COMMITTEE ON MIGRATION ISSUES OEA/Ser.W

 CIDI/CAM/doc.114/22

 6 July 2022

 Original: Spanish

CONCEPT NOTE

THEMATIC MEETING

“PREVENTION OF RACISM, XENOPHOBIA AND INTERSECTIONAL DISCRIMINATION AGAINST MIGRANTS” AND “REGULARIZATION AND REGULAR CHANNELS
FOR THE ADMISSION AND STAY OF MIGRANTS”

(July 14, 2022)

(Prepared by the Chair of the CAM with the support of the Technical Secretariat)

1. “PREVENTION OF RACISM, XENOPHOBIA AND INTERSECTIONAL DISCRIMINATION AGAINST MIGRANTS”

The growing ethnic and racial diversity of the countries of the Americas has to do with the migratory movements seen in the region. The progressive increase in migration has meant that a growing number of States have become multi-ethnic societies and face the challenge of accommodating people of different cultures, races, religions, and languages. Addressing the reality of increasing diversity means finding political, legal, social, and economic mechanisms to ensure mutual respect and mediate relationships while leaving aside differences. However, xenophobia, racism, and other related intolerance have manifested themselves in societies that have taken in significant numbers of migrants and refugees.[[1]](#footnote-1)

The Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance defines racism as “any theory, doctrine, ideology, or sets of ideas that assert a causal link between the phenotypic or genotypic characteristics of individuals or groups and their intellectual, cultural, and personality traits, including the false concept of racial superiority.” Xenophobia is defined as behavior that implies discrimination “based on the perception that the other is foreign to or originates from outside the community or nation.”[[2]](#footnote-2)

Discrimination and xenophobia are acts that erode social cohesion, limit socioeconomic development, and can result in violence. For example, during the COVID-19 pandemic, hatred and discrimination against migrants in many countries around the world were exacerbated as a result of misinformation and fears associated with the virus. In this way, among other developments, alternative names were adopted for COVID-19 that made geographical allusions; sensationalist reports were published blaming certain communities for the spread of the virus; and verbal and physical attacks, arbitrary dismissals, or business closures took place based on the nationality of the owners.[[3]](#footnote-3)

Likewise, according to UNHCR, racism and racial discrimination can affect refugees and displaced persons at every stage of the displacement cycle, including as a cause of displacement from their countries of origin, in transit countries, in host countries as well as in cases where refugees seek voluntary repatriation and reintegration in their home countries or third countries.[[4]](#footnote-4)

In addition, discrimination against migrants, asylum seekers, and refugees can increase the vulnerability of certain groups, not only on the basis of race, but also on that of gender, age, sexual orientation, socioeconomic status, disability, etc. With respect to gender, ECLAC points to a disregard of invisibility of women and the absence of a gender perspective in theoretical approaches to migration issues in recent decades.[[5]](#footnote-5) However, the evidence shows that women have a predominant presence in migratory movements,[[6]](#footnote-6) for which reason the gender perspective should be indispensable in analyzing this problem.

In that regard, governments' legal frameworks need to be strengthened to legally define racism and xenophobia, identify and punish racist crimes, recognize specific forms of racism in the region, and strengthen the capacity of governments to enforce international standards on racism, xenophobia, and other intolerance.[[7]](#footnote-7) In addition, it is important to prevent hate speech towards migrants that could lead to acts of violence and exacerbate the discrimination that such groups face.[[8]](#footnote-8)

The Office of the United Nations High Commissioner for Human Rights (OHCHR) considers that advancing protection for migrants in the face of xenophobia and discrimination requires common approaches, strategies, coordination, and the ability to mobilize human and material resources. Achieving this requires the participation of all parties involved in that process.[[9]](#footnote-9)

In conclusion, in a world where international migration is a reality that is impossible to ignore, the existence of various forms of discrimination such as systemic racism and xenophobia in the Hemisphere is becoming a recurring concern for States. These forms of discrimination are exacerbated by hate speech and stigmatization, which are visible in certain political movements or in exceptional situations such as the health crisis. Similarly, other conditions of vulnerability, such as gender, may hinder access to rights for such communities, so an intersectional mindset must prevail in the methods used to address the issue. In response, strengthening the legal framework on migration and crimes involving migrants is fast becoming a priority for the region. Therefore, in this meeting it is important to hear the positions of member states in order to share information on this issue and coordinate a joint strategy.

1. “REGULARIZATION AND REGULAR CHANNELS FOR
THE ADMISSION AND STAY OF MIGRANTS”

Sustainable Development Goal 10 recognizes in Target 7 the need to “facilitate orderly, safe, regular and responsible migration and mobility of people.” In addition, the IOM recognizes that “effective migration governance is key to safer, more orderly and regular migration.” It also notes the importance of having in place regional migration regimes.[[10]](#footnote-10) Indeed, irregular migration generates a condition of vulnerability that can lead to the violation of the human rights of migrants. In addition, it precludes any of the economic, cultural, and social contributions that migrants can make to the development of host countries. The COVID-19 pandemic has further undermined the rights of migrants by making it more difficult for them to access social protection and health care. Even with the possibility of rights violations, migration shows no signs of diminishing, which is why it is essential to work for its regularization.

The IOM defines regularization as “any process or program by which the authorities of a State authorize a foreigner with irregular status to remain in the country legally by granting that person regular migratory status.”[[11]](#footnote-11) It is important to understand that migratory regularization is the main mechanism “for including and protecting the migrant population,”[[12]](#footnote-12) this includes granting permission for migrants to stay in a country. This officially enables migrants to work and access certain rights, such as health, education, and social security, among others.

In that regard, the different legal frameworks on migratory regularization in the region’s States are important. The capacities of each State depend on their historical experiences with migration; some States, such as Argentina, have been a favorite destination for migrants for centuries, while others, such as Chile, are more recent migratory destinations; and still others are noted more for their emigration, such as Colombia and Peru.[[13]](#footnote-13) In addition, other states in the region are regarded as transit countries for migrants on their way to their final destination. This context calls for different migration regimes to allow migrants to stay in those countries, whether they are transit or host countries.

At the regional level, there are several initiatives that seek to protect the human rights of migrants and promote their regularization. One example is the Regional Framework Law on Migration with a focus on human rights, which makes Central American and Caribbean states responsible for seeking the regularization of migrants and respecting the human rights of that population.[[14]](#footnote-14) In South America, regional integration mechanisms such as the Andean Community, MERCOSUR and UNASUR have encouraged migratory regularization by reducing requirements among member states.

At the same time, regular pathways for admission and stay are “legal, policy and/or administrative mechanisms that provide for regular travel, admission and/or stay in the territory of a State (regardless of whether the initial entry was regular and/or temporary).”[[15]](#footnote-15) These may be non-discretionary, in terms of relating to obligations under international law; or discretionary, i.e., in accordance with the interests and relationships of States. Likewise, there are several examples of such pathways, depending on whether or not the migrant is in the migration territory. For migrants not yet in the intended migration territory such pathways include the granting of a visa prior to entry into the territory through a port of entry and the granting of a visa upon arrival at a port of entry. For migrants already in the territory, the following are envisaged: a regularization process and the granting of a residence permit for irregular migrants and a change from one migration status to another [[16]](#footnote-16)

There are also possibilities for the admission of admission of migrants on humanitarian and other grounds. These include “the right to private and family life, and the derivate obligation to maintain family unity, the principle of the best interests of the child, the right to health, the principle of equality and non-discrimination, the fundamental principles and rights at work, and the principle of non-refoulement, amongst others.”[[17]](#footnote-17)

Thus, it is essential for States to expand regular channels of admission. Indeed, irregular migration has made it difficult to expand such channels.[[18]](#footnote-18) States must have solid guiding principles, where procedural guarantees that respect human rights are established, as well as adopting a gender perspective, among approaches. Such procedural guarantees are achieved by having clear and transparent admission criteria based on the rights and needs of migrants. The accessibility of such channels is also crucial, given the different obstacles that migrants face, including the correct documentation in the appropriate language, computer and internet access, affordable application costs, etc.[[19]](#footnote-19)

This meeting will address this issue and provide an opportunity for member states to share information and review advances with regard to migrant regularization and expanding pathways for admission and stay.

CIDRP03582E04

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