



Call for contributions: Draft General Recommendation n°37 on Racial discrimination in the enjoyment of the right to health

Submission by the International Labour Organization

This submission focuses on the linkages between decent work and the elimination of all forms of racial discrimination in the enjoyment of the right to health. For ease of reference the comments below are presented in the order of the paragraphs to which they refer.

Decent work as a key determinant of racial non-discrimination in the enjoyment of the right to health

Paragraph 2 of the Draft mentions the recognition of occupation as a social determinant of health. The Commission on Social Determinants of Health (2008) specifically recognizes that: “[t]hrough the assurance of fair employment and decent working conditions, government, employers, and workers can help eradicate poverty, alleviate social inequities, reduce exposure to physical and psychosocial hazards, and enhance opportunities for health and well-being. And, of course, a healthy workforce is good for productivity.”¹ The reference to decent work can be made explicit in the General Recommendation.

To reflect the centrality of work as a social determinant of health, in paragraph 3 “distribution of power and resources” can be replaced with “distribution of work, power and resources.”

Key workers

The groups protected under ICERD are overrepresented among key workers, who have been disproportionately vulnerable to the pandemic. Thus, in paragraph 5, the following can be added after the first sentence: “It also brought to the fore the undervaluation of the work performed by key workers, among whom those groups are overrepresented, which exacerbates their health risks and job strain.”²

Indirect discrimination

The Draft explicitly refers to direct discrimination, but not indirect discrimination. In paragraph 9, “Racial discrimination produces...” can be replaced with “Racial discrimination, whether direct or indirect, produces...”. In paragraph 10, a sentence on indirect racial discrimination can be added after the second sentence.

Newborn mortality

In paragraph 11, the last sentence can refer specifically to newborn mortality.³

Unequal distribution of health and other care workers

Under paragraph 12(b), an additional point can be added: “Disproportionately unequal access to health and other care workers globally and within countries, which primarily affects the poorest populations.”⁴

¹ Commission on Social Determinants of Health, “Closing the gap in a generation: health equity through action on the social determinants of health”, 2008, p. 8.

² Key workers can be found among eight main occupational groups: food systems workers, health workers, retail workers, security workers, manual workers, cleaning and sanitation workers, transport workers, and technicians and clerical support workers. See ILO, [World Employment and Social Outlook 2023: The value of essential work](#), 2023.

³ See for example: B.N. Greenwood et al., “Physician–patient racial concordance and disparities in birthing mortality for newborns,” in *Proceedings of the National Academy of Sciences*, (2020, Vol. 117, No. 35), pp. 21194–21200.

⁴ For example, an analysis in 2014 showed that in some African and Asian countries, over 90 per cent of the population had no access to health care due to extreme health workforce shortages (less than three health workers per 10,000 people). See: X. Scheil-Adlung et al., “Health sector employment: a tracer indicator for universal health coverage in national Social Protection Floors”, in *Human resources for health*, (2015, Vol. 13, No. 1), pp.1-8. Also see: ILO, [Improving employment and working conditions in health services](#), 2017.

Health protection

Non-discriminatory access to health insurance/protection has a direct impact on affordability and effective access to health care services. A reference to that can be made in paragraph 12(b)(ii), which can be clarified to refer to health protection coverage.

A safe and healthy working environment as a fundamental principle and right at work

Paragraph 12(b)(iii) can refer to a safe and healthy working environment as a fundamental principle and right at work. In 2022 the International Labour Conference of the International Labour Organization (ILO) recognized a safe and healthy working environment as a fundamental principle and right at work, and decided to designate the Occupational Safety and Health Convention, 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) as fundamental Conventions. This means that all Member States, even if they have not ratified those Conventions, now have an obligation arising from the very fact of their membership in the ILO to respect, to promote and to realize, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental right to a safe and healthy working environment. The details can be in a footnote.

Racial discrimination in acceptability and sensitivity

Paragraph 12(c) can refer to the role of physician–patient racial concordance and its consequences.⁵ It can also refer to the case of migrants in an irregular situation: although in law they have access to emergency or basic health care in law, they still face difficulties accessing these services for reasons including the lack of knowledge and cultural sensitivity of personnel.

Health risks that non-citizens, migrants, refugees, asylum seekers and stateless persons face

In paragraph 16, one of the major health risks that non-citizens, migrants, refugees, asylum seekers and stateless persons face relate to their lack or limited legal and practical access to health services, including limited health protection coverage. National legislation may expressly exclude foreign nationals, temporary migrants or migrants on specific visas or residence permits or establish less favourable conditions for non-national workers under social health protection schemes. An ILO mapping of 120 countries reveals that only 58 and 62 per cent of countries' national laws provide for equality of treatment between nationals and non-nationals with regard to contributory social security and healthcare, respectively.⁶ This can be referred to in the first sentence.

Working conditions of non-citizens

In the first sentence of paragraph 16, the term 'difficult work conditions' should be replaced with "unsafe, unhealthy or unfair working conditions" for clarity and precision. Beyond unsafe and unhealthy working conditions, other working conditions such as low and irregular wages and lack or limited access to social protection are issues directly affecting a person's access to health care.

Clarification of 'other concerns'

In the second sentence of paragraph 16, the phrasing "... shifts the attention disproportionately from public health to other concerns..." can be clarified. If what is meant is "...shifts the attention from health to other human rights concerns...", then it can be reformulated accordingly. If the reference is instead to "security concerns", then it can be clarified that the mitigation mentioned in the sentence is for the health risks and outcomes of *non-citizens* specifically.

Health of migrant workers

In that regard, Article 5(a) of ILO Convention No. 97 (Migration for Employment Convention (Revised), 1949) requires member States to provide appropriate medical services for "ascertaining, where necessary, both at the time of departure and on arrival, that migrants for employment and the members of their families authorized to accompany or join them are in reasonable health."⁷ The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has noted that migrant workers are particularly vulnerable to industrial accidents and emphasized the urgency of reinforcing safety and health mechanisms in occupations in which they are primarily employed.⁸

⁵ See footnote 3 of this submission.

⁶ See: C. Van Panhuys et al., [Migrant access to social protection under bilateral labour agreements: a review of 120 countries and nine bilateral arrangements](#), *ILO Extension of Social Security (ESS) Paper Series No. 57*, 2017.

⁷ See: ILO, [Promoting Fair Migration: General Survey concerning the Migrant Workers Instruments](#), Report III(1B), International Labour Conference, 105th Session, 2016 (hereinafter "2016 General Survey"), paras 249 to 254, as well as 296.

⁸ 2016 General Survey, paras 385 to 388.

Non-citizens' right to a safe and healthy working environment

In the fourth sentence of paragraph 16, in pursuit of alignment with ILO's normative framework as discussed above, "... the right to occupational safety and health..." can be replaced with "... the right to a safe and healthy working environment...". In this regard, art. 4 (3) (h) of the ILO fundamental Convention No. 187 on the Promotional Framework for OSH calls for support mechanisms for a progressive improvement of occupational safety and health conditions in the informal sector. In addition, paragraph 3 of Recommendation No. 197 provides that national system of OSH should provide appropriate measures for the protection of all workers, in particular workers in high-risk sectors, and vulnerable workers such as those in the informal economy and migrant and young workers. Paragraph 4(d) of Recommendation No. 164 on OSH indicates that where appropriate, a special training programme for migrant workers in their mother tongue should be provided. Moreover, ILO Conventions concerning OSH in specific sectors like construction (Convention No. 167) and agriculture (Convention No. 184) are of particular importance given the high proportion of migrant workers employed in these sectors, which are often deemed as high risk. In this regard, the CEACR has noted the importance of ensuring that workers in the construction and agricultural sectors, including migrant workers, are adequately trained in prevention and protection measures. Measures in this respect could include ensuring that occupational safety and health training is provided in a language understood by migrant workers and that workers are trained regularly to keep their skills up to date in relation to new prevention techniques, technological progress in general and new workplace hazards.⁹ These elements can be added to the paragraph.

Non-citizen's right to social security

In the fourth sentence of paragraph 16, reference can be made to non-citizen's right to social security. As per the Social Security (Minimum Standards) Convention, 1952 (No. 102), this includes access to medical care as well as access to sickness benefits, employment injury. The lack of universal health protection coverage is a major obstacle for accessing health care services and as mentioned above, not all countries provide access to health protection to non-nationals. There may also be other legal and practical restrictions for non-nationals to access health protection and thus health care services (namely migrant status, length of stay, length of employment, lack of formal employment, etc.).

Non-citizens and the informal economy

In the fourth sentence of paragraph 16, "... involved in informal labour markets" can be replaced with "... working in the informal economy," in line with the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). In that regard, the main issue is a structural determinant, namely occupational segregation: non-citizens, including also *regular* migrant workers (who are, at least in principle, not in informal employment) tend to be concentrated in the most hazardous industries (in that order, mining, construction and agriculture) where social control is weaker, and employment tends to be more precarious for a variety of factors (e.g. 'circular migration', prevalence of subcontracting arrangements, absence of voice and representations by trade unions...)¹⁰

Migrant domestic workers

In the fifth sentence of paragraph 16, reference can be made to the ILO CEACR 2022 General Survey.¹¹ Moreover, mention can be made of other legal and practical obstacles that migrant domestic workers face in accessing social health protection not only due to live-in requirements but also because of legal exclusions, lack of recognition of domestic work as work (and thus legal exclusions from labour and social security laws) irregular working hours, multiple employers etc.¹²

HIV testing

In paragraph 17, the second sentence addressing mandatory HIV testing can be reformulated to align with the international standard, which is stricter than what the sentence mentions: For everyone: "Testing must be genuinely voluntary and free of any coercion and testing programmes must respect international guidelines on confidentiality, counselling and consent."¹³ HIV testing or other forms of screening for HIV should not be required of workers, *including migrant workers*, jobseekers and job applicants.¹⁴ Moreover, reference can be made

⁹ See ILO, [Working Together to Promote a Safe And Healthy Working Environment: General Survey on the Occupational Safety and Health Instruments concerning the Promotional Framework, Construction, Mines and Agriculture](#), Report III (Part 1B), International Labour Conference, 106th Session, 2017 (hereinafter "2017 General Survey"), paras 331 and 341.

¹⁰ See 2017 General Survey, para. 5ff.

¹¹ See ILO, [Securing Decent Work for Nursing Personnel and Domestic Workers, Key Actors in the Care Economy](#), Report III (Part B), International Labour Conference, 110th Session, 2022 (hereinafter "2022 General Survey"), paras 540 to 545.

¹² See Van Panhuys et al., 2017, p. 5. Also see Chapter 6.1 of ILO, [Extending Social Protection to Migrant Workers, Refugees, and their Families: Guide for Policymakers and Practitioners](#), 2021.

¹³ [HIV and AIDS Recommendation, 2010](#) (No. 200), para. 24.

¹⁴ Recommendation No. 200, para. 25.

to the ILO CEACR’s recalling “that refusal of entry or repatriation on the grounds that the worker concerned is suffering from an infection or illness of any kind which has no effect on the task for which the worker has been recruited, constitutes an unacceptable form of discrimination.”¹⁵

Pregnancy testing

In paragraph 20, considering that maternity can and in practice often still constitutes a source of discrimination, including racial discrimination, the comment can refer to the general prohibition of pregnancy testing as expressed in Article 9 of the ILO Maternity Protection Convention, 2000 (No. 183):

Article 9

1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including - notwithstanding Article 2, paragraph 1 - access to employment.
2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is:
 - (a) prohibited or restricted for pregnant or nursing women under national laws or regulations; or
 - (b) where there is a recognized or significant risk to the health of the woman and child.

Supply of health and other care workers

In paragraph 26, the last sentence can mention the need for “ensuring sufficient numbers of well-trained and supported health and other care workers.”

Home-based personal care providers

In paragraph 28, the list in the first parentheses can include “and other care workers such as home-based personal care providers.”¹⁶ Care is provided at a variety of settings and by a heterogeneous workforce ranging from highly qualified doctors and nurses through care assistants with intermediate training to workers without any formal care training. Many countries also rely on community health workers or community health volunteers.

Palliative services

In paragraph 28, the last sentence can also refer to palliative services.

Monitoring occupational safety and health

In paragraph 32, with regard to occupational safety and health, Indicator 8.8.1 of SDG target 8.8 (protection of labour rights and promoting safe and secure working environments for all workers) provides for “frequency rates of fatal and non-fatal occupational injuries, by sex and migrant status”. The ILO fundamental Conventions Nos. 155 and 187 contain provisions on the collection, analysis and production of statistics concerning occupational injuries and diseases.¹⁷ Moreover, the prescriptions contained in the ILO Protocol of 2002 to the Occupational Safety and Health Convention with respect to the collection and compilation of national statistics are a valuable tool in efforts to collect adequate data for the SDG indicator 8.8.1. The paragraph can refer to them.

Measures against direct and indirect racial discrimination

In paragraph 38, in the first sentence “against racial discrimination” can be replaced with “against direct and indirect racial discrimination.”

The right to a system of health protection and the right to social security

In paragraph 38, alongside the right to a system of health protection can be mentioned the right to social security, which “encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult de.”¹⁸ In addition, non-nationals and other disadvantaged groups, such as minorities, refugees, asylum seekers, internally displaced persons and returnees, should be given special attention by States as they face additional hurdles in exercising their right to social security.¹⁹ It is key that legislative and policy related measures recognize equality of treatment between nationals and non-nationals with respect to social security including social health

¹⁵ 2016 General Survey, para. 254.

¹⁶ 2022 General Survey, para. 45 and others.

¹⁷ Art. 11(c) of [Convention No. 155](#) and Art. 4(3)(f) of [Convention No. 187](#).

¹⁸ [E/C.12/GC/19](#), para. 2.

¹⁹ [E/C.12/GC/19](#), para. 31.

protection. Non-nationals should access to social health protection at par with nationals. This fundamental principle of equality of treatment is embedded in numerous human rights instruments and international labour standards.

Recommendations in relation to decent work

The Commission on Social Determinants of Health (2008) specified three action areas in relation to fair employment and decent work:

- Make full and fair employment and decent work a central goal of national and international social and economic policy-making.
- Achieving health equity requires safe, secure, and fairly paid work, year-round work opportunities, and healthy work–life balance for all.
- Improve working conditions for all workers to reduce exposure to material hazards, work-related stress, and health-damaging behaviours.

These can be better reflected in the text, particularly in the recommendations, possibly as an additional point under paragraph 39.

Mention of indirect racial discrimination in the recommendations

In paragraph 39(iii), the first sentence can read “perpetuate direct and indirect racial discrimination.”

Enforcement of OSH provisions

In paragraph 39(iii), national labour inspectorates in their functions of enforcing OSH provisions (in accordance with Art. 3(1)(a) of Convention No.81) can be mentioned explicitly. In paragraph 38(iv), national OSH policies and programmes (see Part III and V of Convention No. 187 and Part II of Convention No. C155) can be targeted for the aspects of health in occupational settings. In paragraph 38(iv), in the first sentence regarding “adaptability and quality of health care,” a reference can be added to occupational health services.²⁰

Decent work for health and other care workers

In paragraph 38(iv), the last sentence can mention ensuring protection of labour rights and the promotion of decent work for health and other care workers providing those services.

Monitoring

In paragraph 44, mention can be added to monitoring of legal coverage of social health protection as an urgent imperative globally, since coverage gaps highlight persistent socioeconomic inequalities and discrimination.

In paragraph 45, with regard to occupational health, this could include a reference to monitoring of certain sectors of economic activities where migrant workers are more likely to be employed.²¹ Regarding the last sentence of paragraph 45, mention can be made of Art. 19(e) of Convention No. 155: “workers or their representatives [...] are enabled to enquire into, and are consulted by the employer on, all aspects of occupational safety and health associated with their work.” Art. 4(3) (b) and (e) of Convention No. 187 provides that a national system of OSH should include, where appropriate information and advisory services on occupational safety and health and research on occupational safety and health.

Education

In paragraph 49, in the second sentence reference can be made to materials (books etc...) that are not ethnically diverse (for example: describing effects of diseases on a specific type of skin makes it harder for a medical practitioner to identify and diagnose diseases when confronted to minority skin types).

Employers’ and workers’ organizations

In paragraph 50, mention can be made of employers’ and workers’ organizations as well.

²⁰ See: [Occupational Health Services Convention, 1985 \(No. 161\)](#).

²¹ Such as agriculture and construction. See 2017 General Survey.