning of the federal right to abortion in *Dobbs v. Jackson Women's Health Organization* changed that, vastly expanding the application of criminal abortion laws at the state level.[2]

Historically, state abortion bans in the United States have targeted abortion providers and people who assist others seeking abortion care (abortion "helpers"). In most cases, the laws explicitly exempt abortion seekers themselves from criminal and civil penalties.[3] Some states, however, are considering bills that would establish penalties for abortion seekers or eliminate protections for abortion seekers from existing bans. During the 2025 legislative session, lawmakers in at least **11 states** considered bills that would subject people who have abortions to murder or manslaughter charges or wrongful death suits. Lawmakers in at least **seven states** have introduced bills that would remove the exemption for abortion seekers from their state's abortion ban.

Over the past 30 years**,** experts and researchers from diverse disciplines have presented critiques on the use of criminal law to regulate abortion care. Public health and human rights experts have documented the wide range of harms caused by laws that criminalize abortion care — to not only abortion providers, seekers, and helpers, but also their families and broader communities. The existence and enforcement of criminal laws proscribing abortion "punish, stigmatize, and deny services and rights to individuals — particularly those hailing from already marginalized communities facing exclusion and subjugation."[4] Criminal and constitutional law experts have also stressed the importance of relying on criminal law as a "means of last resort."[5] Accordingly, experts from these disciplines have urged countries to remove criminal penalties for abortion from their respective legal frameworks altogether.

Over the past three decades, legislatures and high courts in many countries have reformed their abortion laws to more broadly decriminalize abortion, based on compelling legal, public health, and human rights arguments and evidence. Between 1994 and 2023, at least 60 countries and territories liberalized their abortion laws.[6] Of the countries that have liberalized their abortion laws, nearly half — 27 countries — reformed their laws to permit abortion on request, with many of these reforms occurring relatively recently.[7] Between 2019 and 2023, 12 countries liberalised their laws to permit abortion on request.[8]

a However, some states have had criminal prohibitions on self-managed abortions or a long history of arrests and prosecution of people under other criminal laws for adverse pregnancy outcomes.

Only a handful of countries have done the opposite by narrowing the legal grounds on which pregnant people can access abortion care, namely **El Salvador** (1998), **Nicaragua** (2006), **Poland** (2020), and the **United States** (2022).[9]

Image I: Trends in Liberalization of Abortion Laws over Last 30 Years

Removal of legal grounds for abortion since 1994:

El Salvador (1998)

Nicaragua (2006)

Poland (2020)

United States (2022)

Graphic based on CRR's "Abortion Rights Are Advancing Across the Globe" Supplement.[10]

Liberalizations in abortion law since 1994:

Albania, Angola, Argentina, Benin, Bhutan, Brazil, Burkina Faso, Cambodia, Central African Republic, Chad, Chile, Colombia, Côte d'Ivoire, Cyprus, Democratic Republic of Congo, Ecuador, Eritrea, Eswatini, Ethiopia, Equatorial Guinea, Fiji, Gabon, Guinea, Guyana, Iceland, India, Indonesia, Iran, Ireland, Kenya, Lesotho, Liechtenstein, Luxemburg, Maldives, Mali, Malta, Mauritius, Mexico, Micronesia, Monaco, Mozambique, Nauru, Nepal, New Zealand, Niger, Northern Ireland, Portugal, Rwanda, San Marino, São Tomé and Príncipe, Somalia, South Africa, South Korea, Spain, Saint Lucia, Switzerland, Thailand, Togo, United Arab Emirates, Uruguay, and Uzbekistan.

This report analyzes the arguments that human rights bodies, international experts, and high courts have relied upon to critique and challenge the historical reliance on criminal law to regulate abortion care. While not intended to be comprehensive, this report seeks to lift up and increase visibility of many of the approaches taken in different parts of the world.

Part 2 provides a brief overview of calls by international bodies and experts to remove criminal law from the regulation of abortion.

Part 3 situates the United States' criminal abortion laws in a global context, focusing on different approaches to moving away from abortion criminalization and the range of penalties individuals face under criminal abortion laws.

Parts 4 and 5 consider the harmful consequences, as well as the inefficiency, of relying on criminal law to regulate abortion care.

Part 6 offers policy messages and additional resources for advocates and decision-makers in the United States seeking to integrate these arguments and approaches into their local law and policy reform efforts.

2. Calls for Removing Criminal Law from the Regulation of Abortion

Various international organizations and experts have weighed in on the need to remove criminal law from regulating abortion.

In its 2022 Safe Abortion Guideline, the World Health Organization (WHO) called for "the full decriminalization of abortion."[11] In its 2023 March 8 Principles,[b] the International Commission of Jurists (ICJ) similarly recommended that abortion "be taken entirely out of the purview of the criminal law, including for having, aiding, assisting with, or providing an abortion, or abortion-related medication or services, or providing evidence based abortion-related information."[12]The ICJ also stressed that:

"No other criminal offence, such as murder, manslaughter or any other form of unlawful homicide, may proscribe or be applied to having, aiding, assisting with, or providing an abortion, or abortion-related medication or services, or providing evidence-based abortion-related information."[13]

International human rights bodies and experts have called upon States to remove criminal law from the regulation of abortion. The Human Rights Committee (HRC) has stated that States should not "apply criminal sanctions against women and girls undergoing abortion or against medical service providers assisting them in doing so."[14] Similarly, the Committee on Economic, Social and Cultural Rights (ESCR Committee) has called upon States to "repeal or eliminate laws, policies, and practices that criminalize [...] access to sexual and reproductive health facilities, services, goods, and information."[15] The CEDAW Committee has urged States to amend legislation criminalizing abortion "in order to withdraw punitive measures imposed on women who undergo abortion"[16] and, more recently, "make the legal amendments necessary towards the total decriminalization and legalization of abortion."[17]

The UN Special Rapporteur on the Right to Health has stressed that "the human rights framework supports the elimination of all laws and policies that criminalize or otherwise punish abortion" and urged all States to remove "all laws, policies, and practices that criminalize or otherwise punish abortion."[18] The Working Group on the Elimination of Discrimination against Women has also called for States to decriminalize abortion and "discontinue the use of criminal law to punish women for ending a pregnancy."[19]

In addition, international human rights bodies have called upon countries to decriminalize abortion under specific circumstances, stressing that forcing a pregnant person to carry a pregnancy to term under certain circumstances violates various human rights. The HRC, CEDAW Committee, ESCR Committee, Committee against Torture (CAT), and the Committee on the Rights of the Child (CRC) have all called upon States to decriminalize abortion in cases of threats to the pregnant person's life or health, severe fetal impairment, and rape or incest.[20] The CRC, moreover, has urged states to decriminalize abortion under all circumstances for young people.[21]

> "No one may be held criminally liable for their pregnancy loss, including a pregnancy loss resulting from an obstetric emergency, such as a miscarriage or stillbirth, or for attempting or undergoing an abortion or for other decisions they make around their pregnancy or childbirth. [...] No other criminal offence, such as murder, manslaughter or any other form of unlawful homicide, may proscribe or be applied to having, aiding, assisting with, or providing an abortion, or abortion-related medication or services, or providing evidence-based abortion-related information."
>
> —*International Commission of Jurists*

b The principles are aimed at offering a clear, accessible, and operational legal framework and practical legal guidance — based on general principles of criminal law and international human rights law and standards — on applying criminal law to conduct associated with sex, reproduction, drug use, HIV, homelessness, and poverty.

3. United States Criminal Abortion Laws in a Global Context

Decision-makers and advocates around the world have relied on various legal and political mechanisms to further the criminalization of abortion, including reforming criminal codes, judicial decisions, legislative action, and public referenda. Accordingly, paths towards decriminalization range from incremental to sweeping tactics via the same mechanisms.

a. Criminal Penalties for Providers, Seekers, and Helpers

Criminal abortion laws impose criminal penalties on various individuals, including providers, seekers, and helpers. In the **United States**, **11 of the 12 states** with total abortion bans impose criminal punishment on abortion providers.[22] Criminal penalties range in severity, with maximum prison sentences varying widely:

- **Life in prison** (2 states)
- **15 years** (1 state)
- **10 years** (3 states)
- **5-6 years** (4 states)
- **2 years** (1 state).

Some states have gone beyond imposing criminal liability on providers. **Two states** (Oklahoma and Texas) have enacted legislation that specifically prohibits aiding or abetting abortion[c] and at least **four states** have introduced similar bills. In states where abortion is already broadly criminalized, aiding and abetting could automatically be considered a criminal liability.

Worldwide, according to the WHO, providers in 181 countries, helpers in 159 countries, and seekers in 134 countries could possibly be subjected to criminal abortion laws.[23] A few countries threaten other individuals with criminal liability, such as parents (Philippines) or individuals who knowingly make false declarations to obtain abortion care (Mauritius).[24]

Table 1: Range of Penalties Under Criminal Abortion Laws

	0 to 5 years in prison	5 to 10 years in prison	10 years to life in prison	Life in prison
Providers *(181 countries total)*	126 countries	25 countries	14 countries	5 countries[d]
Helpers *(159 countries total)*	127 countries	16 countries	5 countries	1 country
Seekers *(134 countries total)*	91 countries	25 countries	2 countries	6 countries[e]

Information included in table based on research findings from "A Global Review of Penalties for Abor tion-Related Offences in 182 Countries."[25]

Overall, abortion providers tend to be subjected to harsher punishment than those seeking abortions and those assisting them. Providers, helpers, and seekers can face other consequences under a country's criminal abortion ban, including fines and professional sanctions. Sixty-six countries impose fines, and 48 countries impose professional sanctions[f] on abortion providers.[26] Forty-eight countries also impose fines on those who seek abortions.[27]

c Aiding and abetting provisions can create civil or criminal liability for anyone who helps someone access an abortion, such as by driving them to an abortion clinic, paying for or reimbursing the costs of an abortion through insurance, etc.

d The criminal penalty for providers in Barbados, Belize, Guyana, Jamaica, and the Solomon Islands is life in prison.

e The criminal penalty for seekers in Barbados, Belize, Jamaica, Kiribati, Solomon Islands, and Tuvalu is life in prison.

f Professional sanctions can include equipment seizure, facility closure, employment termination, license suspension, and permanent prohibitions from medical practice.

b. Approaches to Removing Criminal Law from the Regulation of Abortion

Full Decriminalization:

While definitions of "decriminalization" can vary across different legal systems, full decriminalization is generally understood to refer to removing all criminal sanctions against abortion from a country's criminal code.[28] Only two countries, **Canada** and **South Korea**, have fully removed criminal sanctions for abortion from their respective criminal codes. In the **United States**, only **10 states** have taken similar steps to fully decriminalize abortion.

According to the WHO, full decriminalization also involves "ensuring that other criminal offenses (such as homicide or manslaughter) cannot be applied to abortion cases."[29] Fewer countries have taken action to address the criminalization of abortion under other criminal statutes. The **United Kingdom's** House of Commons recently passed a law that clarifies that no offence can be "committed by a woman acting in relation to her own pregnancy," seeking to ensure that pregnant people cannot be prosecuted for ending their pregnancies under any circumstances.[30] In the **United States**, Washington state passed a law to clarify that individuals seeking medical assistance after a pregnancy loss cannot face civil or criminal liability.[31]

Legalization:

Legalizing abortion involves regulating abortion like all other health services.[32] Legalization — like decriminalization — can either be full or partial. Canada is currently the only country to have fully legalized abortion. Many others have partially legalized abortion, regulating it through other areas of law to the extent it has been decriminalized.

Partial Decriminalization:

Short of full decriminalization, countries can partially decriminalize abortion. In fact, the vast majority of countries — an estimated 176 — continue to include one or more provisions related to abortion in their criminal codes.[33] However, nearly all of them have decriminalized abortion under one or more circumstances. They may decriminalize abortion up until a certain point during a pregnancy (i.e., gestational limits model), on one or more grounds (i.e., exceptions model), or adopt a combination of the two approaches. Gestational limits can range from six to 24 weeks, with 12 weeks being the most common gestational limit worldwide. Seventy-three countries have laws with gestational limits, most of which permit abortion under a range of circumstances after that point in the pregnancy.[34]

In the **United States**, **19 states** have gestational limits around 24 weeks, and most of these laws also permit abortion under certain circumstances past that point in the pregnancy.[35] **Seven states** have gestational limits between 6 and 18 weeks, with exceptions after that point in the pregnancy varying by state.[36]

Worldwide, the most common exceptions for abortion are:

1. To preserve the pregnant person's life *(43 countries)* or health *(47 countries)*
2. In cases of rape or sexual abuse *(45 countries)*
3. In cases of fetal anomaly or impairment *(40 countries)*[37]

In the **United States**, among the **18 states** with full bans or early gestational limits (6-12 weeks), all have life exceptions, **12** have physical health exceptions, **10** have rape/incest exceptions, and **eight** have fetal anomaly exceptions.[38]

Other, less common examples include exceptions for economic or social reasons (12 countries) or based on HIV status, marital status, age, and contraceptive failure.[39]

4. Harmful Consequences of Criminal Abortion Laws

Unlike abortion care - which is safe, effective, and protected under human rights standards - criminalization of abortion has devastating consequences- affecting not only abortion seekers, but also providers, helpers, and their families and communities.[40]

Human rights bodies and experts, as well as high courts in numerous countries, have reflected on the harmful nature of criminalization in both the abortion context and health context more broadly. The UN Special Rapporteur on the Right to Health has stressed that "law and policy can themselves become a conduit to harm, by either enhancing or generating it."[41] Criminalization "creates an environment that is not conducive to affected individuals achieving full realization of their right to health" and leads to "fear of judgment and punishment," which ultimately deters people from seeking health care services.[42]

The CEDAW Committee has interpreted Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women as requiring States to "refrain from obstructing action taken by women in pursuit of their health goals."[43] The CEDAW Committee has explained that impermissible barriers include "laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures,"[44] which include abortion care. In 2016, the CEDAW Committee specifically identified that laws criminalizing abortion constitute obstacles to rural women's access to health care.[45]

In other words, criminalization is often inherently incompatible with human rights obligations in various health contexts. The Inter-American Court of Human Rights (IACtHR), in *I.V. v. Bolivia*, similarly referenced the need to carefully evaluate when criminalization is appropriate, given that "some criminal offenses may be openly incompatible with human rights obligations because they limit or deny access to sexual and reproductive health."[46]

a. Barriers to Timely and Affordable Care

For abortion seekers, criminalization can result in barriers to timely and affordable abortion and other essential reproductive health care. When abortion is permissible only under certain circumstances, for example, "healthcare professionals may delay provision where women are experiencing complications to be sure that they 'qualify' under limited exceptions to criminal offen ces."[47]

Relatedly, in **Mexico**, the Supreme Court has stressed that criminalizing abortion can cause health care professionals to act cautiously out of fear of being criminally prosecuted and, as a result, be reluctant to provide a legal abortion — even in cases of rape, incest, or fatal congenital abnormalities.[48] Criminalization, moreover, can result in fewer abortion training opportunities for health professionals, leading to fewer professionals "being trained and willing to perform" the procedure.[49]

> "The uncertainty surrounding the process of establishing whether a woman's pregnancy poses a risk to her life, the reticence of the medical profession in the absence of transparent and clearly defined procedures to determine whether the legal conditions for a therapeutic abortion are met, along with the threat of criminal prosecution, all have a "significant chilling" effect on doctors and the women concerned…"[50]
>
> —*UN Special Rapporteur on extrajudicial, summary, or arbitrary executions*

In **Colombia**, the Constitutional Court identified the range of barriers that can impede pregnant people's access to legal abortion under an exceptions model.[g] The Court identified obstacles such as:

- "[D]enial of medical certifications and authorizations
- Discrediting of external medical certificates or those issued by psychologists
- Improperly processed conscientious objections and lack of referral to another health professional or conscientious objection of a legal person
- Insufficient or untrained medical personnel to perform the procedure
- Absence, deficiency or failure in protocol
- Discrediting of a complaint for a non-consensual sexual act
- Dismissal of the damage to mental health: 'you have to put up with it'
- Imposition of improper requirements such as the following: court orders, authentication of documents, performance of medical boards, concepts of specialist or psychological doctors, unnecessary or additional medical examinations to those prescribed by the treating physician
- Stigmatization by medical personnel and health service providers."[51]

Other barriers to abortion access include logistical obstacles, such as the need to travel long distances to access care. Traveling long distances not only results in additional travel expenses, but also leads to lost wages and increased childcare costs.[52]

In 2016 and 2017, the HRC considered two cases involving Irish women who were forced to travel to the United Kingdom to terminate non-viable pregnancies.[53] At the time, Ireland's abortion ban permitted abortions only in cases involving threats to the pregnant person's life.

In both cases, the committee called upon Ireland to amend its abortion law to ensure "effective, timely and accessible procedures for pregnancy termination in Ireland."[54] The HRC stressed that restrictive abortion laws exacerbate women's suffering because they prevent them from "being able to continue receiving medical care and health insurance coverage" for treatment within the nation's health care system.[55] According to the HRC, this suffering could have been mitigated by allowing a woman "to terminate her pregnancy in the familiar environment of her own country and under the care of health professionals whom she knew and trusted."[56]

The HRC also highlighted the discriminatory nature of abortion bans that drive poor women to seek care in other jurisdictions. The women forced to travel to another country for abortion care did so at their personal expense and incurred "the financial, psychological and physical burdens that such travel imposes," including being separated from familial support and returning to Ireland while not fully recovered.[57] They are also excluded from Ireland's public health care system, denied medical insurance coverage, post-procedure care, and bereavement support, unlike those who carried their non-viable pregnancies to term.[58]

> "[T]he differential treatment to which the author was subjected in relation to other women who decided to carry to term their unviable pregnancy created a legal distinction between similarly situated women that failed to adequately take into account her medical needs and socioeconomic circumstances and did not meet the requirements of reasonableness, objectivity and legitimacy of purpose."[59]
>
> —*HRC, Whelen v. Ireland*

g Between 2006 and 2022, Colombia decriminalized abortion in cases of threats to life and health, fetal anamolies, and rape or incest

The HRC, moreover, noted how this reality disproportionately affects marginalized women, particularly those who lack the financial means to travel for care — reinforcing systemic inequalities based on gender and socioeconomic status.[60] Similarly, in *Artavia Murillo y Otros v. Costa Rica*, the IACtHR found that Costa Rica's in vitro fertilization (IVF) ban indirectly resulted in socioeconomic discrimination, disproportionately affecting infertile couples without the economic resources to travel abroad for such services.[61]

b. Threats to Lives, Health, and Well-Being

According to the UN Special Rapporteur on the right to health, widespread criminalization creates a "chilling effect" on health care provision — discouraging both health professionals from offering abortion care and deterring individuals from seeking post-abortion care due to fear of legal repercussions.[62] The Special Rapporteur also stressed that "this approach undermines public health efforts, imposing barriers to health services and worsening related health outcomes."[63]

A former Special Rapporteur on the right to health similarly warned that criminalization in the health context leads to "fear of judgment and punishment"[64] among patients, which ultimately deters people from seeking health care services.[65] **Ecuador's** Constitutional Court has also highlighted that criminalization prevents pregnant people "from going to hospitals or health centers in emergency situations for fear of being reported."[66] Criminalization, in other words, "creates an environment that is not conducive to affected individuals achieving full realization of their right to health."[67]

This chilling effect, whether it results in barriers to care or the inability to access an abortion altogether, can have profound consequences for abortion seekers' mental health and well-being. In *Mellet v. Ireland*, the HRC characterized Ireland's abortion law, which forced a woman to choose between continuing with a non-viable pregnancy under conditions of considerable suffering and traveling abroad for a termination, as subjecting her "to conditions of intense physical and mental suffering."[68] The HRC has further stated that "restrictions on the ability of women or girls to seek abortion must not [...] subject them to physical or mental pain or suffering that violates" the right to be free from cruel, inhuman, or degrading treatment or punishment.[69]

Being unable to access an abortion altogether due to criminal bans also has profound consequences on pregnant people's mental health and well-being. "Rigorous, long-term psychological research demonstrates clearly that people who are denied abortions are more likely to experience higher levels of anxiety, lower life satisfaction and lower self-esteem compared with those who are able to obtain abortions."[70] Further, "being denied an abortion may be associated with greater risk of initially experiencing adverse psychological outcomes."[71] According to the UN Special Rapporteur on the right to health, "denials of abortion can cause severe physical and mental pain or suffering for pregnant persons" and, in certain circumstances, "meet the threshold of torture or cruel, inhuman or degrading treatment."[72]

High courts around the world have characterized the inability to access abortion under certain circumstances as placing "excessive burdens" on women.[73] As early as 1975, **Germany's** Constitutional Court held that forcing a woman to continue a pregnancy that endangered her life or health, resulted from rape, involved severe fetal malformations, or posed extreme economic or social hardships would place an "extraordinary" — and therefore unacceptable — burden on her.[74] Courts in countries like **Spain** (1985), **Costa Rica** (2004), **Colombia** (2006), **Slovakia** (2007), **Portugal** (2010), and **Chile** (2017) have relied on similar arguments to decriminalize abortion under certain circumstances or through a certain point in the pregnancy.[75]

Criminalization also pushes some pregnant people to access abortion under less safe circumstances, "sometimes with help from individuals who lack medical training and/or through unsafe ways that put their lives at risk."[76] According to the ESCR Committee, denying abortion often leads to increased maternal mortality and morbidity.[77] High courts in both **Mexico** and **Colombia** have acknowledged that criminalizing abortion leads pregnant people to access unsafe abortions,[h] which can be detrimental to their health and even result in death.[78] **Ecuador's** Constitutional Court, similarly, has recognized that the criminalization of abortion in cases of rape leads women to access it under clandestine circumstances that seriously endanger their life, health, and integrity.[79]

h An "unsafe abortion" is defined as a procedure for terminating a pregnancy performed by persons lacking the necessary information or skills or in an environment not in conformity with minimal medical standards, or both. Abortions carried out outside the formal health system (i.e. self-managed abortions) are not necessarily unsafe.

Countries have obligations to protect pregnant people "against the mental and physical health risks associated with unsafe abortions" and "take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices."[80] As a result, countries cannot regulate abortion "in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions."[81]

c. Perpetuation of Stigma, Stereotypes, and Discrimination

Criminalizing abortion exacerbates the stigma that those who seek abortion care face, affecting their mental health and well-being. Criminalizing laws "treat patients as fundamentally suspect by promoting the inaccurate stereotype that those who seek abortion services are morally deviant and incompetent decision makers."[82] According to the CEDAW Committee, criminalization of abortion "has a stigmatising impact on women, and deprives women of their privacy, self-determination and autonomy of decision, offending women's equal status, constituting discrimination."[83]

This stigma, in turn, "increases the risk of poor psychological and physical health outcomes among pregnant individuals."[84] Stigma, for example, can lead to inadequate post-abortion care in restrictive contexts, leading to "negative consequences for pregnant persons."[85] The consequences of stigma are particularly severe for marginalized communities, as "people of color are at greater risk of experiencing abortion stigma and criminalization, resulting in poor health outcomes and lower quality of life from the social costs of their arrests."[86] Those who have been prosecuted in the **United States**, moreover, "faced stigma, deportation, or had to move and change jobs."[87]

Several high courts have also characterized the criminalization of abortion as a form of gender-based violence or discrimination. In 2021, **Mexico's** Supreme Court stressed that criminalization of abortion reinforces discrimination against women.[88] In 2023, the Court emphasized that such laws perpetuate gender stereotypes that women and pregnant people "can only freely exercise their sexuality for procreation" and reinforce gender roles that impose "motherhood as an obligatory destiny for all."[89] **Colombia's** Constitutional Court has likewise characterized the criminalization of abortion as discriminatory, rooted in the stereotype that a woman's body exists primarily for reproductive purposes.[90]

Human rights experts, moreover, have characterized abortion restrictions as discriminatory based on race, ethnicity, or national origin, with pregnant people belonging to racial, ethnic, and national minorities having "a higher incidence of unintended pregnancies and greater abortion rates, particularly Black women, and are also more often prosecuted in that regard."[91] **Mexico's** Supreme Court has noted the disproportionate effects of abortion criminalization on pregnant people who are otherwise marginalized or disadvantaged due to their socioeconomic or educational status.[92] [i]

The consequences of stigma are particularly severe for marginalized communities, as "people of color are at greater risk of experiencing abortion stigma and criminalization, resulting in poor health outcomes and lower quality of life from the social costs of their arrests."

i Intersecting systems of oppression produce a range of inequities and shape an individual's socioeconomic and educational status.

5. Inefficiency of Criminal Abortion Laws

The adoption and enforcement of laws criminalizing abortion violate human rights and directly and indirectly harm abortion seekers, providers, and helpers, as well as their families and communities. In addition, the criminalization of abortion does not reduce abortion rates - the stated goal of anti-abortion policymakers.

According to the CEDAW Committee, "criminal regulation of abortion serves no known deterrent value."[93] Research indicates that, "despite generating fear among some pregnant women, criminalization does not impact the decision to have an abortion."[94] A comprehensive analysis of abortion rates between 1990 and 2019 found that "individuals seek abortion even in settings where it is restricted."[95] The Working Group on the issue of discrimination against women in law and in practice called for the decriminalization of abortions on request during the first trimester or later under specific circumstances, explicitly relying on the fact that "many countries where women have the right to abortion on request supported by affordable and effective family planning measures have the lowest abortion rates in the world."[96]

Moreover, countries with restrictive abortion laws tend to have higher rates of unintended pregnancies compared to those where abortion is broadly legal,[97] meaning that legal prohibitions do little to actually prevent the circumstances that lead to abortion in the first place. Since the early 1990s, the proportion of unintended pregnancies ending in abortion has increased in restrictive settings.[98] In wealthier nations, between 1990 and 2014, "rates of unintended pregnancies dropped by 30 percent, triggering a decline in abortion rates" (from 46 to 27 abortions per 1,000 women of reproductive age).[99] Ultimately, criminalization does little to decrease abortion rates, given that it does not address the underlying factors that drive individuals to seek them, such as economic hardship.[100]

Various high courts have questioned the effectiveness of criminalizing abortion. In both **Mexico** and **Colombia**, high courts considered comparative data showing that highly restrictive abortion laws do not lower abortion rates.[101] Mexico's Supreme Court noted that it is a "social reality" that women who do not want to become mothers will find ways to obtain an abortion — even resorting to unsafe means when the law creates barriers to safer access.[102] Colombia's Constitutional Court has similarly stated that the criminalization of abortion "does not dissuade the conduct" and "has not had a relevant effect in reducing the performance of consented abortions."[103]

The reproductive justice framework, which is grounded in international human rights principles, recognizes the right to have a child, not have a child, and to raise children in a safe environment free from violence. The full realization of the right to personal bodily autonomy does not necessitate a reduction in abortion rates, only that people who want and need abortion care are able to access it.

6. Criminal Law as a Means of Last Resort

Although not a critique of criminal law per se, various legal principles place significant limitations on its application in practice. The principle of minimal intervention (or "ultima ratio"), for example, is grounded in the critiques that criminal law can be both inefficient and harmful and requires that, as a result, it only be used as means of last resort. In particular, this principle requires that the punitive approach be used only as a last resort to achieve a legitimate government purpose and that the criminal provision is effective reasonable, and proportionate.[104]

Some scholars have characterized the principle as a check on a government's punitive power, preventing the "exercise of power that has historically approached brutally abusive forms."[105]

> "[E]ven if it appears to be justifiable in theory to criminalize certain conduct, the decision should not be taken without an assessment of the probable impact of criminalization, its efficacy, its side-effects, and the possibility of tackling the problem by other forms of regulation and control."[106]
>
> —*Andrew Ashworth*

At the global level, high courts have pointed to the principle of minimal intervention as part of their reasoning in overturning laws criminalizing abortion. It can justify the broad decriminalization of abortion, the decriminalization of abortion under certain circumstances, or the removal of barriers to abortion access. In the **United States**, decision-makers have been less inclined to rely on it, unlike other legal systems.[107]

In **Colombia** and **Mexico**, conversely, high courts have relied on the principle of minimal intervention to justify the decriminalization of abortion through a certain point in the pregnancy. The Colombian Constitutional Court, in particular, underscored that legislators should guarantee that "the criminal law answer is not a contingent measure that the political power uses to its discretion without debate."[108] Similarly, Mexico's Supreme Court characterized criminalizing abortion as neither rational nor necessary and, as a result, "equivalent to using criminal law as a symbolic tool and not as a mechanism of ultima ratio."[109]

In **Bolivia**, the Constitutional Court struck down two burdensome requirements for accessing abortions in cases of rape, namely the reporting and judicial authorization requirements, as unconstitutional — relying on the principle to do so. The Court characterized criminal law as "violent" and "based on the illusion of solving extremely serious social problems, which in reality it does not resolve but, on the contrary, generally exacerbates, as it only criminalizes some isolated cases, produced by the people most vulnerable to punitive power."[110] Notably, according to the Court, "the social costs of punishment must be assessed from the perspective of the negative impact it may have on those subjected to it, their families, their social environment, and society as a whole."[111]

7. Toolkit for Pushing Back against Abortion Criminalization in the United States

Since the *Dobbs* decision, using criminal law to regulate abortion has proliferated among states in the United States — a stark contradiction to recommendations from the WHO and human rights bodies, which call for the broad decriminalization of abortion in light of the associated range of risks and harms. The move towards criminalization in many U.S. states also counters global trends, with numerous countries fully or partially decriminalizing abortion through law reform processes over the past 30 years. As state lawmakers in the United States explore opportunities to push back against abortion criminalization, they can look to lessons learned from the approaches that many of these countries have taken, as well as the standards established by human rights bodies and international organizations.

a. Policy Messages

1. Abortion criminalization is inherently **ineffective** and **harmful**, resulting in uniquely harmful consequences to people's lives, health, and well-being.

2. The United States is an **outlier** when it comes to global trends towards less criminalization of abortion.

3. Abortion should be regulated by **health** laws, rather than criminal laws, and no differently from other essential reproductive health services.

b. Additional Resources

International Commission of Jurists, *The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty* (2023).

Center for Reproductive Rights, *The World's Abortion Laws*.

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