

August 17, 2022

Mark Zuckerberg
Founder, Chairman, and CEO
Meta

Dear Mr. Zuckerberg,

On June 17, 2022, the Supreme Court of the United States ruling in the case *Dobbs v. Jackson Women's Health Organization* ended the constitutional protections for abortion rights.¹ This court decision overturned the landmark reproductive rights rulings of *Roe v. Wade* and *Planned Parenthood v. Casey*. Many local, national and international organizations have been monitoring the impacts of this decision on human rights. Specifically, the signatories to this letter have followed reports that Meta has censored reproductive health and rights-related information in the United States, and we have analyzed how this may contravene Meta's responsibility to respect human rights.

Laws that restrict access to abortion violate a number of human rights, including the rights to autonomy, dignity, bodily integrity, privacy and equality, as well as the rights to life, health, information and freedom from torture or other ill-treatment.² These rights are enshrined in several international human rights treaties and instruments, and almost all countries—including the United States—are legally bound to at least one treaty that covers rights within which abortion fits squarely. While abortion may not be listed by name in these treaties, the UN treaty monitoring bodies have increasingly recognised abortion as an integral component of sexual and reproductive healthcare, which is key to realising individuals' reproductive autonomy and their full range of human rights. The UN Human Rights Committee for example, is the body charged under the International Covenant on Civil and Political Rights—a treaty ratified by the United States—with monitoring its implementation. It has confirmed that States cannot regulate abortion in a manner that is contrary to their obligation to ensure that women, girls and pregnant persons are not forced to resort to unsafe abortions.³ Further, the UN Committee on Economic, Social and Cultural Rights (CESCR) explicitly has found that the International Covenant on Economic, Social and Cultural Rights obligates states to “respect the right of women to make autonomous decisions” about their health, and that this right encompasses increased access to abortion, as

¹ *Dobbs State Health Officer of the Mississippi Department of Health, et al. v. Jackson Women's Health Organization et al.* Supreme Court of the United States, 2022 at: https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

² See, e.g. *Human Rights Committee, K.L. v Peru*, Comm. No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003 (2005); *CEDAW Committee, L.C. v Peru*, Comm. No. 22/2009, UN Doc. CEDAW/C/50/D/22/2009 (2011), para. 8.15. See also *Access to safe and legal abortion: Urgent call for United States to adhere to women's rights convention*, UN Office of the High Commissioner for Human Rights, 2022 at:

<https://www.ohchr.org/en/statements/2022/07/access-safe-and-legal-abortion-urgent-call-united-states-adhere-women-rights>; *Joint web statement by UN Human Rights experts on Supreme Court decision to strike down Roe v. Wade*, UN Office of the High Commissioner for Human Rights, 2022 at: <https://www.ohchr.org/en/statements/2022/06/joint-web-statement-un-human-rights-experts-supreme-court-decision-strike-down>

³ UN Human Rights Committee (HRC), General Comment No. 36, Article 6 (Right to Life), 2019, CCPR/C/GC/35, para. 8

well as other sexual and reproductive health services.⁴ The few states that have signed but not yet ratified the ICESCR such as the United States are still bound by these principles through the Vienna Convention on the Law of Treaties, which establishes that these states must not “defeat the object and purpose of a treaty prior to its entry into force.”⁵

The CESCR’s General Comment 14 further establishes that states must ensure that all health facilities, goods and services (including information) must be available, accessible (physically and financially), acceptable and of good quality. Within this context, states must ensure everyone has free, unhindered and easy access to credible, reliable, objective and evidence-based information about health products.⁶ And, as the UN Office of the High Commissioner for Human Rights has explained, “access to medicines is intrinsically linked with principles of equality and non-discrimination, transparency, participation, and accountability.”⁷

Other UN human rights bodies are also increasingly calling for full decriminalisation of abortion (removing abortion from criminal laws and removing other laws, policies and practices that directly or indirectly punish people for seeking, obtaining, providing, or assisting with securing and/or obtaining an abortion) and ensuring access to safe abortion for all pregnant people who need it without restrictions, barriers, or discrimination. An example of this significant shift is the current approach taken by the UN Committee on the Rights of the Child. Since 2015, the Committee has consistently recommended that states “decriminalise abortions in all circumstances and review its legislation with a view to ensuring children's access to safe abortion and post-abortion care services”⁸ and guarantee “the best interests of pregnant adolescents and ensure that their views are always heard and respected in abortion-related decisions.”⁹ The UN Committee on the Elimination of Discrimination against Women has advised states to ensure that sexual and reproductive healthcare includes access to safe abortion services.¹⁰ The United States has signed (though not ratified) the ICESCR and CEDAW, which again means it is obligated to refrain from actions that undermine the treaties’ object and purpose.

As outlined in the UN Guiding Principles on Business and Human Rights, all companies have a responsibility to respect human rights – including the right to health and access to information – and should: (i) avoid causing or contributing to adverse human rights impacts through their own activities; and (ii) seek to prevent such impacts linked to their products and services. The corporate responsibility to respect human rights is independent of the State’s own human rights

⁴ CESCR Committee, General Comment 22 (2016) on the right to sexual and reproductive health (Article 12 of the ICESCR), UN Doc. E/C.12/GC/22 (2016), para. 28

⁵ See *Vienna Convention on the law of treaties* (with annex). Concluded at Vienna on 23 May 1969, Article 18 at: <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

⁶ CESCR Committee, General Comment 22 (2016) on the right to sexual and reproductive health (Article 12 of the ICESCR), UN Doc. E/C.12/GC/22 (2016), para 18

⁷ *Access to medicines – a fundamental element of the right to health*, UN Office of the High Commissioner for Human Rights at: <https://www.ohchr.org/en/development/access-medicines-fundamental-element-right-health>

⁸ UN Committee on the Rights of the Child (CRC). General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, 2016, CRC/C/GC/20, para. 60

⁹ CRC Committee. Concluding Observations: Iraq, UN Doc. CRC/C/IRQ/CO/2-4, 2015, para 67(a)

¹⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW). General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 2013, CEDAW/C/GC/30, para. 52(c).

obligations.¹¹ To meet their responsibility to respect human rights, business enterprises are expected to carry out ongoing and proactive human rights due diligence “to identify, prevent, mitigate and account for their impacts on human rights.”¹² When companies cause or contribute to human rights abuses, they also have the responsibility to remediate the harm.¹³

Social media companies can play a crucial role in facilitating the enjoyment of sexual and reproductive health and rights around the globe, especially where access to information and services is restricted. In the context of user-generated content moderation, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has urged information and technology companies to “incorporate directly into their terms of service and ‘community standards’ relevant principles of human rights law that ensure content-related actions will be guided by the same standards of legality, necessity and legitimacy that bind State regulation of expression.”¹⁴ Likewise, the UN CESCR stated that “[t]he dissemination of misinformation and the imposition of restrictions on the right of individuals to access information about sexual and reproductive rights also violates the duty to respect human rights. . . . Such restrictions impede access to information and services, and can fuel stigma and discrimination.”¹⁵

In sum, actions that unduly restrict the right to freedom of expression on this topic, including the right to seek, receive and impart information related to sexual and reproductive health and rights, would contravene Meta’s responsibility to respect human rights. In order to comply with their human rights responsibilities, social media companies involved in facilitating and moderating online content should at the very least engage in human rights due diligence and ensure greater transparency regarding content moderation practices and policies to guarantee that human rights are respected.

In the weeks following the *Dobbs* decision, Access Now, Amnesty International, Fight for the Future, and the Planned Parenthood Federation of America have noted a number of media reports of Meta censoring reproductive rights-related information in the United States, especially regarding medication abortion (i.e., where two different medications are used to terminate a pregnancy). While this type of censorship has become more visible in recent weeks, reporting suggests it is a longer-term problem.¹⁶ Abortion medication with proper information has been regarded as a safe and effective method of terminating a pregnancy as a self-care intervention.¹⁷

¹¹ *Guiding Principles on Business and Human Rights*, UN Office of the High Commissioner for Human Rights, 2011 at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf. See specifically UNGP Principles 11 through 14.

¹² *UN Guiding Principles on Business and Human Rights*, Principle 15

¹³ UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011), UN Doc HR/PUB/11/04, Principles 11 and 13 including Commentary, www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹⁴ *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/38/35, 2018, para 45.

¹⁵ General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)

¹⁶ Elliott, Vittoria, *Meta Was Restricting Abortion Content All Along*, Wired, 2022 at: <https://www.wired.com/story/meta-abortion-content-restriction/>

¹⁷ WHO recommendations on self-care interventions Self-management of medical abortion <https://apps.who.int/iris/bitstream/handle/10665/332334/WHO-SRH-20.11-eng.pdf>

Since 2005, the World Health Organization has placed these medications on its essential medicines list, and human rights bodies have long recognized states' obligation to ensure the availability and accessibility of such medication.

Numerous media organizations have reported that Meta-owned platforms Facebook and Instagram have taken down posts explaining how to access abortion pills.¹⁸ Media reports also indicate that Instagram is censoring searches for hashtags referencing terms such as “abortion pills” and “mifepristone,”¹⁹ stating that such posts are “hidden because some posts may not follow Instagram’s Community Guidelines.”²⁰

Meta spokesperson and Policy Communications Director Andy Stone subsequently clarified on Twitter that “Content that attempts to buy, sell, trade, gift, request or donate pharmaceuticals is not allowed. Content that discusses the affordability and accessibility of prescription medication is allowed. We’ve discovered some instances of incorrect enforcement and are correcting these.”²¹ Stone here is referencing Facebook’s Community Standards: Restricted Goods and Services, which states that users cannot post content that:

- Attempts to buy, sell or trade pharmaceutical drugs except when:
 - Listing the price of vaccines in an explicit education or discussion context.
 - Offering delivery when posted by legitimate healthcare e-commerce businesses.
- Attempts to donate or gift pharmaceutical drugs.
- Asks for pharmaceutical drugs except when content discusses the affordability, accessibility or efficacy of pharmaceutical drugs in a medical context.²²

Given the reports that Meta has blocked content related to reproductive health and rights, as well as a lack of clarity around what constitutes correct or “incorrect” enforcement, we are concerned that these Community Standards are inadequate in terms of protecting the rights of users to seek, receive, and impart information related to sexual and reproductive health and rights.

We therefore call on Meta to respond to each of the following questions:

1. What human rights due diligence has Meta conducted in relation to the potential human rights impact on reproductive rights of its Community Standards and any policy or

¹⁸ See, e.g., *Instagram and Facebook beginning removing posts offering abortion pills*, The Associated Press, 2022 at:

<https://www.npr.org/2022/06/28/1108107718/instagram-and-facebook-begin-removing-posts-offering-abortion-pills>

¹⁹ The U.S. Food & Drug Administration explains that “Mifeprex (mifepristone) is used, together with another medication called misoprostol, to end an early pregnancy.” See U.S. Food & Drug Administration, *Mifeprex (mifepristone) Information*, 2021 at:

<https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information>

²⁰ Goggin, Ben, Instagram restricts some abortion resource posts and hashtags, NBC News, 2022 at:

<https://www.nbcnews.com/tech/internet/instagram-restricts-abortion-resource-posts-hashtags-rcna35522>

²¹ Statement by Andy Stone, Policy Communication Director, Facebook, 2022 at:

<https://twitter.com/andymstone/status/1541489203434897408?s=20&t=A9wgsi6118xNCZwgBO6VYA>

²² *Facebook Community Standards: Restricted Goods and Services*, Facebook Transparency Center, accessed July 4th, 2022 at: <https://transparency.fb.com/policies/community-standards/regulated-goods/>

guidelines related to curating information, as well as any monitoring of its implementation?

2. Can you provide us with your full Community Guidelines for all your platforms, including any explanatory notes that you use to make particular determinations? For example, how do you define a “legitimate healthcare e-commerce business”?
3. In his statement on June 27th, Meta’s Policy Communications Director Andy Stone stated that “We’ve discovered some instances of incorrect enforcement and are correcting these.” Can you provide information relating to what constituted this “incorrect enforcement,” commit to reporting more data on these instances, and what steps you have put in place to remedy any harm it may have caused to end-users and to ensure that such harm does not happen going forward?
4. Can you clarify how posts related to hashtags for “abortion rights” and “mifepristone” violate the Community Standards of Meta-owned platforms such as Instagram, and whether such posts would violate the Community Standards of other Meta-owned platforms such as WhatsApp? Has Meta taken any specific measure to restrict content using these hashtags?
5. All content moderation and curation criteria, rules, sanctions, and exceptions should be clear, specific, predictable, and properly informed to users in advance. What additional steps, if any, is Meta taking to establish and enforce clear and meaningful human rights standards related to reproductive health and rights?

We request that you respond to this letter by August 31, 2022. We would be pleased to meet with you or your team to explain our concerns further, and we look forward to your written response.

Sincerely,

Access Now

Amnesty International USA

Fight for the Future

Human Rights Watch

Planned Parenthood Federation of America