

Shadow Report for the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families



Summary¹

This report analyzes the recommendations of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (the “Committee”) in response to the report submitted by the Peruvian State in December 2013. Its main focus is to demonstrate the current context of the migrant population in Peru while working with the Peruvian State to improve the conditions of migrants and the protection of their rights. Based on this, the recommendations put forth by the Committee will be contrasted with the advances made by the State.

This report is the result of an initiative carried out by the Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Perú (IDEHPUCP) with the help of the Universidad Antonio Ruiz de Montoya (UARM) y Encuentros Servicio Jesuita de la Solidaridad (Encuentros – SJS).

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Positive Steps of Peruvian State

As of the date of this report, the Peruvian State has implemented two of the Committee's recommendations. First, the State adopted new legislation in line with the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (the "Convention") and other human rights instruments ratified by the State through approval of Legislative Decree No. 1350 ("LD 1350") and its corresponding regulation (No. 007-2017-IN).

Second, the State modified Supreme Decree No. 001-2015 to remove a provision that allowed for [citizens to alert immigration authorities of cases of undocumented migrants.e] However, LD 1350 fails to include measures with respect to integration and other policy measures fail to include concrete steps that support cultural integration and prevent discrimination. This is particularly worrisome because discrimination and social stigma towards migrants is increasing in Peru, particularly against Venezuelan and Colombian migrants.

Detention of Migrants

One of the most pressing challenges identified by the Committee is the Peruvian State's practice of detaining migrants. The Committee recommended that the State take measures to guarantee that the detention of migrants is a measure of last resort and that any detentions are carried out in accordance with article 16 and article 17, paragraph 2 of the Convention. The regulations in relation to LD 1350 currently allow the Peruvian National Police ("PNP") to detain offenders for the purpose of identifying them and determining their migratory status. The regulations also allow the PNP to detain offenders for the purpose of assuring that they leave the country. These regulations exceed the authority established by LD 1350, as neither is set forth therein. In addition, the regulations do not establish specific procedures with respect to detentions. This is troubling, as the conditions under which such detentions will take place are unclear, such as where detainees will stay and the maximum amount of time for which they will be detained. Although each regulation stipulates that an additional regulation establishing detention procedures must be promulgated before such regulations go into effect, in practice the PNP has carried out various detentions in border areas.

In many cases, detentions carried out by the PNP have lasted between 4 and 39 days and have included migrants applying for refugee status, including children. These practices contravene international standards with respect to protection of migrant rights, which are enshrined in Article 16 of the Convention and the Committee's General Comment No. 2.

Deportations and Obligatory Exit

Another challenge is the practice of deportations and obligatory exit of migrants. The Committee recommended that the Peruvian State suspend the administrative and judicial practices of deporting

migrants and that it adopt measures to guarantee the right to family life and other rights under the Convention, until the State resolves the issue of migrant workers in irregular situations.

Currently, Peruvian law establishes two sanctions with mandatory exit from the country: mandatory exit and deportation. In the case of mandatory exit, the law is unclear on who determines the criteria for the amount of time a particular migrant is prohibited from re-entering the country.

In the case of deportation, Peruvian law allows for deportation in 8 different situations. Among the most problematic is the provision allowing deportation of migrants who apply for immigration status by using false documentation or false names. Many trafficking victims and refugees do not travel with authentic documentation. Therefore, this method of deportation should include an exception for such populations as they are in vulnerable situations.

Another situation under which migrants can be deported is if they undergo activities that threaten public order or national security. These references are extremely broad and vague and therefore run the risk of being applied in an arbitrary manner. Therefore, it is necessary to further define the parameters of each circumstance.

In addition, under current law there are no time limits for the execution of sanctions and there is no provision for judicial review of deportation orders. As such, the State must address these issues to ensure the rights of migrants are adequately protected.

Additional Concerns

In addition to the recommendations of the Committee, this report highlights two important aspects with respect to migrants. The first aspect is the various cases of collective deportation of Colombian citizens. According to news sources, the Peruvian State has deported groups of 19, 21 and 43 Colombians on at least three separate occasions. Unfortunately, there is no official data on these deportations. The Peruvian State must explain its motives for such deportations and whether or not it respected the migrants' rights to due process.

The second aspect deals with the Venezuelan population in Peru. In particular, even though the State has authorized 11,000 temporary stay permissions to Venezuelan citizens, the State continues to impose administrative sanctions against Venezuelans that include obligatory exit and deportation measures. This is particularly troublesome, as the State has the international obligation of *non-refoulement*, which prohibits States from returning refugees to their country of origin or any other country where their integrity, life or liberty is at stake.

In addition, there continue to exist significant barriers to migrants seeking to access healthcare and education. Although the Peruvian Constitution establishes that all persons have the right to healthcare, in order for migrants to access healthcare services they must have a foreign residency card, which migrants in

irregular situations do not have (including potential refugees whose applications are pending). Similarly, although refugees in Peru have the right to education under the Peruvian Constitution, this right is not respected in practice. Peruvian education laws do not establish which documents foreigners must present in order to access public education. For refugees whose applications are currently pending the situation is even more precarious, as their immigration status is still in flux.

In summary, although the Peruvian State has made important and notable advances with new legislation regarding migrants, including the preparation of the National Migratory Policy 2017 – 2025, the State is currently failing to comply with many important recommendations of the Committee. The State should comply promptly with these recommendations to ensure it upholds its international obligations with respect the rights of migrants.