

Inputs to the Draft General Recommendation N 37 on Racial discrimination in the enjoyment of the right to health.

1. Reporting Organization

The Danish Refugee Council (DRC) is a leading, international humanitarian organization, working in 40 countries supporting refugees and internally displaced persons throughout the displacement cycle: in acute crises, in exile, when settling and integrating in a new place, or upon return. In the Americas, DRC works in the context of mixed migration flows and internal displacement dynamics providing protection services, including legal aid, to the millions of people who have been forced to seek protection outside their countries of origin due to persecution, generalized violence, massive violations of human rights, and non-international armed conflicts.

The DRC Latin America Protection programme submits this contribution as part of its advocacy efforts to strengthen the legal environment and the respect of the human rights of displaced and conflict-affected populations in the region.

2. Summary of Feedback and Key Recommendations

- a. Reflecting on the disproportionate effects of racial discrimination in the enjoyment in the right to health, DRC welcomes the emphasis of other intersecting discriminatory grounds including migratory status in the General Recommendation 37 as one of the aggravating factors in differentiated treatment.
- b. In the General Recommendation *Introduction*, DRC encourages the Committee to include non-citizens including refugees, asylum seekers, and migrants regardless of their migratory status as parts of the groups whose vulnerability was further exacerbated by the COVID-19 pandemic.
- c. Under *Racial discrimination in the right to public health, including healthcare facilities services and goods*, DRC urges the Committee to add xenophobia as an intersecting ground of discrimination that together with racism and racial discrimination has a negative impact on health outcomes for the people protected by the Convention.
- d. Under *Racial discrimination in the right to public health, including healthcare facilities services and goods*, DRC highlights the importance of explicitly including Internally Displaced Persons (IDPs) as a vulnerable group as they face aggravated

health risks associated with displacement-related factors that are determinants of health.

- e. Under *Legislative and policy related measures*, DRC welcomes the Committee support for community-centred approaches, gender-based, and culturally sensitive practices specially in the form of mobile health clinics. DRC encourages the Committee to add an explicit reference on the importance of effective access to health in international borders and throughout migratory routes and guarantee services from a human rights perspective.
- f. Under *Monitoring racial inequalities in health*, DRC recommends the Committee to explicitly include migratory status as information to be taken into account when monitoring and designing national programmes.

3. Specific Recommendations or Suggested Amendments to the General Comment

- a. Regarding section *Introduction* paragraph 5:

We recommend that refugees and migrants regardless of their migratory status to be included as one of the population groups particularly affected by the COVID-19 pandemic. The Danish Refugee Council and multiple humanitarian organizations in Latin America have documented that migrants, refugees, and asylum seekers were profoundly and disproportionately impacted by the effects of the COVID-19 pandemic and the public health and security policies responses to manage the crisis. During the pandemic, many refugees and migrants in Peru¹, Honduras², Colombia³, Mexico⁴, and Argentina⁵ experienced disproportionate restrictions in accessing health services. Additionally, the pandemic had disproportionate effects on the refugees and migrants' social determinants of health including multiple barriers in accessing an income and the loss of livelihoods, due to a decrease in safe, formal, and secure employment opportunities.

¹ Acción contra el Hambre. (2022). [Perú: Estudio multisectorial en personas refugiadas y migrantes](#); International Rescue Committee. (2021). [Needs Assessment Report- Venezuelans in Perú](#).

² United Nations Office for the Coordination of Humanitarian Affairs (2021). [Honduras: El Salvador, Guatemala y Honduras: Panorama de Necesidades Humanitarias \(Ciclo del Programa Humanitario 2021, Julio 2021\)](#).

³ Danish Refugee Council. (2021). [Acceso y permanencia de la población venezolana al sistema de salud en Medellín y el Valle de Aburrá](#).

⁴ Danish Refugee Council. (2022). [México: El derecho a la salud, desafíos para los flujos migratorios mixtos en Ciudad Juárez](#); Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (2021). [México: Boletín situación de desplazamiento interno forzado en México - agosto 2021](#).

⁵ Interagency Coordination Platform for Refugees and Migrants (2021). [Cono Sur: Reporte Situacional R4V Enero 2021](#).

Moreover, the financial impact of the COVID-19 pandemic continues to have an impact on the ability of vulnerable migrants to ensure food security and decent housing.

Numerous reports have documented these problems in countries such as Argentina⁶, Colombia⁷, Ecuador⁸, Honduras⁹, El Salvador¹⁰, Chile¹¹, and Guatemala¹². Access to health was further restricted to migrants with an irregular status and refugees and asylum seekers without effective access to international protection as throughout the pandemic barriers in accessing migratory regularization programmes and international protection were documented, as was the case in Uruguay¹³ and in México¹⁴. In general, these circumstances increased people's vulnerability and exposed them to protection risks, including the rise of levels of exposure human trafficking in North Central America, Mexico, Peru¹⁵, and the Southern Cone¹⁶.

Considering the aforementioned, DRC recommends Paragraph 5 be amended to read:

The COVID-19 pandemic tragically exposed and further deepened structural inequalities affecting vulnerable groups protected under the Convention, based on entrenched structures and practices of discrimination and exclusion. The responses to the pandemic exacerbated the specific vulnerability of women and girls, children, persons with disabilities and **non-citizens including refugees, asylum seekers and migrants regardless of their migratory status**, leading to multiple or intersecting forms of discrimination.

- b. Regarding section *Racial discrimination in the right to public health, including health facilities, services and goods* paragraph 11.

⁶ International Organization for Migration. (2021). [Argentina: DTM para Argentina, Ronda 9](#), Diciembre 2021; Servicio Jesuita a Migrantes (2021). [Argentina: Informe Situacional SJM Argentina -Otoño 2021](#).

⁷ OCHA (2021). [Colombia: Panorama de las necesidades humanitarias, OCHA, 2022](#); Interagency Coordination Platform for Refugees and Migrants (2021). [Colombia: Informe Final MIRA municipio El Carmen \(centro poblado Guamalito\) en el departamento de Norte de Santander](#); Danish Refugee Council. (2021), [Colombia: Informe de Monitoreo de Protección DRC-ABR-MAY, 2021, 16-07-2021](#)

⁸ UNHCR (2021). Ecuador: [ACNUR-RIADIS informe movilidad humana y discapacidad](#); UNHCR (2022). [Ecuador: ACNUR - PMT - Quito](#).

⁹ Human Rights Council. (2022). [Honduras - Informe del Alto Comisionado DDHH/UN - situación de los DDHH en Honduras 2022](#); ACT Alliance (2022). [Honduras: Análisis de Contexto Sobre Necesidades Humanitarias Bajo Escenario de Inseguridad Alimentaria Honduras, América Central](#).

¹⁰ UNHCR. (2021). [El Salvador Factsheet - January 2021](#).

¹¹ Mixed Migration Centre (2021). [LAC Quarterly Mixed Migration Update \(QMMU\)-Q3](#).

¹² UNHCR. (2021). [Guatemala Factsheet Agosto 2021](#).

¹³ International Organization for Migration. (2021). [DTM Impacto COVID Frontera Rivera y Rocha](#).

¹⁴ Danish Refugee Council and Jesuit Refugee Service (2021). [México - Informe de Monitoreo de Protección - DRC + JRS - MAR - ABR 2021](#).

¹⁵ International Organization for Migration (2022). [Diagnóstico situacional de los delitos de trata de personas y tráfico ilícito de migrantes en la región Tumbes](#).

¹⁶ Interagency Coordination Platform for Refugees and Migrants. (2021). [Cono Sur: Informe Evaluación Conjunta de Necesidades Cono Sur](#).

DRC has documented xenophobia to be intrinsically linked with racism and racial discrimination as societies often conceptualise the ‘otherness’ of migrants, refugees, and asylum seekers based on race, colour, descent, and national and ethnic origin. In 2023, DRC published the report “*Una mirada a la crisis de protección en América Latina*”¹⁷, in which the organization showed that xenophobia is one of the main contributing factors curtailing the human rights of people on the move in the Americas.

Xenophobia has a direct effect on curtailing effective access to health services. Several humanitarian organizations have documented xenophobia expressed in the form of practices of intolerance, insults, mistreatment, and denial of rights in countries such as Colombia¹⁸, Perú¹⁹, Bolivia²⁰, and Mexico²¹. Xenophobia is often expressed through humiliating treatment when people approach health service providers, in which emphasis is placed on nationality or migratory status to deny services, requesting disproportionate and impermissible charges, or by demanding illegal requirements. DRC has documented that these practices have resulted in the affected populations fearing to approach health services providers²². Furthermore, language barriers have been documented as a compounding discriminatory practice affecting ethnic groups such as the Wayuu peoples, where interpretation services are not incorporated in public services²³.

Xenophobic practices are also common during the provision of health services. Especially in the case of refugee and migrant women, obstetric violence practices directly related to their nationality have been documented²⁴. Practices of verbal violence of health service providers based on prejudice and sexual stigmas mainly towards Venezuelan and Haitian women have been reported. DRC has also documented xenophobia and discrimination based on gender identity and sexual orientation against LGBTQI migrants and refugees accentuating existing barriers to accessing health services²⁵.

¹⁷ Danish Refugee Council. (2023). [Una mirada a la crisis de protección en América Latina \(2021-2022\)](#).

¹⁸ Danish Refugee Council (2022). [Acceso a servicios de salud de personas refugiadas y migrantes venezolanas que viven con VIH en Bogotá](#). (2022). [Acceso a la afiliación al sistema de salud colombiano por parte de la población refugiada y migrante en el Distrito de Barranquilla](#). (2021). [Acceso y permanencia de la población venezolana al sistema de salud en Medellín y el Valle de Aburrá](#).

¹⁹ Danish Refugee Council (2021). [Monitoreo de Protección Perú: Snapshot \(septiembre de 2021\)](#). Lima: DRC y Encuentros.

²⁰International Organization for Migration (2021). [DTM Matriz de Seguimiento de Desplazamiento Ronda 1](#).

²¹ International Organization for Migration (2022). [México – Monitoreo de flujos migratorios en Tapachula y Tenosique, Ronda 2](#) (April).

²² Danish Refugee Council. (2021). [Acceso y permanencia de la población venezolana al sistema de salud en Medellín y el Valle de Aburrá](#).

²³ Danish Refugee Council (2022). [Colombia: Barreras en el acceso a salud de la población refugiada y migrante venezolana en Riohacha y Maicao, la Guajira](#).

²⁴Women’s Link Worldwide. (2019). [Información sobre la situación relativa al maltrato y violencia contra las mujeres en el marco de la atención en salud reproductiva, incluso durante el parto en centros de salud, en países de América Latina y el Caribe, Europa y África Oriental](#).

²⁵ Danish Refugee Council (2022). [Acceso a servicios de salud de personas refugiadas y migrantes venezolanas que viven con VIH en Bogotá](#).

Considering the aforementioned, DRC recommends Paragraph 11 be amended to read:

“Effect of racism and racial discrimination on physical and mental health at the micro level and the macro level: racial discrimination, alone or intersecting with other grounds of discrimination, micro-aggressions, **xenophobia**, racist crimes, and racist hate speech has been linked to a range of negative health outcomes [...]”

c. Regarding section *Racial discrimination in the enjoyment of the right to health under Article 5 (e)(iv)*:

We suggest that in addition to highlighting the situation of non-citizens, migrants, refugees, asylum seekers, and stateless persons, an explicit mention be made of the situation of internally displaced persons. IDPs also face multiple risks associated with poor living conditions, difficult work situations, and a multitude of factors that are determinants of health. In many cases, IDPs are part of groups that have been historically discriminated on the account of race, colour, descent, national or ethnic origin.

In the case of Colombia, the official victims' registry of the *Unidad Administrativa para la Reparación Integral de las Víctimas* (UARIV) shows that as of August 2023; 20.4% of the 8,490,000 recognised victims of forced displacement are persons protected by the Convention due to their race or ethnic group. Among these, 69% correspond to Afro-Colombian and “Palenqueros” populations and 30% to indigenous peoples. Historically, victims of forced displacement come from the most peripheral regions of Colombia, where there is limited access to public services. DRC's protection monitoring²⁶ shows that in areas affected by the armed conflict in Colombia access to health services is further restricted by geographic barriers, remoteness from health centres, and limited resources²⁷. IDPs from groups protected by the Convention continue to experience multiple barriers to accessing health services under equal conditions. In fact, the Colombian Constitutional Court in declaring an unconstitutional state of affairs in the country regarding the enjoyment of human rights of the displaced population, warned about the

²⁶ Protection monitoring refers to the exercise of systematically and regularly collecting, verifying and analyzing information over an extended period of time in order to identify violations of rights and protection risks for populations of concern. DRC collects quantitative and qualitative primary data through protection monitoring in the Americas since 2019.

²⁷ Danish Refugee Council. (2023). [Monitoreo de Protección Colombia. Situación del derecho a la salud en Tibú, Trianguló de Telembí, Soacha y Bogotá D.C.](#)

accentuated barriers to access health services²⁸. Over the years, these barriers have persisted and have been repeatedly documented.

Considering the aforementioned, DRC recommends an addition to the section to read:

Internally displaced persons face health risks related to forced displacement and the inability to access decent living conditions and livelihoods. Internally displaced persons often face disproportionate barriers to accessing health services, particularly mental health services to overcome the trauma of displacement.

d. Regarding *Legislative and policy related measures* paragraph 40:

DRC recommends that the report explicitly calls for the need to guarantee the presence of health services in border areas and along migratory routes, as a significant number of people experience discrimination based on race, colour, descent, national and ethnic origin in these areas and where omissions to the right to access health happen. In the last three years, several organizations have documented an approach of health authorities in border areas focusing on accompanying police authorities and military forces to ensure territorial access restrictions as opposed to guaranteeing health services to vulnerable migrants, refugees, and asylum seekers. This can be seen, for example, in the case of Guatemala²⁹, El Salvador³⁰, and Honduras³¹.

Organizations in the region have documented cases of extremely vulnerable migrants and refugees who require physical and mental health services at the border and throughout the migration route. In Argentina³² one of the main needs reported by people on the move are related to health services during their journey. Moreover, in the border between Nicaragua and Honduras³³ pregnant women have faced difficulties in accessing health services. Many border areas have adverse and dangerous geographical conditions³⁴ disproportionately affecting the physical and psychological integrity of people on the move who resort to irregular routes. Migrants and refugees face extreme climates³⁵, as is the case, for example, on the border between Chile and Bolivia³⁶. Taken together, these situations show the aggravated situations of

²⁸ Colombian Constitutional Court. [Providencia T-025-2004](#).

²⁹ International Organization for Migration. (2021). [Guatemala: Línea base para la evaluación de flujos migratorios irregulares y seguimiento a la movilidad en localidades fronterizas bajo el contexto de la COVID-19, Ronda 4](#).

³⁰ International Organization for Migration. (2021). [El Salvador: Línea base para la evaluación de flujos migratorios irregulares y seguimiento a la movilidad en localidades fronterizas bajo el contexto de la Covid-19 Ronda 4 \(Marzo 2021\)](#).

³¹ International Organization for Migration (2021). [Honduras WHP - DTM EL Paraíso](#).

³² International Organization for Migration. (2021). [Argentina: DTM para Argentina, Ronda 8, Octubre 2021; Argentina: DTM para Argentina, Ronda 11, Diciembre](#).

³³ International Organization for Migration. (2021). [Honduras WHP - DTM EL Paraíso](#).

³⁴ UNHCR (2022). [Colombia: Factsheet: High Frequency Survey Ronda 3](#).

³⁵ World Food Programme. (2021). [Análisis de vulnerabilidades sociales de la población venezolana en Ecuador](#).

³⁶ Interagency Coordination Platform for Refugees and Migrants. (2022). [Cono Sur: Reporte Especial de Situación Bolivia, Chile y Perú](#).

vulnerability in which people in border areas find themselves and the need to guarantee legislations and policies that effectively protect the human right to health.

Considering the aforementioned, DRC recommends Paragraph 40 be amended to read:

Community-centred approaches, gender-based and culturally sensitive practices should be adopted to ensure availability, accessibility, adaptability, and quality of health care, based on the needs, traditions and cultural specificities of racial and ethnic minorities. States should provide and strengthen effective collaboration between modern and traditional medicine and support the implementation of a national policy on midwives. States are strongly encouraged to coordinate effectively support services by promoting models of cooperation between the authorities, the communities and the civil society organizations including those representing groups experiencing intersecting forms of discrimination, Equality Bodies and National Human Rights Institutions and private health providers. States should explore as a mitigating special measure the possibility, in consultation with the communities of providing health-care support through mobile health clinics, or specific health prevention programmes, comprehensive emergency health care and any care related to childbirth free of charge for all and, ensure that medical practitioners and staff at medical facilities do not report undocumented migrants. **Medical facilities should be available in international borders and throughout migratory routes where human rights-centred approaches are prioritized delinking the access to health from security and border control policies.**

e. Regarding *Monitoring racial inequalities in health and Data and Statistics*

We suggest highlighting that the data and information, when taking into account economic and social indicators, include migratory status as a relevant factor for the elaboration of public policies to close social gaps. In the current version, paragraph 33 cites the Durban Declaration and Programme of Action which refers to the categories of "health and health status, infant and maternal mortality, life expectancy, literacy, education, employment, housing, land ownership, mental and physical health care, water, sanitation, energy, and communications services, poverty and average disposable income", but leaves out migratory status. DRC in Colombia has collected evidence that shows that, migratory status intersects with racial and ethnic based discrimination accentuating the barriers in accessing health. Frequently, migratory status and lack of civil documentation constitute serious barriers to access to health services for non-citizens, including refugees, migrants, and asylum seekers belonging to groups protected by the Convention who tend to face more barriers than their peers who are not part of a racial or ethnic group.

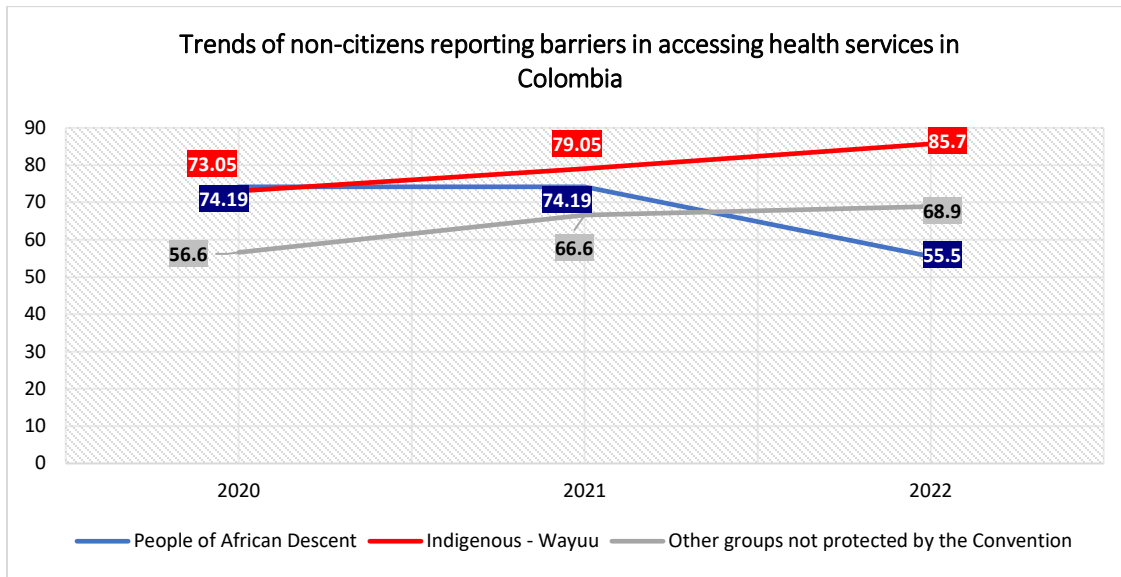


Figure 1. Annual percentage of non-citizens who reported experiencing barriers to accessing health services in Colombia.

The data collected by DRC in Colombia shows that refugees and migrants who belong to groups protected by the Convention tend to face more barriers. While the Colombian migratory regularization program "Temporary Statute for the Protection of Venezuelan Migrants" (ETPV) seemed to have had a positive effect on Afro-Venezuelan populations in reducing the barriers to access health services, unfortunately it has not been effective for the Wayuu population.

A similar situation was observed by DRC in Mexico in the data collected during 2021 and 2022 showing that Haitian refugees and migrants reported experiencing more barriers in accessing health in comparison to other nationalities. Haitian refugees and migrants are also less likely to have access to regular status. According to data from the protection monitoring from DRC between 2020 and 2023, 61.4% of Haitian migrants and refugees interviewed lacked documentation issued by Mexico. Language barriers further aggravate the access to health as there is little dissemination of rights information available in Haitian Creole which was reported by 50% of respondents as a key barrier in accessing health services. One of the main barriers associated with this population is the lack of information and the absence of information dissemination practices and strategies in Haitian Creole.

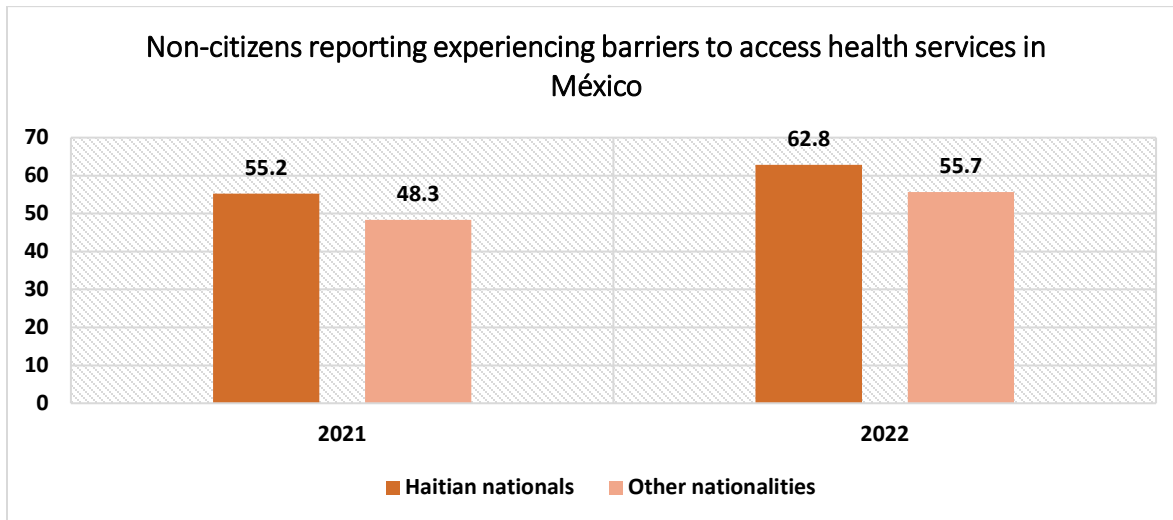


Figure 2. Comparison of Haitian nationals who reported experiencing barriers in accessing health services in Mexico to other nationalities.

Considered the aforementioned, DRC recommends adding an explicit mention to take into account migratory status in the section Monitoring racial inequalities in health in addition to being included in the section on Data and Statistics.

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