Comments on the Draft General Recommendation n°37 on Racial discrimination in the enjoyment of the right to health

Founded in 1967, Action on Smoking and Health (ASH) is the United States’ oldest organization devoted to fight the harms caused by tobacco, both in the US and globally, and is dedicated to a world with zero tobacco deaths. Action on Smoking and Health, an organization with consultative ECOSOC status, is joined in this submission by XX signatories. They include academic institutions, legal centers, and public health advocacy organizations from around the world. (Or from XX number of countries). We are writing to highlight the importance of including tobacco in General Recommendation 37.

Tobacco use is the single leading cause of preventable death and disease worldwide¹ and causes more than 8 million deaths per year.² Over 80% of the world’s 1.3 billion tobacco users live in low-and middle-income countries.³ “Marginalized and vulnerable populations- including, people in low-and middle-income communities, women, children, racial and ethnic minorities, LGBTQI+ persons, and indigenous peoples, bear a disproportionate burden of tobacco-related harm.”⁴⁵

We are pleased to see tobacco mentioned in section II(B)(12)(a)(i) under Racial discrimination in availability of public health, including essential medicine. While we applaud this inclusion, respectfully, tobacco impacts several other areas of the right to health and should be further included throughout other areas of General Recommendation 37. This submission will briefly describe some of the key issues impacting tobacco, race, and the right to health and will provide recommendations for additions to General Recommendation 37.

Background

The Framework Convention on Tobacco Control (FCTC)

The WHO Framework Convention on Tobacco Control (FCTC) is an international treaty that reaffirms the right of all people to the highest standard of health, recalling the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, as well as the Constitution of the World Health Organization.⁶

The FCTC\(^7\) has been instrumental in changing the global conversation about tobacco, and many of its articles address rights that are important to the implementation of ICERD, including:

- Right to health and life – FCTC Articles 9, 10, 11, 12, 13, 14, and 16
- Right to a healthy environment – FCTC Articles 8, 17, and 18
- Children’s rights – FCTC Article 8, 12, 13, 16 and 17
- Women’s rights – FCTC Article 8, and 13

**Indigenous peoples**

The Preamble of the WHO FCTC states that Parties to the Convention are ‘Deeply concerned about the high levels of smoking and other forms of tobacco consumption by indigenous peoples.'\(^8\) The prevalence of tobacco use amongst indigenous peoples is higher in some places than amongst the general population, often with disproportionately detrimental impacts on their health, economic and cultural well-being.\(^9\) This list is not exhaustive, but simply meant to serve as an example of how tobacco is an issue that impacts racial groups around the world.

- In Australia, where prevalence among native aboriginals is almost twice that of the general population.\(^10\)
- In New Zealand, where smoking prevalence is almost twice as high among Māori versus general population.\(^11\)
- In Canada, where smoking rates are 2.5 times higher among Inuit, and higher among First Nations people overall.\(^12\)
- In the United States, American Indian, Alaska natives have the highest rates of smoking prevalence.\(^13\)

**Targeted advertising and flavors**

---

\(^7\) Supra note 6.
\(^8\) Supra note 6, Preamble.
\(^9\) Supra note 4
\(^13\) United States, Centers for Disease Control, Tobacco Disparities. [https://www.cdc.gov/tobacco/disparities/american-indians/index.htm].
Tobacco companies misappropriate indigenous traditions and symbols in marketing and target flavoured products to marginalized and vulnerable populations, for example, African Americans in the United States.\textsuperscript{14,15} Tobacco companies have strategically targeted racial and ethnic communities for decades.\textsuperscript{16}

\textit{Culturally competent cessation support}

The Guiding Principles of the WHO FCTC highlight the need for Parties to take measures to promote the participation of indigenous individuals and communities in the development, implementation and evaluation of tobacco control programs that are socially and culturally appropriate.\textsuperscript{17} This is necessary because, as just one example, “African American adults have been found to be more likely to express interest in quitting and more likely to have tried to quit in the past year than white adults, but are less likely to use proven treatments (e.g., counseling and/or medications) and are less likely to succeed in quitting.”\textsuperscript{18} Culturally competent cessation support is necessary to help end the tobacco epidemic.

\textit{Sustainable Development Goals (SDGs)}

The negative impact of tobacco on global development was recognized by the global community in September 2015, when all United Nations Member States adopted the UN Sustainable Development Goals (SDGs) which include Target 3.a which calls on countries to “Strengthen the implementation of the World Health Organization Framework Convention on Tobacco Control in all countries, as appropriate.” Target 3.4 goes on to call on countries to “by 2030, reduce by one third premature mortality from non-communicable diseases through prevention and treatment”. The FCTC, and tobacco control, is considered an accelerator for sustainable development overall.\textsuperscript{19}

\textbf{Recommendations}

We respectfully suggest that the Committee’s General Recommendation No.37 on racial discrimination and the right to health include clear and specific language and recommendations that:

\textit{The Framework Convention on Tobacco Control}

- Call on all state parties to ICERD to sign, ratify, and fully implement all articles of the Framework Convention on Tobacco Control.
- Countries should implement provisions of the WHO FCTC, and tobacco control measures more generally, in ways that take account of health disparities among racial groups;

\textsuperscript{15} Supra note 4.
\textsuperscript{17} Supra note 4.
**Culturally competent cessation support**

- Call on state parties, in accordance with Article 14 of the FCTC, to provide culturally competent tobacco cessation support.

**Targeted advertising and flavors**

- Call on state parties, in accordance with the FCTC, to implement and enforce a comprehensive ban on tobacco advertising, promotion and sponsorship;²⁰
- Call on state parties, in accordance with the FCTC, to prohibit flavors in tobacco products.

**Indigenous Peoples**

- Affirm, in line with Article 24 of United Nations Declaration on The Rights of Indigenous Peoples (UNDRIP), that Indigenous peoples have the right to the highest attainable standard of health. And that:
  - Health includes physical and mental health, free from addictions such as tobacco.
  - The Tobacco Industry, their products, and their associates obstruct this fundamental human right to health.
- Recall that it is incumbent on States to undertake steps to achieve the full realization of this right and protect the health of Indigenous peoples.

**Sustainable Development Goals (SDGs)**

- Affirm the connection between the right to health and the SDGs, including SDG 3.a, which calls for implementation of the Framework Convention on Tobacco Control.

Thank you for the opportunity to provide input; General Recommendation 37 will have an important impact at the national and international level. Thank you for protecting the right to health of everyone, of every race.

Signed,

XX

---

²⁰ Guidelines for the Implementation of Article 13, [https://fctc.who.int/publications/m/item/tobacco-advertising-promotion-and-sponsorship](https://fctc.who.int/publications/m/item/tobacco-advertising-promotion-and-sponsorship)