

Global impacts of *Dobbs v. Jackson Women's Health Organization* and abortion regression in the United States

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On June 24, 2022, the U.S. Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization*,¹ overturning *Roe v. Wade*² and *Planned Parenthood v. Casey*³ and dismantling 50 years of precedent protecting the constitutional right to abortion in the United States. This article explores the likely impacts of the decision within the United States and elsewhere around the world. It draws on the authors' individual and institutional expertise in international human rights and abortion advocacy and jurisprudence, as well as the Center for Reproductive Rights' role as lead counsel in *Dobbs v. Jackson Women's Health Organization*.

Dobbs v. Jackson Women's Health Organization and U.S. impact

The Court's decision in *Dobbs v. Jackson Women's Health Organization (JWHO)* is a devastating blow for the constitutional right to decide whether to terminate a pregnancy and marks the first time the U.S. Supreme Court has taken away a fundamental liberty right.

At issue in the case was the constitutionality of a Mississippi law banning abortion after 15 weeks of pregnancy. The challenge was brought by what was at the time the only remaining abortion clinic in the state of Mississippi.

In a decision written by Justice Alito, the U.S. Supreme Court upheld the Mississippi law and explicitly overruled *Roe v. Wade* and *Planned Parenthood v. Casey*. The decision eliminates all federal (national level) constitutional protections for abortion and announces that, moving forward, all abortion laws and regulations are to be assessed under the most lenient level of judicial scrutiny, "rational basis." Under this standard, any laws regulating abortion will be entitled to a "strong presumption of validity."

The decision will have wide-ranging harmful impacts in the United States. In overruling *Roe* and eliminating the federal constitutional right to abortion, *Dobbs v. JWHO* allows states throughout the United States to severely restrict or ban abortion outright. The Center for Reproductive Rights estimates that 26 out of the 50 U.S. states may, in fact do so.⁴ Thirteen states have "trigger bans," laws that are intended to ban abortion if *Roe* is overturned.⁴ Eleven states have pre-*Roe* laws banning abortion that were unenforceable under *Roe*, and many states are seeking to revive these old bans. State legislatures are considering and enacting new bans and restrictions, as well.⁴

In the immediate aftermath of the decision, states have rushed to eliminate abortion access, and the legal landscape has been chaotic, with the status of abortion rights changing daily. The

situation is rapidly evolving, but at the time of this writing, abortion is banned from the point of conception, with extremely limited exceptions, in a total of twelve states, and in additional states at other points early in pregnancy.⁴

The devastating impact of this decision falls hardest on people in the United States who already face discriminatory obstacles to health care, particularly Black, Indigenous, and other people of colour, people with disabilities, people in rural areas, young people, undocumented people, and people who are low-income or living in poverty.^{5–8} Even with *Roe* in place, abortion access has always been a struggle for many. For instance, at the federal level, a legislative provision called the Hyde Amendment has banned federal funding for abortion in most circumstances since 1976, and as a result low-income people with public health insurance – who are disproportionately women of colour – are unable to use insurance for this health care procedure. About three-fourths of all abortions in the U.S. are sought by patients who are poor or have low incomes.⁹ Poverty is deeply intertwined with other forms of structural discrimination, and people of colour, immigrants, LGBTQI+ people, people with disabilities, and women and children suffer disproportionately from economic inequalities.¹⁰ With state bans going into effect and clinics shutting down, in many instances people seeking abortion in the United States must now travel across multiple state lines to reach a clinic, which exacerbates the financial and other hardship many already experience. For many, the barriers will simply be too high.

The largest study of women's experiences with abortion in the U.S. found that women who wanted an abortion and were denied one were more likely to experience serious pregnancy complications, poor longer-term health, chronic pain, and even death.¹¹ In addition, the study found that they were more likely to experience household poverty and stay tethered to an abusive partner.¹¹

Abortion bans and restrictions will also impact pregnant peoples' ability to access the full range of reproductive healthcare, regardless of their desired pregnancy outcome. This includes fertility care, care for miscarriage management, and care needed for pregnancy complications. This, too, will disproportionately impact Black, Indigenous, and other people of colour, who face the greatest health risks in pregnancy and childbirth due to

structural racism, inadequate access to services, and underinvestment in overall care, and who often experience discrimination, ill-treatment, abuse, and coercion in maternal health care settings.^{12,13,14}

Moreover, criminalisation of abortion poses a real threat for marginalised communities in the United States. Even with the constitutional right to abortion in place, people in states in the southern and midwestern United States were subject to criminal prosecution or other punitive legal action because of their pregnancy or an outcome of their pregnancy.^{15,16} This punishment disproportionately affects Black, Indigenous, and other people of colour and immigrant women, and people experiencing poverty.¹⁶

Finally, the Supreme Court's decision overruling *Roe* also threatens U.S. constitutional rights beyond abortion. While Justice Alito's opinion for the majority in *Dobbs v. JWHO* purports to limit its holding to abortion, the dissenting Justices make clear that the Court's reasoning could be applied to a whole host of other rights, including the right to contraception, to sexual intimacy, and to marry a person of the same sex or different race.

In response to the *JWHO* decision, there has been an urgent call for federal action to protect abortion access. The Women's Health Protection Act is proposed federal legislation that would protect the right to access abortion in every state.¹⁷ The bill has passed the U.S. House of Representatives, but it has not yet passed the Senate. President Biden has taken steps to further abortion access, including by calling on the U.S. Justice Department to protect the right of people to freely travel to other states to seek abortion care¹⁸ and directing the Department of Health and Human Services to take action to protect access to medication abortion and contraception, protect patients' privacy and access to accurate information, and ensure emergency medical care, among other steps.¹⁹ The Department of Justice has challenged the state of Idaho's ban on abortion, on grounds that the ban violates the right to emergency medical treatment under federal law. Many are calling on the Biden administration to declare a public health emergency, which would allow the U.S. Department of Health and Human Services to assist people seeking abortion care and enable out-of-state prescribing and dispensing of medication abortion in states where abortion is banned.²⁰

Global impact of Dobbs v. JWHO and U.S. abortion regression

In 1973, *Roe v. Wade* was a landmark decision establishing constitutional abortion protections. It was cited often in jurisprudence around the globe liberalising the right to abortion. With *Dobbs v. JWHO*, the U.S. is now the outlier, a point noted by the dissenting justices.

International human rights and the laws and jurisprudence of other countries have clearly established protections for the right to abortion. The overturning of *Roe* is significant and will have a profound impact on abortion rights and access in the United States, but it will not reverse this global tide. Rather, as U.S. Ambassador Linda Thomas-Greenfield noted,²¹ the decision marginalises the United States as an outlier in protections for sexual and reproductive health and rights. While the decision will likely embolden abortion opponents in many regions, it is also likely to spur solidarity and renewed action by abortion rights activists and policy makers around the globe.

International human rights protect abortion

Over the past 25 years, the international community has clarified that abortion is a fundamental human right, which is also critical to ensuring health, justice, and equality.²² Jurisprudence from international human rights bodies establishes that access to abortion is necessary to protect the rights to life, health, non-discrimination, information, privacy, and freedom from ill-treatment, harmful practices and gender-based violence.²³ United Nations Special Procedures have reinforced the findings of the UN treaty bodies by calling on governments around the world to treat abortion as an issue of human rights and as an essential health service rather than as a political wedge.²⁴ In March 2022, the World Health Organization, the leading global public health expert body, published an updated Abortion Care Guideline which recognises abortion as an essential health service that is necessary to meet target 3.8 of the Sustainable Development Goals and also to the realisation of human rights.^{25,26}

Indeed, UN human rights experts and mechanisms have condemned regression on abortion rights in the United States as a clear violation of human rights, and counter to the global trend of liberalisation. Directly following the Court's

issuance of the decision in *Dobbs v. Jackson Women's Health Organization*, UN High Commissioner for Human Rights Michelle Bachelet reiterated human rights protections for abortion and the impact that the decision will have on the fundamental rights of millions within the United States, particularly people with low incomes and those belonging to racial and ethnic minorities.²⁷ UN mandate holders, including the Working Group on Discrimination Against Women, the Special Rapporteur on Health, and the Special Rapporteur on Violence Against Women, have similarly denounced the decision.²⁸ At the conclusion of its recent review of the United States, the UN Committee on the Elimination of Racial Discrimination noted deep concerns with the decision and recommended that the United States address the disparate impact that it will have on racial and ethnic minorities, Indigenous women, and those with low incomes.²⁹

Potential impact of JWHO in global spaces

Despite clarity from across the international human rights and public health communities that access to abortion is a human right and critical to realising sexual and reproductive health for all, the decision in *JWHO* could unfortunately create a chilling effect in international political spaces as it relates to negotiations on sexual and reproductive health and rights (SRHR). To be clear, the decision in this case does not have any direct impact outside the U.S. in law or policy. However, it could have reverberations at the global level in two ways. First, anti-equality governments and anti-equality NGOs working to undermine and dismantle human rights protections and support for SRHR might use this as an opportunity to argue that the decision represents a lack of consensus and legitimacy on SRHR during negotiations on UN resolutions. Second, this decision might undermine the U.S. government's ability to play a leadership role in global spaces on abortion, and SRHR more broadly, given the highly publicised domestic context.

Importantly, the decision in *JWHO* has no legal impact on U.S. foreign policy positions, such as the Global Gag Rule (GGR), which is enforced or rescinded at the discretion of the executive (President) branch. This decision does not bring that policy into force. At this moment in time, only the President can implement the GGR via Executive Order. The Helms Amendment, which restricts

U.S. government funding from being used to support abortion as a method of family planning and the Siljander Amendment, which prohibits the use of U.S. funds to lobby for or against abortion, were in effect before the *JWHO* decision and will continue to remain in effect. There is no legal impact of this decision with regard to the implementation of these policies. Advocates are concerned, however, that the Court's dismantling of constitutional protections for abortion will further embolden anti-abortion legislators in the U.S. to attempt to enact further restrictions on U.S. foreign aid.

Potential impact in regions around the globe

Regression on abortion rights in the U.S. runs counter to the broader global context of liberalisation of abortion, and a movement which has been successfully expanding access to abortion. This profound setback in the U.S. may embolden opposition efforts, but in reality it marginalises the United States and confirms its status as an outlier to the global trend towards more liberal access to abortion and removal of barriers to abortion.

Since 1994, close to 60 countries have liberalised their laws and policies on abortion.²⁹ Some of these changes have been incremental reforms – such as moving from total bans to allowing abortion when the pregnancy is a threat to life or health, when it resulted from rape or forced marriage, or based on socio-economic grounds. Others have removed medically unnecessary administrative procedures – such as third-party authorisation requirements – that posed impediments to accessing abortion even when legal. Some have changed their laws to decriminalise abortions, protecting the rights of women to bodily autonomy. Currently, 72 countries allow abortions on request and 59% of women of reproductive age live in countries that allow abortions broadly.³⁰

An overview of abortion liberalisation in regions around the globe reinforces the important understanding that the decision in *Dobbs v. JWHO* is counter to the global trend. While the decision may embolden opposition efforts, it also has the potential to invigorate popular movements for further abortion liberalisation.

Latin America

In recent years, many countries in Latin America liberalised their abortion laws, positioning the region as a benchmark for advances in sexual

and reproductive rights. Legislators and judges across the region have interpreted modern constitutional frameworks incorporating international human rights law at the domestic level to advance the recognition of abortion rights. A main strategy of this fight was to dedicate efforts to build a strong regional movement, known as the “green wave” (referring to the green bandannas feminists are wearing across the region). Recent wins are the result of decades of organising, mobilising, and working to shift the public conversation around abortion.

As a result, countries including Argentina, Mexico, and Colombia have liberalised their abortion laws. The legislative legalisation in 2020 in Argentina was historic and the beginning of this new wave of legalisation.³¹ Discussions at the Congress were focused on the human rights framework and public health. This framework was amplified in the two more recent regional judicial decisions that partially decriminalise abortion.

In 2021, the Supreme Court of Mexico issued a ground-breaking decision, unanimously recognising a constitutional right to safe, legal, and free abortion within a “short period” of time in early pregnancy.³¹ This created positive obligations on all states in Mexico to fulfil this right to abortion. After the Court decision, states including Baja California, Colima, Sinaloa, and Guerrero liberalised abortion laws. This decision constitutes one of the most progressive steps towards decriminalisation of abortion in Latin America.³²

Another relevant constitutional decision was the one taken by the Colombian Constitutional Court on February 2022 that constitutes a historic and progressive step to guarantee the reproductive rights of women and people with the capacity to gestate in Latin America.³³ It decriminalised abortion until the 24th week of gestation. Beyond that, the Court kept the three exceptions authorised by Ruling C-355 of 2006 without a time limit.³⁴

These changes were made with the understanding that multiple human rights bodies and experts – including the UN Committee on Economic, Social and Cultural Rights, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, and the UN Committee on the Elimination of All Forms of Discrimination Against Women – have raised the need to decriminalise abortion as a measure in favour of sexual and reproductive health and rights, as well as a way of acting against violence

against women.³⁵ The courts also noted that the Inter American Court on Human Rights has interpreted the right to life by stating that any prenatal protection is gradual and incremental and does not override women's rights.³⁶

These decisions would not have happened without the work of activists to shape the public conversation on abortion. These activists are contributing to a cultural change with the strategy to socially decriminalise abortion under the green wave movement. Changing the law is not enough and feminists in Latin America and the Caribbean are diligently fighting to destigmatise and combat misinformation about abortion: taking to the streets; participating in the public conversation through social media, traditional media, and events; cultivating new allies; and creating awareness.

The fact that recent decisions were taken under modern constitutional frameworks that incorporate human rights standards as part of the Constitution is key to avoid legal retrogression in the near future. These decisions can also represent comparative legal precedents for other countries. But it is the social work, the mobilisation work, and the fight against misinformation that will make the law stronger and avoid a backlash 50 years from now. Indeed, these hard won and human rights-grounded legal protections in Latin America are secure and, while it is impossible to predict with certainty, it is unlikely that they will be impacted by the U.S. Supreme Court's decision in *Dobbs v. JWHO*. Rather, they can serve as an inspiration for activists in the United States who now must rebuild protections.

Asia

In recent years, many countries in Asia and the Pacific liberalised their abortion laws. Since 2018, at least five countries and several Australian states have increased gestational limits for abortion access and/or removed criminal provisions on abortion from their laws. In September 2018, Nepal adopted one of the most liberal abortion laws in the world when it allowed abortions up to 28 weeks under certain conditions.³⁷ Between December 2018 and December 2021, several Australian states and territories amended their laws to allow abortion on request up to 22–24 weeks of gestation.^{38–41} In March 2020, New Zealand permitted abortion on request up to 20 weeks of gestation.⁴² As of the beginning of 2021, abortion in South Korea has been fully decriminalised. The

country's criminal provisions on abortion became void and ineffective after the Parliament failed to pass a law as directed by the South Korean Constitutional Court.⁴³ Thailand followed suit in the trend of liberalisation when in February 2021, it adopted a law permitting abortion on request up to 12 weeks of gestation.⁴⁴ This followed a ruling of the Thai Constitutional Court which found that the abortion provisions in its Criminal Code penalising people seeking abortions and abortion providers violate the constitutional right to self-determination and the laws on proportionality.⁴⁵ Then in March 2021, India amended its abortion law to increase from 20 to up to 24 weeks of gestation access to abortion for minors and in cases of rape and incest. India also removed gestational limits for pregnancies with substantial foetal impairment.⁴⁶

Mindful of the rollbacks in other regions and unfettered by the anti-equality groups and rhetoric within Asia, advocates in the region continue to push for more progressive abortion laws. There is a growing movement for the full decriminalisation of abortion. A case is currently pending before the Supreme Court of Nepal seeking the repeal of the remaining abortion provisions in the country's penal code.⁴⁷ Similarly, a High Court petition in Bangladesh is seeking to declare unconstitutional the penal code provisions on abortion.⁴⁸ In the Philippines, advocates initiated the drafting of a proposed law that would fully decriminalise abortion.⁴⁹

When the landmark U.S. Supreme Court ruling in *Roe v. Wade* was issued, advocates were hopeful that a similar progressive change would happen in the region. Indeed, courts in Asia adopted the U.S. Supreme Court's decision to interpret their own laws and become part of their own jurisprudence. For example, a 2009 judgment by the Supreme Court of Nepal took note of the *Roe* decision when it ruled that a foetus does not have the legal status of a human life.⁵¹ This 2009 judgment paved the way for the progressive abortion law reform in 2018.

With the overturn of *Roe*, it is expected that opposition in the region, particularly those supported and inspired by U.S.-based conservatives, will be further encouraged in their attempts to erode abortion rights. Advocates also remain on guard against the potential negative repercussions of the *Dobbs v. JWHO* decision beyond abortion. However, the increasing liberalisation of abortion elsewhere in the world means that Asian countries

have a wealth of progressive laws and judgments in other comparative jurisdictions including international human rights and public health standards to lean on and to bolster efforts to decriminalise abortion and increase safe abortion access in the region. For example, in September 2022, the Supreme Court of India further liberalized abortion access and acknowledged the government's constitutional and international human rights obligations by progressively interpreting the country's amended Medical Termination of Pregnancy Rules which increased the gestational limit for abortion up to 24 weeks for specific categories of women to also apply to those who are single and unmarried.⁵²

Africa

Article 14 (2) (c) of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa ("Maputo Protocol") recognises access to reproductive health services including medical abortion. Forty-three out of the 55 countries on the continent have ratified or acceded to the treaty and continue to make progressive steps to liberalise abortion. Countries including Kenya, Zambia, Uganda, and Benin continue to take progressive steps to liberalise abortion access.

In June 2019, the High Court of Kenya in Petition 266 of 2015 affirmed abortion as a fundamental right under the 2010 Constitution.⁵³ The court ruled that sexual violence victims can access abortion in line with Article 26 (4) and Article 43 (1) (a) of the Constitution. Article 26 (4) provides for abortion access when the life or health of the pregnant woman is in danger, in case of emergency or if permitted by any other written law while Article 43 (1) (a) provides for the right to reproductive health care. In March 2022, the Kenyan High Court in Petition E009 of 2020 further affirmed abortion as a fundamental right under the 2010 Constitution and directed the Parliament to enact reforms.⁵⁴ In Zambia, women can obtain abortion care under most circumstances, including for socio-economic reasons.⁵³ Additionally, Uganda's Constitution protects women's right to reproductive health under Article 22.⁵⁴ In 2021, Benin's Parliament voted to liberalise abortion access in most circumstances, including for socio-economic reasons.⁵⁵

While the continent has made progressive steps to liberalise access to abortion, opposition groups such as religious groups and international and

local non-governmental organisations have become better organised and can gather intelligence fast and mobilise against reproductive rights organisations and advocates. The opposition groups across the continent use civil and less civil tactics to spread disinformation and sway the public and their constituents. In Kenya and Uganda, opposition groups use litigation; advocacy including organising marches, conducting outreach to the youth and other interest groups, and influencing legislation and policy; communication strategies, such as making public statements, using social media, and webinars; and political strategies.

The *Dobbs v. JWHO* decision and the fall of *Roe v. Wade* in the United States will have serious effects on abortion liberalisation efforts on the continent. The fall of *Roe* will not only embolden the opposition groups in their disinformation campaign but will also bolster their funding sources. The fall of *Roe* will also validate and justify their opposition to sexual and reproductive health rights, which they have opposed as a western concept. Already, in Kenya, the Attorney General has moved the Court of Appeal to stay the implementation of a March 2022 decision of the Constitutional Court, which had partly relied on *Roe v. Wade* and recognised abortion as a fundamental right in Kenya.

Europe

For more than 80 years across Europe, the overwhelming trend has been towards the legalisation of access to abortion and removal of barriers. Today, almost all European countries allow abortion on request or on broad social grounds and only five out of 47 countries maintain highly restrictive laws.⁵⁶ In recent years critical reforms to remove legal and policy restrictions on abortion have occurred in many European countries and jurisdictions, including Belgium, Cyprus, France, Germany, Gibraltar, Iceland, Ireland, Netherlands, Northern Ireland, North Macedonia, and San Marino. Although there has been regression, most notably in Poland in 2020 when the no longer independent Constitutional Tribunal invalidated a legal ground for abortion rendering the law even more restrictive,⁵⁷ the steady movement in favour of enhanced access to abortion continues in almost all parts of the region.

The *JWHO* decision will neither reverse nor stall the strong positive trajectory in Europe towards liberalisation of abortion laws and removal of

barriers. Instead, it is likely to galvanise efforts to upgrade European laws on abortion and move them closer to compliance with World Health Organization Guidance. Moreover, reform efforts are underway in some of the five European countries that maintain extreme laws on abortion. In 2021, a referendum in San Marino cleared the way for the repeal of that country's highly restrictive abortion laws and the legalisation of abortion on request.⁵⁸ Litigation filed in Malta on behalf of hundreds of women and on behalf of more than a hundred doctors to challenge the only total ban on abortion remaining among European Union (EU) member states,^{59, 60} and an official review of the country's law announced by the Minister for Health,⁶¹ may also pave the way for law reform in that country.

In the days following the *JWHO* decision, the decision was overwhelmingly condemned by European decision makers as a serious backwards step for women's human rights. Leaders from across the region have made important political statements affirming that abortion is a fundamental right that must be protected in order to allow women to make decisions about their health, lives, and futures.⁶²

In the weeks preceding the *JWHO* decision, the European Parliament adopted a resolution on global threats to abortion rights, focused on the United States.⁶³ The Parliament stressed that retrogression on abortion rights is contrary to human rights and condemned the potential eradication of the constitutional right to abortion in the United States and called on other EU institutions to issue similar condemnations and urged Member States to take action to decriminalise abortion and remove barriers to abortion.

These reactions testify to the fact that the U.S. is now an outlier among some of its closest allies when it comes to reproductive rights, and that across Europe support for access to abortion remains strong and is likely to give further impetus to legal and policy reforms to improve Europe's abortion laws.

Conclusion

The regressive and harmful decision in *Dobbs v. Jackson Women's Health Organization* stands in stark contrast to the overwhelming trend toward global progress on abortion rights and access. As we anticipate the emboldening impact that the ruling may have on opposition forces around the world, it is critical that advocates emphasise the movement successes and legal and policy advances in abortion rights over the past 25 years. These advances and the movements that made them possible should serve to isolate the decision as out of step with human rights and the global trend of liberalisation and provide a roadmap for continued progress towards laws and policies that fully reflect human rights standards and WHO Guidelines on abortion.

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