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TRANSFORMATIONS IN ABORTION LAW AND POLITICS

This panel was convened on Thursday, March 30, 2023 at 3:30 p.m. by its moderator Mindy Roseman of Yale Law School, who introduced the panelists: Alejandra Cardenas Ceron of the Center for Reproductive Rights; Rebecca Cook of the University of Toronto, Faculty of Law; Jayshree Satpute, Human Rights Lawyer; Melissa Upreti of UN Special Procedures, Human Rights Council; and Alicia Yamin of Harvard Law School.

Introductory Remarks by Mindy Roseman*

I would like to frame this discussion in the larger global milieu in which access to sexual and reproductive health services and recognition of their related rights are situated. Nearly everywhere, there is backsliding from democratic norms and civil society spaces staked out during the 1990s, as reflected in the UN political outcome documents, such as the 1994 ICPD Programme of Action.

This is a development that colors what is and is not possible in the broad area of gender equality and justice, abortion access being just one component. That said, abortion was one of the few reproductive health and rights issues carved out from the Programme of Action to be a matter to be regulated by national law and policy. It is a testament to Rebecca Cook, who we have on the panel, and the works of many others, including our panelists, that we have such an array of international and national norms that speak to abortion access, nonetheless.

Today's panel will focus a little bit more heavily on North America, Latin America, and Asia. Luckily, we have Alejandra to speak to the African region. She works with Enid Muthoni at the Center for Reproductive Rights, who could not be with us today.

I am going to briefly introduce our panelists and then open with a question to the panel. First up, we will have Melissa Upreti, who is joining us virtually. Melissa is a member of the UN Working Group on Discrimination Against Women and Girls. A human rights lawyer and a women's rights advocate, she has been foundational in establishing legal norms on reproductive justice issues in South Asia through her work at the Asia Foundation, the Center for Reproductive Rights, and the South Asia Reproductive Justice and Accountability Initiative.

Next, we have Rebecca Cook, to whom everyone who works on international human rights law and reproductive rights and health is indebted. She is an Emeritus Professor at the Faculty of Law at the University of Toronto and its Co-director of the International and Reproductive Sexual Health Law Program. To plug her books, she is an editor of the *Abortion Law and Transnational Perspective* and most recently coauthor of *Learning from Comparative Abortion Law*, which is part of the *Elgar Encyclopedia of Comparative Law*, forthcoming in 2023.

Alejandra Cardenas is the Senior Director of Legal Strategies, Innovation, and Research at the Center for Reproductive Rights, and for the past eighteen years, Alejandra has led the design of legal strategies in Asia, Latin America, and Africa, particularly around reproductive rights issues.

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Next up, we have Alicia Yamin. She is a human rights attorney and scholar whose work on economic, social, and cultural rights, and at the intersections of health and human rights has been foundational to the field. While a generalist, she brings particular Latin American expertise. She is, among other things, a lecturer of law at Harvard Law School, adjunct senior lecturer in the Health Management and Policy Program at the Harvard Chan School of Public Health, and she is also Senior Advisor to Partners in Health.

I am Mindy Roseman, Director of International Law Programs and the Gruber Program for Global Justice and Women's Rights at Yale Law School. Before that, I was the Academic Director of the Human Rights Program and Lecturer on Law at Harvard Law School. And to plug our forthcoming book with Rachel Rebouche, Dean of Temple Law School, we are working on an edited collection focusing on abortion law and policy and comparative perspective post-*Dobbs*.

I would also like to thank Aziza Ahmed, Professor of Law at BU School of Law and Co-director of its program on Reproductive Justice. Her work on human rights, gender, sexuality, and health is a *tour de force*, and we are grateful for her for putting together this panel as well as the organizers for slating this panel as well.

I am going to dive into our questions to the panelists, and, Melissa, you are up first. But it goes to all of you. How have international norms been used in your country or region to facilitate access to abortion? Just so that we are all on the same page, feel free to give us a quick synopsis on laws and policies and their transformations or not while explaining the engagement with international norms. Over to you, Melissa.

Remarks by Melissa Upreti*

Thank you very much, Mindy. I hope everyone can hear me. Good afternoon, distinguished co-panelists and everyone in the audience as well as online. It is an absolute pleasure to be with you today, and I would like to give Aziza special thanks for inviting me to join the discussion.

I am going to say a few words from a global perspective because, as a member of the UN Working Group on Discrimination Against Women and Girls, that is my vantage point right now, and let me emphasize at the outset that I am merely scratching the surface here.

Over the years, what we have seen is that the human rights dimensions of abortion have been clearly established under international law with denial of access to abortion, whether through restrictions, including criminal bans or practical barriers, being recognized as implicating a broad range of human rights guaranteed across numerous treaties that cover civil, political, economic, and social rights, as well as those that specifically address discrimination against women, racial discrimination, and also torture. Clear evidence of this can be found in the work of treaty monitoring bodies and special procedures like my mandate, which is with the Human Rights Council. These are both important mechanisms for promoting compliance with international human rights law and also for promoting accountability.

Now, these bodies have increasingly recognized the harms caused by abortion bans and restrictions not only to women's health but to, for example, their economic empowerment and participation in political and public life as well as the harm caused by abortion stigma and the disproportionate impact of restrictions and bans on those who are most socioeconomically marginalized. These bodies have articulated the obligations of states to prevent and address the harms and violations of rights caused by restrictions and bans; to remove barriers, including physical, informational barriers, those arising from stigma and prejudice as well as economic barriers; and to

* UN Special Procedures, Human Rights Council.

fulfill the positive obligations to ensure the availability, accessibility, affordability, and acceptability of abortion services. Criminal bans on abortion and denial of access to abortion have been recognized as discriminatory.

My mandate, the Working Group on Discrimination Against Women and Girls, recognizes the right to abortion as a matter of women's autonomy and agency, without which substantive equality cannot be achieved. We have repeatedly, through our work, emphasized the denial of access to abortion and criminal bans, that they relate to issues of power, and dealing with them requires transformative legal measures to address unequal power relations and structures that underlie systemic sex and gender-based discrimination and the subordinate legal status of women.

Under international law, through the work of these bodies, as well as other bodies—and there are too many to name right now, but suffice it to say that they have clearly recognized that—many of them have recognized that unsafe abortion and forced pregnancy constitute forms of gender-based violence, and calls for decriminalization of abortion have become stronger and more unanimous.

International human rights law is dynamic in nature, and it continues to be informed and shaped by the female experience. This is something that we did not have seventy-five years ago when the Universal Declaration of Human Rights was adopted, and these positive changes in international human rights law reflect the tireless efforts of feminist activists and movements from around the world that have actively engaged with the international human rights system through the processes available and the mechanisms offered by the UN and also with their own governments to strengthen these norms by making them more responsive to the specific needs of women and to bring women under the protection of international law.

There have been many more developments, and these are just a few examples, and they have run in parallel and in many ways contributed to the general global trend toward liberalization of domestic abortion laws and the increasing calls for decriminalization.

There are still a few countries where not much has changed, and opposition to abortion law reform has become even more entrenched. In others, where abortion rights have been curtailed or even revoked in blatant violation of international law, things are indeed moving backward. Importantly, it is worth noting that international norms have also helped shape regional human rights standards on women's rights and abortion more specifically. I would like to emphasize that it is important to have strong regional standards as they can be used to both bring about change in accountability at the national level and also help resist the political backlash against abortion, which is part of the backlash against sexual and reproductive health and rights in key global spaces.

Very quickly, before I end, in terms of what has not changed, I will highlight two things. First of all, there are many countries that still have penal provisions on abortion, which is really harmful and suggests the prevalence of ongoing violations. Penal provisions are being used to prosecute women and girls. These provisions stigmatize abortion, even where abortion is legal on certain grounds, giving rise to many practical barriers. It basically leads to situations where abortion is legal but not accessible in practice, which is still all too common.

And, finally, the politicization of abortion, led by highly organized ideological opponents of women's rights and gender equality, has not changed. In fact, it has become even more intense. These same ideological actors who use the issue of abortion to oppose sexual and reproductive health and rights more broadly, at both the international and national levels, are behind many of the rollbacks of women's rights and current threats to gender equality, which we are seeing today.

Mindy Roseman

Thank you, Melissa. Over to you, Rebecca.

Remarks by Rebecca Cook*

Thank you, Mindy, and thanks to the co-panelists and for those who have organized this meeting. What I will do in my brief remarks is to respond to the question:

> what international norms can help build the standards necessary to facilitate access to abortion through the informal sector?

We know that many people, especially those who have limited or no access to health care, find abortion services primarily through the informal health sector.

In answering this question, we might first examine the World Health Organization's Abortion Care Guideline (WHO, 2022). For starters, the WHO Guideline explains what the evidence shows about ensuring availability, accessibility, acceptability, and quality of abortion services, including self-managed abortion, and the importance of decriminalization.

The Guideline's Self-Management Recommendation 50 regarding medical abortion at <12 weeks (using the combination of mifepristone plus misoprostol or using misoprostol alone) calls for "… the option of self-management of the medical abortion process in whole or any of the three component parts of the process:

- self-assessment of eligibility (determining pregnancy duration; ruling out contraindications)
- self-administration of abortion medicines outside the health facility and without the direct supervision of a trained health worker, and management of the abortion process
- self- assessment of the success of the abortion."

The Guideline explains that one of the important considerations for implementation of this Recommendation is that individuals "must have access to accurate information about the self-management process as well as other options available in their local context, to enable informed decision making on whether to self-manage all or parts of the process."

The Guideline's Law and Policy Recommendation 1 calls for "the full decriminalization of abortion." Decriminalization requires that there should be no criminal penalties for having or assisting with abortion, providing information on abortion, and providing abortion itself. Two recent cases of those who have assisted individuals in self-managing abortion suggest that there is lots to be done to apply the norms of the WHO Abortion Care Guideline. They include: the convictions of Justyna in Poland who assisted a woman in an abusive relationship to access medication abortion, and the conviction of a mother in the British Virgin Islands for assisting her adolescent daughter to obtain medication abortion.

These Recommendations of the WHO Abortion Care Guideline provide significant normative structures for facilitating access to medication abortion through the informal sector, which is essential for those who have limited or no access to abortion through the formal sector.

Mindy Roseman

Alejandra, please.

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Remarks by Alejandra Cardenas Ceron*

Thank you. I was asked to talk about how international law has impacted national abortion laws in Africa, and it is actually a region I love to talk about, because I think that here in the Americas, we only talk about the Americas, and Africa is a very interesting region, because as opposed to what has happened here in the United States and in other countries in this continent, since 1994, when the Programme of Action of the Cairo Conference was adopted, there have been zero regressions on that continent in terms of abortion laws. Everything has been progress from that moment on.

Right after the Programme of Action was adopted, there were a series of high-level meetings in which legislators and high government officials came together, and they drafted model legislation for the protection of reproductive health. They basically copied a lot of the Programme of Action, a lot of what has been agreed on during ICPD, and other international human rights instruments. After that, six countries liberalized their abortion laws, the most restrictive being Mali. South Africa had a system of access based on grounds and moved to an on-request system.

Then other crucial moments came in 2003 and then 2005 when the Maputo Protocol was adopted. It started being implemented, and as you probably have heard, the Maputo Protocol is the first regional instrument, and so far the only one, that explicitly talks about reproductive rights as human rights, and it explicitly says that abortion should be guaranteed by states on this—at least on these narrow circumstances of life and health, and it actually explicitly says mental health as well as rape and incest. After that—and you can trace this to the countries that were a part of the creation of this, the adoption of this instrument—thirteen more countries moved to liberalize their abortion laws, and actually three of them—Ethiopia, Eswatini (Swaziland), and Mauritius—explicitly amended their abortion laws to include an exception for mental health risks.

Five more countries moved from total bans after that to a system of grounds that included the typical grounds of life, health, rape/incest, and malformations, and one country went so far as to move from a total ban to a system of on-request, which was São Tomé and Principe.

Then, in 2016, another very critical moment occurred when the African Human Rights Commission launched a campaign to decriminalize abortion, and it is the only human rights body that has ever explicitly came out on a campaign calling states to decriminalize abortion. After that campaign was launched, eight more countries further liberalized their abortion laws, the least progressive being Côte d'Ivoire, which added a rape exception, to Benin and Equatorial Guinea that moved from grounds to a system of on-request with just some gestational limits.

Three countries broadened the scope of their health exception, one to add the concept of minors in distress. That was in Gabon, 2019, and in that same year and the year after, Angola and Rwanda also broadened the scope of what they understood to be the health exception, to include mental health, and in the case of Rwanda, to really embrace the definition of health under international law that goes beyond mental health and, of course, has this whole concept of well-being.

It is very interesting because, if you look at the trends from the almost thirty years that have happened since Cairo, the region that actually has made more progress has been Africa, consistently, and more countries than any other region have moved to a system of on-request with gestational limits that differ. If you go to each one of these, most of them have actually been amendments to either constitutions or just penal codes. They have been basically political processes that have taken place in these countries. They have all been very grounded in the discussions on their commitments of these states in regard to international law and specifically on regional human rights law.

* Center for Reproductive Rights.

Mindy Roseman

Thanks, Alejandra. Alicia.

Remarks by Alicia Yamin*

Thanks very much, Mindy, and I would also like to thank Aziza and the organizers and my co-panelists for putting this really timely panel together and make a pitch for yet another book. Mary Ziegler has edited the *Edward Elgar Research Handbook on International Abortion Law*, which is available for pre-order and about to come out in which I have a chapter, but there are lots of other people who have wonderful chapters.

I will be talking about Latin America, and the story that most of you probably have heard is the story of the Green Wave, women and everybody mobilizing massively in public, first in Argentina and then later spreading across the region. The Green Wave is not something that really just started, although Argentina legalized abortion through fourteen weeks in 2020, and that is called "voluntary interruption of pregnancy," and thereafter, it is "legal interruption of pregnancy" under a regime of exceptions. In 2021, the Mexican Supreme Court—along with that legislation that Argentina passed—passed what is called the "Thousand Days Laws," which is a real recognition of reproductive justice, that it is about if, when, and how persons who gestate people in the world want to have kids, not just about reproductive autonomy. It provides well baby care, et cetera.

In 2021, the Mexican Supreme Court unanimously said that full criminalization of abortion violates both constitutional law and international law. Mexico is a federalist state. Now it is up to state legislatures across Mexico to decriminalize. I believe eleven have done so thus far.

In February of 2022, the Colombian Constitutional Court also decriminalized through twenty-four weeks. That was a trickier decision. It was five to four, and now public policies need to be created. Budgets need to be created, and Colombia is going through a contentious process of reforming its health system. There are different things at play in all of these countries, and I should mention that Central America is a very different picture.

International law had a lot to do with all of this activity really going back many years from reformed constitutions that encoded constitutional blocks that I think we will hear about in the plenary tonight, where handfuls of international treaties were directly embedded in the constitution to interpret the text alongside other norms in the constitution, and that has helped dramatically, especially with the right to health.

One of the things we see over these years is an elaboration, a fuller understanding of what health rights mean and what a gendered understanding of health systems means for obligating the provision of abortion care services.

Mindy Roseman

Thank you so much. Next up, we have Jayshree Satpute. Let me introduce you first. I neglected to introduce you. I feel terrible. She is joining us virtually from India. She is the Director and Co-founder of Nazdeek. A legal empowerment organization committed to bringing access to justice closer to marginalized communities in India. She is also a human rights lawyer who has advocated before the Supreme Court of India and various high courts. Over to you, Jayshree. Thank you so much.

* Harvard Law School.

Remarks by Jayshree Satpute*

Thank you. Thank you for the introduction. Thank you for having me on the panel. Special thanks to Aziza, organizers, and my fellow esteemed panel members. Melissa, what you have described, I completely agree, and now I am going to go into an Indian experience, which is going to resonate with what other panelists have already spoken about.

In India, abortion is being criminalized under Indian penal codes, and there are certain exceptions that are created within the law. The Medical Termination of Pregnancy Act came about in 1971, which legalized abortion in certain conditions based on medical opinion, and it is not a right.

It has been fifty-three years since abortion was criminalized and the law has been amended twice, but the law still does not speak the rights language. It keeps the service provider at the center of the law instead of the pregnant person, but thankfully, it does not keep the fetus at the center of the law yet.

There is a recent Supreme Court decision, which came out in September 2022, that further expanded the scope of the law by including unmarried single women as having a right to access safe abortion. It is a progressive decision, but there are still several gaps that need to be filled out. This decision has also harmonized some complications that the Medical Termination of Pregnancy Act had with other laws like the Preconception and Prenatal Diagnosis Technique Act—PCPNDT Act—and the laws related to child sex abuse.

In India, because female feticide has been a massive issue, child marriage has been a massive issue, so sex determination has been banned under various laws. There were some issues that are not harmonized, and the Supreme Court decision has made an attempt to do so.

However, there is still a lot that needs to be done, because while the judgment is prescriptive and gives specific direction, the individual states—India is divided into various states—need to take steps and issue detailed guidelines to service providers so that there is clarity, because now there is a lot of confusion. Several cases have been taken to court where access to abortion has been denied for one or the other reason, and the confusion is do the service providers need a court decision to provide this service. There needs to be this clarity issued and on various other issues by the state government themselves.

What has now happened is that because there have been a lot of cases since 2016 that have gone to court where individual persons have been seeking permission for termination of pregnancy. There is a lot of conflicting jurisprudence from different courts, and there is a greater lack of clarity on the ground on whether medical termination of pregnancy (MTP) can be provided without a court order or not. Therefore, the access, while positive jurisprudence should be increased, it has actually been curtailed due to lack of clarity.

I am a law practitioner, and yes, the international law has a persuasive value before the Indian courts, and we have time and again used international law and progressive decisions from courts in other jurisdictions to convince courts here to make progressive decisions on especially the issues of abortion and reproductive health. Thank you.

Mindy Roseman

Thank you, Jayshree. Now we have our second question, and I am going to ask the panelists to weigh in on it in reverse order. Jayshree, you will be first up, and, Melissa, you will be last, if you can bear with us.

* Human Rights Lawyer.

To follow on, we have heard about the different ways that international law has moved the needle on abortion access, whether through advocacy or embedded in constitutions to varying aspects, and I just wonder if you all could reflect on how you would like to see international norms developed to be thicker and be more effective in facilitating access to abortion, a full range of reproductive and sexual health services, gender equality, and so on. Some of the things that I personally am thinking about are whether the language and rights claiming around bodily autonomy has been useful or whether there is an appetite to recognize abortion as a human right, full stop, or whether prohibiting the use of criminal law in the regulation of abortion is achievable and to what consequence. Finally, we have not mentioned Voldemort, the United States, but if anybody has any thoughts about the United States in this regard, I am sure we would all love to hear and open up the question. But let us not have the United States dominate our responses. Jayshree, please.

Jayshree Satpute

Of course, the United States is dominating this issue, and what is happening in the United States has been impacting other countries as well. The right to abortion has been proved contentious globally after the U.S. Supreme Court overturned, in June, the landmark *Roe v. Wade* decision, as we all know. How has it impacted here? There was a March for Life protest, which was organized, and the various stages of fetuses was shown. It was sponsored by the church. This has never happened before in India. "Never" is a strong word, but I was not aware of such a protest in India.

Then there is recently a case filed before the Kerala High Court by an organization, Cry for Life, challenging provisions of MTP, and the High Court has dismissed that petition, while the Supreme Court has issued a notice. I think what happened at the international level and where the narrative is going, what discussions are happening certainly impacts how the local corporations look at the issue and what actions are taken on the ground by different stakeholders.

Coming to reproductive health, I would say that the Millenium Development Goals (MDGs), the Sustainable Development Goals (SDGs), really push governments to make progress with policies to support pregnant women who struggle with basic nutrition, for quality health services. Because of the targets that were set and the accountability mechanism that came with it, we found that in India, the government had put together several policies and had attempted to reach out to women in the rural most areas.

But I think this accountability needs to be stronger because we saw that the goal that all the governments were committed to at the end of MDGs were not achieved, and certainly, without having that conversation, we moved to SDGs with new goals.

As I said, as a legal practitioner, international norms and the language used in international treaties and documents really help us to argue these rights before the domestic courts, and international norms has a high persuasive value. It gives a very concrete document to refer to, to base our arguments on, and seek accountability at the local level from the governments for their commitments that are made at the international level.

Mindy Roseman

Thank you. Ali.

Alicia Yamin

I would take your question as two questions. One is conceptual, about how to conceptualize it, and one is more strategic and pragmatic. First, I should say, I really believe that the relationship is a

recursive one between international and national law, deeply recursive. The overlapping consensus we see on a right to life with dignity or a right to sexual and reproductive health or a right to be free of gender-based violence is one that has been built iteratively over time with examples from countries.

Reproductive autonomy is way too narrow, way too individualistic, but a right to abortion may also be not all that strategic. One of the things from Latin America that has been extremely effective is the framing of freedom from structural violence, along with many other forms of violence. The region is plagued by femicide, by lots of physical, sexual, and gender-based violence, but also criminal violence, economic violence, environmental violence, and political violence. To frame it as part of that effort of freedom from violence has been quite extraordinarily powerful and mobilizing and has allowed feminists to join with other movements, like the NiUnaMenos, which is the movement against femicide and gender-based violence, like labor unions that understand it as violently keeping women out of the workforce, keeping them out of being full members of the economy. It is a powerful framing.

Perhaps because I have worked on health for so long, the idea that health systems are not technical apparatuses but core social institutions that can mitigate exclusion and discrimination in the overall society or enhance inclusion and equality and dignity has been quite powerful throughout Latin America, and that gendered understanding of health systems that I mentioned before has been quite compelling. I would rather see abortion embedded in reproductive justice, as it has been in Argentina, tied to socioeconomic concerns and structures, which are a huge issue in the region but also internationally, and we know that concerns over economic precarity are transformed by the antis into these imaginary demons of who is using what bathroom and women killing babies. I would like to see it be more broadly tied to structural issues.

Mindy Roseman

Amen. Alejandra.

Alejandra Cardenas Ceron

Thank you. I wholeheartedly agree with that. I think we need to stop seeing abortion in isolation of everything that really ends up impacting your autonomy as a human being to make decisions about your body, and that it is touched by where you can access water, where you can access education. I wholeheartedly agree with that.

But I am going to make a point that is boring because it is more technical. I would like to make a point about abortion jurisprudence. If you look at the case law, at least of the UN treaty monitoring bodies, what you are going to see is that we went from a series of cases in which they were talking about good access to legal abortion to cases in which they started to get more into whether access to abortion is a right, not just whether the state had already decided that it was legal and whether there had been good access in terms of an effective legal remedy or the clarity of the scope of the law.

The first time they did, it was the CEDAW committee in that case against Peru when they went a little further and they said, "You should amend your legal framework and allow for abortion in cases of rape." Then the two cases that the Human Rights Committee issued in 2016 and 2017 against Ireland in which they said, "Okay. You should amend your legal framework, even if you need to amend your constitution," and they did talk about access to abortion without qualifying in the orders they gave to the state that it needed to be an access in terms of a number of grounds for extreme cases.

You can see it more and more in the Human Rights Committee, the CEDAW Committee, the Children's Rights Committee, and the Disability Rights Committee, that they are starting to be

more vocal and unified in asking for states to decriminalize abortion. I try to be very careful and intentional when I use that word, because we use that word to mean liberalization, not real decriminalization. Only two countries in the world have actually decriminalized abortion. This is all very important that they are finally starting to say decriminalize abortion.

But, at the same time that they are saying that, they are asking for states to provide access in a very narrow set of cases. It is not the same. There is a first step that I do think is the right step, which is talking about decriminalizing abortion. Abortion does not belong in penal codes. It should be part of health care systems.

The scope of the state's obligations is to make sure that people have access to abortion. That is the next frontier, and I think that if all these human rights bodies want to keep using the proportionality test, which they all use to resolve abortion cases, then my hope is that they will also resolve the last part of it, which is who is going to actually make that decision in each individual case or where that balance is going, and it should be a person whose body is at stake and whose life is at stake.

That is where I hope we are moving toward in terms of legal standards. Thank you.

Mindy Roseman

Rebecca.

Rebecca Cook

To reinforce some of the previous speakers with whom I totally agree, the two norms that I think need to be thickened and that would help in terms of achieving reproductive justice are norms against intersectional discrimination and the norms around women's rights of conscience.

Let me explain. In terms of the norms against intersectional discrimination, here I draw from the work of Shreya Atrey, who did a brilliant analysis of the Human Rights Committee's jurisprudence on discrimination in the *Nordic Journal of Human Rights*. She has updated that for a book that I have edited, *Frontiers of Gender Equality*, that is forthcoming in the UPenn Press Human Rights series that Bert Lockwood runs.

In that article, Shreya talks about how you do intersectionality, and she uses this specific case of *LNP v. Argentina*, an Indigenous woman in Argentina who was raped, and they found for that woman. But they found for that woman on intersectional discrimination. Why is this important? They made space for specific explanations of the nature of intersectional discrimination based upon multiple grounds. The specific instances that woman faced were on grounds of her indigeneity. There was a lack of respect for her rights as a patient to make free and informed decisions. There was a lack of respect in terms of the inordinate delay that she experienced, and finally, there was a lack of appeal procedures for that woman. Professor Atrey highlights that this case is one of the high watermarks of the Human Rights Committee's work on intersectional discrimination.

We still need to do far more. Currently pending before the Inter-American Court on Human Rights is the *Beatriz* case on which many people on this panel have been involved. *Beatriz* in the Inter-American Commission decision on that case, they talked about intersectional discrimination but in a very limited way. They talked about intersectional discrimination on grounds of her gender and on grounds of her poverty, but they omitted dealing with the form of discrimination on grounds of her pregnant status, on grounds of her health status. She had an underlying health condition, which could have also been characterized as a disability, so on grounds of disability, and on grounds of her status as a patient, her denial of her right to free and informed decision making. Stay tuned for the Court's decision in the *Beatriz* case against El Salvador to see how well that Court addresses the multiple grounds of intersectional discrimination and how well they make space for

the specific explanations of the nature of the intersectional discrimination. Those are a few thoughts on thickening the norm against intersectional discrimination.

I want to touch briefly on the right of conscience. It is an issue like mushrooms, popping up all over the world, but how is it characterized? It is characterized as the right of conscientious objection of providers. This lopsided view of the right of conscience ignores that women might have a right of conscience, the ability to call their souls their own, picking up on George Bernard Shaw's characterization of the right.

Professor Yamin mentioned the Colombian 2022 decision. Yes, a very significant decision, but it was significant for many reasons, and one of the reasons is that it accorded women their rights of conscience.

Let me take you back historically to the *McGee* decision in Ireland in the 1970s. Mrs. McGee, a wife of a fisherman, argued for access to contraception on grounds of her right of conscience. She argued it on secular grounds, not on religious grounds. The court did rule for her on grounds of privacy, but they threw out her right of conscience. They did not think women had conscience. They completely ignored this claim. This decision was rewritten by Professor Máiréad Enright. Her rewritten decision is brilliant. This feminist rewriting phenomenon is popping up all over the world: there is rewriting in Canada, in the UK, and in India—where scholars and practitioners are rewriting decisions the way they would like the court to reason. Máiréad Enright rewrote the *McGee* decision and accorded Mrs. McGee her right of conscience. Think where we would be today if Mrs. McGee had been accorded her right of conscience back in the 1970s. The issue of the right of conscience would not have been captured by those opposed to abortion, but rather recognized as a right that should be accorded to all individuals, women included. The right of conscience and the norms against intersectional discrimination, need thickening. Thank you.

Mindy Roseman

Thanks, Rebecca. And over to you, Melissa.

Melissa Upreti

Thank you, Mindy, and thanks to all the co-panelists. I want to build and expand a little, and I will not repeat anything that has been said because I think some excellent points have been made. But I will speak more from a pragmatic perspective as to how a human rights-based approach can perhaps enrich everyone's work going forward.

Clearly, the role of human rights norms in shaping legal and policy transformations relating to abortion law reform has been tremendous, and I think many illustrations have been provided today. Now what is important to understand is that we can derive crucial lessons from all of these examples.

There are too many countries to name, although my co-panelists did name a few, but I think in most regions, there have been pretty important shifts and gains because of the use of human rights-based approach. For example, where human rights-based fact finding and analysis has been used to actually expose, document, and name violations linked to the denial of abortion access in order to challenge restrictions, I think that work has been crucial.

Human rights norms and principles have been incorporated into the premise and key legal provisions of new legislation. Similarly, human rights standards and the articulation of state obligations have been used in strategic litigation to frame issues and in the formulation of specific claims, and human rights analysis has been used to reframe abortion debates and shift the public discourse; for example, to shift it from a debate on morality to a discussion about legal rights.

Concluding observations and recommendations issued by treaty monitoring bodies, special procedures, as well as some of the jurisprudence referred to earlier have been used to call for reform and the decriminalization of abortion by civil society. I think whatever comes out of the human rights system can and is often strategically used by civil society. In fact, these outputs are often a result of civil society utilizing these mechanisms to produce these results. And human rights institutions have also utilized what is come out of the system to push for reform and decriminalization.

Human rights norms and principles and arguments have also been used very effectively to counter the arguments that are being presented by ideological opponents of sexual reproductive rights and specifically of abortion and also to build movements, to galvanize others to join in the actual creation of coalitions.

I would like to add here that mechanisms such as special procedures and treaty monitoring bodies have positively influenced, in many ways, through their own working methods, the adoption of new legislation, law reform processes, court decisions at the domestic level through a range of interventions, including by participating in parliamentary hearings, submitting amicus briefs, as well as through the communications procedure, which is a UN specific term used to describe official letters from mandate holders to member states as well as country missions, special inquiries, and periodic reviews, which happen every four years. Their influence can be seen across regions from countries like South Korea to Nepal, Argentina, as well as in the United States, believe it or not, with all the retrogressions. New York State introduced a reproductive health law that has some stellar provisions and also decriminalizes abortion, and so there is a model right there. The working group actually was invited to testify in support of that draft when it was in a draft bill stage. There has been wonderful utilization of international mechanisms and procedures and arguments.

To give you some examples of how international mechanisms can contribute to law reform and address barriers at the national level, my working group had conducted a country visit to the United States in 2016 and noted key issues and made recommendations. There is a report that anyone can access online. We have sent formal letters to the United States government on many occasions, and also, we met with diplomats in Geneva to raise issues with them. We submitted an amicus brief in the *Dobbs* case, and we also issued public statements. We issued a very strong public statement the day the *Dobbs* decision came out.

Regarding the question about norms and which norms need to thicken, I think a few key points have already been made, which I totally agree with, and I would like to focus now on the possibilities for utilizing human rights-based arguments and strategies even more frequently to achieve these goals of strengthening the norms at the national as well as the international level. This can really be done by integrating human rights principles and standards in legal research and the analysis of current issues and trends and using what has been articulated in international law to outline the obligations of duty bearers and by incorporating human rights arguments and legal strategies aimed at dismantling discriminatory laws.

As noted previously, we know it is a fact that women are not a monolithic group, and the benefits of progress that have been made in securing the recognition of women's rights as human rights have not been felt evenly. Similarly, the consequences of setbacks and regression are felt even more acutely by these groups. There is more that needs to be done in terms of taking an intersectional approach and strengthening that approach. I want to emphasize this point, not just because it is important in and of itself, as already highlighted by one of the panelists, but there is a very strong political pushback against the very concept of gender but also against the approach of intersectionality that is being fueled by opponents of women's rights and gender equality, because of the importance of our work.

At the end of the day, the effective application of human rights really derives from its strategic and correct use. I do not think we should ask what international law can offer us, but actually it is up

to us to really understand how best to utilize international law as a tool. It is not a magic bullet for any of our problems, but it is something we can use. It begins with legal education and making sure that we are able to better understand the normative content of international human rights law and how mechanisms work, and we need to equip lawyers with the right knowledge and skills. This has to be followed by practical opportunities to engage in the design and implementation of human rights-based strategies.

I would like to note the role of civil society in propelling these strategies, designing these strategies, and implementing them, as well as law school clinics and law firms that provide pro bono support. We as a mandate have also benefited greatly from the support that we have received from all three. It can be further shaped and made more effective by comparative learning and transnational engagement where we learn from other movements, and I think that is what this discussion has also helped us do today to understand how international law is being used as a tool and how a human rights-based approach can be used as a strategy. Context is very important. Human rights law does not provide a one-size-fits-all solution for all of our problems. We must determine how we shall use these standards and norms, while staying true to them, but also based on the context that we operate in.

Mindy Roseman

Thank you so much, Melissa, and I thank all the panelists. I feel like we barely got the conversation off the ground.