

**Committee on the Elimination of Racial Discrimination**

**Issues for consideration during the thematic discussion in preparation for a
General Recommendation on article 5 (e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination**

**Racial discrimination and the right to health**

DEADLINE FOR WRITTEN CONTRIBUTIONS: BEFORE 1 JULY 2022

**Background**

1. The Committee on the Elimination of Racial Discrimination decided at its 103rd session (19-29 April 2021) to prepare a General Recommendation on racial discrimination and the right to health under Article 5 (e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, in light of experience obtained in the review of State reports and individual communications on this right. CERD aims at providing guidance on the legal obligations of States parties under Article 5 (e) (iv) of the Convention and defining the measures they should implement to ensure full compliance with this provision.

2. Article 5 (e)(iv) reads as follows:

“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(…)

(e) Economic, social and cultural rights, in particular:

(…)

(iv) The right to public health, medical care, social security and social services;”

3. To start this process, the Committee will convene a day of general discussion at its 107th session, on 23 August 2022. The Committee is inviting State parties, national human rights institutions, civil society and grassroots organisations, academia, other relevant stakeholders (i.e., health-related entities or laboratories) and international organisations to provide relevant information to be taken into consideration by the Committee during the preparation of the first draft that will be submitted to States and other stakeholders for comments. Interested parties are invited to participate in this consultation process by providing information on any of the questions raised below, or by making submissions on any other aspects of article 5 (e)(iv) that they deem relevant.

**Questions**

4. The list of questions covers some of the main areas the Committee plans to cover in the first draft of the General Recommendation. Stakeholders are invited to comment upon any of the questions and draw attention to other aspects not included in the list of questions.

*Scope of Article 5 (e)(iv)*

5. What are the features of the right under Article 5 (e)(iv), taking into account the core obligations of Article 2 ICERD? Do the prohibition and elimination of racial discrimination introduce a specific focus on socio-economic determinants establishing a core of health-related rights?

6. What is the relationship between Article 5 (e)(iv) and Article 12 of the International Covenant on Economic, Social and Cultural Rights, as interpreted by the Committee on Economic, Social and Cultural Rights, considering the ratification status of both instruments?

7. What is the relationship between Article 5 (e)(iv) and the definition of health in the World Health Organisation?

8. What is the relationship between Article 5(e)(iv) and other rights of Article 5 ICERD, such as the prohibition and elimination of racial discrimination in the right to just and favourable conditions of work, the right to housing, the right to education and training, or with civil and political rights, such as 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, the right to freedom of movement and residence, and the right of privacy.

*General standards in assessing risks and outcomes of racial discrimination in health*

9. Does the understanding of racial discrimination as social determinant of health encompass compounded health risks and harms arising from structural discrimination?

10. Has the concept of “health equity” added value in relation to obligations under Article 5(e)(iv)? Does health equity address the systemic risks for persons subjected to racial discrimination?

11. How does structural discrimination affect obligations related to the right to health? Does structural discrimination constitute a *de facto* limitation imposed on the right to health that States should always measure in assessing indirect discrimination? What (negative and positive) obligations are placed upon States? What sort of standards (health-related, socio-economic, risk-related, or other) should States apply to assess the effect of indirect racial discrimination? Are these standards equally applicable in the adoption of special measures (affirmative action)?

12. How is intersectionality understood in the field of health? Does the compartmentalisation of health allow the identification and accurate assessment of health-risks and potential violations of the prohibition of racial discrimination?

13. Traditional medicine continues to have a very important place in certain health systems and coexists in many parts of the world with modern medicine. Certain groups exposed to racial discrimination continue to use regularly traditional medicine. How is the dialogue between modern and traditional medicine established? What status do the States give to this medicine in their health system?

*Individual and group experiences by indigenous peoples, people of African descent, Roma, national or ethnic minorities and castes, including women, girls, and children*

14. Apart from health indicators already established by specialised organisations, which other indicators should States adopt to measure the impact of racial discrimination on groups protected under the Convention?

15. How are women, children, persons with disabilities and LGBTQI persons within these groups experience racial discrimination intersecting with other forms of discrimination, including age?

16. How do racial inequalities affect sexual and reproductive health and rights?

17. How should “informed consent” be understood under the Convention?

*Stateless persons, asylum seekers, refugees, and migrants*

18. How does the status of stateless persons, asylum seekers, refugees, and migrants influence the assessment of restrictions in the right to health? Do immigration policies allow for systemic deficiencies in health and how should these policies balance individual and societal risks?

*Consultation with groups subject to racial discrimination*

19. Is there a right to consult on health with groups protected under the Convention?

20. How should States determine the groups to be consulted?

21. Should States ensure the participation of groups exposed to racial discrimination in health-related processes with non-state actors and health-related corporations?

*Identifying and measuring the effect of racial discrimination: statistics, artificial intelligence (AI) and big data*

22. What kind of statistics and indicators should the States develop and standardise to monitor their laws and policies? What sort of studies are needed to evaluate the impact of racial discrimination in the right to health? Apart from health studies, which fields need to be under scrutiny and which authorities need to be coordinated?

23. How does structural racial discrimination in health manifest in emerging technologies? How does digitalisation affect persons and groups protected under the Convention?

24. Which proxies, not subject to scrutiny today under anti-discrimination law, especially in relation to AI and big data, should be considered suspect of hiding or leading to racial discrimination in the right to health? How are these proxies connected to health-related procedures? How should new technologies prevent bias but keep the focus on the racial element to identify the risks?

25. How should availability of data on intersectionality be pursued?

26. How should States assess their compliance with the prohibition and elimination of racial discrimination regarding health in situations, such as deprivation of liberty?

*Health-related coercive measures and racial discrimination*

27. How should States identify health practices as coercive taking into account structural racial discrimination?

28. How should States strike a balance between the prohibition and elimination of racial discrimination and coercive measures in health? Does racial discrimination establish or blurs borderlines between informed consent and coercion?

29. How should States assess the overrepresentation in mental health facilities of persons belonging to communities protected under the Convention?

30. How should States respond to potentially harmful traditional cultural practices?

31. How should the requirements of legality, precaution, necessity, and proportionality be understood?

*Private actors*

32. How should States classify actors interfering with the prohibition of racial discrimination in health? Is the division between public and private actors sufficient or should actors follow a typology reflecting their role in health?

33. Taking into account the UN Guiding Principles on Business and Human Rights, what sort of standards should States adopt in matters involving private parties and to promote respect for human rights by private parties?

*Global health*

34. Do States have obligations under the Convention regarding global health? Have States any anti-discrimination obligation regarding the right to health outside their jurisdiction? Have States an obligation to harmonise their actions within international and regional organisations or other international agreements with their obligations under the Convention?

*Monitoring and accountability*

35. What sort of mechanisms and institutions should States involve at national level in preventing, monitoring, and remedying racial discrimination in health? How persons and groups protected under the Convention should be involved?

36. How should accountability for violations by all parties concerned be regulated? How should responsibility be distributed?

37. Which standards should these processes apply to identify and redress racial discrimination in health? How should States apply the principles of transparency, participation and empowerment while respecting and protecting privacy rights?

*International organisations and racial discrimination*

38. How should the United Nations and its agencies and programmes, directly or indirectly involved, contribute to advancing the prohibition of racial discrimination?

39. How should human rights and health-related organisations enhance cross-fertilization?

40. Which institutional, operational, and other measures should these agencies adopt to prevent and prohibit the perpetuation of racial inequalities?

*Lessons learned during the COVID-19 pandemic*

41. Examples on lessons learned on racial inequality and good practices in building community-centered approaches and combatting racial discrimination during the COVID-19 pandemic.

**Written submissions must be submitted to****ohchr-cerd-gr37@un.org****, before 1 July 2022 in one of the official working languages of the Committee: English, French or Spanish and** should be **limited to a** **maximum of 10 pages.** Additional supporting materials, such as reports, academic studies, and other background materials may be annexed to the submission.