

TO: The UN Committee on the Elimination of Racial Discrimination and the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
FROM: Christopher Batarseh, Abhinav Balamurugan, Amatullah Madera, Mackenzie Norris, Kamar Taweel, Damian Gao, Atia AnwerBasha, Dominic Monczewski, and Brian Gran
RE: CERD-CMW Joint General Comment/Recommendation on Obligations of State Parties on Public Policies for Addressing and Eradicating Xenophobia: Improving Individual Communications Procedures
DATE: March 31, 2024

This contribution focuses on the utility of the UN individual communication procedures (ICPs) for people who are stateless. ICPs are valuable tools to addressing and eradicating xenophobia stateless people experience every day. This contribution proposes repairs to ICPs as well as an innovation necessary to protecting human rights of people who are stateless.

The [UN Special Rapporteur](#) on contemporary forms of racism, racial discrimination, xenophobia and related intolerance indicates xenophobia “denotes behavior specifically based on the perception that the other is foreign to or originates from outside the community or nation.” The Special Rapporteur goes further to contend that xenophobia is found when “individuals are denied equal rights on account of real or perceived geographic origins of the said individuals or groups, or the values, beliefs and/or practices associated with such individuals or groups that make them appear as foreigners or outsiders.” People who are stateless face discrimination, including denial and violations of human rights, because they are perceived as outsiders.

This contribution is offered as input into the first draft of the 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 focus of this contribution is on practices UN member parties should change, then promote for preventing, eradicating, and responding to xenophobia. Its focus is on stateless people as the two Committees define for purposes of drafting the Joint General Comment, which includes every person who:

is not national of the country where he/she temporarily/permanently is, regardless the reason for leaving his/her country and also regardless of his/her migratory status. It includes asylum seekers, refugees, statelessness, victims of trafficking, and other people in the context international migration.

This contribution focuses on the utility of the UN ICPs for people who are stateless. This contribution contends that ICPs are not accessible to people who are stateless. It contends that ICPs are a crucial, essential tool to the United Nations and her member parties in preventing, eradicating, and responding to xenophobia. This contribution identifies repairs to the ICPs that will help the United Nations and her member parties prevent, eradicating, and respond to xenophobia. It recommends a new strategy to individual communications about rights violations.

The United Nations has stated that:

Anyone may bring a human rights problem to the attention of the United Nations and thousands of people around the world do so every year...It is through individual complaints that human rights are given concrete meaning. In the

adjudication of individual cases, international norms that may otherwise seem general and abstract are put into practical effect.

These statements are not entirely accurate for people who are stateless.

As CERD and CMW Committee members know, people who are stateless face multiple obstacles in employing an ICP. Those obstacles include:

1. that a State may not be a party to the relevant instrument;
2. that the State party may not recognize the competence of the Committee monitoring the treaty;
3. that while the complaint must be communicated via a UN language (Arabic, Chinese, English, French, Russian and Spanish), the stateless individual cannot communicate in one of these languages; and,
4. that the complainant cannot demonstrate that they have exhausted domestic remedies.

A problem for using CERD and CMW ICPs is that many States have not recognized the competences of Committees by ratifying the Optional Protocols. For the CERD, the UN Human Rights Office of the High Commissioner [reports](#) that approximately sixty UN member parties have accepted ICPs for CERD. For the CMW, neither the inter-State communications procedure nor the individual complaint mechanism have entered into force as of the date of this contribution. Article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families gives the Committee on Migrant Workers (CMW) competence to receive and consider individual communications alleging violations of the Convention by States parties who made the necessary declaration under article 77.

Another problem for using CERD and CMW ICPs migrants is that the complaint must be communicated in Arabic, Chinese, English, French, Russian, or Spanish. The Institute for Statelessness and Inclusion reports for 2020 that Rohingya people from Myanmar are among the largest groups of people who are stateless. Rohingya, of course, is not one of the UN's languages. A related concern is the likelihood that many people who are stateless will be unfamiliar with the CERD and CMW ICPs.

Another problem for using CERD and CMW ICPs is that the complainant is expected to demonstrate exhaustion of domestic remedies. While Article 16 of the 1951 Convention relating to the Status of Refugees indicates a refugee will have access to courts, many stateless people do not have access to courts. Consequently, they cannot exhaust domestic remedies.

Each of those factors preclude employment of ICPs by most stateless people. The combination of these factors conveys to stateless people not only that they are ineligible to file individual complaints, but in many ways their human rights are not given concrete meaning. For people who are stateless, international norms remain abstract, without practical effect and meaning to their lives. For people who are stateless, using their human rights to battle xenophobia as individuals and collectively is restricted in significant, meaningful ways.

To address and eradicate xenophobia, this contribution recommends that CERD and CMW take steps to ensure that their work in monitoring their respective instruments and ensuring the rights those instruments articulate are available to stateless people.

This contribution recommends that CERD and CMW make their individual communication procedures available to people who are stateless. CERD and CMW should take publicize their ICPs to people who are stateless. It recommends that CERD and CMW reject the requirement that a person who is stateless live in a country whose State is a party to the relevant instrument. This contribution recommends that the CERD and CMW loosen requirements of exhausting domestic remedies for people who are stateless. Given differences in national laws and difficulties in exhausting domestic remedies, as well as linguistic differences and challenges in communicating with the Committees for people who are stateless, CERD and CMW should establish a procedure by which people who are stateless can request an intake interview with a UN official. A paralegal would interview this person via an online, secure platform or another method. The person's communication would be reviewed by a panel of impartial attorneys CERD and CMW designate.

This contribution recommends establishment an international Legal Services Agency (ILSA). The ILSA is an innovation that will be useful, perhaps necessary, for people who are stateless to exercise their human rights, including employing an ICP.

The ILSA would be set up according to geographic regions in countries whose governments are willing to host ILSA offices. The ILSA would set up temporary, dedicated offices in locations of immediate concern. In other locations, people would contact ILSA professionals via online, secure platforms.