



**Global
Justice Center**

Human Rights Through Rule of Law

**Submission to Ms. Tlaleng Mofokeng – The Special Rapporteur on the Right
of Everyone to the Enjoyment of the Highest Attainable Standard of
Physical and Mental Health**

**Upcoming Thematic Report on “Health and Care Workers as Key
Defenders of the Right to Health”**

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I. Introduction

Health and care workers play an essential role in realizing the human right to health for all people globally. In fact, the right to “the highest attainable standard of physical and mental health” enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights would be meaningless without health and care workers.¹ As noted by the UN Special Rapporteur on the Right to Health, these individuals are “key protectors of the right to health” and should be protected as human rights defenders.

The Global Justice Center (GJC)² submits the following information for consideration as the UN Special Rapporteur on the Right to Health prepares her report to the Human Rights Council, 59th Session, focusing on “health and care workers as key protectors of the right to health”. GJC applauds the Special Rapporteur for identifying the human rights of healthcare workers and their ability to protect the rights of others as strategic priorities.

Through this submission, GJC illustrates how U.S. abortion bans have created an insecure and, at times, unsafe work environment for providers who lack legal clarity around abortion restrictions, face criminalization for providing lifesaving, health-preserving and medically indicated care, and are at increased risk of violence and reprisals. Section II provides an overview of the devolving legal and policy context around abortion in the US. Section III highlights the range of laws and policies that are impacting the ability of health and care workers to provide necessary sexual and reproductive services, including abortion services. Section IV examines reprisals committed against providers because of their provision of abortion care.

¹ International Covenant on Economic, Social and Cultural Rights (ICESCR), 993 U.N.T.S. 3, Art. 12, (1976).

² 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. GJC combines advocacy with legal analysis, working to ensure equal protection of the law for women and girls.
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II. Background

In 2022, the U.S. Supreme Court eliminated the federal right to abortion in *Dobbs v. Jackson Women’s Health Organization*.³ Since *Dobbs*, there has been a dramatic increase in U.S. states adopting abortion bans, near-abortion bans and/or highly restrictive legislation to curtail abortion access to millions of women, girls and people who can become pregnant, with grave consequences for their human rights. This crisis has only grown more acute over time. Reports of adolescent survivors of rape or sexual assault being forced to carry resulting pregnancies to term⁴, and pregnant people in critical condition being denied life-saving care, including in emergency rooms, in some cases leading to their death, continue to increase.⁵

These bans impose restrictions that contravene healthcare workers medical and ethical duties to “do no harm.” Rather than providing medically indicated care, providers are compelled to deny treatment or risk their professional standing, medical licenses, and in some cases, prosecution. In states such as Georgia, Florida, and South Carolina, where abortion is banned after just six weeks of pregnancy,⁶ providers’ hands are tied as they must weigh their patients’ health against potential criminal consequences for providing care.

³ See 597 U.S. 215 (2022).

⁴ Charlotte Alter, *She Wasn’t Able to Get an Abortion. Now She’s a Mom. Soon She’ll Start 7th Grade.*, TIME MAG. (Aug. 14, 2023), <https://time.com/6303701/a-rape-in-mississippi/>.

⁵ Kavitha Surana, *Abortion Bans Have Delayed Emergency Medical Care. In Georgia, Experts Say This Mother’s Death Was Preventable*, PROPUBLICA (Sept. 16, 2024), <https://www.propublica.org/article/georgia-abortion-ban-amber-thurman-death>.

⁶ See *Bill Summary: SB 300 — Pregnancy and Parenting Support*, FLA. SENATE (2023), <https://www.flsenate.gov/Committees/BillSummaries/2023/html/3106>; *Abortion Policies in Georgia*, GUTTMACHER INST., <https://states.guttmacher.org/policies/georgia/abortion-policies> (Last visited Dec. 23, 2024); S. 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023), https://www.scstatehouse.gov/sess125_2023-2024/bills/474.htm.

Criminalization of abortion leads to a chilling effect on the provision of healthcare.⁷ Even when abortion laws provide exceptions on certain grounds (*i.e.*, when the life of the pregnant person is at risk and/or when a pregnancy was the result of incest or sexual violence), the laws are often unclear, which leads providers to err on the side of caution and not provide an abortion.⁸ As a result, pregnant patients are denied medically-indicated, life-saving, and health-sustaining care; with healthcare providers' hands being tied to safeguard the health and human rights of their patients.

III. U.S. Laws and Policies Impacting the Ability of Health and Care Workers to Provide Healthcare Services

Since *Dobbs*, myriad restrictive state laws have impeded health and care workers from providing accessible, affordable, quality healthcare services to pregnant Americans.⁹ Though the patchwork of abortion restrictions varies, their effects are largely the same by impeding practitioners' ability to provide care when patients experience pregnancy complications or medical emergencies. According to a Kaiser Family Foundation study, 68% of OBGYNs

⁷ See, e.g., World Health Organization (WHO), Abortion Care Guideline, 24 (2022), <https://www.who.int/publications-detail-redirect/9789240039483>; Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, (39th Sess., 2017), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 18, UN Doc. CEDAW/C/GC/35 (2017) (urging states to repeal “provisions that allow, tolerate or condone forms of gender-based violence against women...and provisions that criminalize abortion.”); Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22 on the right to sexual and reproductive health (article 12 on the International Covenant on Economic, Social and Cultural Rights), (26th sess., 2016), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, paras. 40-41, 57, UN Doc. E/C.12/GC/22 (2016); See also International Federation of Gynecology and Obstetrics (FIGO), FIGO Calls for the Total Decriminalisation of Safe Abortion (Feb. 28, 2022), <https://www.igo.org/resources/figo-statements/figo-calls-total-decriminalisation-safe-abortion>.

⁸ Fiona de Londras et al., *The impact of 'grounds' on abortion-related outcomes: a synthesis of legal and health evidence*, BMC PUB. HEALTH 2022, 22: 936.; see also Tess Graham, *When It Comes to Abortion Bans, 'Life of the Mother' Exceptions Are a Lie*, MS. MAG. (Apr. 22, 2024), <https://msmagazine.com/2024/04/22/abortion-exception-life-health-of-mother-death/>.

⁹ The attached Annex provides an overview of state-by-state restrictions on abortion at time of writing. (Dec. 2024).

reported that laws enacted after *Dobbs* have “worsened their ability to manage pregnancy-related emergencies”¹⁰:

- 4 in 10 OBGYNs report their decision-making autonomy is restricted.
- 1 in 4 report being “very or somewhat concerned” about legal risk when making decisions about abortion.”¹¹ This figure rises to 61% in states with full bans.¹²
- A majority of practitioners report “worsened pregnancy-related mortality.”¹³

Data on clinic closures since *Dobbs* also indicates a severe narrowing of access to reproductive and maternal healthcare. Sixty-six clinics across 15 states ceased operations within three months.¹⁴ In the 14 states enforcing total bans, no abortion-providing facilities operated.¹⁵ Those who continue to practice in hostile states face deepening resource constraints and security concerns. Dr. Erica Balthrop, for example, provides care at one of Mississippi’s few remaining clinics.¹⁶ Mississippi - the state whose 15-week abortion ban sparked the *Dobbs* case - now has the second-highest maternal-mortality rate in the country.¹⁷ Black women are four times more likely to make up that figure as other groups.¹⁸ As one of the few remaining practitioners in the state, Dr. Balthrop has absorbed a rapidly increasing patient list.¹⁹ Her clinic faces serious financial strain, and soon she may be forced to sell the practice to a hospital thirty miles away.

¹⁰ B. Frederiksen et al., *A National Survey of OBGYNs’ Experiences After Dobbs*, KFF 3 (Jun. 21, 2023), <https://files.kff.org/attachment/Report-A-National-Survey-of-OBGYNs-Experiences-After-Dobbs.pdf>.

¹¹ *Id.* at 4.

¹² *Id.*

¹³ *Id.* at 3.

¹⁴ Kelly Baden, Joerg Dreweke & Candace Gibson, *Clear and Growing Evidence That Dobbs Is Harming Reproductive Health and Freedom*, GUTTMACHER INST. (May 31, 2024), <https://www.guttmacher.org/2024/05/clear-and-growing-evidence-dobbs-harming-reproductive-health-and-freedom>.

¹⁵ *Id.*

¹⁶ Alter, *supra* note 4.

¹⁷ *Id.* (43 deaths per 10,000 live births.)

¹⁸ *Id.*

¹⁹ Sarah Muthler, *Addressing Mississippi’s Maternal Health-Care Shortage: State regulations and payment systems have prevented the growth of freestanding birth centers*, THINK GLOB. HEALTH (Jul. 31, 2024), <https://www.thinkglobalhealth.org/article/addressing-mississippis-maternal-health-care-shortage>.

Dr. Balthrop lamented -“Imagine if we weren’t here,” says an assistant at the Clarksdale clinic. “Where would they go?”²⁰

Even at clinics that can continue operations, increasing restrictions gravely impair workers’ ability to respond to patients’ needs and respect, protect and fulfill their patients’ right to health. Even when near-total abortion bans provide narrow exceptions, the language tends to be unclear and/or does not align with medical diagnoses of pregnancy-related health conditions. The legal uncertainties chill the provision of care as providers fear criminal sanctions.²¹

Under Oklahoma’s ban, a pregnant woman carrying a non-viable fetus was refused an abortion, despite heightened risks of cancer developing.²² The hospital staff, wary of running afoul of the prohibition, instructed her to wait in the parking lot until her condition deteriorated to unequivocally requiring life-saving care - the only recognized exception under Oklahoma’s ban.²³ A woman in Tennessee experiencing a life-threatening ectopic pregnancy was denied an abortion under the state’s total ban.²⁴ Though her physician recommended the procedure, the doctor was unable to assemble a team to assist due to apprehension that the procedure would not qualify under the ban’s narrow exception.²⁵ Treatment was delayed until the woman required an emergency hysterectomy, leaving her sterile.²⁶ The same physician now has to turn away patients weekly who he believes qualify for “medically indicated abortion care.”²⁷ In Texas,

²⁰ *Id.*

²¹ Brendan Pierson, *Texas AG threatens to prosecute doctors in emergency abortion*, REUTERS (Dec. 7, 2023), <https://www.reuters.com/legal/texas-judge-allows-woman-get-emergency-abortion-despite-state-ban-2023-12-07/>.

²² Selena Simmons-Duffin, *'I'll lose my family.' A husband's dread during an abortion ordeal in Oklahoma*, NAT’L PUB. RADIO (May 1, 2023), <https://www.npr.org/sections/health-shots/2023/05/01/1172973274/oklahoma-abortion-ban-exception-life-of-mother-molar-pregnancy>.

²³ *Id.*

²⁴ Kavitha Surana, *Doctors Warned Her Pregnancy Could Kill Her. Then Tennessee Outlawed Abortion.*, PROPUBLICA (May 14, 2023), <https://www.propublica.org/article/tennessee-abortion-ban-doctors-ectopic-pregnancy>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

patients experiencing miscarriages are exposed to preventable and potentially permanent complications due to physicians' fear that miscarriage care could be considered an illegal abortion.²⁸

While outright bans pose the most direct threat, other laws and policies foster surveillance, policing, regulation, and criminalization of practitioners. These include restrictions on the use of federal funds for abortion care, prenatal personhood provisions, restrictions of abortion medication as controlled substances, prohibitions of abortion-related travel, targeted restrictions on abortion providers, and mandated reporting requirements for pregnant patients with suspected drug use.²⁹ Working in concert, these measures degrade the working conditions of healthcare workers, and undercut the realization of the right to health and related human rights.

IV. Attacks Against Health and Care Workers

Bans have fomented a dangerous environment for practitioners. Since the enactment of Indiana's total abortion ban, Dr. Katie McHugh's Indiana clinic has experienced a sharp increase in security threats. "Just going to work . . . risks my life," she says, speaking about threats of imprisonment, loss of her license, or violence because of her treatment of pregnant people.³⁰

²⁸ Interview by Foley Hoag LLP with Dr. Elissa Serapio (14 Jan. 2024).

²⁹ There are also myriad legislative efforts to limit certain types of healthcare, such as gender-affirming care for transgender and non-binary individuals. Significantly, almost half of all states have passed some kind of prohibition on gender-affirming care. See L. Dawson and J. Kates, Policy Tracker: Youth Access to Gender Affirming Care and State Policy Restrictions, KFF (9 Apr. 2024), <https://www.kff.org/other/dashboard/gender-affirming-care-policy-tracker/>; S. Hendrickson, "Ohio bans gender-affirming care and restricts transgender athletes despite GOP governor's veto," AP News, available at <https://rb.gy/meyuyg>; HRC Foundation, Map: Attacks on Gender Affirming Care by State, available at <https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map> (last updated: 13 Nov. 2023).

³⁰ Selena Simmons-Duffin, *Doctors who want to defy abortion laws say it's too risky*, NAT'L PUB. RADIO (Nov. 23, 2022), <https://www.npr.org/sections/health-shots/2022/11/23/1137756183/doctors-who-want-to-defy-abortion-laws-say-its-too-risky>.

Dr. McHugh’s experience is not isolated. In 2022 alone, there was marked by a sharp increase in violence against providers and their facilities, including:³¹ a 229% increase in stalking incidents, a 231% increase in burglary incidents and property damage, a 20% increase in death threats or threats of harm against providers, and a 100% increase in arson against clinics.³² In Wyoming, a clinic was broken into in May 2022 and set on fire. The arson devastated staff and cost hundreds of thousands of dollars.³³ The timing, just weeks after the *Dobbs* opinion first leaked, shows a link between state action hostile to abortion healthcare and an emboldening of violence against care providers.

Alongside private retaliation, twelve states now subject abortion providers to criminal penalties. A doctor who provides an abortion in Texas could face life imprisonment;³⁴ in Oklahoma a practitioner could be fined up to \$100,000.³⁵ The threat of such penalties curtails workers’ ability to treat their patients. More than half of OBGYNs practicing in states with gestational limits and bans reported being “very or somewhat concerned” about their legal risk when making care decisions.”³⁶ In addition to prosecution and incarceration, these doctors fear losing their medical license and livelihoods.³⁷

³¹ National Abortion Federation, *2022 Violence and Disruption Statistics 2* (2022), <https://prochoice.org/wp-content/uploads/2022-VD-Report-FINAL.pdf>.

³² *Id.* at 4–7.

³³ *Id.* at 4.

³⁴ See TEX. HEALTH & SAFETY CODE §170A.004; TEX. PENAL CODE § 12.32.

³⁵ 63 OKL. ST. § 1-731.4.

³⁶ E.L. Sabbath *et al.*, *US Obstetrician-Gynecologists' Perceived Impacts of Post-Dobbs v Jackson State Abortion Bans*, 7(1) JAMA NETWORK OPEN 4 (2024), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2814017>.

³⁷ *How abortion bans prevent clinicians from providing essential women’s health care*, WOLTERS KLUWER (Nov. 17, 2023), <https://www.wolterskluwer.com/en/expert-insights/how-abortion-bans-prevent-clinicians-from-providing-essential-womens-health-care>.

While eight states have passed ‘shield laws’ to protect providers from criminal prosecution, civil claims, and extradition, these laws are now being tested.³⁸ Texas’s Attorney General recently sued a New York doctor for prescribing abortion pills to a woman near Dallas, seeking \$250,000 in damages.³⁹ The Attorney General is trying to send the message that medical providers are not safe to do their jobs where they reside or across state lines.

V. Conclusion

If the right to health is to be substantially realized, state-level abortion bans and restrictions must be removed, and health and care workers must be legally protected - to protect their human rights as individuals and as human rights defenders. Otherwise, the human rights impact increases exponentially when pregnant individuals are denied access to abortion care.

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³⁸ Elissa Nadworny and Scott Simon, *The Texas Attorney General is suing a New York doctor for prescribing abortion pills*, NAT’L PUB. RADIO (Dec. 14, 2024), <https://www.npr.org/2024/12/14/nx-s1-5228141/the-texas-attorney-general-is-suing-a-new-york-doctor-for-prescribing-abortion-pills>.

³⁹ *See id.*