

CERD SHADOW REPORT: SEX-SELECTIVE ABORTION BANS IN THE UNITED STATES AND THEIR DISCRIMINATORY EFFECT ON ASIAN AMERICAN WOMEN

June 2014



[The International Human Rights Clinic](#) at the University of Chicago Law School works for the promotion of social and economic justice in the United States and globally. The Clinic uses international human rights laws and norms as well as other substantive laws and strategies to draw attention to human rights violations and to develop practical solutions to those problems using interdisciplinary and empirical research methodologies. The Clinic faculty and students work on projects in collaboration with non-profit organizations to advance social justice and teach human rights law and advocacy skills.



[National Asian Pacific American Women's Forum](#) (NAPAWF) is the only multi-issue, progressive, community organizing and policy advocacy organization for Asian and Pacific Islander women and girls in the United States. NAPAWF's mission is to build a movement to advance social justice and human rights for Asian & Pacific Islander women and girls.



[Advancing New Standards in Reproductive Health](#) (ANSIRH) works to ensure that reproductive health care and policy are grounded in evidence. ANSIRH's multi-disciplinary team includes clinicians, researchers and scholars in the fields of sociology, demography, anthropology, medicine, nursing, public health and law. ANSIRH is a program of the Bixby Center for Global Reproductive Health at the University of California, San Francisco.

EXECUTIVE SUMMARY

1. In its 2008 Concluding Observations, the Committee on the Elimination of Racial Discrimination enjoined the United States to reduce racial disparities in reproductive healthcare.¹ In recent years, however, laws prohibiting sex-selective abortion have been enacted in several states on the basis of xenophobic stereotypes concerning Asian American women. Though these laws purport to combat gender discrimination, their probable effect will be to reduce access to reproductive healthcare services for Asian American women. This Report requests that the Committee (1) question the United States on the discriminatory effect of laws prohibiting sex-selective abortion and (2) recommend their repeal.
2. Laws banning sex-selective abortion are proliferating in the United States. Eight states have enacted such laws,² and twenty-one states and the United States Congress have considered them in recent years.³ Legislators who sponsor or support the laws claim they are necessary to stop sex selection based on a preference for sons. They claim all Asian American women in the United States are “from ethnic backgrounds that are known to practice sex selection”⁴ and that these women “are exercising sex-selection abortion practices . . . consistent with discriminatory practices common to their country of origin.”⁵ These stereotypes concerning Asian American women are not only harmful but also untrue: a comparison of the overall sex ratios at birth of Asian groups and White Americans born in the United States reveals that Asian groups have *more girls* on average than White Americans.⁶ Empirical evidence thus strongly suggests that Asian American women are not practicing sex selection based on son preference in the United States.
3. The United States must review state laws for compliance with the Convention on the Elimination of Racial Discrimination (CERD) and amend, repeal, or nullify laws determined uncompliant. Laws banning sex-selective abortion do not comply with CERD and so should be repealed for the following reasons. First, the laws interfere with the equal enjoyment of the right to health protected by Article 5(e)(iv). The right to health requires States Parties to “take measures to ensure that legal and safe abortion services are available, accessible, and of good quality.”⁷ Sex-selective abortion bans hinder Asian American women’s access to reproductive health services by encouraging medical professionals to deny them care so as to avoid civil or criminal liability. Second, the laws violate various provisions of Article 2 because they tend to strengthen racial division and perpetuate racial discrimination by promoting harmful and inaccurate racial stereotypes regarding Asian American women in the United States.

THE ISSUE: SEX-SELECTIVE ABORTION BANS IN THE UNITED STATES

4. Sex selection is the practice of attempting to control the sex of one’s offspring in order to achieve a desired sex. One method of sex selection is sex-selective abortion. States within the United States are passing laws prohibiting sex-selective abortion at an accelerating rate. To date, eight states have enacted such statutes: Illinois (1984), Pennsylvania (1989), Oklahoma (2010), Arizona (2011), Kansas (2013), North Carolina (2013), North Dakota (2013), and South Dakota (2014).⁸ Moreover, twenty-one states and the federal government have considered such laws since 2009.⁹ This Report does not advocate sex selection—which is a gender injustice that significantly impacts the status of women around the world—but it does argue that, in the United States, sex-selective abortion bans are *discriminatory* and *unnecessary*.

Sex-Selective Abortion Bans Discriminate Against Asian American Women

5. Legislators who sponsor sex-selective abortion bans claim they are necessary to stop the practice of sex selection based on son preference. For example, a federal bill that would ban sex-selective abortion throughout the United States claims that “some Americans [i.e., Asian Americans] are exercising sex-selection abortion practices within the United States consistent with discriminatory practices common to their country of origin, or the country to which they trace their ancestry.”¹⁰ Likewise, during legislative debates in South Dakota, testimony in support of the state’s ban on sex-selective abortion suggested that all Asian Americans in South Dakota are “from ethnic backgrounds that are known to practice sex selection.”¹¹
6. Sex-selective abortion bans encourage racial profiling in doctors’ offices. The bans generally impose criminal and civil penalties on medical professionals who perform an abortion sought based on the sex of the fetus.¹² As a result, they force medical professionals to scrutinize women’s motives for terminating a pregnancy. The difficulty in determining the motives for terminating a pregnancy may force medical professionals to deny reproductive health services to women in order to avoid liability under these laws. Medical professionals may be more likely to deny care to Asian American women in particular, since the laws’ legislative histories explicitly single out Asian communities as groups that allegedly seek sex-selective abortions.
7. Some enacted laws impose affirmative obligations on medical providers. For instance, the law in South Dakota requires physicians to actively “inquire into whether the pregnant mother knows the sex of her unborn child and if so, whether the mother is seeking an abortion due to the sex of the unborn child.”¹³ Intrusive laws such as this increase medical professionals’ exposure to legal liability and further encourage them to deny care to Asian American women. These laws are also problematic because some Asian American women have limited English proficiency and may be misunderstood.
8. Relatedly, sex-selective abortion bans strengthen anti-immigrant sentiment and racial division. For example, testimony before the United States Congress imputed a pernicious male bias to all persons of Asian descent:

While it is difficult to say with any exactitude how many sex-selection abortions take place in the U.S. each year, the number is not trivial. . . . [W]e are talking about communities consisting of 3.9 million Chinese Americans, 2.8 million . . . Asian Indians, [and] 1.6 million Korean Americans[.] [T]he highly skewed sex ratios found in census surveys suggest among these groups alone, that tens of thousands of unborn girls have been eliminated.¹⁴

This and other statements made in support of sex-selective abortion bans propagate xenophobic stereotypes that fortify anti-immigrant sentiment and racial division.

Sex-Selective Abortion Bans Are Unnecessary in the United States

9. The standard range of male to female sex ratios at birth is 1.03 to 1.07.¹⁵ Sex ratios at birth above this range are thought to provide evidence of sex selection based on a preference for sons. Foreign-born Chinese, Indians, and Koreans in the United States are singled out by supporters of sex-selective abortion bans as groups that practice sex selection based on son preference.¹⁶ If this were true, they would have sex ratios at birth above the standard range. However, the sex ratios at birth for foreign-born Chinese, Indians, and Koreans in the United States are within or

below the standard range at 1.05, 1.02, and 1.04, respectively.¹⁷ The sex ratio at birth for the entire population in the United States is 1.05.¹⁸ Foreign-born Chinese, Indian, and Korean families are therefore having *as many or more girls* than the average family in the United States. Moreover, recent polling data reveals that approximately 90% of Chinese, Indian, and Korean Americans would not care whether their only child was a boy or a girl.¹⁹

2008 CONCLUDING OBSERVATIONS: SEX-SELECTIVE ABORTION BANS IMPEDE A PREVIOUSLY SET GOAL

10. In its 2008 Concluding Observations, the Committee enjoined the United States to reduce racial disparities in reproductive healthcare. In paragraph 33, it stated: “The Committee regrets that despite the efforts of the State party, wide racial disparities continue to exist in the field of sexual and reproductive health, particularly with regard to the high maternal and infant mortality rates among women and children belonging to racial, ethnic and national minorities.”²⁰ Sex-selective abortion bans impede the ability of the United States to address the Committee’s concerns because they inhibit equal enjoyment of the right to health and perpetuate racial discrimination in the area of reproductive health.

THE UNITED STATES’ PERIODIC REPORT FAILS TO ADEQUATELY ADDRESS DISCRIMINATION IN ACCESS TO PRENATAL CARE AND ABORTION SERVICES

11. The United States’ 2013 Periodic Report to the Committee acknowledges that Asian Americans receive “worse [health] care” than Whites.²¹ The United States commits itself in the Report to “improving access to quality [health] care for all, and to reducing and eventually eliminating [] disparities” based on race.²² Toward this end, the United States notes that it has enacted the Affordable Care Act and the Department of Health and Human Services has released the Action Plan to Reduce Racial and Ethnic Health Disparities.²³ However, the 2013 Periodic Report neither addresses sex-selective abortion bans nor speaks directly to continuing racial disparities in women’s access to reproductive health services.

CERD: SEX-SELECTIVE ABORTION BANS INHIBIT EQUAL ENJOYMENT OF THE RIGHT TO HEALTH AND PERPETUATE RACIAL DISCRIMINATION

Article 5: Right to Health

12. Article 5(e)(iv) of CERD requires States Parties to guarantee equal enjoyment of the right to health. This same right is articulated in Article 12 of the International Covenant on Economic, Social, and Cultural Rights.²⁴ The Committee on Economic, Social, and Cultural Rights has stated: “The realization of women’s right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.”²⁵ Moreover, the UN Special Rapporteur on the Right to Health has observed that both criminal and noncriminal restrictions on abortion may violate the right.²⁶ Restrictions on abortion are in tension with the right to health because (1) they contribute to poor health outcomes, since “more unsafe abortions are likely to occur in legal regimes that are more restrictive of abortion,”²⁷ and (2) they “reinforce the stigma that abortion is an objectionable practice,” while other aspects of reproductive healthcare are not subject to similarly restrictive regimes.²⁸

13. Sex-selective abortion bans are in tension with the right to health for the same two reasons identified by the Special Rapporteur. First, sex-selective abortion bans are likely to have a discriminatory effect on Asian American women by reducing their access to reproductive health services (e.g., ultrasounds and abortions), thereby contributing to poor health outcomes. The bans force medical professionals to scrutinize women’s motives for terminating a pregnancy. Since these motives are difficult to discern, medical professionals may deny care to women to avoid liability under the laws. Medical professionals may be still more likely to deny care to Asian American women because the laws’ legislative histories single out Asian American women as a group that allegedly seeks sex-selective abortions.
14. Asian American women may also be less likely to seek reproductive health services as a result of sex-selective abortion bans. If Asian American women believe that medical professionals are likely to suspect them of seeking a sex-selective abortion, they may not seek reproductive health services in the first place. This is especially likely to be the case in states with particularly restrictive laws, such as South Dakota (where physicians are affirmatively obligated to inquire into whether a woman is seeking an abortion due to the sex of the fetus) and Oklahoma (where the spouse, parents, siblings, or former healthcare providers of a woman upon whom an abortion was performed may sue the physician for injunctive relief).²⁹
15. Second, sex-selective abortion bans stigmatize Asian American women. The xenophobic stereotypes propagated by supporters of sex-selective abortion bans may cause medical professionals and others to presume that Asian American women are seeking abortions based on a preference for sons even when they are not in fact doing so. These stereotypes are harmful and empirically false: overall sex ratios at birth among Asian groups in the United States do not show evidence of sex selection based on a preference for sons.³⁰ Moreover, the false imputation of a preference for sons to Asian American women compounds sex-selective abortion bans’ effect on women’s enjoyment of the right to health. As the Special Rapporteur has noted: “The marginalization and vulnerability of women as a result of abortion-related stigma and discrimination perpetuate and intensify violations of the right to health.”³¹

Article 2: Duty to Review State Laws

16. Under Article 1 of CERD, “racial discrimination” is defined to encompass “any distinction, exclusion, restriction or preference based on race . . . which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise . . . of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Though facially neutral, state laws prohibiting sex-selective abortion are restrictions having the effect of impairing Asian American women’s human rights. The legislative histories of the laws make it clear that they are directed toward women of Asian descent. As a result, the laws may disproportionately inhibit Asian American women’s access to reproductive health services: medical professionals may deny care to Asian American women, since legislative histories single out Asian American women as a group that allegedly seeks sex-selective abortions. Moreover, the laws’ legislative histories stigmatize Asian American women by imputing a pernicious male bias to them. Therefore, sex-selective abortion bans constitute racial discrimination under CERD.³²
17. Under Article 2, the United States has a duty to review state laws that are racially discriminatory. Article 2(a)(1) requires the United States to “ensure that all public authorities and public

institutions, national and local, shall act in conformity with th[e] obligation [to engage in no act or practice of racial discrimination].” Similarly, Article 2(1)(c) obliges the United States to “take effective measures to review . . . and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination.” Moreover, the United States Senate explicitly affirmed these obligations to oversee and review state laws when it ratified CERD:

“[T]he United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention.”³³

Sex-selective abortion bans are state laws that are racially discriminatory. The United States therefore has a duty to review them for compliance with CERD.

18. The United States must take affirmative measures to address sex-selective abortion bans for the following reasons. First, the laws are in tension with the United States’ obligation under Article 2(a)(1) to engage in no act or practice of racial discrimination. As noted above, the laws are racially discriminatory because they disproportionately inhibit Asian American women’s access to reproductive health services and because they stigmatize Asian American women. Second, the laws trigger the requirement under Article 2(1)(c) to amend, rescind, or nullify regulations that create or perpetuate racial discrimination. Not only do sex-selective abortion bans create racial discrimination, they also perpetuate it by reinforcing harmful and inaccurate stereotypes about Asian American women. Third, the laws implicate the United States’ obligation under Article 2(1)(e) to “discourage anything which tends to strengthen racial division.” The stereotypes that surround sex-selective abortion bans tend to strengthen racial division by singling out Asian American women and casting them in the role of a dangerous “other.” For these reasons, as well as to address infringements of the right to health described above, the United States must take affirmative measures to address laws banning sex-selective abortion.

RECOMMENDED QUESTIONS AND CONCLUDING OBSERVATIONS

19. Recommended questions:

- (a) What will the United States do to address the discriminatory effect sex-selective abortion bans have on Asian American women in reducing their access to reproductive health services and stigmatizing their use of such services?
- (b) What affirmative measures can the United States take to counteract the harmful stereotypes about persons of Asian descent being propagated at the state level through sex-selective abortion bans?

20. Recommended conclusions:

- (a) The United States should issue a statement condemning sex-selective abortion bans as discriminatory against and harmful to Asian American women, encouraging state

legislatures to repeal their sex-selective abortion bans, and encouraging the United States Congress *not* enact a federal sex-selective abortion ban.

- (b) The United States Congress should take affirmative measures to counteract the harmful stereotypes about persons of Asian descent being propagated at the state level through sex-selective abortion bans, including by allocating funding to organizations working to counteract these stereotypes.
- (c) The United States Congress should enact a resolution stating that it refuses to enact a sex-selective abortion ban due to the discriminatory impact of such a ban on Asian American women, and it should call on state legislatures to do the same.

¹ U.N. Comm. on the Elimination of Racial Discrimination, *Concluding Observations of the Committee: United States of America*, ¶ 33, CERD/C/USA/CO/6 (Feb. 2008) [hereinafter *Concluding Observations*].

² See ARIZ. REV. STAT. § 13-3603.02 (2013); 720 ILL. COMP. STAT. § 510/6-8 (2013); KAN. STAT. § 65-6726 (2013); N.C. GEN. STAT. § 90-21.121 (2013); N.D. CENT. CODE § 14-02.1-04.1 (2013); OKLA. STAT. TIT. 63, § 1-731.2 (2013); 18 PA. CONS. STAT. § 3204 (2013); H.B. 1162, 89th Leg., Reg. Sess. (S.D. 2014) (enacted).

³ United States Congress, *see, e.g.*, Prenatal Nondiscrimination Act of 2013, H.R. 447 and S. 138, 113th Cong. (2013); California, A.B. 2336, 2013–2104 Leg., Reg. Sess. (Cal. 2014); Colorado, *see, e.g.*, H.B. 1131 and S.B. 56, 69th Gen. Assemb., Reg. Sess. (Colo. 2013); Florida, *see, e.g.*, H.B. 845 and S.B. 1072, 115th Leg., Reg. Sess. (Fla. 2013); Georgia, H.B. 1155 and S.B. 529, 2009 Leg., Reg. Sess. (Ga. 2010); Iowa, S.F. 13, 85th Gen. Assemb. (Iowa 2014); Idaho, H.B. 693, 60th Leg., Reg. Sess. (Idaho 2010); Indiana, H.B. 1430 and S.B. 183, 118th Gen. Assemb., Reg. Sess. (Ind. 2013); Massachusetts, H.B. 1567, 188th Leg., Reg. Sess. (Mass. 2014); Michigan, *see, e.g.*, H.B. 5731, 96th Leg., Reg. Sess. (Mich. 2012); Minnesota, *see e.g.*, H.F. 1196 and S.F. 1073, 86th Leg., Reg. Sess. (Minn. 2010); Missouri, *see, e.g.*, H.B. 1585, 97th Gen. Assemb., 2d Sess. (Mo. 2014); Mississippi, *see, e.g.*, S.B. 2790, 129th Leg., Reg. Sess. (Miss. 2014); New Jersey, *see, e.g.*, A.B. 2157, 215th Leg., Reg. Sess. (N.J. 2013); New York, *see, e.g.*, A.B. 2533 and S.B. 2286, 237th Leg., Reg. Sess. (N.Y. 2014); Ohio, H.B. 570, 129th Gen. Assemb., Reg. Sess. (Ohio 2012); Oregon, *see, e.g.*, H.B. 4034, 78th Leg. Assemb., Reg. Sess. (Or. 2014); Rhode Island, *see, e.g.*, H.B. 7383 and S.B. 2376, 2014 Leg., Reg. Sess. (R.I. 2014); Texas, *see, e.g.*, H.B. 309, 83d Leg., Reg. Sess. (Tex. 2013); Virginia, *see, e.g.*, H.B. 98, 2014 Leg., Reg. Sess. (Va. 2014); West Virginia, *see, e.g.*, H.B. 2371, 81st Leg., Reg. Sess. (W. Va. 2014); Wisconsin, *see, e.g.*, A.B. 217 and S.B. 201, 101st Leg., Reg. Sess. (Wis. 2014).

⁴ Molly Redden, *GOP Lawmaker: We Need to Ban Sex-Selective Abortions Because of Asian Immigrants—Supporters of a South Dakota Bill Say Asian Americans Don't Value Girls as Much as Boys*, MOTHER JONES (Feb. 5, 2014), <http://www.motherjones.com/politics/2014/02/south-dakota-stace-nelson-ban-sex-based-abortions-because-asian-immigrants> (quoting House Judiciary Committee, South Dakota Public Broadcasting, *available at* <http://sdpb.sd.gov/SDPBPodcast/2014/hju19.mp3>).

⁵ Prenatal Nondiscrimination Act of 2013, H.R. 447, 113th Cong. § 2(a)(1)(F) (2013).

⁶ See International Human Rights Clinic at the University of Chicago Law School, National Asian Pacific American Women's Forum & Advancing New Standards in Reproductive Health, *Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States* 15–18 (May 2014), *available at* <https://ihrclinic.uchicago.edu/page/replacing-myths-facts-sex-selective-abortion-laws-united-states>.

⁷ U.N. Special Rapporteur of the Human Rights Council on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, ¶ 29, U.N. Doc. A/66/254 (Aug. 3, 2011).

⁸ See *supra* note 2.

⁹ See *supra* note 3.

¹⁰ Prenatal Nondiscrimination Act of 2013, H.R. 447, 113th Cong. § 2(a)(1)(F) (2013).

¹¹ Molly Redden, *GOP Lawmaker: We Need to Ban Sex-Selective Abortions Because of Asian Immigrants—Supporters of a South Dakota Bill Say Asian Americans Don't Value Girls as Much as Boys*, MOTHER JONES (Feb. 5, 2014), <http://www.motherjones.com/politics/2014/02/south-dakota-stace-nelson-ban-sex-based-abortions-because-asian-immigrants> (quoting House Judiciary Committee, South Dakota Public Broadcasting, *available at* <http://sdpb.sd.gov/SDPBPodcast/2014/hju19.mp3>).

¹² For a detailed summary of enacted sex-selective abortion bans in the United States, see the appendix to *Replacing Myths with Facts*, *supra* note 6.

¹³ H.B. 1162, 89th Leg., Reg. Sess. (S.D. 2014) (enacted).

¹⁴ *Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011: Hearing before the S. Comm. on the Constitution of the Comm. on the Judiciary*, 112th Cong. 1 (2011) (statement of Steven W. Mosher, President, Population Research Institute), available at http://judiciary.house.gov/_files/hearings/printers/112th/112-74_71599.pdf.

¹⁵ See *Replacing Myths with Facts*, *supra* note 6, at 6. There is thus a natural tendency for women to give birth to slightly more boys than girls. Some scientists believe this is an evolutionary adaptation to the facts that male infants suffer more frequent health complications than female infants and that adult men take more risks, suffer from frequent health problems, and generally die younger than adult women. See Natalie Wolchover, *Why Are More Boys Born than Girls?*, LIVE SCIENCE (Sept. 9, 2011), <http://www.livescience.com/33491-male-female-sex-ratio.html>.

¹⁶ See, e.g., *supra* notes 14 and accompanying text.

¹⁷ See *Replacing Myths with Facts*, *supra* note 6, at 17.

¹⁸ See *id.* at 6–7.

¹⁹ The 2012 National Asian American Survey on Opinions among Asians and Pacific Islanders posed the following question: “In some countries, people are allowed to have only one child. If, for whatever reason, you could only have one child, would you want it to be a boy, a girl, or does it not matter?” Overall, 92 percent of Chinese, 92 percent of Indians, and 89 percent of Koreans surveyed answered “It doesn’t matter or they don’t care.” See *id.* at 20.

²⁰ *Concluding Observations*, *supra* note 1, at ¶ 33.

²¹ U.S. DEPARTMENT OF STATE, UNITED STATES PERIODIC REPORT TO THE COMMITTEE ON ELIMINATION OF RACIAL DISCRIMINATION, ¶ 134 (2013).

²² *Id.* at para 138.

²³ *Id.* at paras. 139–40.

²⁴ International Covenant on Economic, Social and Cultural Rights, art. 12, Oct. 5, 1977, 993 U.N.T.S. 3.

²⁵ Comm. on Economic, Social, and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, 22d sess., ¶ 21, U.N. Doc. E/C.12/2000/4 (2000).

²⁶ See Special Rapporteur of the Human Rights Council on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, U.N. Doc. A/66/254 (Aug. 3, 2011). Criminal laws penalizing abortion “are the paradigmatic examples of impermissible barriers to the realization of women’s right to health and must be eliminated.” *Id.* at ¶ 21. In addition, noncriminal restrictions on abortion are also problematic. The Special Rapporteur gives the following examples: “laws prohibiting public funding of abortion care; requirements of counselling and mandatory waiting periods for women seeking to terminate a pregnancy; requirements that abortions be approved by more than one health-care provider; parental and spousal consent requirements; and laws that require health-care providers to report ‘suspected’ cases of illegal abortion.” *Id.* at ¶ 24.

²⁷ *Id.* at ¶ 25.

²⁸ *Id.* at ¶ 24.

²⁹ OKLA. STAT. TIT. 63, § 1-731.2 (2013); H.B. 1162, 89th Leg., Reg. Sess. (S.D. 2014) (enacted).

³⁰ See *supra* note 19.

³¹ See Special Rapporteur of the Human Rights Council on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, ¶ 34, U.N. Doc. A/66/254 (Aug. 3, 2011). The Special Rapporteur has further noted: “Criminal laws and other legal restrictions disempower women, who may be deterred from taking steps to protect their health . . . out of fear of stigmatization. By restricting access to sexual and reproductive health-care goods, services and information these laws can also have a discriminatory effect, in that they disproportionately affect those in need of such resources, namely women.” *Id.* at ¶ 17.

³² See Comm. on the Elimination of Racial Discrimination, *General Recommendation 14, Definition of Racial Discrimination*, 42d sess., ¶ 144, U.N. Doc. A/48/18 (1994) (“A distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms.”).

³³ 140 CONG. REC. S7634-02 (daily ed., June 24, 1994) (United States Reservations, Declarations, and Understandings, International Convention on the Elimination of All Forms of Racial Discrimination), ¶ III.