

Access to Justice Knowledge Hub for Fair Participation¹

Disability and Race in the Interface with Police: Reality, Data and Proposals for Fundamental Change

Comments to the United Nations High Commissioner for Human Rights

Charleena Lyles, a Black woman, called the police in Seattle, Washington, United States, in June 2017 to report a burglary. Ms. Lyles was pregnant and the mother of four children, including a child with Down syndrome. The police responded, found her in a “mental health crisis” and allegedly with a knife. They shot her multiple times, killing her. Her young children were at home. Her death was preventable.²

Joe Prude called the Rochester, New York, police in 2020 to report that his brother **Daniel Prude**, a Black man, was missing and that he might be suicidal. Joe did not imagine that it would be Daniel’s encounter with police – not suicide – that would prove to be fatal. Police found Daniel soon after the call – in the street, naked and acting in a distressed manner. They handcuffed him. When Daniel tried to stand up, an officer restrained him, placing his body weight on Daniel’s head, pushing it to the pavement. Daniel died a week later. The medical examiner described the death as a homicide, listing the cause as “asphyxia in the setting of physical restraint.”³ Positional asphyxia was also the cause of George Floyd’s death.⁴

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² David Perry, Police killings: The price of being disabled and black in America, The Guardian, June 22, 2017 available at <https://www.theguardian.com/us-news/2017/jun/22/police-killings-disabled-black-people-mental-illness>.

³ Brett Dahlberg, Rochester Hospital Released Daniel Prude Hours Before Fatal Encounter with Police, NPR, September 29, 2020 available at <https://themighty.com/2020/09/nathaniel-julius-killed-by-police/>.

⁴ After George Floyd’s death, USA Today examined 32 reports of restraint deaths. “Most of those killed suffered from underlying health conditions, mental illness or were under the influence of drugs or alcohol — factors that could have heightened their distress and complicated their ability to understand or comply with police orders,” according to the report. The most common cause of death was positional asphyxia. Katie Widell, et al., Police tactics do more than stop people, they put them at risk of dying, USA Today, June 25, 2020 available at <https://www.usatoday.com/in-depth/news/investigations/2020/06/13/george-floyd-not-alone-dozens-said-cant-breathe-police-holds/3137373001/>.

The death toll of Black people with disabilities at the hands of United States law enforcement is nothing short of stunning.

A report by Disability Rights Ohio provides a distressing list, including:

Eric Garner, a Black man with asthma, diabetes, and a heart condition, who died after being put in a chokehold by law enforcement following an accusation of a misdemeanor offense.

Tanisha Anderson, a Black woman, who was killed by police while being restrained face-down while she was experiencing a psychosocial crisis.

Deborah Danner, a Black woman, who was shot and killed by police in her own home after neighbors reported she was behaving erratically.

Alfred Olango, a Black man with a psychosocial disability, who was killed by police after his sister reported he was experiencing a crisis.

Keith Lamont Scott, a Black man with a traumatic brain injury, who was shot and killed by police for allegedly not following orders to exit his vehicle.

Ezell Ford, a Black man labeled with bipolar disorder, depression, and schizophrenia, who was killed by police during a struggle after an investigatory stop.

Madgiel Sanchez, who was deaf, was fatally shot by police outside his home after neighbors screamed to officers that Sanchez could not hear their commands.

Freddie Gray, a Black man with a developmental disability, who died from a spinal injury caused by police officers after being taken into custody for possession of a knife that was in fact legal.

Daniel Harris, who was deaf, was shot and killed by police after exiting his vehicle outside his home after officers stopped him for speeding.

Walter Wallace Jr., a Black man with mental illness, who was fatally shot by police while having a mental health crisis.

Elsewhere too, the list is long. For instance, in the United Kingdom (UK): **Sean Rigg**, **Leon Briggs**, **Olaseni Lewis**, **Kevin Clarke**, among others. The proportion of deaths of Black, Asian, and minority ethnic people in custody in the UK is more than twice that of other deaths in custody, and are nearly twice as likely to occur when mental health related issues are a feature.⁵

In early 2019, **Yehuda Biadga**, a 24-year-old man of Ethiopian origin was shot to death by a policeman in the Israeli city of Bat Yam. Yehuda struggled with post-traumatic stress, and was in a crisis situation, when his family called the police. Family members cited his mental condition and pleaded with the police to help protect him,

⁵ Olivia Blair, Marcia Rigg: You Think Police Brutality Is Just A US Issue? Think Again, Elle (June 2, 2020) available at <https://www.elle.com/uk/life-and-culture/a32742001/marcia-rigg-anti-racism/>.

after he was seen wielding a knife at a pedestrian crossing. Police arriving on the scene shot him in the head killing him. The officer who fired the fatal shot was neither charged nor even interviewed after the incident.⁶ Activists have taken to the streets to protest the use of violence by the police and their quickness on the trigger when it comes to youths of Ethiopian origin. This is one of a series of shootings of young Ethiopian men by the police over the years and an aspect of the violence enacted against minorities, primarily Palestinians in the Occupied Territories and within Israel.

Nathaniel Julies, a 16-year-old boy with Down syndrome, died in Johannesburg, South Africa in August 2020 after police shot him. Witnesses described Julies as mostly non-verbal. He was shot in the chest when he was unable to answer questions from the police.⁷ Extensive protests followed the shooting. Police responded to the protests with rubber bullets and stun grenades. Three police officers have since been charged with murder.⁸

The worldwide COVID-19 pandemic has exacerbated the violence by law enforcement.⁹ Violent confrontations have resulted when police have attempted to enforce pandemic-related restrictions. This has sometimes ended in the killing of persons with disabilities.¹⁰ For instance,

Winston Ragos, a retired soldier with post-traumatic disorder was shot and killed in the Philippines when he was stopped for breaking quarantine. Police said he had a gun; witnesses who implored police not to shoot, disputed that claim.¹¹

⁶ Josh Breiner & Bar Peleg, Israeli Police Who Shot 24-year-old Told He Was Mentally Unstable, Senior Official Says, Haaretz (February 1, 2019) available at <https://www.haaretz.com/israel-news/.premium-israeli-police-who-shot-24-year-old-told-he-was-mentally-unstable-official-says-1.6854545>.

⁷ Renee Fabian & Nathaniel Julian, Teen with Down Syndrome killed by police in South Africa, The Mighty, September 8, 2020 available at <https://themighty.com/2020/09/nathaniel-julius-killed-by-police/>.

⁸ Nathaniel Julius: South African police arrested for killing teen, BBC, August 29, 2020 available at <https://www.bbc.com/news/world-africa-53958570>.

⁹ For a description of the use of excessive police force in South Africa comparing the police response unfavorably to the OHCHR Human Rights Guidelines on Less-Lethal Weapons in Law Enforcement, see Mary Raymer, et al., Can our police be trusted with their weapons?, Mail & Guardian (Nov. 12, 2020) available at <https://mq.co.za/opinion/2020-11-12-can-our-police-be-trusted-with-their-weapons/>.

¹⁰ The following and other examples are summarized in an extensive and troubling report by the COVID-19 Disability Right Monitor, Disability Rights During the Pandemic (2020) available at <https://covid-drm.org/assets/documents/Disability-Rights-During-the-Pandemic-report-web.pdf>.

¹¹ Vince Ferreras & Greg Cahiles, Retired soldier shot dead by police at checkpoint in Quezon City, CNN (April 22, 2020) available at <https://www.cnnphilippines.com/news/2020/4/22/Retired-soldier-shot-dead-by-police-.html>.

In June 2020, Kenyan police were accused of killing **a man with a physical disability** because he was not wearing a face mask. Street protests followed.¹²

On April 30 2020, the Ugandan local defence unit tried to catch the attention of **Willie Oloya** who was out beyond a strict curfew put in place due to the coronavirus. Oloya, who is deaf and blind, could not see or hear them and continued on his way. Officers shot him in the leg. His leg has since been amputated and Oloya now has another disability.¹³

These and other distressingly similar dramatic events around the world have focused attention on violent police interactions with persons of African descent and other racial and ethnic minorities. However, the high number of people suffering compounded discrimination based on their race overlaid with their disability has often been overlooked in important discussions that have followed the violence.¹⁴

The summary of our submission is as follows:

- **Racially marginalized people and persons with disabilities share many common historical experiences with brutality, violence, control, separation, segregation, institutionalization, stigmatization, and discrimination.**
- **It is not surprising, then, that at least in the context of law enforcement violence, data and experience show that race and disability are all too often implicated jointly in the deadly or otherwise harmful results of violent policing for people of African descent.**
- **To tackle police violence, we must identify the range of root causes, and barriers—some of which are identified through the lens of disability. Absent this lens, a large constituency within those most harmed by police brutality will be left unprotected.**
- **Furthermore, the disability perspective adds voice and strength to the fight to reform policing and to reallocate resources currently allotted to law enforcement toward community services and support. Community services should be accessible to all, including to people with disabilities on an equal basis with others.**

¹² NTV Kenya Tonight, Police accused of killing disabled man for not wearing a mask, (June 25, 2020) available at <https://www.youtube.com/watch?v=B7S6ulkn3KY>.

¹³ Brian Oduti, People with disabilities left stranded during national lockdown in Uganda, Global Views, (June 23, 2020) available at <https://globalvoices.org/2020/06/23/people-with-disabilities-left-stranded-during-national-lockdown-in-uganda/>.

¹⁴ Abigale Abrams, Black, disabled and at risk: The overlooked police violence against Americans with disabilities, TIME, (July 6, 2020) available at <https://time.com/5857438/police-violence-black-disabled/>.

- **Integrating the disability perspective is essential to ensuring that services and supports outside of criminal justice, including mental health support, services and treatments, be based—as a matter of fundamental rights—on choice and consent of the person, and cannot be based on force or coercion.**
- **In light of the risk that persons with disabilities share with other marginalized groups, the disability community must be recognized as a critical voice in the call for and design of police reform.**

It is in this context, and with the requirements of the UN Convention on the Rights of Persons with Disabilities (CRPD) squarely in mind, that the international members of the **Access to Justice Knowledge Hub for Fair Participation** (“Hub”) respectfully offer our detailed comments, below, in response to a call from the Office of the High Commissioner for Human Rights.

The Hub

The Hub seeks to transform justice systems so that persons with disabilities can participate equally and fairly. The Hub strives to ensure that persons with disabilities enjoy equal opportunities to communicate, to be heard, and to be understood; to eliminate the exclusion of persons with disabilities from judicial and quasi-judicial proceedings, such as being denied the right to be a witness or to stand trial; and, to eliminate alternatives to trial or detention, such as treatment or institutionalization, which are based on force, coercion, or findings of incapacity; and to create alternatives to criminal justice responses which are based on the person’s consent and full participation.

The Hub builds on the participation and knowledge of human rights activists in the fields of disability and criminal justice from a variety of countries, including: Israel, Kenya, Mexico, South Africa, Spain, Taiwan, United Kingdom, United States, Zambia, and Zimbabwe. Members are involved in reform efforts in their respective regions and are pooling their expertise for the purpose of the Hub. These comments are an example of such cooperation.

Common roots of stigma and discrimination underlie and contribute to police violence.

Centuries of discrimination against persons of African descent and the stigmatization of persons with disabilities have combined to create a long history of violent law enforcement interactions. Being Black and disabled significantly increases an already substantial risk.¹⁵

¹⁵ Camille Nelson suggests an even more troubling connection – that stigma and discrimination are triggered more powerfully when Blackness intersects with disability.

[P]olice encounters, which are transformed into confrontations through escalation and/or racism, may catalyze a range of mental vulnerabilities in the mind of even the

Traditional police roles have included enforcing the law and keeping the peace, to protect the public. Often, enforcing laws has meant regulating the lives of Black persons.¹⁶ Keeping the peace has included ensuring that persons with disabilities do not somehow intrude on or disrupt the sensibilities and quiet enjoyment of the lives of non-disabled persons. This has included controlling “disruptions” to public order thought to be caused by persons with disabilities through the use of (or threat of the use of) the criminal justice system and other legal processes and sanctions. Rounding up persons with disabilities (sometimes as vagrants or paupers) and locking them up was often a task for the police. Enforcing the separation of people with disabilities from the community, in the “mental hospital,” “asylum,” in institutions for persons with intellectual disabilities, and in prisons and jails continues to be an important police function. Likewise, police historically enforced slavery and segregation.

Today, law enforcement separates marginalized people from their communities through arrest and imprisonment. At least in the United States, Black people make up a highly disproportionate percent of incarcerated people.¹⁷ And, in yet another example of the overlap, the percentage of persons with mental disabilities in prisons in the United States outdistances the percent in the population.¹⁸ Therefore, the ultimate outcome of police interactions for Black people and persons with disabilities is very often the same – separation from the community and incarceration.

Although the historical reasons may have changed somewhat, in recent decades the number of police interactions with persons with disabilities, particularly those in some kind of crisis, has actually increased.¹⁹ Police fill a role they should not, serving

most mentally healthy person of color. ... Thus, it is not unreasonable to expect that preexisting mental illnesses or new mental vulnerabilities might be activated or created in racially charged policing encounters.

Camille Nelson, *Frontlines: Policing at the Nexus of Race and Mental Health* 43 Fordham Urban L. J. 896 (2016) available at

https://digitalcommons.wcl.american.edu/facsch_lawrev/896.

¹⁶ Jill Lapore, *The Invention of the Police*, *The New Yorker*, July 6, 2020 available at

<https://www.newyorker.com/magazine/2020/07/20/the-invention-of-the-police>.

¹⁷ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, *The Sentencing Project* (2016) available at <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

¹⁸ Edward Lyon, *Imprisoning America’s Mentally Ill*, *Prison Legal News* (February 2019) available at <https://www.prisonlegalnews.org/news/2019/feb/4/imprisoning-americas-mentally-ill/>.

¹⁹ In England and Wales, for example, it is estimated 20-40% of police time is taken up by mental health concerns, with demand appearing to be increasing. *College of Policing Analysis: Estimating demand on the police service* (2015) available at https://www.college.police.uk/News/College-news/Documents/Demand%20Report%2023_1_15_noBleed.pdf. In the United States, police spend approximately 10% of their time involved in situations with people with psychosocial disabilities. Gary Cordner, *People with mental illness* (U.S. Dep’t of Justice)(2006) available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.168.6007&rep=rep1&type=pdf>. Although these encounters are only a small proportion of all police interactions, “their repetitive

as a first line response to social problems at the same time that the causes of these problems—including profound discrimination and marginalization—are left largely unaddressed. Many governments and social services systems have simply abrogated their responsibilities and left the job to the police.

There is a persuasive overlap between police shooting of Black people and persons with disabilities.

Between one third and one half of people shot and killed by police in the U.S. have a disability.²⁰ Disability has long merged with race – in the sense of the historic and current violence, stigma, marginalization – to expose them to the highest form of risk.

Among victims with disabilities, persons labelled with psychosocial disabilities appear to account for the majority. Persons with intellectual disability and autistic people are probably the next largest groups.²¹

Police may come into contact with people with disabilities in a variety of situations.²²

- Some contacts may arise from public behaviors by a person with a disability that are interpreted or misinterpreted by police (often because of stigma) to be anti-social, disruptive, troublesome, or criminal.
- Other contacts may arise from police-initiated activities such as motor vehicle stops or from enforcement of court orders including warrants.
- Others may come in response to third party complaints or calls for assistance. These include police responses to calls reporting an apparent suicide threat or

nature, elevated association with arrest, and sometimes fatal outcome raise important concerns.” Yanik Charette, et al., Police encounters involving citizens with mental illness: Use of resources and outcomes, 65 *Psychiatric Services* 511 (2016) available at <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201300053>.

²⁰ David M. Perry & Lawrence Carter-Long, *The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability* (2016) available at https://issuu.com/rudermanfoundation/docs/ruderman_white_paper/1?e=23350426/33988851.

A Washington Post tally of police shootings in the US found that at least 25% of people shot and killed by police since 2015 experienced mental illness at the time of their death. Wesley Lowey, et al., *Distraught people, deadly results*, Washington Post, June 30, 2015 available at https://www.washingtonpost.com/sf/investigative/2015/06/30/distraught-people-deadly-results/?utm_term=.a263183cf8bc.

²¹ David M. Perry, n. 20 supra. One study found that people with autism spectrum disorder (ASD) “were largely dissatisfied with their experiences of the police and echoed the need for police training of ASD.” Laura Crane, *Experiences of autism spectrum disorder and policing in England and Wales: Surveying police and the autism community*. 46 *J. of Autism and Developmental Disorders* 2028 (2016) available at <https://pubmed.ncbi.nlm.nih.gov/26861714/>.

²² Common situations are listed in the Int’l Assn. of Chiefs of Police model policy and also include wandering and seizures, available at <https://www.theiacp.org/sites/default/files/2018-8/IntellectualDevelopmentalDisabledPaper.pdf>.

attempt, or requesting assistance for a person in apparent emotional distress, or in a response to a domestic violence matter.

- Police are often called upon to enforce emergency hospitalization orders.

Handcuffs, mechanical, chemical, and physical restraints, and force are usually part of all of these traumatizing interactions. Death sometimes is the ultimate outcome.

In all of these encounters, as in all police contacts, the nature of law enforcement's response is largely a matter of the officers' discretion. More than 50 years ago, in a seminal field study that is still relevant, Egon Bittner found that in exercising their discretion to arrest a person with a mental health disability, police officers were influenced less by the nature of the behavior than by the availability of resources.²³ Bittner found that in the absence of available services police will likely use arrest in the hope that that will end the crisis event, keep the peace, and may somehow make treatment available to the detained person. Arrest and incarceration are often seen as a gateway to the disability services health system. Indeed, a review of 18 research studies in the United States indicated that fully 29% of the roughly 560,000 users of the mental health services studied "had the police involved in their pathway to the mental health system."²⁴

As previously noted, the social services, disability services, and public health services systems have deferred to the police the responsibility to provide assistance in many crisis situations. It is a matter of some real concern that these systems continue to face spending cuts, while there has been increased spending on police and other initiatives to improve "public safety." The abrogation of responsibility has accentuated and prioritized the role of law enforcement – with profound and negative consequences, including needless trauma to individuals and their families, unwanted and unnecessary institutionalization, incarceration, injury, and death.

For instance, a review of mental health policing in England and Wales concluded that

Instead of finding the help that they need through police intervention, individuals with mental disorders may be subjected to excessive force and arrest during a police encounter, often for minor offences. Rather than exercising their police discretion to identify innovative and fair solutions to the residual problems of society, a significant degree of misunderstanding appears to be responsible for inappropriate, and sometimes fatal, outcomes.²⁵

²³ Egon Bittner, Police discretion in the emergency apprehension of mentally ill persons, 14 *Social Problems* 278 (1967).

²⁴ James D. Livingston, Contact between police and people with mental disability: A review of rates, 67 *Psychiatric Services* 850 (2016) available at <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201500312>.

²⁵ John L. M. McDaniel, Reconciling mental health, public policing and police accountability. 92 *The Police J.: Theory, Practice and Principles* 72 (2018) available at <https://journals.sagepub.com/doi/full/10.1177/0032258X18766372>.

Moreover, the use of unnecessary or excessive force is often caused by or exacerbated by miscommunications, misunderstandings and misperceptions by first responders or community members.²⁶ The result can be unwarranted entry into the criminal justice or mental health systems and, too often and tragically, lead to violence and, as evidenced by the cases described above, death.

Patterns in Police Killings of People with Disabilities.

“Police often approach mental health crises as they would any other call, with a battle-ready response that fails to consider reasonable accommodations for people with disabilities and often uses force instead of compassion.”²⁷ A review of reported appellate court opinions in cases seeking damages for police killings of persons with psychosocial disabilities in the United States demonstrates certain patterns.

- Many police killings result from emergency “911” calls for help, often by concerned family members who believe (perhaps accurately) that they have no other option. Too often, the family is shocked by the aggressive police response. In many cases, the appearance and conduct of the police escalates a situation which could potentially have been handled without violence by mental health professionals.²⁸
- Deaths and injuries, especially shootings, often occur very quickly after police first appear on the scene.²⁹
- Many shooting deaths involve threats of suicide. There are cases where police kill apparently suicidal people who are unarmed.³⁰ Some other shootings are called “suicide by cop,” where a person points a weapon

²⁶ As used here, a “first responder” is a person, such as a police officer, an emergency health care worker or a crisis worker, who is among those responsible for going immediately to the scene of an emergency or crisis to provide assistance.

²⁷ Disability Rights Ohio, Policing and Racial Justice: A Disability Rights Perspective (2020) available at <https://www.disabilityrightsohio.org/news/disability-right-ohio-examines-the-impact-of-police-use-of>.

²⁸ David Baker & Claire Pillinger, “If you call 911 they are going to kill me”: Families’ experiences of mental health and deaths after police contact in the United States, 30 Policing & Society 674 (2020) available at <https://www.tandfonline.com/doi/abs/10.1080/10439463.2019.1581193>.

²⁹ For instance, in *Hainze v. Richards*, 207 F.3d 795 (5th Cir. 2000) the shooting occurred within 20 seconds of officers’ arrival on the scene; in *Nelson v. County of Wright*, 162 F.3d 986 (8th Cir. 1998) an unarmed individual was beaten on the head with a nightstick and shot in his bedroom within three minutes of arrival of the police; and, in *Allen v. Muskogee*, 119 F.3d 837 (10th Cir. 1998) the shooting took place within 90 seconds of police arrival on scene.

³⁰ For instance, police responded to a report that an 18 year old man was suicidal and had taken eighteen pills. A violent struggle ensued when the police tried to handcuff the man. He did not have a weapon. The officer hit the man in the head with his asp and shot him. He survived. *Nelson v. County of Wright*, 162 F.3d 986 (8th Cir. 1998).

(often unloaded) at a police officer with the explicit intention that the police officer will shoot him (these situations almost always involve men). There are about 100 such deaths a year in the United States.³¹ There are also records of such cases in the United Kingdom,³² and Australia.³³

Examples of reforms and their advantages and shortcomings

In response to police violence against persons with disabilities, jurisdictions have instituted various reform measures that integrate a response, ostensibly, to mental health challenges. Generally speaking, these reforms fall into three categories: (1) police-based responses, (2) police-based co-responses, and, (3) community-based responses.³⁴

Indeed, as part of the long overdue global call to uproot racism from criminal justice and policing, we hear demands made to divert those who are ‘mentally ill’ to the psychiatric system. While we support challenging the utility of a criminal justice response, especially with respect to violent police response and all that we know about its roots, **we caution against replacing the violence of one system, encapsulated in police brutality toward people of African descent, with another—that is the violence encapsulated in forced or non-consensual treatment and psychiatric confinement.** These are rampant in all socio-legal systems, contravening international law.³⁵

It is essential to hear the voice of the disability rights community in this respect. While policing reforms may offer a more appropriate response than stand-alone police intervention, none of the models as depicted above is in itself the solution to police violence against persons with disabilities. Moreover, several are problematic in that they are too focused on disability as a “medical” issue requiring a medical (often psychiatric) solution, while in the best of circumstances, mental health professionals can provide an answer only to a narrow swath of needs, and more often than not they are part of the administering of a non-consensual coercing response. **For people having**

³¹ Tom Jackman, Police chiefs propose ways to reduce “suicide by cop,” Washington Post, October 31, 2019 available at <https://www.washingtonpost.com/crime-law/2019/10/31/police-chiefs-propose-ways-reduce-suicide-by-cop/>.

³² Rebecca Allison, UK’s first “suicide by cop” ruling, The Guardian, May 9, 2003 available at <https://www.theguardian.com/uk/2003/may/10/ukcrime.ukguns>.

³³ Mark Dunn, Tyler Cassidy’s death “suicide by cop,” coroner told, The Courier Mail, March 11, 2011, available at <https://www.couriermail.com.au/news/national/tyler-cassidys-death-was-a-suicide-police-lawyer-tells-inquest/news-story/b63467267909d6d01a9ff102944209cc>.

³⁴ See, Fact Sheet, Crisis Response Services for People with Mental Illness or Intellectual/Developmental Disabilities: A Review of the Literature on Police-Based and Other First Responder Models, (2019) Vera Institute of Justice available at <https://www.vera.org/downloads/publications/crisis-response-services-for-people-with-mental-illnesses-or-intellectual-and-developmental-disabilities-fact-sheet.pdf>.

³⁵ Articles 5, 12, 14, 15, and 25 of the CRPD; UN CRPD General Comment No. 1 (2014), CRPD/C/GC/1; report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53 (2013).

experienced various forms of trauma, oppression, discrimination, lack of opportunity, finding their place in society is helped by responses that support and are attentive to people’s needs, choices and preferences and encompass social and community supports and a social safety network, including access to housing, education, meaningful social links, and support in everyday living.

Responses that allow for involuntary detention and forced treatment in mental health facilities or in forensic facilities, contravene fundamental rights according to the CRPD. Police often contribute to these results by filling a role (whether or not by force) in leading people to these responses: by calling in mental health crews who administer forced chemical interventions on site, driving those detained to psychiatric wards, etc. Therefore, although we offer these as examples of reform, we caution that any reform should be community-based and voluntary. The harsh historical experiences of persons with disabilities with prior social “reforms” provide a strong cautionary note – in finding solutions we need to be vigilant not to exchange one wrong with another. In particular, we must eschew force and coercion of persons with disabilities into involuntary services and institutions even if claimed to be “for their own good.”

Some examples of alternatives include:

- **Mobile response teams** are non-police community-based teams, often including persons with lived experience with psychosocial or other disability, that are available around the clock to respond to what are often called “mental health crises.”

The program models vary considerably. A very recent paper (by authors including the Special Rapporteur on the right of everyone to enjoyment of the highest attainable standard of health and the research coordinator for the Special Rapporteur on the rights of persons with disabilities), proposes a model for crisis intervention that conforms to the CRPD and reinforces our arguments about the need for voluntariness. The authors recommend a community based model that is not framed within the context of a medical or law enforcement response.³⁶

Examples of mobile response models include:

- **PAM** (Psykiatrisk akut mobilitet, i.e., Psychiatric Emergency Response Team) in Stockholm, Sweden responds to emergency calls regarding persons in “behavioral distress.” In Sweden these emergency cases are traditionally handled by the police. The PAM team includes two specialized psychiatric nurses and a paramedic, who often collaborate with police, ambulance, and rescue services. Although it does not use police at first, this

³⁶ Peter Stastny, et al., Crisis Response as a Human Rights Flashpoint: Critical Elements of Community Support for Individuals Experiencing Significant Emotional Distress, 20 Health & Human Rights J. 105 (2020) available at <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2020/06/Stastny.pdf>.

program is primarily a medical model of intervention, with the limitations we note above with regard to such a focus.³⁷

- **CAHOOTS** (Crisis Assistance Helping Out On The Street) is a mobile crisis service in Eugene, Oregon in the United States. The program uses de-escalation and harm reduction techniques. Although calls for help are triaged by police and emergency response centers, this is not a police-based program. Police assistance is needed in less than 1percent of cases. Also, the program's services also include conflict resolution, housing and other services.

Mobile response teams will be most effective if they are truly mobile (not attached to a hospital, for instance) and include peers (people with lived experience with psychosocial disability) and professional staff who are well trained in de-escalation and trauma-informed care. The response teams must be able to link people voluntarily to housing, transportation, healthcare, and employment services. Funds will need to be reallocated to these models from police or other budgets.

- **Police Crisis Intervention Team (CIT) training** is a police-based model that includes specialized training for officers and significant cross-system partnerships with mental health agencies, advocates, and persons with lived experience. Respite sites may be part of the program.³⁸
- **Street Triage teams** in England are based on the CIT model and usually consist of a police officer and a clinician co-working to attend police reported incidents of purported emotional crisis. There is evidence that Street Triage has reduced the number of people detained under emergency forced mental health treatment laws.³⁹ However, an independent study found that “it is essential that mental health services are commissioned and resourced adequately so that they can properly perform their role, stepping in to the breach that police officers often need to fill.”⁴⁰

³⁷ Olof Bouveng et al., First-year follow-up of the Psychiatric Emergency Response Team (PAM) in Stockholm County, Sweden: A descriptive study, 46 Int'l J. of Mental Health, 65 (2017) available at <https://www.tandfonline.com/action/showCitFormats?doi=10.1080%2F00207411.2016.1264040>.

³⁸ CIT programs are described at <https://www.mamh.org/science-innovation/tested-solutions/crisis-intervention-team-program>.

³⁹ Patrick Keown, et al., Too much detention? Street Triage and detentions under Section 136 Mental Health Act in the North-East of England: a descriptive study of the effects of a Street Triage intervention, 6 BMJ Open (2016) available at <https://bmjopen.bmj.com/content/6/11/e011837>.

⁴⁰ HM Government, Modernising the Mental Health Act: Final Report from the Independent Review (2018), available at <https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review>.

- **Joint training projects. SWaPOL** (Social Work and Policing) has projects in Austria, Portugal, and Belgium. The project seeks “a good balance between welfare and law enforcement policies by developing a joint training for social workers and crime prevention officers.”⁴¹ The curriculum is integrated into existing vocational training for social workers and police.

We reiterate the importance of reviewing the extent to which these programs and others do not contribute to an over-focus on the medical model and other challenges noted above.

Another important kind of support is that of “**intermediaries**,” also known as “facilitators.” Intermediaries support persons with disabilities during legal proceedings to communicate, understand and make informed choices, making sure that things are explained and talked about in ways that people can understand and that appropriate accommodations and supports are provided. Intermediaries are neutral and they do not speak for the person, nor do they lead or influence the person to a decision or an outcome. Some countries that have intermediaries make them available to police to assist in communication with persons with disabilities, usually during interrogation.⁴² Having them on hand at the earliest possible time after the first interface with law enforcement is essential to preventing escalation, harm and death because of miscommunication with the person with disability. The use of intermediaries is called for by OHCHR in the recently issued International Principles and Guidelines on Access to Justice for Persons with Disabilities.⁴³ In this submission, we emphasize the importance of their role starting from the very first point of contact with law enforcement.

There is evidence these approaches can be effective in diverting persons with disabilities from arrest. However, except for mobile crisis intervention, most rely on police as the primary and first responders. Accordingly, civil society organizations, particularly those led by communities that are multiply marginalized, are leading efforts to end over-policing and mass incarceration practices by creating **non-police programs. These should be free of the use of forced treatment, hospitalization or institutionalization.** Moreover, none can be effective without the availability community-based **voluntary** programs. Therefore, these communities are also calling for the reallocation of funds from police departments **back into social supports and services.** Otherwise, whatever the service, the outcome, even if not violence, is likely to be arrest or institutionalization.

Relevant requirements of international law.

The Special Rapporteur on the rights of persons with disabilities recently released the International Principles and Guidelines on Access to Justice for Persons with

⁴¹ Information available at <http://www.swapol.eu/>.

⁴² Hub members from Israel report that police there will reach out to an NGO to ask for an intermediary to assist a suspect during interrogation.

⁴³ Available at https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf. See glossary of terms, and Principles 1, 3 and 6.

Disabilities.⁴⁴ Several of the principles are relevant to police interactions. For example:

Ensuring that police officers, prosecutors and others involved in arrests and investigations of criminal offences are knowledgeable about the rights of persons with disabilities, are alert to the possibility that a person may have a disability and, throughout the course of an arrest or investigation.

Ensure the provision of procedural accommodations to persons with disabilities at the time of their arrest, including procedural adjustments and communication support, and the use of de-escalation techniques, as appropriate, to safeguard all due process guarantees and prevent police violence and abuse.

Likewise, the Committee on the Rights of Persons with Disabilities in its General Comment 1 on Equal Recognition Before the Law states that

Police officers, social workers and other first responders must be trained to recognize persons with disabilities as full persons before the law and to give the same weight to complaints and statements from persons with disabilities as they would to nondisabled persons. This entails training and awareness-raising in these important professions.⁴⁵

Similarly, the Committee on the Elimination of Racial Discrimination's (CERD) General Recommendations on Discrimination Against Persons of African Descent, recommends that States

Take measures to prevent the use of illegal force, torture, inhuman or degrading treatment or discrimination by the police or other law enforcement agencies and officials against people of African descent, especially in connection with arrest and detention, and ensure that people of African descent are not victims of practices of racial or ethnic profiling.⁴⁶

Within the last few days, CERD has noted the intersectionality of issues of police violence in a General Recommendation on racial profiling, including as racial profiling intersects with disability.⁴⁷

⁴⁴ Available at https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf

⁴⁵ Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

⁴⁶ Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGC%2f34&Lang=en

⁴⁷ CERD, General Recommendation No. 36, Preventing and Combatting Racial Profiling by Law Enforcement Officers, paras 13, 18, 47, and 60, 24 November 2020, available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/CERD_C_GC_36_9291_E.pdf.

The intersectional nature of the impact of police violence with disability is clear from the recommendations of these UN entities.

Principles to guide all interactions between police and persons with disabilities.

In August 2019, the Hub contributed to OHCHR's call for information on access to justice for people with disabilities, the result of which were International Principles and Guidelines on Access to Justice for Persons with Disabilities issued by the Special Rapporteur on the Rights of Persons with Disabilities. What follows immediately below builds from our previous submission, and is offered in the context of broader changes to address issues of racism and racial discrimination.

In light of the growing global understanding of the deep fault lines around policing and communities, we suggest that a principle addressing the interface of people with disabilities and policing, and the intersectionality with race, should be added to the Special Rapporteur's excellent best practices advisory.

The overriding and most important principle is that in order to comply with international law, including the CRPD, in all their interactions with first responders, persons with disabilities must have a right to be free from discrimination and any use of force or coercion based on disability, including perceived differences in behavior or manner of communication.

A second important principle is that persons with disabilities should be afforded all necessary procedural accommodations to allow them to effectively participate in all aspects of the criminal justice process, including initial contact with law enforcement.⁴⁸ Intermediaries are but one example of such an accommodation.

Therefore, we suggest that the OHCHR recommend that in order to ensure that persons with disabilities are not discriminated against in their interactions with first responders and that they are afforded all necessary procedural accommodations, States should take the following actions:

- A. Limit by law and practice the use of law enforcement interventions, including first response, as a way to access or to fill in gaps in support services.
- B. Remove police entirely from most responses to person experiencing a crisis.
- C. Refrain from utilizing law enforcement interventions and forced or coerced disability interventions.

⁴⁸ Procedural accommodations are the necessary and appropriate modifications and adjustments, needed in a particular case, to ensure to persons with disabilities' access to justice on equal basis with others.

D. Ensure the use of de-escalation techniques by first responders, including law enforcement, as relevant.

E. Ensure that intermediaries or facilitators are available as members of the first response team or at least at the earliest possible moment when necessary to assist first responders in communication with a person with a disability.

F. Ensure that first responders do not force or coerce mental health treatment, assessment or confinement.

We recognize and emphasize that nothing can be accomplished without a commitment to creating cross-cutting programs that reduce poverty, inequalities, and discrimination for everyone, and thus suggest to expand the guidelines to obligate States to –

G. Work closely with disabled persons organizations (DPOs) and other civil society organizations led by community members who are most affected by police violence to review existing laws, practices, and procedures, including consultations to create a range of support services—unrelated to and independent of police and law enforcement, including:

1. culturally competent community-based mobile response supports, including those that are managed and staffed by persons with disabilities, available 24 hours every day to respond immediately to assist people (including children) in crisis, without resort to the use of force;
2. suicide and other hot lines, including those managed and staffed by persons with disabilities;
3. broad-based housing, education, health and social safety net programs which address poverty and guarantee inclusion in the community; and,
4. when police are necessary, ensure there are community members including persons with disabilities, to work directly with first responders (e.g., “street triage” and “ride-along programs”), all of whom are trained in de-escalation techniques, be quickly available on-call, to assist first responders to de-escalate difficult situations, prevent inappropriate interventions including the use of force, and prevent the need for utilizing the criminal justice system.
5. Provide appropriate training to all first responders, including on –
 - a. the impacts of racism, gender identity, and trauma on persons with disabilities;

- b. basic communication skills including when it is necessary to engage experts for communication assistance; and,
 - c. de-escalation techniques, to ensure that when they encounter a person with a disability they are able to approach and interact with the person in a manner that will not exacerbate the situation but, rather, will assist communication and, if necessary, de-escalation.
6. Programs and services designed with the goal to divert as many people as possible from the criminal justice system, including people with disabilities, utilizing, among other things, access to housing, opportunities for work, and family and individual support and ensuring that diversion measures do not include forced treatments, confinement, institutionalization, or other involuntary interventions.
 7. Incorporate the principles of “procedural justice” (fairness, respect etc.) into all police interactions.
 8. Increase the availability of voluntary restorative justice programs as an alternative to the criminal justice system.

Conclusion

OHCHR has asked expressly for information relating to (among others) disability, as it intersects with protecting Africans and people of African descent against excessive use of force and other violations by law enforcement officers.

In our submission, we have pointed at data and reports that in many instances disability intersects with being of African descent to make the risk of rights violation skyrocket. This added risk factor must be identified and combatted, as part of addressing the structural and institutional factors leading to race-based excessive use of force by law enforcement.

We pointed at common roots that go back to segregation, control and oppression, a role undertaken and contributed to by law enforcement.

We followed the trajectory beyond the first point of contact, to the frequent practice of law enforcement partaking in steps that lead to forced treatment or psychiatric incarceration and other forms of degrading treatment.

In some cases, this kind of treatment takes place as an ‘alternative’ to criminal justice—making it all the more essential to prevent replacing one form of violence with another. This requires interrogating solutions to excessive use of force by law enforcement that call for diverting people from the realm of criminal justice to the realm of mental health, or for integrating mental health into the law enforcement response, to ensure these are not limited to medical intervention and are not ridden by force or

coercion. Forms of diversion which themselves employ coercion and force, prohibited by international law, should be eliminated.

We referred above to guidance we designed, which encompasses these principles, and encourage OHCHR to consider integrating it into the International Principles and Guidelines on Access to Justice for Persons with Disabilities.⁴⁹

Disabled persons organizations should be consulted. Their perspective and voice will strengthen and be strengthened by the broader efforts to eliminate excessive use of force against people of African descent. A common call to all is to eliminate over-policing and the use of law enforcement as a stop-gap measure to lack of services, against the backdrop of structural discrimination. Another common call is to divert resources from criminal justice responses, to create meaningful and equitable safety nets, including access to housing, opportunities for work, and family and individual support—these should be accessible to persons with disabilities on an equal basis with others.

Thank you for the opportunity to contribute to this important endeavor. We hope these comments are helpful.

Respectfully submitted,
The Access to Justice Knowledge Hub for Fair Participation
3 December 2020

⁴⁹ Available at

https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf