CENTER FOR REPRODUCTIVE RIGHTS

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The Situation of Healthcare Professionals Who Provide Abortions in the United States

*Supplemental documentation submitted by the Center for Reproductive Rights to the Inter-American Commission on Human Rights for the thematic hearing, "**Risks and Vulnerabilities of Women's Rights Defenders in the Americas**"*

I. Legal Framework for Protecting Women's Human Rights Defenders

Human rights defenders play a critical role in ensuring that human rights enshrined in international human rights treaties translate into meaningful rights at the national level. Unfortunately, these courageous individuals are frequently targeted for the work they do to promote human rights because such work often challenges traditional power structures. Women's human rights defenders (WHRDs) experience different threats and challenges than other human rights defenders. Some face heightened risk because of the work they do in defending women's rights, which often calls for changes to laws and institutions that discriminate against women. Others are targeted based on their gendered identities as women, making them more vulnerable to specific forms of attack such as sexual or gender-based violence. These additional risks for WHRDs require states to take extra measures to ensure their rights.

In recent years, the OAS General Assembly has recognized the important work of human rights defenders in protecting and promoting human rights in the Americas, expressed concern over the targeting of human rights defenders, and called on states to strengthen measures for their protection.[1] It also instructed the Permanent Council to study the situation of defenders and write a follow up report to the Commission.[2] The Executive Secretariat established a Human Rights Defenders Unit that conducted a survey of the situation of defenders in OAS member states. Its 2006 report[3] identified patterns of violations and risks faced by defenders in the Americas, established a legal framework for addressing violations against human rights defenders, and issued a series of recommendations to states to protect defenders and promote their work. The framework draws upon the United Nations Declaration on Human Rights Defenders ("the Declaration")[4] and the framework established by the former UN Special Representative on Human Rights Defenders, Ms. Hina Jilani.

The Commission has recognized the unique status and role of women's human rights defenders (WHRDs).[5] The 2006 report of the Human Rights Defenders Unit found

that "there are two situations that require special attention: that faced by women defenders in general, due to the historical disadvantages women and girls have suffered, and that of women human rights defenders who specifically promote and protect women's rights."[6] The Commission concluded that states should establish special mechanisms to guarantee the security of WHRDs and to affirm the importance of their work in the human rights movement.[7]

This documentation addresses the failure of the United States to guarantee the rights of a particular class of WHRDs: healthcare professionals who provide abortion services. The human rights to dignity, liberty and security require that women have reproductive and sexual self-determination.[8] This right to reproductive autonomy includes women's ability to control the number and spacing of their children, as well as the rights to information, privacy and confidentiality.[9] In addition, the right to health necessarily comprises the right to sexual and reproductive health.[10] Women have a right to reproductive healthcare services that are widely available, economically and physically accessible to all women, and of good quality.[11] In the United States, women's reproductive rights include a constitutional right to abortion. These rights cannot be fulfilled unless healthcare professionals are able to provide abortion and other related services free of violence and harassment by public and private actors.

Those who promote women's right to sexual and reproductive health are women's rights defenders,[12] as are healthcare providers who face great risk in working to promote the rights of others.[13] From 1973 through the present, when the constitutional right to an abortion was recognized in the U.S. Supreme Court decision *Roe v. Wade*,[14] abortion providers have been targeted for harmful treatment by both state and non-state actors. Because anti-abortion extremists cannot legally prohibit women from exercising their rights, they target healthcare workers such as physicians, nurses, and other employees of healthcare clinics to make it impossible for them to provide abortion services. The U.S. has a duty to respect, protect, and fulfill the ability of healthcare professionals to perform abortions in order to realize women's reproductive rights.

This letter documents the threats faced by healthcare providers who provide abortions in the U.S., showing how they are forced to work under circumstances far more dangerous and difficult than other medical professionals in the United States. They endure violence and threats to their physical security, as well as harassment, intimidation, destruction of private property, and smear campaigns. The government's response to this violence is inadequate at best, and at worst openly hostile towards providers. Federal and state laws fail to deter many forms of violence and harassment against providers, and there is insufficient enforcement of the protective laws that do exist. Further, the federal and state governments often pass legislation targeting abortion providers, subjecting them to criminal penalties and other sanctions that are not imposed on providers of comparable medical services. Other laws are designed to impose additional burdens on abortion providers or allow private groups to use state mechanisms as tools of harassment. In combination, these laws impose extremely burdensome conditions on WHRDs trying to provide reproductive healthcare and lead to impunity for those who violate their human rights.

The impact of these attacks by state and non-state actors is that fewer and fewer reproductive healthcare professionals are willing or able to provide abortion services. The number of abortion providers has fallen by at least 37 percent since 1982.[15] As a result, 87 percent of U.S. counties and 97 percent of non-metropolitan counties have no abortion provider, and these counties are home to one-third of women of reproductive age.[16] The numerous barriers to providers' ability to ensure access to abortion and other services ultimately results in women losing access to crucial reproductive healthcare.

II. Persistent Attacks on Healthcare Professionals

Abortion providers face a variety of threats to their life, bodily or mental integrity, including threats to their physical security, destruction of private property, and attacks on their private life, family, and reputation. These attacks threaten the ability of medical professionals to provide reproductive healthcare, jeopardizing women's access to necessary services.

A. Attacks on Physicians' Physical Security

There is a long history of violence, death threats, and murder of physicians who perform abortions in the United States, undertaken with the express purpose of preventing physicians from providing abortions. Since 1973, three physicians and four clinic workers in the U.S. have been killed by anti-abortion extremists.[17] Five other physicians or clinic workers have been seriously injured in such attacks.[18] On August 19, 1993, an anti-abortion extremist attempted to assassinate Dr. George Tiller,[19] a physician who operates a medical practice, Women's Health Care Services (WHCS), in Wichita, Kansas, where he provides abortion services to women from across the country. He specializes in later term abortion services for women who face substantial health risks or fetal anomalies. Because he is one of only three physicians in the country who provides abortions later in pregnancy, his clinic is a frequent target for harassment and violence by anti-abortion protestors and extremists.[20]

Prior to the shooting, WHCS had been targeted for two years by anti-abortion forces dedicated to closing the clinic at whatever cost. In 1991, an extremist group called Operation Rescue led a six-week siege on WHCS during its "Summer of Mercy" protest in Wichita, which involved numerous blockades of clinic entrances; death threats to doctors who perform abortions; and daily, often violent, protests at abortion clinics.[21] The government did not take adequate measures to protect Dr. Tiller, such as ordering federal marshal protection,[22] despite a known, significant association between severe intimidation tactics and violence against abortion clinics.[23] Tellingly, Dr. Tiller's would-be assassin had participated in the Summer of Mercy blockades as a member of the Army of God, an underground network that believes violence is acceptable and justifiable to end abortion.[24] The correlation between intimidation and severe violence continues today. In 2005, clinics facing one or more forms of intimidation were three times more likely to experience violence compared with clinics that experienced no intimidation tactics.[25]

As a result of the violence, reproductive healthcare clinics have been forced to take extreme security measures that are expensive and burdensome to maintain. Clinics have spent thousands of dollars to install maximum security measures, including security barriers, bulletproof glass, metal detectors, and security cameras.[26] Maintenance of alarm systems and security personnel amount to tens of thousands of dollars.[27] Providers also take precautionary measures at their private homes for fear of being targeted there. For example, Dr. Tiller wears a bullet proof vest and moved to a home in a gated community with a state-of-the-art security system and barrier wall in order to protect himself and his family from shootings by extremists.[28] Although some abortion providers have been placed under federal marshal protection for certain brief periods of time, in general they must provide and pay for their own security. Continued threats to abortion providers' physical security is a key factor contributing to the decline in physicians who provide abortions around the country.[29]

B. Destruction of Private Property

Today, one in five abortion clinics in the U.S. is targeted with forms of violence considered the most severe, including bombing, arson and invasion.[30] Between the years 1977-2007, there were over 41 bombings, 175 arsons, 94 attempted bombings and arsons, and 623 bomb threats directed at abortion providers, resulting in $8.5m in damages.[31] Since May 2007, four clinics in New Mexico, Virginia, and California have been damaged or attacked by arson.[32] One clinic in Albuquerque, New Mexico run by Dr. Curtis Boyd was destroyed by fire in December 2007 after arsonists threw a gas can into the exam room and lit it on fire.[33]

As many as one in four abortion clinics have now experienced some form of vandalism, a substantial increase from the late 1990s.[34] For example, in 2007, Dr. Tiller's facility was attacked by vandals who cut a hole in the ceiling of WHCS, inserted a garden hose, and flooded part of the facility with several inches of water. They also attempted to seal the gates of the parking lot.[35] WHCS was forced to close for more than a month due to mold damage.[36] The closure prevented approximately 230 women from obtaining reproductive health services at the clinic and resulted in at least $86,000 of damages, not including lost income.[37] This was the second time that WHCS was forced to close; the first was in 1986, when a bomb exploded at the clinic and caused $100,000 in damage.[38]

Abortion opponents have also targeted the private property of physicians who provide abortions, yet these crimes have seldom been prosecuted. For example, in 1991, a suspicious fire was set on the property of Dr. Leroy Carhart, a Nebraska physician who provides later term abortion services. Arsonists set seven fires on Dr. Carhart's property, destroying his family home and horse barn.[39] The fire also killed two family pets and 17 horses.[40] County officials bulldozed the site immediately, destroying any potential evidence before arson investigators could arrive.[41] An anonymous letter delivered to the clinic the next day claimed that the fire was justified by Dr. Carhart's performance of abortions.[42] Yet, no one was ever charged in the case.[43]

C. Attacks against Private Life, Family, and Reputation

Now that a federal law prohibits clinic blockades,[44] anti-abortion extremists have shifted tactics and begun to wage smear campaigns—some of which advocate violence—against doctors providing abortions. Physicians who provide abortions have been featured in "most-wanted" posters resembling the posters used by the FBI to track down most-wanted criminals.[45] Some of these posters offered a $1,000 reward for stopping physicians from performing abortions.[46] Two physicians featured on these posters were later assassinated.[47] Some anti-abortion extremists, including the extremist who tried to murder Dr. Tiller, defend the murder of abortion providers as "justifiable homicide."[48] These actions are facilitated by websites such as the infamous "Nuremburg Files," which until it was shut down by a federal judge in 1999 published the names, addresses, and other identifying information of abortion providers, with the names of those who had been killed crossed out in black.[49]

Smear campaigns are carefully coordinated to pressure abortion clinics to go out of business. Employees of Dr. Tiller's clinic have been subjected to continuous smear campaigns since the 2004 "Year of Rebuke" organized by Operation Rescue.[50] The "name and shame" campaign involved targeted picketing of each clinic employee. Protestors picketed outside private homes, mailed postcards to their neighbors, greeted employees at restaurants with photos of mangled fetuses, and even sorted through employees' home garbage.[51] They also drove a moving billboard of bloody post-abortion fetuses around the neighborhoods where clinic employees live and work.[52] Operation Rescue even mounted an attack against over 200 companies doing business with the clinic or Dr. Tiller personally, demanding that they cease their affiliations or face a boycott.[53] Recently, anti-abortion extremists in Wichita have begun a public shaming campaign entitled "People Are Watching," where they wear binoculars and stake out the movements of Dr. Tiller and his employees.

Many of these forms of harassment are protected speech under the U.S. Constitution. However, the established link between forms of intimidation and violence against abortion providers requires heightened diligence on the part of state actors to monitor potential threats, provide proper training to law enforcement and other public officials to offer the same level of protection to abortion providers as other human rights defenders, and promptly investigate instances when public expression crosses the line to threatening behavior.[54]

III. U.S. Government's Failure to Protect Providers or Provide an Effective Remedy for Violations

Under article 12 of the Declaration, the United States has an obligation to take all necessary measures to protect human rights defenders against any violence, threats, or retaliation directed against them as a result of their activities to defend human rights. The government also has an obligation to conduct a prompt and impartial investigation or inquiry whenever allegations of a violation arise, punish acts or provide redress as appropriate, and enforce judicial decisions on remedies.[55] However, the U.S. has not

only failed to adequately protect abortion providers from attacks on their physical security, it has failed to provide an effective remedy in the event that violations do occur. This has led to a climate of impunity for those who repeatedly target abortion providers, emboldening those who commit such acts to continue to target these defenders of women's rights.

A. Federal Response: Non-recognition of Violations and Lack of Enforcement

Following a peak of clinic blockades and violence against abortion providers in the early to mid 1990s, in 1994 the federal government passed the Federal Access to Clinic Entrances (FACE) Act[56] to protect reproductive healthcare providers and facility as well as women seeking to access clinics. There have been several successes, including the prosecution of Dr. Tiller's attacker. While it aims to deter some of most egregious forms of violence directed at abortion providers, FACE does not recognize the full range of harassment they experience, including severe intimidation that has been linked to violence.[57] FACE does not explicitly define areas that the protestors are prohibited from entering, but rather provides for injunctive relief or civil remedies only after a FACE violation has occurred.

Abortion opponents soon learned the loopholes in FACE and began to embrace more sophisticated tactics. First, they concentrated their harassment on a small number of physicians with the aim of forcing them to stop performing abortions. Second, their tactics became increasingly more personal, involving protests at providers' private homes where FACE does not reach. Meanwhile, violence against physicians and clinics continues, albeit in different forms. While blockades have decreased and no one has attempted to murder a physician since 1998, other forms of violence including assault and battery, death threats, bomb threats and stalking are on the rise, reaching their highest levels in 2007 since the 1990s.[58]

Finally, clinic employees report that FACE enforcement is waning. In 1995, President Clinton ordered the Department of Justice (DOJ) to establish local working groups in each U.S. Attorney's office. The purpose of these working groups was to maximize coordination and communication among federal, state and local law enforcement and to better address security risks at clinics. After the 1998 slaying of an abortion provider named Dr. Barnett Slepian, Attorney General Janet Reno established a national Task Force on Violence Against Health Care Providers to assist the local working groups and coordinate national investigation and prosecution of abortion clinic violence.[59] This system was meant to address a problem that arose soon after FACE was passed, where federal and state authorities dodged jurisdiction when they received complaints.[60] The Task Force established local working groups that proved to be a key mechanism for effective FACE enforcement because they coordinated trainings and responses to clinic violence between federal and local law enforcement agencies.

In the past eight years of the Bush Administration, the local working groups have been inactive and insufficiently funded. Consequently, they have not provided assistance to local law enforcement that is critical for prevention of violence and successful

prosecutions. Jen Boulanger, Executive Director of the Allentown Women's Center in Allentown, Pennsylvania, explains that the loss of federal support has had a great impact on her clinic because local law enforcement lacks both training and funding to take preventative measures to ensure clinic safety.[61] Another provider in the South explains that during the past eight years, the Department of Justice acts belatedly, if at all, in response to alleged FACE violations.[62]

B. Inadequate State and Local Responses

Recognizing the loopholes in FACE, a few states have passed legislation providing further protection of clinics against the activities of anti-abortion extremists.[63] For example, six states prohibit threatening or intimidating staff or patients entering a reproductive healthcare facility.[64] A handful of states prohibit property damage or other forms of harassment such as telephone threats or possessing a weapon during a demonstration at a facility.[65] Six states[66] and a handful of cities[67] have taken further steps to protect providers by passing "buffer zone" legislation requiring that protestors stay a certain number of feet away from people accessing the clinic or from clinic entrances. However, the *vast majority* of states and municipalities lack legislation to prohibit activities not covered by FACE that are designed to frighten and intimidate providers, and that often cross the line to violence.

IV. Government Regulations and Restrictions on the Right to an Abortion

Article 11 of the Declaration sets forth the duty of the state to respect the right of human rights defenders to the lawful exercise of their profession.[68] However, the federal and state governments are making it increasingly difficult for abortion providers to exercise this human right, in turn compromising their ability to provide comprehensive reproductive healthcare to their patients. A panoply of state and federal laws create a complicated legal minefield for abortion providers. Physicians who perform abortions are subject to far greater risk of legal liability than physicians who provide comparable medical services. They work with fear of criminal sanctions, civil liability, or loss of their medical license if they unintentionally fail to comply with one of the many regulations governing every aspect of their medical practice. In addition to fear of legal liability, these regulations impose insurmountable economic barriers that force many reproductive health clinics to cease providing abortion services. Being forced to navigate a legal minefield in order to provide abortions deters many physicians from offering the service at all, resulting in a provider shortage and diminished abortion access for women.

C. Criminal Penalties and other Severe Sanctions for Exercising the Right to Provide Medical Care

Laws that single out abortion providers regulate everything from the methods physicians use to perform abortions, the physical plant requirements of their facilities, and staffing levels and qualifications. Failure to comply with these requirements can result in substantial criminal sanctions, civil penalties, or loss of medical licensure. In contrast, all other doctors, including those in the field of gynecology and obstetrics who

do not perform abortions, are subject only to professional ethics codes and medical malpractice laws. For example, as a physician who provides abortion services in the state of Kansas, Dr. Tiller must comply with four laws that *do not apply* to other kinds of physicians. These laws include:

- A state ban on certain methods of abortion that carries a penalty of **imprisonment for non-compliance.** Kan. Stat. Ann. § 65-6721.
- A federal ban on certain methods of abortion that carries a penalty of **2 years imprisonment.** 18 U.S.C.A. § 1531 (2003).
- A Kansas law requiring that another financially and legally independent doctor verifies the first physician's independent judgment that a post-viability abortion is necessary. Failure to comply could result in **one year imprisonment, the loss of a medical license or fines.** Kan. Stat. Ann. § 65-6703(a).
- A biased counseling law that requires Dr. Tiller to provide patients medically unnecessary or inappropriate materials to patients 24 hours prior to receiving an abortion. A violation could lead to **loss of a medical license or fines.** Kan. Stat. Ann. §§ 65-6701; 65-6708-15.

In addition, 44 states and the District of Columbia impose regulations on abortion providers that do not apply to other medical professionals.[69] Known as Targeted Restrictions on Abortion Providers (TRAP), these laws regulate where abortions can be performed and who can perform them. Generally, compliance is difficult due to the complicated, detailed nature of the requirements and the great expense involved. Failure to comply with TRAP laws can carry criminal penalties, civil liability, or loss of licensure for physicians employed by the clinic. (The economic burden of TRAP laws on clinics is discussed in Part IV(D).)

Finally, the state of Louisiana has a particularly insidious law stating that physicians may be held strictly liable to a woman on whom an abortion is performed for any harm resulting to the pregnant woman or the fetus. This special statute replaces medical malpractice laws for physicians who perform abortions, thus making an abortion provider legally liable even if he or she complied with the appropriate standard of care.[70] Because an abortion causes harm to the fetus *by definition*, a doctor performing this procedure is left open to civil liability with every procedure he or she performs.

D. Insurmountable Economic Burdens on Reproductive Healthcare Providers

TRAP laws impose burdensome requirements on the facilities where healthcare professionals provide abortions that are far more stringent than regulations applied to facilities where comparable medical procedures are performed. TRAP laws are not medically necessary and have neither the purpose nor effect of improving the quality of abortion care. For example, a TRAP law in South Carolina requires that abortion facilities keep their outdoor shrubbery insect-free.[71] Moreover, the cost and burden of compliance with these regulations can be so high that some clinics may not be able to continue providing abortion services. A current TRAP law in Missouri would require

such significant renovations to abortion facilities that three out of four of Missouri's clinics would be forced to shut down, cease providing abortions entirely, or undergo prohibitively expensive renovations.[72]

E. Manipulation of Legal Mechanisms to Harass Providers

Navigating the legal minefield is difficult in itself for physicians, but public officials with political motivations can substantially heighten the risk. Zealous prosecutors have abused the power of their state office to investigate and prosecute physicians providing abortion services. For example, former Kansas Attorney General Phill Kline, who described himself as "unabashedly pro-life,"[73] initiated an aggressive multi-year inquisition of Dr. Tiller for the purpose of investigating whether he violated Kansas abortion law. Kline issued subpoenas for the private medical records of 90 of Dr. Tiller's patients and eventually charged him with 30 misdemeanor crimes based on their contents.[74] Kline's successor as Attorney General, Paul Morrison, convinced the Kansas Supreme Court to drop the misdemeanor charges against Dr. Tiller because according to his office, the basis of the charges was "absolutely inaccurate and false"[75] and "based on a political agenda."[76]

States also grant private citizens the power to trigger the minefield of legal liability for abortion providers. For instance, two anti-abortion extremist groups in Kansas used an 1887 state law to convene a "citizen grand jury" to investigate whether Dr. Tiller violated the state's abortion laws, even though the state was conducting its own investigation of Dr. Tiller at the time.[77] Fortunately, the Kansas Supreme Court recently held that the citizen grand jury must take certain precautions to protect patient privacy when issuing subpoenas of medical records.[78] Despite these limits, the state has allowed the citizen grand jury to be turned into a mechanism for the harassment of physicians and an anti-abortion "political weapon."[79]

V. Recommendations

The perseverance of healthcare professionals in providing women their constitutional right to an abortion—served in the face of great risks to their safety, reputation, and profession—deserves both great admiration and greater protection by the U.S. government. We urge the Commission to make the following recommendations to the U.S. government:

- Provide strong federal protection for reproductive freedom: The first step towards protecting healthcare professionals who provide abortions is to recognize their role in providing women's fundamental right to reproductive freedom. Congress should pass the Freedom of Choice Act (FOCA),[80] federal legislation designed to protect women's reproductive rights regarding decisions about whether and when to become pregnant and whether to continue a pregnancy or have an abortion. This legislation would override federal and state laws that seek to rollback the constitutional right to an abortion established in *Roe v. Wade*. Such laws, which include bans on abortion, other restrictions on access, and TRAP laws, have no

health-related purpose and impose severe penalties on providers for exercising their legal right to provide healthcare to women.

- Publicly recognize the role of reproductive healthcare providers as WHRDs: The U.S. government should recognize the special role of WHRDs, including reproductive healthcare providers, in ensuring human rights such as the rights to reproductive autonomy and reproductive health. In addition, the government should implement national guidelines that reflect international and regional guidelines designed to protect WHRDs.

- Stop impunity for those who attack, threaten and harass healthcare professionals: Develop and implement a national strategy to investigate, prosecute and punish those who commit human rights violations against reproductive healthcare providers. Renew the mandate and funding for the DOJ's Task Force on Violence Against Health Care Providers to encourage collaboration between law enforcement at all levels of government and to ensure sufficient resources for violence prevention. Urgently adopt measures to strengthen security for providers who are known to be most at risk.

- Improve institutional mechanisms for implementing human rights: Establish a national human rights commission or equivalent body with a mandate to implement measures and recommendations issued by the Inter-American Commission on Human Rights, including those related to WHRDs and women's rights. The institution should have sufficient funding and other resources to carry out its mandate. It should also involve reproductive healthcare providers in discussions about human rights implementation.

- Repeal state laws that ban or restrict abortion or otherwise target reproductive health professionals: Encourage states to pass state-level FOCA laws to express strong support for reproductive rights as human rights and to protect the right of reproductive healthcare professionals to practice their profession without fear of sanctions. At a minimum, urge states to (1) repeal existing bans on abortion, TRAP laws, and other restrictions on abortion access that subject reproductive healthcare providers to extreme sanctions and economic burdens and (2) prevent manipulation of state institutions and legal mechanisms to harass reproductive healthcare providers.

Endnotes

[1] Human Rights Defenders in the Americas, Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas, AG/RES. 1671 (XXIX-O/99) (7 June 1999).
[2] Human Rights Defenders in the Americas, Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas, AG/RES. 1711 (XXX-O/00) (5 June 2000); Human Rights Defenders in the Americas, Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas, AG/RES. 1818 (XXXI-O/01) (5 June 2001).
[3] Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev. 1 (7 Mar. 2006) [hereinafter HRD Report (2006)].
[4] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, *adopted* Mar. 8, 1999, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (1999) [hereinafter Declaration on Human Rights Defenders].
[5] Human Rights Defenders: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas, AG/RES. 2067 (XXXV-O/05) (June 7, 2005) (noting, "[i]n view of their specific role and needs, women human rights defenders should be accorded special attention to ensure that they are fully protected and effective in carrying out their important activities").
[6] HRD Report (2006), ¶ 227.
[7] HRD Report (2006), ¶ 342(7).
[8] *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, ¶¶ 7.3, 7.17, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter ICPD Programme of Action]; *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, ¶¶ 96, 106(g), U.N. Doc. A/CONF.177/20 (1995) [hereinafter *Beijing Declaration and Platform for Action*].
[9] Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, arts. 10(h), 16.1(e), U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981) [hereinafter CEDAW]; ICPD Programme of Action, Principle 8, ¶¶ 7.2, 7.45; Beijing Declaration and Platform for Action, ¶¶ 106(f), 107(e), 223.
[10] Committee on Economic, Social, and Cultural Rights (CESCR), *General Comment No. 14: the Right to the Highest Attainable Standard of Health*, ¶ 8, U.N. Doc. E/C.12/2000/4 (July 4, 2000) [hereinafter CESCR General Comment No. 14]; CEDAW, art. 12; ICPD Programme of Action, Principle 8.
[11] CESCR, General Comment No. 14, ¶ 12.
[12] *Promotion and Protection of Human Rights Defenders: Report Submitted by Ms. Hina Jilani, the Special Representative of the Secretary-General on Human Rights Defenders, pursuant to the Commission on Human Rights Resolution 2000/61*, 58th Sess., ¶ 92, U.N. Doc. E/CN.4/2002/106 (2002); *see also* Amnesty International, Background: Human Rights Defenders, http://www.amnesty.org/en/human-rights-defenders/background (last visited June 20, 2008) (including "women working for the promotion of reproductive rights" as human rights defenders).
[13] *See Report Submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani*, 4th Sess. 2007, ¶¶ 70-72, U.N. Doc. A/HRC/4/37 (2007) (explaining that since the establishment of her mandate, the Special Representative has sent 36 communications to countries in all regions concerning the right to health and has raised issues ranging from threats to health providers treating civilians in the Occupied Territories to those assisting people living with HIV/AIDS in China); Hum. Rts. Council, *Report Submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani*, 7th Sess. 2008, ¶¶ 283-88, 1080-83, U.N. Doc. A/HRC/7/28/Add.1 (2008) (summarizing urgent appeals the Special Representative made to governments in 2008 regarding physicians who work with especially vulnerable populations, including people living with HIV/AIDS and healthcare for victims of sexual abuse); *see also* HUMAN RIGHTS FIRST, PROTECTING HUMAN RIGHTS DEFENDERS: ANALYSIS OF THE NEWLY ADOPTED DECLARATION ON HUMAN RIGHTS DEFENDERS, Part I and II(D), http://www.humanrightsfirst.org/defenders/hrd_un_declare/hrd_declare_1.htm (last visited June 20, 2008) (noting that the Declaration recognizes that while physicians may not be viewed primarily as human

rights defenders, they are included in the category because they play a crucial role in safeguarding the human rights of others).

[14] 410 U.S. 113 (1973).

[15] Lawrence Finer & Stanley Henshaw, *Abortion Incidence and Services in the United States in 2000*, 35 PERSP. ON SEXUAL & REPROD. HEALTH 6, 10 (2003) (showing there were 1,819 abortion providers in 2000, down 11% from 1996, and that the number of providers fell 14% between 1992 and 1996).

[16] *Id.* at 10-11.

[17] NAT'L ABORTION RIGHTS ACTION LEAGUE (NARAL) PRO-CHOICE AM. FOUND., CLINIC VIOLENCE AND INTIMIDATION 1-3 (2007), http://www.prochoiceamerica.org/assets/files/Abortion-Access-to-Abortion-Violence.pdf [hereinafter NARAL, CLINIC VIOLENCE AND INTIMIDATION].

[18] Nat'l Abortion Fed'n (NAF), History of Violence: Murders and Shootings, http://www.prochoice.org/about_abortion/violence/murders.asp (last visited June 20, 2008).

[19] Seth Faison, *Abortion Doctor Wounded Outside Kansas Clinic*, N.Y. TIMES, Aug. 20, 1993.

[20] Stephanie Simon, *A Late Decision, a Lasting Anguish*, L.A. TIMES, May 31, 2005, at A1.

[21] Eric Harrison, *Local Groups take up Wichita Abortion Fight*, L.A. TIMES, Aug. 27, 1991, at A18.

[22] The federal government ordered temporary federal marshal protection for Dr. Tiller after he was shot, but not prior to the attempt. Interview with Dr. George Tiller in Wichita, Kan. (Apr. 9, 2008).

[23] MICHELLE WOOD ET AL., FEMINIST MAJORITY FOUND., 2005 NATIONAL CLINIC VIOLENCE SURVEY 9 (2006), http://feminist.org/research/cvsurveys/clinic_survey2005.pdf [hereinafter FMF Clinic Violence Survey].

[24] James Risen, *Anti-Abortion Zealot's Gun May Have Wounded Allies*, L.A. TIMES, Apr. 18, 1994, at A1; NAF, Anti-Abortion Extremists, The Army Of God and Justifiable Homicide, http://www.prochoice.org/about_abortion/violence/army_god.html (last visited June 19, 2008).

[25] FMF Clinic Violence Survey, *supra* note 23, at 9.

[26] NARAL, CLINIC VIOLENCE AND INTIMIDATION, *supra* note 17, at 9; Lisa J. Adams, *Abortion Clinics Increase Security After Latest Outbreak of Violence*, ASSOC. PRESS, Jan. 4. 1995.

[27] For example, Dr. Tiller spends over $70,000 annually on security personnel and maintenance for the clinic's alarm system. Interview with Dr. Tiller, *supra* note 22; *see also* Lorraine Adams, *Abortion Doctor Thanked Clinton at Coffee*, WASH. POST., Apr. 1, 1997, at A4.

[28] Interview with Dr. Tiller, *supra* note 22.

[29] Finer & Henshaw, *supra* note 15, at 14.

[30] NARAL, CLINIC VIOLENCE AND INTIMIDATION, *supra* note 17, at 5.

[31] *Id.* at 3.

[32] Dan Frosch, *Albuquerque Has Renewal of Attacks on Abortion*, N.Y. TIMES, Dec. 28, 2007; NAF, Member Security Alert, Feb. 20, 2008 (on file with Ctr. for Reproductive Rts.).

[33] Maggie Shepard, *Albuquerque Abortion Clinic Fire Was Arson, Feds Say*, ALBUQUERQUE TRIB., Dec. 8, 2007.

[34] FMF Clinic Violence Survey, *supra* note 23, at 8.

[35] *Tiller's Abortion Clinic Vandalized* (KAKE 10 ABC television broadcast July 4, 2007), http://www.kake.com/news/headlines/8324012.html (last visited June 19, 2008).

[36] Stephanie Simon, *Pressure Rises for Abortion Provider*, L.A. TIMES, Sept. 17, 2007.

[37] Interview with Dr. Tiller, *supra* note 22.

[38] No one was ever prosecuted for the crime, and the case is now closed because the statute of limitations has run. NAF, History of Violence: Arson and Bombings, http://www.prochoice.org/about_abortion/violence/arsons.asp (last visited June 19, 2008).

[39] Sandy Banisky, *Abortion 'Circuit Rider' Accepts Risks; 'Stubborn' Doctor Defies Many Threats*, ST. LOUIS POST DISPATCH, Sept. 7, 1993, at B5.

[40] *Id;* Pam Belluck, *After Abortion Victory, Doctor's Troubles Persist*, N.Y. TIMES, Nov. 7, 2000, at A18.

[41] Diane Carman, *Top Court, Arapahoe Draw Line*, DENVER POST, June 29, 2000, at B1.

[42] *Id.*

[43] *Id.*

[44] *See infra* Part II(A).

[45] Mary Jordan & Don Phillips, *Abortion Foe Arrested in Shooting; Wounded Doctor Returns to Clinic*, WASH. POST, Aug. 21, 1993, at A1.

[46] *Id.*

[47] PEG JOHNSTON, SOUTHERN TIER WOMEN'S SERVICE, OPTING OUT OF THE WAR (NAT'L COALITION OF ABORTION PROVIDERS, PROVIDER SPEAKERS SERIES) 3 (1998-2002), http://www.ncap.com/images/PDFS/providerspeakjohnston.pdf.
[48] Risen, *supra* note 24 (noting that Rachelle Shannon commented to a policeman as she was being arrested, "Did I get him? If ever there was a justifiable homicide, this was it."); NAF, Anti-Abortion Extremists, *supra* note 24; Gustav Niebuhr, *To Church's Dismay, Priest Talks of 'Justifiable Homicide' of Abortion Doctors*, N.Y. TIMES, Aug. 24, 1994.
[49] Johnston, *supra* note 47, at 3; NARAL, CLINIC VIOLENCE AND INTIMIDATION *supra* note 17, at 7-8.
[50] Kimberley Sevcik, *One Man's God Squad*, ROLLING STONE, July 28, 2004.
[51] *Id.*; Stephanie Simon, *Protestors Who Push the Limits*, L.A. TIMES, Feb. 17, 2004, at A1.
[52] NARAL, CLINIC VIOLENCE AND INTIMIDATION, *supra* note 17, at 8; Mary Sanchez, Editorial, *Abortion Debate Needs Reason*, KANSAS CITY STAR, Jan. 27, 2004, at B5.
[53] NARAL, CLINIC VIOLENCE AND INTIMIDATION, *supra* note 17, at 8-9; Sevcik, *supra* note 50.
[54] *See* Declaration on Human Rights Defenders, art. 9(5) (imposing a duty on the state to "conduct a prompt and impartial investigation or ensure than an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction); *id.* art 15 (imposing a duty on the state "to ensure that all those responsible for training … law enforcement officers … and public officials include appropriate elements of human rights teaching in their training programme.").
[55] *Id.* arts. 9, 12, 14, 15.
[56] 18 U.S.C. § 248 (1994). FACE makes it unlawful for a person to use force, threat of force, or physical obstruction to intentionally injure or intimidate a person because s/he is or has been obtaining or providing reproductive health services, or to intentionally damage or destroy the property of a facility because it provides reproductive health services. Punishment for a violation of the statute ranges from monetary fines for non-violent physical obstructions to criminal imprisonment for actions resulting in bodily injury.
[57] *See* Dep't of Justice, National Task Force on Violence Against Health Care Providers, http://usdoj.gov/crt/crim/faceweb.htm (last visited June 19, 2008) (explaining that conduct found illegal under FACE is limited to: physical attacks on clinic employees and escorts, attempted arson of facilities, blockages of clinic entrances, and threats of bodily harm communicated to providers or patients); *see also infra* Part I(A).
[58] NAF, INCIDENTS OF VIOLENCE & DISRUPTION AGAINST ABORTION PROVIDERS IN THE U.S. AND CANADA 1 (2008), http://www.prochoice.org/pubs_research/publications/downloads/about_abortion/violence_statistics.pdf.
[59] *See* Dep't of Justice, *supra* note 57.
[60] Robert Pear, *Abortion Clinic Workers Say Law Is Being Ignored*, N.Y. TIMES, Sept. 23, 1994.
[61] Interview with Jen Boulanger (Allentown, Pennsylvania, USA) (Oct. 8, 2008).
[62] Interview with an abortion provider in the South (identity and specific location concealed for protection) (Mar. 10, 2008).
[63] NAF, FREEDOM OF ACCESS TO CLINIC ENTRANCES (FACE) ACT 4 (2006), http://www.prochoice.org/pubs_research/publications/downloads/about_abortion/face_act.pdf.
[64] GUTTMACHER INST., STATE POLICIES IN BRIEF: PROTECTING ACCESS TO CLINICS 1 (2008), http://www.guttmacher.org/statecenter/spibs/spib_PAC.pdf.
[65] *Id.*
[66] *Id.*; *see, e.g.*, COL. REV. STAT. § 18-9-122 (2008) (imposing a 100 foot buffer zone around the facility's entrances); MASS. GEN. LAWS. ch. 266, § 120E 1/2 (2008) (restricting anyone who is not an employee, patient, law enforcement officer, or passerby from coming within 35 feet of the entrance to a reproductive healthcare facility, or otherwise obstructing access to the entrances).
[67] *See, e.g.*, Municipal Code of City of Oakland, CA, Ch. 8.52 (2008) (creating a fixed buffer zone of 15 feet); New York City, N.Y., Code § 8-803 (2007) (making it a misdemeanor crime to physically obstruct or block a person from entering a reproductive health clinic, to follow or harass such a person in public, or to physically damage a clinic such that it disrupts its operation)
[68] Declaration on Human Rights Defenders, art. 11.
[69] NARAL, Who Decides?, http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides/fast-facts/issues-trap.html (last visited June 20, 2008).
[70] LA. REV. STAT. ANN. § 9:2800.12 (2008).

[71] S.C. CODE ANN. REGS. 61-12 § 606 (2008).
[72] The law is currently enjoined by a federal court. Planned Parenthood of KS v. Drummond, No. 07-4164-CV-C-ODS, 2007 WL 2811407 (W.D. Mo. Sept. 24, 2007). However, in a separate case filed under state law by one clinic, a judge recently upheld the law's constitutionality. Daily Women's Health Pol'y Rep., Mo. Judge Rejects PPKM Argument against State Law to Reclassify Abortion Clinics as Ambulatory Surgical Centers (2008), *at* http://www.nationalpartnership.org (last visited June 20, 2008).
[73] Emily Friedman, *Could One Man Influence Abortion Law?*, ABC NEWS.COM, Oct. 22, 2007, http://abcnews.go.com/TheLaw/Story?id=3752146&page=1 (quoting Kline's spokesman, Brian Burgess).
[74] Laura Bauer & Jim Sullinger, *Kline's Abortion Charges Derailed; a Judge Dismisses 30 Counts Filed by the Attorney General against a Wichita Doctor*, KAN. CITY STAR, Dec. 23, 2006, at A1.
[75] Friedman, *supra* note 73 (quoting Morrison's spokeswoman, Ashley Anstaett).
[76] Emily Bazelon, *Record Shopping*, SLATE, Apr. 8, 2008, http://www.slate.com/id/2187961/. The state of Kansas later filed 19 misdemeanor charges against Dr. Tiller on the grounds that he had failed to obtain a referral from a Kansas physician with whom he was not financially or legally affiliated in violation of KAN. STAT. ANN. § 65-6703(a) (2007). Dr. Tiller has moved to dismiss all the charges, which are still pending. No investigation, however, has ever found any wrongdoing as to his medical judgment or the basis on which he has complied with Kansas law governing the medical circumstances under which a late term abortion may be performed.
[77] The grand jury issued subpoenas seeking all records of women who consulted a physician at WHCS when her fetus was 22 weeks gestation or more from July 1, 2003 through Jan. 18, 2008, even if the women did not have an abortion.
[78] Tiller v. Corrigan, 182 P.3d 719 (Kan. 2008).
[79] Monica Davey, *Grand Juries Become Latest Abortion Battlefield*, N.Y. TIMES, June 17, 2008, at A1 (quoting a Republican state senator, "[the citizen grand jury] is being used in a political way to further a political cause, and that was never the purpose of the grand jury system in Kansas.").
[80] S. 1173 & H.R. 1964, 110th Cong. (1st Sess. 2007).