

# List of Issues submission to the United Nations Committee on the Elimination of Racial Discrimination during its periodic review of the United States

## Introduction

With this submission, the Global Justice Center (GJC) and Human Rights Watch (HRW) aim to provide guidance to the Committee on the Elimination of Racial Discrimination (“Committee”) in its preparation of the list of themes to be examined during the Committee’s upcoming review of the United States (US). The United States’ combined report to the Committee does not consider the current national crisis in reproductive health care and its disproportionate impact on women and pregnant people of color. To mitigate this omission, this submission discusses four sites of gendered racial discrimination in the US: the shackling of pregnant prisoners, inequalities in screening and treatment for cervical cancer, abortion restrictions, and the criminalization of pregnant people and pregnancy outcomes.

We strongly urge the Committee to apply an intersectional lens to its examination of racial discrimination in the US and address the overlapping racial- and gender-based discrimination faced by women of color in the context of reproductive health.

## Observations Regarding Violations of CERD by the United States

### Shackling of Pregnant Persons in Prisons and Detention Centers Violates the Right to Health (Article 5(e)(iv)) and Amounts to a Practice of Racial Discrimination against Persons (Article 2)

1. The United States has the highest incarceration rate in the world (664 per 100,000 people in 2021)<sup>1</sup> and incarceration is marked by extreme racial disparities.<sup>2</sup> The population of incarcerated women is growing at twice the rate of men,<sup>3</sup> and women belonging to racial minorities are disproportionately represented in this population. For example, in 2019 the incarceration rate for Black women was 83 per 100,000 people, over 1.7x the rate for white women (48 per 100,000).<sup>4</sup> Latinx women were incarcerated at a rate of 63 per 100,000.<sup>5</sup> Native women make up 2.5% of incarcerated women in the US, despite being only 0.7% of the total US female population.<sup>6</sup>
2. Though the US incarcerates more women than any other nation in the world, the distinct human rights abuses suffered by women in prison receive relatively little attention. The barbaric practice of shackling pregnant prisoners, including during labor, delivery, and postpartum recovery is one such abuse. Though shackling has long been recognized as a human rights violation by

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<sup>1</sup> Emily Widra and Tiana Herring, *States of Incarceration: The Global Context 2021*, PRISON POLICY INITIATIVE (September 2021), <https://www.prisonpolicy.org/global/2021.html>

<sup>2</sup> Black Americans are incarcerated in state prisons at nearly five times the rate of white America. See Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENTENCING PROJECT (October 13, 2021), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

<sup>3</sup> <https://www.jrsa.org/pubs/factsheets/jrsa-factsheet-women-girls-in-corrections.pdf>

<sup>4</sup> *Incarcerated Women and Girls*, THE SENTENCING PROJECT (November 24, 2020), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.

<sup>5</sup> Ibid.

<sup>6</sup> Leah Wang, *The U.S. criminal justice system disproportionately hurts Native people: the data, visualized*, PRISON POLICY INITIATIVE (October 8, 2021), <https://www.prisonpolicy.org/blog/2021/10/08/indigenouspeoplesday/>.

successive UN bodies,<sup>7</sup> the dehumanizing practice persists and federal efforts to end the practice have had limited impact. A 2018 study of perinatal nurses in the US found that among those who worked with incarcerated pregnant patients, 82.9% reported that their incarcerated patients were shackled “sometimes” to “all the time.”<sup>8</sup>

3. Because Black women are nearly twice as likely to be incarcerated as white women, they are also disproportionately subjected to shackling. Moreover, the practice is a direct descendent of the subjugation and confinement of Black women during slavery, as well as in the racist post-Civil War carceral systems that have influenced modern US prison policies
4. As a vestige of slavery, the practice is a form of racial discrimination against women of color. It is also dangerous and a violation of women’s right to health. Shackling can delay timely medical interventions during labor and delivery and dangerously limits women’s ability to move during delivery.<sup>9</sup> It can also worsen pre-existing mental health conditions including post-traumatic stress disorder and depression and can cause postpartum depression. Leading US medical organizations, including the American College of Obstetricians and Gynecologists<sup>10</sup> and the American Medical Association,<sup>11</sup> acknowledge the severe negative health impacts of shackling and strongly oppose the practice. As one US court found, a woman who had been shackled during delivery suffered “extreme mental anguish and pain, permanent hip injury, torn stomach muscles, and an umbilical hernia requiring surgical repair,” as well as damage to her sciatic nerve.<sup>12</sup>
5. Given that the number of women in US jails and prisons is growing at a rate twice as high as that of men,<sup>13</sup> the horror of shackling pregnant women is an acute concern.

Suggested Questions for the State Party:

- How does the United States intend to comprehensively end shackling of pregnant people in federal and state jails and prisons?
- How does the United States intend to standardize human rights compliant care for incarcerated pregnant people?

Suggested Recommendation for the State Party:

- The United States should eliminate the practice of shackling pregnant people in jails and prisons.

### **Inequalities in Screening and Treatment for Cervical Cancer Violate the Right to Health (Article 5(e)(iv)) and Perpetuate Racial Inequalities (Article 2)**

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<sup>7</sup> See CAT/C/USA/CO/2 (2006), CAT/C/USA/CO/3-5 (2014), A/HRC/31/57 (2016), CCPR/C/USA/QPR/5 (2019), CCPR/C/USA/CO/3/Rev.1 (2006)

<sup>8</sup> Lorie S. Goshin et. al., *Perinatal Nurses’ Experiences With and Knowledge of the Care of Incarcerated Women During Pregnancy and the Postpartum Period*, 48 J. OBSTETRIC, GYNECOLOGIC, & NEONATAL NURSING 1, 27-36 (2019).

<sup>9</sup> Alison Smock, *Childbirth in Chains: A Report on the Cruel but not so Unusual Practice of Shackling Incarcerated Pregnant Females in the United States*, 3 TENN. J. OF RACE, GENDER, & SOCIAL JUSTICE 112-142 (2014)

<sup>10</sup> *Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals*, American College of Obstetricians and Gynecologists, Committee Opinion 830 (July 2021), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals>.

<sup>11</sup> American Medical Association, Policy H-420.957 on Shackling of Pregnant Women in Labor, <https://policysearch.ama-assn.org/policyfinder/detail/shackling?uri=%2FAMADoc%2FHOD.xml-0-3700.xml>

<sup>12</sup> *Nelson v. Correctional Medical Services*, 533 F.3d 958 (2008).

<sup>13</sup> *Incarcerated Women and Girls*, THE SENTENCING PROJECT (November 24, 2020), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.

9. Cervical cancer thrives in the United States in a context of structural racism, discrimination, poverty, and inequality. It is highly preventable and treatable yet Black women in the US die at disproportionate rates.<sup>14</sup> Black women have a higher risk of late-stage diagnosis, are less likely to receive adequate treatment, and are more likely to die from the disease than any other racial or ethnic group in the country.<sup>15</sup> They are almost twice as likely to die from cervical cancer as white women in the US, and racial disparities are even greater when national data is corrected to exclude women who have had hysterectomies.<sup>16</sup>
10. Such marked disparities in rates of cervical cancer deaths in the US reflect exclusion from the healthcare system and unequal access to the interventions and services necessary to prevent and treat the disease, particularly in its early and treatable stages. Recent research by the Southern Rural Black Women’s Initiative for Economic and Social Justice (SRBWI) and Human Rights Watch found that state and federal policies in the US neglect the reproductive healthcare needs of Black women and contribute to an environment in which they are dying of cervical cancer at alarming rates.<sup>17</sup>
11. In failing to address and eliminate barriers to equal, accessible, and comprehensive cervical cancer care—including a lack of affordable healthcare coverage and inequalities in access to life-saving information on sexual and reproductive health—US state and federal governments are failing to protect and promote the rights to health, equality, and nondiscrimination, with particularly devastating and disproportionate impacts on Black women.

Suggested Questions for the State Party:

- How does the United States intend to address inequity in access to screenings and affordable and quality care for cervical cancer?

Suggested Recommendations for the State Party:

- The United States should comply with its obligations to eliminate disparate racial impacts in public health, including racial disparities in cervical cancer outcomes.
- The United States should improve oversight, establish incentives, and take other necessary steps to ensure compliance at the state and local levels with its obligations under CERD.

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<sup>14</sup> American Cancer Society, “Cancer Facts and Figures for African Americans, 2019-2021,” 2019, <https://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/cancer-facts-and-figures-for-african-americans/cancer-facts-and-figures-for-african-americans-2019-2021.pdf> (accessed June 17, 2021), p. 3

<sup>15</sup> Sarah Markt et al., “Insurance Status and Cancer Treatment Mediate the Association Between Race/Ethnicity and Cervical Cancer Survival,” *PLoS One*, February 15, 2018, vol. 13, no. 2, doi: 10.1371/journal.pone.0193047; American Cancer Society, “Cancer Facts and Figures for African Americans, 2019-2021,” p. 19. CDC, “United States Cancer Statistics: Data Visualizations—Cancer Statistics at a Glance 2018,” undated, <https://gis.cdc.gov/Cancer/USCS/#/AtAGlance/> (accessed July 29, 2021).

<sup>16</sup> American Cancer Society, “Cancer Facts and Figures for African Americans, 2019-2021,” p. 9. See also, Anna Beavis et al., “Hysterectomy-Corrected Cervical Cancer Mortality Rates Reveal a Larger Racial Disparity in the United States.”

<sup>17</sup> Human Rights Watch, *It Should Not Happen: Alabama’s Failure to Prevent Cervical Cancer Death in the Black Belt*, November 2018, <https://www.hrw.org/report/2018/11/29/it-should-not-happen/alabamas-failure-prevent-cervical-cancer-death-black-belt>; SRBWI and Human Rights Watch, *“We Need Access”*:

*Ending Preventable Deaths from Cervical Cancer in Rural Georgia*, January 2022,

<https://www.hrw.org/report/2022/01/20/we-need-access/ending-preventable-deaths-cervical-cancer-rural-georgia>.

## US Abortion Law and Policies Violate the Right to Health (Article 5 (e)(iv)) and Perpetuate Racial Inequalities (Article 2)

12. Barriers to abortion access in the US are likely to be greatly more expansive by the time the State Party is examined in August 2022 because the US Supreme Court may rescind federal protections. These barriers, entrench racial inequality and cause both short-term and long-term health disparities for women of color.
13. Since the US was last examined by the CERD Committee, authorities, mostly at the state and county level, have instituted cascades of abortion restrictions. Twenty-six states severely restrict access to abortion care meaning that nearly 40 million U.S. women of reproductive age (58% of the total number) live in states with medically unnecessary regulatory barriers to abortion, including, but not limited to, parental notification laws, burdensome and costly restrictions on providers, mandatory ultrasound regulations, and biased counseling requirements.<sup>18</sup> Six states have only one clinic serving their entire population.<sup>19</sup> Most alarmingly, a leaked draft decision in the case of *Dobbs v. Jackson Women's Health Organization* from the US Supreme Court indicates that the Court will soon rule that there is no constitutional right to abortion in the United States.<sup>20</sup> In this event, almost all abortion care will be illegal in over half the country's states.<sup>21</sup>
14. Most abortion patients in the US are people of color.<sup>22</sup> The human rights impacts of anti-abortion regulation fall disproportionately on women of color not only because this population experiences a greater need for abortion care, but also because structural racial inequalities in the US impact how persons of color experience motherhood, health care, the economy, and the criminal legal stem.
15. Denial of access to abortion has negative health consequences on women of color, further heightening already pervasive disparities. The United States is considered the deadliest place in the industrialized world for a woman to give birth and the most recent data shows the rate worsened between 2019 and 2020. For Black women, the maternal death rate is nearly three times that of white women.<sup>23</sup> Restricting access to abortion is likely to increase these risks and lead to devastating health implications, including death; a recent [study](#) has estimated that a total ban on abortion in the U.S. will lead to a 21% increase in the number of pregnancy-related

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<sup>18</sup> See Guttmacher Institute, State Bans on Abortion Throughout Pregnancy (as of May 3, 2022), <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortion>. See also, Guttmacher Institute, State Abortion Policy Landscape: From Hostile to Supportive, <https://www.guttmacher.org/article/2019/08/state-abortion-policy-landscape-hostile-supportive>

<sup>19</sup> Communities Need Clinics Report 2021, Abortion Care Network, 5 (2021), <https://abortioncarenetwork.org/wp-content/uploads/2021/11/CommunitiesNeedClinics2021-1.pdf>

<sup>20</sup> Josh Gerstein, Supreme Court has voted to overturn abortion rights, draft opinion shows, POLITICO (May 2, 2022) <https://www.politico.com/news/2022/05/02/supreme-court-abortion-draft-opinion-00029473>

<sup>21</sup> Abortion Policy in the Absence of Roe, GUTTMACHER INST. (last updated Jan. 13, 2022), <https://www.guttmacher.org/state-policy/explore/abortion-policy-absenceroe>.

<sup>22</sup> See GUTTMACHER INST., CHARACTERISTICS OF U.S. ABORTION PATIENTS IN 2014 AND CHANGES SINCE 2008, at 1 (2016), <https://perma.cc/9H2V-3VVY> (PDF) (“Thirty-nine percent [of abortion patients] were white, 28% were black, 25% were Hispanic, 6% were Asian or Pacific Islander, and 3% were of some other race or ethnicity.”)

<sup>23</sup> <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/maternal-mortality-rates-2020.htm> I In Our Own Voice: National Black Women's Reproductive Justice Agenda, Addressing America's Black Maternal Health Crisis, [https://blackrj.org/wp-content/uploads/2020/04/6217-IOOV\\_Maternal\\_trifold.pdf](https://blackrj.org/wp-content/uploads/2020/04/6217-IOOV_Maternal_trifold.pdf); The Commonwealth Fund, Maternal Mortality and Maternity Care in the United States Compared to 10 Other Developed Countries (Nov 18, 2021), <https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/maternal-mortality-maternity-care-us-compared-10-countries>; Amy Roeder, America is Failing its Black Mothers, Harvard Public Health (Winter 2019), [https://www.hsph.harvard.edu/magazine/magazine\\_article/america-is-failing-its-black-mothers/](https://www.hsph.harvard.edu/magazine/magazine_article/america-is-failing-its-black-mothers/).

deaths overall and a 33% increase among Black women.<sup>24</sup> As UN Special Procedure experts have noted, “Black women will disproportionately suffer the gravest consequences of forced pregnancy as they already experience significantly higher rates of maternal mortality and morbidity than white women in the entire country.”<sup>25</sup>

16. Even though many states in the US will continue to provide legal access to abortion, the concrete realities of intersectional discrimination against pregnant people of color will limit their ability to travel for abortion care. The challenges of interstate travel – the financial cost combined with difficulties such as taking time off work, arranging childcare, and securing transportation – are acutely felt by women with lower socioeconomic status.<sup>26</sup> And because race and socioeconomic status are often related in the US (and elsewhere) — particularly in those regions of the country where abortion restrictions are more extensive — these burdens on poor women translate to burdens on women of color. As a result, abortion will be inaccessible to significant numbers of women and girls of color, threatening their health, wellbeing, and equality.
17. Abortion restrictions also violate the US’ obligations to eliminate practices that perpetuate racial discrimination. When people cannot obtain abortion care, they incur social, financial, and physical costs that are difficult to bear, and are particularly challenging for already marginalized women. Such intersectional discrimination impacts the social and economic opportunities for women of color. The legal status of abortion can define the extent to which pregnant people are able to complete their educations, participate in the workforce, and play a role in public and political life.<sup>27</sup> One recent study on the effects of abortion access on Black women’s participation in the workforce indicated an increase in participation by 6.9 percentage points.<sup>28</sup>

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<sup>24</sup> Amy Roeder, The negative health implications of restricting abortion access, Harvard T.H. Chan School of Public Health (Dec. 13, 2021), <https://www.hsph.harvard.edu/news/features/abortion-restrictions-health-implications/> (citing Amanda Jean Stevenson; The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant. *Demography* 1 December 2021; 58 (6): 2019–2028. doi: <https://doi.org/10.1215/00703370-9585908>); Lisa B Haddad and Nawal M Nour, Unsafe abortion: unnecessary maternal mortality, *Reviews in obstetrics & gynecology* vol. 2,2 (2009): 122-6, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2709326/> (“Evidence demonstrates that liberalizing abortion laws to allow services to be provided openly by skilled practitioners can reduce the rate of abortion-related morbidity and mortality.”). See also, *Am. Coll. of Obstetricians & Gynecologists v. FDA*, 472 F. Supp. 3d 183, 214–15 (D. Md. 2020) (discussing the impact of restricting abortions for disadvantaged social groups).

<sup>25</sup> United States: UN experts denounce further attacks against right to safe abortion and Supreme Court complicity (Sept. 14, 2021), <https://www.ohchr.org/en/statements/2021/09/united-states-un-experts-denounce-further-attacks-against-right-safe-abortion>. See also, Leitner Center for International Law and Justice & Global Justice Center, *Reproducing Patriarchy: How the Trump Administration has Undermined Women’s Access to Reproductive Health Care* (Oct. 2020), [https://globaljusticecenter.net/files/ReproducingPatriarchy\\_FINAL.pdf](https://globaljusticecenter.net/files/ReproducingPatriarchy_FINAL.pdf) (citing Brief of Amici Curiae National Health Law Program, et al., in *Support of Plaintiff-Appellee, Mayor of Baltimore v. Azar*, 10-12).

<sup>26</sup> See Brief of Human Rights Watch, Global Justice Center, and Amnesty International as Amici Curiae Supporting Respondents, *Dobbs v. Jackson Women’s Health Organization* (2021) (No. 19-1392), [https://globaljusticecenter.net/files/Dobbs\\_Amicus\\_920.pdf](https://globaljusticecenter.net/files/Dobbs_Amicus_920.pdf); Margaret Wurth, *What Life is Like When Abortion is Banned*, Human Rights Watch (June 10, 2019 9:00 AM), <https://www.hrw.org/news/2019/06/10/what-life-when-abortion-banned>.

<sup>27</sup> Amy Roeder, The negative health implications of restricting abortion access, Harvard T.H. Chan School of Public Health (Dec. 13, 2021), <https://www.hsph.harvard.edu/news/features/abortion-restrictions-health-implications/>.

<sup>28</sup> Anna Bernstein, MPH & Kelly M. Jones, PhD, *The Economic Effects of Abortion Access: A Review of the Evidence*, Institute for Women’s Policy Research Center on the Economics of Reproductive Health, [https://iwpr.org/wp-content/uploads/2020/07/B379\\_Abortion-Access\\_rfinal.pdf](https://iwpr.org/wp-content/uploads/2020/07/B379_Abortion-Access_rfinal.pdf).

18. Several United Nations human rights bodies have condemned the United States’ abortion restrictions as discriminatory and a threat to women’s health. UN Experts’ recommendations include calling for “judicial authorities to halt the implementation” of state-level abortion bans, which puts the United States in “violation of international law” including the right to health and non-discrimination.<sup>29</sup> Experts have also called for the government to “enact positive measures to ensure access to safe and legal abortion.”<sup>30</sup>
19. For the US to meet its obligations to guarantee “the right to public health, medical care, social security, and social services,” and to “rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination” the State must act urgently to affirm, protect, and vindicate the right to abortion. The Committee has previously expressed concern about “the problem of sexual and reproductive health disparities for minorities and for Black Americans in particular”<sup>31</sup> and has made important recommendations on improving maternal health for women of color. However, in the years since the last examination of the State Party, the barriers to abortion access have reached catastrophic levels. We urge the Committee to give explicit attention to this crisis as part of its list of themes.

Suggested Questions for the State Party:

- What steps and effective measures is the United States taking to amend, rescind, or nullify abortion bans that have the effect of creating or perpetuating racial discrimination?
- How will the United States address forms of discrimination including racial disparities in accessing reproductive health care such as abortion, and ensure equal protection before the law?

Suggested Recommendation for the State Party:

- The United States should take steps to amend, rescind or nullify abortion bans due to the discriminatory impact on people of color.

**The criminalization of women and other pregnant people based on their pregnancy or pregnancy outcomes Violate the Right to Health (Article 5 (e)(iv)) and Perpetuate Racial Inequalities (Article 2)**

20. The restrictive abortion regime in the US has created an environment in which pregnant people are *already* policed and criminally punished for behavior during pregnancy and for pregnancy outcomes. Referred to here under the umbrella term “pregnancy criminalization laws”, a vast array of criminal laws is currently used by prosecutors to penalize pregnant women for engaging in behavior that produces—or creates a risk of producing—a negative birth outcome. Some states have subjected pregnant women to criminal punishment and civil constraints for doing

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<sup>29</sup> United States: UN experts denounce further attacks against right to safe abortion and Supreme Court complicity (Sept. 14, 2021), <https://www.ohchr.org/en/statements/2021/09/united-states-un-experts-denounce-further-attacks-against-right-safe-abortion>.

<sup>30</sup> Ibid.

<sup>31</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination ¶33 (May 8, 2008).

things that would be perfectly legal if done by a person who was not pregnant— including falling down steps<sup>32</sup> or attempting suicide.<sup>33</sup> Others pursue women for so-called ‘fetal abuse’ using charges such as murder, manslaughter, feticide, child abuse, child endangerment, and chemical endangerment.<sup>34</sup>

21. Though the data is limited, between 2006 and 2020, there were nearly 1,300 criminal investigations of pregnancy outcomes in the US.<sup>35</sup> While these arrests and prosecutions are happening across the nation, officials have mostly targeted and charged Black and Brown women.<sup>36</sup> Amnesty has also documented that drug testing of pregnant women is applied selectively, often based on discretionary “risk” factors such as low income, an indicator that frequently applies to women of color.<sup>37</sup> In one particularly egregious example, a Black woman who suffered a stillbirth was charged and convicted of murder because she had ingested crack cocaine during her pregnancy — even though the evidence did not establish that her cocaine use caused the death of her fetus.<sup>38</sup>
22. These prosecutions and the threat of such prosecutions also infringe on the right to health of pregnant people of color in several ways. Women are deterred from accessing healthcare, including prenatal care or treatment for substance misuse (if needed) for fear of criminal sanction.<sup>39</sup> For pregnant women suffering from substance abuse, remarkably, the state is responding with prosecution rather than social services and healthcare.
23. With the U.S. Supreme Court poised to overturn the key precedents articulating the constitutional underpinnings for the right to abortion, the threats that women and other pregnant people will face criminal sanction for pregnancy outcomes and behavior during pregnancy will dramatically increase. The National Association of Criminal Defense Lawyers has reported that over 4,450 crimes in the federal criminal code and tens of thousands of state criminal laws exist that could subject a wide range of individuals to criminal penalties when the constitutional right to abortion is overturned.<sup>40</sup> Because the criminal justice system already

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<sup>32</sup> Iowa Police Almost Prosecute Woman for Her Accidental Fall During Pregnancy . . . Seriously., ACLU Me. (Feb. 11, 2010, 5:04 PM), <https://www.aclumaine.org/en/news/iowa-police-almost-prosecute-woman-her-accidental-fall-during-pregnancyseriously> [<https://perma.cc/WMB9-YTK1>].

<sup>33</sup> Jessica Mason Pieklo, *Legal Wrap: Finally Some Justice for Bei Bei Shuai*, Rewire News Grp. (Aug. 6, 2013, 9:14 AM), <https://rewire.news/article/2013/08/06/legal-wrap-finally-some-justice-for-bei-bei-shuai/>

<sup>34</sup> National Association of Criminal Defense Lawyers, *Abortion in America: How Legislative Overreach Is Turning Reproductive Rights Into Criminal Wrongs* (2021)

<https://www.nacdl.org/Document/AbortioninAmericaLegOverreachCriminalizReproRights>

<sup>35</sup> NAPW, *Arrests and Deprivations of Liberty of Pregnant Women, 1973-2020* (Sept. 2021), [bit.ly/arrests1973to2020](https://bit.ly/arrests1973to2020).

<sup>36</sup> See Amnesty International, *Criminalizing Pregnancy: Policing Pregnant Women Who Use Drugs in the USA*, 23 (Sept. 23, 2017) <https://www.amnesty.org/en/documents/amr51/6203/2017/en/> (hereinafter, Amnesty International, *Criminalizing*

*Pregnancy*); See also, MICHELLE GOODWIN, *POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD* 109-110 (2020); Aziza Ahmed, *Floating Lungs: Forensic Science in Self-Induced Abortion Prosecutions*, 100 B.U. L. REV. 1111, 1116, 1121, 1124 (2020); Cortney E. Lollar, *Criminalizing Pregnancy*, 92 Ind. L.J. 947, 949, 998 (2017)

<sup>37</sup> *Id.* Amnesty International, *Criminalizing Pregnancy*.

<sup>38</sup> Jeanne Flavin & Lynn M. Paltrow, *Punishing Pregnant Drug-Using Women: Defying Law, Medicine, and Common Sense*, 29 J. Addictive Diseases 231, 235 (2010). The woman’s conviction was ultimately overturned—but only after she had already been incarcerated for a decade.

<sup>39</sup> See Amnesty International, *Criminalizing Pregnancy: Policing Pregnant Women Who Use Drugs in the USA*, 23 (Sept. 23, 2017) <https://www.amnesty.org/en/documents/amr51/6203/2017/en/>.

<sup>40</sup> National Association of Criminal Defense Lawyers, *Abortion in America: How Legislative Overreach Is Turning Reproductive Rights Into Criminal Wrongs* (2021)

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disproportionately polices women and girls of color, this is the population that will shoulder the brunt of increased surveillance and criminalization.<sup>41</sup>

Suggested Question for the State Party:

- What steps, if any, will the federal government take to prevent the criminalization of women and other pregnant people based on their pregnancy or pregnancy outcomes?

Suggested Recommendation for the State Party:

- Ensure that no federal criminal laws are applied to behavior in pregnancy or pregnancy outcomes.

### **Organizations Submitting This Report**

The Global Justice Center is an international human rights organization, with consultative status to the United Nations, dedicated to advancing gender equality through the rule of law. We combine advocacy with legal analysis, working to ensure equal protection of the law for women and girls. Human Rights Watch is an independent, international non-governmental organization that investigates and reports on rights violations in over 100 countries worldwide. Human Rights Watch documents and exposes human rights abuses and directs advocacy toward governments, armed groups, and businesses, pushing them to change or enforce their laws, policies, and practices to respect and uphold rights for all people.

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<sup>41</sup> Ibid.