

December 4, 2020

Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations
CH-1211 Geneva 10, Switzerland
Antiracism1@ohchr.org, Registry@ohchr.org

Distinguished United Nations High Commissioner for Human Rights:

In response to your call for inputs for the preparation of the report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 43/1 on the “Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers,” the National Birth Equity Collaborative and the Center for Reproductive Rights present this joint submission highlighting the need to include and examine violations of Black women’s human rights, including sexual and reproductive rights violations caused by systemic racism and state violence.

This joint submission responds to questions 2 and 10 of the call for inputs, highlighting (a) systems and policies that reinforce systemic racism and undermine civil, political, social, economic, and cultural rights, and (b) some of the gendered dimensions of the United States’ pervasive tendency to surveil, control, and exploit Black people, leading to violations of Black women’s rights to life, health, sexual and reproductive health, bodily and reproductive autonomy, equality and non-discrimination, and freedom from cruel, inhuman, and degrading treatment that severely impact their reproductive and family lives. To end police violence against Black adults and Black children of every gender, the U.S. must confront and eradicate racism in every system and institution that treats Black people as disposable, including those that undermine the reproductive health and autonomy of Black women and girls.

The National Birth Equity Collaborative (“NBEC”) is a national leader in creating solutions that optimize Black maternal and infant health through training, policy advocacy, research, and community-centered collaboration. NBEC’s founder and staff experts are Black women dedicated to building a future where all Black mothers and babies thrive. The Center for Reproductive Rights (“The Center”) is a global organization that uses law and policy to advance reproductive rights as fundamental human rights that governments around the world are obligated to respect, protect, and fulfill.

Black women are leading the largest social movement in U.S. history, and their lives matter too

George Perry Floyd Jr. was murdered by a white police officer in May 2020. For months afterward, protests became a part of daily life across the United States (U.S.) as Black people and others [demanded justice for Mr. Floyd](#) and an end to the impunity that allows police officers to routinely destroy Black lives. Many of the [activists leading this human rights movement](#) are Black women, whose own needs and gendered experiences with oppression are often minimized or disregarded.

Black women in the U.S. live and raise families with the knowledge that they, their children, and their loved ones are always at risk of experiencing police violence—even when they are unarmed, playing, sleeping, or doing virtually any activity that white people routinely engage in without fear. In the face of this terrifying reality, Black women form the frontlines of the resistance to police violence, even [as their own lives are taken and forgotten](#). Challenging the apathy that often surrounds police violence against Black women, Black feminists have [carefully documented Black women’s stories](#) and launched a national

campaign that calls people to remember each woman killed and “[Say Her Name.](#)” It was also Black women who coined the term “Black Lives Matter,” and organized protests in cities across the United States. Although the vast majority of Black Lives Matter demonstrations have been peaceful, [government authorities have disproportionately used force against these crowds.](#) While Black women fight for an end to police violence against everyone, it is imperative that we remember how high the stakes are for Black women themselves.

Black cisgender and transgender women in the U.S. are recurring victims of police violence—including homicide and sexual assault. In the last five years, at least [48 Black women have been killed by police](#) and in none of those cases have the police been convicted for it. The U.S. criminal justice system empowers police officers and others to target Black people and then justify violence against them. It is not designed to hold police officers accountable or to ensure justice for Black women who have been the victims of human rights violations.

Breonna Taylor’s death last March provides a devastating example of how little protection and justice Black women in the U.S. are afforded. Twenty-six year old [Breonna Taylor](#) was sleeping when police officers in Louisville, Kentucky approached her home after midnight, knocked down the door, and shot her eight times. The two [officers who fired at and killed her were not held accountable.](#) A third officer who shot blindly into Ms. Taylor’s apartment was only charged with “wanton endangerment” for firing recklessly into a neighbor’s unit.

Racism is embedded in the U.S. criminal justice system and extends far beyond fatal interactions with law enforcement. While the system rarely holds police accountable for abuses of power, it severely punishes Black women and girls (especially those who are LGBTQ+) for even minor and perceived offenses. Consequently, Black women and girls are overrepresented among the [more than 230,000 women](#) incarcerated in the United States, many of whom are mothers and primary caregivers to children.

Systemic racism affects all areas of Black women’s lives, including Black women’s reproductive health and autonomy

During the [Urgent Debate](#) on June 17, E. Tendayi Achiume—Special Rapporteur on Contemporary Forms of Racism (and [the first woman to serve in the role](#) since the mandate’s origin in 1993)—read [a statement](#) in which she noted that while the focus of the Urgent Debate was law enforcement, “the uprising in the United States and in other parts of the world are rejections of *all* systemic racism in *all* areas of life.”

Systemic racism poses risks to Black lives across a broad spectrum of social, political, and economic systems, and the uprisings against racial injustice in the United States confront this fact. In addition to the harm caused by police violence, Black women suffer and die from many other preventable causes rooted in government sanctioned discrimination, neglect, and the deprivation of economic and social rights. The chronic stress of observing, navigating and experiencing oppression weathers Black women on a cellular level, making them more susceptible to premature death, whether by violence or disease.

Systemic racism affects even the most personal decisions that Black women make. [Black women who decide to birth face both the possibility that they or their children will be killed by state actors](#) and the possibility that they will die or become injured bringing those children into the world. Fear of these outcomes is rooted in data and lived experience. Maternal mortality is an indicator of a nation’s commitment to health and equity, and on this measure, the United States has failed. For decades, Black women in the U.S. of all socioeconomic backgrounds have been dying from pregnancy complications

at [more than three times the rate of white women](#). The U.S. has the [highest maternal mortality ratio among high-resource countries](#) and the government's own data indicates that [the majority of these deaths are preventable](#). This year in New York City, Black women birth workers organized small [protests outside hospitals](#) where young Black women suffered maternal deaths. But whether they are caused by state violence or state neglect, Black women's deaths do not garner the attention and collective anguish they deserve. When a Black woman's human right to life is violated, it is often only other Black women who seek justice in her name.

In hospital settings, where most Black women in the U.S. give birth, racism and sexism facilitate mistreatment and abuse. [Black women report](#) being ignored, disrespected, coerced, threatened, and denied information and the opportunity to give or refuse consent to medical interventions. While most Black women do survive childbirth, they are twice as likely as white women to experience severe pregnancy complications and more likely to give birth in hospitals that provide lower quality care. Evidence shows that repeated exposure to racism has a ["weathering"](#) effect that harms Black women's health and contributes to adverse birth outcomes. As the U.S. reckons with the way police wield authority over Black bodies, that reckoning must also extend to health care institutions where Black pregnant people birth, and too often, die.

Government laws, policies, and practices that seek to control Black women's bodies and reproductive lives further infringe on Black women's human rights to decide whether and when to have children and to raise the children they do have in safe, supportive environments. [The U.S. child welfare system separates Black mothers from their children](#) at alarming rates, often for simply enduring the conditions of poverty imposed by systemic racism. Between 2000 and 2011, [one in nine Black children in the U.S. were removed from their parent's care](#). Rather than fulfill the civil, political, economic, and social rights of Black families, the U.S. has built a child welfare system that functions as a punitive parallel to the criminal justice system, systematically disrupting and separating Black families.

For Black women who seek to end a pregnancy, systemic racism and state sanctioned barriers to health care can be difficult to overcome. [Abortion restrictions are escalating in the U.S.](#), disproportionately impacting Black women and other pregnant people subjected to multiple and intersecting forms of discrimination. The proliferation of increasingly extreme laws and regulations restricting abortion access in the U.S. is retrogressive and reflects a callous disregard for their real-life impact. Medically unnecessary restrictions delay, demean, stigmatize, and misinform people seeking abortion care while increasing health risks for patients. And they extend [a violent legacy of state control](#) over Black women's reproductive lives, in violation of their rights to autonomy, privacy, life, health, equality, and non-discrimination.

In some cases, Black women in the U.S. are subjected to government control and punishment as a result of their pregnancy or an outcome of their pregnancy. Despite Constitutional legal protections for reproductive autonomy and decision-making, state and local law enforcement officers and agencies in the U.S. [misuse laws to criminalize and arrest pregnant people](#) for pregnancy loss, for having or seeking an abortion, and for conduct during or related to pregnancy that law enforcement officials object to. Government child welfare agencies play a similar role, using the civil legal system to forcibly remove children from their mothers in some cases where they suspect prenatal drug use. Destructive stereotypes and the over policing and surveillance of Black communities make Black women particularly vulnerable to pregnancy-related punishments in these systems.

Because Black women are incarcerated at disproportionately high rates, they are also disproportionately impacted by the sexual and reproductive health and rights abuses that proliferate in these settings. Black women incarcerated in the U.S. experience denial of medical care and critical reproductive health services, are sometimes shackled while pregnant and giving birth, and have been subjected to [coerced and non-consented sterilization](#) both [inside and outside the criminal justice system](#). Black women are also [among the women](#) subjected to [unnecessary gynecological procedures and non-consensual surgeries](#) while in the custody of the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), at the Irwin County Detention Center (ICDC) in Ocilla, Georgia.

Government sanctioned stigmatization of reproductive health not only interferes with patients' access to evidence-based, dignified care, it also contributes to an environment in which patients and their health care providers are routinely exposed to privacy violations and harassment at work, on their way to health appointments, in their communities, and in online spaces where they seek or share information. The recent [surge in white nationalist organizing](#) involves many white supremacist [members of the anti-abortion movement](#) who surround reproductive health clinics and direct racialized harassment at Black patients and providers. But while law enforcement has suppressed protestors demanding racial justice by beating and arresting them, charging them with crimes, and even assaulting them with rubber bullets and [tear gas](#) (that medical professionals worry may cause miscarriage), [anti-abortion protestors who seek to enforce patriarchal norms and block access to health care rarely encounter police intervention](#).

[Racism is a public health crisis in the United States](#). The structural, institutional, and interpersonal racism that fuels police killings also negatively impacts Black women's reproductive health and autonomy. Systemic racism disrupts Black families through fear, incarceration, and separation, drives racial disparities in maternal mortality and morbidity (as well as COVID-19 and numerous other health conditions), creates access barriers to reproductive health care, nurtures mistreatment and bias against Black women in facility-based birth settings, encourages the control and criminalization of pregnant people, and gives rise to racialized harassment and under-investment in reproductive health care services that women and Black communities need. These disparities in access and outcomes are both forms and symptoms of discrimination. When they are tolerated, they reinforce the systemic racism that assigns Black lives less value and perpetuates state violence against Black people.

The United States has obligations under international human rights law to address systemic racism and its impact on Black women's sexual and reproductive health and rights

The United States has international human rights obligations to prevent and remedy sexual and reproductive rights violations and to protect, respect, and fulfill Black women's human rights to equality and non-discrimination. The discriminatory policies, practices, and outcomes described above are manifestations of systemic racism and implicate a range of rights protected by the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), both ratified by the United States.¹ Treaty monitoring bodies and

¹ The SRHR violations against Black women described in this letter contravene rights protected under the ICCPR, including the rights to: non-discrimination (Article 2); equality between men and women (Article 3); life (Article 6); freedom from torture and cruel, inhuman and degrading treatment (Article 7); privacy (Article 17); freedom of expression and opinion (Article 19); and equality before the law (Article 26). Human Rights Committee General Comment 36 (Right to Life) provides that "restrictions on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, subject them to physical or mental pain or suffering which violates article 7, discriminate against them or arbitrarily interfere with their privacy." Furthermore States "should not . . . apply criminal sanctions against women and girls undergoing abortion." States should also protect the lives of women and girls by "prevent[ing] the stigmatization of women and girls seeking abortion" and "ensur[ing] the availability of,

Special Procedures have expressed concern over sexual and reproductive health and rights violations in the U.S. and have repeatedly noted that these violations disproportionately harm marginalized communities, including Black women and women of color.

- The UN Special Rapporteur on Violence Against Women (SRVAW) raised concerns about shackling of pregnant women following visits to the U.S. in [1998](#) and [2011](#). In 2011, the SRVAW noted that despite restrictions, shackling regularly occurred and that existing policies were not adequately enforced. The SRVAW also expressed concern about women’s health care in U.S. justice facilities, noting the system is “insufficiently responsive to gender-specific needs, including the reproductive health needs of women, and is under-staffed and under-resourced.”
- In its 2014 review of the United States, the [Committee on the Elimination of Racial Discrimination expressed concern](#) with high maternal and infant mortality rates among African American communities. The Committee recommended that the United States ensure effective access to affordable and adequate health-care services and eliminate racial disparities in the field of sexual and reproductive health.
- In 2014, the [HRC expressed concern](#) about racial disparities in the criminal justice system, and the impact on people of color under Articles 2, 9, 14, and 26.
- After its 2015 visit to the United States, the [UN Working Group on discrimination against women in law and practice](#) recommended that the U.S. address racial disparities in maternal health, ensure that women are able to exercise their right to abortion, repeal discriminatory laws that prevent poor women from using public insurance to pay for abortion care, and combat the stigma attached to reproductive and sexual health care. The Working Group also expressed concern about over-incarceration and the shackling of pregnant women, as well as the lack of appropriate health care services for women in U.S. immigration detention.
- At the conclusion of its 2016 U.S. visit, the [UN Working Group of Experts on People of African Descent noted](#) that racial discrimination has a negative impact on Black women’s ability to maintain good health and recommended that the United States prioritize policies and programs to reduce maternal mortality for Black women.
- Reporting on its visit to the United States in 2016, the [UN Working Group on Arbitrary Detention expressed concern](#) about civil detentions of pregnant women who used or were suspected to have used criminalized drugs, noting that “[t]his form of deprivation of liberty is gendered and discriminatory in its reach and application.”
- At the conclusion of his 2017 visit to the United States, [UN Special Rapporteur on Extreme Poverty noted](#) that the U.S. has the highest maternal mortality rate among wealthy countries and that Black women are three to four times more likely to die from childbirth. He also expressed concern that low-income women face legal and practical obstacles to exercising their Constitutional, privacy-derived right to access abortion services and that people in poverty,

and effective access to, quality prenatal and post-abortion health care for women and girls, in all circumstances, and on a confidential basis.” (Para 8). Additionally, States’ duty to protect life requires States to take appropriate measures to address adequate conditions for protecting the right to life and advancing the enjoyment of life, including by developing strategic plans for improving access to medical examinations and treatments designed to reduce maternal and infant mortality. (Para. 26). General Comment 28 states that “[p]regnant women who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times, and in particular during the birth and while caring for their newborn children.” (Para. 20).

particularly pregnant women, are disproportionately criminalized and subjected to interrogations that strip them of privacy rights.

Recommendations

The National Birth Equity Collaborative and the Center for Reproductive Rights respectfully urge the United Nations High Commissioner for Human Rights and the relevant special procedure mandate holders assisting with preparation of this report to consider the following recommendations:

1. Take a gender-inclusive approach to the report and consider both the immediate and broader impacts of police violence on women and gender minorities, their families, and their reproductive health and autonomy.
2. Contextualize police violence against Black people, and Black women in particular, by examining the ways that systemic racism affects multiple areas of Black life, including reproductive health and autonomy, giving rise to and reinforcing conditions that make police violence (and impunity for such violence) more likely to occur.
3. Make recommendations to States to specifically affirm Black women's dignity and respect, protect, and fulfill their human rights to life, health, sexual and reproductive health, bodily and reproductive autonomy, equality and non-discrimination, and freedom from cruel, inhuman, and degrading treatment in interactions with law enforcement and in all areas of their lives, including their reproductive lives.

We appreciate this opportunity to provide input in advance of the United Nations High Commissioner for Human Rights' report. Should OHCHR need any additional information, please do not hesitate to reach out to Pilar Herrero, Senior Staff Attorney, U.S. Human Rights, Center for Reproductive Rights at pherrero@reprorights.org and Dr. Joia Crear Perry, Founder and President, National Birth Equity Collaborative at dr.joia@birthequity.org.