**Inputs for 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**

Submitted by Migrant-Rights.org

**About Migrant-Rights.Org**

Migrant-Rights.org is a research and advocacy organisation that aims to advance the rights of migrant workers in the Gulf Cooperation Council (GCC). For over 15 years, we have documented and spotlighted emerging migrant rights issues and abuses across the GCC; worked closely with key stakeholders across the ecosystem, supporting them to implement our recommendations in their unique contexts; and nurtured interregional networks of migrant rights organisations, to strengthen solidarity, knowledge sharing and community support. Migrant-Rights.org works closely with migrant workers, non-governmental organisations, activists, and civil society organisations across the region. The information and analysis provided in this report are based on our reporting on the country and our engagement with the above stakeholders. Questions outside of our remit have not been answered.

**Content & Questions**

Submissions are expected to provide inputs on the goals, scope, and topics described by the CERD and the CMW in the outline of the Joint General Comment. The following non-exhaustive questions could guide the elaboration of the Submissions:

1. **How xenophobia should be defined nowadays, in a 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?**

The concept note accompanying the CERD-CMW Joint General Comment/Recommendation highlighted the absence of an internationally recognised legal definition of xenophobia. While achieving a universally accepted and precise definition may be difficult to attain, xenophobia inherently encapsulates both actions and attitudes employed by an “insider” group to marginalize "outsiders," denying them the privileges often linked, to a national or statist identity, as articulated by Professor of Law and expert consultant to the UN Human Rights Council’s Special Rapporteur on Contemporary Forms of Racism Natsu Taylor Saito [[1]](#footnote-1) It's also important to recognize that although "phobia" is attached to the term, xenophobia is not necessarily about fear; while fear might be mobilized, it is better understood as a form of animus or hostility,[[2]](#footnote-2) that is designed and executed by the state machinery.

According to Professor of Law and former Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance E. Tendayi Achiume, it is crucial to acknowledge xenophobia as inherent within governance and to analyze xenophobia in terms of its structural drivers, rather than solely as a matter of individuals committing prejudice-driven acts against foreigners.[[3]](#footnote-3)

Though there are no international instruments on xenophobia and hate speech, the UN Strategy and Plan of Action on Hate Speech[[4]](#footnote-4) defines hate speech as… “any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.” The Rabat Plan of Action[[5]](#footnote-5) on ‘the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to hostility, discrimination or violence’, also provides guidelines to states to prohibit hate speech. If we were to frame xenophobia as a key component of hate speech, then these existing guidelines and definitions must be used in national legislation.

In the Gulf Cooperation Council (GCC) context, a significant structural driver for xenophobia lies in the Kafala (or sponsorship) system and exclusionary citizenship practices (citizenship in the Gulf is strictly paternal jus sanguinis, and migrants typically have no path to becoming part of the citizenry), which establish the citizen (insider)/non-citizen (outsider) dichotomy that defines Gulf societies.[[6]](#footnote-6) The kafala system is a complex of laws and practices that regulate migration and residency in the GCC states. Though there are shades of difference in each Gulf state, its defining feature is the tying of all migrants’ residency to a local sponsor, and forced temporariness of all but the wealthiest of migrants.[[7]](#footnote-7) The system renders migrants dependent on their employers for legal residency, and controls on employment mobility artificially keep wages low. This socio-cultural-economic marginalisation of migrants is thus by design and deliberately excludes migrant workers from fully participating in the nations and facilities they build.

1. **What elements should a comprehensive and holistic public policy have aimed at preventing and eradicating xenophobia in migrant-receiving societies? Which ministries, secretaries, and other public bodies should be involved in the design, implementation, and periodic evaluation of such policy?**

Currently, there are no dedicated institutions in the Gulf States focused on combating and eliminating xenophobia. Any public policy aimed at eradicating xenophobia must prioritize addressing the inherent "outsider" status imposed on migrants by the Kafala system prevalent in the Gulf States. Such policy must account for xenophobia that is tied to social factors such as citizenship, race, gender, disability, and class. Across GCC states, institutions that tackle these social issues tend to exclude migrants from their scope of protection. Institutions like the Supreme Council for Women, Media Ministries, Ministries of Education, Immigration and Interior Ministries, and the Ministries of Labour and Social Development, which typically target various social issues, must collaborate to implement policies that address the challenges faced by migrants in the region, including discrimination and xenophobia.

1. **How to measure the impact of these policies? Should indicators be needed? Which practices could better assess the progress, challenges, setbacks, and other outcomes?**

As a starting point, states must pass national laws that take into consideration the guidelines of the Rabat Plan and the UN strategy (see response to Q1)

1. **Which follow-up mechanisms should be put in place? Which stakeholders should have a role on these mechanisms?**

Migrants must be stakeholders in the development of these policies and in their follow-up mechanism. Currently, migrant representation is absent in policies that predominantly affect migrants across the GCC states, in part because trade unions and collective organizing are either prohibited or tightly restricted for migrants.

1. **How xenophobia should be addressed through an intersectionality lens? How this policy should 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?**

Intersectionality provides a nuanced perspective for comprehending and dissecting the intricacies of individuals' experiences. It recognizes that the myriad factors influencing lived experiences—such as gender, race, and citizenship—cannot be understood in isolation but rather as interconnected layers. Employing Intersectionality as an analytical framework broadens the scope to consider various intersecting identities, shedding light on political and structural inequalities and the complex interplay of racial, ethnic, gender, and class dynamics.

In the Gulf States, domestic workers constitute a significant portion of the female and migrant labour force. For instance, in Kuwait, domestic workers represent over a quarter of the migrant workforce.[[8]](#footnote-8) Yet, they are among the most vulnerable groups in Gulf societies, facing frequent instances of racism and xenophobia. Additionally, female domestic workers often endure abuse at the hands of female employers.

Merely examining identities like gender in isolation is inadequate. Instead, unravelling intersections is essential for devising practical strategies and legal interventions tailored to the specific needs of marginalized groups like domestic workers. Given that all domestic workers lack citizenship in the Gulf, any anti-xenophobic policy must embrace an expansive and inclusive feminism that challenges exclusionary practices such as Kafala. As the prolific feminist thinker and Professor of Women’s Studies Chandra Talpade Mohanty states, it requires a "feminism without borders," recognizing that borders encompass more than just geographical lines but also divisions based on nationality, race, class, sexuality, religion, and disability. Imagining[[9]](#footnote-9) transformative actions for social justice necessitates crossing these boundaries.

1. **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.**

The Gulf States consistently rank among the lowest globally in terms of press freedom and freedom of speech, with strict government regulation and censorship of media.[[10]](#footnote-10) Despite these constraints, the Gulf media has long played a significant role in perpetuating negative stereotypes and rhetoric against migrants. This trend has been exacerbated by a global increase in xenophobic discourse, particularly following the onset of Covid-19 and the economic downturn in recent years. Media outlets, including social media platforms, have actively contributed to the dissemination of hateful narratives that scapegoat migrant populations for the spread of the virus. Such narratives have served to legitimize calls for heightened border protection and restrictive policies, fostering an environment of fear and division.[[11]](#footnote-11) The Gulf States must allow for freedom of expression and press to counter such hateful and selective narratives.

While news media is censored, social media has given a platform to xenophobic discourse with little or no action from the states. While the fear of misuse of cybercrime laws in this context is real, there has to be some level of monitoring to prevent hate speech, without adversely impacting the already limited freedom of expression.

Furthermore, other kinds of media including advertisements and public interest messaging tend to stereotype based on race, ethnicity, and gender. While this is not an easy issue to navigate through regulations, it can be addressed via education and public discourse.

1. **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?**

The education curricula in the Gulf region require immediate revision to confront biases and eliminate stereotypes perpetuating discrimination. It is imperative to integrate the histories of minorities, migrants, and slavery into relevant studies. Key educational materials must feature contributions from authors, historians, and other educational figures representing diverse racial, ethnic, and citizenship backgrounds that make up Gulf societies. Additionally, policies should aim to eradicate the racial and ethnic segregation that persists within the Gulf countries' education systems.

1. How policies against xenophobia could be framed within child welfare and youth policies? And within policies for older persons?
2. How policies for preventing xenophobia could be mainstreamed within policies directed to achieve Sustainable Human development?
3. **Which standards should be added to those already existing for preventing, eradicating and prosecuting hate speech, including through digital technologies?**

In some instances, cybercrime laws are deployed to respond to xenophobic comments. However, this usage is not consistent or transparent, and these overly restrictive laws are more likely be used to detain and deport migrants for expressing political views.[[12]](#footnote-12)

1. Which practices could be included in the comprehensive policy against xenophobia in order to prevent the use of xenophobic narratives and strategies with election processes?
2. **Which could be the role of local governments within a comprehensive policy directed to prevent and eradicate xenophobia and its impact on the rights of migrants, their families and local community?**

The Gulf States must address structural barriers that marginalize migrants, who constitute the majority of the region's population, as perpetual "outsiders." This entails dismantling the Kafala system and reforming exclusionary citizenship practices to grant migrants the opportunity to attain full citizenship status within the region.

They are ghettoised and segregated from the mainstream in both housing and access to facilities – labour camps, separate medical services, and recreational centres, where they exist, are restricted to places outside the main areas. Male migrant workers, of Asian and African origin, are labelled bachelors and hence kept away from ‘family’ zones, implicitly casting suspicions on their presence in these areas. These kinds of ghettoisation and segregation need to be dismantled.[[13]](#footnote-13)

1. Which concrete role should play the justice administration system for addressing expressions -narrative, measures, policies- of xenophobia? How xenophobia could be eradicated from within the justice administration system?
2. Which practices States should promote at bilateral and regional level for preventing and eradicating xenophobia?
1. Natsu Taylor Saito, Why Xenophobia?, 31 Berkeley La Raza L.J. 1 (2021) [↑](#footnote-ref-1)
2. Ibid [↑](#footnote-ref-2)
3. E. Tendayi Achiume, Governing Xenophobia, 51 Vanderbilt Law Review 333 (2021)

Available at: https://scholarship.law.vanderbilt.edu/vjtl/vol51/iss2/1 [↑](#footnote-ref-3)
4. <https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech> [↑](#footnote-ref-4)
5. <https://www.istanbulprocess1618.info/rabat-plan-of-action/#:~:text=The%20Rabat%20Plan%20of%20Action,OHCHR)%2C%20provides%20practical%20legal%20and> [↑](#footnote-ref-5)
6. Longva, Anh Nga (1999). Walls Built On Sand: Migration, Exclusion, And Society In Kuwait. Westview Press; Dito, Mohammed (2015). Kafala: Foundations of Migrant Exclusion in GCC Labour Markets. In A. Khalaf, O. AlShehabi, & A. Hanieh (Eds.), Transit States: Labour, Migration and Citizenship in the Gulf (Vol. 1, pp. 79–100). Pluto Press. [↑](#footnote-ref-6)
7. Migrant-Rights.org (2020) Reform the Kafala System. Available at https://www.migrant-rights.org/campaign/end-the-kafala-system/ [↑](#footnote-ref-7)
8. Arab Times (2024) Domestic workers more than quarter of expat workforce in Kuwait. Arab Times Kuwait. [online] Available from:https://www.arabtimesonline.com/news/domestic-workers-more-than-quarter-of-expat-workforce-in-kuwait/ [↑](#footnote-ref-8)
9. Mohanty, C. (2003) Feminism without borders: Decolonizing theory, practicing solidarity. Durham, NC: Duke University Press. [↑](#footnote-ref-9)
10. Americans for Democracy & Human Rights in Bahrain (2019) The Gulf Remains an Area of Darkness on World Press Freedom Day. ADHRB [online] Available from: https://www.adhrb.org/2019/05/the-gulf-remains-an-area-of-darkness-on-world-press-freedom-day/ [↑](#footnote-ref-10)
11. Migrant-Rights.Org (2020) The COVID-19 crisis is fueling more racist discourse towards migrant workers in the Gulf. Migrant-Rights.Org [online] Available from: https://www.migrant-rights.org/2020/04/the-covid-19-crisis-is-fueling-more-racist-discourse-towards-migrant-workers-in-the-gulf/ [↑](#footnote-ref-11)
12. Chatham House (2020) Cybercrime Legislation in the GCC Countries Fit for Purpose? Available From: https://www.chathamhouse.org/sites/default/files/publications/research/2018-07-04-cybercrime-legislation-gcc-hakmeh-final.pdf [↑](#footnote-ref-12)
13. Migrant-Rights.Org (2019) Forced evictions: Kuwait’s dehumanising campaign targets male migrants. Migrant-Rights.Org [online] Available from: https://www.migrant-rights.org/2019/09/forced-evictions-kuwaits-dehumanising-campaign-targets-male-migrants/ [↑](#footnote-ref-13)