First draft General Recommendation No. 37 (2023) on Racial discrimination in the enjoyment of the right to health

International Convention on the Elimination of Racial Discrimination

prepared for the committee on the elimination of racial discrimination, Office of the United Nations High Commissioner for Human Rights

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Introduction

The Ontario Native Women’s Association (ONWA) is the oldest and largest Indigenous Women’s organization in Canada. ONWA is a not-for-profit organization established in 1971 to empower and support all Indigenous women and their families in Ontario, regardless of status or location, through research, advocacy, policy development, and culturally enriched programs. ONWA’s vision guides this work:

*“We celebrate and honour the safety and healing of Indigenous women and girls as the take up their leadership roles in the family, community and internationally for generations to come.”*

ONWA is both a direct service provider in 10 sites across the province of Ontario, Canada and an association with 13 Chapters (incorporated Indigenous women’s organizations providing front-line services) and 21 Councils (grassroots Indigenous women’s groups).

Our work focuses on nine key safety issues identified by Indigenous women in the community: Mother Earth, Family Violence, Sexual Violence, Child Welfare, Human Trafficking, Missing and Murdered Indigenous Women and Girls (“MMIWG”), Housing and Homelessness, Justice, and Health. ONWA’s work is intersectional in nature, where we understand that Indigenous women are uniquely impacted by their intersecting identities as both Indigenous people and as women with further intersections such as economic class, age, ability/disability, geographic location, or sexuality. ONWA uses a strengths-based, trauma-informed, culturally supportive approach to all of our work.

The following submission provides ONWA’s response to the first draft of **General Recommendation N° 37 on racial discrimination in the enjoyment of the right to health**, which aims to clarify and provide guidance on the obligations for states under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) regarding the right to health.

Overall, ONWA is supportive of the first draft of the General Recommendation and its inclusion of Indigenous peoples as well as its acknowledgement of and focus on intersectionality and gender-based experiences related to health care. The draft effectively provides comprehensive explanations of how the experiences of racial discrimination are impacted by the compounding effects of colonization, intergenerational trauma, and the social determinants of health. The draft also accounts for wholistic views of wellness and need for culturally appropriate care. ONWA is pleased to provide our recommendations to further strengthen the draft General Recommendation #37.

The following submission provides ONWA’s response to the first draft of the **General Recommendation N° 37 on racial discrimination in the enjoyment of the right to health.**

ONWA’s Recommendations

**Paragraph 6, line 9-13:** While health, well-being and traditional ways of life are impacted by waste disposal, extraction and manufacturing, Indigenous lands and peoples, and Indigenous women’s safety in particular, are impacted by a broader range of colonial forces. Furthermore, as this paragraph specifically discusses Indigenous people and their inherent connection to land, it is important to reiterate that rights to these lands are protected under other UN mechanisms, such as UNDRIP. For example, article 26.1 states, “*Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired*.” ONWA recommends that when expanding on the impacts of lands on health, well-being and traditional ways of life, this section utilizes the concepts and language contained in UNDRIP.

**Paragraph 9, line 4-11:** While it is clear that section 1.9 aims to emphasize the importance of equitable health care delivery, the term ‘distinctions’ in line four must be further expanded upon. ONWA emphasizes that a distinctions-based approach with a focus on gender (distinctions-based PLUS) is essential to all state interactions with groups within the purview of the Convention. The example given of the intersectionality of Indigenous women and women of African descent (line 26-33) can be further expanded to describe the need for distinctions-based plus approaches to healthcare to promote equity and equitable health outcomes.

**Paragraph 11, line 1:** The definition of the impact of racism and racial discrimination on health presented in paragraph 11, line 1 must be expanded to be inclusive of wholistic views of health and well-being. Paragraph 6, line 7 provides an expanded definition of wholistic health informed by Indigenous understandings of wellness. Wholistic understandings of health account for impacts across the social determinants of health and promote the understandings of equity that the Convention aims to express. ONWA recommends the definition of wholistic wellness presented in paragraph 6, line 7 be applied as the definition of health consistently throughout the document, including paragraph 11, line 1.

**Paragraph 12.a.i, line 5-8:** The language used surrounding alcohol and tobacco use does not account for the root causes of substance use for Indigenous women and Indigenous peoples in Canada and is not based on current evidence regarding mental health and substance use generally. By not identifying the social determinants of health and colonialism as a root cause of substance use for Indigenous peoples, this language can further perpetuate the negative biases and assumptions that lead to racism and discrimination. ONWA recommends the following replace the current draft lines: ***‘Despite evidence-based disparities across the social determinants of health leading to disproportionate impacts on***

***mental wellness and substance use, public health does not address them as such, leading to a cycle of morbidity and mortality reifying bias and stigmatisation among health professionals;’***

**Paragraph 12.b.iii:** Indigenous peoples in Canada have been deeply impacted by systemic failures and discrepancies. ONWA recommends that Indigenous peoples, and Indigenous women in particular, be included here in addition to migrants and refugees.

Paragraph 18: Lack of trust in public institutions due to racial bias, stigma and structural inequities as well as fulfillment of population specific needs can be addressed by leveraging service delivery through community-based organizations. Community-based organizations are best positioned to meet the needs of groups under the purview of the Convention. Community-based organizations are experts in group specific needs and can serve as a mechanism to counter the ongoing infodemic. It is important, however, to acknowledge the over-burdened and under-funded nature of community-based organizations. If the convention recommends leveraging community-based organizations as a mechanism to fulfill state obligations related to healthcare delivery, these organizations must be adequately supported with sustainable long-term funding.

**Paragraph 29, line 10-15:** Obligations regarding decision-making participation and consultation obligations between states and Indigenous peoples are outlined in article 18 and 19 of UNDRIP. ONWA recommends adopting this language in line 10-15 of paragraph 29.

**Paragraph 31, line 4:** The Convention has established that racism and discrimination are highly complex and experienced by groups under the purview of the Convention differently. These complex factors resulting in wide health disparities require complex responses. Equitable service delivery, not equal service delivery is required to address these disparities. ONWA reiterates that a distinction-based plus approach must be utilized. **In line 4, equality must be changed to equity.**

**Paragraph 45:** Due to historical harm and exploitation resulting from research and data collection, states must recognize that Indigenous peoples and other groups within the purview of the Convention may be reluctant to participate in or approve of disaggregated data collection. Any data collection and statistical analysis needs to be done in cooperation with Indigenous peoples and other groups within the purview of the Convention and adhere to the principles of Indigenous data sovereignty

**Paragraph 48, line 5-7:** It is ONWA’s experience that community or grassroots organizations engaged by the state are often overburdened and under-funded, relying on piecemeal project-based funding to deliver essential services to marginalized groups that states are challenged to reach. While it is critical that states be obligated to engage with groups under the purview of the Convention on all health-related matters impacting them, it must also be recognized that engagement processes can be oppressive and exploitative. ONWA strongly recommends that the General Recommendation assert that

consultation and engagement must not occur at the expense of the organizations they seek to benefit. Further, cultural safety should be added to the human rights education and racial discrimination training.

**Paragraph 49:** Similar to the recommendation presented above, curricula for medical schools should be informed or supported by groups under the purview of the Convention. That is to say that the engagement or consultation required to do so not further burden the groups they seek to benefit. Cultural safety should also be a focus of trainings.

**Paragraph 50:** In addition to integrating human rights policies and anti-discrimination trainings, it should be inclusive of cultural safety trainings.

Paragraph 60, line 3: ONWA recommends the term ‘victim-centered’ be changed to ‘survivor-centered’ or ‘person-centered’ to promote strength-based approaches to language. Further, beyond structural and integrational harms, it is important to recognize the individual’s role in healthcare delivery and the racism and discrimination that specific healthcare professionals can perpetuate. Accountability mechanisms must also be in place at this level.

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