Submission to the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health

Inputs for the upcoming report on racism and the right to health

Sexual Rights Initiative, June 2022

Introduction

1. This submission is made by the Sexual Rights Initiative (SRI). The Sexual Rights Initiative is a coalition of national and regional organisations based in Canada, Poland, India, Egypt, Argentina and South Africa, that work together to advance human rights related to sexuality at the United Nations.[1]

2. We welcome the opportunity to provide input into the Special Rapporteur's upcoming report, and welcome the report's focus on racism, coloniality and the right to health, which remains an under-addressed topic in thematic UN expert guidance.[2] This focus is especially important in a UN system

---

[1] For more information about the Sexual Rights Initiative, please visit http://www.sexualrightsinitiative.com/

[2] Until the Committee on the Elimination of Racial Discrimination concludes the process of elaborating its upcoming general recommendation on the topic, there is currently no General Comment or Recommendation from a treaty body specifically focusing on racism and the right to health. Although several Special Procedures mandates have addressed some aspects of racism and the right to health in their thematic reports (see below), there does not seem to have been a Special Procedures report specifically dedicated to that topic in recent years. See for instance the reports of the Special Rapporteur on Racism on the intersection between poverty and racism (2013), available at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/68/333 and on contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance, including on discrimination against the Roma, available at http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2005/18&Lang=E ; as well as the reports of the Working Group of Experts on People of African Descent on COVID-19, systemic racism and global protests (2020) at https://undocs.org/en/A/HRC/45/44, on The Urgency of Now: Systemic Racism and the opportunities of 2021 (2021) at https://undocs.org/A/76/302, on structural discrimination against people of African descent (2010) at https://undocs.org/en/A/HRC/14/18, and the sections on racism and health of early Working Group reports; as well as the report of the Special Rapporteur on the Right to Health on the role of the determinants of health in advancing the right to mental health (2019) at https://www.undocs.org/en/A/HRC/41/34; and the Study by the Expert Mechanism on the Rights of Indigenous

that continues to marginalise issues related to racial justice and reparations for colonisation,[3] where the urgent need to take more effective action against racial discrimination in the UN secretariat itself has also come to light,[4] and where much of UN and mainstream human rights discourse has 'captured' the concept of intersectionality.[5] Indeed, UN recommendations frequently refer to "multiple and intersecting forms of discrimination,"[6] often erasing race analysis in the process and diluting intersectionality's radical critique of white supremacy, patriarchy, and other systems of oppression and its complication of any sense of gender, sex, class, or race as singular and discrete identities.[7] Paradoxically, a Black feminist framework developed to look specifically at the operation of racial and gender discrimination is now often used without race analysis, as a box-ticking and virtue signalling exercise.

3. This submission advocates for an analysis of racism[8] and the right to health that positions and addresses both racism and colonialism as determinants of health and as structural violence, at the national and international levels. It illustrates some of the ways in which racism manifests in the area of the right to health, including with regards to bodily autonomy, sexual and reproductive health and rights, mental health, maternal mortality and morbidity, and the impact of racist anti-immigration policies. The submission looks at the colonial history and current colonial power dynamics of medicine, global health, health funding, and international financial institutions, and critiques the racist impacts of neoliberal approaches to health, economics and human rights. Finally, it argues that reparations for colonialism and slavery are essential to the realisation of the right to health and the decolonisation of global health.

Peoples on the Right to health and indigenous peoples with a focus on children and youth (2016) at https://www.undocs.org/A/HRC/33/57.

[3] Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, commemorating the twentieth anniversary of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa. A/76/434, 2021, para. 71. See also paras 76-78.

[4] Report of the Secretary-General : Addressing racism and promoting dignity for all in the United Nations Secretariat, A/76/771, 2022.

[5] Often in the form of "multiple and intersecting forms of discrimination."

[6] See for instance UN Human Rights Council Resolution 48/3: *Human rights of older persons,* operative paragraph 11; UN General Assembly Resolution 73/148: *Intensification of efforts to prevent and eliminate all forms of violence against women and girls: sexual harassment,* preambular paragraph 12; Human Rights Council Resolution 35/22: *Realizing the equal enjoyment of the right to education by every girl*, preambular paragraph 10; Human Rights Council Resolution 41/17: *Accelerating efforts to eliminate all forms of violence against women and girls: preventing and responding to violence against women and girls in the world of work*, preambular paragraph 20.

[7] One telling example was the 2020 HRC panel discussion on "Gender and diversity: strengthening the intersectional perspective in the work of the Council," during which many states did not mention racism in their statements, as noted by Dr Joia Crear Perry in her closing remarks (see https://media.un.org/en/asset/k19/k19irh5rv3).

[8] The term "racism" in this submission should be read to include, as the Committee on the Elimination of Racial Discrimination has made clear in its General Recommendation 29, the elimination of discrimination based on race, colour, descent (including discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status), or national or ethnic origin.

Health, bodily autonomy and racism

4. The right to bodily autonomy and its rejection of racism and all oppressions is central to the right to health. The concept of bodily autonomy interrogates and encompasses the options and material conditions available to people for the exercise of autonomy and self-determination over their bodies and lives, without coercion, discrimination, or interference from the State, family, society and other external elements.[9] Bodily autonomy is a central part of reproductive justice.[10]

5. As the right to bodily autonomy is increasingly recognised and affirmed by UN bodies,[11] and despite its fundamental incompatibility with racism and its grounding in intersectional analysis, the realisation of bodily autonomy is often addressed as separate from the need to eradicate racism,[12] from critiques of anti-migration policies and economic inequalities between countries, or from calls for the right to development, unobstructed access to medicines and vaccines, and for reparations for colonialism. It is therefore crucial to reaffirm bodily autonomy's anti-racist critique of power structures and resource distribution.

Race, class and gender

6. Intersectionality offers us of a radical critique of patriarchy, capitalism, white supremacy and other forms of domination, and it complicates any sense of gender, sex, class, race, caste or disability as singular and discrete identities. It rejects any hierarchy of one categorical

---

[9] For more on SRI and SRI partners' conception of the right to bodily autonomy, see for instance the Highlights from the panel on Bodily Autonomy and Sexual Rights held on 20 September 2016 during the 33rd session of the UN Human Rights Council: https://sexualrightsinitiative.com/ru/node/98; and the SRI Submission to the Office of the High Commissioner for Human Rights on the elimination of discrimination against women and girls in sports (2019), paras 19-20, https://www.sexualrightsinitiative.com/resources/submission-ohchr-elimination-discrimination-against-women-and-girls-sports

[10] SisterSong defines reproductive justice as "the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities." https://www.sistersong.net/reproductive-justice/

[11] See for instance Human Rights Council Resolution 40/5: Elimination of discrimination against women and girls in sport (2019), which called upon states to repeal rules, policies and practices that negate women and girl athletes' rights to bodily integrity and autonomy (A/HRC/RES/40/5, OP3); HRC resolution 44/17: Elimination of all forms of discrimination against women and girls, https://undocs.org/en/A/HRC/RES/44/17, OP 7; UNFPA, My Body is My Own: Claiming the right to autonomy and self-determination (2021), https://www.unfpa.org/sites/default/files/pub-pdf/SoWP2021_Report_-_EN_web.3.21_0.pdf; Generation Equality Forum: Action Coalitions: A Global Acceleration Plan for Gender Equality (draft - 30 March 2021), https://forum.generationequality.org/sites/default/files/2021-03/AC_Acceleration%20Plan.Final%20Draft%20%28March%2030%29_EN.pdf; Report of the United Nations High Commissioner for Human Rights: Intersection of race and gender discrimination in sport, https://undocs.org/en/A/HRC/44/26, para. 34(f).

[12] With the important exception of Human Rights Council Resolution 40/5: Elimination of discrimination against women and girls in sport (2019), which looked at the intersection of gender-based and racial discrimination in sport.

determination over others and brings us to the conclusion that no form of oppression or subordination ever stands alone.[13]

7. This is true of all oppressions, and certainly of race and class: in the words of Stuart Hall, "race is the modality in which class is lived."[14] It is worth highlighting class in the context of this submission because it remains an under-addressed frame of analysis in the human rights sector,[15] and also requires addressing the racist roles and impacts of capitalism and neoliberalism.

8. As highlighted in the Special Rapporteur's questionnaire, caste is another important factor to consider in this analysis.[16]

9. Adding the lens of "class" is critical. In Latin America and the Caribbean, as in other places, class and ethnicity are closely linked: "Only by [...] appreciating how the gender and racial/ethnic dimensions fuse [with social class, sexuality and other axes of differentiation] will it be possible to take the full measure of the situation of indigenous people and Afro-descendants."[17]

10. As noted by the Special Rapporteur, it is important to focus on the concept of substantive equality and the State obligations associated with it. As Saidiya Hartman noted, "the stipulation of abstract equality produces white entitlement and black subjection in its promulgation of formal equality. [...] Abstract universality presumes particular forms of embodiment and excludes or marginalises others. "[18] While Hartman's statement was made in response to the United States context, it can also be applied to the United Nations and much of international human rights discourse, where the myth according to which colonisation was at worst a 'regrettable' accident of the past that bears little relation to contemporary racism or to power imbalances at the UN and beyond, lives on and precludes any possibility of substantive equality.[19]

---

[13] SRI Submission to the Working Group on Discrimination Against Women and Girls, focusing on sexual and reproductive rights in situations of crisis. September 2020. https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ReproductiveHealthRights/CSOs/srisubmission/submission.docx

[14] Hall, Stuart, Chas Critcher, Tony Jefferson, John N. Clarke, and Brian Roberts (1978). "Policing the Crisis: Mugging, the State, and Law and Order." London: Macmillan. Page 394.

[15] Audrey R. Chapman: "The social determinants of health, health equity, and human rights." *Health and Human Rights: An International Journal* 12/2 (2010): https://www.hhrjournal.org/2013/08/the-social-determinants-of-health-health-equity-and-human-rights/

[16] See for instance "UN rights experts call for stronger protection of victims of caste-based discrimination" https://news.un.org/en/story/2013/05/440422-un-rights-experts-call-stronger-protection-victims-caste-based-discrimination

[17] ECLAC: "The social inequality matrix in Latin America." 2016. https://repositorio.cepal.org/bitstream/handle/11362/40710/1/S1600945_en.pdf, page 24.

[18] Hartman, Saidiya V. 1997. *Scenes of subjection: terror, slavery, and selfmaking in nineteenth-century America*. New York: Oxford University Press. Pages 116; 122.

[19] For more analysis on the workings of race and gender in the UN human rights system, please see the recording of SRI and IMADR's webinar "Race Matters:" https://www.youtube.com/watch?v=r0ovIgwlAFw

Racism and colonialism as determinants of health, and as structural violence (questions 1, 4, 10)

11. Racism is a fundamental cause of inequalities in health care and health outcomes, but is often absent from health research and policy.[20] Structural, institutional and interpersonal racism coalesce to affect racialised people's enjoyment of the right to health. But even within human rights discourse and standards, "[w]hile we have long understood the social determinants of health to include a healthy environment, food security, water and sanitation, we have been slow to acknowledge, much less repair, the racial hierarchies that structure access to these public goods. These are the determinants of health that we prefer not to see."[21]

12. This dismissal of racism's role in determining health is related to frequent denial in multilateral and human rights spaces of the historical and ongoing impacts of colonisation on human rights, including the right to health.[22] In addition to racism, it is important to address colonialism as a determinant of health, as several scholars and peoples subjected to colonialism have done.[23] Omitting colonialism as a determinant of health would obscure the colonial structures that continue shaping racist inequalities in resources, health access and outcomes between countries

---

[20] NHS Race & Health Observatory Rapid Evidence Review on Ethnic Inequalities in Healthcare, 2022, https://www.nhsrho.org/wp-content/uploads/2022/02/RHO-Rapid-Review-Final-Report_v.7.pdf, page 21.

[21] Cohen, Jonathan. "A Time for Optimism? Decolonizing the Determinants of Health" Health and Human Rights Journal, November 2020. Available at https://www.hhrjournal.org/2020/11/a-time-for-optimism-decolonizing-the-determinants-of-health/

[22] For more analysis on the workings of race and gender in the UN human rights system, please see the recording of SRI and IMADR's webinar "Race Matters" (2020): https://youtu.be/r0ovIgwlAFw

[23] See for instance Czyzewski, K. (2011). Colonialism as a Broader Social Determinant of Health. The International Indigenous Policy Journal, 2(1). DOI: 10.18584/iipj.2011.2.1.5 ; How Is Colonialism a Sociostructural Determinant of Health in Puerto Rico? José G. Pérez Ramos, PhD, MPH, Adriana Garriga-López, PhD, and Carlos E. Rodríguez-Díaz, PhD, MPH: https://journalofethics.ama-assn.org/sites/journalofethics.ama-assn.org/files/2022-03/msoc2-peer-2204.pdf ; Nelson, Sarah. "Challenging hidden assumptions: Colonial Norms as Determinants of Aboriginal Mental Health." Available at https://www.ccnsa-nccah.ca/docs/determinants/FS-ColonialNorms-Nelson-EN.pdf ; Mulumba, M., A.L. Ruano, K. Perehudoff, and G. Ooms. 2021. "Decolonizing Health Governance: A Uganda Case Study on the Influence of Political History on Community Participation". Health and Human Rights. 23 (1): 259-271. page 260. Available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8233017/pdf/hhr-23-01-259.pdf ; Hammoudeh W, Kienzler H, Meagher K, et al : "Social and political determinants of health in the occupied Palestine territory (oPt) during the COVID-19 pandemic: who is responsible?" BMJ Global Health 2020;5:e003683. Available at https://gh.bmj.com/content/5/9/e003683 ; ML Greenwood, SN de Leeuw. Social determinants of health and the future well-being of Aboriginal children in Canada. Paediatr Child Health 2012;17(7):381-384. Page 382. Available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3448539/; Dyck, Miranda. Métis Centre, National Aboriginal Health Organization. "Social Determinants of Métis Health," available at https://ruor.uottawa.ca/bitstream/10393/30593/1/Research_SocialDeterminantsofHealth.pdf; Gunn, Brenda L. "Ignored to Death: Systemic Racism in the Canadian Healthcare System" Submission to EMRIP the Study on Health. https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Health/UniversityManitoba.pdf, page 3; Michael J. Chandler and Christopher Lalonde, "Cultural Continuity as a Hedge against Suicide in Canada's First Nations," *Transcultural Psychiatry* 35, no. 2 (1998), doi.org/10.1177/136346159803500202, as cited in Marya, Rupa, and Raj Patel. *Inflamed: deep medicine and the anatomy of injustice*. New York: Farrar, Straus and Giroux, 2021. Page 27.

and people depending on whether they benefited from or were subjected to colonialism, and leave unexplained the reasons for health inequalities between Indigenous and settler populations worldwide.[24] It would mean silencing the colonial reasons for the health impacts of generational trauma, dispossession and violence, and for the current economic, geopolitical and global health structures reflecting colonial power dynamics. Lastly, it would contribute to isolating racism from the colonial and capitalist enterprise that invented race to justify slavery, colonial conquest, exploitation and countless atrocities for profit.

13. As pointed out by the Special Rapporteur in her latest report,[25] the violence inherent in the everyday operation of oppressions and structures of racism, ableism, patriarchy and classism have a severe accumulated impact on people's integrity, agency, and ultimately, their rights to health and to bodily autonomy. Exposing racism not merely as a health determinant, but as structural violence, is helpful to surface "the deep structural roots of health inequities [...], explicitly identif[y] social, economic, and political systems as the causes of poor health"[26] and explicitly name health inequities as an act of violence. This is important in a human rights discourse that often shies away from power analysis, despite the fact that in the context of the right to health, as correctly noted by Alicia Ely Yamin, "health is a reflection of power relations as much as biological or behavioral factors."[27]

14. Just as research into racist structural violence in Europe has surfaced the processes through which racism is enacted and reproduced in health care settings, in a European context in which race is silenced in law and policy and treated as "an individual aberration […] and not a structural societal issue" based on the fallacy of a "post-racist" society,[28] more international human rights attention to racism as a form of structural violence is necessary given what the Special Rapporteur on racism denounced as the "general marginality of racial equality within the global human rights agenda, and among those who wield power in the formation and execution of this agenda," which

---

[24] Czyzewski, K. (2011). Colonialism as a Broader Social Determinant of Health. The International Indigenous Policy Journal, 2(1). DOI: 10.18584/iipj.2011.2.1.5. Page 1; Study by the Expert Mechanism on the Rights of Indigenous Peoples: Right to health and indigenous peoples with a focus on children and youth, A/HRC/33/57, https://undocs.org/A/HRC/33/57, para. 4.

[25] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Violence and its impact on the right to health. A/HRC/50/28, para.69. available at https://undocs.org/A/HRC/50/28.

[26] De Maio F, Ansell D. "As Natural as the Air Around Us": On the Origin and Development of the Concept of Structural Violence in Health Research. Int J Health Serv. 2018 Oct;48(4):749-759. https://pubmed.ncbi.nlm.nih.gov/30092699/

[27] A. E. Yamin, "Shades of dignity: Exploring the demands of equality in applying human rights frameworks to health," Health and Human Rights: An International Journal 11/2 (2009), https://www.hhrjournal.org/2013/08/shades-of-dignity-exploring-the-demands-of-equality-in-applying-human-rights-frameworks-to-health, as cited in https://www.hhrjournal.org/2013/08/the-social-determinants-of-health-health-equity-and-human-rights/

[28] Hamed S, Thapar-Björkert S, Bradby H, Ahlberg BM. Racism in European Health Care: Structural Violence and Beyond. Qualitative Health Research. 2020;30(11):1662-1673. https://doi.org/10.1177/1049732320931430, page 1663.

continues excluding racialised people and grassroots organisations from its decision-making and knowledge production.[29]

15. In this sense, approaching racism as structural violence is “a way to understand the conundrum of racism, its invisibility, and obfuscation, on one hand, and its material consequences that shape the risk of morbidity and mortality, on the other.”[30] Racist structural violence also operates at the international level, where populations in the Global South are constantly confronted with barriers to access vaccines, medicines and treatments.

Access to health care and health determinants (questions 1, 2, 3)

16. In addition to constituting a determinant of health of its own, racism jeopardises people’s enjoyment of their other determinants of health. In Latin America and the Caribbean, as in other places, residential segregation and racism determine Black and Indigenous people’s access to health, as they are more likely to live in areas characterised by limited availability of health care.[31] Travestis, an identity falling under the trans umbrella that has been reclaimed as specifically Latin American and different from North American and European trans identity, face precarity, early expulsion from their homes, lack of access to education, training and formal jobs. They are subjected to stigma, police harassment, violence by state agents (also linked to the repression of sex work) and private citizens and poor housing.[32] All of this leads to a very short life expectancy of around 35 years.[33]

17. The Special Rapporteur on adequate housing has called attention to residential segregation as “a fundamental cause of racial disparities in health” that is directly correlated with other social determinants of health.[34] In that context, he noted the Roma population’s reduced lifespan compared to other groups in Europe as a result of segregation and systemic discrimination,[35] the proliferation of informal settlements around the world where low-income and racialised

---

[29] E. Tendayi Achiume. 2018. "Putting racial equality onto the global human rights agenda." *Sur: International Journal on Human Rights.* 15 (28): 141; 143. https://sur.conectas.org/en/putting-racial-equality-onto-the-global-human-rights-agenda/

[30] Hamed S, Thapar-Björkert S, Bradby H, Ahlberg BM. Racism in European Health Care: Structural Violence and Beyond. Qualitative Health Research. 2020;30(11):1662-1673. https://doi.org/10.1177/1049732320931430, pages 1662-3.

[31] ECLAC: “The social inequality matrix in Latin America.” 2016. https://repositorio.cepal.org/bitstream/handle/11362/40710/1/S1600945_en.pdf, pages 60-61.

[32] See https://www.mpdefensa.gob.ar/sites/default/files/la_revolucion_de_las_mariposas.pdf

[33] This figure emerges from research conducted by feminist anthropologist Josefina Fernández and published in the book “Cumbia, copeteo y lágrimas”, compiled by late travesti activist Lohana Berkins and published by Ediciones Madres de Plaza de Mayo in 2015.

[34] Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Balakrishnan Rajagopal: Spatial segregation and the right to adequate housing: A/HRC/49/48, 2022, https://www.ohchr.org/en/documents/thematic-reports/ahrc4948-spatial-segregation-and-right-adequate-housing-report-special, para. 54.

[35] *Ibid.*, para. 54.

populations are often concentrated,[36] and expressed concern about persistent patterns of spatial segregation based on caste and religion in India.[37] In a report on the intersection between poverty and racism, the Special Rapporteur on racism also expressed concern about Dalits being denied entry into health centres and visits from public health workers.[38]

18. Racist anti-immigration policies in Europe also severely jeopardise racialised people's right to health. In its review of access to maternal health care in the European Union, the Center for Reproductive Rights has found that 16 EU countries deny or undermine undocumented migrant women's access to affordable maternal health care.[39]

19. In a rare show of solidarity, several European countries recently opened their borders to refugees fleeing the war in Ukraine. However it soon became apparent that whiteness - and Ukrainian nationality - was the condition for being 'welcomed' into neighbouring countries.[40] In Poland, the stark distinction between the government's relative openness to (white) people fleeing Ukraine and its hostility toward racialised migrants having entered Poland from Belarus is indicative not only of the Polish government's hypocrisy and racist policies, but also of Fortress Europe's racist double standards.[41] In response to their inhumane detention and slow asylum procedures, Kurdish asylum seekers in Poland have started a hunger strike with demands including access to mental and physical health care, which has recently entered its third week, following other hunger strikes by Syrian and Iraqi asylum seekers in late 2021 and early 2022.[42]

Informed consent and coercion (question 1)

20. As pointed out by the mandate of the Special Rapporteur, racialised people, ethnic minorities, Indigenous people and migrants face particular risks of coercion and denial of informed consent in health care.[43] Coercion is a common experience for racialised people in health care,[44] including

---

[36] *Ibid.*, para. 22.
[37] *Ibid.*, para. 22.
[38] Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance A/68/333, 2013. https://www.undocs.org/A/68/333, para. 65.
[39] Center for Reproductive Rights: *Perilous Pregnancies: Barriers in Access to Affordable Maternal Health Care for Undocumented Migrant Women in the European Union.* 2020. https://reproductiverights.org/wp-content/uploads/2021/03/Updated-GLP-EUROPE-PerilousPregnancies-2020-Web.pdf
[40] OHCHR: "Ukraine: UN experts concerned by reports of discrimination against people of African descent at border" (3 March 2022): https://www.ohchr.org/en/press-releases/2022/03/ukraine-un-experts-concerned-reports-discrimination-against-people-african
[41] Emily Venturi and Anna Iasmi Vallianatou: "Ukraine exposes Europe's double standards for refugees" (30 March 2022): https://www.chathamhouse.org/2022/03/ukraine-exposes-europes-double-standards-refugees
[42] Benjamin Bathke: "Kurdish asylum seekers' hunger strike in Poland enters third week." Info Migrants (30 May 2022): http://www.infomigrants.net/en/post/40855/kurdish-asylum-seekers-hunger-strike-in-poland-enters-third-week
[43] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A/64/272, 2009, www.undocs.org/A/64/272, paras 61-64.
[44] See for instance NHS Race & Health Observatory Rapid Evidence Review on Ethnic Inequalities in Healthcare, 2022, https://www.nhsrho.org/wp-content/uploads/2022/02/RHO-Rapid-Review-Final-Report_v.7.pdf, p. 22.

in the form of population control and other coercive population policies, and in the complete violation of informed consent and other ethical standards throughout the course of medicine's history of violent experimentation on racialised bodies.

21. Upholding informed consent in practice is not possible without a power analysis and consideration of the material conditions, structures and systems of oppression and other options necessary for a true exercise of autonomy. Colleen Campbell's analysis connects "early gynecology's reliance on the bodies of unconsenting Black women to how medicine and the law's failure to reckon with this history continues to harm Black women now"[45] and examines the doctrine of informed consent and its operation in the US context as often compromised in practice, due to factors including the doctor-patient imbalance in power and information, cost-related concerns, health care staff paternalism and expectations placed on patients to be 'good', obedient and trusting of medical authority, all compounded by the routine operation of race, gender and class oppression.[46] These factors are among those resulting in the routine dehumanisation, obstetric violence and racism faced by Black women, translating among others into stark racial inequalities in maternal mortality rates and (medically unnecessary) C-sections,[47] illustrating a combination of over-medicalisation and medical neglect.

22. The routine denial of informed consent as part of clinical trials in the Global South is a telling example of the racist double standards at play in the (non-)application of the doctrine.[48] On this topic, Anand Grover stressed that "[i]t continues to be questioned whether conducting clinical trials in developing countries can ever be considered ethical, especially when using placebos despite the existence of appropriate non-placebo interventions."[49] To add insult to injury, some of these clinical trials bring little to no benefit to the country (e.g. not guaranteeing access to that medicine in that country, not allowing patent exceptions, etc.), as was the case with COVID-19 vaccines.

23. In addition, narrow individualised conceptions of informed consent do not necessarily encapsulate all the scenarios in which coercion is experienced. When health care is inaccessible or health systems are undermined as a result of colonial and economic exploitation, violence and the neocolonial imposition of structural adjustments, privatisation, deregulation and debt

---

[45] Colleen Campbell, Medical Violence, Obstetric Racism, and the Limits of Informed Consent for Black Women, 26 MICH. J. RACE & L. 47 (2021). Available at: https://repository.law.umich.edu/mjrl/vol26/iss0/4

[46] *Ibid.,* pages 65-68.

[47] "While C-sections are sometimes medically necessary and potentially lifesaving, a C-section is a major surgery that poses greater fetal and maternal health risks than vaginal birth. In fact, C-sections are associated with extensive adverse perinatal and neonatal outcomes. For this reason, the World Health Organization states "[t]here is no justification for any region to have a rate higher than 10-15%." At over 30%, the C-section rate in the U.S. is generally concerning from a public health standpoint." (*Ibid.,* page 61).

[48] M Kottow: "The battering of informed consent." *J Med Ethics* 2004;30:565–569. doi: 10.1136/jme.2003.002949 https://jme.bmj.com/content/30/6/565

[49] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A/64/272, 2009, www.undocs.org/A/64/272, Para. 40.

repayments, the experience is one of coercion and denial of the rights to health and bodily autonomy, rooted in historical and ongoing racism. It is therefore important to affirm the right to bodily autonomy and its rejection of racism and all other oppressions, as central to the fulfillment of the right to health.

Epistemic injustice (questions 1, 2 and 3)

24. Miranda Fricker's concept of epistemic injustice,[50] or injustice related to knowledge, refers to instances in which someone's knowledge or experience is not taken seriously or considered "credible" based on an analysis of power and associated stereotypes, and has been increasingly applied in the context of health care.[51] Fricker distinguishes between two types of epistemic injustice: testimonial injustice, in which someone's pain, experience or trauma is discounted by people in a position of power,[52] and hermeneutical injustice, in which the naming and articulation of suffering is prevented by a gap in (dominant) knowledge and ideas, arising from stereotypes and dismissal of marginalised groups' authority on their experiences.[53] These injustices "can be systematic, especially if, as in the case of racism and sexism, the stereotypes and prejudices are deeply entrenched in the social world."[54]

25. Where gendered epistemic injustice manifests in the lack of recognition of postpartum depression[55] or endometriosis,[56] racial epistemic injustice manifests in an academic global health sector characterised by an "unfair denial of knowledge-production capacity of local experts or members of marginalised groups" as well as "editorial racism," all of which impact on global health's ability to meaningfully investigate and address all dimensions of racism in health care.[57]

---

[50] Fricker, Miranda. 2011. *Epistemic injustice: power and the ethics of knowing*. Oxford: Oxford University Press.
[51] Byrne, Eleanor Alexandra. 2020. "Striking the balance with epistemic injustice in healthcare: the case of Chronic Fatigue Syndrome/Myalgic Encephalomyelitis". *Medicine, Health Care, and Philosophy.* 23 (3): 371-379. https://link.springer.com/content/pdf/10.1007/s11019-020-09945-4.pdf
[52] Marya, Rupa, and Raj Patel. *Inflamed: deep medicine and the anatomy of injustice*. New York: Farrar, Straus and Giroux, 2021. Page 193. (hereinafter: Marya and Patel: *Inflamed*)
See also Dhairyawan, Rageshri. 2021. "The medical practice of silencing". *Lancet (London, England).* 398 (10298): 382-383.
[53] Marya and Patel: *Inflamed,* pages 193-194.
[54] Kidd, Ian James, and Havi Carel. "Epistemic Injustice and Illness." *Journal of applied philosophy* vol. 34,2 (2017): 172-190. doi:10.1111/japp.12172 , page 177.
[55] Marya and Patel: *Inflamed,* page 194.
[56] Dhairyawan, Rageshri. 2021. "The medical practice of silencing". *Lancet (London, England).* 398 (10298): 382.
[57] See also Bhakuni, Himani, and Seye Abimbola. 2021. "Epistemic injustice in academic global health". *The Lancet Global Health.* 9 (10): e1465-e1470.

26. Testimonial injustice is a common experience for racialised people, and is compounded by other factors including gender,[58] class,[59] disability,[60] body size,[61] or health status[62]. In health care settings, it takes place when racialised patients' account of their symptoms or their pain is dismissed because they are not perceived as credible narrators.[63] As Rageshri Dhairyawan states, "[w]omen have had their pain ascribed to "hysteria", resulting in the undertreatment of their symptoms, [and] racial bias in pain assessment and treatment has also been well documented in western medicine."[64] Over time, this can lead to silencing, with patients preferring to "self-censor their symptoms and concerns so as to remain a 'good patient'" and to avoid facing disbelief.[65] All of this can lead to delayed diagnosis, ineffective treatment, and inadequate pain relief.[66]

27. Racism in pain assessment, management and treatment is well-established[67] and is one of the legacies of a history of white supremacist conspiracy theories and pseudoscience seeking to justify slavery, colonisation and the exploitation of racialised people's bodies and territories on the basis of ludicrous claims that racialised people, and Black people particularly, did not feel pain.[68] These racist claims also formed the basis of violent medical experimentation: "[the] bodies [of enslaved women] considered property, were treated as medical laboratories, sites of violence, exploration and theft, without which modern medicine would have been impossible."[69] Infamous examples include the theft of Henrietta Lacks' cervical tumor cells, which became the HeLa line, or Marion Sims' violent experimentations on Black women leading to the modern speculum.[70]

---

[58] Dhairyawan, Rageshri. 2021. "The medical practice of silencing". *Lancet (London, England).* 398 (10298): 382-383.
[59] J. Adam Carter & Daniella Meehan (2022) Trust, distrust, and testimonial injustice, Educational Philosophy and Theory, DOI: [10.1080/00131857.2022.2037418](https://doi.org/10.1080/00131857.2022.2037418)
[60] Study by the Expert Mechanism on the Rights of Indigenous Peoples: Right to health and indigenous peoples with a focus on children and youth, A/HRC/33/57, https://undocs.org/A/HRC/33/57, para. 69.
[61] See for instance Rathbone J.A., Jetten J., Barlow F.K., and Cruwys T. 2020. "When stigma is the norm: How weight and social norms influence the healthcare we receive." *Journal of Applied Social Psychology.*
For an analysis of the racist origins of fatphobia, and the deployment of racial discourse by white people to distinguish themselves from so-called "greedy and fat racial others," primarily targeting women in that process, please see Strings, Sabrina. 2019. *Fearing the black body: the racial origins of fat phobia*.
[62] Kidd, Ian James, and Havi Carel. "Epistemic Injustice and Illness." *Journal of applied philosophy* vol. 34,2 (2017): 172-190. doi:10.1111/japp.12172
[63] Dhairyawan, Rageshri. 2021. "The medical practice of silencing". *Lancet (London, England).* 398 (10298): 382.
[64] *Ibid.,* page 382.
[65] *Ibid.,* page 383.
[66] *Ibid.,* page 383.
[67] Hoffman, K. M., Trawalter, S., Axt, J. R., & Oliver, M. N. (2016). Racial bias in pain assessment and treatment recommendations, and false beliefs about biological differences between blacks and whites. *Proceedings of the National Academy of Sciences of the United States of America*, *113*(16), 4296–4301. https://doi.org/10.1073/pnas.1516047113
[68] *Ibid.*
[69] Marya and Patel: *Inflamed,* page 202.
[70] *Ibid.,* pages 204-207.

28. This unwillingness to empathise with Black women's pain remains a critical problem in medicine today: "The direct testimony of black women has been treated with suspicion because believing it would open the door to having to listen, take seriously and reconfigure the racial order."[71]

Mental health (questions 1, 2 and 3)

29. The increasing recognition of the deep impacts of systemic oppressions on mental health is important: as stated by the Coalition of African Lesbians and SRI in a statement to the Human Rights Council, “ultimately to be well, we also need to be free and living in a just world. There is no mental health in a violent world.”[72]

30. As expressed in the Coalition of African Lesbians’ African Feminist Standpoint,[73] today’s psychiatry is not too distant from the medical discourse that invented drapetomania, which considered an enslaved person’s desire or attempt to escape slavery a sign of mental illness — a predictable consequence of the hegemonic, white, patriarchal and eurocentric science whose antiblack, misogynist, and colonialist theses defined “knowledge” about racialised people, women and queer people.[74]

31. The racism inherent in modern western science was able to transform Black women’s justifiable rage into a sign of non-rationality and ‘madness’. When the standard for logic and reasoning — and Science— is so deeply rooted in patriarchal white supremacy, blackness, queerness and femaleness are categorised as mental illness or irrationality simply by virtue of being the Other. The discourse and practice of medicine labels black women ‘crazy’; the law, medicine’s accomplice in this regard, labels them incompetent and “dangerous”. While mental illness can be used as a mitigating factor to reduce white men’s culpability in court,[75] black mental illness is harshly surveilled and punished with prison, psychiatric institutions or other kinds of reclusion. Mental illness, therefore, is a flexible category that can fit everyone and no one, and is often used to reinforce class, gender and race stereotypes.[76]

---

[71] *Ibid.,* pages 202-203.
[72] Statement by the Coalition of African Lesbians and the Sexual Rights Initiative during the interactive dialogue with the Special Rapporteur on the right to health. 44th session of the Human Rights Council, July 2020: https://www.sexualrightsinitiative.org/resources/hrc-44-statement-interactive-dialogue-special-rapporteur-right-health
[73] Sexual Rights Initiative: “Pulping mental health in the Human Rights Council.” *African Feminist Standpoint*, September 2020: http://ralf.cal.org.za/pulping-mental-health-in-the-human-rights-council/
[74] *Ibid.;* Bruce, La Marr Jurelle. 2017. "Mad Is a Place; or, the Slave Ship Tows the Ship of Fools". *American Quarterly.* 69 (2): 303-308. https://www.academia.edu/34168904/Mad_Is_a_Place_or_the_Slave_Ship_Tows_the_Ship_of_Fools
[75] Bailey, Moya, and Izetta Autumn Mobley. 2019. "Work in the Intersections: A Black Feminist Disability Framework". *Gender & Society.* 33 (1): 19-40. https://journals.sagepub.com/doi/pdf/10.1177/0891243218801523
[76] Sexual Rights Initiative: “Pulping mental health in the Human Rights Council.” *African Feminist Standpoint*, September 2020: http://ralf.cal.org.za/pulping-mental-health-in-the-human-rights-council/

32. Mainstream medicine also has the prescriptive power to label persons as non-compliant or non-adherent to treatment along racial lines, even though non-compliance is often a manifestation of power imbalances between systems and institutions on the one hand and "patients" on the other.

33. Someone's best (or only) choice might be "non-compliance" because of racism, poverty, trauma, fear of violence or repercussion, lack of transportation, or any of the numerous barriers and tasks required by institutional structures for allowing access to services.[77] As the previous Special Rapporteur stated, "the burden of managing and coping with the systemic damage caused by ignoring the determinants of health has fallen on individuals. These individuals then turn to a mental health-care sector that often lacks adequate resources and appropriate approaches to cope with collective failures."[78] Rather, as Jessica Horns argues, it is important to "situate distress in [its] broader landscape, and to understand that we cannot understand and act to support wellness and emotional health if we do not attend to the external structural factors that undermine them."[79]

Racism and reproductive justice (questions 1, 2 and 3)

34. White supremacy, racism and class play a central role in population control, the instrumentalisation of women's bodies for nationalist agendas, and related violations of bodily autonomy, as Black feminists organising for reproductive justice have known and articulated for decades.[80] Sylvia Tamale's analysis on British colonial policies related to health, sexuality and gender in Uganda shows that the ultimate motive was one of control of the population, because "a dwindling population translated into reduced labour power."[81] This same logic is true of other colonial contexts and times, such as the traumatic colonial treatment of enslaved women as "increasers" and "sources of new workers"[82] in the United States, the treatment of women under indentured labour as "reproducers of labour power" in colonial Natal,[83] or to some extent in the present-day European treatment of migrant women as "temporary units of labour – a supply that could be turned on and off at whim," especially for care and reproductive labour for white families - but now considered more 'productive' and less 'threatening' without a family of their own.[84]

---

[77] *Ibid.*

[78] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental Health, A/HRC/41/34, 2019, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/41/34, para. 7.

[79] Jessica Horn (2020) Decolonising emotional well-being and mental health in development: African feminist innovations. *Gender & Development* 28:1, 85-98, DOI: 10.1080/13552074.2020.1717177

[80] See Ross, Loretta, and Rickie Solinger. 2017. *Reproductive Justice: An Introduction*; https://www.sistersong.net/reproductive-justice

[81] Tamale, Sylvia. Decolonization and Afro-feminism. Daraja Press: 2020. Page 295.

[82] Marya and Patel: *Inflamed,* page 203.

[83] Jo Beall. Women under indentured labour in colonial Natal, 1860-1911. In *Women and Gender in Southern Africa to 1945* (edited by Cherryl Walker), available at https://www.sahistory.org.za/archive/women-under-indentured-labour-colonial-natal-1860-1911-jo-beall

[84] Siddiqui, Sophia. Racing the nation: towards a theory of reproductive racism. *Race & Class*. 2021;63(2): 12.

35. As detailed by Judith A. M. Scully, Black women from the Global North and South and other women of color from the Global South were instrumental in Cairo and Beijing in advocating for a comprehensive definition of reproductive health[85] and for a shift away from the narrow rhetoric of "choice" to emphasise instead freedom from coercion, respect for informed consent, and self-determination in reproductive health:

> "[T]he 'reproductive choice' framework emphasized a consumer-oriented approach to family planning. Whereas economically privileged women were primarily concerned with the quantity of "choices" made available to them through their purchasing power (abortion, the pill, the IUD, diaphragms, etc.), less privileged women expressed the fact that the only choices that were made available to them were dangerous ones that resulted in permanent sterilization as a result of unconsented surgery or temporary sterilization as a result of Norplant and Depo-Provera use. Black women argued that the limited options that they were offered were a direct result of their race and/or socioeconomic status, and, by introducing this intersectionality approach, they shifted the focus of the conversation from the quantity of choices to the quality of choices."[86]

36. Despite the resulting commitments in the ICPD Programme of Action to center gender equality and women's autonomy, health and rights as central to development and against discrimination, coercion and violence in family planning,[87] re-affirmed in the 1995 Beijing Declaration and Platform for Action, States' population policies and objectives continue impacting and implicating sexual and reproductive health and rights in deeply raced and classed ways.[88] Eugenic and colonial reasoning continues to rear its ugly head in reproductive policies and impacting racialised women's enjoyment of their right to sexual and reproductive health, manifesting in coercion through forced sterilisation, contraception and abortion. Population control supporters adapt their racist narratives and pretexts to fit the times, from explicit eugenics to so-called 'poverty reduction' or more recently 'combating climate change' - always "redirect[ing] the blame for societal problems to those with the least power to address them."[89]

37. In the European context, Sophia Siddiqui calls 'reproductive racism' the urge (informed by population decline and replacement theory) to 'protect' and preserve the white, Christian, heterosexual, nuclear and neoliberal family, by encouraging or coercing (white) women to procreate through pro-natalist and pro-maternalist policies and abortion restrictions, all the while relying on migrant women's care work and reproductive labor to uphold this neoliberal family,

---

[85] ICPD Programme of action, para 7.2.; Beijing Declaration and Platform for Action, para. 94.
[86] Scully, J. (2015). Black Women and the Development of International Reproductive Health Norms. In *Black Women and International Law* (pp. 225-249). doi:10.1017/CBO9781139108751.013, page 245.
[87] ICPD Programme of action, para 7.2.
[88] https://reproductiverights.org/wp-content/uploads/2018/08/pub_bo_GG_population.pdf, page 92.
[89] Dakota Schee and Varsha Nair: "Overpopulation and Environmentalism." Greenpeace (25 January 2021): https://www.greenpeace.org/usa/overpopulation-and-environmentalism/

and denying them the same rights to family life and social protection with anti-immigration policies. This exposes the racial hierarchies and hegemonic contours of the families deemed to be 'worthy of protection,' often modeled after dominant norms in a given context.[90] White women are treated as the 'wombs' or 'keepers' of the nation, while racialised people are portrayed simultaneously as "democratic threats" to the nation and its imaginary racial 'purity,' and migrants are treated as "temporary units of labour – a supply that could be turned on and off at whim;"[91] and while queerness and gender-non-conformity are punished.[92] Anti-immigration policies and xenophobia could then be considered as another facet of the population control agenda. Examples of natalist policies pushed by far-right governments alongside anti-immigration agendas include Poland, Hungary and Italy,[93] while in Western European countries including Germany and the UK, "the capacity to have and look after children is restricted and controlled by the state, with racialised families deemed 'unworthy' of protection."[94] As Siddiqui points out, these "[e]xclusionary strategies demarcate the productive and unproductive, the valuable and non-valuable, those that bolster the nation and those that threaten it – and this has particular gendered and racial implications for those who are non-white, non-mainstream, non-citizen."[95] Françoise Vergès' work has exposed a similar logic of reproductive racism and colonialism behind France's forced sterilisation and abortion policy in the Réunion island, a French 'overseas territory,' in the 1970s while abortion was still criminalised and contraception severely restricted in France.[96]

38. The institution of the family, often associated with "innocent children," is often deployed as a neoliberal, racist and patriarchal device for the reproduction of social norms, violence and systems of oppression. Some of this has been highlighted by the Working Group of Experts of African Descent which recently discussed threats to the Black family and racialised interpretations of the best interests of the child at its May 2022 session,[97] and the Special Rapporteur on counter-terrorism and human rights, who pointed to the racist and sexist targeting of Muslim mothers and State regulation of Muslim families in western countries under the guise of counter-terrorism.[98]

---

[90] Siddiqui, Sophia. Racing the nation: towards a theory of reproductive racism. *Race & Class*. 2021;63(2):3-20. doi:10.1177/03063968211037219.
[91] *Ibid.,* page 12.
[92] *Ibid*.
[93] *Ibid.,* page 5.
[94] *Ibid.,* page 5.
[95] *Ibid.,* page 4.
[96] Françoise Vergès. *Le Ventre des femmes. Capitalisme, racialisation, féminisme.* Albin Michel: 2017.
[97] Working Group of experts on people of African descent: 30th public session on Children of African Descent (4th meeting): "Existential threats to the Black family: racialized interpretations of the best interests of the child." https://media.un.org/en/asset/k1f/k1fwsao521
[98] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin: Human rights impact of counter-terrorism and countering (violent) extremism policies and practices on the rights of women, girls and the family**:** https://undocs.org/A/HRC/46/36, para. 26.

39. Racism also operates in so-called sexual rights politics in the form of femonationalism and pinkwashing, in which populist and right-wing discourses in the Global North rely on racist stereotypes and "national security" fears to spread a narrative according to which migrants and refugees pose a "danger" to women and sexual and gender non-conforming people, and should therefore not be allowed to migrate or seek asylum. This type of discourse does not in fact stem from genuine gender equality concerns, but rather from racial and xenophobic hatred. It creates a false opposition between racial equality and the rights of women and non-conforming persons, and completely disregards the many people at the intersections of these groups. This co-optation of gender and sexuality is used to disguise xenophobia. Such homonationalism and consequent pink washing of gross human rights violations creates an artificial divide between different human rights, and is used as a ruse by Global North States to further racial and ethnic hatred and violence.[99]

Forced sterilisation and forced contraception (questions 1, 2 and 3)

40. State-sanctioned forced sterilisation continues to take place across the world and is rooted in eugenics and racist, ableist, colonial and capitalist systems of oppression determining whose bodily autonomy and integrity are expendable. These policies continue targeting racialised persons, also on the basis of their HIV or immigration status, caste, class, gender identity, sex characteristics, or disability.[100]

41. In Canada, sexist, racist, ableist, and colonialist sterilisation practices have targeted Indigenous women.[101] While the literature on this topic tends to treat women with disabilities and Indigenous women separately, it is important to recognise that legal mechanisms to sterilise women with disabilities were targeted at Indigenous women through ableist, racist and classist assumptions on their abilities and capacity.[102]

42. Indigenous women in the Americas, particularly from Canada, Bolivia and Perú, have turned to the Inter-American System of Human Rights[103] to denounce how they are forced to abort, or have

---

[99] SRI submission to the Special Rapporteur on Racism, July 2018.

[100] Sexual Rights Initiative, Her Rights Initiative and Women's Legal Centre: Online side event on forced sterilization held during the 47th session of the Human Rights Council, on 25 June 2021.
On this topic, see also the Commission for Gender Equality (South Africa)'s investigative report on the forced sterilisation of women living with HIV/AIDS in South Africa: Complaint Ref No: 414/03/2015/KZN, available at http://srjc.org.za/wp-content/uploads/2020/03/Forced-Sterilisation-Report.pdf

[101] Karen Stote, (2012). The coercive sterilization of aboriginal women in Canada. American Indian Culture and Research Journal, 36(3), 117-150.

[102] Natalia Acevedo, The medical discourse and the sterilization of people with disabilities in the United States, Canada and Colombia: From eugenics to the present, (2015), P. 99-101

[103] See, e.g. Inter-American Court of Human Rights, I.V. v. Bolivia, Preliminary objections, merits, reparations and costs, 30 November 2016; EFE, Víctimas de esterilizaciones forzadas pedirán a la CIDH que juzgue a Fujimori, 11 January 2018, available at: https://www.efe.com/efe/cono-sur/sociedad/victimas-de-esterilizaciones-forzadas-pediran-a-la-cidh-que-juzgue-fujimori/50000760-3489734 ; Forum of the Inter-American Human Rights System,

their children removed if they carry their pregnancy to term, and subsequently forcibly sterilised, sometimes at the behest of social services who weaponise the custody of their children.[104] In the United States, there have been recent reports of forced sterilisation in migrant detention centers[105] following a long history of eugenics and forced sterilisation targeting women of color, poor women and women with disabilities.[106]

43. Similarly, while media coverage of forced sterilisations based on HIV status (which have taken place in countries including Chile, the Dominican Republic, Mexico, Venezuela, Namibia and South Africa)[107] may not always mention racism as a determining factor, race and class often play an important role in who is eventually targeted and/or disproportionately affected.[108]

44. In European countries including Czechia and Slovakia, Romani women have been forcibly sterilised and targeted based on a combination of racist, sexist, classist and ableist stereotypes.[109]

45. In India, population control policies have historically targeted poor, Muslim, Adivasi and Dalit women, including in the form of forced sterilisations sometimes leading to death.[110]

Forced Sterilizations of Indigenous Women in the Americas, November 2019, agenda available at: https://www.oas.org/es/cidh/docs/pdfs/2019/ForoInteramericano-AgendaAmpliada-en.pdf

[104] SRI submission to the Office of the High Commissioner on Human Rights for its report on maternal mortality and morbidity (2020). See also "Forced sterilization a symptom of 'colonial hangover' says lawyer Alisa Lombard" (7 April 2020): https://www.aptnnews.ca/facetoface/forced-sterilization-a-symptom-of-colonial-hangover-says-lawyer/

[105] Inter-American Commission on Human Rights: "IACHR Expresses Its Concern Over Reports of Sterilizations and Surgical Interventions Without Consent in Migrant Detention Centers in the United States." 30 October 2020. https://www.oas.org/en/iachr/media_center/PReleases/2020/262.asp

[106] Sanjana Manjeshwar: "America's Forgotten History of Forced Sterilization." 4 November 2020. https://bpr.berkeley.edu/2020/11/04/americas-forgotten-history-of-forced-sterilization/

[107] Sifris, Ronli. 2015. "Involuntary Sterilization of HIV-Positive Women: An Example of Intersectional Discrimination". *Human Rights Quarterly.* 37 (2): 464-491.

[108] See for instance the January 2022 submission by Her Rights Initiative, the Women's Legal Centre and SRI to the Special Rapporteur on the right to health, para. 3.5; Atkinson, Holly G., and Deborah Ottenheimer. 2018. "Involuntary sterilization among HIV-positive Garifuna women from Honduras seeking asylum in the United States: Two case reports". *Journal of Forensic and Legal Medicine.* 56: 94-98. https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1537&context=cc_pubs

[109] Gwendolyn Albert and Marek Szilvasi: "Intersectional Discrimination of Romani Women Forcibly Sterilized in the Former Czechoslovakia and Czech Republic." *Health and Human Rights Journal,* 4 December 2017, https://www.hhrjournal.org/2017/12/intersectional-discrimination-of-romani-women-forcibly-sterilized-in-the-former-czechoslovakia-and-czech-republic/

[110] Feminism in India: "Looking Back At The History Of Forced Sterilisation In India And Why It Concerns Us Even Today" (4 September 2020): https://feminisminindia.com/2020/09/04/history-of-forced-sterilisation-concerns-us-even-today/

46. These instances of forced sterilisation must be viewed in the context of the long history of protest by Black and other racialised women across the Global South and in some Global North countries against forced contraception, including in the form of Depo-Provera and Norplant.[111]

Unsafe abortion, maternal mortality and morbidity (questions 1, 2 and 3)

47. Like other SRH services, criminalisation and restrictions to abortion access have racist and classist consequences. In many countries, the laws currently criminalising or penalising abortion are colonial legacies.[112]

48. In Brazil, Lívia Casseres calls for going beyond the mainstream conceptualisation of abortion restrictions as "compulsory motherhood" to highlight that the criminalisation of abortion determines "which lives are worthy of protection and who can be left to die" and is in effect "a death policy for Black women."[113]

49. In other Latin American countries, abortion restrictions, which can lead to forced pregnancy, severely impact the lives of girls and adolescents who are more likely to become pregnant as a result of the intersection of racism and sexual violence, affecting their likelihood of completing education and entering the labour market. Many Indigenous and Afro-descendant girls and adolescents in that situation become domestic workers, with low wages and precarious conditions, compounded by their young age.[114] There is a growing trend of unplanned adolescent pregnancies between 10 and 19 years of age has been increasing in Latin America and the Caribbean, which disproportionately affects Indigenous and Afro-descendant communities.[115]

50. Forced pregnancies can also result from a widespread form of systemic racist and gender-based violence inflicted by young white men against Indigenous girls and adolescents in some Latin American countries such as Argentina.[116] The violence can take the form of harassment, rape and

---

[111] Scully, J. (2015). Black Women and the Development of International Reproductive Health Norms. In *Black Women and International Law* (pp. 225-249). doi:10.1017/CBO9781139108751.013, page 230. See also https://www.theguardian.com/world/2013/feb/28/ethiopian-women-given-contraceptives-israel

[112] Nandagiri, Rishita, et al. "COVID-19 and Abortion: Making Structural Violence Visible." *International Perspectives on Sexual and Reproductive Health*, vol. 46, no. Supplement 1, 2020, pp. 83–89. *JSTOR*, https://doi.org/10.1363/46e1320. Page 85.

[113] Lívia Casseres. 2018. "Structural racism and the criminalisation of abortion in Brazil." *Sur: International Journal on Human Rights.* 15 (28): 77-85. https://sur.conectas.org/en/structural-racism-and-the-criminalisation-of-abortion-in-brazil/

[114] UNFPA, PAHO: Adolescent Pregnancy in Latin America and the Caribbean. Technical Brief, August 2020. https://lac.unfpa.org/sites/default/files/pub-pdf/final_dec_10_approved_policy_brief_design_ch_adolescent.pdf

[115] *Ibid.*

[116] See for instance Ana María Rodríguez Flores: "El Chineo...o la Violación como Costumbre: Violencia Sexual de Varones Criollos hacia Mujeres Indígenas en el Chaco Argentino." https://repositorio.flacsoandes.edu.ec/bitstream/10469/17226/2/TFLACSO-2021AMRF.pdf ; "El INAI solicitó se investiguen los casos de abuso sexual "CHINEO" en las comunidades de la provincia de Salta." 31 May 2022. https://www.argentina.gob.ar/noticias/el-inai-solicito-se-investiguen-los-casos-de-abuso-sexual-chineo-en-las-comunidades-de-la

killing. These cases are often met by impunity, supported by State agents and institutions reproducing structural racism and discrimination. One of these cases was brought to the UN Human Rights Committee, which found that the actions of the police, health and judicial authorities constituted discrimination based on the complainant's gender and ethnicity, and ordered Argentina to pay reparations.[117]

51. The racist impacts of abortion restrictions are one of the factors leading to widespread racial and ethnic disparities in maternal mortality rates, given that unsafe abortion is one of the leading causes of maternal mortality.[118] While similar assumptions could be made about the racist impacts of unsafe abortion on maternal morbidity for those who survive, this remains an assumption due to scarcity of data.[119]

52. Racial and ethnic inequalities in maternal health are well-established at the national level in many countries,[120] as well as at the international level, where rates of maternal mortality and severe maternal morbidity are higher in low- and middle-income countries (LMICs) than in high-income countries.[121] Statistics showing that low and middle-income countries bear 99% of the burden of maternal mortality cannot be explained without pointing to the (neo-) colonial structures and racial capitalism maintaining these countries and their people in a position of economic subordination.[122]

53. In the UK, Black women are four times more likely and Asian women twice as likely to die in childbirth than white women.[123] Issues related to language, inadequate interpretation services, poor listening skills among some health care staff, and negative experiences and interactions marked by racist stereotypes and discrimination, lack of cultural or religious accommodation, and

---

[117] *L.N.P. v. Argentina*, Communication No. 1610/2007, U.N. Doc. CCPR/C/102/D/1610/2007 (2011). Para. 13.3. http://hrlibrary.umn.edu/undocs/1610-2007.html

[118] World Health Organization, https://www.who.int/news-room/fact-sheets/detail/maternal-mortality

[119] SRI submission to the Office of the High Commissioner on Human Rights for its report on maternal mortality and morbidity (2020).

[120] For instance, in the UK (NHS Race & Health Observatory Rapid Evidence Review on Ethnic Inequalities in Healthcare, 2022, page 22, https://www.nhsrho.org/wp-content/uploads/2022/02/RHO-Rapid-Review-Final-Report_v.7.pdf); in France, the Netherlands, Brazil, the United States (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5608036/);
The Office of the High Commissioner for Human Rights has also found that "discrimination [...] on the basis of age, socioeconomic status, disability, racial or ethnic background, language, religion, national or social origin, health or other status [...] substantially heightens the risk of suffering maternal morbidities." (see "Good practices and challenges to respecting, protecting and fulfilling all human rights in the elimination of preventable maternal mortality and morbidity: Follow-up report of the United Nations High Commissioner for Human Rights," 2020, A/HRC/45/19, para. 56).

[121] Geller, S.E., Koch, A.R., Garland, C.E. *et al.* A global view of severe maternal morbidity: moving beyond maternal mortality. *Reprod Health* 15, 98 (2018). https://doi.org/10.1186/s12978-018-0527-2

[122] Robinson, Cedric J. *On Racial Capitalism, Black Internationalism, and Cultures of Resistance*. Edited by H. L. T. Quan. Pluto Press, 2019. https://doi.org/10.2307/j.ctvr0qs8p.

[123] NHS Race & Health Observatory Rapid Evidence Review on Ethnic Inequalities in Healthcare, 2022, page 22. Available at https://www.nhsrho.org/wp-content/uploads/2022/02/RHO-Rapid-Review-Final-Report_v.7.pdf

the State's treatment of women who are undocumented or seeking asylum were among the factors contributing to racialised and migrant women's access to and experience of maternal health care.[124] There are also ethnic inequalities in access to perinatal mental health support.[125]

Colonialism, neoliberalism and medicine (questions 4 and 10)

54. "The history of modern medicine is the history of colonialism. It's no wonder we're not feeling any better."[126] After this statement in their book *Inflamed: Deep Medicine and the Anatomy of Injustice* Rupa Marya and Raj Patel go on to expose the many overt and more insidious ways in which modern medicine "reflects the colonial politics of its time."[127] From western medicine's militaristic and individualistic conception of the immune system 'fighting' external enemies,[128] to its liberal conception of 'tolerance,'[129] its focus on individual disease "to keep the systems invisible,"[130] to the ways in which colonial and racist oppression, violence and stress over generations have worsened COVID-19 infections for racialised and historically oppressed groups,[131] the fact that health crises often treated as 'facts of life' such as epidemics or famine are man-made and evitable,[132] or the colonial violence inflicted on enslaved women, whose bodies were treated as laboratories and whose knowledge of traditional African medicine was stolen and commodified by white doctors.[133] Colonialism does not stop at a singular event or at the occupation of land; it is a continuous exercise of power, violence and coercion that has long standing and pervasive effects in its transformation of "[p]atterns of identity, language, culture, work, relationship, territory, time, community, and care."[134]

55. Rooted in imperial conceptions and hierarchies between "legitimate" and "non-legitimate" knowledge,[135] the targeting by European colonial powers of medicine in the colonies was a deliberate strategy for domination.[136] Colonial states used both civil and criminal laws to suppress or marginalise most African therapeutics, targeting especially those challenging individualistic and

---

[124] *Ibid.,* pages 48-53.
[125] *bid.,* page 57.
[126] Marya and Patel: *Inflamed,* page 18.
[127] *Ibid.,* page 50.
[128] *Ibid.,* page 44.
[129] *Ibid.* Chapter 1: Immune system: I am because you are; The "broken windows" theory of immunology."
[130] *Ibid.,*Page 25.
[131] "Covid has revealed the violence that our society inscribes on certain bodies, those that colonial powers have alienated and deemed to be foreigners and foes." *Ibid.,* page 44.
[132] *Ibid.,* page 37.
[133] Infamous examples include the theft of Henrietta Lacks' cervical tumor cells, which became the HeLa line, or J. Marion Sims' violent experimentations on Black women leading to the modern speculum. *Ibid.,* pages 204-207.
[134] *Ibid.,* pages 14; 187.
[135] Waldron, Ingrid. n.d. *The Marginalization of African Indigenous Healing Traditions within Western Medicine: Reconciling Ideological Tensions & Contradictions along the Epistemological Terrain*. UTSC Printing Services, University of Toronto Scarborough. http://hdl.handle.net/1807/24423. Page 51.
[136] Marya and Patel: *Inflamed,* page 17.

materialist conceptions of health.[137] This suppression, undermining and marginalisation of traditional and Indigenous knowledge systems and medicine has wide-ranging health impacts.[138]

56. When it comes to Indigenous peoples, European colonisation meant that "relationships with and duties of care for water, land, and living beings were uprooted, replaced with a worldview animated by domination, exploitation, and profit."[139] The Expert Mechanism on the Rights of Indigenous Peoples has highlighted that Indigenous peoples' concept of health "is generally broader and more holistic than that of mainstream society, with health frequently viewed as both an individual and a collective right, strongly determined by community, land and the natural environment," which implicates a range of other rights denied to most Indigenous peoples: self-determination, development, culture, land, language and the natural environment.[140] The disregard for Indigenous peoples' concept of health and health knowledge in non-Indigenous health systems, combined with ongoing threats of colonial expansion,[141] and other legacies of colonialism such as forced assimilation, political and economic marginalisation, racial discrimination and prejudice, and and poverty all contribute to Indigenous peoples' poorer health across the world.[142]

57. It is also important to view the impacts of colonialism on traditional and indigenous medicine, and on the right to health more broadly, in combination with the capitalist and neo-liberal dimensions of medicine. The same emphasis on the individual over structural or societal health determinants that was at odds with holistic Indigenous conceptions of health, goes hand in hand with the capitalist conceptualisation and commodification of health as a product and with the business model of big pharma and other big corporations, including agribusiness. People are sold a lot of pills, exercise programs, diet supplements, but their living conditions remain unhealthy (both in a physical and mental sense). The impacts of western medicine's emphasis on the individual have also been noted by the mandate of the Special Rapporteur on the right to health: "the burden of managing and coping with systemic damage has fallen on individuals," resulting in inadequate attention to structural root causes of ill health and a corresponding lack of State accountability.[143]

58. Intellectual property regimes are another legacy of colonialism allied with neoliberal capitalism, rooted in European cognitive imperialism and its "subordination of non-European knowledge

---

[137] Tilley, Helen. Medicine, Empires, and Ethics in Colonial Africa. AMA Journal of Ethics, July 2016, Volume 18, Number 7: 743-753, page 748.
[138] See for instance Thokozani Xaba's account in "Marginalized Medical Practice: The Marginalization and Transformation of Indigenous Medicines in South Africa." In *Another Knowledge Is Possible: Beyond Northern Epistemologies*, edited by Boaventura de Sousa Santos, 317–351. London: Verso.
[139] Marya and Patel: *Inflamed, p*age 14.
[140] Study by the Expert Mechanism on the Rights of Indigenous Peoples: Right to health and indigenous peoples with a focus on children and youth, A/HRC/33/57, https://undocs.org/A/HRC/33/57, para. 4.
[141] According to Marya and Patel, "[t]here are over seventy countries with Indigenous people whose lives are under threat by colonial expansion today." (Marya and Patel: *Inflamed,* page 13.)
[142] Study by the Expert Mechanism on the Rights of Indigenous Peoples: Right to health and indigenous peoples with a focus on children and youth, A/HRC/33/57, https://undocs.org/A/HRC/33/57, para. 5.
[143] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/41/34, 2019: https://undocs.org/A/HRC/41/34, para. 7.

systems, languages, and cultures;"[144] one of the manifestations of what Boaventura de Sousa Santos calls "epistemicide" or the marginalisation, replacement and acquisition of knowledge from the Global South.[145] Intellectual property also enables the colonial theft of Indigenous peoples' traditional knowledge and genetic resources[146] by allowing for patenting and profiteering from living organisms extracted from Global South peoples and communities, along with the ancestral knowledge associated with them, threatening food sovereignty and Indigenous cultural heritage in the process.[147]

59. One concrete example is the TRIPS Agreement, for its introduction and reinforcement of western-style intellectual property rights and advancement of northern countries' interests and corporations, at the expense of access to medicines in Southern countries - a form of "informal economic colonialism."[148] The devastating consequences of this Agreement were most recently exposed by the blocking of the TRIPS waiver proposal for access to COVID-19 vaccines,[149] following a long history of blocking access to HIV treatment[150] and HPV vaccines,[151] among others, all illustrating the "life-threatening injustices that result from a neocolonial and neoliberal global governance and economic model."[152] As Leah Eryenyu puts it, "[t]here are no circumstances that better illustrate the inequality between the two worlds—of the power brokers and the

---

[144] James [Sa'ke'j] Youngblood Henderson: "The Indigenous domain and intellectual property rights." *Lakehad Law Journal (2021) 4:2* https://llj.lakeheadu.ca/article/download/1787/1024, page 94.

[145] Boaventura de Sousa Santos, Epistemologies of the South: Justice against Epistemicide (Boulder: Paradigm Publishers, 2014), as cited in https://llj.lakeheadu.ca/article/download/1787/1024, page 94.

[146] Martin Fredriksson (2020): Dilemmas of protection: decolonising the regulation of genetic resources as cultural heritage. *International Journal of Heritage Studies*, DOI:10.1080/13527258.2020.1852295 https://www.diva-portal.org/smash/get/diva2:1505968/FULLTEXT01.pdf, page 3.

[147] Third World Network: "Why life forms should not be patented." October 2000. https://www.twn.my/title/2103.htm ; Third World Network: "TRIPS Council addresses patents on life forms and access to medicines." Published in SUNS #6877 dated 5 March 2010. https://www.twn.my/title2/wto.info/2010/twninfo100303.htm

[148] Rahmatian, Andreas (2009), 'Neo-Colonial Aspects of Global Intellectual Property Protection', The Journal of World Intellectual Property, Vol. 12(1), pp. 40-74. doi: 10.1111/j.1747-1796.2008.00349.x https://www.researchgate.net/profile/Andreas-Rahmatian-2/publication/46214861_Neo-Colonial_Aspects_of_Global_Intellectual_Property_Protection/links/61dd68fd323a2268f9995a55/Neo-Colonial-Aspects-of-Global-Intellectual-Property-Protection.pdf?origin=publication_detail, page 27.

[149] See https://feminists4peoplesvaccine.org

[150] MSF statement concerning intellectual property and access to medicines in the 2021 UN High-Level Meeting on HIV/AIDS Declaration (June 2021): https://msfaccess.org/msf-statement-concerning-intellectual-property-and-access-medicines-2021-un-high-level-meeting

[151] Subhashini Chandrasekharan, Tahir Amin, Joyce Kim, Eliane Furrer, Anna-Carin Matterson, Nina Schwalbe, Aurélia Nguyen: "Intellectual property rights and challenges for development of affordable human papillomavirus, rotavirus and pneumococcal vaccines: Patent landscaping and perspectives of developing country vaccine manufacturers." Vaccine, Volume 33, Issue 46, 2015, Pages 6366-6370, https://doi.org/10.1016/j.vaccine.2015.08.063.

[152] Wangari Kinoti and Fatimah Kelleher: COVID-19 Recovery and Beyond: An African Feminist Vision for Macroeconomic System Change. In *Feminist Africa* 2022, Volume 3, Issue 1: African Women's Lives in the Time of a Pandemic. https://feministafrica.net/wp-content/uploads/2022/05/FA-_Volume-3-Issue-1_African-Womens-Lives-in-the-Time-of-a-Pandemic_Full-Issue.pdf, Page 24.

structurally excluded, the rich and the poor, of black and white—than those surrounding vaccine access."[153] Civil society has called the current inequitable vaccine rollout "a textbook example of structural racial discrimination,"[154] an analysis echoed by Special Procedures[155] and the Committee on the Elimination of Racial Discrimination.[156]

60. Another manifestation of this racist and neoliberal health framework is the dominant narrative of 'personal responsibility' to stay home and practice social distancing during the COVID-19 pandemic, which ignored the realities of many people who did not have a safe home to stay in, or for whom social distancing was just impossible, ultimately shifting the blame on individuals for circumstances and structures far beyond their control.[157]

61. Colonialism and racism also shaped the medical norms of what is considered "healthy" and their resulting monitoring and surveillance. Sabrina Strings' account of the racist origins of fatphobia, the body mass index (BMI) and of its creator's motivations - rooted in his views of fatness as "repugnant" rather in a real concern about any potential health impacts - is an illustration of how a racist standard was eventually adopted by the World Health Organization and made part of a narrative of personal responsibility often deployed against racialised populations, and used as yet another pretext used to scrutinise black women's bodies.[158] Another example is the racist colonial myth of the "strong Black woman" and its ableist implications,[159] the disability field's use of the white male body as the central normative body,[160] or the practice of "race norming" or "race adjustment" of indicators used across medical disciplines such as cardiology or pulmonary medicine, and often based on racist fictions of biological differences.[161]

---

[153] Leah Eryenyu: A Tale of Two Worlds Amidst the Covid-19 Pandemic: Is A New More Just Economic Order Possible? In *Feminist Africa* 2022, Volume 3, Issue 1: African Women's Lives in the Time of a Pandemic. https://feministafrica.net/wp-content/uploads/2022/05/FA-_Volume-3-Issue-1_African-Womens-Lives-in-the-Time-of-a-Pandemic_Full-Issue.pdf, Page 100.

[154] Urgent action appeal sent to the UN Committee on the Elimination of Racial Discrimination by an international coalition of human rights law groups, public health experts, and civil society organisations: https://movementlawlab.org/covid-healthcare-equity

[155] See for instance the Report of the Working Group of Experts on People of African Descent: The urgency of now: systemic racism and the opportunities of 2021, A/76/302, https://undocs.org/A/76/302, para. 34.

[156] Committee on the Elimination of Racial Discrimination: Statement on the lack of equitable and non-discriminatory access to COVID-19 vaccines (April 2022) https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_SWA_9548_E.pdf

[157] Cardona, Beatriz. "The pitfalls of personalization rhetoric in time of health crisis: COVID-19 pandemic and cracks on neoliberal ideologies." *Health promotion international* vol. 36,3 (2021): 714-721. doi:10.1093/heapro/daaa112

[158] Strings, Sabrina. 2019. *Fearing the black body: the racial origins of fat phobia*. PART III: Doctors Weigh In.

[159] Bailey, Moya, and Izetta Autumn Mobley. 2019. "Work in the Intersections: A Black Feminist Disability Framework". *Gender & Society.* 33 (1): 19-40. https://journals.sagepub.com/doi/pdf/10.1177/0891243218801523 Page 21.

[160] Bailey, Moya, and Izetta Autumn Mobley. 2019. "Work in the Intersections: A Black Feminist Disability Framework". *Gender & Society.* 33 (1): 19-40. https://journals.sagepub.com/doi/pdf/10.1177/0891243218801523, Page 27.

[161] See for instance Malina, Debra, Darshali A. Vyas, Leo G. Eisenstein, and David S. Jones. 2020. "Hidden in Plain Sight — Reconsidering the Use of Race Correction in Clinical Algorithms". *New England Journal of Medicine.* 383

62. Western medicine's focus on individualised disease and diagnosis, its disregard for determinants of health and broader structures of oppression, and its compatibility with and furthering of neoliberalism can be paralleled with the human rights system's own neoliberal emphasis on the individual and interpersonal sphere, its frequent omission of class as a crucial health determinant,[162] and its reluctance to engage with entrenched structures of racism and colonialism, preferring to focus on what it perceives to be "extreme" manifestations of racism and on individual prejudice rather than on the ubiquity of histories and present of racial oppression. As the Special Rapporteur on racism has stated, "[a]lthough influential actors within the global human rights system have raised the alarm against visceral expressions or acts of racism and xenophobia, these actors fail seriously to engage with the historically entrenched structures of racial oppression, exploitation and exclusion that violate the human rights of many but are largely invisible even in the global human rights discourse."[163] In addition, it would be a mistake to view the mainstream human rights focus on civil and political rights and marginalisation of economic, social and cultural rights from a 'colourblind' perspective. As Jessica Whyte notes, "[t]his version of human rights became hegemonic alongside neoliberal assaults on both the welfare state and postcolonial attempts to restructure the international economy in the interests of global equality."[164]

Aid, health funding and financing (questions 6 and 9)

63. At the global level, health funding comes mostly from high-income countries in the north; businesses and corporations; and private foundations/people. It is generally channeled to Global South countries through UN agencies, bilateral organisations based in donor countries (such as USAID or Grand Challenges Canada), global health partnerships (Global Fund or Gavi, for instance) and INGOs.[165] Donors' priorities regularly dictate the attention and funding given to specific issues, often without prior consultation or regard for the context. There is a dire lack of accountability mechanisms to ensure that global health priorities and funding follow recipients'

(9): 874-882; Gopal, Dipesh P, Grace N Okoli, and Mala Rao. 2022. "Re-thinking the inclusion of race in British hypertension guidance". *Journal of Human Hypertension.* 36 (3): 333-335.

[162] Audrey R. Chapman: "The social determinants of health, health equity, and human rights." *Health and Human Rights: An International Journal* 12/2 (2010): https://www.hhrjournal.org/2013/08/the-social-determinants-of-health-health-equity-and-human-rights/

[163] E. Tendayi Achiume. 2018. "Putting racial equality onto the global human rights agenda." *Sur: International Journal on Human Rights.* 15 (28): 143. https://sur.conectas.org/en/putting-racial-equality-onto-the-global-human-rights-agenda/

[164] Whyte, Jessica. *The Morals of the Market: Human Rights and the Rise of Neoliberalism*. London: Verso, 2019. Page 6.

[165] Olusanya, J.O., Ubogu, O.I., Njokanma, F.O. *et al.* Transforming global health through equity-driven funding. *Nat Med* 27, 1136–1138 (2021). https://doi.org/10.1038/s41591-021-01422-6

needs.[166] In other words, the current global health and health funding landscape replicates colonial and racist power dynamics.[167]

64. Aid, international funding and technical cooperation practices modeled like aid, are often harmful to existing health systems and undermine human rights, particularly SRHR. Generally, "funders fail to focus their activities on the health needs of recipient states and direct assistance towards health systems development, inadequately incorporate the inputs of affected communities in their activities, and attach conditionalities to the receipt of funding for health."[168] International health financing is not designed to make existing domestic health systems sustainable. On the contrary, it has the impact of making health financing reliant only on international financing. Consequently, every change in donor priority requires an overhaul of the health infrastructure in the recipient country. One of the most prominent examples illustrating this phenomenon is the reinstatement of the Mexico City Policy, also known as the Global Gag Rule, by the United States of America.[169] Constantly responding to changing donor priorities results in an absence of sustained, well-developed, context-specific, available, accessible, acceptable and quality institutions or commodities. In the case of women's and girls' health this is linked to the ways in which health systems are not adequately equipped to deal with health complications linked to pregnancy, and to the fact that women and girls' autonomy is not the basis for health options. Traditional systems in Global South states are upended to "modernise" without adapting to the context, based on colonial ideas positioning racialised people's 'traditions' as a barrier to 'progress.'[170] Some examples include the kinds of contraception available and pushed onto women in the Global South like Depo-Provera,[171] and the dismantling of traditional birth attendant systems,[172] among others.

65. In the Palestinian context, humanitarian and development aid has also been criticised for its negative long-term impacts, including on health systems: "Humanitarian interventions, while important in a war-affected setting, do not come without costs as they have been shown to

[166] *Ibid.*
[167] *Ibid.*
[168] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on health financing in the context of right to health, 2012, available at https://undocs.org/A/67/302, para. 23.
[169] Please see IPPF: "Global Gag Rule" at https://www.ippf.org/global-gag-rule; Human Rights Watch: "Trump's 'Mexico City Policy' or 'Global Gag Rule'" (8 February 2018), https://www.hrw.org/news/2018/02/14/trumps-mexico-city-policy-or-global-gag-rule
[170] MacDonald, Margaret E. "The Place of Traditional Birth Attendants in Global Maternal Health: Policy Retreat, Ambivalence and Return" in Wallace, Lauren J., Margaret E. MacDonald, and Katerini T. Storeng. 2022. *Anthropologies of global maternal and reproductive health: from policy spaces to sites of practice*. https://doi.org/10.1007/978-3-030-84514-8, page 105.
[171] Caitlin Lambert (2020) 'The objectionable injectable': recovering the lost history of the WLM through the Campaign Against Depo-Provera, Women's History Review, 29:3, 520-539, DOI: 10.1080/09612025.2019.1695354
[172] MacDonald, Margaret E. "The Place of Traditional Birth Attendants in Global Maternal Health: Policy Retreat, Ambivalence and Return" in Wallace, Lauren J., Margaret E. MacDonald, and Katerini T. Storeng. 2022. *Anthropologies of global maternal and reproductive health: from policy spaces to sites of practice*. https://doi.org/10.1007/978-3-030-84514-8, page 105.

hamper long-term development considering that their visions and outcomes are treated as projects with short timelines and narrow goals, rather than systemic programmes impacting the livelihoods of people."[173] In addition, projectised aid "act[s] as a distraction from systemic oppression. Second, the delivery of healthcare in the form of projects allows international actors to provide aid without questioning the status quo of Israeli occupation and involvement of Europe and the USA in the quagmire; that is, it allows aid provision without laying bare and questioning historical injustices to address the root causes of the Palestine Question and develop long-term, sustainable development of the health sector."[174]

66. As pointed out by the Special Rapporteur on racism in her report on reparations, "if pursued in a manner that completely denies the connection between contemporary problems and their historical origins, such [development aid] initiatives cannot do the necessary work of repairing structures of racial inequality and discrimination rooted in historic injustice. Such ahistorical and uncontextualized development aid similarly fails to fulfil specific international human rights obligations relating to the contemporary manifestations of historic racial discrimination and injustice."[175]

Neoliberalism and international financial institutions (questions 6 and 9)

67. Neoliberal approaches to health spending have disproportionate impacts along gender, race and class lines and are themselves a form of structural and economic violence inflicted upon racialised communities in the Global South and North. This has been especially destructive in countries across the Global South, where the concept of structural violence has been used to describe the effects of neoliberalism, austerity and structural adjustment programmes, combined and compounded with the enduring impacts of colonial dispossession and domination.[176] Debt itself, along with "the 'indebtedness' of countries of the South is both a consequence and a tool for domination."[177]

68. In his assessment of the World Bank's approach to human rights, the previous Special Rapporteur on extreme poverty concluded: "For most purposes, the World Bank is a human rights-free zone. In its operational policies, in particular, it treats human rights more like an infectious disease than universal values and obligations."[178] And this is certainly true of the racist impacts of its policies

---

[173] Hammoudeh, Weeam, Hanna Kienzler, Kristen Meagher, and Rita Giacaman. 2020. "Social and political determinants of health in the occupied Palestine territory (oPt) during the COVID-19 pandemic: who is responsible?" *BMJ Global Health.* 5 (9): e003683. https://gh.bmj.com/content/bmjgh/5/9/e003683.full.pdf page 2.
[174] *Ibid.,* page 2.
[175] Report of the Special Rapporteur on racism, https://undocs.org/A/74/321, para. 54.
[176] Macassa G, McGrath C, Rashid M, Soares J. Structural Violence and Health-Related Outcomes in Europe: A Descriptive Systematic Review. *International Journal of Environmental Research and Public Health*. 2021; 18(13):6998. https://doi.org/10.3390/ijerph18136998, page 10.
[177] Global Action for Debt Cancellation: "Open Letter to All Governments, International Institutions and Lenders." https://debtgwa.net/#open-letter
[178] Report of the Special Rapporteur on extreme poverty and human rights, A/70/274, 2015. https://undocs.org/A/70/274

on health outcomes (including maternal mortality[179]), as well as its governance: as Jason Hickel outlines, the heads of both the IMF and the World Bank are nominated by Europe and the US respectively; the G7 and the EU control a large majority of the votes in the two multilateral institutions, and the ratio of per capita voting allocations reveals that "the votes of people of colour are worth only a fraction of their counterparts."[180]

69. The mandate of the Special Rapporteur on the right to health has long warned against the global trend towards privatisation in health systems for the risks it poses to the "equitable availability and accessibility of health facilities, goods and services, especially for the poor and other vulnerable or marginalised groups."[181]

70. This privatisation is fuelled and exacerbated by persistent deficits, unavailability of public funds in absolute terms and low prioritisation of health by governments in their public expenditure.[182] None of these factors work alone; they feed into each other resulting in making health systems inaccessible for the people who most need them.[183] In addition to health, the World Bank and International Monetary Fund have also notoriously imposed or pushed for water privatisation with serious health consequences, especially in "African countries and the smallest, poorest and most debt-ridden countries."[184] The Special Rapporteur on the human rights to safe drinking water and sanitation has warned against such neoliberal approaches to water, including its commodification, financialisation and privatisation, and recommended that water and sanitation infrastructure be publicly funded.[185] The violent impacts of neoliberal approaches to health are translated in numbers: recent Oxfam research estimates that for 5.6 million people per year in poor countries, lack of access to health care leads to death.[186]

---

[179] Jason Hickel: "Apartheid in the World Bank and the IMF." Al Jazeera, 26 November 2020. https://www.aljazeera.com/opinions/2020/11/26/it-is-time-to-decolonise-the-world-bank-and-the-imf
[180] *Ibid.*
[181] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on health financing in the context of right to health, 2012, available at https://undocs.org/A/67/302, para. 3.
[182] For instance, in Egypt the Constitution-mandated minimum spending of 3% of the GDP on health had been unachieved for several years until 2020, when it was reached not by increasing spending on underfunded aspects, but by broadening the scope of what constitutes "health spending" in the national budget. See https://eipr.org/en/publications/eipr-launches-study-%E2%80%9C-and-after-covid%E2%80%A6-plight-egyptian-physicians%E2%80%9D, page 10.
[183] SRI submission to the Office of the High Commissioner on Human Rights for its report on maternal mortality and morbidity (2020).
[184] Public Citizen: "IMF and World Bank Push Water Privatization." https://www.citizen.org/wp-content/uploads/migration/imf-wb_promote_privatization.pdf; See also Nuria Molina and Peter Chowla: "The World Bank and water privatisation: public money down the drain." Bretton-Woods Project, 2008: https://www.brettonwoodsproject.org/2008/09/art-562458/
[185] Report of the Special Rapporteur on the human rights to safe drinking water and sanitation: Risks and impacts of the commodification and financialization of water on the human rights to safe drinking water and sanitation. A/76/159, 2021, https://undocs.org/en/A/76/159, Paras 35; 70.
[186] Nabil Ahmed: "Inequality Kills: The unparalleled action needed to combat unprecedented inequality in the wake of COVID-19." Oxfam International, January 2022. https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621341/bp-inequality-kills-170122-en.pdf;jsessionid=0357E79A4E1055BF74247BF3657969CE?sequence=9, page 12 ;

71. Sri Lanka's current economic crisis is a clear example of the devastating consequences of international financial institutions' neocolonial and neoliberal loan conditionalities: following 16 IMF loans, and with debt repayments reaching new heights, Sri Lankans are bearing the brunt of shortages in medicines, food and essential products.[187]

Coloniality of global health (questions 4, 6, 10)

72. Eugene T. Richardson summarises his analysis of the coloniality of global public health with this statement: "The continuation of disproportionate amounts of suffering and death from infectious diseases in the Global South is not the result of an intractable problem thwarting our best efforts to prevent and cure disease; we have the means. However, as an apparatus of *coloniality*, Public Health *manages* (as a profession) and *maintains* (as an academic enterprise) global health inequity."[188] The global health sector has been criticised for being "ill equipped to address structural violence as a determinant of health, and [...] uphold[ing] the supremacy of the white saviour."[189]

73. Differential funding for health research efforts between diseases affecting high-income countries in the North, and research needs in the Global South, is one of the ways in which this coloniality manifests.[190] Large funds are allocated to health conditions and illnesses prevalent in the Global North (such as Alzheimer's and Parkinson's diseases, heart disease, cancer) while health conditions and illnesses prevalent in the Global South are neglected (such as the effects of early and prolonged malnutrition, including during pregnancy, tropical diseases, mosquito and other vector borne diseases, diarrhea, parasitic diseases, or the effects of agrotoxics fumigation and presence in contaminated drinking water).[191]

74. The racialisation of diseases in global health is one of the manifestations of this coloniality. The WHO's discretion regarding the moment at which to declare a disease an international emergency

---

https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621341/tb-inequality-kills-methodology-note-170122-en.pdf, page 15.

[187] Thamil Venthan Ananthavinayagan: "Sri Lanka and the Neocolonialism of the IMF." The Diplomat, 31 March 2022: https://thediplomat.com/2022/03/sri-lanka-and-the-neocolonialism-of-the-imf/

[188] Richardson, Eugene T. *Epidemic illusions: on the coloniality of global public health*. MIT Press: 2021.

[189] Büyüm AM, Kenney C, Koris A, et al : Decolonising global health: if not now, when? BMJ Global Health 2020;5:e003394. https://gh.bmj.com/content/5/8/e003394

[190] Alfredo Yegros-Yegros, Wouter van de Klippe, Maria Francisca Abad-Garcia, and Ismael Rafols. 2020. "Exploring why global health needs are unmet by research efforts: the potential influences of geography, industry and publication incentives". *Health Research Policy and Systems.* 18 (1): 1-14. https://health-policy-systems.biomedcentral.com/articles/10.1186/s12961-020-00560-6

[191] On diarrhoeal diseases, see for instance: https://academic.oup.com/heapol/article/28/8/799/580889. On the impact of agrotoxics in Latin America, see https://www.fian.org/en/news/article/warning-cry-about-the-impact-of-agrotoxics-in-latin-america-and-the-caribbean-2762

is informed by this racialisation, and indeed by the extent to which that disease "implicates white health." This was evident during the Ebola outbreak (2014-2015), during which "the confirmation of transmission via air travel, transformed Ebola from a "local" disease in "Africa," to one that potentially touched and concerned countries in the Global North [and] turned Ebola into a crisis calling for international action."[192] The racialisation of COVID-19 is another example, with the racial and geographic 'alternative names' given to the virus, racist slurs and violence against people of East Asian descent.[193] This evokes the United States Center for Disease Control's infamous 1980s term of the "Four Hs" it considered to be high-risk groups for HIV: "homosexuals, heroin addicts, hemophiliacs, and Haitians,"[194] which unfortunately traveled well beyond the United States.[195] Most recently, UNAIDS[196] and African journalists[197] have also called out the racist international media coverage of monkeypox in recent weeks.

Impacts of lack of reparations for colonialism (question 10)

75. The obligation for States having inflicted and benefited from colonialism and slavery to provide reparations is well-established under international law.[198] The Special Rapporteur on Racism clearly asserted that "reparations for slavery and colonialism include not only justice and accountability for historic wrongs, but also the eradication of persisting structures of racial inequality, subordination and discrimination that were built under slavery and colonialism to deprive non-whites of their fundamental human rights."[199]

76. Jessica Whyte's account of the allied history of neoliberalism, colonialism and human rights reminds that "[i]t was Kwame Nkrumah who grasped most clearly that the colonies were not

[192] Matiangai Sirleaf: "Entry Denied: COVID-19, Race, Migration, and Global Health." Front. Hum. Dyn., 15 December 2020 | https://doi.org/10.3389/fhumd.2020.599157

[193] OHCHR: "States should take action against COVID-19-related expressions of xenophobia, says UN expert." 23 March 2020. https://www.ohchr.org/en/press-releases/2020/03/states-should-take-action-against-covid-19-related-expressions-xenophobia

[194] Gonsalves, Gregg, and Peter Staley. 2014. "Panic, Paranoia, and Public Health — The AIDS Epidemic's Lessons for Ebola". *New England Journal of Medicine.* 371 (25): 2348-2349. Available at https://www.nejm.org/doi/full/10.1056/nejmp1413425

[195] See for instance Simonetto, Patricio. "The Club of the Four Hs": HIV/AIDS, Race, and Neoliberalism in Argentina." Nursing Clio. 2021. Available at https://nursingclio.org/2021/05/04/the-club-of-the-four-hs-hiv-aids-race-and-neoliberalism-in-argentina/

[196] UNAIDS: "UNAIDS warns that stigmatizing language on Monkeypox jeopardises public health." 22 May 2022. https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2022/may/20220522_PR_Monkeypox

[197] Alexander Onukwue: "Stop using images of Black people to illustrate monkeypox stories." Quartz Africa. 24 May 2022. https://qz.com/africa/2169315/using-black-peoples-images-for-monkeypox-in-media-draw-backlash/

[198] See for instance Report of the Special Rapporteur on racism, https://undocs.org/A/74/321; Report of the Expert Mechanism on the Rights of Indigenous Peoples: Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation, A/HRC/EMRIP/2019/3, 2019, available at https://undocs.org/en/A/HRC/EMRIP/2019/3

[199] Report of the Special Rapporteur on racism, https://undocs.org/A/74/321, paras 7-8.

simply an exception to the extension of social welfare and rights. Colonial exploitation, he argued, constituted the condition of possibility for economic rights in the metropolis. […] The colonies were not simply latecomers to the welfare world. If there was no 'rights cascade' when it came to social and economic rights, this was, not least, because the exploitation of the colonies made these rights possible in the metropolis."[200]

77. And indeed, the Independent Expert on foreign debt's reminder that "human rights require resources"[201] goes to the heart of the issue of absence of reparations for colonialism. When we look at States' obligation to guarantee the right to health "to the maximum of their available resources"[202] we must also look at the racist reasons for which some states have ample resources while others see theirs hamstrung by a history of colonial dispossession and exploitation, followed by neo-colonial capitalist domination. As Jonathan Cohen puts it, "[c]alls for rights-based approaches to health and development ring hollow coming from colonial masters disguised as 'development partners.'"[203] The health determinants and right to health of racialised people across the Global South, and in settler colonies in the North, continue to be directly shaped by the structures and effects of colonisation and slavery, including the resulting debt and attached conditionalities.

RECOMMENDATIONS (questions 5, 7, 8 and 11)

- **Urgently address racism, colonialism, xenophobia and other systemic oppressions** as key determinants of health, as well as the structural violence they inflict. This requires addressing structural forms of racism as well as interpersonal and individual racism, as well as removing anti-immigration laws and policies and realising the right to health for all, regardless of citizenship or migration status.

- **On reproductive justice and bodily autonomy**: Center reproductive justice and its emphasis on the rights to bodily autonomy, self-determination and to parent or not in safe and healthy environments when regulating access to abortion, contraception, sexual and reproductive health

[200] Whyte, Jessica. *The Morals of the Market: Human Rights and the Rise of Neoliberalism*. London: Verso, 2019. Pages 121-122.
[201] Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, Attiya Waris: Taking stock and identifying priority areas: a vision for the future work of the mandate holder, paras 22-28. Available at https://www.undocs.org/A/HRC/49/47
[202] International Covenant on Economic, Social and Cultural Rights, art. 2(1); OHCHR Fact sheet No. 31: The Right to Health: https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf
[203] Cohen, Jonathan. "A Time for Optimism? Decolonizing the Determinants of Health" *Health and Human Rights Journal,* November 2020. Available at https://www.hhrjournal.org/2020/11/a-time-for-optimism-decolonizing-the-determinants-of-health/

services and all the material conditions necessary to enjoy these rights.[204] This includes guaranteeing informed consent as a critical component of the right to health and informed by a power analysis. It also requires removing all laws and policies criminalising or otherwise punishing abortion, contraception, adolescent sexuality, same-sex conduct, and sex work.[205] These laws and policies are inherently discriminatory, have racist impacts, and are contrary to bodily autonomy.

- **Recognise medicines and vaccines as public goods and remove all obstacles to their access**, including those posed by intellectual property regimes. Recognise and ensure the full realisation of the right to enjoy the benefits of scientific progress and its applications.[206]

- **Ensure recognition of and access to available, accessible, acceptable and quality Indigenous, traditional and culturally competent health care.**

- **Prioritise investment and research** into the wide-ranging impacts of racism on health[207] and on the right to health, as well as into diseases affecting the Global South, while ensuring respect for informed consent and all ethical standards.

- **Reparations for colonialism, slavery, apartheid and racial discrimination:** Fully implement international human rights legal obligations to provide reparations for racially discriminatory violations of human rights, and adopt a structural and comprehensive approach to reparations that accounts for historical individual and group wrongs as well as the persisting structures of racial inequality, discrimination and subordination that have slavery and colonialism as their root causes, as recommended by the Special Rapporteur on racism.[208]

- **Debt justice and cancellation:** Unconditionally cancel illegitimate debts by all lenders and provide reparations for the damages caused to countries, peoples and nature, due to the contracting, use

---

[204] This was one of the recommendations endorsed by 354 organizations and 643 individuals in a joint statement on abortion delivered to the Human Rights Council in September 2020: https://www.sexualrightsinitiative.com/resources/hrc-45-joint-civil-society-statement-abortion

[205] See for instance https://undocs.org/A/HRC/14/20 and https://undocs.org/A/66/254

[206] See for instance the Committee on Economic, Social and Cultural Rights' General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights), 2020, E/C.12/GC/25, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f25&Lang=en, including paras 69, 70, 83.

[207] See Hamed, Sarah, Hannah Bradby, Beth Maina Ahlberg, and Suruchi Thapar-Björkert. 2022. "Racism in healthcare: a scoping review". *BMC Public Health.* 22 (1) concluding that "[t]he USA dominates the research. It is imperative that research covers other geo-political contexts. Research on racism in healthcare is mainly descriptive, atheoretical, uses racial categories uncritically and tends to ignore racialization processes making it difficult to conceptualize racism. Sociological research on racism could inform research on racism as it theoretically explains racism's structural embeddedness, which could aid in tackling racism to provide good quality care." See also the Conclusions of the NHS Race & Health Observatory Rapid Evidence Review on Ethnic Inequalities in Healthcare, 2022, page 92. Available at https://www.nhsrho.org/wp-content/uploads/2022/02/RHO-Rapid-Review-Final-Report_v.7.pdf

[208] Report of the Special Rapporteur on racism, https://undocs.org/A/74/321, paras 56-57.

and payment of unsustainable and illegitimate debts and the conditions imposed to guarantee their collection.[209]

- **On health systems and financing:** Strengthen and finance public health systems through taxation and free from control from other governments, multilateral agreements and transnational corporations.

- **Remove aid conditionalities:** Donor states, international financial institutions and other creditors and donors should adhere to human rights and ensure that financial and other assistance is sustainable, designed with meaningful participation of local feminist movements, and does not depend on any conditionality such as austerity measures, privatisation and structural adjustments.[210]

- **Reverse neoliberal approaches to health**, including the privatisation of health care and health determinants.

Recommendations to international financial institutions

- Adhere to human rights, including and especially non-discrimination.[211]
- Reform undemocratic governance system and decision-making that currently favor Global North over Global South states and interests, improve transparency and civil society participation.
- Ensure rights-holders have access to independent accountability mechanisms to seek reparations and remedy.[212]

Recommendations to the UN human rights system

- Integrate analysis on racism across UN human rights mechanisms and mandates, informed by the analysis of racialised people, groups and organisations.
- Ensure meaningful access, participation and leadership of racialised people, groups and organisations, including through regularly scheduled open consultations.

---

[209] Global Action for Debt Cancellation: "Open Letter to All Governments, International Institutions and Lenders." https://debtgwa.net/#open-letter

[210] See *e.g.* Special Rapporteur on the Right to Health, Report on health financing in the context of the right to health, A/67/302, para 28; and Independent Expert on Foreign Debt, COVID-19: Urgent appeal for a human rights response to the economic recession, page 12. This was part of the recommendations made by 354 organizations and 643 individuals in a joint statement on abortion delivered to the Human Rights Council in September 2020: https://www.sexualrightsinitiative.com/resources/hrc-45-joint-civil-society-statement-abortion

[211] Report of the Independent Expert on the promotion of a democratic and equitable international order: The interplay between the economic policies and safeguards of international financial institutions and good governance at the local level. A/HRC/45/28, 2020, https://www.undocs.org/en/A/HRC/45/28, para. 69.

[212] See these and other demands in the joint call by over 140 civil society organizations and groups: "It's just the tip of the iceberg: civil society organisations call for an overhaul of the World Bank following the Doing Business Report scandal." April 2022.
https://www.brettonwoodsproject.org/2022/04/its-just-the-tip-of-the-iceberg-civil-society-organisations-call-for-an-overhaul-of-the-world-bank-following-the-doing-business-report-scandal/