

**Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Working Group of Experts on People of African Descent; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls**

Ref.: AL ZAF 2/2024  
(Please use this reference in your reply)

3 May 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Working Group of Experts on People of African Descent; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 51/21, 45/24, 53/10, 52/36, 52/7, 50/7 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged forced or coerced sterilisation of HIV positive Black women from low socio-economic backgrounds, by healthcare professionals in public hospitals, located predominantly in Black and poor rural areas and townships in South Africa during the time where these women sought maternal healthcare.

According to the information received:

Thousands of HIV positive women have reportedly been subjected to forced or coerced sterilisation in South Africa since the late 1990s, with the latest known case having taken place in 2023. The organization Her Rights Initiative (HRI) represents 104 of these women. Women they represent underwent forced or coerced sterilisation in six of South Africa's nine provinces.

Black, pregnant, HIV positive women living in lower-income communities who relied on State-funded healthcare were reportedly targeted in public hospitals located in predominantly Black and poor rural areas and townships, where the majority of the victims were forced or coerced into sterilisation when they were young. HIV positive women from other ethnic backgrounds, HIV negative women, and HIV positive men have allegedly not reported being forced or coerced into sterilisation.

The HIV positive women who were subjected to forced or coerced sterilisation were reportedly coerced or forced to sign forms permitting the hospital to sterilise them, without knowing that these were consent forms, just before giving birth in maternal health services in public hospitals. Women were reportedly threatened by medical personnel that without signing the forms,

which they signed, unaware of their content, they would not be attended to by the medical personnel. Furthermore, they were reportedly denied the opportunity to consult with family members, including their spouses and were reportedly informed after the procedure that they had been sterilised or discovered at a later stage based on complications and fertility challenges. In addition, these women reportedly gave birth through C-section, even if it was not medically required.

A complaint was lodged on 20 March 2015 to the South African Commission for Gender Equality in relation to maternal healthcare services regarding 48 reportedly HIV positive women subjected to forced or coerced sterilisation occurred in 15 public hospitals located in predominantly Black and poor areas and townships, in KwaZulu Natal and Gauteng provinces, the investigative report released by the same entity in February 2020 found that:

- “The rights of women with HIV to act autonomously and choose their own method of birth control [were] not being respected in practices [... resulting] in women living with HIV being unfairly discriminated against.
- Women living with HIV [were not] provided with adequate knowledge before being asked to consent to sterilisation.
- HIV Positive women [were] asked to consent to sterilisation in circumstances that undermine[d] their ability to act voluntarily.
- Healthcare workers equate[d] a signed consent form to informed consent.
- The Department of Health has not recognised the devastating impact that sterilisation can have on a woman who ha[d] not consented.”<sup>1</sup>

In addition, the Commission found that the State violated among others, the rights to equality, freedom from discrimination, dignity, bodily integrity, freedom and security over the women’s bodies, the right to the highest attainable standard of health including sexual and reproductive rights, as well as to be free from cruel, torturous, or inhuman and degrading treatment.<sup>2</sup> It also found that the HIV positive women “were not provided with adequate knowledge on the sterilisation procedure before being asked to consent[,] thus violating their right to information” and that they were not advised on other alternative methods of contraception.

In terms of remedies, the South African Commission for Gender Equality requested the National Department of Health to “facilitate dialogue between themselves and the complainants in order [...] for them to find ways of providing redress [to the victims of forced or coerced sterilisation]”.<sup>3</sup>

On 25 November 2020, the Minister of Health announced the establishment of an Independent Committee to Accelerate Implementation of Redress to

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<sup>1</sup> Available at: <https://srjc.org.za/wp-content/uploads/2020/03/Forced-Sterilisation-Report.pdf>, pp. 50-51.

<sup>2</sup> Ibid., p. 53.

<sup>3</sup> Ibid., p. 56.

Complainants of Forced Sterilisation. On 3-4 June 2021, the first in person meeting with the Independent Committee was held in Durban, which was attended by approximately 90 of the women who were forcibly sterilised. During these engagements, representatives of the National Department of Health reportedly refused to acknowledge the validity of women's claims and insisted that medical evidence was required to substantiate their claims of forced or coerced sterilisation in public hospitals in South Africa. At the request of the Independent Committee, women consented to have their medical records shared and examined. At the conclusion of the meeting, it was understood that the Independent Committee would report back to the Minister of Health and seek to extend its mandate to engage with women on restitution for the suffering they endured.

As of April 2024, the Independent Committee, which is within the Maternal Child and Women's Health Unit, has yet to implement the directive issued by the South African Commission for Gender Equality's report, regarding the treatment suffered by HIV positive women in public hospitals in South Africa. As a result, the victims have not received financial compensation, nor any form of redress for pain and suffering. The State has not provided programmes for mental health treatment, treatment of side effects, and gynae-urinary complications from violent sterilisation operations, nor any social support to the women, stopped the forced or coerced sterilisation of women, nor amended the Sterilisation Act of 1998.

We express serious concern at the alleged forced or coerced sterilisation of poor Black African women living with HIV in South Africa. Serious concern is equally expressed at the imminent threat of further forced or coerced sterilisation of other poor Black African women living in South Africa, which would continue to constitute acts of violence, gender-based violence against women, and obstetric violence, including torture or other cruel, inhuman or degrading treatment or punishment, discrimination based on their gender, ethnicity, their socio-economic background and age, towards women and a violation of their sexual and reproductive health rights.

We express serious concern at the denial of access to justice of the women victims of forced or coerced sterilisation and the lack of any form of redress for their pain and suffering. We are further concerned by the State's disregard of the investigation conducted on forced or coerced sterilisation of poor Black African women living with HIV in South Africa by the South African Commission for Gender Equality and the State's failure to implement the directive issued by the South African Commission for Gender Equality's report.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations to ensure the right to protection from discrimination, based on gender, socio-economic background and ethnicity, torture or cruel, inhuman or degrading treatment, the right to health which includes the right to sexual and reproductive health, including the right to make informed decisions over their own body as well as bodily autonomy, and the right to an effective remedy, as guaranteed by various international human rights instruments to which South Africa is a party, in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment, among others.

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 therefore 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.
2. Please provide information on the healthcare services, including psychological support provided to HIV positive women who have been victims of forced or coerced sterilization.
3. Please provide information concerning the initiatives taken by the National Department of Health to negotiate appropriate redress and compensation with HIV positive women who have been victims of forced or coerced sterilisation.
4. Please provide information on the measures taken by the State to implement the recommendations issued in the South African Commission for Gender Equality's report.
5. Please provide information on the implementation of South Africa's obligations to investigate promptly and impartially all allegations of forced sterilization, unequivocally recognised at international human rights law as torture, and measures taken to provide appropriate rehabilitation to victims and survivors, pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights.
6. Please provide information on any progress, measures and actions taken by the Independent Committee to Accelerate Implementation of Redress to Complainants of Forced Sterilisation and the Minister of Health to address the above allegations and provide redress to victims, including through the implementation of the South African Commission for Gender Equality's report.
7. Please provide information on any support or funding provided to civil society organizations working on this issue in the country.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release 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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Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Barbara Reynolds  
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Dorothy Estrada-Tanck  
Chair-Rapporteur of the Working Group on discrimination against women and girls

Reem Alsalem  
Special Rapporteur on violence against women and girls, its causes and consequences

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns and without prejudging the accuracy of these allegations, we would like to bring to the attention of your Excellency's Government article 7 of the International Covenant on Civil and Political Rights (ICCPR), which South Africa ratified on 10 December 1998, states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and that no one shall be subjected without her or his free consent to medical or scientific experimentation; as well as relevant articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by South Africa on 10 December 1998.

The Human Rights Committee has unequivocally classified forced sterilization as a form of torture or other cruel, inhuman or degrading treatment or punishment, prohibited by article 7, in its General Comment No. 28 (paragraph 11), as well as in a number of concluding observations on State party reports<sup>4</sup>. The Committee against Torture similarly considers forced sterilizations as falling within the remit of the CAT, raising concerns on a range of State party reports<sup>5</sup>. The Special Rapporteur on torture has also classified forced sterilization as an act of violence, a form of social control, and which violates a person's right to be free from torture or other ill-treatment (A/HRC/31/57, paragraph 45).

In all cases if allegations of torture or ill-treatment, including those relating to forced sterilization, there is an obligation of each State Party to take effective legislative, administrative, judicial or other measures to prevent acts of torture or other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction pursuant to articles 2(1) and 16; while article 4 creates a legal obligation on State Parties to ensure that all acts of torture are offences under its criminal law. In addition, article 12 of the Convention requires each to ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture or other ill-treatment has been committed in any territory under its jurisdiction. According to article 13 of the Convention, State Parties have the legal duty to ensure that any individual who alleges he or she has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his or her case promptly and impartially examined by, its competent authorities. Lastly, article 14 provides for the obligation that lies upon each State Party to ensure in its legal system that the victim of an act of torture or other ill-treatment obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

In her report on obstetric violence, the former Special Rapporteur on violence against women and girls stressed that forced sterilisation and forced abortions are crimes and forms of gender-based violence against women, and also highlighted that informed consent for medical treatment related to reproductive health services and childbirth is a fundamental right (A/74/137). The Special Rapporteur further emphasized that women have the right to receive full information about recommended

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<sup>4</sup> See, also, HRC, Concluding observations on Japan (1998) UN Doc. CCPR/C/79/Add.102, para. 31; Peru (2000) UN Doc. CCPR/CO/70/PER, para. 21; Slovakia (2003) UN Doc. CCPR/CO/78/SCK, para. 12.

<sup>5</sup> CAT/C/PER/CO/5-6, para. 15.

treatments so that they can make informed and well-considered decisions. In addition, the Special Rapporteur stressed that some women experience intersecting forms of discrimination, which has an aggravating negative impact, and noted that gender-based violence may affect women to different degrees or in different ways. The Special Rapporteur identified forced sterilisation as an example of intersectional discrimination, often targeting women belonging to a minority and indigenous women, and called for appropriate legal and policy responses.

We also wish to draw your Excellency's Government's attention to the General Comment No. 3 (2012) of the Committee against Torture which further explains that the term "redress" in article 14 encompasses the concepts of "effective remedy" and "reparation" whereby the reparative concept entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention. Accordingly, the obligations of States parties to provide redress under article 14 are two-fold: procedural and substantive. To satisfy their procedural obligations, States parties are required to enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims. At the substantive level, States parties should ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible. The Committee also emphasizes the importance of victim participation in the redress process.

In view of this, we would also like to recall the remarks of the Subcommittee on Prevention of Torture following their visit to South Africa in March 2023 which urgently called on South Africa to expedite its legislative measures for "setting up a national torture prevention watchdog".<sup>6</sup>

We would also like to recall that in its concluding observations concerning gender-based violence in South Africa on 7 June 2019, the Committee against Torture urged your Excellency's Government to ensure that all complaints of gender-based violence, especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, and that the alleged perpetrators are prosecuted and, if convicted, punished with penalties commensurate to the gravity of the crime (CAT/C/ZAF/CO/2, paras. 35 (a) and (b)).

Furthermore, article 5 of the African Charter on Human and Peoples' Rights, ratified by your Excellency's Government on 6 June 1994 prohibits any act of torture, cruel, inhumane or degrading treatment. Article 2 of the Charter prohibits discrimination based on race, colour, sex and social origin, among others. In this regard, paragraphs 2 and 3 of the Resolution on Involuntary Sterilisation and the Protection of Human Rights in Access to HIV Services calls on States to ensure that the existing international medical and ethical principles of free and informed consent in relation to all medical procedures, including sterilisation are reflected in national laws and enforced in the provision of healthcare services to women living with HIV; and to set up mechanisms to ensure that HIV positive women are not subjected to

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<sup>6</sup> <https://www.ohchr.org/en/press-releases/2023/03/south-africa-must-fully-comply-international-obligations-prevent-torture>.

coercion, pressure or undue inducement by healthcare providers to secure consent for sterilisation, among others.<sup>7</sup>

In addition, we would like to refer to articles 2.2 and 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by South Africa on 12 January 2015, which creates an obligation on States Parties to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health without discrimination of any kind, including race, colour, sex and social origin, among others. The General Comment No.14 adopted by the Committee on Economic, Social and Cultural Rights further expounds that the right to health is closely related to, and dependent on, other rights including the prohibition against torture (para 3) and that this right extends to sexual and reproductive health (para. 11). The Committee notes that the acceptability constituent of the right to health means that all health facilities, goods and services must be respectful of medical ethics and must be culturally appropriate, that is, must be respectful of the culture of individuals, minorities, peoples and communities, must be sensitive to gender and life-cycle requirements, and should be designed to respect confidentiality and improve the health status of those concerned. Furthermore, the General Comment stresses that everyone has the right to be free from non-consensual medical treatment and requires informed consent prior to the administration of medical treatment.<sup>8</sup>

In this regard, the former Special Rapporteur on the on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stressed that “[g]uaranteeing informed consent is a fundamental feature of respecting an individual’s autonomy, self-determination and human dignity in an appropriate continuum of voluntary health-care services”.<sup>9</sup> He further stressed that “[i]nformed consent is valid only when documented prior to a medical procedure and provided voluntarily, meaning without coercion, undue influence or misrepresentation”, which “requires disclosure of the associated benefits, risks and alternatives to a medical procedure.”<sup>10</sup> The Special Rapporteur emphasized that “[i]nformed consent invokes several elements of human rights that are indivisible, interdependent and interrelated”, which in addition to the right to health these include the right to freedom from discrimination, security and dignity of the human person, recognition before the law and freedom of thought and expression and reproductive self-determination, among others.<sup>11</sup> He also emphasized that “[g]ender inequalities reinforced by political, economic and social structures result in women being routinely coerced and denied information and autonomy in the health-care setting” and added that “evidence reveals that women are often entirely excluded from decision-making in health care” and pointed out that women, including women with HIV/AIDS and women from marginalized communities are particularly vulnerable to be affected by forced sterilization, injuring their physical and mental health and violating their right to reproductive self-determination.<sup>12</sup> Informed consent, as an integral part of the right to health, “must be guaranteed with every protection against stigmatization or discrimination on any grounds”.<sup>13</sup>

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<sup>7</sup> <https://achpr.au.int/index.php/en/adopted-resolutions/260-resolution-involuntary-sterilisation-and-protection-human-rights-ac>.

<sup>8</sup> CESCR, General Comment No. 14, para. 8 and A/64/272.

<sup>9</sup> A/64/272, para. 18.

<sup>10</sup> Ibid. paras. 13 and 15.

<sup>11</sup> Ibid., para. 19.

<sup>12</sup> Ibid., paras. 54 and 55.

<sup>13</sup> Ibid., para. 43.

Regarding the right to sexual and reproductive health, the Committee on Economic, Social and Cultural Rights takes the view in its General Comment n°22 that this right entails a set of freedoms and entitlements. The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health, while the entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health under article 12 of the Covenant.

We wish to recall the view of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health that there is need to reconsider the meaning of reproductive liberty in order to take into account its relationship to racial oppression.<sup>14</sup> In her report, the Special Rapporteur explains that such coercion in health care is a common experience for racialized people, including in the form of population control and other coercive population policies. She adds that coercion in health care occurs in complete violation of the rules on informed consent and other ethical standards and that pregnant women from lower-income communities who are HIV-positive and rely solely on State-funded health care have been specifically targeted.

In addition, article 12.1 of the Convention on the Elimination of All Forms of Discrimination against Women, ratified by South Africa on 15 December 1995 stresses the obligation of States to take all appropriate measures to eliminate discrimination against women in the field of health care. Furthermore, article 16.1 (e) requires that States eliminate discrimination against women in all matters relating to marriage and family relations and ensure the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights. Furthermore, article 10 (h) prescribes that States shall take all appropriate measures to eliminate discrimination against women in order to ensure to them access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning. In the case of *A.S. v. Hungary*, where Roma woman was exposed to forced sterilisation the Committee on the Elimination of Discrimination against Women found that the author had a right “to specific information on sterilization and alternative procedures for family planning in order to guard against such an intervention being carried out without her having made a fully informed choice” (Communication 4/2004, 29 August 2006, para. 11.2). The Committee explained in its general recommendation No. 24 on women and health that “[A]cceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity...” The Committee further stated that “States parties should not permit forms of coercion, such as non-consensual sterilization ... that violate women's rights to informed consent and dignity” (para. 11.3). It also stressed in its general recommendation No. 19 on violence against women that “[C]ompulsory sterilization ... adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children” (para. 11.4). The Committee further recalls in its recommendation no. 35 that forced sterilisation is a form of gender-based violence, and may amount to torture or other forms of ill-treatment (para. 18). In addition, we would like to draw your attention to the concluding observations of the Committee on the Elimination of

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<sup>14</sup> A/77/197, para. 35.

Discrimination against Women on the fifth periodic report of South Africa, where the Committee noted with concern reports of forced sterilisation of women living with HIV/AIDS in public health facilities and demanded your Excellency's Government to immediately stop the practice of forced sterilisation of women living with HIV/AIDS and to amend the Sterilisation Act (Act No. 44 of 1998) in order to require the free, prior and informed consent of the woman concerned to any intervention.<sup>15</sup>

In this regard, the Working Group on Discrimination against Women and Girls, highlighted that “women are disproportionately vulnerable to HIV/AIDS owing to various factors, including gender-based violence and lack of autonomy to negotiate safe and responsible sexual practices and make informed health-related decisions. Even when women living with HIV/AIDS are able to access health services, they often face stigma and discrimination on the part of health-care professionals, ranging from abuse to denial of services. Laws, policies, and practices that prevent women living with HIV from bearing children through, for example, forced termination of pregnancy and forced sterilization constitute an extreme form of discrimination.”<sup>16</sup> The experts further emphasised “the practice of coerced sterilization, particularly of ethnic minority and Indigenous women, including those deprived of their liberty, as well as of women with disabilities, is also an outcome of the intersectional discrimination and violence experienced by women and girls living in poverty.” The experts further recommended states “to adopt a feminist and human rights-based approach to the measurement of intersecting forms of discrimination to ensure a gender, equality centered and sustainable development approach to poverty, with enhanced attention to the groups of women and girls identified as being in heightened conditions of marginalization and exclusion.”<sup>17</sup>

We wish to also refer to the International Guidelines on HIV/AIDS and Human Rights developed by OHCHR and UNAIDS (2006) that emphasize the need to protect the informed consent of persons living with HIV/AIDS, especially with regards to sexual and reproductive health, which includes women's rights to have control over and to decide freely and responsibly, free of coercion, discrimination and violence, on matters related to their sexuality, including sexual and reproductive health (guideline 111).

We would like to remind to your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which was ratified by the South Africa on 10 December 1998. Article 1 of ICERD defines prohibited racial discrimination as “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”. Article 2, paragraph 1, obliges States Parties to condemn racial discrimination and to pursue, by all appropriate means and without delay, a policy of eliminating racial discrimination in all its forms.

We would also like to refer to article 5 which provides that State parties have the obligation to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or

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<sup>15</sup> CEDAW/C/ZAF/CO/5, paras. 53 and 54(c).

<sup>16</sup> A/HRC/32/44

<sup>17</sup> [A/HRC/53/39](#)

ethnic origin, to the right to medical care, 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.