



International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Concluding observations on the initial report of Peru*

1. The Committee considered the initial report of Peru (CMW/C/PER/1) at its 275th and 276th meetings (CMW/C/SR.275 and 276), held on 14 and 15 April 2015, and adopted the following concluding observations at its 288th meeting (CMW/C/SR.288), held on 23 April 2015.

A. Introduction

2. The Committee welcomes the submission, albeit late, of the initial report of the State party and thanks the State party for its replies to the list of issues (CMW/C/PER/Q/1).

3. The Committee commends the State party for its multisectoral delegation headed by the Permanent Representative of Peru to the United Nations Office at Geneva, Mr. Luis Chávez Basagoitia, and including representatives of the country's Supreme Court, the Directorate for Protection and Support for Peruvians Abroad of the Ministry of Foreign Affairs and other representatives of the Permanent Mission. In addition, leading figures spoke on the topic of migration by videoconference from Lima. The Committee welcomes the additional information provided by the delegation during the constructive dialogue, which gave the Committee a better understanding of the implementation of the Convention in the State party, although some questions were remained unanswered.

4. The Committee acknowledges that Peru has traditionally been a country of origin of migrant workers but that in recent years it has also posted an increase in the flow of workers transiting through or settling in the State party, as well in the return of its nationals, thereby becoming a receiving country.

5. The Committee notes that some of the countries in which Peruvian migrant workers are employed are still not parties to the Convention, which could constitute an impediment to the enjoyment of their rights under the Convention. It notes, too, that some of the countries in which Peruvians have settled are members of the Southern Common Market (MERCOSUR) and the Andean Community; consequently, they are entitled to the advantages of the agreements adopted in the context of those processes of integration.

* Adopted by the Committee at its twenty-second session (13-14 April 2015).



B. Positive aspects

6. The Committee welcomes the ratification of or accession to the following international human rights instruments:

(a) International Convention for the Protection of All Persons from Enforced Disappearance, in September 2012;

(b) Convention on the Rights of Persons with Disabilities, in January 2008;

(c) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in September 2006.

7. The Committee welcomes the adoption of the following instruments:

(a) Act No. 30103 of November 2013 establishing the residency procedure for foreign nationals in an irregular situation;

(b) Act No. 30001 of March 2013 on the Economic and Social Reintegration of Returned Migrants;

(c) Act No. 28950 of January 2007 on Trafficking in Persons and Smuggling of Migrants.

8. The Committee also welcomes the following institutional measures and policies:

(a) National Human Rights Plan 2014-2016, adopted in July 2014;

(b) National Human Rights and Fundamental Duties Education Plan for 2021, adopted in December 2014;

(c) General migration policy guidelines, adopted in February 2015;

(d) Legislative Decree No. 1130 of December 2012, establishing the principles, functions, organizational structure and economic, financial and labour regime of the National Migration Authority;

(e) Supreme Decree No. 067-2011-PCM of July 2011, which set up the Standing Multisectoral Committee “Intersectoral Round Table for Migration Management”;

(f) National Plan of Action to Combat Trafficking in Persons 2011-2016, adopted in November 2011;

(g) Agreements with Argentina, the Plurinational State of Bolivia, Canada, Chile, Ecuador, Spain and Uruguay, and others concluded in the framework of MERCOSUR and the Andean Community, on improving the conditions of work of the nationals of the State party in those countries.

9. The Committee welcomes the invitation to the special procedures of the United Nations extended by the State party in April 2002.

C. Principal subjects of concern, suggestions and recommendations

1. General implementation measures (arts. 73 and 84)

Legislation and application

10. The Committee welcomes the State party’s efforts to promote and protect the rights of migrant workers abroad. Nonetheless, it is concerned that the State party is still in the midst of a long shift towards the development of new legislation on migration consistent with the provisions of the Convention. In particular, it is

concerned that the Aliens Act of 1991 contains provisions that can conflict with international standards for the protection of migrant workers and their families.

11. The Committee recommends that the State party take the measures necessary to develop legislation on migration consistent with the Convention and other human rights treaties ratified by the State party.

12. The Committee congratulates the State party on the fact that the National Human Rights Plan 2014-2016, adopted in July 2014, includes special protection for migrants, displaced persons, trafficking victims and their families and that it provides for specific actions for the protection and comprehensive promotion of the rights of migrants and the members of their families. However, the Committee is concerned about the lack of information about the plan's implementation.

13. The Committee recommends that the State party implement this plan immediately and ensure that legislation protects these groups, in accordance with the provisions of the Convention.

14. The Committee notes that the State party has not yet initiated the process of making the declarations provided for in articles 76 and 77 of the Convention.

15. The Committee encourages the State party to make the declarations provided for in articles 76 and 77 of the Convention as soon as possible.

16. The Committee notes that the State party has not ratified the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97), ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), ILO Private Employment Agencies Convention, 1997 (No. 181), or ILO Domestic Workers Convention, 2011 (No. 189).

17. The Committee recommends that the State party take the measures necessary to ratify ILO Conventions Nos. 97, 143, 181 and 189.

Data collection

18. The Committee takes note of the State party's efforts to improve the collection of data on migration flows, particularly as regards migrant workers in a regular situation in the State party. It regrets, however, that so little statistical and qualitative information is available on aspects related to the Convention, in particular in respect of migrant workers and members of their families in irregular situations and unaccompanied child migrants and child migrants separated from their parents, whether they are in Peru or are Peruvians abroad.

19. The Committee recommends that the State party step up its efforts to ensure that the migration statistics system takes into account all aspects of the Convention and includes detailed information on migrant workers in the State party, those in transit or in host countries, and emigrants. It encourages the State party to compile information and qualitative statistics broken down by sex, age and migration status, in connection with the rights enshrined in the Convention. Where it is not possible to obtain precise information (in the case of migrant workers in an irregular situation, for example), the Committee would appreciate receiving at a minimum information based on studies or estimates.

Training and dissemination of the Convention

20. The Committee welcomes the State party's initiatives to inform the general public of its domestic legislation. Nevertheless, the Committee is concerned to note that these initiatives have not been sufficient to meet the needs of migrant workers and their families in Peru, whether on arrival or during their stay in the country, or those of

Peruvian migrant workers seeking to leave the country to work and live abroad. Furthermore, the Committee is concerned by the lack of information on the development of specific ongoing programmes providing training on the content of the Convention to relevant officials, such as staff of the National Migration Authority, the Directorate-General for the National Police, judges and prosecutors, and other officials working in areas related to migration, and for dissemination to the general public.

21. The Committee recommends that the State party should carry out ongoing education, awareness and training programmes on the content of the Convention. It further recommends that training should encompass all officials engaged in migration-related activities, including at the local level. The Committee encourages the State party to guarantee migrant workers access to information on their rights under the Convention and to cooperate with and empower civil society organizations in the publicizing and promotion of the Convention.

Civil society participation

22. The Committee notes the information provided by the State party during the dialogue concerning the mechanisms for civil society participation in the area of human rights, particularly in respect of migration policies. However, the Committee is concerned by the limited information on the formal ongoing participation of civil society in the implementation of the Convention, particularly in the Intersectoral Round Table for Migration Management, as well as in the preparation of the present report.

23. The Committee recommends that the State party take active measures to ensure continuous participation by civil society in the implementation of the Convention, and in the formulation and preparation of the next report.

2. General principles (arts. 7 and 83)

Non-discrimination

24. The Committee notes that the principle of non-discrimination is recognized in the legislation of the State party. However, the Committee is concerned at the lack of any guarantee that all migrant workers and members of their families within its territory and/or subject to its jurisdiction enjoy the rights recognized in the Convention without discrimination. It is particularly concerned by the residence restrictions based on disability, and at the fact that family members of migrant workers are not permitted to work.

25. The Committee recommends that the State party guarantee that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights recognized in the Convention, without discrimination, in accordance with article 7. The Committee also recommends that the State party give specific examples of the measures adopted in its next periodic report.

26. The Committee is concerned that the State party has established a migration control mechanism called “citizens’ alert” (Supreme Decree No. 001-2015-IN, art. 5) whereby citizens can report migrant workers in breach of the Aliens Act, particularly those in an irregular situation.

27. The Committee recommends that the State party amend article 5 of the Supreme Decree and any other measure that might give rise to any kind of persecution, discrimination or racism against migrant workers in the State party. It also urges the State party to take immediate and effective measures of public

education and to conduct awareness campaigns in order to combat prejudice and the social stigmatization of migrant workers in general, and especially those of particular nationalities.

Right to effective redress

28. The Committee notes the information provided by the State party to the effect that all persons are entitled to justice, as recognized in the Constitution. However, the Committee is concerned that, in practice, migrant workers have limited access to justice owing to ignorance of the administrative and judicial remedies to which they are entitled. The Committee notes the lack of information on the number of complaints concerning violations of the rights of migrant workers and on the action taken on those complaints. It also notes the lack of information on legal assistance requested and received by migrant workers and members of their families.

29. The Committee recommends that the State party ensure that, both in law and in practice, migrant workers and members of their families, including workers in an irregular situation, enjoy the same rights as nationals of the State party to submit complaints, enjoy effective remedies, and receive appropriate redress from the competent administrative and judicial authorities. It also recommends that the State party step up its efforts to inform migrant workers of the remedies available, and of the legal aid services available in the country. The Committee recommends that the State party ensure that complaints by migrant workers are dealt with in an effective and timely manner.

3. Human rights of all migrant workers and members of their families (arts. 8-35)

30. The Committee notes the information provided on various forms of deprivation of liberty of migrant workers and the differences between holding and detention. However, the Committee is concerned by the lack of statistical information on the number of cases of detention and/or holding by reason of irregular migration, and on the places where such procedures are carried out and the conditions, and the measures taken to ensure consular assistance and access to justice and legal assistance for workers and members of their families in such circumstances. The Committee is also concerned by the lack of information on the existence of alternatives to deprivation of liberty in the context of migration control procedures. Furthermore, the State party has not provided information on the number of cases involving the detention or holding of migrant workers of Haitian origin and the relevant places, duration and conditions, prior to their obligatory departure.

31. The Committee recommends that the State party take the necessary measures to guarantee that detention of migrant workers in an irregular situation is a measure of last resort and that detention in all circumstances is conducted in accordance with article 16 and article 17, paragraph 2, of the Convention, and also with the Committee's general comment No. 2 on the rights of migrant workers in an irregular situation and members of their families. It also recommends that the State party should provide detailed information on this issue in its next periodic report, including the information mentioned in the previous paragraph.

32. The Committee notes with concern that migrant workers subject to an expulsion decision have difficulties in exercising administrative remedies in Peru, and that it is not possible to suspend the effects of the measure challenged. Moreover, the law does not stipulate an obligation to take account of the individual's family situation, the time spent in the country and other circumstances that might cause the sanction to be revoked or modified. The Committee is concerned that procedures for the detection

and assessment of administrative infractions such as irregular migration should lie in the hands of the National Police, even though no offence is involved.

33. The Committee recommends that the State party guarantee the suspensive effect of administrative and judicial appeals against measures of expulsion or obligatory departure from the country. It recommends that the necessary measures should be taken to guarantee respect for the right to family life and other rights under the Convention when the situation of a migrant worker in irregular circumstances is being resolved. The Committee also recommends that, under the Migration Bill, the relevant institutional powers should be apportioned in such a way as to avoid any kind of criminalization of irregular migration.

34. The Committee takes note of the progress made by the State party in improving and expanding its consulate services. However, the Committee is concerned by the lack of information as to how the State party ensures sufficient financial and human resources to guarantee adequate assistance and protection to Peruvian workers abroad, and in particular to guarantee free legal aid and humanitarian assistance programmes.

35. The Committee recommends that the State party should take the necessary measures to ensure that the consular services network responds effectively to the needs of migrant workers and members of their families in regard to the protection of their rights and the granting of assistance. Such measures should include the allocation of sufficient human and financial resources and the development of ongoing training programmes for consular officials on the Convention and other human rights treaties.

36. The Committee is concerned by the lack of information, including specific examples, on situations in which trade union statutes allow only workers of Peruvian nationality to become union members, and in particular on how this right is guaranteed to migrant workers in an irregular situation.

37. The Committee recommends that the State party take all necessary measures, including legislative measures, and establish mechanisms for social dialogue with the trade unions, so as to guarantee that migrant workers in an irregular situation can exercise their trade union rights in accordance with article 26 of the Convention.

38. The Committee is concerned that the State has not provided information or data on health-care coverage for migrant workers and members of their families in an irregular situation or arrangements to guarantee access to education for the children of migrant workers in an irregular situation in Peru.

39. The Committee recommends that the State party adopt specific and effective measures to ensure access to health care for all migrant workers and members of their families, as well as access to education for their children, irrespective of their migration situation.

40. The Committee commends the State party on the measures adopted to inform Peruvian migrant workers who are to leave the country of their rights and obligations in the State of employment. However, it is concerned that this information is not adequate and that the State party has not fully explained how it disseminates this information and guarantees access to it by migrant workers who are in the State party or in transit through it, as well as to members of their families, particularly at border posts.

41. The Committee recommends that the State party increase its efforts to provide migrant workers and their families with adequate information on the rights set out in the Convention, and their rights and obligations in Peru and abroad.

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

42. The Committee notes that the general migration policy guidelines adopted in February 2015 and the new bill provide for the protection of the rights of the child, including the principle of the best interests of the child. However, it is concerned that the State party has not taken urgent measures to ensure that the principle of the best interests of the child is applied in existing legislation and practice on migrant workers, affecting the right to family unity of migrant workers with dependent children.

43. The Committee recommends that the State party take urgent measures to ensure that the principle of the best interests of the child is explicitly included in the applicable legislation and policy guidelines on migrant workers, in accordance with the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

44. The Committee is concerned that the State party does not provide for family reunification in the legislation on migration, in particular, the possibility of obtaining residence permits in the State party for spouses in the event of death, unmarried children and other close relatives of migrant workers. The Committee is also concerned by the non-recognition of de facto unions for the purpose of granting visas for family reunification and residence permits for family unity, despite the fact that such unions are recognized in the Peruvian Constitution.

45. The Committee recommends that the State party take all necessary measures to help reunite migrant workers with their spouses or with persons with whom they have a relationship equivalent to marriage, and with their children, without any distinction based on gender.

46. The Committee is concerned by the lack of information on differential treatment regarding the length of employment contracts and termination indemnities for workers from countries members of the Andean Community of Nations and MERCOSUR member and associate member countries, and on workers from other countries.

47. The Committee recommends that the State party promptly take all necessary measures to guarantee the right to equality of treatment in accordance with the provisions of article 54 of the Convention.

48. The Committee takes note of the information provided on the exceptions made by the State party to restrictions on the recruitment of migrant workers. However, the Committee is concerned by the application of these restrictions when hiring migrant workers, particularly the provisions limiting the employment of foreigners to 20 per cent of the total workforce and the length of contracts to a maximum of three years.

49. The Committee recommends that the State party eliminate the restrictions on the hiring of migrant workers and guarantee treatment no less favourable than that received by nationals of the State party, in accordance with the Convention.

50. The Committee is concerned that the State party has not provided information on the measures adopted to improve the situation of migrant frontier workers and include a definition of frontier worker in its national legislation.

51. The Committee recommends that the State party adopt the necessary measures to guarantee the protection of migrant frontier workers in accordance with article 58 of the Convention.

5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

52. The Committee notes that the State party has adopted Act No. 30001 on the Economic and Social Reintegration of Returned Migrants, which grants facilities to returning Peruvians. However, the Committee is concerned that the benefits are merely of a fiscal nature and are limited to employment and self-employment promotion services, with no provision for travel support or other measures facilitating the resettlement and integration of returnees in the country of origin. Moreover, this legislation does not include any measure of protection for Peruvian citizens expelled from the country of destination.

53. The Committee recommends that the State party develop a programme to assist the voluntary return of Peruvian migrant workers and members of their families and their lasting reintegration in the economic, social and cultural fabric of Peru, on the basis of the rights recognized in this Convention and others ratified by the State party. It also recommends the incorporation of specific measures for the reintegration of Peruvian migrant workers expelled from the country of destination.

54. The Committee welcomes the adoption of the National Plan of Action to Combat Trafficking in Persons 2011-2016 and Act No. 28950 on Trafficking in Persons and Smuggling of Migrants. However, the Committee is concerned by the lack of more detailed information on the implementation of these provisions and in particular on their impact.

55. The Committee recommends that the State party adopt measures to guarantee the practical implementation of these provisions to combat trafficking in persons and investigate, prosecute and punish persons, groups or bodies organizing or involved in such offences. It also recommends that information be obtained on the impact of the requirement for migrant workers of Haitian origin to hold a tourist visa, particularly its impact in reducing trafficking in persons, smuggling of migrants and irregular migration to the country. The Committee recommends that the State party continue its efforts to combat trafficking and smuggling of persons, particularly by:

- (a) Further developing the application of the gender perspective;**
- (b) Developing effective mechanisms for identifying and protecting victims of trafficking, including the expansion of the shelter network and the guarantee of access to justice;**
- (c) Systematically compiling disaggregated data in order to better combat trafficking in persons and avoid the expulsion of affected groups from the State party;**
- (d) Intensifying campaigns for the prevention of trafficking in persons, especially in border areas with a high incidence of trafficking victims;**
- (e) Devising a strategy to ensure respect for victims' rights and avoid their re-victimization, taking account of the physical, psychological and social consequences suffered by trafficking victims.**

56. The Committee takes note of Act No. 30103 of November 2013 establishing the residency procedure for foreign nationals in an irregular situation in the country. However, the Committee is concerned by the low number of applications, due, inter alia, to the high cost to applicants, and to the fact that applicants must have entered the State party before 31 December 2011.

57. The Committee recommends that the State party intensify its efforts to formulate and implement simple procedures for the regularization of migrants and publicize them through information campaigns at the local and national levels. It also recommends that procedures be consistent with the principle of non-discrimination and readily accessible to migrant workers and members of their families in an irregular situation. The Committee also recommends the creation of permits to obviate the expulsion of affected vulnerable groups, which take account of the length of stay in the State party, the ties with the State and/or family reunification.

6. Follow-up and dissemination

Follow-up

58. The Committee calls on the State party to include in its second periodic report detailed information on the measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to Congress and local authorities.

59. The Committee requests the State party to involve civil society organizations in the dissemination and implementation of the recommendations contained in these concluding observations.

Follow-up report

60. The Committee requests the State party to provide, within two years — i.e., by 24 April 2017 — written information on the follow-up to the recommendations contained in paragraphs 11, 27, 31 and 33 of these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and Congress, and to local authorities.

Dissemination

61. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, NGOs and other members of civil society, and to universities and the general public, and to take the steps necessary to make them known to Peruvian migrant workers abroad and foreign migrant workers residing or in transit in Peru.

7. Technical assistance

62. The Committee recommends that the State party avail itself of international assistance, including technical assistance, to develop a comprehensive programme for the implementation of the above recommendations and the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with the specialized agencies and programmes of the United Nations system.

8. Next periodic report

63. The Committee requests the State party to submit its second periodic report by 24 April 2020 and to include therein information on the implementation of the present concluding observations. Alternatively, the State party may follow the simplified reporting procedure, whereby the Committee draws up and adopts a list of issues that is transmitted to the State party prior to the submission of its

next report. The replies of the State party to that list of issues will constitute its report under article 73 of the Convention. In that way, the State party is not required to submit its report in the traditional manner. This new optional procedure was adopted by the Committee at its fourteenth session in April 2011 (see A/66/48, para. 26).

64. The Committee draws the State party's attention to its guidelines for the periodic reports to be submitted by States parties under article 73 of the Convention (CMW/C/2008/1) and reminds it that periodic reports should be in compliance with the guidelines and not exceed 21,200 words (General Assembly resolution 68/268, para. 16). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned guidelines. If the State party is not in a position to review and resubmit the report, translation of the report for purposes of examination by the treaty body cannot be guaranteed.

65. The Committee requests the State party to ensure broad participation by all ministries and public bodies in the preparation of its next periodic report (or replies to the list of issues, in the case of the simplified reporting procedure) and, at the same time, to consult widely with all relevant stakeholders, including civil society, migrant workers and human rights organizations.
