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## Overturing *Roe v Wade*: reproducing injustice

While the impact of overturning *Roe* will be most acutely felt in the US, its repercussions will be felt globally, writes Nina Sun

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On Friday 24 June, the US Supreme Court dealt a devastating blow to reproductive justice. In *Dobbs v. Jackson*, the Supreme Court reversed *Roe v. Wade*, which guaranteed women and pregnant people a constitutional right to abortion. In doing so, the Court turned its back to medical evidence, public health, and human rights. Access to abortion is now under the purview of individual states and governed by a patchwork of abortion laws, with some states banning abortion in all instances.<sup>1</sup>

A core concern from the *Dobbs* decision is how criminal penalties might be used to enforce restrictive abortion laws. Thirteen states are poised to severely restrict abortions through “trigger bans” (or laws that go into effect after the fall of *Roe*). Some of these laws include penalties for providers that allow up to 10 years imprisonment.<sup>2</sup> Criminalising providers will cause a “chilling effect” on health services, putting physicians and other medical professionals at risk of criminal prosecution, even in instances of obstetric emergencies and post abortion care. More states are likely to enact similar restrictions—model legislation from the anti-abortion movement explicitly relies on criminal penalties to restrict access to abortion, calling for criminalisation of individuals who provide guidance on self-administered abortions or any other method of obtaining an abortion, as well as for “aiding and abetting” a woman in obtaining the procedure. Criminalising abortion is in addition to other instances where women are criminalised and prosecuted for pregnancy outcomes, including charges brought under manslaughter, homicide and “chemical endangerment” laws.<sup>3</sup>

The toll of the *Dobbs* decision will be borne by women on low incomes and women from ethnic minorities. Estimates on the impact of an abortion ban suggest that there could be a 21% increase in mortality overall and a 33% increase for Black women.<sup>4</sup> This is against a backdrop where the maternal mortality rate of Black women is 2.9 times higher than for White women, with a statistically significant increase for Black women from 2019 to 2020.<sup>5</sup> These data do not include women being forced to seek unsafe abortions, a leading cause of mortality and morbidity worldwide.<sup>6</sup> Within this context, criminalising abortion not only exacerbates health outcomes for women, but it also feeds into the structural discrimination experienced by ethnic minority communities from over-criminalisation, over-policing and mass incarceration.

While the impact of overturning *Roe* will be most acutely felt in the US, its repercussions will be felt globally. Though US foreign policy around abortion has always been complicated, with administrations

enacting or rescinding the global gag rule, for almost half a century, there had always been a clear domestic standard that abortion was a constitutional right. Movements have referenced this standard in efforts to expand reproductive health and rights worldwide. *Roe* has also been influential in court decisions in other countries that have achieved significant gains in reproductive freedoms. For example, in Kenya, the High Court of Malindi, in affirming that abortion care is a fundamental right under the Kenyan constitution, specifically references and considers key points from *Roe*.<sup>7</sup> By eliminating the constitutional right to abortion, the *Dobbs* decision cripples efforts to protect reproductive health and justice in the US, and strengthens efforts to restrict abortion access globally.

With *Roe*'s reversal and increases in criminalising abortion, the US will follow the footsteps of countries like El Salvador, which has a complete prohibition on abortion. Dozens of women in El Salvador have been criminalised for obstetric emergencies, with some sentenced to 30 years imprisonment.<sup>8</sup> Many of these women are from marginalised, poor communities, with limited formal education. Human rights bodies at both regional and international levels have denounced the criminalisation of abortion as violating government obligations to uphold fundamental rights.<sup>9,10</sup> Criminal penalties for abortion providers, as well as for those seeking essential healthcare, violate the right to health and, ultimately—for many women and girls, the right to life.<sup>11,12</sup>

Alarming, opening the door to abortion criminalisation raises red flags for decriminalisation efforts on other public health related issues. Within the HIV response, for example, public health experts have seen the detrimental impact of punitive and criminal laws on people who use drugs and sex workers. Decades of work with these communities have resulted in global recognition of the need to decriminalise drug use and sex work—both because such laws are often unjustly applied to individuals from low-income, marginalised communities, and because they heighten stigma and worsen health outcomes.<sup>13,14</sup> Turning to criminalisation within the context of abortion undermines these efforts to take an evidence and rights based approach in building more equitable health systems.

As the world faces the new post-*Roe* reality, mitigating the harms of restrictive abortion laws and abortion criminalisation requires a broad coalition of advocates and allies. Fighting for reproductive freedoms necessitates an interdisciplinary approach—one where healthcare providers and public health researchers work closely with communities

and policymakers to craft laws based on medical evidence, that respect individual autonomy, and that improve health outcomes for all. Only then will we have legal environments and health systems that truly protect life.

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