

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group of Experts on People of African Descent; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL USA 10/2020

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group of Experts on People of African Descent; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 36/23, 42/16, 34/6, 34/35, 41/18 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning COVID-19 exposure-related risks in prisons and other detention facilities and establishments.

According to the information received:

In the United States of America, there are over 1,332,411 confirmed cases of COVID-19 and over 79,606 deaths caused by the virus¹. The United States Center for Disease Control and Prevention ("CDC") projects that without swift and effective public health interventions, over 200 million people in the U.S. could be infected with COVID-19 over the course of the epidemic, with as many as 1.7 million deaths.² COVID-19 is a particularly contagious disease made even more difficult because of the prominence of asymptomatic transmission. People over the age of fifty face greater chances of serious illness or death from COVID-19. People of any age who suffer from certain underlying medical conditions are also at elevated risk. For these people in such vulnerable situations, the symptoms of

¹ Coronavirus Disease 2019 (COVID-19): Cases in U.S., Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-in-us.html (last visited 12 May, 2020).

² Sheri Fink, Worst-Case Estimates for U.S. Coronavirus Deaths, N.Y. Times, (Mar. 13, 2020), <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>

COVID-19, particularly shortness of breath, can be severe, and complications can manifest at an alarming pace. Most people in higher risk categories who develop serious illness will need advanced medical support. This level of supportive care requires highly expensive and specialized equipment, including ventilators, which are in limited supply. The only way to prevent complications and the enormous risk to medically vulnerable people is to prevent them from becoming infected. The CDC and other public health agencies have universally prescribed social distancing and rigorous sanitation³.

COVID-19 for individuals in jails, prisons and immigration detention facilities

People in custody throughout the United States (total population of approximately 2.3 million) may be particularly vulnerable to COVID-19 for a number of reasons. In jails, prisons or immigrant detention facilities, for instance, it is difficult to practice social distancing or maintain personal hygiene. Correctional and immigration detention facilities are inherently congregate environments, where large groups of people are confined and often eat, and sleep in close contact with one another. It is very challenging to achieve social distancing standards in these settings.

Persons held in these establishments may lack access to adequate medical care or supplies and may be suffering from preexisting medical conditions. A study revealed that up to 15% of people who are in custody in the USA have asthma, 10% of people live with a heart condition that requires medical care, 10% live with diabetes and 30% have hypertension.⁴ As a result, incarceration itself in the USA may drastically affect people's health as it may lead to higher rates of morbidity and mortality. Also at higher risk are incarcerated individuals age 50 years and older. They constitute approximately 16% of the state and federal prison population and make up the fastest growing demographic in the USA prison system. Additionally, persons belonging to minorities, including African-Americans, are represented in the criminal and prison system at higher rates and may be among those who predominately suffer from preexisting medical conditions.

In an outbreak in carceral facilities these groups would be at risk of overrepresentation among those affected by the virus, including because they may be among those who predominately suffer from preexisting medical conditions. Data released by the United States Centers for Disease Control and Prevention shows that African-Americans, for example have been disproportionately affected by the pandemic, accounting for about 30% of cases, despite being only around

³ Coronavirus Disease 2019 (COVID-19): How to Protect Yourself, CDC, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fprevention.html (last visited Apr. 16, 2020).

⁴ Laura M. Marushack et al., *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, U.S. Dept. of Justice (2015).

13% of the population. Among the leading causes of this overrepresentation is a long history of systemic racial discrimination, including in access to the right to health.

Furthermore, due to worse health care outcomes compared with straight and cisgender people,⁵ lesbian, gay, bisexual or transgender (“LGBT”) persons are susceptible and more likely to experience COVID-19 related complications because of underlying health condition or inadequate access to routine medical care. Among LGBT people, transgender persons are disproportionately represented in prisons, especially African-American transgender persons⁶ with half of them reporting having been incarcerated at some point in their life. Further, once incarcerated, many transgender inmates report being denied adequate, routine medical care,⁷ thus increasing the risks in case of infection.⁸

The risk of contracting an infectious disease is also higher in correctional and immigration detention facilities because many facilities are not sanitary environments. People share toilets, sinks, and showers, and often have limited access to soap, hand sanitizer, hot water, and other necessary hygiene items. Surfaces are infrequently washed, if at all, and there are often shortages of cleaning supplies. These needs are now multiplied and also compounded by the lack of personal protective equipment such as masks and gloves for either staff or incarcerated people.

Furthermore, many correctional and immigration detention facilities lack an adequate medical care infrastructure to address the spread of infectious disease, like COVID-19, and provide medical treatment to people in detention at high-risk vis-à-vis COVID-19. Prison health units are not equipped with sufficient emergency medical equipment, such as oxygen tanks, nasal cannulae, and oxygen face masks, to respond to an outbreak of patients with respiratory distress. For these reasons, among others, experts have warned that, “widespread community transmission of COVID-19 within a correctional institution is likely to result in a disproportionately high COVID-19 mortality rate.”⁹ Incarcerated people are not the only ones at risk of this; staff are at risk, too, and may carry COVID-19 from a

⁵ Jennifer Kates et al., *Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender (LGBT) Individuals in the US*, Kaiser Family Foundation (2018).

⁶ See

https://www.transequality.org/sites/default/files/docs/resources/NCTE_Blueprint_for_Equality2012_Prison_Reform.pdf.

⁷ See <https://www.lambdalegal.org/protected-and-served/jails-and-prisons>.

⁸ Lambda Legal, *Prisons Must Begin Releasing People to Stop COVID-19*, (2020), available at: https://www.lambdalegal.org/blog/20200501_covid-19-prisons-jails-lgbtq-release.

⁹ “COVID-19 in Correctional Settings: Unique Challenges and Proposed Responses”, AMEND (March 23, 2020), <https://amend.us/wp-content/uploads/2020/03/COVID-in-Corrections-Challenges-and-Solutions-1.pdf>;

see also “Correctional Facilities In The Shadow Of COVID-19: Unique Challenges And Proposed Solutions,” Health Affairs Blog, March 26, 2020, available at: <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/>.

facility in which it is rapidly transmitted to a community after concluding their shift. Yet, despite these concerns, there has not been adequate or proportionate COVID-19 testing among incarcerated people in jails and prisons.

Widespread testing is an essential preventive mechanism to ensure further outbreaks. From information available, about 2% of 32,000 immigrants held by Immigration and Customs Enforcement (ICE) have been tested. ICE has indicated that more than 300 detainees and 35 employees at ICE detention centres have tested positive. In one Ohio prison, wider testing showed that more than 70% of inmates tested positive for COVID-19.

At the end of March, Congress gave the Department of Justice (DOJ) and Federal Bureau of Prisons (BOP) increased authority to reduce the federal prison population, including by expanding the home confinement eligibility. At a state-level, on 1 May, the Governor of New York issued an executive order to release pregnant people who have less than six months in their sentence from New York prisons. ICE also has released hundreds of detainees, in some cases due to the intervention of federal judges.

Despite some steps at the federal and state levels to reduce the population of people in custody, the USA's response has been insufficient, given the massive scale of incarceration. At present, the vast majority of people in custody, including older persons and those with underlying health conditions, remain confined during the pandemic.

According to an epidemiological model released recently by the ACLU and Washington State University, University of Pennsylvania, and University of Tennessee, COVID-19 could claim the lives of approximately 100,000 more people in the USA than current projections stipulate if USA jail populations are not dramatically reduced.¹⁰ Preliminary data is already demonstrating the validity of these concerns. On 6 May 2020, the CDC reported¹¹, as of April 21, 2020, 4,893 cases of infection and 88 deaths among incarcerated and detained persons and 2,778 cases and 15 deaths among staff members, with less than two-thirds of federal facilities reporting and only half of those facilities reporting any data on incarcerated people. At least 30 federal inmates have died from the disease, including a female inmate who died of COVID-related complications following childbirth on 28 April. In New York State facilities, over 1000 prison staff and 400 incarcerated people have been confirmed positive for COVID-19, despite a serious lack of testing in prisons. Inmates on death row in prisons have tested positive also in Arizona.

¹⁰ <https://www.aclu.org/press-releases/new-model-shows-covid-19-death-toll-100000-higher-current-projections>

¹¹ https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e1.htm?s_cid=mm6919e1_w

While we do not wish to prejudge the accuracy of the information received, we wish to express our utmost concern at the above-mentioned allegations which, if confirmed, would be in contravention of the right of everyone to life, as set forth in Article 3 of the Universal Declaration of Human Rights (“UDHR”); as well as in Article 6 of the International Covenant on Civil and Political Rights (“ICCPR”), ratified by the United States of America in 1992.

Article 6 of the ICCPR guarantees the right to life for all human beings, without distinction of any kind, including for persons detained or otherwise held in situations of deprivation of liberty. This means that everyone has the right to be free from acts or omissions that are intended or may be expected to cause their unnatural or premature death¹². Under U.S. law, the continued and routine use of incarceration as punishment in the course of the pandemic, accelerating risk to incarcerated people, may present parallel Eighth Amendment concerns.

By depriving persons of their liberty, States assume responsibility to care for their life and bodily integrity. States have a heightened duty of care to protect inmates’ physical, mental health and well-being and must take any necessary measures to protect the lives of individuals deprived of their liberty. Inadequate conditions of detention can be a factor contributing to deaths and serious injury in detention, and when they are seriously inadequate they can constitute an immediate or long-term danger to life. The Committee against Torture and the Human Rights Committee have also consistently found that conditions of detention can amount to inhuman and degrading treatment. We reiterate that infectious and communicable diseases may spread easily in overcrowded detention facilities due to poor hygiene and sanitation and this may adversely impact on the right to life of detainees. Furthermore, detainees should be ensured equal access to healthcare equivalent to that available in the community. States’ failure to ensure appropriate access to healthcare contribute to deaths in situations of deprivation of liberty. If not promptly and adequately treated, infections and communicable diseases may lead to lethal consequences.¹³

Ensuring the physical and mental integrity and the well-being of incarcerated people, prison officers, other prison personnel and visitors must therefore be at the heart of infection prevention and control measures, while respecting the principles of “do no harm” and “equivalence of care”, as well as the fundamental safeguards outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Importantly, these include the requirements to limit the confinement of prisoners for 22 hours or more a day without meaningful human contact to an exceptional

¹² Human Rights Committee, General comment No. 36 (CCPR/C/GC/36):

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

¹³ Report of the High Commissioner for Human Rights, Human Rights in the administration of justice (A/HRC/42/20):

https://www.ohchr.org/Documents/Issues/RuleOfLaw/Violence/A_HRC_42_20_AUV_EN.pdf ; and

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Deprivation of liberty and the right to health (A/HRC/38/36):

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/101/42/PDF/G1810142.pdf?OpenElement> .

measure, and never beyond a maximum of 15 consecutive days; to ensure continued access of external inspection bodies and legal advisers to prisoners; to have clinical decisions taken only by health-care professionals; and to abstain from suspending family contacts altogether.

In case of substitution of in-person family visits by other measures, such as videoconferences, any interference with privacy or family must not be arbitrary or unlawful. Particular efforts should be made to ensure family visits and alternatives are provided to all detained children and other persons in detention who are in situations of vulnerability, including person with disabilities who may not otherwise be able to maintain contact through other means with their families. Under no circumstances must COVID-19 measures in prisons be used to justify discrimination or the imposition of harsher or less adequate conditions on a particular group, including children. Likewise, under no circumstances whatsoever must COVID-19 measures in prisons amount to torture, inhumane or degrading treatment.¹⁴ Those who are suspected or have tested positive to COVID-19 should be placed in facilities in non-punitive isolation or quarantine with access to appropriate medical care. Releases should be accompanied with protocols to ensure that those released have access to adequate healthcare, hygiene, and housing to maintain their health following release.

Furthermore, the procedural guarantees protecting the liberty and dignity of the person may never be made subject to measures of derogation. In order to protect non-derogable rights, including the right to life and prohibition of torture and cruel, inhuman, degrading treatment or punishment, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention may not be restricted. The ability to meet with legal counsel must be maintained, and prison or detention authorities should ensure that lawyers can speak with their client confidentially. Suspending hearings may in fact exacerbate the risk of coronavirus in places of detention. Even in an officially declared state of emergency, States may not deviate from fundamental principles of fair trial, including the presumption of innocence. Authorities should also guarantee maximum transparency in the adoption of preventive measures and a constant monitoring of their application.¹⁵

¹⁴ UNOCD Position Paper, Covid-19 Preparedness and responses in prison:

https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Position_paper_COVID-19_in_prisons.pdf.

¹⁵ OHCHR and WHO Interim Guidance, COVID-19: Focus on persons deprived of their liberty:

<https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf> ; also see Statement of the

High Commissioner for Human Rights, Urgent action needed to prevent COVID-19 rampaging through places of detention:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>; as well as

Special Rapporteur on extrajudicial, summary or arbitrary executions, Human Rights Dispatch no. 2:

COVI-19 and the protection of the right to life in places of detention:

<https://www.ohchr.org/EN/Issues/Executions/Pages/HumanRightsDispatches.aspx>; Subcommittee on Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment, Advice of the Subcommittee to State parties and national preventive mechanisms relating to the coronavirus disease

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations, including disaggregated data according to race, ethnicity, age, health condition, sexual orientation and gender identity, the intersections of these circumstances and other circumstances.
2. Please provide detailed information on what measures the Government of the United States of America adopted, or intends to adopt and implement in order to ensure the physical and mental integrity, as well as the well-being of incarcerated population (including of minorities and other discriminated populations), staff and other personnel and visitors, from possible COVID-19 exposure-related risks. Please explain how these measures are compatible with the USA's international human rights obligations.
3. Please explain whether, other than any prevention and control measure, the Government of the United States of America has adopted, or envisages to adopt, and if so which ones, to reduce in-custody populations. These alternative measures, commutation of sentences, clemency, medical quarantine or home detention, and/or targeted release programs, particularly with regard to persons in situations of vulnerability. In this connection, please explain whether any measure was adopted, or is envisaged to be adopted and implemented in relation to immigrants, including unaccompanied minors, held in civil immigration detention, and with regard to deportation procedures.
4. Please provide nation-wide statistics on the numbers of people released from prisons, jails and other detention centres as a measure to mitigate COVID-19 outbreaks.
5. Please provide detailed information on whether detainees and prison staff, as well as any visitors to prisons, have been provided with training and/or

(COVID-19) pandemic: <https://undocs.org/CAT/OP/10>; and WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance: http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1.

awareness-raising and other educational programs on COVID-19 exposure-related risks.

6. Please provide nation-wide statistics on the numbers of people deprived of liberty who have tested positive for COVID-19, who have died and those who have recovered.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Given the seriousness of the matter, we believe that it requires the most serious attention on the part Your Excellency's Government, and would thus appreciate a response to this communication at your earliest convenience. For the same reason, we may be considering to publicly express our concern in the case. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

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Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to Article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person"; to Article 6 (1) of the International Covenant on Civil and Political Rights, ratified by the USA on 08 Jun 1992, that provides that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life", and to Article 7 which provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Regarding the right to life (ICCPR Article 6), the Human Rights Committee, in its General Comment No. 36 (CCPR/C/GC/36) establishes that this right concerns the entitlement to be free from acts and omissions that are intended or may be expected to cause unnatural or premature death, as well as to enjoy a life with dignity. This applies to all without any distinction, including persons suspected or convicted for crimes (para 3). Accordingly, States have the duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty and to care for their life and bodily integrity, including those held in private facilities. In particular, States' duty to protect the life of all detainees includes providing them with the necessary medical care and the appropriate regular monitoring of their health (para 25). The duty to protect life includes States' responsibility to take appropriate measures to address conditions, such as the prevalence of threatening diseases, which directly threat life or prevent individuals from enjoying their right to life with dignity. Measures include access without delay to essential goods and services such as food, water, shelter, health-care, electricity and sanitation, and other measures to promote and facilitate adequate general conditions such as the effective emergency health services, emergency response operations and social housing programs (para 26).

We also recall the Standard Minimum Rules for the Treatment of Prisoners (the so-called Nelson Mandela Rules) which include provisions on the responsibility of States regarding health care for persons detained in prisons (rules 24–35)¹⁶. In particular, the provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community. Health-care services should ensure continuity of treatment and care, including for (...) infectious diseases (...) (Rule 24); all prisons shall ensure prompt access to medical attention in urgent cases. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff (Rule 27); in women's prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. (...) (Rule 28); Children in prison with a parent shall never be treated as prisoners (Rule 29); a physician or other qualified health-care professionals (...) shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary (...). In cases where prisoners are suspected of

¹⁶ <https://undocs.org/A/RES/70/175>

having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period (Rule 30); qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed.; the relationship between the physician or other health-care professionals and the prisoners shall be governed by the same ethical and professional standards as those applicable to patients in the community (Rule 32); if health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority (Rule 34); the physician or competent public health body shall regularly inspect and advise the prison director on: (a) The quantity, quality, preparation and service of food; (b) The hygiene and cleanliness of the institution and the prisoners; (c) The sanitation, temperature, lighting and ventilation of the prison; (d) The suitability and cleanliness of the prisoners' clothing and bedding; (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities. The prison director shall take into consideration the advice and reports provided (...) and shall take immediate steps to give effect to the advice and the recommendations in the reports (Rule 35).

We wish to further draw the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), signed by the United States of America on 5 October 1977, which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. While your Excellency's Government has not ratified the ICESCR, the United States Government agreed to bind itself in good faith to ensure that nothing is done that would defeat the object and purpose of the international instrument, pending a decision on ratification.

Also, we would like to bring to your Excellency's attention Principle 9 and 23 (O) of the Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, which recommends States to ensure that placement in detention, where used, avoids further marginalising LGBTI persons or subjecting them to violence, discrimination or other harm, and to adopt and implement policies to combat violence, discrimination and other harm on grounds of sexual orientation, gender identity, gender expression or sex characteristics faced by persons who are deprived of their liberty, with respect to access to and continuation of gender affirming treatment and medical care, among others.

We wish to highlight article 1 of International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and article 26 of International Covenant on Civil and Political Rights which prohibit "racial discrimination" by any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin. In particular, article 1 of ICERD stipulates special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection in order to ensure such groups or individuals equal

enjoyment or exercise of human rights. We like to draw your Excellency's attention in this regard to State's de facto and de jure obligation to realise racial equality. General Recommendation No 32 of ICERD clearly states that the principle of equality underpinned by the Convention combines formal equality before the law with equal protection of the law, with substantive or de facto equality in the enjoyment and exercise of human rights as the aim to be achieved by the faithful implementation of its principles.

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) guarantees everyone, without distinction as to race, colour, or national or ethnic origin, the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. It also guarantees equal right to public health, medical care, social security and social services. It is worth recalling that any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life constitute racial discrimination (Article 1). The Convention further requires States to implement affirmative measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, with a view to guaranteeing them full and equal enjoyment of all human rights and fundamental freedoms (Article 2).