30 March 2024

**Submission to concept paper for the CERD[[1]](#footnote-2)-CMW[[2]](#footnote-3) 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.**

Under the call for "Specific Thematic Guidelines", recommendations for "Political Rights & Electoral Processes", including proposed revisions to General Recommendation No. 35, to include more guidance on electoral processes

1. **Context/Problem Statement – Anti-Migrant Xenophobia in Electoral Processes**

In 2024, nearly half of the world’s population will be asked to vote in elections in their jurisdictions[[3]](#footnote-4). While the International Organization for Migration (IOM) estimates that the proportion of migrants in the world population has increased more than threefold between 1990 and 2020, the total estimated proportion is just over 3%[[4]](#footnote-5). Given this low percentage, immigration, including anti-migrant rhetoric, often occupies a disproportionately large position in many election debates[[5]](#footnote-6), especially in popular migration destination States. A London School of Economics (LSE) report on its survey of the role of immigration in electoral debates concludes that “*whereas topline survey figures of more banal questions suggest national-level stability or even positivity, more intricate and even extreme narratives on immigration such as the so-called Great Replacement Theory, underscored by widespread fears of migration leading to social conflict, threaten to excite not only electoral behaviour but extra-parliamentary political behaviour, including violence*.”[[6]](#footnote-7) Furthermore, UNESCO’s 2023 “survey on the impact of online disinformation and hate speech”[[7]](#footnote-8) found that “citizens strongly believe that both governments and regulatory bodies (89%) and social media platforms themselves (91%) should play an "active role" in combating [disinformation and hate speech] during election campaigns”[[8]](#footnote-9). This specific issue of anti-migrant xenophobia and hate speech in electoral processes, especially online, is additional to the many other risks faced by migrants and their families, as identified in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) and thus requires dedicated measures to combat it. Some key proposed measures are outlined below.

1. **Recommended Revisions to CERD General Recommendation No. 35**

* The Recommendation currently only mentions migrants/immigrants in Paragraph 6. It is therefore recommended to revise the Recommendation to include migrants in all relevant paragraphs where protected groups are enumerated, especially Paragraph 13(b), to expand the interpretation of the application of ICERD to those facing xenophobic hate speech on the grounds of their (real or perceived) migration status.
* The Recommendation also does not currently directly address electoral processes. It is therefore recommended to revise the Recommendation to include proposed measures for the curtailment of racist and anti-migrant xenophobic hate speech in the context of elections. Relevant paragraphs to be revised include:
  + 32-35, relating to ICERD Article 7’s obligation on the Committee on the Elimination of Racial Discrimination (CERD) to tackle racist hate speech through teaching and education, which should be expanded to include teaching and education on xenophobia toward migrants and their families.
  + 36-41, relating to information dissemination and public discourse on race and racism, including in politics and in the media, which should be revised to explicitly include electoral campaigning and the need for concrete measures by States Parties, i.e. through Electoral Commissions, to curtail anti-migrant xenophobic hate speech by politicians, electoral campaigners and media (particularly social media), in line with the recommendations made below in this Submission.
* The below recommended *Policy to Safeguard against Anti-Migrant Xenophobia in Electoral Processes* will refer to the updated and re-issued General Recommendation No. 35.

1. **Recommendations for a Policy to Safeguard against Anti-Migrant Xenophobia in Electoral Processes:**
   1. **For National, Regional, and Local Governments**

* Provide financing to enable immigrant and pro-immigrant ally civil society organisations, especially immigrant-run and –led organisations, to enable them to hire staff to enhance their social media and online profile and participate in public discourse about xenophobic speech and narratives, including those promoted by political candidates and parties[[9]](#footnote-10). Also, provide these organisations with the necessary funds to provide specialized training for their staff, volunteers, and beneficiaries in recognising and combatting hate speech[[10]](#footnote-11).
* Recognising that political participation and representation are critical to inclusion and combatting xenophobia, ensure that all eligible immigrants and their family members are enabled to register to vote in elections (local and national level, progressively), as appropriate, including through removal of barriers such as excessive or discriminatory bureaucratic requirements.[[11]](#footnote-12)
  1. **For Electoral Commissions/Regulators**
* In accordance with the Committees’ understanding of Article 4(c) regarding particular concern about public authorities and institutions employing racist expressions[[12]](#footnote-13), implement independent monitoring mechanisms to prevent the use of hate speech that intends to disseminate ideas of racial or ethnic discrimination, prejudice, or hatred against peoples or members of a group during electoral campaigns.
* Require candidates to sign an Anti-Racism Code of Conduct in which they commit to eschew racist and anti-migrant xenophobic electoral campaign rhetoric.[[13]](#footnote-14) This is in line with:
  + - ICERD Art 4 which obliges States Parties ‘to take “immediate and positive measures” to eradicate incitement and discrimination, a stipulation that … reinforces obligations under other articles … to dedicate the widest possible range of resources to the eradication of hate speech’;
    - ICMW Art 14 which stipulates that migrants and their families must be protected from ‘unlawful attacks’ upon their ‘honour or reputation’;
    - CERD General Recommendation No. 35 on Hate Speech[[14]](#footnote-15); and
    - CERD General Recommendation No. 32 which enumerates ‘special measures’ available to States, including policies and regimes, with the above-proposed Code of Conduct falling into the category of a “policy”[[15]](#footnote-16).
* Create reporting/whistle-blowing mechanism within Electoral Commissions, where instances of anti-migrant xenophobic electoral rhetoric can be reported and investigated by the Commission under domestic law provisions related to ICERD and ICMW.
  1. **For Candidates/Campaigners**
* Through signing of the Anti-Racism Code of Conduct for Electoral Campaigns, publicly commit to refrain from the use of racist/xenophobic hate speech during any stage of an electoral process that encroaches on Article 1 of ICERD and Article 20 of ICCPR. As recognized by the Committee in General Recommendation No. 35 on Hate Speech, racist hate speech is not only understood or confined to ‘explicitly racial remarks’[[16]](#footnote-17), as it includes any ’speech attacking particular racial or ethnic groups [which] may employ indirect language in order to disguise its targets and objectives’[[17]](#footnote-18). Any and all forms in which the candidate or campaigner chooses to communicate or manifest such hate speech shall be prohibited and condemned[[18]](#footnote-19).
* Candidates and campaigners are strongly encouraged to undertake consultations with migrant representative organisations (see Civil Society section below) to better understand the forms, vehicles and impacts of xenophobia occurring within their jurisdictions.
  1. **For Media**
  + Social Media
    - UNESCO’s 2023 “survey on the impact of online disinformation and hate speech”, conducted with internet users in 16 countries in which national elections were foreseen in 2024[[19]](#footnote-20), identified the following key findings of relevance to anti-migrant xenophobia in electoral processes. Although there are significant variations between countries, on average:
      * + “56%...use social media to stay informed about current events, far ahead of television (44%)”;
        + “67%...have encountered [hate speech] online (including 74% of those under 35)”; and
        + “According to citizens, it is primarily LGBT+ people…and ethnic or racial minorities who are victims of online hate speech in their country”.[[20]](#footnote-21)
      * These statistics combine to reveal (or confirm) social media as the media of greatest concern when it comes to hate speech. Furthermore, Nobel Peace Prize Winner, Maria Ressa, whose organisation has been monitoring social media influencing of politics and elections since 2014 says: ‘*The business model of social media is … “surveillance capitalism”. The platform’s goal is not to … give you more knowledge … [but] to keep you scrolling. And so [social media] platforms prioritise lies laced with anger and hate ... In terms of elections if you don’t have integrity of facts, how can you have integrity of elections?’*[[21]](#footnote-22) [[22]](#footnote-23). Therefore, it is recommended to:
        + Promote the social media profiles and give more visibility to the speech of immigrant and pro-immigrant ally civil society organisations, bearing in mind that the former tend to have less funding and staff available than their ally counterparts[[23]](#footnote-24), therefore meaning that immigrants often are least able to participate in the debates surrounding xenophobic speech and narratives, and marginalised in the discourse which most directly affects them[[24]](#footnote-25);
        + Proactively adapt media regulatory measures already applicable to mainstream media to social media platforms, to enable timely and effective combating of online xenophobic hate speech, especially in the context of elections. This will require international cooperation of States Parties.
  + Mainstream Media
    - Avoid disseminating dis- and mal-information[[25]](#footnote-26) that intends to discriminate or create hostility towards people or members of a group belonging to a specific race or ethnicity, which goes against the provisions set forth in ICERD and ICMW[[26]](#footnote-27). This is in accordance with the Commitee’s observations in General Recommendation No. 35 on Hate Speech which express the important role that mainstream media and other popular platforms ought to have in “promoting responsibility in the dissemination of ideas and opinions”[[27]](#footnote-28).
    - Commit to abiding by and implementing ethical practices and standards that help counter any type of fabricated information and ‘fake news’ considering its prevalence and impact on political life[[28]](#footnote-29).
    - Avoid use of the term ‘illegal’ to refer to migrants who have not taken regular modes and routes of entry. Using the term ‘illegal migrants’ contributes to maintaining and promulgating a pernicious mainstream narrative that stigmatises and criminalises irregular migrants[[29]](#footnote-30). The word ‘irregular’, or a similar term, can possibly contribute to the destigmatisation of migrants who have employed these modes of entry and dissociate it from criminality.
    - Cooperate with governmental authorities and civil society organisations to develop both written and digital guides and handbooks for researchers and journalists, specifically to help them recognise xenophobic tropes and narratives in their sources and the speech of their interviewees, and to construct counternarratives where they encounter such tropes and narratives[[30]](#footnote-31). It should be emphasised that conventional news media has an obligation to so counter xenophobia where they encounter it, as allowing xenophobic rhetoric to be uttered unchallenged and uncriticised on their platform can unintentionally promote it[[31]](#footnote-32).
  1. **For Civil Society** 
     + Engage the general public through reports, workshops and other activities that can educate and bring awareness on the risks and impacts of disinformation leading up to, during and after elections[[32]](#footnote-33).
       - Such activities may include awareness-raising campaigns to educate a) the general public or b) specific age or professional groups about what xenophobic speech and narratives are, their possible consequences for the people targeted by them, and how to recognise and respond to xenophobia when promoted by an electoral candidate or their followers[[33]](#footnote-34).
       - They may also include ‘affirmative’ counter-storytelling campaigns, offering humanising and anti-discriminatory counternarratives about immigrants and their lives[[34]](#footnote-35).
       - Finally, they may include ‘restrictive’ measures to gather information about xenophobic speech and narratives and their sources to report, respond to, or restrict such speech/narratives[[35]](#footnote-36).
       - Civil society organizations (CSOs) may undertake specific activities, especially those intended to raise public awareness and practice counter-storytelling, such as the following:

Use their social media accounts and websites to tell stories of racism, xenophobia, and police brutality and debunk common lies told about immigrants[[36]](#footnote-37);

Run sensitization campaigns, forums, training sessions and webinars for the general public or specific audiences (university students, professionals in social and health services, etc.) to ‘eliminate misconceptions’ about immigrants and immigration law[[37]](#footnote-38);

Direct web-users to accurate primary sources about immigrants and immigration[[38]](#footnote-39); and/or

Produce podcasts, radio programmes, and documentary films offering testimony from immigrants and journalistic explorations of their neighbourhoods[[39]](#footnote-40).

* + - CSOs should support all eligible immigrants and members of their families to register to vote in elections (local and national level, progressively), as appropriate.
  1. **Punitive Measures** 
     + Expanding on the CERD Committee’s suggestion, stated in General Recommendation No. 35 on Hate Speech, to include “measures of a disciplinary nature”[[40]](#footnote-41), in case of infringement of the Electoral Campaign Code of Conduct, States Parties to the Conventions whose legislation does not already address anti-migrant hate speech are encouraged to introduce and apply the following punitive measures for those deemed by Electoral Commissions to be in violation of the Code of Conduct:
       - 1. Require media outlets and social media companies found disseminating hate speech to pay monetary fines.
         2. Issuing of a public retraction statement when fabricated information or fake news is broadcasted, published or posted.
         3. Freezing of campaign funds or removal of a certain percentage of the total amount of funds at the time of the infringement.
         4. Mandatory public acknowledgement by campaigners of any hate speech violation determined by participating Electoral Commissions.

These measures are expected to act as deterrents from further and future use of hate speech.

1. **Conclusion**

Because of the concerning increase of xenophobia and its negative impact on the rights of migrants and their families, and other non-citizens affected by racial discrimination, especially in light of the national elections that will be held this year in various countries, the Irish Centre for Human Rights would like to thank the Committee for the opportunity to provide recommendations to States Parties on how to address and eradicate xenophobia in the context of electoral processes. These initiatives aim at engaging and fostering collaboration among key actors, such as governmental authorities, electoral regulators, candidates, civil society organizations, news outlets and social media platforms, to create a comprehensive framework for policy development that align with ICERD and ICMW, in addition to providing suggestions to amend General Recommendation No. 35 on Hate Speech to expand the interpretation of the application of ICERD.

1. UN Committee Against Racial Discrimination (CERD) [↑](#footnote-ref-2)
2. UN Committee for the Protection of the Rights of Migrant Workers and Their Families (CMW) [↑](#footnote-ref-3)
3. Time Magazine, <https://time.com/6550920/world-elections-2024/>, accessed 28 March 2024 [↑](#footnote-ref-4)
4. International Organization for Migration (IOM), <https://worldmigrationreport.iom.int/wmr-2022-interactive/>, accessed 28 March 2024 [↑](#footnote-ref-5)
5. Gallup, ‘Immigration Surges to Top of Most Important Problem List’, <https://news.gallup.com/poll/611135/immigration-surges-top-important-problem-list.aspx> Feb 2024 US survey found that 28% of respondents is immigration is the most important problem facing the USA, making it the number one concern for voters. [↑](#footnote-ref-6)
6. James Dennison & Alexander Kustov, ‘How immigration could shape the elections of 2024’, (LSE Blog, 19 February 2024) <https://blogs.lse.ac.uk/europpblog/2024/02/19/how-immigration-could-shape-the-elections-of-2024/>, accessed 28 March 2024 [↑](#footnote-ref-7)
7. UNESCO/IPSOS, ‘Survey on the impact of online disinformation and hate speech’, [www.unesco.org/sites/default/files/medias/fichiers/2023/11/unesco\_ipsos\_survey.pdf](http://www.unesco.org/sites/default/files/medias/fichiers/2023/11/unesco_ipsos_survey.pdf), accessed 28 March 2024 [↑](#footnote-ref-8)
8. UNESCO/IPSOS, (n7) 8 [↑](#footnote-ref-9)
9. Pilar Rodriguez Martinez, et al., ’Hate-Speech Countering by Immigrant and Pro-Immigrant Associations in Almeria (Spain)’ 2 Jan. 2024, 13 Social Sciences 33, 35, 44, 53. [↑](#footnote-ref-10)
10. id [↑](#footnote-ref-11)
11. As highlighted in the Concept Note on the CERD-CMW 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, 7 [↑](#footnote-ref-12)
12. UN Committee on the Elimination of Racial Discrimination (CERD), ‘General Recommendation No. 35: Combatting racist hate speech’, adopted 26 September 2013, UN Doc CERD/C/GC/35, Para 22 (CERD Gen Rec 35) [↑](#footnote-ref-13)
13. See Anti-Racism Election Protocol (AREP) produced by Irish Network Against Racism (INAR) for 2024 Elections as a positive example: <https://inar.ie/wp-content/uploads/2024/02/AREP-2024-A4.pdf>, accessed 23 March 2024. We recommend that anti-migrant xenophobia be specifically mentioned in such election protocols/codes of conduct. [↑](#footnote-ref-14)
14. CERD Gen Rec 35 (n12), art 15, highlights the particular “role of politicians and other public opinion-formers in contributing to the creation of a negative climate towards groups protected by the Convention” [↑](#footnote-ref-15)
15. General recommendation 32 of the Committee on the Elimination of Racial Discrimination (adopted 24 September 2009) UN Doc CERD/C/GC/32, Para 11 (CERD Gen Rec 32) [↑](#footnote-ref-16)
16. CERD Gen Rec 35 (n12) Para 7 [↑](#footnote-ref-17)
17. id [↑](#footnote-ref-18)
18. id [↑](#footnote-ref-19)
19. UNESCO/IPSOS (n7) 3 [↑](#footnote-ref-20)
20. id 8 [↑](#footnote-ref-21)
21. Real Facebook Oversight Board, ‘Interview - Maria Ressa on Facebook, Disinfo + the Philippine Election’, (The Medium, 7 May 2022) <https://rfob.medium.com/interview-maria-ressa-on-facebook-disinfo-the-philippine-election-7728a8540fab>, accessed 20 March 2024 [↑](#footnote-ref-22)
22. The negative correlation between capitalism and the exploitation of racial minorities is also addressed by Makau Mutua in ‘Critical Race Critical Race Theory and International Law: The View of an Insider-Outsider’, Villanova Law Review 45 (2000) 841 [↑](#footnote-ref-23)
23. Martinez (n 9) 42-43, 50, 54. [↑](#footnote-ref-24)
24. id at 35, 48, 53. [↑](#footnote-ref-25)
25. Wardle and Derakshan ‘Information Disorder: Toward an interdisciplinary framework for research and policy making’ (2017) Council of Europe Repot, <https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c,> accessed 30 March 2024.

    As stated in this report, there are three types of information: a) Mis-information is when false information is shared, but no harm is meant b) Dis-information is when false information is knowingly shared to cause harm, c) Mal-information is when genuine information is shared to cause harm, often by moving information designed to stay private into the public sphere.

    The term mis-information tends to be used incorrectly. In this context dis- and mal-information are being used as they are types of information that intend to cause harm. [↑](#footnote-ref-26)
26. Wardle and Derakshan ‘Information Disorder: Toward an interdisciplinary framework for research and policy making’ (2017) Council of Europe Repot, <https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c,> accessed 30 March 2024 [↑](#footnote-ref-27)
27. UN Committe on the Elimination of Racial Discrimination (CERD), ‘General Comment No. 35: Combatting racist hate speech’, adopted 26 September 2013, UN Doc CERD/C/GC/35, Para 39. [↑](#footnote-ref-28)
28. UNESCO/IPSOS (n7)

    Wardle and Derakshan ‘Information Disorder: Toward an interdisciplinary framework for research and policy making’ (2017) Council of Europe Repot, <https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c,> accessed 30 March 2024 [↑](#footnote-ref-29)
29. Delgado, Richard, and Jean Stefancic. Critical Race Theory: An Introduction, Fourth Edition. New York University Press, 2023, Chapter 3: Legal storytelling and narrative analysis [↑](#footnote-ref-30)
30. See Akil Yunus, ’Countering Online Radicalisation during the COVID-19 Pandemic’ Mar. 2022, 14(2) Counterterrorist Trends and Analyses 9, 14. See also Richard Delgado & Jean Stefancic, *Critical Race Theory: An Introduction* (4th edn, NYUP 2023) 45-55. [↑](#footnote-ref-31)
31. See Yunus (n 21) 14. See also Chimamanda Ngozi Adichie, ’The danger of a single story’ TEDGlobal Conference 2009 (July 2009) <https://www.ted.com/talks/chimamanda\_ngozi\_adichie\_the\_danger\_of\_a\_single\_story> accessed 17 March 2024. [↑](#footnote-ref-32)
32. Wardle and Derakshan ‘Information Disorder: Toward an interdisciplinary framework for research and policy making’ (2017) Council of Europe Report, <https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c,> accessed 30 March 2024 [↑](#footnote-ref-33)
33. Martinez (n 9) 37-38, 44. [↑](#footnote-ref-34)
34. id [↑](#footnote-ref-35)
35. id [↑](#footnote-ref-36)
36. Martinez (n 9) 49, 50. [↑](#footnote-ref-37)
37. Martinez (n 9) 49-50. [↑](#footnote-ref-38)
38. Martinez (n 9) 51. [↑](#footnote-ref-39)
39. Martinez (n 9) 50-51. [↑](#footnote-ref-40)
40. CERD Gen Rec 35 (n12), Para 22. [↑](#footnote-ref-41)