

Xenophobia and its impacts on the rights of migrants, their families, and other non-citizens affected by racial discrimination

Submission to the Committee on the Elimination of Racial Discrimination and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

Joint submission by: International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World),¹ The Fruit Basket (South Africa),² Queer for Queer (United Kingdom),³ Mesahat Foundation for Sexual & Gender Diversity (Egypt and Sudan)⁴ and the Office against Discrimination, Racism and Intolerance (ODRI)⁵

¹ **ILGA World**, <https://ilga.org>, established in 1978, is a federation of more than 1,700 organisations from over 160 countries and territories campaigning for lesbian, gay, bisexual, trans and intersex (LGBTI) human rights. ILGA World enjoys the ECOSOC status, consistently engaging with United Nations human rights bodies, and conducts legal and socio-economic research on the situation of LGBTI persons. ILGA World supports local LGBTI civil society groups engaging with United Nations Treaty Bodies, Special Procedures and the Human Rights Council.

² **The Fruit Basket**, <https://thefruitbasket.wixsite.com/fruitbasket/about>, is a registered non-profit organisation that advocates for the rights of lesbian, gay, bisexual, transgender, intersex and queer refugees, asylum seekers and forced migrants living in South Africa.

³ **Queer for Queer**, <https://www.queerforqueer.org/>, is a United Kingdom registered charity with international reach that supports LGBTQIA+ refugees, asylum seekers and migrants through education and employment. Queer for Queer is led by people with lived experiences (queers and/or migrants/asylum seekers/refugees). They use those experiences to create a new circle of queer care by bringing successful professionals and queer (and ally) organisations to provide education, skill improvement and employment for queers in disadvantaged positions.

⁴ **Mesahat Foundation for Sexual & Gender Diversity**, <https://www.mesahatfoundation.org/>, was established on September, 2015 for working on identifying and reducing security risks and eliminate the social obstacles faced by sexual and gender diversities in the Nile Valley Area (Egypt and Sudan) and to create appropriate means and tools for queer activists and community members to carry on their work safely and contribute to creating nourished and effective queer societies.

⁵ The **Office against Discrimination, Racism and Intolerance (ODRI)** is a LGTBI, anti-racist, apolitical NGO established in 2017. Among its principal goals is the introduction of intersectional approaches in human rights mechanisms, and the contribution to environmental, social, and racial justice. Furthermore, ODRI is also

Methodology

This submission presents the results of a collective discussion organized by ILGA World in response to the call for submissions by the Committee on Migrant Workers (CMW) and the Committee on the Elimination of Racial Discrimination (CERD) regarding their Joint General Comment/Recommendation on Obligations of State Parties on public policies for addressing and eradicating xenophobia and its impact on the rights of migrants, their families, and other non-citizens affected by racial discrimination.

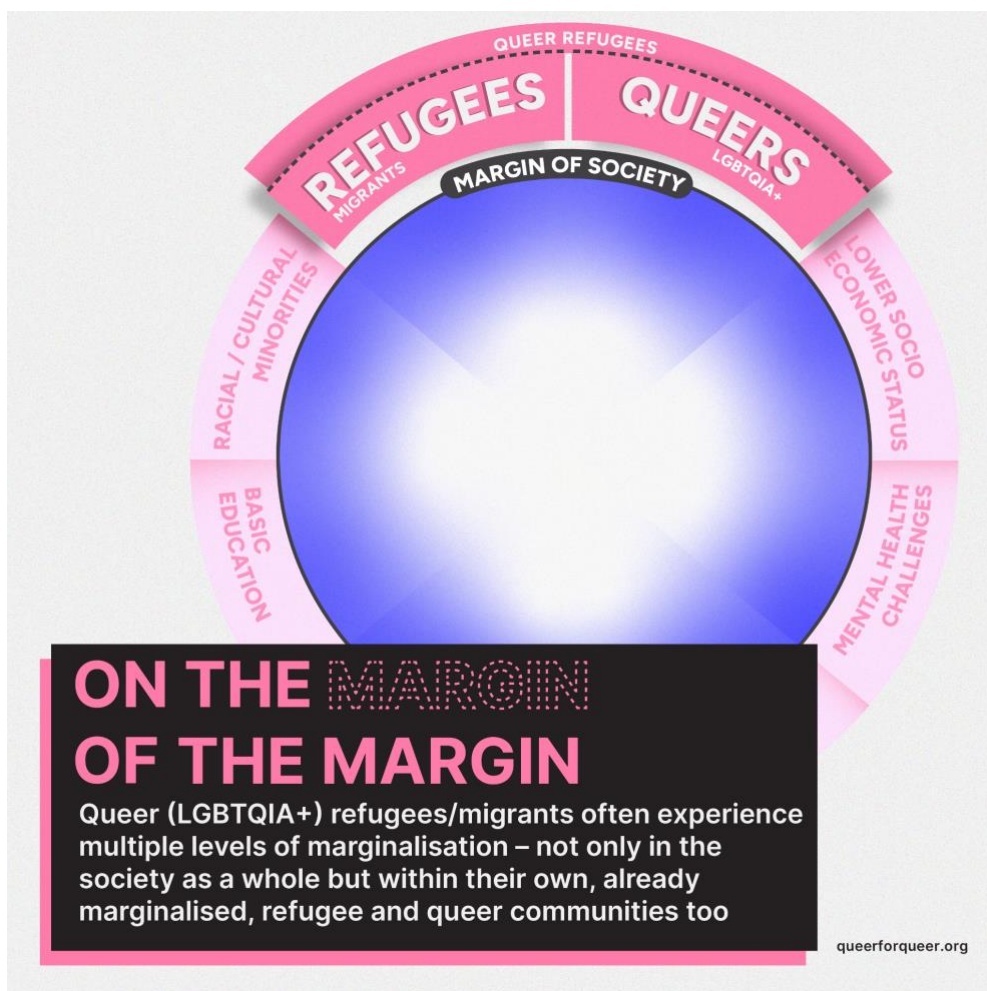
The dialogue focused on the questionnaire released by these committees and involved lesbian, gay, bisexual, trans, and intersex (LGBTI) human rights defenders from different regions engaging with treaty bodies on issues of racial discrimination, human mobility, and sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC). The information included in this submission comprehends Questions 1, 5, 6, and 7 of the questionnaire, which were identified as encompassing the most pressing issues for LGBTI persons in the context of the committee's future General Comment/Recommendation.

Question 1: How xenophobia should be defined nowadays, in social and political meaning that could lead to developing public policies directed to address its impact on the rights of migrants -within the scope of this General Comment/Recommendation-, their families, and other non-citizens affected by racial discrimination?

'Xenophobia' is a term whose meaning has been contested, depending on the individuals and fields using it. It can be understood as **harboring negative thoughts, feelings, actions, and/or behaviors towards someone or a group perceived as different**. It can also be considered a **process of "otherization"**. Although xenophobia and racial discrimination are distinct terms, they are often interconnected and correlated phenomena that reinforce each other. Being racialized and a migrant, displaced person, refugee or asylum seeker means facing two levels of oppression, based on race and migratory status. However, if this person also identifies as LGBTI, this can introduce yet another level of discrimination experienced in the country of origin, transit, and/or destination. This can lead to a compounded level of xenophobia and discrimination.

In the intricate web of social marginalization, the experiences of LGBTI refugees stand at the intersection of xenophobia, racial discrimination, different forms of migration and their implications, and LGBTI issues. Often referred to as "on the margin of the margin," LGBTI racialized migrants face dual or triple layers of marginalization, not only within their migrant and host country communities but also within the broader LGBTI communities; inter-violence and intra-violence can be found. The compounded challenges they encounter include intra-community discrimination, particularly affecting trans and intersex individuals, who find themselves at the fringes of acceptance even within spaces meant for advocacy and support.

responsible for coordinating the strategic participation of human rights activists and networks to empower their significant roles to play in the promotion and the global protection of human rights.



“Queer refugees are on the margin of the margin”⁶

Moreover, the ordeal of seeking asylum becomes a tormenting journey as they encounter systemic xenophobia, homophobia and transphobia, along with various forms of racial discrimination. LGBTI refugees, particularly from certain geographical areas, are subjected to **derogatory questioning and denied asylum** on inauthentic grounds, perpetuating the cycle of exclusion and vulnerability, and reinforcing discriminatory stereotypes. For instance, during the review of the periodic reports of the Kingdom of the Netherlands, CERD received information concerning stereotypes during the screening and determination of asylum claims based on sexual orientation, and the committee recommended the inclusion of civil society organizations to improve the assessment of asylum.⁷

Compounding xenophobia, racial discrimination, and LGBTI-phobia are the **broader political landscapes**, as seen in some government’s proposals to withdraw from key refugee protection and human rights conventions and implement policies that disregard the safety and well-being of vulnerable individuals, falsely claiming countries like Zimbabwe and Zambia as safe havens for LGBTI people, despite evidence to the contrary. Moreover, political figures spread messages about “kicking out migrants,” “migrants are stealing *our* jobs,” and a supposed relationship between crime rates and migration. In this complex narrative, **the voices and experiences of those navigating multiple**

⁶ Designed by Queer for Queer.

⁷ CERD/C/NLD/CO/35-36.

intersecting identities must be heard and considered while attempting to define ‘xenophobia,’ including an intersectional focus that pays attention to the different types of oppression one can face.

Question 5: How xenophobia should be addressed through an intersectionality lens? How should this policy be reciprocally complemented with policies directed to prevent and eradicate racism? Which measures should be put in place for ensuring a gender approach within a comprehensive policy against xenophobia and gender-based discrimination? Which measures should be implemented for intersecting xenophobia with other factors forbidden by the principle of non-discrimination, including age, gender, disability, sexual orientation, racial and ethnic origin, among others?

CERD has widely developed the concept and application of intersectionality through its general recommendations. Firstly, through General Recommendation XXV, the committee established a four-point typology of case analysis, to explain the form, context, consequences and remedies,⁸ which requires an intersectional analysis and understanding of a case. This general recommendation was issued by the committee in the context of racial discrimination and gender, emphasizing the importance of considering intersecting factors that contribute to rights violations and exploring how remedies can effectively address them.

Additionally, CERD released a General Recommendation highlighting the influence of descent and caste in shaping and perpetuating discrimination. This instrument acknowledges caste’s intersectionality with factors like segregation and access to food.⁹ Moreover, in its general comment on racial profiling, CERD mentioned that “Racial profiling is: (...) based on grounds of race, colour, descent, national or ethnic origin or their intersection with other relevant grounds, such as religion, sex or gender, **sexual orientation and gender identity**, disability and age, **migration status, or work or other status.**”¹⁰ The committee not only started focusing on intersectionality as a theoretical framework but as an issue that cuts across multiple identities, including those related to SOGIESC.

On the other hand, the CMW also developed intersectionality and its application in its “Draft outline: General Comment No. 6 on the Convergence between the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the Global Compact for Safe, Orderly and Regular Migration.” In its section on the “Protection of vulnerable categories of migrants/humane treatment,” it stated that “Migrants are not inherently vulnerable, or lack resilience and agency. Rather, **vulnerability to human rights violations is the result of multiple and intersecting forms of discrimination**, inequality and structural and societal dynamics that lead to diminished and unequal levels of power, opportunities and enjoyment of rights.”

The CMW also referred to a situation of “double vulnerability” that some children affected by migration are subject to, and mentioned that “Additional vulnerabilities could relate to their national, ethnic or

⁸ CERD, ‘General Recommendation XXV’ (2000) UN Doc A/55/18, paragraph 5.

⁹ CERD, ‘General Recommendation XXIX’ (2002) UN Doc CERD/C/61/Misc.29/rev.1, paragraph 1(a).

¹⁰ CERD, ‘General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials’ (2020) UN Doc CERD/C/GC/36, paragraph 13(c).

social origin; gender; **sexual orientation or gender identity**; religion; disability; migration or residence status; citizenship status; age; economic status; political or other opinion; or other status.”¹¹

An intersectional approach is found in the previous work of CERD and CMW, as well as other treaty bodies and UN mechanisms. This focus reflects the evolution of international human rights law and the UN mechanisms paying attention to the structural hierarchies and patterns of unequal resource and power distribution that perpetuate xenophobia and racial discrimination globally. For instance, during the review of Argentina, **both CERD and CMW identified that LGTBI persons face multiple forms of discrimination and violence**, including physical injury, threats, and intimidation. They pointed out that normative frameworks do not include sexual orientation and gender identity as protected grounds for discrimination. CMW particularly focused on the violence and harassment conducted by law enforcement agents against lesbian, gay, bisexual, or transgender migrant workers.¹²

Addressing xenophobia and its consequences requires considering the comprehensive work of CERD and CMW on intersectionality.¹³ This involves acknowledging the unique experiences of individuals with multiple identities, such as LGBTI individuals who also belong to indigenous peoples, minorities, Roma and ethno-religious minority groups, people of African descent, migrants, and other communities. LGBTI individuals often face discrimination based on their work, descent, disability, physical appearance, class, caste, social status, perceived racial or ethnic origin and migratory status. **It is crucial that the first draft of the General Comment/Recommendation on xenophobia follows the committees’ practice of applying an intersectional approach** and acknowledges these different intersecting and multiple forms of discrimination, including those based on sexual orientation, gender identity, gender expression, and sex characteristics. By recognizing these intersecting forms of discrimination, both treaty bodies can provide solution-oriented approaches to address the root causes of xenophobia and racial discrimination and work towards more inclusive and equitable societies.

Question 6: Which should be the role of media, both public and private actors, including digital, for preventing xenophobia and building cohesive societies? Which policies could be put in place, promoting social responsibility of media, within the scope of the protection of the right to freedom of expression? Please provide good practices on media initiatives for a responsible approach to migration, as well as on communication policies toward such goal

In the realm of human rights, **combating racial discrimination, xenophobia, and LGBTI-phobia in the media requires a concerted effort from various stakeholders**, including governments, the international community, and private entities. Recognizing the interconnectedness between xenophobic

¹¹ CMW and CRC, ‘Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration’ (2017), UN Doc CMW/C/GC/3-CRC/C/GC/22, paragraph 3.

¹² CMW/C/ARG/CO/2, 32-33; CERD/C/ARG/CO/21-23, 35-36; CERD/C/ARG/CO/24-26, 8-9.

¹³ CERD/C/BOL/CO/21-24, 17-18, 46-47; CERD/C/SEN/CO/19-23, 26-27; CERD/C/URY/CO/24-26, 26-27; CERD/C/SEN/CO/19-23, 26-27; CERD/C/PRT/CO/18-19, 13-14; CERD/C/USA/CO/10-12, 39-40; CERD/C/KZH/CO/8-10, 12-13; CERD/C/THA/CO/4-8, 13-14; CERD/C/NLD/CO/22-24, 35-36; CERD/C/BEL/CO/20-22, 24-25; CERD/C/COL/CO/17-19, 10-11; CERD/C/SWE/CO/22-23, 10-11; CERD/C/KGZ/CO/8-10, 15-16; CMW/C/PHL/CO/3, 27-28; CMW/C/NGA/CO/1-2, 34-35; CMW/C/GTM/CO/2, 26-27; CMW/C/JAM/CO/1, 62-63; CMW/C/LKA/CO/2, 26-27; CMW/C/HND/CO/1, 10-11, 26-27, 52-53; CMW/C/BLZ/CO/1, 18-19.

and anti-LGBTI sentiment in popular narratives is paramount, and efforts must be directed towards eliminating both forms of discrimination. It is essential to acknowledge the unique challenges faced by LGBTI asylum seekers, migrants, displaced persons and refugees amidst xenophobic environments, as these challenges encompass the perpetuation of **stereotypes related to disease transmission, limited healthcare access due to migrant status**, and the spread of **harmful stereotypes that depict migrant communities as societal threats**.

The proliferation of hate speech, particularly facilitated by social media algorithms and not correctly detected by cloud-based, cross-platform, encrypted instant messaging (IM) services or governmental anti-discrimination and data protection authorities, and especially found **in election processes and political campaigns**, poses a significant obstacle in the fight against xenophobia and discrimination. Organized hate speech campaigns orchestrated by nationalist, conservative, and state-sponsored groups exploit digital platforms, utilizing tactics such as altering spellings, employing coded language, and using emojis to evade detection. Furthermore, the ease with which companies can generate and disseminate aggravating data underscores the urgent need for counter-narratives to mitigate the effects of discrimination.

Addressing the root causes of disinformation and the dissemination of xenophobic narratives in media requires multifaceted approaches, including **promoting critical thinking education** to empower individuals in discerning fact from fiction and detecting discriminatory statements and information based on discriminatory stereotypes. Preventive measures should focus on dismantling hate speech campaigns at their inception while fostering an environment conducive to diverse narratives and perspectives. By amplifying counter-narratives and nurturing critical thinking skills, media and other stakeholders can play a pivotal role in combating xenophobia, racial discrimination, and LGBTI-phobia.

Question 7: How xenophobia could be addressed in the field of education, in order to: a) eradicate xenophobia at schools, and b) prevent xenophobia in the mid and long term, through education practices and subjects directed to build inclusive and cohesive societies?

*“It reaffirmed my long-standing belief that education was the enemy of prejudice”
- Nelson Mandela*

To combat xenophobia effectively at all levels, particularly in education, governments must adopt comprehensive measures as outlined in Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and Article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. **Ensuring non-discrimination requires States to prevent, detect, and monitor discriminatory stereotyping**, as well as to penalize individuals who make xenophobic statements that may undermine or impair migrants’ dignity in political discourse, official communications, or media content.

A critical aspect of addressing xenophobia involves **modifying school curricula to incorporate human rights education** modules that focus on racial discrimination and protection from all forms of discrimination. This includes collecting data on the impact of such programs and reforming curricula to include a country's historical past, normative framework, and narratives of individuals and groups who have suffered discrimination based on factors like race, skin color, descent, national or ethnic origin, and other intersecting and multiple forms of discrimination, such as SOGIESC. Moreover,

curricula should reflect the history and culture of various ethnic groups, **emphasizing the diversity within these groups and promoting their active, inclusive, and meaningful participation in the curriculum reform process.**

Combating xenophobia and fostering tolerance also necessitates awareness-raising campaigns for the general public, law enforcement officials, and judicial authorities that highlight the importance of non-discrimination and cultural diversity for all individuals. To ensure accurate representation and effective messaging, these campaigns should actively involve civil society organizations. Furthermore, teachers, school personnel and initiatives promoted by civil society organizations must be promoted in a safe and enabling environment and actively protected from harassment, threats, intimidation, and violence, ensuring that educational environments remain safe and inclusive spaces for learning. Additionally, educators should receive ongoing education to prevent the perpetuation of discrimination and xenophobia.

Facilitating a Regional Consultation Process on the Draft Joint General Comment/Recommendation

The submitting organizations request CERD and CMW to issue a General Comment/ Recommendation on xenophobia and racial discrimination, **drawing inspiration from the successful regional participatory approaches** employed by CERD's General Recommendation on health and CEDAW's General Recommendation on the rights of indigenous women and girls. These approaches involve **regional consultations** with a diverse array of stakeholders, including governments, national human rights institutions, the private sector, international organizations, and civil society organizations, including LGTBI activists and human rights defenders.

Such consultations empowered rights holders and facilitated productive dialogues among stakeholders. Activists from non-ICERD states have had the opportunity to engage with Committee members, discussing concerns not typically addressed in periodic reports. Additionally, regional consultations have aided in implementing international obligations and enhancing the credibility of international standards. This helps **counteract anti-rights discourses and xenophobic efforts**, as well as other practical and social barriers, such as **limited access to online platforms for engaging with treaty bodies** and the **high cost associated with traveling to Geneva, Switzerland for UN committee sessions.**

The submitting organizations strongly urge CERD and CMW to conduct comprehensive regional consultations on xenophobia and racial discrimination, adopting an intersectional approach that includes SOGIESC. These consultations should be inclusive and involve a broad range of stakeholders, mirroring the successful practices mentioned above. By integrating regional consultations specifically focused on xenophobia, CERD and CMW can promote dialogue, empower rights holders, and strengthen the legitimacy and effectiveness of international human rights standards in addressing these crucial issues.