OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

**Contribution to the CERD drafting of the General Recommendation N° 37 on racial discrimination and the right to health under Article 5 (e)(iv) of the ICERD**

28 June 2022

Note: All responses to questions were taken from the report *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, by OSCE/ODIHR, 2020, available at: <https://www.osce.org/files/f/documents/e/c/457567_0.pdf>.

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

*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?*

*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?*

In some [OSCE] participating States, minorities and persons of migrant background are overrepresented among essential workers, many of them women.[[1]](#footnote-1) Especially in the health care sector, concerns were expressed about their public invisibility, and dangerously inadequate personal protective equipment that appeared to be designed for the size of an average white man.[[2]](#footnote-2)

Furthermore, discrimination, often structural in nature, in economic and social rights can create poor public health conditions in affected minority communities, which places them at special risk of contracting the virus and falling sick. In some minority communities, such as Roma, people of African descent and/or of migrant background, discrimination in access to adequate housing, characterized by high density of housing units or entire neighbourhoods and settlements sometimes without access to clean water, exposed them to the virus and made them more likely to fall seriously ill.[[3]](#footnote-3)

Access to clean water has also been reported as an issue for indigenous communities living on reservations.[[4]](#footnote-4) Discrimination in access to adequate health, especially if in combination with undocumented status and limited health insurance, put many migrant workers at risk. Many were forced to leave their jobs and return to their home countries, out of concern that they may not receive equal treatment in healthcare institutions. In some states, migrant workers were also made vulnerable through their high representation in specific high-risk workplaces, such as the meat industry.[[5]](#footnote-5)

**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?*

OSCE/ODIHR recommendations to OSCE participating States: “Ensure meaningful public participation of minority communities’ representatives, in both the assessment of the situation as well as in designing and implementing the adequate remedial policies and actions, while taking into account the different needs of women and men.” “Design and implement recovery assistance in a non-discriminatory manner, with the participation of underrepresented groups affected by discrimination.”

**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?*

OSCE/ODIHR recommendation to OSCE participating States: “Promote policies focusing on equality of opportunity by making the collection of equality data in the context of the pandemic a norm across the public sectors in participating States, assess how health and emergency measures have disproportionately affected minority and/or marginalized communities, adopt mitigating measures, as well as ensuring that further disadvantages are not created. Participating States should support and co-operate with civil society in the collection and analysis of equality data.”

**Health-related coercive measures and racial discrimination**

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

The emergency measures introduced by authorities across the OSCE region to contain the spread of the pandemic appeared to frequently affect minority communities in a disproportionate manner. In terms of monitoring and ensuring the application of measures, media and civil society made allegations of disproportionate securitization of minority communities. This reportedly included minority groups, including predominantly migrant or Roma communities, being threatened with, or actually selectively placed under enforced lockdown, monitored by police, without a medical or other legitimate justification or in a discriminatory or disproportionate manner.[[6]](#footnote-6) According to some reports, only a small number of states provided pandemic-related information in minority languages.[[7]](#footnote-7)

**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.*

“In the area of addressing intolerance and discrimination in the context of the pandemic, some participating States [of the OSCE] recognized the need for special support to minority communities by announcing new health-care support for, inter alia, indigenous communities amid the pandemic.[[8]](#footnote-8) Special commissions were created to monitor the impact of the pandemic on vulnerable groups.[[9]](#footnote-9) Some States provided information on Covid-19 in the languages of national minorities, and/or languages of the main migrant groups in their countries.[[10]](#footnote-10)

The engagement of national human rights institutions also brought some inspiring examples calling on national governments and local authorities to safeguard the rights of minorities and marginalized groups or intervened in the interest of particularly vulnerable communities.[[11]](#footnote-11)

In a number of participating States, civil society organizations engaged in monitoring how the pandemic directly and indirectly affected minority communities.[[12]](#footnote-12)”

1. For example, in the United Kingdom, statistics show that BAME (Black, Asian and Minority Ethnic) professionals make up about 20 per cent of the National Health Service (NHS); in the United States, Black and Latino people are overrepresented among essential workers, according to JoAnn Yoo of the Asian American Federation (Reimagining Racial Justice webinar, 9 June 2020). In Canada, many migrant workers and other non-permanent residents have been working on the front lines of the COVID-19 pandemic. [↑](#footnote-ref-1)
2. For example, reports show in the United Kingdom, of the 53 NHS staff known to have died in the pandemic

   thus far 68 per cent were BAME. In Canada, many female Filipino nurses working in the health sector without personal protective equipment due to the lack of work safety, were blamed for allegedly carrying the Covid-19 virus (Jeffrey Andrion, PhD, University of Toronto (Resisting Anti-Asian Racism in Canada webinar, 27 May 2020). Already in 2017, a report established that “most PPE is based on the sizes and characteristics of male populations from certain countries in Europe and the United States”. [↑](#footnote-ref-2)
3. For example, in Bulgaria and Sweden. [↑](#footnote-ref-3)
4. See, the United States, Covid-19 Disparities Reflect Structural Racism, Abuses, Human Rights Watch

   Testimony to US House of Representatives Ways and Means Committee. [↑](#footnote-ref-4)
5. For example, the United States; and in Germany a significant number of clusters of Covid-19 infections have been linked to meat processing plants employing predominantly Eastern European workers. [↑](#footnote-ref-5)
6. For example, in Azerbaijan, Bulgaria, Georgia, the Russian Federation, Slovakia and Spain. In Belgium,

   France, the Russian Federation and Slovakia, heavy-handed law enforcement raids, meant to monitor

   the implementation of restrictive pandemic-related policies, disproportionately affected minority communities, including instances of police violence. In Romania, Slovakia, Spain, Greece, France and Turkey, this was particularly the case with Roma communities, persons of African descent or those of migrant background. In Canada, “random checks” and profiling that police conducted in the streets, in the context of ensuring lockdown, sometimes appeared to disproportionately affect racialized minority groups. In the United States, an overrepresentation of people of African or Latin American descent were fined for apparent violations of physical distancing restrictions, indicating the possibility that these groups may have been disproportionately profiled and fined. In Canada, concerns were raised around “carding”, racial and social profiling in the context of police checks on potential violations of lockdown regulations, leading to mass collection of data about marginalized people. [↑](#footnote-ref-6)
7. See also statements and reports by the HCNM. [↑](#footnote-ref-7)
8. For example, in Canada. [↑](#footnote-ref-8)
9. For example, in Belgium and in Canada. In terms of addressing the disproportionate impact of the pandemic on minority communities, some participating States provided a good practice of publishing detailed reports, including the Centres for Disease Control and Prevention, COVID-19 in Racial and Ethnic Minority Groups in the United States, where a number of lawmakers declared racism a public health emergency, and the governor of a state provided its population of African descent with free medical insurance. [↑](#footnote-ref-9)
10. For example, in Sweden, Austria, Czech Republic and Georgia. [↑](#footnote-ref-10)
11. For example, in Ireland, the NHRI called political parties involved in government formation to safeguard human rights and equality measures amid the emergency responses to the pandemic. In Serbia, the NHRI called the authorities to provide particular support to Roma communities, including access to clean water. [↑](#footnote-ref-11)
12. For example, in Canada, the United States, the United Kingdom, Germany, Ireland, and through the European Network Against Racism (ENAR), a network of member organizations across Europe. [↑](#footnote-ref-12)