

**INTERSECTIONAL DISCRIMINATION AGAINST WOMEN AND GIRLS, LGBTQI+ PEOPLE, AND PEOPLE WITH DISABILITIES OF AFRICAN DESCENT:**

**DOCUMENTATION OF HARMS, RIGHTS-BASED ANALYSIS, AND STATE OBLIGATIONS**

United Nations Permanent Forum on People of African Descent

Input for the drafting of the United Nations Declaration on the promotion, protection and full respect of the human rights of people of African descent

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**Introduction**

The Leitner Clinic submission to the United Nations Permanent Forum on People of African Descent analyzes intersectional discrimination against women and girls of African descent, LGBTQI+ people of African descent, and people of African descent with disabilities in the African Diaspora, including Europe, Latin America and the Caribbean, and the United States. The submission documents specific harms against each group, the rights those harms violate, and state obligations to ameliorate those harms. The submission is based on in-depth desk research and highlights the recommendations of Black-led organizations fighting for the rights of people of African descent. It is our hope that in helping to draft the United Nations Declaration on the promotion, protection, and full respect of the human rights of people of African descent, the Permanent Forum on People of African Descent will take intersectionality into account in its framing and analysis of abuses, rights, and state obligations.

International human rights were designed to combat inequalities regardless of race, gender, religion, language, political opinion, and other social status.<sup>1</sup> However, the human rights system has oftentimes not adequately addressed the situation of communities who face multiple and interconnected forms of discrimination.<sup>2</sup> People of African descent with overlapping identities have not had their lived experiences fully addressed within international human rights law. An intersectional approach would push human rights bodies to “[evaluate] how the aggregation of two or more grounds

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<sup>1</sup> See Ivona Truscan and Joanna Bourke-Martignoni, *International Human Rights Law and Intersectional Discrimination*, 16 THE EQUAL RTS. REV. 103, 103 (2016).

<sup>2</sup> See Gauthier de Beco, *Protecting the Invisible: An Intersectional Approach to International Human Rights Law*, 17 HUM. RTS. L. REV. 633, 656 (2017).

of discrimination works to reinforce subordination and disadvantage.”<sup>3</sup> This understanding of intersectional discrimination would create a more inclusive system for marginalized groups and allow human rights bodies to develop stronger recommendations for states.<sup>4</sup>

Human rights mechanisms have started to incorporate intersectionality into their general comments and recommendations. General Recommendations adopted by the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Elimination of Discrimination against Women (CEDAW), as well as General Comments by the Convention on the Rights of People with Disabilities (CRPD) are good examples of this approach.<sup>5</sup> The United Nations Declaration on the Rights of Indigenous Peoples also includes intersectional language.<sup>6</sup> More recently, E. Tendayi Achiume, the former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, wrote a report which focused heavily on incorporating intersectionality in the plan to eradicate racism.<sup>7</sup> Achiume highlighted the need for member states to embrace an expansive understanding of intersectionality that examines not only gender but also disability, sexual orientation, and gender identity.<sup>8</sup>

Although there have been new initiatives to include intersectionality into international human rights analysis, there are still barriers to doing so comprehensively. One crucial obstacle is the lack of comprehensive data collection on intersectional discrimination against people of African descent. This statistical invisibility is a pervasive issue.<sup>9</sup> States must do better to compile accurate and specific

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<sup>3</sup> *Id.* at 636.

<sup>4</sup> See Truscan & Bourke-Marignoni, at 129-30.

<sup>5</sup> See generally Convention on the Elimination of All Forms of Racial Discrimination [CERD] Committee, *General Recommendation No. 25, Gender Related Dimensions of Racial Discrimination*, U.N. Doc. A/55/18, annex V (Mar. 20, 2000); see also CERD Committee, *General Recommendation No. 28, on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, U.N. Doc. CEDAW/C/FC/28, at III.A.18., 1, 4 (Dec. 16, 2010) (noting “State parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them” and that certain groups of women may suffer from “multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste, or other factors”); see Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW] Committee, *General Recommendation No. 18, Disabled Women*, (1991) (acknowledging the “double discrimination” that women with disabilities face.); CEDAW Committee, *General Recommendation No. 25, on Art. 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, Temporary Special Measures*, III.12 1, 3 (1999) (acknowledging that certain groups of women may suffer from “multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste, or other factors”); see Convention on the Rights of Persons with Disabilities [CRPD] Committee, *General Comment No. 6, on Equality and Non-discrimination*, U.N. Doc. CRPD/C/GC/6, at I. 1, 1 (Apr. 26, 2018) (noting that national laws “often lack a recognition of multiple and intersectional discrimination” and requires state parties to work closely with organizations that “represent the vast diversity in society”).

<sup>6</sup> See United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP] arts. 1, 17, 21.2, U.N. Doc. A/RES/61/295 (2007) (“Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration”).

<sup>7</sup> See generally E. Tendayi Achiume, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, U.N. Doc. A/76/434 (Oct. 22 2021).

<sup>8</sup> See *id.* at 23.

<sup>9</sup> See generally *Minority Stories: Europe*, MINORITY RIGHTS GROUP INTERNATIONAL, <https://stories.minorityrights.org/afro-descendants/chapter/europe/> (last visited Nov. 17, 2022) (compiling official data on the Black population in Europe is challenging because of a continental reluctance to keep data broken down by race and ethnicity stemming from the impact of the Holocaust); see also AFRODESCENDENT WOMEN IN LATIN

statistics on people of African Descent, including statistics related to economic status, education, healthcare, housing, and other areas.<sup>10</sup>

## I. Women and Girls of African Descent

Women and girls of African descent experience discrimination in education, employment, and healthcare, as well as harassment and violence from private citizens and state entities.

### A. Education

#### 1. Documentation of Harms

Women and girls of African descent face barriers when trying to access education due to poverty, racial discrimination, and gender discrimination. This discrimination prevents Black women and girls from achieving a high level of education, escaping poverty, and fully participating in society.

**Access to Education:** In Latin America and the Caribbean, poverty limits access to education for girls of African descent and leads to low literacy rates. In Brazil, 20.2% of women of African descent had “no schooling” completed, 4.1% more than women of non-African descent.<sup>11</sup> In Peru, 8.6% of people who could not read or write identified as Afro-Peruvian, with the rate for women being 6.7% higher than for men.<sup>12</sup> Women of African descent in Latin America account for a lower percentage of the total attendance in higher education than women of non-African descent.<sup>13</sup> In Uruguay, this number was 8.1% compared to 25.7%; in Ecuador 12.5% compared to 27.2%; in Costa Rica 13.7% compared to 22.4%; and in Venezuela 23.9% compared to 34.1%.<sup>14</sup>

**School Discipline, Discrimination, and Harassment:** Black girls face systemic discrimination and harassment at school, adding a significant barrier to attaining an education. Girls of African descent in Latin America reported increased rates of bullying at school.<sup>15</sup> In the United States, society often views Black girls not as children but as adults.<sup>16</sup> This adultification bias against Black girls may play a role in their disproportionate rates of school punishment.<sup>17</sup> In the United States, Black

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AMERICA AND THE CARIBBEAN: DEBTS OF EQUALITY, ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN [ECLAC] 18, 20-22 (Jan. 2019), <http://hdl.handle.net/11362/44387> (tracking data for Latin America poses challenges because surveys and censuses often do not contain space to self-identify with an ethnic or racial class).

<sup>10</sup> See AFRODESCENDENT WOMEN IN LATIN AMERICA AND THE CARIBBEAN: DEBTS OF EQUALITY, at 18, 22; see also Inter-Am. Comm’n H.R., *REF: Inputs for the Preparation of the Report of the United Nations High Commissioner for Human Rights Pursuant to Human Rights Council Resolution 43/1*, 1, 2 (Dec. 10, 2020).

<sup>11</sup> AFRODESCENDENT WOMEN IN LATIN AMERICA AND THE CARIBBEAN: DEBTS OF EQUALITY, at 18, 31.

<sup>12</sup> Rep. of Working Group on Issue of Discrimination Against Women in Law and in Practice on its Mission to Peru (11 to 19 September 2014), U.N. Doc. A/HRC.29/40/Add.2, at 17 (2015).

<sup>13</sup> See *Economic, Social, Cultural, and Environmental Rights of Persons of African Descent: Inter-American Standards to Prevent, Combat and Eradicate Structural Racial Discrimination*, approved by the Inter-American Commission on Human Rights on March 16, 2021, O.A.S. Rec. OEA/Ser.L/V/II. Doc. 109/21, at 102 (Mar. 16, 2021).

<sup>14</sup> *Id.*

<sup>15</sup> See HEALTH OF AFRO-DESCENDANT PEOPLE IN LATIN AMERICA, PAN AMERICAN HEALTH ORGANIZATION 36 (2021), <https://doi.org/10.37774/9789275124895>.

<sup>16</sup> See Rebecca Epstein et al., *Girlhood Interrupted: The Erasure of Black Girls’ Childhood*, GEO. L. CTR. ON POVERTY & INEQ., at 1 (July 2017).

<sup>17</sup> See *id.* at 9.

girls are punished with out-of-school suspension rates that are seven times more than their white counterparts.<sup>18</sup> The **National Association for the Advancement of Colored People (NAACP)**, a group that has long fought for the rights of Black Americans, notes how this disproportionate punishment of Black girls in the United States school system acts as a barrier to equal opportunity in education and work and reproduces negative stereotypes of Black girls as disobedient and violent.<sup>19</sup>

## 2. Rights-Based Analysis

Women and girls of African descent have a right to an education free from discrimination that allows them to participate in society.<sup>20</sup> Black girls also have the right to be free from discipline and punishment, which violates their human dignity.<sup>21</sup> Further, they have a right to accessible social programs that offer financial assistance to Black girls seeking to continue their education despite difficult circumstances.<sup>22</sup>

## 3. State Obligations

States should take all appropriate measures to make education accessible to women and girls of African descent by breaking cycles of marginalization and discrimination.<sup>23</sup> The **Network of Afro-Latin American, Afro-Caribbean and Diaspora Women** recommends that States implement affirmative education policies for women of African descent and strengthen the path for young women of African descent in education.<sup>24</sup> In order to accomplish this, States should strive to eradicate illiteracy and establish an accessible middle-level education system.<sup>25</sup> States should ensure that girls of African descent are able to attend school and that the discipline they experience in school does not violate their human dignity. States should also establish more inclusive educational climates such as implementing anti-racist training for teachers.<sup>26</sup>

## B. Employment

### 1. Documentation of Harms

Women and girls of African descent experience disproportionately high levels of unemployment and low wages. Black women and girls are more likely to work in service occupations as caregivers, housekeepers, nannies, and foodservice staff, which are positions that often receive lower wages and less benefits. Additionally, Black women and girls experience higher rates of workplace discrimination and harassment.

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<sup>18</sup> See Leah A. Hill, *Disturbing Disparities: Black Girls and the School-to-Prison Pipeline*, 87 FORDHAM L. REV. 58, 58 (2018).

<sup>19</sup> See CARA MCCLELLAN, OUR GIRLS, OUR FUTURES: INVESTING IN OPPORTUNITY & REDUCING RELIANCE ON THE CRIMINAL JUSTICE SYSTEM IN BALTIMORE, T. MARSHALL INST. 5 (2018), [https://tminstituteldf.org/wp-content/uploads/2019/04/Baltimore\\_Girls\\_Report\\_FINAL\\_6\\_26\\_18.pdf](https://tminstituteldf.org/wp-content/uploads/2019/04/Baltimore_Girls_Report_FINAL_6_26_18.pdf).

<sup>20</sup> See International Covenant on Economic, Social and Cultural Rights art. 13, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>21</sup> See Convention on the Rights of the Child art. 28 (2), Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>22</sup> See *id.*, art. 28 (1) (a)-(b).

<sup>23</sup> See CEDAW Committee, *General Recommendation No. 36, on the Right of Girls and Women to Education*, U.N. Doc. CEDAW/C/GC/36 (Nov. 16, 2017).

<sup>24</sup> See Joanna Wetherborn, *Declaración Final Foro Cali Red Mujeres Afro*, MUJERES AFRO (Oct. 14, 2018), <http://www.mujeresafro.org/declaracion-final-foro-cali-red-mujeres-afro/>.

<sup>25</sup> See Organization of American States [OAS], Charter of the Organization of American States art. 49, ¶a, Apr. 20, 1948.

<sup>26</sup> See generally Brooke LePage, *In Schools, Black Girls Confront Both Racial and Gender Bias*, FUTURE ED (June 13, 2021), <https://www.future-ed.org/in-schools-black-girls-confront-both-racial-and-gender-bias/>.

**Unemployment and Low Wages:** Women and girls of African descent disproportionately experience unemployment. In the United States, Black women have the highest unemployment rate amongst all women.<sup>27</sup> In Argentina, Brazil, Ecuador, Panama, and Uruguay, women of African descent face the highest unemployment rates of any group and twice that of non-Black men.<sup>28</sup> Similarly, Black people in the European Union experience unemployment at a higher rate than the white people, with Black women experiencing higher rates of unemployment than Black men.<sup>29</sup> In the United Kingdom, 10.9% of Black women are unemployed, compared to 6.9% of Black men and 2.7% of white women.<sup>30</sup>

Women of African descent also face disproportionately low wages when they do secure employment. In the United States, Black women have lower incomes compared to white women and Black men and experience the highest unemployment rates compared to all groups.<sup>31</sup> In Brazil, male laborers make 30% more than female laborers with Black women earning even less.<sup>32</sup> Women of color in countries in the European Union similarly experience a pay gap in comparison to men and white women.<sup>33</sup>

**Concentration of Jobs in Service Occupations:** Black women and girls are more likely to work in service occupations. Workers in service occupations often receive low wages and lack access to benefits such as social security and paid sick leave.<sup>34</sup> In the United States, Black women are more likely than any other group to work in service occupations.<sup>35</sup> According to the **Black Women's Roundtable**, a Black women-led program of the National Coalition on Black Civic Participation, Black women in the United States are less likely to occupy higher-level and higher-paying jobs that guarantee better benefits and mobility in comparison to white women.<sup>36</sup> In Brazil, lasting

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<sup>27</sup> See ANDREA J. RITCHIE ET AL., END THE WAR ON BLACK TRANS, GENDER NON-CONFORMING, AND INTERSEX PEOPLE, MOVEMENT FOR BLACK LIVES 10 (Aug. 25, 2020), <https://m4bl.org/policy-platforms/end-the-war-trans/>.

<sup>28</sup> See AFRODESCENDENT WOMEN IN LATIN AMERICA AND THE CARIBBEAN: DEBTS OF EQUALITY, at 33.

<sup>29</sup> See MARTA CAPESCIOTTI ET AL., THE SOCIOECONOMIC POSITION OF WOMEN OF AFRICAN, MIDDLE EASTERN, LATIN AMERICAN, AND ASIAN DESCENT LIVING IN THE EUROPEAN UNION, EUR. PARL.'S COMM. ON WOMEN'S RTS. AND GENDER EQUAL. 52-53 (Aug. 2021), [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/696916/IPOL\\_STU\(2021\)696916\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/696916/IPOL_STU(2021)696916_EN.pdf).

<sup>30</sup> AN EQUAL PATH TO PROGRESSION: AN EMPLOYER'S GUIDE TO UPLIFTING BLACK AND SOUTH ASIAN WOMEN IN THE WORKPLACE, TOTALJOBS AND THE DIVERSITY TRUST 5 (2022), [https://www.totaljobs.com/file/general/TJ\\_CAMPAIGN\\_An-equal-path.pdf?WT.mc\\_id=E\\_A\\_AF\\_AWIN\\_TJ&awc=21134\\_1663076329\\_4729fda9405b50738fb96a6e19129646](https://www.totaljobs.com/file/general/TJ_CAMPAIGN_An-equal-path.pdf?WT.mc_id=E_A_AF_AWIN_TJ&awc=21134_1663076329_4729fda9405b50738fb96a6e19129646).

<sup>31</sup> See Asha DuMonthier et al., *The Status of Black Women in the United States*, INST. FOR WOMEN'S POL'Y RSCH., at 22, 24 (2020).

<sup>32</sup> See Inter-Am. Comm'n H.R., *Situation of Human Rights in Brazil*, at 41, OEA/Ser.L/V/II. Doc. 9 (Feb. 12, 2021), <http://www.oas.org/en/iachr/reports/pdfs/Brasil2021-en.pdf>.

<sup>33</sup> See Jill Motley, *Bringing Women of Color into the European Workforce*, DIVERSITY GLOBAL, <https://diversityglobal.com/web/Article.aspx?id=Bringing-Women-of-Color-Into-the-European-Workforce-3727> (last visited Nov. 19, 2022).

<sup>34</sup> See DuMonthier, at 29; *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, INTER-AM. COMM'N H.R., OAS No. OEA/Ser.L/V/II., Doc. 233/19, at 40, 50-52, (Nov. 14, 2019), <http://www.oas.org/en/iachr/reports/pdfs/ViolenceWomenGirls.pdf>.

<sup>35</sup> See DuMonthier, at 28.

<sup>36</sup> See BLACK WOMEN'S ROUNDTABLE, STATE OF BLACK WOMEN IN THE U.S. AND KEY STATES: CENTERING BLACK WOMEN & GIRLS LEADERSHIP AND PUBLIC POLICY AGENDA IN A POLARIZED POLITICAL ERA, NAT'L COAL. ON BLACK CIV. PARTICIPATION 6-7 (2019), [https://www.ncbcp.org/assets/2019BWRReportExecutive\\_Summary.BlackWomenintheU.S.2019.FINAL3.22.19.pdf](https://www.ncbcp.org/assets/2019BWRReportExecutive_Summary.BlackWomenintheU.S.2019.FINAL3.22.19.pdf).

discrimination in education, training, and hiring forces many Black women into domestic labor.<sup>37</sup> In the Caribbean, the racial division of labor has historically pushed Black women into lower-ranking positions and lower-earning careers.<sup>38</sup>

**Workplace Violence, Harassment, and Discrimination:** In Europe, Black women and girls are disproportionately impacted by harassment and abuse in the workplace. Many Black women in Europe face targeted workplace discrimination such as office dress codes that ban natural hairstyles.<sup>39</sup> In the United Kingdom, 37% of Black and minority ethnic women have left a job due to assault or other physical violence while 57% reported that the bullying and harassment they experienced at work affected their mental health.<sup>40</sup>

## 2. Rights-Based Analysis

Women of African descent have the right to work, the right to choose their line of work, the right to equal pay, and the right to fair and favorable work conditions without distinction as to race, color, or national origin.<sup>41</sup>

## 3. State Obligations

The **Black Women's Roundtable** calls for States to adopt protections to ensure Black women's economic rights such as equal pay legislation and wage increases.<sup>42</sup> **The Movement for Black Lives**, a coalition of Black activist organizations, calls for legal protections for Black women workers in under-regulated industries like the service sector.<sup>43</sup> States should develop programs that address the gender stereotypes and racial discrimination that further deny women of African descent better employment opportunities and economic autonomy.<sup>44</sup>

## C. Healthcare

### 1. Documentation of Harms

Women and girls of African descent face barriers to healthcare, including discrimination by medical providers, lack of access to sexual and reproductive healthcare, high maternal mortality rates, early pregnancy, and lack of access to mental health services. Barriers to equal access to healthcare negatively affect the physical and mental health of Black women and girls.

**Discrimination by Medical Providers:** Women and girls of African descent face obstacles accessing comprehensive and safe healthcare. In the United Kingdom, Black women report feeling

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<sup>37</sup> See Peggy A. Lovell, *Race, Gender and Regional Labor Market Inequalities in Brazil*, 58 REV. OF SOC. ECON. 277, 279-281, 284 (Nov. 2010).

<sup>38</sup> See *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, at 24, 52.

<sup>39</sup> See TOOLKIT: WOMEN OF COLOUR IN THE WORKPLACE, EUR. NETWORK AGAINST RACISM 8 (Dec. 2017), [https://docs.euromedwomen.foundation/files/ermwf-documents/8343\\_4.301.womenofcolourintheworkplace.pdf](https://docs.euromedwomen.foundation/files/ermwf-documents/8343_4.301.womenofcolourintheworkplace.pdf).

<sup>40</sup> See *id.* at 9.

<sup>41</sup> See International Convention on the Elimination of All Forms of Racial Discrimination arts. 5(e)(1) & 11(b)-(e), Dec. 21, 1965, 660 U.N.T.S. 195, 212.

<sup>42</sup> See BLACK WOMEN'S ROUNDTABLE, at 7-8.

<sup>43</sup> See *Policy Platforms: Economic Justice*, MOVEMENT 4 BLACK LIVES, <https://m4bl.org/policy-platforms/economic-justice/> (last visited Nov. 11, 2022).

<sup>44</sup> See generally CEDAW Committee, *General Recommendation No. 36, on the Right of Girls and Women to Education*.

unsafe, dehumanized, and discriminated against in medical settings because of their race.<sup>45</sup> In the Dominican Republic, providers often humiliate and shame women of African descent.<sup>46</sup> In Brazil, women of African descent are significantly more likely to be turned away from hospitals where they seek care than white women.<sup>47</sup>

**Sexual and Reproductive Health:** Women and girls of African descent face barriers to realizing their reproductive rights, including lack of access to contraception and safe abortions. **Sister Song**, a women of color reproductive justice collective, highlights how Black women in the United States endure discriminatory contraceptive practices such as the inability to access contraceptive and misinformation about contraceptive use.<sup>48</sup> In the Dominican Republic, a country where 80% of the population is of African descent, one in ten women would like to delay pregnancy but do not have resources to obtain contraception.<sup>49</sup> In the United States, Black women are disproportionately impacted by legislation that restricts access to and criminalizes abortion.<sup>50</sup>

**Maternal Mortality:** Black women globally face higher rates of maternal mortality. The Black maternal mortality rate in the United States is three to four times the rate of white mothers.<sup>51</sup> In the United Kingdom, Black women are five times more likely to die during pregnancy and childbirth than white women.<sup>52</sup> In Brazil, the maternal mortality rate for women of African descent is three times higher than white women.<sup>53</sup>

**Early Pregnancy in Girls of African Descent:** In Latin America, girls of African descent disproportionately experience premature pregnancy.<sup>54</sup> High rates among girls of African descent of child, early, and forced marriage and unions correspond to pregnancy during adolescence, frequently as the result of sexual violence or coercion.<sup>55</sup> These pregnancies increase health risks ranging from

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<sup>45</sup> See generally SYSTEMIC RACISM, NOT BROKEN BODIES: AN INQUIRY INTO RACIAL INJUSTICE AND HUMAN RIGHTS IN UK MATERNITY CARE, BIRTHRIGHTS 16, 18, 22 (2022), [https://www.birthrights.org.uk/wp-content/uploads/2022/05/Birthrights-inquiry-systemic-racism\\_exec-summary\\_May-22-web.pdf](https://www.birthrights.org.uk/wp-content/uploads/2022/05/Birthrights-inquiry-systemic-racism_exec-summary_May-22-web.pdf).

<sup>46</sup> See Arachu Castro et al., *Assessing Equitable Care for Indigenous and Afrodescendant Women in Latin America*, 38 REV PANAM SALUD PUBLICA 96, 98 (2015), <https://iris.paho.org/bitstream/handle/10665.2/10044/v38n2a02.pdf?sequence=1&isAllowed=y>.

<sup>47</sup> See *id.* at 99.

<sup>48</sup> See SisterSong et al., *Reproductive Injustice: Racial and Gender Discrimination in U.S. Health Care*, Shadow Report for the UN Committee on the Elimination of Racial Discrimination, at 15, 19 (2014), [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17560\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17560_E.pdf).

<sup>49</sup> See AFRODESCENDENT WOMEN IN LATIN AMERICA AND THE CARIBBEAN: DEBTS OF EQUALITY, at 18, 59.

<sup>50</sup> See generally UN Body Urges U.S. to Ensure Abortion Access and Culturally Respectful Maternal Health Care in Efforts to Eliminate Racial Discrimination, CENT. FOR REPROD. RTS. (Sept. 12, 2022), <https://reproductiverights.org/un-cerd-us-abortion-maternal-health-racial-discrimination/>; CERD Committee, *Concluding Observations on the Combined Tenth to Twelfth reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/10-12, at 9 (Aug. 30, 2022).

<sup>51</sup> See Dána-Ain Davis, *Reproducing While Black: The Crisis of Black Maternal Health, Obstetric Racism and Assisted Reproductive Technology*, 11 REPROD. BIOMEDICINE & SOC'Y ONLINE 56, 59 (2020), [10.1016/j.rbms.2020.10.001](https://doi.org/10.1016/j.rbms.2020.10.001).

<sup>52</sup> See generally, SYSTEMIC RACISM, NOT BROKEN BODIES: AN INQUIRY INTO RACIAL INJUSTICE AND HUMAN RIGHTS IN UK MATERNITY CARE, at 2.

<sup>53</sup> See Rep. of the Working Group of Experts on People of African Descent on its Fourteenth Session Mission to Brazil, A/HRC/27/68/Add.1 (Dec. 14, 2014), at 17-18.

<sup>54</sup> See HEALTH OF AFRO-DESCENDANT PEOPLE IN LATIN AMERICA, at 33.

<sup>55</sup> See *Child Marriage and Early Unions in Latin America and the Caribbean*, UNICEF, <https://www.unicef.org/lac/en/child-marriage-and-early-unions-in-latin-america-and-the-caribbean> (last visited Nov.

infant mortality to unsafe abortions.<sup>56</sup> Pregnancies among girls of African descent also push them out of school and into domestic life at a premature age.<sup>57</sup>

**Mental Health:** Black women are disproportionately affected by the lack of adequate mental health services. In the United Kingdom, mental health services often fail to account for Black women's trauma and abuse as the result of racism and other discrimination.<sup>58</sup> Language and cultural barriers further contribute to Black women's lack of access to mental health services in the United Kingdom.<sup>59</sup> **Black Mamas Matter**, a Black-led reproductive justice organization, emphasizes how discrimination, poverty, and loss of wages due to chronic health issues have detrimental effects on Black women's physical and mental health in the United States.<sup>60</sup>

## 2. Rights- Based Analysis

Women and girls of African descent have the right to equal access to healthcare services.<sup>61</sup> Women and girls of African descent have the right to full physical autonomy, including the right to sexual and reproductive healthcare free from discrimination.<sup>62</sup> Black pregnant women have the right to be treated with human dignity and receive quality care that will enable them to give birth safely.<sup>63</sup> Black women also have the right to postpartum care and adequate nutrition.<sup>64</sup>

## 3. State Obligations

**Sister Song** calls on States to provide comprehensive sexual education in schools, provide access to affordable contraceptives and abortion, and ensure equitable allocation of reproductive health resources.<sup>65</sup> States should also fund family planning clinics that are accessible to low-income Black

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27, 2022) (“[O]ne in every four women in the [Latin American/ Caribbean] region entered marriage or union for the first time before the age of 18.”); *See generally* CHILD, EARLY AND FORCED MARRIAGE AND UNIONS IN LATIN AMERICA AND THE CARIBBEAN, GIRLS NOT BRIDES 5 (July 2020), <https://www.girlsnotbrides.es/documents/947/Child-early-and-forced-marriages-and-unions-in-LAC.pdf>.

<sup>56</sup> *See generally* CHILD, EARLY AND FORCED MARRIAGE AND UNIONS IN LATIN AMERICA AND THE CARIBBEAN, at 5.

<sup>57</sup> *See* Natalia Kanem, UNFPA Executive Director, Accelerating Global Action to Fulfill the Rights of Afro-Descendants in Latin America and the Caribbean, Address at the Accelerating Global Action for the Fulfillment of Rights for Afro-Descendant People in Latin America and the Caribbean (Oct. 17, 2019), *available at* <https://www.unfpa.org/press/accelerating-global-action-fulfill-rights-afro-descendants-latin-america-and-caribbean>.

<sup>58</sup> *See* TAKING A FORWARD VIEW ON WOMEN AND MENTAL HEALTH: KEY MESSAGES FOR GOVERNMENT, WOMEN'S HEALTH & EQUAL CONSORTIUM 11 (June 2017), <https://positivelyuk.org/wp-content/uploads/2017/06/Taking-a-Forward-View-on-Women-and-Mental-Health.pdf>.

<sup>59</sup> *See id.* at 11.

<sup>60</sup> *See Issue Brief: Black Maternal Health*, BLACK MAMAS MATTER ALLIANCE, at 1 (Sept. 2020), [https://blackmamasmatter.org/wp-content/uploads/2022/04/0322\\_BMHStatisticalBrief\\_Final.pdf](https://blackmamasmatter.org/wp-content/uploads/2022/04/0322_BMHStatisticalBrief_Final.pdf).

<sup>61</sup> *See* Convention on the Elimination of All Forms of Discrimination against Women art.12, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>62</sup> *See* Regional Conference on Women in Latin America and the Caribbean, *Brasilia Consensus*, ¶6 (July 16, 2010), *available at* [https://www.cepal.org/sites/default/files/events/files/consensobrasilia\\_ing.pdf](https://www.cepal.org/sites/default/files/events/files/consensobrasilia_ing.pdf).

<sup>63</sup> *See id.*

<sup>64</sup> *See* Convention on the Elimination of All Forms of Discrimination against Women art. 12; International Covenant on Economic, Social and Cultural Rights art. 12; *see e.g.*, International Convention on the Elimination of All Forms of Racial Discrimination art. 5; *see generally*, Maria de Lourdes da Silva Pimentel v. Brazil, *available at* [www.ohchr.org/Documents/HRBodies/CEDAW/Jurisprudence/CEDAW-C-49-D-17-2008\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/CEDAW/Jurisprudence/CEDAW-C-49-D-17-2008_en.pdf).

<sup>65</sup> *See Reproductive Injustice: Racial and Gender Discrimination in U.S. Health Care*, at 28, 37; *See e.g.*, *Reproductive Justice*, SISTER SONG, <https://www.sistersong.net/reproductive-justice> (last visited Nov. 20, 2022). *See also*, Joanna Wetherborn, *Declaración Final Foro Cali Red Mujeres Afro*, MUJERES AFRO (Oct. 14, 2018),



women.<sup>66</sup> States should reduce maternal mortality among women and girls of African descent and promote reproductive justice through holistic maternal care that empowers them to make their own decisions during pregnancy, labor, childbirth, and the postpartum period.<sup>67</sup> States should develop effective maternal health policies that provide financial resources to Black women-led health care systems and organizations while applying an intersectional lens to policy implementations addressing racial disparities in health care.<sup>68</sup> Additionally, States should reduce the inequity in healthcare access by placing a greater emphasis on the work performed by midwives and healers.<sup>69</sup> States should also provide women and girls of African descent with equal access to education in order to prevent early pregnancies.<sup>70</sup> States should further invest in culturally competent mental health practitioners to serve women of African descent and to make those mental health services more accessible.<sup>71</sup>

#### D. Violence

##### 1. Documentation of Harms

Women and girls of African descent face high rates of interpersonal and state violence, including higher rates of intimate partner violence, sexual assault, police violence, and victimization by the criminal justice system. The physical and psychological pain inflicted on Black women and girls leads to other disadvantages.

**Interpersonal Violence:** Black women experience disproportionate rates of interpersonal violence. Economic insecurity, racism, limited educational opportunities, and unsafe housing are all tied to higher rates of domestic violence that disproportionately affect Black women.<sup>72</sup> In the United States, Black women experience higher rates of intimate partner violence and sexual assault than all other groups of women.<sup>73</sup> More than 40% of Black women will experience intimate partner violence in their lifetimes compared to 31.5% of all women.<sup>74</sup> In the United States, the murder of transgender and gender non-conforming individuals has drastically increased over the years, especially for Black transgender women.<sup>75</sup> In the United Kingdom, Black women make up 16% of the population but 20% of women who report domestic abuse.<sup>76</sup> In Brazil, women of African descent are at higher risk of being

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(recommending that states guarantee sexual and reproductive education which respects diverse identity and an inclusive interpretation of gender), <http://www.mujiresafro.org/declaracion-final-foro-cali-red-mujires-afro/>.

<sup>66</sup> See *id.* at 35, 37.

<sup>67</sup> See generally Tayo Bero, *What It's Like to Give Birth While Black*, CHATELAINE (Sept. 26, 2019), <https://www.chatelaine.com/living/black-birthing-experience-canada/>.

<sup>68</sup> See generally, *id.*

<sup>69</sup> See Ana Luisa González, *COVID-19 sees more expectant Colombian mothers turn to traditional help*, THE NEW HUMANITARIAN (Jan. 7, 2021), <https://www.thenewhumanitarian.org/news-feature/2021/01/07/colombia-covid-traditional-maternal-health>.

<sup>70</sup> See Convention on the Elimination of All Forms of Discrimination against Women art. 10.

<sup>71</sup> Kay Matthews et. al., *Pathways to Equitable and Antiracist Maternal Mental Health Care: Insights from Black Women Stakeholders*, 40 HEALTH AFFAIRS No. 10, 1597, 1600 (2021).

<sup>72</sup> WOMEN OF COLOR NETWORK, DOMESTIC VIOLENCE IN COMMUNITIES OF COLOR 1; IMKAAAN POSITION PAPER, THE IMPACT OF THE DUAL PANDEMIC'S VIOLENCE AGAINST WOMEN & GIRLS AND COVID-19 ON BLACK AND MINORITISED WOMEN & GIRLS 5 (May 2020).

<sup>73</sup> See DuMonthier, at 119 (defining intimate partner violence as “a cycle of violence in which one individual seeks to dominate and control another through psychological, sexual, economic, and/or physical abuse”).

<sup>74</sup> *Id.* at 119-120.

<sup>75</sup> See Annamarie Forestiere, *America's War on Black Trans Women*, HARVARD CIVIL RIGHTS: CIVIL LIBERTIES LAW REVIEW (Sept. 23, 2020), <https://harvardcrcl.org/americas-war-on-black-trans-women/>.

<sup>76</sup> *Violence Against Women & Girls Mayor of London*, MOPAC EVIDENCE AND INSIGHT, 19 (Jun. 2019), [https://www.london.gov.uk/sites/default/files/annex\\_1\\_-\\_evidence\\_pack.pdf](https://www.london.gov.uk/sites/default/files/annex_1_-_evidence_pack.pdf).

killed by men compared to white women.<sup>77</sup> Women of African descent in Brazil make up 68.8% of women who are murdered and 60% of women involved in reported cases of gender-based violence.<sup>78</sup> Between 2005 and 2015, there was a 14.5% increase in homicides involving women of African descent in Brazil, in contrast to an 8% decrease in homicides involving all other women.<sup>79</sup>

**State Violence:** Women and girls of African descent are disproportionately subjected to state violence. In the United States, the criminal justice system views Black women and girls as aggressors instead of victims.<sup>80</sup> Most incarcerated women have been the victims of physical and sexual violence, and many are punished for defending themselves and their children.<sup>81</sup> **Survived and Punished**, a Black-led grassroots organization, highlights how courts interpret self-defense laws narrowly when Black women protect themselves, effectively criminalizing survival actions.<sup>82</sup> As a result of structural racism in the U.S. criminal justice system, Black women are overrepresented in prisons and, along with Black girls, are the fastest growing prison population.<sup>83</sup> Black women in the United States are also disproportionately murdered by the police.<sup>84</sup> In Colombia, women of African descent report the state's police as a primary security threat.<sup>85</sup>

## 2. Rights-Based Analysis

Women and girls of African descent have the right to security of the person and to be protected by the State against violence or harm by private or public actors.<sup>86</sup> This right applies regardless of race,<sup>87</sup> gender,<sup>88</sup> or gender identity.<sup>89</sup> Black women and girls also have the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, and the right to equal protection under the law.<sup>90</sup>

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<sup>77</sup> See DuMonthier, at 121; Mario Francisco Giani Monteiro et. al., *Is There Race/Color Differential on Femicide in Brazil? The Inequality of Mortality Rates for Violent Causes Among White and Black Women*, J. HUM. GROWTH DEV. 358 (2021).

<sup>78</sup> Inter-Am. Comm'n H.R., *Situation of Human Rights in Brazil*, OEA/Ser.L/V/II. Doc.9 (Feb 12, 2021), at 41-42.

<sup>79</sup> *Id.*

<sup>80</sup> Maya Finoh & Jasmine Sankofa, *The Legal System Has Failed Black Girls, Women, and Non-Binary Survivors of Sexual Assault*, ACLU NEWS & COMMENTARY (Jan. 28, 2019) <https://www.aclu.org/news/racial-justice/legal-system-has-failed-black-girls-women-and-non>.

<sup>81</sup> See Mariame Kaba, *Black women punished for self-defense must be freed from their cages*, THE GUARDIAN (Jan. 3, 2019), <https://www.theguardian.com/commentisfree/2019/jan/03/cyntoia-brown-marissa-alexander-black-women-self-defense-prison>.

<sup>82</sup> See Alisa Bierria & Colby Lenz, *Defending Self-Defense: A Call to Action by Survived and Punished*, SURVIVED & PUNISHED, 11 (Mar. 31, 2022) <https://survivedandpunished.org/2022/03/31/defending-self-defense-a-call-to-action-by-survived-punished/>.

<sup>83</sup> See Jamal Hagler, *6 Things You Should Know About Women of Color in the Criminal Justice System*, CTR. FOR AM. PROGRESS (Mar. 16, 2016); Hill, at 58.

<sup>84</sup> See DuMonthier, at 126; Andrea J. Ritchie, et. al., *End the War on Black Women*, MOVEMENT 4 BLACK LIVES, 2 (Aug. 25, 2020), <https://m4bl.org/policy-platforms/end-the-war-black-women/>.

<sup>85</sup> See J.M. Kirby & René Uruena, *Understanding Threats Against Afro-Descendant Women Human Rights Defenders: Re-Envisioning Security*, COLUM. HUM. RTS. L. REV. ONLINE, 324, 358 (Nov. 20, 2020).

<sup>86</sup> See International Convention on the Elimination of All Forms of Racial Discrimination art. 5.

<sup>87</sup> See *id.*

<sup>88</sup> See Convention on the Elimination of All Forms of Discrimination against Women art. 2.

<sup>89</sup> See Yogyakarta Principles plus 10: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, principle 30 (2017), available at <http://yogyakartaprinciples.org/principles-en/yp10/>.

<sup>90</sup> See Convention on the Elimination of All Forms of Discrimination against Women, *General Recommendation No. 35*, ¶15-16, U.N. Doc. CEDAW/C/GC/35 (July 14, 2017).

### 3. State Obligations

**Survived and Punished** calls for freeing survivors of gender-based violence and for state funds to be redirected towards non-carceral, community interventions that empower survivors.<sup>91</sup> These include access to affordable healthcare and housing, as well as tools for employment and financial security.<sup>92</sup> Similarly, **Imkaan**, a Black feminist organization, highlights the need for healthcare and housing for survivors of domestic violence.<sup>93</sup>

## II. LGBTQI+ People of African Descent

LGBTQI+ people of African experience discrimination in education, employment, healthcare, and housing, as well as violence from private citizens and state entities.

### A. Education

#### 1. Documentation of Harms

LGBTQI+ people of African descent face significant barriers to education, including harassment and violence in school, discrimination by teachers and school officers, and disparities in educational outcomes compared to other groups. Such barriers can substantially affect personal autonomy and long-term economic opportunities.

**Harassment and Discrimination in School:** LGBTQI+ people of African descent face disproportionate harassment and violence in school settings. In a report co-authored by the **National Black Justice Coalition**, a civil rights organization dedicated to empowering Black LGBTQI+ people, 51.6% of surveyed Black LGBTQI+ students in the United States felt unsafe in school due to their sexual orientation and 40% faced harassment or assault based on their identity.<sup>94</sup> Black LGBTQI+ people often face discrimination by teachers and school officers, particularly with school disciplinary measures. In the United States and Brazil, LGBTQI+ youth of African descent face discrimination related to school discipline due to their race and sexual orientation or gender identity.<sup>95</sup> In Brazil, students report harassment and violence in both primary school and university settings, from both school administrators and peers.<sup>96</sup> Almost half of Black LGBTQI+ students in the United States faced some sort of disciplinary measure, with 28.6% experiencing detention.<sup>97</sup>

**Disparities in Educational Outcomes:** The discrimination faced by Black LGBTQI+ people often leads to greater disparities in educational outcomes. In Peru and the United States, high levels of harassment and discrimination against LGBTQI+ students of African descent can lead them to abandon

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<sup>91</sup> See Alisa Bierria & Colby Lenz, *Defending Self-Defense: A Call to Action by Survived and Punished*, at 4.

<sup>92</sup> See *id.*; cf. ANDREA J. RITCHIE ET AL., *End the War on Black Women*, at 2.

<sup>93</sup> See Imkaan Position Paper, *The Impact of the Dual Pandemic's: Violence Against Women & Girls and COVID-19 on Black and Minoritised Women & Girls*, 5-6, 11, 17 (May, 2020), [https://829ef90d-0745-49b2-b404-cbea85f15fda.filesusr.com/ugd/2f475d\\_6d6dea40b8bd42c8a917ba58ceec5793.pdf](https://829ef90d-0745-49b2-b404-cbea85f15fda.filesusr.com/ugd/2f475d_6d6dea40b8bd42c8a917ba58ceec5793.pdf).

<sup>94</sup> NHAN L. TRUONG ET AL., GLSEN AND NAT'L BLACK JUST. COAL., *ERASURE AND RESILIENCE: THE EXPERIENCES OF LGBTQ STUDENTS OF COLOR* xvi, xvii (2020).

<sup>95</sup> See e.g., *id.* at xvii, xviii.

<sup>96</sup> See *id.*

<sup>97</sup> *Id.* at xvii, 23 (2020).

their education and negatively impact their social and economic development.<sup>98</sup> Black LGBTQI+ students in the United States who experience significant harassment based on their sexual orientation and/or race/ethnicity are more likely to skip school and students who experience school discipline are less likely to pursue post-secondary education.<sup>99</sup>

## 2. Rights-Based Analysis

LGBTQI+ people of African descent have a fundamental right to education that will enable them to participate in society at their fullest potential.<sup>100</sup> This right applies without discrimination and is based on equal opportunity.<sup>101</sup>

## 3. State Obligations

The **Center for Black Equity**, an international coalition of Black LGBTQI+ community-based organizations, notes that states' programs and policies should ensure that Black LGBTQI+ communities have access to education, skills, and training at all levels.<sup>102</sup> States should enact laws and policies to combat educational discrimination faced by Black LGBTQI+ people.<sup>103</sup> This includes having states ensure that teachers and students are trained to combat discrimination at all levels of education.<sup>104</sup> States should also promote disciplinary measures that do not violate a child's human dignity.<sup>105</sup> More specifically, the **National Black Justice Coalition** recommends states advocate for restorative school disciplinary measures and develop accessible and confidential avenues for Black LGBTQI+ students to report discrimination.<sup>106</sup>

## **B. Employment**

### 1. Documentation of Harms

LGBTQI+ people of African descent face significant barriers to employment, including disparities in hiring and firing, harassment and violence in the workplace, and lower wages. Barriers to employment can further the social exclusion of LGBTQI+ people of African descent.

**Disparities in Hiring and Firing:** Black LGBTQI+ people face disproportionate discrimination with regards to hiring and firing practices. In the United States, 78% of Black LGBTQI+ people report that discrimination negatively impacts their ability to be hired, compared to 55% of white LGBTQI+ people; 56% report the same regarding retaining a position, compared to 46% of white

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<sup>98</sup> See e.g., ANDREA J. RITCHIE ET AL., END THE WAR ON BLACK TRANS, GENDER NON-CONFORMING, AND INTERSEX PEOPLE, MOVEMENT FOR BLACK LIVES, at 10; Rep. of Working Group of Experts on People of African Descent on its Visit to Peru (25 Feb. to 4 Mar. 2020), U.N. Doc. A/HRC/45/44/Add.2 (2020).

<sup>99</sup> See TRUONG ET AL., GLSEN AND NAT'L BLACK JUST. COAL., ERASURE AND RESILIENCE: THE EXPERIENCES OF LGBTQ STUDENTS OF COLOR at xvi-xviii.

<sup>100</sup> See Universal Declaration of Human Rights art. 26, Dec. 8, 1948, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948); International Covenant on Economic, Social and Cultural Rights art. 13; Convention on the Rights of the Child arts. 28 & 29.

<sup>101</sup> See International Covenant on Economic, Social and Cultural Rights art. 2; International Convention on the Elimination of All Forms of Racial Discrimination arts. 2 & 5(e)(v) & 7; Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, principle 16 (2007), available at <http://yogyakartaprinciples.org/principles-en/>.

<sup>102</sup> See *Defining Equity*, CTR. FOR BLACK EQUITY, <https://centerforblackequity.org/defining-equity>.

<sup>103</sup> See Yogyakarta Principles, principles 16, 28.

<sup>104</sup> See *id.* at principle 28(f).

<sup>105</sup> See Convention on the Rights of the Child art. 28.

<sup>106</sup> See NHAN L. TRUONG ET AL., GLSEN AND NAT'L BLACK JUST. COAL., ERASURE AND RESILIENCE: THE EXPERIENCES OF LGBTQ STUDENTS OF COLOR at 38.

LGBTQI+ people.<sup>107</sup> Black transgender Americans are unemployed at twice the overall rate of all transgender Americans and four times the rate of the general U.S. population.<sup>108</sup> In the United Kingdom, 12% of Black, Asian, and minority ethnic LGBTQI+ employees reported losing their job because of their sexual orientation or gender identity, compared to 4% of white LGBTQI+ employees.<sup>109</sup>

**Harassment and Violence in the Workplace:** Black LGBTQI+ people face significant harassment and violence in the workplace. In Brazil, Colombia, and the United Kingdom, LGBTQI+ people of African descent report hiding or feeling forced to hide their identity at work.<sup>110</sup> In Peru, workplace guidance and training often fail to consider the experiences of individuals with intersectional identities, leading to negative experiences for LGBTQI+ people of African descent.<sup>111</sup> Further, reports from Cuba, the United Kingdom, and the United States demonstrate that LGBTQI+ people of African descent experience verbal harassment and exclusion by work colleagues.<sup>112</sup> Black LGBTQI+ individuals are also at risk of workplace violence. In the United Kingdom, 10% of Black, Asian, and minority ethnic LGBTQI+ employees reported attacks at work, compared to 3% of white LGBTQI+ employees.<sup>113</sup>

**Low Wages:** In the United States, Black LGBTI+ people endure economic hardship and lower incomes than their heterosexual counterparts as a result of employment discrimination. A 2019 census conducted by **Black Futures Lab**, a United States voter mobilization and advocacy group targeting Black voters, noted that over 90% of Black lesbian, gay, and bisexual respondents reported low wages as a problem.<sup>114</sup> Notably, 53% of Black LGBTQI+ people in the United States have an annual household income of less than \$40,000, compared to 41% of white LGBTQI+ people.<sup>115</sup>

## 2. Rights-Based Analysis

LGBTQI+ people of African descent have a right to work and a right to just and favorable work

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<sup>107</sup> Lindsay Mahowald, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination*, CENTER FOR AMERICAN PROGRESS (July 13, 2021), <https://www.americanprogress.org/article/black-lgbtq-individuals-experience-heightened-levels-discrimination/>.

<sup>108</sup> ANDREA J. RITCHIE ET AL., END THE WAR ON BLACK TRANS, GENDER NON-CONFORMING, AND INTERSEX PEOPLE, MOVEMENT FOR BLACK LIVES, at 8, (noting that Black transgender people face unemployment two to three times more than Black cisgender people and that 47% of Black transgender women faced job discrimination based on their sexual orientation and gender identity).

<sup>109</sup> CHAKA L. BACHMANN AND BECCA GOOCH, STONEWALL, LGBT IN BRITAIN: WORK REPORT 6 (Apr. 2018), [https://www.stonewall.org.uk/system/files/lgbt\\_in\\_britain\\_work\\_report.pdf](https://www.stonewall.org.uk/system/files/lgbt_in_britain_work_report.pdf).

<sup>110</sup> *Id.* at 13 (noting that 19% of Black, Asian, minority ethnic LGBT people say that they were encouraged to hide or disguise their sexual orientation or gender identity by a work colleague); INT’L INST. ON RACE, EQUAL., AND HUM. RTS., WHAT IS THE COLOR OF THE INVISIBLE? THE HUMAN RIGHTS SITUATION OF AFRO-LGBTI POPULATION IN BRAZIL 198-97 (Sept. 2020); M.C. Quevedo-Gómez et al., *Social Inequalities, Sexual Tourism and HIV in Cartagena, Colombia: An Ethnographic Study*, 20 BMC PUB. HEALTH 1208, 1213-14 (2020).

<sup>111</sup> See Rep. of Working Group of Experts on People of African Descent on its Visit to Peru (25 Feb. to 4 Mar. 2020), U.N. Doc. A/HRC/45/44/Add.2 (2020).

<sup>112</sup> See INT’L INST. ON RACE, EQUAL., AND HUM. RTS., CEDAW AND ITS IMPACT ON WOMEN’S LIVES: AN INTERSECTIONAL PERSPECTIVE 113 (May 2021); ANDREA J. RITCHIE ET AL., END THE WAR ON BLACK TRANS, GENDER NON-CONFORMING, AND INTERSEX PEOPLE, MOVEMENT FOR BLACK LIVES, at 8-9; BACHMANN & GOOCH, STONEWALL, LGBT IN BRITAIN: WORK REPORT at 9.

<sup>113</sup> BACHMANN & GOOCH, STONEWALL, LGBT IN BRITAIN: WORK REPORT at 6-7.

<sup>114</sup> BLACK FUTURES LAB, WHEN THE RAINBOW IS NOT ENOUGH: LGB+ VOICES IN THE 2019 BLACK CENSUS 6 (2019), <https://blackcensus.org/wp-content/uploads/2019/06/When-The-Rainbow-Is-Not-Enough.pdf>.

<sup>115</sup> Mahowald, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination* at 4.

conditions.<sup>116</sup> This includes the right to equal employment opportunities, fair wages, equal pay and remuneration for equal work, and protection against unemployment.<sup>117</sup> Black LGBTQI+ people must be able to realize this right without discrimination.<sup>118</sup>

### 3. State Obligations

States should enact laws and apply directives to combat employment discrimination faced by LGBTQI+ people of African descent, including legislation to ensure equal pay and benefits and measures to prohibit discriminatory hiring and firing practices.<sup>119</sup> As emphasized by the **Black Queer & Intersectional Collective**, a grassroots community organization focused on the rights of Black LGBTQI+ people, states should promote and guarantee secure and positive environments for Black LGBTQI+ people at work.<sup>120</sup> States should also implement employment protections for Black LGBTQI+ people, such as diversity audits and diversity management training, and promote fair selection criteria, promotions, and labor conditions.<sup>121</sup> Finally, as noted by the **Center for Black Equity**, states should engage in policies and programs that facilitate greater and more competitive opportunities in the market for Black LGBTQI+ people.<sup>122</sup>

## C. Health

### 1. Documentation of Harms

Black LGBTQI+ communities face significant barriers to adequate healthcare, including discriminatory treatment by medical providers leading to unequal access to proper care, including HIV prevention, testing, and treatment. Barriers to adequate healthcare can substantially affect the long-term health of LGBTQI+ people of African descent.

**Discrimination by Medical Professionals:** In Brazil, Europe, and the United States, LGBTQI+ people of African descent face unequal access to healthcare and healthcare discrimination. In Brazil and the United Kingdom, LGBTQI+ people of African descent report feeling ignored or undermined by healthcare providers and therefore avoid seeking services or treatment.<sup>123</sup> In the United

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<sup>116</sup> See Universal Declaration of Human Rights art. 23; Committee on Economic, Social and Cultural Rights arts. 6 & 7.

<sup>117</sup> See Committee on Economic, Social and Cultural Rights art. 7(a); Convention on the Elimination of All Forms of Discrimination against Women art. 11(b)-(d); Convention on the Elimination of All Forms of Racial Discrimination art. 5(e)(i).

<sup>118</sup> See Convention on the Elimination of All Forms of Racial Discrimination art. 2; Committee on Economic, Social and Cultural Rights art. 2; Yogyakarta Principles, principle 12.

<sup>119</sup> See *LGBT Workers of Color are Among the Most Disadvantaged in the U.S. Workforce*, MOVEMENT ADVANCEMENT PROJECT (2013), <https://www.lgbtmap.org/broken-bargain-lgbt-workers-of-color-release>; A LONG WAY TO GO FOR LGBTQI EQUALITY, EUR. UNION AGENCY FOR FUNDAMENTAL RTS. 20-21 (2020), [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-lgbti-equality-1\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf); see also Yogyakarta Principles, principle 28(f).

<sup>120</sup> See *Systemic Demands*, BLACK QUEER & INTERSECTIONAL COLLECTIVE, <https://bqic.net/systemic-demands/>.

<sup>121</sup> See A LONG WAY TO GO FOR LGBTQI EQUALITY, EUR. UNION AGENCY FOR FUNDAMENTAL RTS. 20 (2020); INT’L INST. ON RACE, EQUAL., AND HUM. RTS., WHAT IS THE COLOR OF THE INVISIBLE? THE HUMAN RIGHTS SITUATION OF AFRO-LGBTI POPULATION IN BRAZIL 209 (Sept. 2020).

<sup>122</sup> See *Defining Equity*, CTR. FOR BLACK EQUITY at 2, (developing Black LGBT-owned business and educating on financial administration, accounting, and debt management).

<sup>123</sup> See e.g., WHAT IS THE COLOR OF THE INVISIBLE? THE HUMAN RIGHTS SITUATION OF AFRO-LGBTI POPULATION IN BRAZIL at 137-43 (noting Brazilian transgender men and women avoid doctors due to the prejudice they face, in particular when trying to access transitional surgery and/or hormonal treatment); BACHMANN & GOOCH, LGBT IN BRITAIN: WORK REPORT at 14 (comparing 19% of Black, Asian and minority ethnic LGBT people experiencing a form of unequal treatment from healthcare staff to 13% of LGBT people overall).

Kingdom, 33% of Black, Asian, and minority ethnic LGBTQI+ people note instances where medical providers lack understanding of queer-specific health needs, compared to 25% of white LGBTQI+ people.<sup>124</sup> In the United States, 19% of Black LGBTQI+ people and 30% of Black transgender and gender non-conforming people report experiencing discrimination when seeking healthcare services.<sup>125</sup> Notably, 83% of Black LGBTQI+ people in the United States report that healthcare discrimination negatively affected their physical health, and 95% report it negatively affected their mental health.<sup>126</sup>

**HIV-Related Harms:** Black LGBTQI+ people are significantly impacted by HIV/AIDS, aggravated further by unequal access to necessary testing, prevention, and treatment. **The Black AIDS Institute**, an NGO dedicated to ending the HIV/AIDS epidemic in the Black community, notes that HIV vulnerability is often a result of systemic health injustices related to intersecting issues, such as institutional racism and transphobia.<sup>127</sup> In Brazil, the Caribbean, and the United States, LGBTQI+ communities of African descent face a high risk of HIV/AIDS exposure and infection.<sup>128</sup> In the United States, Black LGBTQI+ people are disproportionately impacted by HIV/AIDS despite engaging in similar or lower levels of sexual activity/risk compared to white LGBTQI+ people.<sup>129</sup> Stigma and limited access to adequate health care limits Black LGBTQI+ people's access to HIV-related prevention, testing, and treatment.<sup>130</sup>

## 2. Rights-Based Analysis

LGBTQI+ people of African descent have the right to the highest attainable standard of physical and mental health.<sup>131</sup> Black LGBTQI+ people also have the right to receive health services without discrimination.<sup>132</sup> Health-related rights are also essential to reduce vulnerability to HIV/AIDS.<sup>133</sup>

## 3. State Obligations

The **Center for Black Equity** advocates for healthcare that includes culturally competent

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<sup>124</sup> See BACHMANN & GOOCH, STONEWALL, LGBT IN BRITAIN: WORK REPORT at 13.

<sup>125</sup> See BLACK LGBTQ PEOPLE AND COMPOUNDING DISCRIMINATION: KEY FINDINGS FROM HRC FOUNDATION ANALYSIS OF THE 2020 BLACK LGBTQ COMMUNITY SURVEY, HUM. RTS. CAMPAIGN FOUND. 1, 9 (2020).

<sup>126</sup> See Mahowald, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination*.

<sup>127</sup> See *Black Voices Matter*, BLACK AIDS INSTITUTE, <https://blackaids.org/campaign/black-voices-matter/>.

<sup>128</sup> See e.g., HEALTH OF AFRO-DESCENDANT PEOPLE IN LATIN AMERICA, PAN AM. HEALTH ORG. 29 (2021) (citing data for the United States); WHAT IS THE COLOR OF THE INVISIBLE?, at 153 (noting that 46.4% of men exposed to HIV in Brazil were gay men and 64.4% of the reported HIV infections in men were men of African descent); *Who We Are*, CARIBBEAN VULNERABLE COMMUNITIES, <https://cvccoalition.org/who-we-are/> (last visited Nov. 27, 2022) (noting that in Jamaica HIV prevalence rate among transgender people is as high as 52%); Eduard J. Beck et al., *Attitudes Towards Homosexuals in Seven Caribbean Countries: Implications for an Effective HIV Response*, 29 AIDS CARE 1557, 1558, 1564-65 (2017).

<sup>129</sup> See UNDERSTANDING AND ADDRESSING THE SOCIAL DETERMINANTS OF HEALTH FOR BLACK LGBTQ PEOPLE: A WAY FORWARD FOR HEALTH CENTERS, NAT'L LGBT HEALTH EDUC. CENT. (June 2019) 4; Krishen Samuel, *Being Black and Gay: How Intersectional Stigma Impacts on the Uptake of PrEP*, NAM AIDSMAP (May 17, 2019) (showing 50% of all Black men who have sex with men (MSM) test positive for HIV, compared to 25% of Hispanic MSM and 9% of white MSM).

<sup>130</sup> See generally Samuel, *Being Black and Gay: How Intersectional Stigma Impacts on the Uptake of PrEP* (discussing how stigma limits PrEP among queer Black men and transgender women).

<sup>131</sup> See International Covenant on Economic, Social and Cultural Rights art. 12; Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, principle 17.

<sup>132</sup> See International Convention on the Elimination of All Forms of Racial Discrimination art. 5.

<sup>133</sup> See generally G.A. Res. S-26/2, U.N. Doc. A/RES/S-26/2, Declaration of Commitment on HIV/AIDS (2001).

services and for far reaching and stronger leadership to address health disparities.<sup>134</sup> States should implement laws to ensure Black LGBTQI+ people have equitable access to healthcare and HIV-related information.<sup>135</sup> States should establish initiatives to understand and eliminate intersectional discrimination, including training healthcare providers on how trauma and discrimination shape the physical and mental health of Black LGBTQI+ people.<sup>136</sup> The training should also include methods for preventing stigma and ensuring equal access to HIV-related resources.<sup>137</sup>

## **D. Housing**

### **1. Documentation of Harms**

LGBTQI+ people of African descent face significant barriers to housing, including difficulties accessing safe and secure housing and high rates of houselessness. Such barriers can affect the ability of Black LGTBQI+ people to realize an adequate standard of living.

**Lack of Access to Safe and Secure Housing:** Black LGBTQI+ people experience discrimination in the housing market, which often contributes to the barriers they face in accessing safe and secure housing. In the United States, Black LGBTQI+ individuals are less likely to own their own homes than white LGBTQI+ people.<sup>138</sup> Black transgender people, in particular, are vulnerable to housing instability.<sup>139</sup> In the United States, 38% of Black transgender and gender non-conforming people have been refused the opportunity to buy a home or rent an apartment and 31% have experienced eviction due to bias.<sup>140</sup> In the Caribbean, Europe, and the United States, intimate partner violence, rejection from family members, and economic instability can negatively impact the Black LGBTQI+ community's ability to access safe housing.<sup>141</sup>

**Houselessness:** Black LGBTQI+ people face a significant risk of experiencing houselessness. As noted by the **Trans Women of Color Collective**, a global organization designed to uplift Black transgender women, Black LGBTQI+ people in the United States, particularly transgender people, experience high and disproportionate rates of houselessness.<sup>142</sup> Fifty-one percent of Black transgender

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<sup>134</sup> See *Defining Equity*, CENTER FOR BLACK EQUITY.

<sup>135</sup> See OFF. OF THE UNITED NATIONS HIGH COMM'R FOR HUM. RTS., FACT SHEET NO. 31: THE RIGHT TO HEALTH 13 (June 1, 2008); TGEU, GUIDELINES TO HUMAN RIGHTS-BASED TRANS-SPECIFIC HEALTHCARE 17 (Dec. 2019).

<sup>136</sup> See NAT'L LGBT HEALTH EDUC. CTR, at 6; EUROPEAN PARLIAMENT, REPORT ON INTERSECTIONAL DISCRIMINATION IN THE EUROPEAN UNION 4.

<sup>137</sup> See *Handbook on HIV and Human Rights for National Human Rights Institutions*, UNAIDS (2007).

<sup>138</sup> See e.g., HUM. RTS. CAMPAIGN FOUND., at 11 (reporting only 22% of the Black LGBTQI+ people that faced discrimination in renting/buying owned a home).

<sup>139</sup> See e.g., Gina Martinez and Tara Law, *Two Recent Murders of Black Trans Women in Texas Reveal a Nationwide Crisis, Advocates Say*, TIME (June 5, 2019); Katelyn Burns, *Why police often single out trans people for violence*, VOX (July 23, 2020) (comparing 34% of Black transgender women living with housing insecurity to 9% of non-Black transgender people).

<sup>140</sup> NBJC, INJUSTICE AT EVERY TURN: A LOOK AT BLACK RESPONDENTS IN THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY (2022).

<sup>141</sup> See e.g., Carmen Radu, *Minorities and Homelessness in the United States and Europe: A Comparative Analyses*, 4 INQUIRIES J. 1, 27 (2012); CAISO: SEX AND GENDER JUSTICE, INSIGHTS FROM WHOLENESS & JUSTICE 8 (Dec. 2021).

<sup>142</sup> See *Black Trans Health Initiative*, TRANS WOMEN OF COLOR COLLECTIVE, <https://www.twocc.us/our-work/black-trans-health-initiative/>; see also Voices of Youth Count, *Missed Opportunities: LBGTQ Youth Homelessness in America*, Chapin Hall at the University of Chicago, 2018; *LBGTQ Youth Homelessness*, NATIONAL NETWORK FOR YOUTH (2022) <https://nn4youth.org/lgbtq-homeless-youth/>.



women in the United States experience houselessness at least once in their lives.<sup>143</sup> Further, 31% of unhoused LGBTQI+ youth in the United States are Black, despite Black youths accounting for only 14% of the total youth population.<sup>144</sup> In Europe, 59% of transgender migrants and people of color experienced some form of houselessness.<sup>145</sup>

## 2. Rights-Based Analysis

LGBTQI+ people of African descent have the right to an adequate standard of living, including the right to adequate housing.<sup>146</sup> This right must be realized without discrimination and based on equal opportunity.<sup>147</sup> This includes equal rights related to home ownership, improved living conditions, and housing security of tenure.<sup>148</sup>

## 3. State Obligations

The **Center for Black Equity** notes that state programs and policies should ensure the Black LGBTQI+ community's access to affordable housing.<sup>149</sup> This includes implementing services that provide adequate housing specific to the needs of Black LGBTQI+ individuals.<sup>150</sup> States should also develop action plans to combat and protect against housing discrimination.<sup>151</sup> States should implement measures that support those experiencing houselessness, particularly securing appropriate funding for LGBTQI+ shelters and prioritizing those that already exist.<sup>152</sup>

## E. Violence

### 1. Documentation of Harms

LGBTQI+ people of African descent are vulnerable to physical violence, gender-based violence, and police violence. Violence paired with barriers to justice lead to distrust of law enforcement and underreporting of violence, making it difficult to fully understand the extent of the

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<sup>143</sup> Martinez & Law, *Two Recent Murders of Black Trans Women in Texas Reveal a Nationwide Crisis*, *Advocates Say*.

<sup>144</sup> Daiana Griffith, *LGBTQ Youth Are at Greater Risk of Homelessness and Incarceration*, PRISON POLICY INITIATIVE (Jan. 2019) (noting results from a 2014 survey of human service providers serving homeless youth).

<sup>145</sup> TGEU, TRANS DISCRIMINATION IN EUROPE: A TGEU ANALYSIS OF THE FRA LGBTI SURVEY 2019 7, 23, 32 (Dec. 2021).

<sup>146</sup> See Universal Declaration of Human Rights art. 25; International Covenant on Economic, Social and Cultural Rights art. 11; see also U.N. Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (art. 11(1) of the Covenant)*, Sixth Session (1991).

<sup>147</sup> See International Convention on the Elimination of All Forms of Racial Discrimination arts. 2 & 5(e)(iii); Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, principle 15.

<sup>148</sup> See Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, principle 15; International Covenant on Economic, Social and Cultural Rights art. 11; U.N. Committee on Economic, Social and Cultural Rights, *General Comment No. 7: The Right to Adequate Housing (art. 11(1) of the Covenant)*, Sixteenth Session (1991).

<sup>149</sup> See *Defining Equity*, CTR. FOR BLACK EQUITY.

<sup>150</sup> See Mengia Tschalaer, *The Recognition of Black Lesbian Asylum Claims in Germany*, UNIVERSITY OF BRISTOL; UN HABITAT, FACT SHEET NO. 21: THE RIGHT TO ADEQUATE HOUSING (May 2014).

<sup>151</sup> See *id.* (noting third-party interference includes landlords, corporations, and banks tampering with housing availability, quality, or accessibility); see also Martinez & Law, *Two Recent Murders of Black Trans Women in Texas Reveal a Nationwide Crisis*, *Advocates Say* (noting the importance of promoting Black leadership in combatting housing discrimination).

<sup>152</sup> See RITCHIE ET AL., at 10; *LGBTQ Youth Homelessness*, National Network for Youth; BACHMANN & GOOCH, at 10.

violence.<sup>153</sup>

**Physical Violence:** Black LGBTQI+ are particularly vulnerable to physical violence. In Latin America and the Caribbean, LGBTQI+ people of African descent experience physical violence based on the intersection of race, ethnicity, sexual orientation, and gender identity.<sup>154</sup> The **Rede Nacional de Negras e Negros LGBT**, a network of NGOs and LGBTQI+ activists of African descent in Brazil, observed that 60% of LGBTQI+ people of African descent interviewed in Salvador, Brazil, suffered discriminatory acts because of their race, sexual orientation, and gender identity.<sup>155</sup> In Colombia, LGBTQI+ people of African descent faced excessive violence in the conflict between the state and rebel groups.<sup>156</sup> In the United Kingdom and United States, Black LGBTQI+ people face high rates of domestic violence.<sup>157</sup>

**Gender-Based Violence:** Black LGBTQI+ women are especially vulnerable to gender-based violence. In Latin America and the Caribbean, lesbian and transgender women are specific targets of rape and sexual assault because of their sexual orientation and gender identity.<sup>158</sup> Black transgender women continue to face rising rates of violence.<sup>159</sup> In the United States, transgender and gender non-conforming people, particularly Black transgender women, faced some of the highest reported violence in 2021.<sup>160</sup> In Brazil and Europe, Black people also make up a significant number of reported murders of queer and transgender people.<sup>161</sup> In 2017, 80% of the murdered transgender women in Brazil were people of African descent.<sup>162</sup>

**Police Violence:** Black LGBTQI+ people are often disproportionately targeted by law enforcement. In the United States, 25% of Black LGBTQI+ people report discrimination in police

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<sup>153</sup> See BACHMANN & GOOCH, at 8; Beatriz Rioz, *Beyond the US: Police Brutality, Structural Racism are a Problem in Europe Too*, EURACTIV (Jun 11, 2020); INTER-AM. COMM’N H.R., VIOLENCE AGAINST LGBTI PERSONS IN THE AMERICAS, OAS Rec. OAS/Ser.L/V/II.rev.1 Doc. 36, at 16-17 (Nov. 12, 2015).

<sup>154</sup> See e.g., *id.* at 76-77, 192-93.

<sup>155</sup> See WHAT IS THE COLOR OF THE INVISIBLE? THE HUMAN RIGHTS SITUATION OF AFRO-LGBTI POPULATION IN BRAZIL at 20-21.

<sup>156</sup> See *Colombia: Race and Equality and Partner Organizations Present the First Report to the Truth Commission on the Impact of the Armed Conflict on the Afro-LGBT Population*, RACE AND EQUALITY (Aug. 23, 2021); VIOLENCE AGAINST LGBTI PERSONS IN THE AMERICAS at 194.

<sup>157</sup> See e.g., BACHMANN & GOOCH, at 7.

<sup>158</sup> See e.g., INTER-AM. COMM’N H.R., ECONOMIC, SOCIAL, CULTURAL, AND ENVIRONMENTAL RIGHTS OF PERSONS OF AFRICAN DESCENT, O.A.S. Rec. OEA/Ser.L/V/II. Doc. 109/21, at 56 (March 16, 2021); INT’L INST. ON RACE, EQUAL., AND H.R., CEDAW AND ITS IMPACT ON WOMEN’S LIVES: AN INTERSECTIONAL PERSPECTIVE at 45, 181 (reporting between 2014 and 2017, femicide against lesbian Brazilian women increased by 237%, with the majority being victims of African descent).

<sup>159</sup> See e.g., Martinez & Law, *Two Recent Murders of Black Trans Women in Texas Reveal a Nationwide Crisis, Advocates Say*; Trudy Ring, *These are the Trans People Killed in 2019*, THE ADVOCATE (2019) (noting that of the 21 reported murders of transgender Americans in 2021, all but one of the victims was Black).

<sup>160</sup> See Laurel Powell, *2021 Becomes the Deadliest Year on Record for Transgender and Non-Binary People*, HUMAN RIGHTS CAMPAIGN (Nov. 9, 2021).

<sup>161</sup> See e.g., ILGA-EUROPE, SAY THEIR NAMES: THE TRANS AND GENDER-DIVERSE PEOPLE WHOSE MURDERS WERE REPORTED IN EUROPE AND CENTRAL ASIA LAST YEAR (Nov. 20, 2021); INT’L INST. ON RACE, EQUAL., AND H.R., CEDAW AND ITS IMPACT ON WOMEN’S LIVES: AN INTERSECTIONAL PERSPECTIVE at 46.

<sup>162</sup> ILGA-EUROPE, SAY THEIR NAMES: THE TRANS AND GENDER-DIVERSE PEOPLE WHOSE MURDERS WERE REPORTED IN EUROPE AND CENTRAL ASIA LAST YEAR; INT’L INST. ON RACE, EQUAL., AND H.R., CEDAW AND ITS IMPACT ON WOMEN’S LIVES: AN INTERSECTIONAL PERSPECTIVE at 46.

encounters, compared to 13% of white LGBTQI+ people.<sup>163</sup> Further, the excessive targeting of Black LGBTQI+ people by police results in disproportionate imprisonment and further violence in the United States carceral system.<sup>164</sup> In Latin America and the Caribbean, LGBTQI+ people of African descent also face significant risk of over-policing and police brutality.<sup>165</sup> Although Black LGBTQI+ people are vulnerable to violence, law enforcement agents often ignore or dismiss cases involving LGBTQI+ victims or refuse to conduct further investigations.<sup>166</sup>

## 2. Rights-Based Analysis

LGBTQI+ people of African descent have the right to security of person and protection by the state against violence or bodily harm.<sup>167</sup> This includes the right to equal protection under the law and the right not to be subjected to torture or cruel, inhumane, or degrading treatment.<sup>168</sup>

## 3. State Obligations

States should implement laws and action plans that prohibit violence against Black LGBTQI+ individuals, eliminate stereotypes, and guarantee respect for diversity.<sup>169</sup> States should enhance information-gathering processes to make visible the intersectional harms faced by Black LGBTQI+ individuals, including compiling statistics on the extent, causes, and effects of violence against Black LGBTQI+ people.<sup>170</sup> States should also establish programs that provide access to reporting and other services for Black LGBTQI+ victims of domestic violence.<sup>171</sup> **INCITE**, a network of feminists of color organizing to end violence, calls for community-based alternative responses to address sexual violence.<sup>172</sup>

# **III. People with Disabilities of African Descent**

People with disabilities of African descent experience discrimination in education, employment, and healthcare, as well as harassment and violence from private citizens and state systems.

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<sup>163</sup> Mahowald, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination*.

<sup>164</sup> See *Id.*; Alexi Jones, *Visualizing the unequal treatment of LGBTQ people in the criminal justice system*, PRISON POLICY INITIATIVE (Mar. 2, 2021) (noting that Black, indigenous, and ethnic minority LGBTQI+ people are twice as likely to be placed in solitary confinement).

<sup>165</sup> See e.g., VIOLENCE AGAINST LGBTI PERSONS IN THE AMERICAS, at 94,96; E.R. Pulgar, *The Queer and Trans Activists on the Forefront of Bogota's Protests*, VICE (Apr. 8, 2021), <https://i-d.vice.com/en/article/88ne7p/bogota-colombia-protests-2021>.

<sup>166</sup> See *id.* at 240; *Paradise Lost: The Plight of LGBT People in the Eastern Caribbean*, HUMAN RIGHTS WATCH, (Mar. 21, 2018); INT'L INST. ON RACE, EQUAL., AND H.R., CEDAW AND ITS IMPACT ON WOMEN'S LIVES: AN INTERSECTIONAL PERSPECTIVE at 109 (noting discrimination when domestic violence cases involve lesbian and transgender women); Beenish Ahmed, *Queer Haitians Find a Refuge in Vodou*, THE ADVOCATE (Oct. 31, 2016).

<sup>167</sup> See Universal Declaration of Human Rights art. 3; Convention on the Elimination of Racial Discrimination art. 5(b).

<sup>168</sup> See Yogyakarta Principles plus 10, principle 31 & 33; CEDAW Committee, *Gen. Recommendation No.19: Violence against women, October 1992*.

<sup>169</sup> See FREE & EQUAL, FACT SHEET: INTERNATIONAL HUMAN RIGHTS LAW AND SEXUAL ORIENTATION & GENDER IDENTITY (May 2017); INTER-AM. COMM'N H.R., VIOLENCE AGAINST LGBTI PERSONS IN THE AMERICAS, OAS Rec. OAS/Ser.L/V/II.rev.1 Doc. 36, at 226 (Nov. 12, 2015).

<sup>170</sup> See *Id.* at 197, 210; Yogyakarta Principles plus 10, principle 30.

<sup>171</sup> See BACHMANN & GOOCH, at 10.

<sup>172</sup> *Stop Law Enforcement Violence*, INCITE <https://incite-national.org/stop-law-enforcement-violence/> (last visited Nov. 27, 2022).

## **A. Education**

### **1. Documentation of Harms**

People with disabilities of African descent face barriers to education, including reduced school attendance and retention rates, overrepresentation in special education programs, and greater harassment and violence from school officials. The discrimination and harms Black children with disabilities face in education have lasting impacts on their personal autonomy and economic opportunities.

**Reduced School Attendance and Retention Rates:** School non-attendance rates are high for children of African descent with disabilities in Latin America and the Caribbean. Ten percent of disabled children 12-17 years old in Trinidad and Tobago and 27% of those in Jamaica do not attend school.<sup>173</sup> Similarly, in Brazil, Costa Rica, Ecuador, Mexico, and Uruguay, disabled children of African descent are 26% less likely to complete secondary education than their white or indigenous counterparts.<sup>174</sup>

**Overrepresentation in Special Education Programs:** Black students in the United States are overrepresented in special education programs.<sup>175</sup> Although they make up only 17% of the school-aged population, they comprise 33% of students in special education classes.<sup>176</sup> Educator bias has led to a disproportionate number of Black students who are misidentified as having an emotional, intellectual, or learning disability.<sup>177</sup>

**Disparate Treatment in School:** Black students with disabilities often face disparate treatment in schools. In the United States, Black students with disabilities are more likely to face discipline than other students.<sup>178</sup> They are expelled at consistently higher rates than other disabled students<sup>179</sup> and are four times as likely to have multiple suspensions.<sup>180</sup> These disciplinary methods are often in response to minor school infractions and are disproportionately enacted in schools in low-income communities.<sup>181</sup> During the 2022 **African American Conference on Disabilities**, a Black-led

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<sup>173</sup> See MARÍA ELENA GARCÍA MORA ET AL., *DISABILITY INCLUSION IN LATIN AMERICA AND THE CARIBBEAN: A PATH TO SUSTAINABLE DEVELOPMENT*, WORLD BANK 1, 109-10 (2021).

<sup>174</sup> *Id.* at 112.

<sup>175</sup> See Charles Bell, *Special Needs Under Siege: From Classrooms to Incarceration*, 10 *SOCIOLOGY COMPASS* 698, 698 (2016).

<sup>176</sup> *Id.*

<sup>177</sup> See National Center for Learning Disabilities, *Significant Disproportionality in Special Education: Trends Among Black Students*, 2 (2020), [https://www.nclld.org/wp-content/uploads/2020/10/2020-NCLD-Disproportionality\\_Black-Students\\_FINAL.pdf](https://www.nclld.org/wp-content/uploads/2020/10/2020-NCLD-Disproportionality_Black-Students_FINAL.pdf).

<sup>178</sup> See *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities*, U.S. COMM'N ON CIVIL RIGHTS i, 10 (Jul. 2019). Cf. Lorelai Laird, *Students of Color with Disabilities are Being Pushed into the School-to-Prison Pipeline*, *Study Finds*, ABA J. (July 24, 2019), <https://www.abajournal.com/web/article/report-finds-more-discipline-are-at-the-intersection-of-race-and-disability>.

<sup>179</sup> *Id.* at 11.

<sup>180</sup> Lorelai Laird, *Students of Color with Disabilities are Being Pushed into the School-to-Prison Pipeline*, *Study Finds*.

<sup>181</sup> *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities*, U.S. COMM'N ON CIVIL RIGHTS, 9 (July, 2019).

conference examining civil rights for Black disabled communities,<sup>182</sup> advocates highlighted that Black students with disabilities in Arizona are 2.72 times more likely to face out-of-school suspension than their white counterparts.<sup>183</sup> School discipline increases the chances that a student will drop out of school, become ensnared in the juvenile justice system, and have lower earning potential.<sup>184</sup>

## 2. Rights-Based Analysis

People with disabilities of African descent have a right to education without discrimination, equal opportunity for academic advancement, and an inclusive education system.<sup>185</sup> This includes a right to an education that promotes self-reliance and enables the full development of their personality and sense of dignity.<sup>186</sup>

## 3. State Obligations

According to the **Historically Black Colleges and Universities (HBCU) Disability Consortium**, a network of HBCU colleges re-envisioning disability services, states should ensure that schools provide culturally responsive disability services and accommodations to alleviate discrimination against Black students with disabilities.<sup>187</sup> To improve attendance and retention rates, the **National Black Disability Coalition**, an organization focusing on Black disabled people, has encouraged states to invest in expanding scholarship opportunities for Black students with disabilities.<sup>188</sup> Additionally, states should remove police from schools and instead invest in non-carceral interventions that support and promote positive behavior.<sup>189</sup> States should implement restorative justice methods in schools instead of relying on retributive or punitive discipline methods, which are disproportionately levied upon Black students with disabilities.<sup>190</sup> States should also provide reasonable accommodations for students with disabilities, such as ramps, accessible educational materials, and programs in Braille and sign language.<sup>191</sup> Training programs for teachers should incorporate disability awareness and appropriate communication styles, educational techniques, and materials to support disabled students.<sup>192</sup>

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<sup>182</sup> See *African American Conference on Disabilities*, ACDL, <https://www.azdisabilitylaw.org/african-american-conference-on-disabilities/> (last visited Nov. 13, 2022).

<sup>183</sup> AZDISABILITYLAW, *Disproportionality in School Discipline*, YOUTUBE, at 51:18 (Feb. 3, 2022), <https://youtu.be/wzVOdUFaYCc>.

<sup>184</sup> See U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-258, DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES (2018).

<sup>185</sup> See Convention on the Rights of Persons with Disabilities at 14, May 3, 2008, U.N. Doc. A/RES/61/106, Annex I.

<sup>186</sup> See *id.*; G.A. Res. 44/25, annex, Convention on the Rights of the Child, at 14 (Nov. 20, 1989).

<sup>187</sup> See *generally About US – The HBCU Disability Consortium*, BLACK, DISABLED, & PROUD: COLL. STUDENTS WITH DISABILITIES, <https://www.blackdisabledandproud.org/about-us.html> (last visited Nov. 13, 2022).

<sup>188</sup> National Black Disability Coalition, <https://blackdisability.org/> (last visited Nov. 13, 2022).

<sup>189</sup> See *Replacing School Police with Services that Work*, THE BAZELON CTR. 1, 3-5 (Aug. 2019), <https://secureservercdn.net/198.71.233.69/d25.2ac.myftpupload.com/wp-content/uploads/2021/08/Replacing-Police-in-Schools-1.pdf>.

<sup>190</sup> *Id.* at 7.

<sup>191</sup> Convention on the Rights of Persons with Disabilities at 14; *cf. The Right to Education for Persons with Disabilities: Overview of the Measures Supporting the Right to Education for Persons with Disabilities reported on by Member States*, UNESCO 3, 7 (2015).

<sup>192</sup> Convention on the Rights of Persons with Disabilities at 14-15.

## **B. Employment**

### **1. Documentation of Harms**

People with disabilities of African descent face barriers to employment, including exclusion from economic opportunities, high rates of unemployment, and unequal working conditions and job benefits.

**Lack of Economic Opportunity and Unemployment:** Black people with disabilities face barriers that limit or exclude them from economic opportunities as well as high unemployment rates. In the United States, structural barriers to employment, education, and income potential result in high poverty rates among Black people with disabilities.<sup>193</sup> The unemployment rate for Black people with disabilities in the United States is 16.3%, compared to 11.6% for white people with disabilities.<sup>194</sup> In Latin America, the unemployment rate for people with disabilities of African descent is 47.7%, compared to 26.9% for people without disabilities of African descent.<sup>195</sup> A 2012 report found that less than four in ten Black people with disabilities in the United Kingdom were employed.<sup>196</sup>

**Unequal Work Conditions and Benefits:** Black people with disabilities face unequal working conditions and job benefits, including lower salaries and higher representation in informal labor markets that lack benefits and proper accommodations. In Bolivia, indigenous people and people of African descent with disabilities earn 20.2% less for the same types of jobs than people without a disability.<sup>197</sup> In Mexico, indigenous people and people of African descent with disabilities earn 10.5% less pay than other workers in comparable positions.<sup>198</sup> In Latin America and the Caribbean, people with disabilities are on average more likely to work in informal sectors than their non-disabled peers and, as such, face substandard work conditions.<sup>199</sup> Informal employment positions also result in workers with disabilities of African descent being excluded from social security, pensions, and health plans.<sup>200</sup> Further, informal workplaces are far less likely to provide disability accommodations or supportive technologies.<sup>201</sup>

### **2. Rights-Based Analysis**

People of African descent with disabilities have the right to work, which includes equal opportunities for advancement, fair pay, benefits, and safe working conditions.<sup>202</sup> They are entitled to

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<sup>193</sup> NANETTE GOODMAN ET AL., FINANCIAL INEQUALITY: DISABILITY, RACE AND POVERTY IN AMERICA, NAT'L DISABILITY INST. 12 (2017), <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/disability-race-poverty-in-america.pdf>; see also *id.* (“Even when adjusting for education level, African Americans with disabilities are more likely to be in poverty than other disability groups”).

<sup>194</sup> Megan Buckles, *10 Policies to Improve Economic Security for Black Women with Disabilities*, CTR. FOR AM. PROGRESS (Feb. 15, 2022), <https://www.americanprogress.org/article/10-policies-to-improve-economic-security-for-black-women-with-disabilities/>.

<sup>195</sup> MORA ET AL., at 139-140 (noting that inactivity rates “hint at the existence of job searching and placement obstacles that prevent” access to labor markets).

<sup>196</sup> Maria Berghs & Simon Dyson, *Intersectionality and Employment in the United Kingdom: Where Are All the Black Disabled People?* 37 DISABILITY & SOCIETY 543, 551 (2019).

<sup>197</sup> MORA ET AL., at 9-10.

<sup>198</sup> *Id.* at 10, 148.

<sup>199</sup> *Id.* at 9-10, 143.

<sup>200</sup> See generally AFRODESCENDENT WOMEN IN LATIN AMERICA AND THE CARIBBEAN: DEBTS OF EQUALITY, at 24, 43-44 (noting that inequalities in pension system coverage for women of African descent stems mainly from “[t]heir concentration in substandard, informal forms of employment”).

<sup>201</sup> MORA ET AL., at 10.

<sup>202</sup> International Covenant on Economic, Social and Cultural Rights arts. 6(1) & 7(a)-(d).

a nondiscriminatory work environment.<sup>203</sup> Black people with disabilities also have the right to accommodations in the workplace.<sup>204</sup>

### 3. State Obligations

States should guarantee equitable access to employment for people with disabilities of African descent, including efforts to promote reasonable accommodations and accessibility measures.<sup>205</sup> The **African American Conference on Disabilities** highlighted how implementing assistive technology practices and resources can lead to increased employment opportunities for Black people with disabilities.<sup>206</sup> States should also implement policies that prevent and combat racial discrimination in the labor market, emphasizing intersectional approaches to address multiple layers of discrimination faced by Black people with disabilities.<sup>207</sup> States should also facilitate greater economic inclusion for Black people with disabilities through the provision of accessible government benefits, financial competency services, and vocational training and placement programs.<sup>208</sup>

## C. Health

### 1. Documentation of Harms

People with disabilities of African descent face barriers to healthcare, including discrimination by medical professionals, lack of access to health services, and inaccessibility of sexual and reproductive healthcare. Barriers to healthcare can significantly affect long-term health outcomes for Black people with disabilities.

**Discrimination by Medical Professionals:** People with disabilities of African descent experience discrimination by medical professionals, which causes delayed treatment and health disparities. In the United States, Black adults with intellectual and developmental disabilities (IDD) disproportionately report distrust of doctors as one of the primary reasons for delaying or forgoing medical care, compared to white adults with IDD who do not mention distrust of medical professionals as a reason for forgoing care.<sup>209</sup> Avoiding care can result in long-term negative healthcare outcomes, including preventable secondary conditions for Black adults with disabilities.<sup>210</sup> In Latin America, discriminatory attitudes and treatment by healthcare professionals often discourage people with disabilities of African descent from pursuing healthcare.<sup>211</sup> Healthcare discrimination also creates

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<sup>203</sup> *Id.*

<sup>204</sup> Convention on the Rights of the Child art. 27(1)(i)-(k).

<sup>205</sup> *Economic, Social, Cultural, and Environmental Rights of Persons of African Descent: Inter-American Standards to Prevent, Combat and Eradicate Structural Racial Discrimination* at 82, 83; MORA ET AL., at 168.

<sup>206</sup> AZ DISABILITY LAW, *How Assistive Technology Can Impact Employment Opportunities for Individuals with Disabilities*, YOUTUBE at 10:54, 35:57 (Feb. 8, 2022), <https://youtu.be/oA1vn4Sbm0w>.

<sup>207</sup> *Economic, Social, Cultural, and Environmental Rights of Persons of African Descent: Inter-American Standards to Prevent, Combat and Eradicate Structural Racial Discrimination* at 83.

<sup>208</sup> GOODMAN ET AL., at 21, 24; *Acting on Disability Discrimination in Jamaica*, WORLD BANK (Apr. 18, 2016), <https://www.worldbank.org/en/news/feature/2016/04/18/acting-on-disability-discrimination-jamaica>.

<sup>209</sup> See Henan Li et al., *Racial and Ethnic Disparities in Perceived Barriers to Health Care Among U.S. Adults with Intellectual and Developmental Disabilities*, *Intellectual and Developmental Disabilities*, 59 INTELL. DEVELOPMENTAL DISABILITIES 84, 8 (2021).

<sup>210</sup> See *id.* at 10.

<sup>211</sup> See MORA ET AL., at 199.

barriers for people with disabilities of African descent in need of urgent health services, impacting their ability to detect and treat non-communicable diseases.<sup>212</sup>

**Lack of Access to Healthcare:** Various obstacles including physical barriers, communication barriers, and economic hardships prevent people with disabilities of African descent from seeking healthcare. In the United States, 25.6% of Black adults with IDD experienced delayed medical care due to difficulty physically accessing a doctor's office, compared to only 8% of their white peers.<sup>213</sup> In the Caribbean, many sexual and reproductive health clinics are inaccessible to people with disabilities because of lack of ramps or adapted examination tables.<sup>214</sup> Further, communication barriers such as a lack of Braille, large print materials, and sign language interpretation also prevent people with disabilities of African descent in the Caribbean from receiving health services.<sup>215</sup> Black people with disabilities in the United States faced disproportionate risks from COVID-19, partly due to communication barriers that prevented them from accessing vaccinations.<sup>216</sup> In the Caribbean, discrimination and institutional racism intersects with high levels of poverty, disparities in education, and unemployment for people with disabilities of African descent to further limit their access to health services.<sup>217</sup> In the United States, 15% of Black people with disabilities have difficulty paying their medical bills.<sup>218</sup>

**Sexual and Reproductive Health:** People with disabilities of African descent face structural barriers to sexual and reproductive healthcare. In the Caribbean, people with disabilities experience barriers including lack of access to information and health services.<sup>219</sup> In Latin America and the Caribbean, disabled adolescents and young women are subjected to forced hysterectomies, contraception to suppress sexuality, and sterilization.<sup>220</sup> In the United States, a high number of Black women with disabilities report a lack of health insurance during pregnancy.<sup>221</sup> As a result, the average cost of childbirth is more expensive for Black women with disabilities compared to white women with disabilities.<sup>222</sup>

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<sup>212</sup> See generally HEALTH OF AFRO-DESCENDANT PEOPLE IN LATIN AMERICA, at 22; AFRODESCENDENTS & THE MATRIX OF SOCIAL INEQUALITY IN LATIN AMERICA: CHALLENGES FOR INCLUSION, ECON. COMM'N FOR LAT. AM. & THE CARIBBEAN 23 (May 2021), <http://hdl.handle.net/11362/46871>.

<sup>213</sup> Henan Li et al., at 84.

<sup>214</sup> See MARION MYRIE, FORGOTTEN VOICES: SEXUAL AND REPRODUCTIVE HEALTH & KEY POPULATIONS WITH DISABILITY IN THE CARIBBEAN REGION, CARIBBEAN VULNERABLE COMMUNITIES COAL. 2 (2017).

<sup>215</sup> See *id.*

<sup>216</sup> See generally Dante Allen et al., *Black History Month Discussion on Intersectionality for Black People with Disabilities*, YOUTUBE at 54:02 (Feb. 18, 2021), <https://youtu.be/Q6APINJWnMw>.

<sup>217</sup> See AFRODESCENDENTS AND THE MATRIX OF SOCIAL INEQUALITY IN LATIN AMERICA: CHALLENGES FOR INCLUSION, at 28.

<sup>218</sup> GOODMAN ET AL., at 3, 16.

<sup>219</sup> See MYRIE, at 1.

<sup>220</sup> See MORA ET AL., at 202.; see also Lydia X. Z. Brown, *We can't address disability without addressing race. Here's why*, LEARN PLAY THRIVE, <https://learnplaythrive.com/we-cant-address-disability-without-addressing-race/> (last visited Nov. 13, 2022).

<sup>221</sup> See NAT'L CTR. FOR DISABILITY & PREGNANCY RSCH., UNEQUAL CARE UNEQUAL OUTCOMES (2020) <https://heller.brandeis.edu/disability-and-pregnancy/pdfs/infosheets-resources/black-disabled-maternal-health-infographic.pdf>

<sup>222</sup> See *id.*



## 2. Rights-Based Analysis

People with disabilities of African descent have the right to the highest attainable standard of health without discrimination.<sup>223</sup> People with disabilities of African descent also have the right to full enjoyment of sexual and reproductive healthcare without discrimination including the right to seek, receive, and disseminate information and ideas related to sexual and reproductive health issues.<sup>224</sup>

## 3. State Obligations

The **Movement for Black Lives** emphasizes that healthcare should be physically accessible, free, equitable, and meet the needs of people with disabilities.<sup>225</sup> States should ensure health facilities, information, and services are physically accessible for people of African descent with disabilities.<sup>226</sup> States should also ensure healthcare information is accessible, including access to sexual and reproductive health, for all individuals regardless of disability.<sup>227</sup> **Black Feminist Futures**, an organization working to improve the lives of Black women, girls, and “gender-expansive” people, hosted a Disability Justice Innovation Lab that calls for the rejection of the desexualization and infantilization of people with disabilities, the merging of reproductive and disability justice, and the provision of competent sexual healthcare for people with disabilities.<sup>228</sup> **Sins Invalid**, a disability justice performance project led by people of color, notes that state healthcare systems should recognize the sexual freedom of people with disabilities and support the exercise of this right.<sup>229</sup>

## D. Violence

### 1. Documentation of Harms

People with disabilities of African descent are disproportionately susceptible to interpersonal and institutional violence as well as high rates of incarceration. The violence Black people with disabilities face includes interpersonal violence and state violence.

**Interpersonal Violence:** People with disabilities of African descent are disproportionately at risk of violence from members of their communities and caregivers. In the Caribbean, people with disabilities are approximately three times more likely to experience physical violence, including sexual abuse and rape, than people without disabilities.<sup>230</sup> The risks are even greater for those with mental disabilities.<sup>231</sup> In the United States, people with mental disabilities in Black communities are victims of violence at much higher rates than their non-Black counterparts.<sup>232</sup> In Brazil, 39.6% of people with

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<sup>223</sup> See Convention on the Rights of Persons with Disabilities art. 25.

<sup>224</sup> See 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), ¶15-16, 18-19; *Stop Regression on Sexual and Reproductive Rights of Women and Girls, UN Experts Urge*, OHCHR (Sept. 5, 2018), [www.ohchr.org/en/press-releases/2018/09/stop-regression-sexual-and-reproductive-rights-women-and-girls-un-experts](http://www.ohchr.org/en/press-releases/2018/09/stop-regression-sexual-and-reproductive-rights-women-and-girls-un-experts).

<sup>225</sup> See *End the War on Black Health and Black Disabled People*, M4DL, <https://m4bl.org/policy-platforms/end-the-war-black-health/> (last visited Nov. 11, 2022).

<sup>226</sup> See General comment No. 22 (2016), ¶15-16.

<sup>227</sup> See *id.* at ¶18-19.

<sup>228</sup> See BLACK FEMINIST FUTURE’S DISABILITY JUSTICE INNOVATION LAB, BLACK DISABLED FEMINISM 5 (July, 2022).

<sup>229</sup> See generally *Curriculum: 10 Principles of Disability Justice*, SINS INVALID, <https://www.sinsinvalid.org/curriculum> (last visited Nov. 4, 2022).

<sup>230</sup> See MYRIE, at 2.

<sup>231</sup> See *id.*

<sup>232</sup> See *Principles: The Stigma of Mental Health and Violence*, DISABILITY RTS. CAL. (amended as of Dec. 12, 2020), [https://www.disabilityrightsca.org/legislation/principles-the-stigma-of-mental-health-and-violence#foot\\_4b](https://www.disabilityrightsca.org/legislation/principles-the-stigma-of-mental-health-and-violence#foot_4b). (“[P]eople living with mental health disabilities are actually more likely to be the victims of violence. People with

disabilities who reported violence inflicted against them between 2011 and 2017 were of African descent.<sup>233</sup> A particular form of violence common in Brazil is violence by caregivers against their clients with disabilities.<sup>234</sup> Further, in Latin America and the Caribbean, many states lack adequate resources to aid or respond to violence against people with disabilities, including shelters, helplines, and intervention centers, which can significantly impact people with disabilities of African descent who face higher risks of violence.<sup>235</sup>

**Institutional Violence:** People with disabilities of African descent are disproportionately susceptible to police violence and inhumane treatment in the carceral system.<sup>236</sup> In the United States, police interactions often demand compliance, understood in a neurotypical way, and any non-compliance may lead individuals with disabilities to face excessive force.<sup>237</sup> **Advance Your Leadership Power**, a Chicago-based community organizing group focused on the intersection of disability and race, highlights the lack of emergency response systems for people with disabilities, specifically in the context of police brutality.<sup>238</sup> In the United Kingdom, systemic racism and negative stereotyping lead to Black disabled people being violently restrained by police and dying in police custody even when they show no signs of aggression.<sup>239</sup> In the United States, one-third of the twelve million people filtered through the criminal justice system yearly have a diagnosed mental illness, yet Black people are less likely than white people to receive mental health services in prison.<sup>240</sup> Further, Black people with disabilities in the United States are more likely to be placed in solitary

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severe mental illnesses, such as schizophrenia, bipolar disorder, or psychosis, are 2.5 times more likely to be attacked, mugged, or raped than the general population.... People with mental health disabilities in Black [people and other minorities communities] are victims of violence [at] much higher rates.”).

<sup>233</sup> Nicole Freitas de Mello et al., *Cases of Violence Against People with Disabilities Notified by Brazilian Health Services, 2011-2017*, 30 EPIDEMIOL. SERV. SAUDE. 1, 3 (2021).

<sup>234</sup> See *id.* at 5-6.

<sup>235</sup> See, e.g., LUANA MARQUES GARCIA ET AL., GENDER AND DIVERSITY DIVISION, VIOLENCE AGAINST WOMEN AND GIRLS WITH DISABILITIES: LATIN AMERICA AND THE CARIBBEAN, INTER-AM. DEV. BANK, Brief No. IDB-PB-302, 6, 21 (Mar. 2019) (discussing the experience of women and girls with disabilities).

<sup>236</sup> See Lily Robin & Evelyn F. McCoy, *Policing is Killing Black Disabled People. Centering Intersectionality is Critical to Reducing Harm*, URB. INST. (Nov. 15, 2021), <https://www.urban.org/urban-wire/policing-killing-black-disabled-people-centering-intersectionality-critical-reducing-harm> (“The intersection of racism and ableism add up to a higher risk of arrest, other forms of physical and mental harm, and even death for Black disabled people when they encounter police.”); see generally Mark Townsend, *Met Police Officer Faces New Hearing Over Death of Mentally Ill Black Man*, GUARDIAN (Jan. 24, 2021), <https://www.theguardian.com/uk-news/2021/jan/24/met-police-officer-faces-new-hearing-over-death-of-mentally-ill-black-man>; see generally MORA ET AL., at 180.

<sup>237</sup> See Vilissa Thompson, *Understanding the Policing of Black, Disabled Bodies*, CTR. FOR AM. PROGRESS (Feb. 10, 2021), <https://www.americanprogress.org/article/understanding-policing-black-disabled-bodies/>; Lily Robin & Evelyn F. McCoy, *The Criminal Legal System Fails to Address Black Disabled People’s Intersectional Identities*, URB. INST. (Aug. 29, 2022), <https://www.urban.org/urban-wire/criminal-legal-system-fails-address-black-disabled-peoples-intersectional-identities> (citing that 55% of black people with disabilities were at a high risk of arrest by 28 compared to 40% of white people with disabilities).

<sup>238</sup> See Judy Heumann, *The Heumann Perspective: Candace Coleman*, YOUTUBE (Dec. 12, 2017), [https://www.youtube.com/watch?v=cHITav\\_OEPc](https://www.youtube.com/watch?v=cHITav_OEPc); *Racial and Justice + Disability Justice*, ACCESS LIVING, <https://www.accessliving.org/get-involved/join-a-community-organizing-group/advance-your-leadership-power/>. (last visited Nov. 18, 2022).

<sup>239</sup> See generally Townsend, *Met Police Officer Faces New Hearing Over Death of Mentally Ill Black Man*.

<sup>240</sup> See Fatos Kaba et al., *Disparities in Mental Health Referral and Diagnosis in the New York City Jail Mental Health Services*, 105 AM. J. PUB. HEALTH 1911, 1911 (2015) (citing a study that found that Black and Hispanic people were less likely than White people to enter mental health services in jail).

confinement.<sup>241</sup> In Latin America and the Caribbean people with disabilities are also overrepresented in the prison population and face further abuse while incarcerated.<sup>242</sup>

## 2. Rights-Based Analysis

Black people with disabilities have the right to be protected from exploitation, violence, and abuse.<sup>243</sup> People with disabilities of African descent are entitled to the right to life, liberty, and security of their personhood.<sup>244</sup>

## 3. State Obligations

States should direct funding to programs that address violence against Black people with disabilities.<sup>245</sup> These programs should include nondiscriminatory violence-response services as well as accessible shelters, intervention centers, and helplines.<sup>246</sup> States should also invest in community-based mental health services to take the place of law enforcement in emergency situations involving Black people with disabilities, thereby lessening the risk of harm to these communities.<sup>247</sup> This would also serve the additional role of offering aid to people with disabilities of African descent in crisis who may not otherwise receive it.<sup>248</sup> **Black, Disabled, and Proud**, a college-student group, and the **Harriet Tubman Collective**, a collective of Black Deaf and disabled activists, argue that a crucial step in protecting Black people with disabilities from police violence is to ensure that they are overtly included in the development of reforms seeking to address systemic violence against Black people.<sup>249</sup>

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<sup>241</sup> See Robin & McCoy, *The Criminal Legal System Fails to Address Black Disabled People's Intersectional Identities*.

<sup>242</sup> See generally MORA ET AL., at 180.

<sup>243</sup> See Convention on the Rights of Persons with Disabilities art 16.

<sup>244</sup> See International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>245</sup> See generally LUANA MARQUES GARCIA ET AL., at 21.

<sup>246</sup> See *id.*

<sup>247</sup> See DIVERSION TO WHAT? EVIDENCE-BASED MENTAL HEALTH SERVICES THAT PREVENT NEEDLESS INCARCERATION, BAZELON CENTER 7-8 (Sept. 2019), [https://securereservedn.net/198.71.233.111/d25.2ac.myftpupload.com/wp-content/uploads/2019/09/Bazon-Diversion-to-What-Essential-Services-Publication\\_September-2019.pdf](https://securereservedn.net/198.71.233.111/d25.2ac.myftpupload.com/wp-content/uploads/2019/09/Bazon-Diversion-to-What-Essential-Services-Publication_September-2019.pdf).

<sup>248</sup> See *id.*

<sup>249</sup> See Alexis Toliver et al., Harriet Tubman Collective, *Disability Solidarity: Completing the "Vision for Black Lives,"* HARV. KENNEDY SCH. J. AFRI. AM. PUB. POL'Y 69, 70-71 (2017); see generally *Black Lives Matter and Disability*, BLACK, DISABLED, AND PROUD: COLLEGE STUDENTS WITH DISABILITIES, <https://www.blackdisabledandproud.org/black-lives-matter.html> (last visited Nov. 13, 2022).