



**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**

**Consideration of reports submitted by States
parties under article 73 of the Convention**

Initial reports of States parties due in 2007

Peru*

[14 August 2013]

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Abbreviations and acronyms

CAN	Andean Community of Nations
CERTIJOVEN	Standard labour certificate for young people aged 18–25
CTS	Compensation for time worked
ESSALUD	Ministry of Health – Social Health Insurance
IFI	Intermediary Financial Institution
IGV	Value-added tax
ILO	International Labour Organization
INABIF	National Comprehensive Family Welfare Programme
INEI	National Institute for Statistics and Information Technology
IOM	International Organization for Migration
MERCOSUR	Southern Common Market
MTPE	Ministry of Labour and Employment
PCM	Office of the President of the Council of Ministers
RENIEC	National Registry of Identification and Civil Status
RETMA	Register of Andean Migrant Workers
SIS	Comprehensive Health Insurance
SISFOH	Household Targeting System
UNDP	United Nations Development Programme
UNFPA	United Nations Fund for Population Activities

I. Introduction

1. The Republic of Peru signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter “the Convention”) on 22 September 2004. It was approved by the Congress of the Republic by Legislative Resolution No. 28602 of 10 September 2005 and ratified without reservation the same day by Supreme Decree No. 071-2005-RE, entering into force on 1 January 2006. In accordance with article 73 of the Convention, the Peruvian State has undertaken to submit a report on the legislative, judicial, administrative or other measures that it has adopted to give effect to the provisions of this important international instrument.

2. Accordingly, the initial report of Peru covering the period from the entry into force of the Convention until December 2012 is presented for the consideration of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter “the Committee”).

3. The process of preparing the initial report was participatory and planned. The Ministry of Labour and Employment was responsible for coordinating the drafting, and to that end requested information from a number of State agencies with a view to identifying the major achievements, progress and challenges with respect to the protection of the rights of migrant workers and their families.

4. The preliminary version of the initial report was circulated to the National Human Rights Council¹ (CNDH), which is composed of State institutions² and representatives of civil society.³ Finally, the report was approved by the Office of the Deputy Minister for Human Rights and Access to Justice of the Ministry of Justice and Human Rights, whose duties⁴ include the final approval of periodic reports and any reports required by the bodies of the international systems for the protection of human rights.

5. As to the institutional framework, in December 2011, Act No. 29809 was adopted, laying down the powers of the Ministry of Justice as the main national authority in the area of human rights, renaming it the Ministry of Justice and Human Rights.⁵ This demonstrates the Peruvian Government’s determination to foster a national policy to promote, protect,

¹ Under article 1 of Supreme Decree No. 012-86-JUS, dated 6 September 1986, as amended by Supreme Decree No. 011-2012-JUS, dated 20 April 2012, the National Human Rights Council (CNDH) was set up under the Ministry of Justice and Human Rights. CNDH is a multisectoral body with a mandate to issue opinions and advise the Executive on the development of policies, programmes, projects and plans in the field of human rights, relating in particular to the National Human Rights Plan, and has a Technical Secretariat which provides it with technical and administrative support. CNDH is chaired by the Office of the Deputy Minister for Human Rights and Access to Justice of the Ministry of Justice and Human Rights.

² Presidency of the Council of Ministers, Ministry of Justice and Human Rights, Ministry of Foreign Affairs, Ministry of Defence, Ministry of the Interior, Ministry of Education, Ministry of Health, Ministry of Labour and Employment, Ministry for Women and Vulnerable Population Groups, Ministry of the Environment, Ministry of Energy and Mining, Ministry of Culture, Ministry of Development and Social Inclusion, the Judiciary, the Public Prosecution Service and the Office of the Ombudsman.

³ National Human Rights Coordinating Coalition, Evangelical Council of Peru, Peruvian Episcopal Association, National Confederation of Private Business Institutions and the Peruvian Press Council.

⁴ Ministry of Justice. Supreme Decree No. 011-2012-JUS, approving the Regulations on the Organization and Functions of the Ministry of Justice and Human Rights, art. 16, para. (g), (*El Peruano*, the official gazette of Peru, 20 April 2012).

⁵ Congress of the Republic. Act No. 29809 on the Organization and Functions of the Ministry of Justice and Human Rights. (*El Peruano*, 8 December 2011.)

respect and guarantee human rights, mandating the Ministry of Justice and Human Rights to do so, proposing policies in that area that focus on people on vulnerable people and ensuring compliance with the State's legal obligations in that regard. Furthermore, to achieve those ends the Office of the Deputy Minister for Human Rights and Access to Justice was established, which has responsibility for formulating, coordinating, implementing and monitoring national human rights policy.⁶

6. We would also mention the establishment of the National Migration Authority⁷ (formerly the Immigration and Naturalization Department), a specialized technical body under the Ministry of the Interior, with legal personality under domestic public law, with administrative, functional and economic independence in the exercise of its powers, that has responsibility for internal migration policy and participates in domestic and border security policy, coordinates immigration control with the various State agencies manning the country's Migration and Border Control Posts to ensure that it operates properly. The Authority is guided, *inter alia*, by the principle of fair and equal treatment.

7. Finally, we would point out that this report was prepared taking account of the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.2/Add.1), and with the guidelines for the specific report to the Committee on Protection of the Rights of All Migrant Workers and Members of Their Families.

II. Information of a general nature

A. Constitutional, legislative, judicial and administrative framework governing the implementation of the Convention, and any bilateral, regional or multilateral agreements in the field of migration made by the State party

1. Institutional framework

8. The fourth final and transitional provision of the Constitution stipulates that the rules relating to constitutional rights and freedoms shall be interpreted in conformity with the Universal Declaration of Human Rights and such international treaties and agreements in that respect as Peru has ratified. This interpretation is also echoed by the Code of Constitutional Procedure,⁸ article V in the Preliminary Title of which states:

“Article V: The content and scope of the constitutional rights protected by processes governed by the present Code should be interpreted in accordance with the Universal Declaration of Human Rights, the human rights treaties, and decisions adopted by international human rights tribunals constituted under treaties to which Peru is a party.”

9. The provisions of the above paragraphs, coupled with the provisions of the Peruvian Constitutional Court, to the effect that international human rights treaties have constitutional rank and prevail over domestic law,⁹ indicate that the rights recognized in the

⁶ Congress of the Republic. Act No. 29809 on the Organization and Functions of the Ministry of Justice and Human Rights, art. 12 (*El Peruano*, 8 December 2011).

⁷ Established by Legislative Decree No. 1130 of 6 December 2012.

⁸ Congress of the Republic Code of Constitutional Procedure. Act No. 28237. *El Peruano*, 31 May 2004.

⁹ Constitutional Court. Judgement of 25 April 2006, handed down in case No. 0025-2005-PI and No. 0026-2005-PI.

Peruvian Constitution must be interpreted in accordance with the provisions of the Convention.

10. Finally, note that all internal regulations are subject to the principle of constitutionality, in other words, they may not infringe the Constitution. In the words of the Constitutional Court: “No legal provision can be detached from the supreme canon, which prevails over, informs and underpins the validity of the entire legal system.”¹⁰

2. Legal framework of the implementation of the Convention

(a) *Aliens Act (Legislative Decree No. 703)*¹¹

11. The Aliens Act regulates the migration status of foreigners in the country (art. 11, paras. (q), (r) and (u)).¹²

(b) *Nationality Act, No. 26574*¹³

12. The purpose of the Nationality Act is to regulate the legal, political and social links concerning Peruvian nationality, in accordance with the precepts of the Constitution and the treaties signed by the Peruvian State that are in force. The Regulation, for its part, lays down the rules and procedures for implementing the provisions of the Act.

(c) *Act on Employment of Foreign Labour, Legislative Decree No. 689*¹⁴

13. In accordance with the Act on Employment of Foreign Labour, aliens who move to the country for work are subject to the following guidelines: (a) workers whose employment is regulated by Legislative Decree No. 689 shall comply with the administrative requirements of the Peruvian Immigration and Naturalization Department; (b) Andean migrant workers — from countries of the Andean Community of Nations (CAN) — are treated as nationals and need only register their contracts of employment in the Virtual System of Andean Migrant Workers of the Ministry of Labour and Employment and in return are issued an Andean Migrant Worker Certificate. After satisfying the

¹⁰ Constitutional Court. Judgement of 16 April 2003, handed down in case No. 2050-2002-AA/TC. F.J. 4.

¹¹ Congress of the Republic Aliens Act. Legislative Decree No. 703, promulgated on 5 November 1991, as amended by Legislative Decree No. 1043, published on 26 June 2008.

¹² Congress of the Republic Aliens Act. Legislative Decree No. 703, promulgated on 5 November 1991, as amended by Legislative Decree No. 1043, published on 26 June 2008.

Art. 11

(q) WORKER – Anyone who enters the country to work under a contract previously approved by the Ministry of Labour.

(r) DESIGNATED WORKER – Anyone who enters the country to work with no intention of residence, sent by their foreign employer for a restricted and defined period to carry out a particular task or function or work requiring professional, commercial, technical or other highly specialized knowledge. (...)

(u) RESIDENT FAMILY MEMBER – An alien who is part of an immigration unit referred to in art. 4 (“For the purposes of this Act any alien is an immigration unit. The alien’s migration status is extended to the members of his family, comprising his spouse, children under 18, unmarried daughters, parents and dependants (...)”) of the present Act and entering the country as dependants of a Peruvian citizen or of an adult foreigner holding a “RESIDENT” visa.

¹³ Act No. 26574, Nationality Act, enacted on 3 January 1996. It was regulated by Supreme Decree No. 004-97-IN of 23 May 1997 and published on 28 May 1997.

¹⁴ Legislative Decree No. 689, Act on Employment of Foreign Labour, of 5 November 1991; Supreme Decree No. 014-92-TR — implementing regulation of Act No. 26196 of 21 December 1992 — Amending the Legislative Decree of 9 June 1993.

requirements of (a) and (b), the migrant's work is governed by the labour laws of Peru, which make no distinction between the rights of a domestic worker and a foreign or migrant worker.

(d) *Trafficking in Persons and Smuggling of Migrants Act, No. 28950*¹⁵

14. The Act governs the prevention and punishment of trafficking for labour exploitation, among other purposes, and the smuggling of migrants. It also provides for mechanisms to protect victims of trafficking.

(e) *Refugee Act, No. 27891*¹⁶

15. The purpose of the Refugee Act is to regulate the entry, recognition and legal relations of the Peruvian State with refugees, in accordance with international instruments to which Peru is a party and relevant domestic law. Article 14 of the Act entitles foreign refugees to work, and article 26 relates to the labour regime for refugees.¹⁷

(f) *Act No. 30001 on the Economic and Social Reintegration of Returned Migrants*¹⁸

16. The purpose of this Act is to facilitate the return of Peruvians resident abroad, regardless of their migration status, through incentives and measures to promote their proper economic and social reintegration and to contribute to the creation of productive employment. This Act states that Peruvian nationals who have stayed abroad at least four years and no less than two years and have been forced to return, are eligible for migrant incentives, free of all taxes.

(g) *Asylum Act, No. 27849*¹⁹

17. The Asylum Act regulates the granting of refugee status to aliens requesting it. We would also mention some of the regulations applying to the same field.

18. The Consular Regulation, approved by Supreme Decree No. 076-2005-RE,²⁰ regulates the functions of the consular offices and the services provided to Peruvians abroad.

19. The Agreement²¹ signed with the Kingdom of Spain, governing the participation in municipal elections by the nationals of each country resident in the territory of another State, through the exchange of letters dated 6 February 2009.

¹⁵ Act No. 28950, Combating Trafficking in Persons and Smuggling of Migrants, of 16 January 2007, Supreme Decree No. 007-2008-IN — implementing regulation of the Act of 30 November 2008.

¹⁶ Refugee Act (No. 27891) of 20 December 2002, Supreme Decree No. 119-203-RE — implementing regulation of the Act of 10 October 2003.

¹⁷ Congress of the Republic. LAW No. 27891. *El Peruano*, 22 December 2002. Art. 14 – Provisional processing document: (...) 14.2 This document allows applicants to remain in the country while awaiting a definite answer to their application, and authorizes them to work meanwhile.

Art. 26 – Labour regime: The restrictions on employing foreigners do not apply to refugees recognized by the State who satisfy one of the following conditions: (a) They have a spouse of Peruvian nationality; anyone abandoning their spouse may not invoke this right; (b) They have Peruvian ascendants, descendants or siblings; and (c) They have been resident in the country for at least two years.

¹⁸ Act No. 30001, on the Economic and Social Reintegration of Returned Migrants, published on 14 March 2013.

¹⁹ Asylum Act (No. 27849), of 12 October 2002, Supreme Decree No. 002-2005 RE — implementing regulation of the Act of 30 November 2005.

²⁰ *El Peruano*, 30 October 2005.

20. Ministerial Resolution No. 0989-95 IN-03030001000 authorizing the issue and distribution of the Andean Migration Card.

21. Ministerial Resolution No. 0226-2002-IN-1601 approving the guidelines “Rules and procedures for establishing the content, format and use of the Andean Migration Card”.

22. Ministerial Resolution No. 003-2009-TR of 8 January 2009 laying down provisions for the issue of the Temporary Move Certificate for the accreditation of the period when subject to the National Social Security Regulations.

(h) *International rules applicable to Peru in this area*

23. The Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, 1985.

24. CAN Decision No. 397 creating the Andean Migration Card.

25. CAN Decision No. 503 recognizing the national identity document as sufficient for entering and leaving the countries of the Community, for tourism purposes.

26. CAN Decision No. 504 creating and approving the use of the Andean passport.

27. CAN Decision No. 526 requiring the States to implement a booth to facilitate the transit and migration control of domestic tourists and residents of the Member Countries.

28. Decision No. 548, establishing the Andean Cooperation Mechanism on Consular Assistance and Protection and Migratory Matters, among other matters.

29. The Convention on the Rights of the Child, which requires States to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form, and to promote physical and psychological recovery and social reintegration of a child victim.

30. ILO Convention 182 of 1999 on the prohibition of the worst forms of child labour and immediate action for the elimination, including the worst forms of child labour all forms of slavery or practices similar to slavery, such as child trafficking.

31. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

32. The Rome Statute of the International Criminal Court, which includes enslavement as a punishable act and a crime against humanity.

3. Regional, bilateral and multilateral agreements signed by Peru in the field of migration

(a) *Regional agreements*

i. Andean Community of Nations

33. Peru is a member of the CAN, together with Ecuador, Colombia and Bolivia. In this regional context, the most important instrument on the migration of workers to Peru is Decision No. 545, the Andean Labour Migration Instrument, which was adopted at the eleventh meeting of the Andean Council of Foreign Ministers of the Andean Community, on 24 and 25 June 2003 in Colombia. Its scope is restricted to Andean migrant workers,

²¹ It is intended to allow both Peruvians and Spaniards resident in the territory of the other State to exercise the rights provided for in arts. 41 and 42 of the International Convention.

excluding civil servants and anyone engaged in activities that threaten public morals, law and order, human life and health and the essential interests of national security.²²

ii. Southern Common Market

34. The Southern Common Market (MERCOSUR) is a trade integration bloc established under the Treaty of Asunción of 26 March 1991. The States with full membership are Brazil, Argentina, Uruguay, Paraguay and the Bolivarian Republic of Venezuela.

35. Peru has the status of associate member of MERCOSUR, under Decision No. 39/03 of the Mercosur Council of 15 December 2003. Its participation is governed by the Conditions of Participation of Associate States of MERCOSUR, under Decision No. 18/04 of the Mercosur Council of 7 July 2004.

36. Regarding the issue of immigration, by Decision No. 04/11, the Mercosur Council approved the accession of the Republic of Peru to the Agreement on Residence for Nationals of the States Parties of MERCOSUR, Bolivia and Chile, of 29 July 2011; it was ratified by Supreme Decree No. 047-2011-RE and entered into force on 28 June 2011.

(b) *Bilateral agreements*

i. Peru-Argentina

37. Additional Protocol to the Convention on Migration between the Republic of Argentina and the Republic of Peru, signed on 16 December 2002 and ratified by Supreme Decree No. 028-2003-RE. It has been in force since 11 June 2004.

38. This purpose of the Protocol is to broaden the scope of a number of benefits and substantially streamline some administrative aspects. For example, the Protocol extended the deadline for applying for migratory regularization to 365 days (from 180 days) and temporary residence to three years (from six months). It also simplified the procedures for renewing temporary residence and for regularization. In addition, it laid down the requirements for obtaining permanent residence and regulated the voluntary departure of nationals with an irregular status.

ii. Peru-Ecuador

39. Agreement to regularize the employment and migration status of nationals of Peru and Ecuador in the extended border integration zone.

40. The “Agreement to regularize the employment and migration status of nationals of Peru and Ecuador in the extended border integration zone” – Supreme Decree No. 012-2007-RE has been ratified. It entered force on 20 February 2007. This agreement aims to establish an exceptional immigration system to regularize the stay of farm and construction workers and employers of domestic workers in the border integration zone; and for immigration purposes, it is extended in Peru to the regions of Lambayeque, Amazonas and Loreto and in Ecuador to the provinces of Azuay and Cañar.

41. The Peru-Ecuador Permanent Migration Statute is an instrument designed to facilitate the regularization of the migration and stay of migrants in both countries.

²² Art. 2 – *Scope: This Decision shall be applicable to Andean migrant workers. Its scope excludes civil servants and anyone whose activities threaten public morals, law and order, human life and health and the essential interests of national security.*

iii. Peru-Chile

42. Memorandum of understanding on labour and immigration cooperation between the Republic of Peru and the Republic of Chile, dated 2 August 2006. The MoU was amended on 18 April 2007. The “Memorandum of understanding on labour and immigration cooperation between the Republic of Peru and the Republic of Chile” was ratified by Supreme Decree No. 019 2009-RE.

43. The document’s objectives include: (a) promoting the development of labour and immigration policies and practices that improve working conditions and living standards in the territories of the Parties, (b) protecting basic workers’ rights such as the right to form associations, to organize and to collective bargaining, the prohibition of any form of forced or compulsory labour, a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labour and discrimination.

iv. Peru-Canada

44. Agreement on Labour Cooperation between Canada and the Republic of Peru, signed on 29 May 2008, which was ratified by Supreme Decree No. 046-2009-RE and entered into force on 1 August 2009.

45. Note that this labour agreement provides for an open and transparent dispute-resolution procedure, under which any breaches duly established by an independent arbitration panel can result in financial penalties in the form of fines.

46. Under the Free Trade Agreement between Peru and Canada, the parties undertook to sign an agreement on labour cooperation that respects the basic rights of workers, ensuring freedom of association and the right to collective bargaining (with protection of the right to organize and the right to strike).

47. They also agreed to eliminate all forms of forced or compulsory labour, to effectively abolish child labour (including protection for children and young people)²³ and to eliminate discrimination on grounds of employment and occupation.

48. Acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health, and providing migrant workers with the same legal protection as their own nationals as regards working conditions are also covered.

v. Dual citizenship agreement with Spain, approved by Legislative Resolution No. 13283 of 24 December 1959

49. Under that agreement, Spanish citizens are exempt from the procedures for hiring foreign staff in Peru. However, the obligation to obtain a residence visa still applies, which grants migrant status for working in the country.

4. Judicial and administrative mechanisms safeguarding the rights of migrant workers

50. The same administrative and judicial safeguards apply to both domestic and migrant workers for the exercise of their constitutional and legal rights. The principle of the right to effective judicial protection and effective access to justice applies fully to both female and male migrant workers. The means available to them for enforcing their rights against any violations of their rights as workers in Peru may be judicial, administrative and even private (private dispute resolution mechanisms such as arbitration, which has its own jurisdiction).

²³ Quote from the Agreement on Labour Cooperation between Canada and the Republic of Peru, art. 1, para. (c).

That said, note that as an additional safeguard — but not for an exclusive group — migrant workers from CAN countries are covered by a safeguard set out in article 13, paragraph (d) of Decision No. 545, which states that they have “free access to the social security systems, in keeping with the Community provisions that are in effect”.

51. In Peru, the judicial power is exercised by judicial bodies carrying out their functions through the various levels of court in accordance with the Peruvian Constitution and laws (Constitution, art. 138).²⁴ The judicial function in Peru is governed by the principles of unity, independence, due process and effective judicial protection, proceedings open to the public, reasoned decision, the right of appeal, right to compensation as prescribed by law, among others, in accordance with article 139 of the Constitution.

52. Workers can also assert their rights through the courts under employment proceedings governed by the new Employment Proceedings Act (No. 29497).²⁵

In accordance with the structure of the Peruvian justice system, labour proceedings are heard before magistrates courts, labour courts (first instance), labour divisions of high courts (second instance) and the constitutional and social law division of the Supreme Court (in the event of appeal in cassation). However, the judicial settlement of individual labour disputes is not the sole preserve of employment proceedings, since an action for *amparo* may also be brought where fundamental rights (express or implied) are affected. *Amparo* proceedings may be brought in the first instance before courts of constitutional, public, civil or mixed law, as appropriate, and in the second instance before the relevant divisions of the high courts,²⁶ with the right of final appeal before the Constitutional Court if the appeal judgement is not in the complainant’s favour.

(a) *The Judiciary*

53. The Judiciary is autonomous in political, administrative, economic, and disciplinary terms, with independent courts albeit subject to the Constitution; it is organized hierarchically, the highest instance being the Supreme Court of Justice of the Republic²⁷ and its various Supreme Divisions. It also has 31 High Courts of Justice throughout the country which include High Court Divisions or decentralized divisions (in the provinces) and specialized, mixed and magistrates courts located in each of the judicial districts, provincial capitals, districts, villages, annexes, sectors or others. It also has a governing body for support, advice and control.

(b) *Office of the Ombudsman*

54. The Office of the Ombudsman is an autonomous constitutional body, legally constituted under public law, responsible for safeguarding the constitutional and

²⁴ This article states that the power to administer justice emanates from the people and is exercised by the Judiciary through the various levels of court. This article is consistent with articles 1 and 25 of the consolidated text of the Act organizing the judiciary approved by Supreme Decree No. 017-93-JUS, as amended.

²⁵ The Act is entering into force in the cities of Peru on different dates. This legislation is important because it strengthens the oral proceedings mechanisms at trial, the use of new technologies and the simplification of proceedings which, together with an extensive system of precautionary measures, expresses the desire of the legislature to give effect to the right to effective judicial protection for workers bringing actions against their employers.

²⁶ Neves, Javier. *Jurisprudencia en materia Laboral [Jurisprudence on labour issues]*. Judicial debate booklets, legislation and jurisprudence series (vol. 5). Lima: Judicial Coordination Council, 2000, p. 13.

²⁷ The procedures for electing the President of the Supreme Court are governed by art. 74 of the consolidated text of the Act organizing the judiciary.

fundamental rights of the individual and the community, and supervising fulfilment of the duties of the State administration and the performance of public services. The functions of the Office of the Ombudsman also include the defence of migrants' human rights.

(c) *Attorney-General's Office – the Public Prosecution Service*

55. The Attorney-General's Office²⁸ is an autonomous constitutional body headed by the Attorney-General; its main function is to defend the law, civil rights and public interests, representing society in court, for the purpose of defending the family, minors and legally incompetent persons, and the interests of society; and to safeguard public morality, prosecute crime and civil damages. It also ensures crime prevention within the limits laid down by law and the independence of the judiciary and the proper administration of justice, together with the other powers set out in the Constitution of Peru and national legislation.

(d) *Congress of the Republic*

56. The Congress of the Republic of Peru is the Legislature of the Republic of Peru and has a leading position in the Peruvian State. Since 1995 it has been a single-chamber congress, consisting of one legislative chamber of 120 members and 130 from 28 July 2011, elected by multiple districts (by each department according to the voting population) for a five-year term, coinciding with the presidential term. The electoral system is proportional preferential voting. The current Congress was installed on 25 July 2011. It has 24 parliamentary committees.

57. Note also that the executive branch includes the Ministry of Foreign Affairs, the Ministry of the Interior and the Ministry of Labour and Employment, whose responsibilities also include protecting the rights of migrant workers.

(e) *Ministry of Justice and Human Rights*

58. In legislation was adopted in December 2011 to define the powers of the Ministry of Justice²⁹ as the main authority in the area of human rights, and amending its title to the Ministry of Justice and Human Rights. Similarly, the Office of the Deputy Minister for Human Rights and Access to Justice was established.

59. As set out in the Rules on the organization and functions of the Ministry of Justice and Human Rights,³⁰ the organizational structure includes the Department of Justice, the Department of Human Rights and Access to Justice, and Boards and Commissions.

60. The Directorate-General for Public Defence and Access to Justice is a line agency which reports to the Department of Human Rights and Access to Justice. Its functions include ensuring access to justice and to the right to defence of all people. Accordingly, it is responsible for directing, regulating, promoting, coordinating, and overseeing the Public Defence Service; extrajudicial conciliation; and promoting and expanding the use of alternative conflict resolution mechanisms.

61. Note that in Peru there is no legal or other impediment to people of other nationalities having access the Peruvian Public Defence Service. This is an interpretation of article 14 of Act No. 29360 on the Public Defence Service, which states as follows: "The Public Defence Service is provided to assist low-income persons requiring legal defence or assistance in the circumstances set out in article 8. Is also provided in cases

²⁸ As per the Constitution of Peru, art. 158.

²⁹ Congress of the Republic. Act No. 29809 on the Organization and Functions of the Ministry of Justice and Human Rights. *El Peruano*, 8 December 2011.

³⁰ Supreme Decree No. 011-2012-JUS, dated 19 April 2012.

where a defence is required by the procedural rules and the defendant has no lawyer or has waived the right to defence but the court or Public Prosecution Service requires one.”

62. The Directorate for Legal Aid and Victim Defence³¹ was set up in April 2012, within the organizational structure of the Directorate-General for Public Defence and Access to Justice, for the purpose of providing free legal aid in family, civil and labour matters to low-income persons, as well as immediate assistance to victims of rights violations in any form and throughout the country.

63. Regarding free legal aid, in July 2012 there were 24 centres nationwide³² where migrant workers and/or their relatives can obtain advice and sponsorship in employment, civil and family matters by trained professionals. It has 908 public defenders nationwide, which is an increase of 30 per cent in relation to the 697 lawyers available in 2008. Between January 2008 and June 2012, there were 1,436,910 consultations and 513,897 sponsorships by the Public Criminal Defence system. The implementation of the New Code of Criminal Procedure has led to 53,793 consultations and 28,095 sponsorships in the country.

(f) *Ministry of Foreign Affairs*

64. The Ministry of Foreign Affairs³³ is an agency of the Executive Branch operating in the external relations sector and representing the State in the international arena through the Diplomatic Service of the Republic and the Foreign Service, protecting the interests of citizens who are victims of the offence of human trafficking, witnesses and their dependent relatives, who are abroad, and is responsible for coordinating the safe repatriation of victims and direct dependent relatives, among others. The Directorate-General for Peruvian Communities Abroad and Consular Affairs is the responsible agency in this area of international migration.³⁴

65. The Directorate-General for Peruvian Communities Abroad and Consular Affairs is a line agency of the Ministry of Foreign Affairs responsible for consular affairs, international migration and the protection and assistance of Peruvians abroad.

66. Meanwhile, the Directorate for the Protection and Assistance of Citizens, which reports to the Directorate-General for Peruvian Communities Abroad and Consular Affairs is responsible for devising policies to protect the rights of Peruvians resident abroad, as a mechanism for social inclusion, recognizing that this is a strategic focus and a priority of Peruvian foreign policy.

(g) *Ministry of the Interior*

67. The Ministry of the Interior³⁵ devises, establishes, promotes, implements, monitors and assesses policy on domestic and public order, in order to ensure compliance with the law and respect for human rights throughout the country. Its functions include monitoring compliance with internal migration policy.

³¹ *Ibid.*

³² The Offices for the Legal Assistance and Defence of Victims are located in: Amazonas, Ancash, Apurímac, Arequipa, Ayacucho, Cajamarca, Callao, Cañete, Cuzco, Huancavelica, Huánuco, Huaura, Ica, Junín, La Libertad, Lima Norte, Lima Metropolitana, San Juan de Lurigancho, Lima Sur, Madre de Dios, Pasco, Puno, Santa, San Martín and Tumbes.

³³ Act No. 29357 on the organization and functions, of 30 April 2009.

³⁴ Regulation on the Organization and Functions, art. 115.

³⁵ Consolidated text of Legislative Decree No. 370, approved by Supreme Decree No. 004-2005.IN, Act on the organization of the Ministry of the Interior of 22/07/2005.

68. The National Migration Authority³⁶ — formerly the Directorate-General for Migration and Naturalization — and the Directorate-General for the National Police of Peru, both reporting to the Ministry of the Interior, are responsible for taking action in any cases of criminal or administrative infringements which involve aliens.

69. The National Migration Authority of the Ministry of the Interior ensures that the administrative procedures are carried out for granting temporary visas or residence permits for the migration categories of “worker”, “designated worker” and “family member”, giving equal treatment to all without distinction on grounds of sex, race, colour, language, religion or belief, public or other opinion, national, ethnic or social origin, nationality, age, financial circumstances, property, marital status, birth or other circumstance. The functions performed by the Directorate-General for Migration and Naturalization are covered by article 55 of the Aliens Act that recognizes equal rights for Peruvians and foreigners, with the exceptions laid down by the Constitution, that Act and other legislation of the Republic.

70. In that regard, note that by Legislative Decree No. 1130³⁷ established the National Migration Authority as an specialist technical agency of the Ministry of the Interior with administrative, functional and financial autonomy. The Authority is responsible for internal migration policy and contributes to internal and border security policy. It coordinates migration control with the various State agencies that have a presence in the country’s migration or border control posts to ensure that it functions properly. It has nationwide jurisdiction. However, pending the approval of the management tools for proper implementation by the National Migration Authority, the agency has been authorized to retain the functions, organizational structure and management tools of the Directorate-General for Immigration and Naturalization.

71. The National Police of Peru³⁸ is a State institution reporting to the Ministry of the Interior, with administrative and operational autonomy, which aims to secure, maintain and restore internal order; prevent, investigate and combat crime and offences; provide protection and assistance to individuals and to the community; ensure compliance with the laws and the safety of public and private assets; and monitor and control the borders.

72. The Directorate of State Security of the Ministry of the Interior³⁹ is the systemic technical and policy agency responsible for providing personal protection to government officials, dignitaries, national and foreign personalities on official visits; surveillance and guarding of the headquarters of State agencies; prevention and investigation of offences against the State and National Defence, against the authorities and the constitutional order, against the will of the people, against public security, peace and health and breaches of the Aliens Act. It has an Aliens Division whose mission is to prevent and investigate migration offences by foreigners in the country; it also monitors their activities, in their various migration activities in accordance with the Aliens Act and other applicable statutory provisions.

73. The Directorate-General for Democratic Security of the Ministry of the Interior⁴⁰ is the agency of the Ministry of the Interior responsible for proposing, conducting and monitoring public policy guidelines on human rights and community relations, in accordance with the relevant governing bodies within the purview of the Interior

³⁶ Established by Legislative Decree No. 1130 of 6 December 2012.

³⁷ Published on 7 December 2012.

³⁸ Since June 2012, the National Police of Peru has reported directly to the Minister: Supreme Decree No. 002-2012-IN, New Rules on the Organization and Functions of the Ministry of the Interior, art. 116, published 25/06/2012.

³⁹ Effective from July 2005 to June 2012.

⁴⁰ Supreme Decree No. 010-2013 IN, art. 69, 29 June 2013. Reports to the Office of the Deputy Minister for Internal Order.

Ministry. To fulfil its goals relating to human rights, its organizational structure includes the Directorate of Fundamental Rights for Governance. From June 2012, the Directorate-General replaced the National Human Rights Commission of the Interior sector, which had similar functions.

(h) *Ministry of Labour and Employment*

74. This Ministry is another important body for the defence of migrant workers and their families.

75. The Directorate-General for the Promotion of Employment of the Ministry of Labour and Employment includes within its organizational structure a Directorate of Labour Migration which, pursuant to article 67 of the Rules of Organization and Functions of that administrative authority (approved by Supreme Decree No. 004-2010-TR),⁴¹ is responsible for proposing and implementing national and sectoral policies on labour migration. It has the right of initiative for drafting technical standards, instructions and guidelines to ensure compliance with the labour rights of those involved in labour migration (potential migrants, migrants and their families, returnees, Andean migrants and immigrants).

76. The General Records Department of the Ministry of Labour and Employment⁴² is responsible for approving the employment contracts of foreign personnel and temporary approval of the employment contracts of foreign asylum-seekers. They may appeal to the Directorate for Dispute Prevention and Settlement. Note that from 2006 to December 2010, the Regional Directorates and Regional Offices of Labour and Employment Promotion in the regions were authorized to issue certificates for the status of “Andean migrant worker”.

77. With regard to labour inspection, at national level the labour sector has the Directorate-General for Labour Inspection, which oversees the work of labour inspection carried out by the Regional Directorates of Labour and Employment Promotion, regarding working conditions and compliance by employers with labour regulations, ensuring that the rules protecting the rights of migrant workers are actually observed. This is without prejudice to the obligation of ex-post inspection in the field of the recruitment of migrant workers which is the responsibility of the General Records Department (or the offices that represent it in each region) and that is a horizontal service across the entire public administration.

(i) *Standing Multisectoral Committee “Intersectoral Round Table for Migration Management”*

78. By Supreme Decree No. 067-2011-PCM, The Peruvian State set up the Standing Multisectoral Committee “Intersectoral Round Table for Migration Management”⁴³ as a

⁴¹ This regulation entered into force on 22 April 2010. The Directorate of Labour Migration became operational in August 2010.

⁴² From January 2006 to December 2010, pursuant to Regulation R.M. 173-2002-TR, as amended, Supreme Decree No. 018-2006-TR of 28 October 2006 of Act 27711 on the organization of the Ministry of Labour and Employment of 16 April 2002, it was responsible for keeping the Register of Andean migrant workers, which was a national manual register. This meant that it had to dispatch certificates to the effect that Bolivian, Ecuadorian and Colombian workers had the status of “Andean migrant worker”.

⁴³ Presidency of the Council of Ministers, Ministry of Labour and Employment, Ministry of the Interior, Directorate-General for Immigration and Naturalization, National Tax Office, Office for Standards for Welfare, the Superintendent of Banking, Insurance and Private Pension Fund Administrators, Ministry of Education, Ministry of Women and Social Development, Ministry of Production, Ministry of Justice, National Prison Institute, Public Prosecution Service, Ministry of Health – Social

standing body under the Ministry of Foreign Affairs, which chairs the committee. The Committee's task is to coordinate, assess, propose, prioritize and monitor policies and measures related to comprehensive migration management.

79. The Committee's functions include: proposing guidelines for the policy of comprehensive migration management in Peru, and plans, programmes and projects in that field; fostering the strengthening and updating of the legislation on comprehensive immigration management; devising and promoting mechanisms for implementing programmes and projects of benefit to Peruvian communities abroad; promoting the development of actions and strategies for regular migration, and strengthening the protection of the rights and duties of migrants and immigrants; disseminating and promoting information on the migration status of Peruvians abroad and at home; and disseminating and promoting information on the migration status of Peruvians abroad and at home.

B. Information about the nature and character of migration flows (immigration, transit and emigration)

1. Incoming and outgoing movements of foreigners

80. According to statistics from the National Institute of Statistics and Information Technology, in June 2012, the number of foreigners entering Peru by the various checkpoints nationwide totalled 264,877, an increase of 3.6 per cent in relation to the same month the previous year. Similarly, in the first six months of this year, the number of foreigners entering rose 4.3 per cent compared with the same period last year; foreign nationals registering to enter the country came mainly from Chile (42.8 per cent).

81. Otherwise, 15.2 per cent of foreign nationals entering the country came from the United States, 6.2 per cent from Ecuador, 5.5 per cent from Bolivia, 5.4 per cent from Spain, 4.8 per cent from Colombia, 4.4 per cent from Brazil, 2.9 per cent from Argentina, 2.5 per cent from Panama, 2.2 per cent from the Netherlands, 1.8 per cent from Mexico, 1.4 per cent from France and 1.4 per cent from Venezuela. By gender, 53.7 per cent of foreigners who entered our country were men and 46.3 per cent women.

82. In June 2012, the number of Peruvians migrating abroad totalled 204,000, a rise of 5.3 per cent compared with the same month in 2011. Moreover, between January and June this year, 4.7 per cent more Peruvians left the country than in the same month last year. The main destination countries were Chile with 49.1 per cent, Bolivia with 13.0 per cent, the United States with 9.2 per cent, Ecuador with 4.8 per cent, Spain with 3.8 per cent, Argentina with 3.3 per cent, Brazil with 3.1 per cent, Panama with 2.8 per cent, Colombia with 2.5 per cent, Mexico with 1.9 per cent, the Netherlands and Venezuela each with 1.1 per cent, and the Dominican Republic with 0.8 per cent. By gender, 51.8 per cent of Peruvians leaving were men and 48.2 per cent women.

83. By age group, 28.0 per cent of Peruvians going abroad were aged 30–39, 22.6 per cent were aged 40–49, 19.8 per cent were aged 20–29, 14.1 per cent were aged 50 to 59 and 5.6 per cent were aged under 20. By contrast, the percentage of older people (aged 60 and over) was 9.9 per cent.

Health Insurance, Comprehensive Health Insurance Scheme, MIVIVIENDA SA fund, National Institute for Statistics and Information Technology. The Office of the Ombudsman, and the Foreign Affairs Committee of the Congress of the Republic sit on the Committee as permanent observers.

84. Peru is a net sending country for migrants. Between 1990 and 2009, more than two million Peruvians left the country,⁴⁴ mostly to the United States, Spain, Argentina, Italy, Chile, Japan, Venezuela, Canada, Brazil and Germany.

85. The largest emigration volume by continent of residence was to America (64.4 per cent), followed by Europe (30.7 per cent), Asia (4.4 per cent) and Oceania and Africa (0.4 per cent).

86. There are several reasons for migration. The most important of these are economic reasons, family reunification, studies, and to escape violence; official and illegal means of travel are used. On arrival in the destination countries, the most serious problems Peruvian migrants can face — depending on whether they are legal or illegal migrants — range from a lack of access to basic services, housing, high levels of informal employment and abusive employment conditions, to inadequate prison conditions, exploitation, discrimination and xenophobia, among others. This context of vulnerability is caused by most countries focusing on migration purely from a viewpoint of national defence rather than human rights.

87. Also, according to the National Institute for Statistics and Information Technology, 76,501 Peruvians have returned to the country in the last three years (2007–2009) without leaving the country again up to 30 June 2010.⁴⁵ Importantly, despite the international crisis there has not been a massive return by Peruvians; on the contrary, people are still leaving the country, even though the economic situation in Peru has improved in relation to previous years.

88. With regard to foreigners⁴⁶ in Peru, according to data reported by the National Institute for Statistics and Information Technology, over the period 1994–2009, 58,964 foreigners were resident in Peru while no migratory movements out of the country were reported. Of these, according to the Directorate-General for Immigration and Naturalization, 22,081 foreigners had a valid alien's identity card for 2010.⁴⁷ It can be inferred that the remaining group includes foreigners who have acquired Peruvian nationality, who are deprived of their liberty or are in an irregular migration situation.

2. Foreign labour employed, 2006-June 2012

89. Furthermore, the records of the administrative labour authority in the period 2006 to 2012 indicate a growing trend of Andean workers migrating to Peru. In 2006, a total of 1,186 foreign workers were employed. In the following years the numbers increased to 1,189 in 2007; 1,768 in 2008; 2,054 in 2009; 1,898 in 2010; 2,377 in 2011; and 1,465 in January-June 2012.

⁴⁴ International Organization for Migration/National Institute of Statistics and Information Technology/Directorate-General for Immigration and Naturalization. Peru: Statistics on international migration of Peruvians and immigration of foreigners 1990–2009. Lima: IOM, 2010, p. 14.

⁴⁵ IOM. *Op. cit.*, pp. 40–41.

⁴⁶ Note that Andean migrant workers are treated as nationals. In this regard, art. 10 of Decision No. 545, the Andean Labour Migration Instrument states that: “The principle of equal treatment and opportunity is applied to all Andean migrant workers within the Community. In no circumstances may they be subject to discrimination on grounds of nationality, race, sex, belief, social status or sexual orientation.”

⁴⁷ International Organization for Migration/National Institute of Statistics and Information Technology/Directorate-General for Immigration and Naturalization. Peru: Statistics on international migration of Peruvians and immigration of foreigners 1990–2009, pp. 52 and 61.

Table 1*
Peru: foreign labour employed between 2006 and 2012

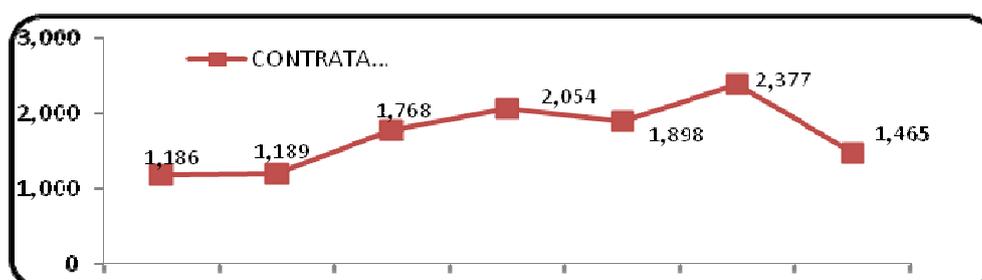
<i>Year</i>	<i>Foreign labour employed</i>
2006	1 186
2007	1 189
2008	1 768
2009	2 054
2010	1 898
2011	2 377
2012**	1 465

Source: Ministry of Labour and Employment/Office for Statistics and Information Technology/Statistical Office.

* Note that the figure reported in each year refers only to foreign workers employed for the first time in that year.

** Information as at June 2012.

Figure 1



Source: Ministry of Labour and Employment/Office for Statistics and Information Technology.

* Information as at June 2012.

90. In terms of areas of the economy, most foreign workers were reported to be working (average 2006–2011) in the construction sector (282), followed by other activities, communal and social services (267) real estate, business and rental activities (256), and retail (179); fewer (4) were working in the fisheries sector. See table 2.

Table 2
Peru: number of foreigners hired per year, by economic activity 2006–2012

<i>Economic activity</i>	<i>Year</i>						
	2006	2007	2008	2009	2010	2011	2012*
Agriculture, livestock, hunting and forestry	3	5	9	26	14	11	10
Fisheries	4	8	6	3	8	3	39
Mining and quarrying	119	78	163	155	172	187	110
Manufacturing industries	82	87	99	137	105	212	84
Supply of electricity, gas and water	4	8	16	12	14	17	13
Construction	95	142	329	499	293	401	219
Trade in motor vehicles	127	160	180	242	238	311	176

<i>Economic activity</i>	<i>Year</i>						
	2006	2007	2008	2009	2010	2011	2012*
Hotels and restaurants	84	22	42	100	62	51	33
Transport, storage and communications	45	66	133	87	116	97	53
Financial brokerage	18	15	17	15	27	31	15
Real-estate, businesses and rental activities	184	145		323	407	506	233
Public administration, social security schemes	2	2	287	19	24		2
Teaching	111	119	129	176	185	185	120
Social and health services	9	15	15	12	29	12	13
Other activities, community, social and personal services	298	0	341	246	204	443	343
Organizations and institutions abroad	1	317	2	2	0	1	0
Private households with domestic service	0	0	0	0	0	0	2
Total	1 186	1 189	1 768	2 054	1 898	2 377	1 465

Source: Ministry of Labour and Employment/Office for Statistics and Information Technology.

* Information as at June 2012.

91. The largest number of foreigners hired (2006–2011) by the labour and employment sector, was from South America (5,633), followed by workers from Europe (2,032), Asia (1,882), North America (1,576), Central America (565), Oceania (168) and, to a lesser extent, Africa with 81 workers. See table 3.

Table 3

Peru: foreigners hired per year by continent and nationality 2006–2012

<i>Continent/Country of nationality</i>	<i>Year</i>						
	2006	2007	2008	2009	2010	2011	2012*
Europe	170	211	296	323	350	418	264
France	31	41	63	54	78	82	52
Germany	17	34	41	35	54	70	28
Italy	19	23	30	42	34	72	50
Netherlands	5	7	8	16	9	16	6
Russia	14	14	11	17	15	23	20
Serbia	2	3	-	2	2	3	1
Spain	-	6	18	11	11	7	6
Sweden	3	-	3	2	4	5	-
Switzerland	7	10	10	11	14	12	3
United Kingdom	36	12	42	68	70	28	31
Other	36	61	80	65	59	100	67
Asia	205	116	246	339	303	367	306
China	151	51	138	191	161	158	121
India	7	10	19	27	17	24	13
Japan	18	21	40	29	21	30	23
Korea	12	15	19	39	32	31	32

Continent/Country of nationality	Year						
	2006	2007	2008	2009	2010	2011	2012*
Pakistan	1	-	-	-	-	-	-
Other	16	19	30	53	75	124	117
Oceania	22	27	24	26	23	29	17
Australia	15	17	16	24	17	23	14
New Zealand	7	10	8	2	6	6	3
Africa	10	10	15	11	9	16	10
South Africa	7	3	7	7	8	6	6
Other	3	7	8	4	1	10	4
North America	148	140	228	229	275	375	181
Canada	39	25	56	40	45	70	23
Greenland	-	-	-	-	-	1	-
Mexico	36	29	58	57	92	100	60
United States	73	86	114	132	138	204	98
Central America	43	62	80	90	105	115	70
Cuba	23	37	28	49	55	54	30
El Salvador	1	6	6	4	9	11	5
Other	19	19	46	37	41	50	35
South America	588	623	879	1 036	833	1 057	617
Argentina	141	172	379	462	279	288	174
Bolivia	26	25	13	5	10	6	2
Brazil	119	106	109	147	153	138	92
Chile	99	164	220	235	187	393	232
Colombia	139	71	47	43	35	21	12
Ecuador	24	24	11	16	11	2	1
Venezuela	22	42	67	100	124	167	92
Other	18	19	33	28	34	42	12
Total	1 186	1 189	1 768	2 054	1 898	2 377	1 465

Source: Ministry of Labour and Employment/Office for Statistics and Information Technology/Statistical Office.

* Information as at June 2012.

C. Present situation regarding the practical application of the Convention in the reporting State

92. It is important to note that the Convention is regarded as the most complete instrument of international law on the protection of migrants. However, its scope does not cover all migrants, only migrant workers and their families, regardless of their migration status.

93. In many cases, the rights of foreign workers who are in the country are protected under the general rules and procedures applicable to all citizens in the country. In a minority of cases, the regulations are specifically designed for migrant workers.

94. The National Migration Authority operates in accordance with the rules of due process, particularly as regards the granting of resident's visas or temporary visas for aliens, for the migrant categories of Worker, Designated Worker or Resident Family Member. Note that for the purposes described above, the interested party must abide by the requirements of the single administrative procedures text approved by Supreme Decree No. 003-2012-IN.⁴⁸

95. Although Peru is part of the Andean Community of Nations (CAN) and has unilaterally implemented Decision No. 545 on the "Andean Labour Migration Instrument", the Aliens Act has not implemented the migrant category of "Migrant Worker", as provided by the Decision and the Convention.

96. At regional level, the implementation of Decision No. 545 in Peru gives rise to some difficulties. We would refer in particular to those identified by the International Labour Organization (ILO).⁴⁹ So, while on the one hand we would assert that the number of Andean migrants arriving in Peru, although growing, is still minimal and that this influx has not adversely affected the Peruvian labour market, it is true that some national production sectors have benefited from this foreign labour. A documented case is that of the construction and real-estate sectors, where a revolution in the domestic market shows that migration within the Community enables us to secure and rely on human capital specializing in areas of economic activity that are not covered in this country.

97. The Aliens Act does not specify in detail the sanctions, accompanying assumptions or consequences of non-compliance; the measure established must be commensurate with the principles of legality and proportionality.

98. There is growing demand in the migrant population for the recognition of university degrees and specialized studies for those travelling abroad. Peru has few conventions on recognition, which impede the recognition of our academic qualifications for our citizens and affects their integration into the labour market. There is very little publicly available information about which foreign universities may be recognized and their certificates approved in this country, which universities in Peru are authorized for approval, how long the paperwork takes and the actual cost of the whole procedure.

99. Note, furthermore, that the compensation due for dismissal (protection for damages), treats foreign workers differently from the labour regulations governing private business. In this respect, the differentiating factor is the system of compensation laid down by law for workers covered by the general private business regime who are recruited for a specified period, while migrant workers must be hired on a temporary contract, pursuant to article 5 of Legislative Decree No. 689, the Act on Employment of Foreign Labour.

⁴⁸ Published on 23 December 2012.

⁴⁹ We refer below to some conclusions of the ILO report on the implementation of Decision No. 545 in Peru. The full document is available on the following website: <<http://www.comunidadandina.org/camtandinos/OLA/Documentos/Pdf/EstudioDecision545OITmigrandina.pdf>>.

Table 4
Comparison of protection against dismissal

<i>General private business regime</i>	<i>Foreign labour regime</i> ⁵⁰
Consolidated Text of the Labour Productivity and Competitiveness Act. Supreme Decree No. 003-97-TR.	Implementing regulation of the Act on Employment of Foreign Labour. Supreme Decree No. 014-92-TR.
“Article 76. If, after the expiry of the trial period, the employer arbitrarily terminates the contract, he must pay the worker compensation equivalent to one and a half months’ regular pay for each month in which he is not working until the expiry of the contract, up to twelve (12) months.”	<p>“XIV. Loss of earnings</p> <p>Article 24. If the employer unilaterally terminates the contract without stating any grounds for dismissal, he must pay the employee the wages due up to the expiry of the contract, by way of compensation.</p> <p>The payment of compensation as provided for in the preceding paragraph replaces compensation for wrongful dismissal.”</p>

100. Note that the rules on compensation in case of dismissal differ for the two groups of workers in the following respects: while for Peruvian workers the amount of the compensation is calculated on the basis of payment of one and a half months’ pay for each month between the date of termination and the expiry of the contract, for migrants it is calculated on the basis one month’s pay (rather than one and a half). On the other hand, the private-sector labour law sets a ceiling on the maximum amount of compensation that does not apply to the system for migrant workers.

101. There is a specific issue regarding the legislative implementation of the holiday entitlement of foreign workers: they may accumulate two or more vacation periods where the contract of employment is concluded abroad (Legislative Decree No. 713, art. 18 “Legislation on paid leave of absence for employed workers”).⁵¹

1. The right of return to the country with proper arrangements for the return and reintegration (art. 8, para. 1)

102. On 14 March 2013, Act No. 30001 on the Economic and Social Reintegration of Returned Migrants was enacted in order to facilitate the return of Peruvians living abroad, regardless of their migration status, through incentives, guidance and assistance in the fields of education, health and economic, business and labour development to foster the sound economic and social reintegration of returned migrants and their families. Note that the Intersectoral Round Table for Migration Management has prepared a draft regulation, which was sent on 10 June to the Presidency of the Council of Ministers for review and possible approval.

⁵⁰ This regime does not apply to the Andean migrant workers, who are governed by Decision No. 545, the Andean Labour Migration Instrument.

⁵¹ This legislation has been in force since 6 December 1991. Note that under that legislation, workers to whom this exception does not apply (Peruvian and foreign workers whose contract of employment was concluded in Peru) may accumulate no more than two consecutive vacation breaks, provided that after a year of continuous work they take at least seven calendar days’ leave.

2. The obligation to avoid discriminatory treatment in the recognition of rights (art. 7)

103. The Constitution makes no distinction in the treatment of the rights of Peruvian workers and those of foreigners in employment.

104. In the absence of implementing provisions for the Aliens Act since 1991, the Directorate-General for Immigration and Naturalization has issued guidelines to enable such acts to be prosecuted and punished. Penalties are currently established with reference to Ministerial Resolution No. 0548-95-IN-030100000000, of 10 May 1995. However, the procedures laid down therein are still incomplete and lack clear application criteria to avoid arbitrary decisions.

3. The right to private and family life (art. 44)

105. The granting of residence visas for family reunification (known as the family visa) does not address cohabitation, although this situation is legally recognized and has civil consequences in Peru.

D. Measures taken by the State party to disseminate and promote the Convention, and cooperation with civil society on the promotion and respect of the rights concerned

106. The Directorate for International Judicial Cooperation of the Ministry of Justice and Human Rights, in the exercise of its powers, has taken a number of measures to ensure that the human rights of both female and male convicted migrants are respected.

107. The Directorate of International Judicial Cooperation, in coordination with the Post-Prison Department of the National Prison Institute, has made a series of visits to prisons in order to publicize the right of foreign nationals to rehabilitation in their social environment of origin. In this way, it promotes and processes applications for international transfers of prisoners. As part of these activities, information is also provided to convicted foreigners so they know their rights and the requirements they have to meet to initiate an international transfer procedure.

108. During 2012, the National Prison Institute made three visits to prisons in Lima (Ancon II, Chorrillos I and Virgen de Fátima), meeting 500 foreign inmates.⁵²

109. The Directorate also handles the coordination between the institutions of the National Penal System to promote assistance in the enforcement of the sentences of convicted persons.

110. On 23 July 2010, the Ministry of Labour and Employment launched the Migrant Information Service. It subsequently institutionalized the PERU INFOMIGRA Information and Guidance Service,⁵³ as a timely, accurate and reliable information and guidance service for migrant workers on the process of labour migration, their social and employment rights, information on migration incentives offered in the country for their return and on the productive use of remittances, so as to enhance their chances of employment. It is now called the Migrant Guidance Service (available on the following website: www.trabajo.gob.pe/migrante/).

⁵² In these meetings, foreign inmates are informed of the current regulations on the international transfer of prisoners, the enforcement of sentences, and on issues concerning the requirements and the relevant procedure.

⁵³ Ministerial Resolution No. 002-2011-MTPE/3 approving General Directive No. 001-2011-MTPE/3/17, dated 3 March 2011.

111. Among the results achieved in the framework of the PERU INFOMIGRA Information and Guidance Service, from July 2011 to June 2012, 1,937 potential migrants, families of migrants and returnees were given direct personal guidance at the Migrant Guidance Service; and there were 107,399 visits to the portal of the migrant information and guidance service (a returnees' employment platform for Peruvians wishing to migrate, Peruvians who are abroad and wish to return to Peru, Peruvians working abroad and foreigners working or wishing to work in Peru).

112. On the other hand, the Ministry of Labour and Employment has set up a One-Stop Job Centre⁵⁴ to promote employment in the country by fostering job opportunities, improving employability and the development of sustainable ventures. It offers in one place the State's free services to promote employment and entrepreneurship for both citizens and businesses, comprising: labour market information, business outreach, vocational guidance and occupational information, job training, training for entrepreneurship; guidance for entrepreneurship, job vacancies, advice on job-seeking, the standard labour certificate, temporary employment, certification of job skills and the Migrant Guidance Service aimed at citizens and young people requiring information and guidance on the process of labour migration, technical assistance for returnees, and training in the productive use of remittances. Its organization and operation are governed by Ministerial Resolution No. 109-2012-TR approving General Directive No. 02-2012-MTPE/3/18 "Guidelines for handling users of the One-Stop Job Centre". Between January and June 2012, Job Centres were opened in Moquegua, Tacna, Ayacucho, Loreto, San Martín — Moyobamba —, Tarapoto, Lambayeque, Apurímac and Piura.

113. Among the achievements of the One-Stop Job Centre, between July 2011 and June 2012, 166 returning migrants received training for jobs and self-employment, and their job skills were certified under the Revalora Perú programme, now Vamos Perú. Most of the returnees came from the United States, Chile, Spain, Argentina, Japan and Italy.

114. Under the National Human Rights Plan (PNDH)⁵⁵ for 2006–2010, nine measures were introduced to strengthen the mechanisms for the comprehensive protection of migrants' human rights. These include:

- (a) Ratifying international standards safeguarding the rights of migrants and adapting domestic legislation to implement them;
- (b) Including the migration issue in integration and trade agreements, particularly in the negotiations on the Free Trade Agreement;
- (c) Running public information campaigns for the prevention of illegal migration and people trafficking and smuggling;
- (d) Introduction of early warning systems by the authorities for dealing with emergencies faced by migrants;
- (e) Fostering the participation of civil society in the border committees operating on Peru's northern and southern borders;
- (f) Simplifying procedures and reducing consular fees in Peruvian offices abroad;
- (g) Developing coordination mechanisms between the public and private sectors to facilitate the transfer of remittances.

⁵⁴ Created by Supreme Decree No. 001-2012-TR dated 8 February 2012.

⁵⁵ Ministry of Justice and Human Rights. Supreme Decree No. 017-2005-JUS of 10 December 2005. The National Human Rights Plan was extended until 31 December 2011 by Supreme Decree No. 021-2010-JUS of 20 December 2010.

115. Among the activities of the proposed National Human Rights Plan for 2013–2016, activities are also planned for the protection of the rights of migrant workers and their families. Note that this plan is currently before the Council of Ministers for discussion and approval.

116. Up to June 2011, the Ministry of Labour and Employment implemented the Action Plan for Strengthening Regional and Local Government under the Labour Migration Management Framework,⁵⁶ seeking to coordinate the management of labour migration at all three levels of government, with a view to improving the quality of life of migrant workers and their families. This plan was implemented with the support of the International Organization for Migration (IOM), the International Labour Organization (ILO) Migration Programme and the United Nations Population Fund (UNFPA).

117. The following main results were achieved through the implementation of the Action Plan for Strengthening Regional and Local Governments in the Labour Migration Management Framework: 16 training workshops were conducted on labour migration management and building an upward career path; they also covered the shared social development of the countries of origin and destination. They took place in 13 cities, with the participation of 13 regional governments and 104 provincial and district municipalities, involving a total of 457 authorities and officials.

118. Since contemporary migration is a manifestation of the current processes of globalization, the Ministry of Foreign Affairs regards migration as a natural field of action in a number of areas; accordingly, in 2005 the Secretariat for Peruvian Communities Abroad drafted the “Guide for the recent Peruvian immigrant”. This document seeks to provide reliable and up-to-date information for Peruvians emigrating temporarily or permanently to countries with a large presence of Peruvian migrants or those with an increasing flow that are regarded as new destinations. The guide makes reference to the immigration laws of those countries, sets out migrants’ rights and duties in the host country, the requirements for entry, stay and obtaining a work permit, and includes a directory of Peruvian consular offices, among other things.

119. Moreover, in December 2010 the Ministry of Foreign Affairs presented its new publication: “Guide for Peruvian Immigrants Abroad”, with the aim of providing reliable and up-to-date information for Peruvians migrating temporarily or permanently to another country. This amounts to effective protection before Peruvian workers go abroad, giving the reader a true picture of his future migration status and the rights and duties that will be recognized by the host country.

120. The Ministry of Labour and Employment circulated the “Basic Guide for Migrant Workers”,⁵⁷ which includes information on the protection of the labour rights of migrant workers, migration administrative procedures, details of the Andean migration card, the services it provides through its job training programmes, information and guidance for migrants and the National Employment Service platform for returnees. It also includes the telephone numbers and addresses of the Consulates of Peru in the United States, Argentina, Bolivia, Chile, Brazil, Ecuador, Spain, Italy, Japan and Venezuela.

121. The Office of the Ombudsman has made its contribution to the obligation to inform, established by the Convention, by drafting the “Basic Guide for Migrant People” which contains the basic information that every Peruvian should have when migrating to another country. This booklet was distributed to the migration authorities for circulation and to various Peruvian associations and organizations abroad.

⁵⁶ Approved by Ministerial Resolution No. 204-2011-TR, dated 21 July 2011.

⁵⁷ Released on 10 December 2010.

III. Information in relation to each of the articles of the Convention

A. General principles

1. Articles 1 and 7 of the Convention: non-discrimination

122. Under this principle, States are bound not to introduce into their law discriminatory regulations, to eliminate discriminatory regulations, to combat any such practices, and to establish rules and other measures to ensure the effective recognition and equality before the law of all people.

(a) *Constitutional mandate for non-discrimination against migrant workers in Peru*

123. There are no provisions in the Constitution that differentiate between the treatment of the rights of workers of Peruvian nationality and those of foreign nationals providing services on Peruvian territory. The constitutional rights of workers in Peru are applied without discrimination as to nationality. In this respect, article 2 of the Constitution establishes the right to equality before the law, to the effect that “no one shall be discriminated against on the basis of origin, race, sex, language, religion, opinion, economic circumstances or any other factor” (second para.). Thus, equal treatment and the non-discrimination mandate in labour relations are guaranteed in Peru, regardless of the worker’s nationality (original or acquired). In the labour context, ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, is in line with it.

124. In addition to the generic prohibition of discrimination in relations between private individuals, in the labour context there is a constitutional clause⁵⁸ relating to equal opportunities in employment.

125. Note that, in the context of the CAN, article 10 of Decision No. 545 states that “The principle of equal treatment and opportunities for all Andean migrant workers within the Community space is recognized. In no case shall they be subjected to discrimination by reason of their nationality, race, sex, creed, social status or sexual orientation”.

126. Another important aspect of the non-discrimination mandate is the nullity of dismissal based on discriminatory grounds. In that regard, Supreme Decree No. 003-97-TR, Consolidated Text of Legislative Decree No. 728, the Labour Productivity and Competitiveness Act,⁵⁹ refers in article 29 to grounds of discrimination for which dismissals may be nullified, workers being reinstated in their jobs (protective remedy). In addition, there is settled case law of the Constitutional Court that lists invalid grounds for dismissal, based on discrimination (nationality, race, sex, trade union, etc.).

⁵⁸ Constitution, art. 26:

“The following principles shall be observed in labour relationships:

Equality of opportunity without discrimination.

Inalienability of the rights recognized by the Constitution and the law.

Where any doubt about the meaning of a rule cannot be resolved, it shall be interpreted in the worker’s favour.”

⁵⁹ It entered into force on 28 March 1997.

(b) *Peruvian legislation aimed at promoting equal opportunities for and non-discrimination against migrant workers*

127. Article 55 of Legislative Decree No. 703, the Aliens Act, states that foreigners in the territory of the Republic have the same rights and obligations as Peruvians, with the exceptions laid down by the Constitution, this Act and other statutory provisions of the Republic.

128. Act No. 28867, amending article 323 of the Criminal Code of 8 August 2006 punishes anyone committing acts of discrimination for whatever reason, with a custodial sentence of no less than two years and no more than three years or community service of from 60 to 120 days. Where the agent is a public official or servant, the penalty shall be no less than two and no more than four years and loss of legal capacity. The same custodial sentence shall be imposed if the discrimination involved acts of physical or mental violence.

129. Supreme Decree No. 027-2007-PCM of 22 March 2007, defining and establishing the mandatory national policies for Government agencies, establishes policies designed to promote equality of opportunity and non-discrimination.

130. Supreme Decree No. 052-2011-PCM, amending section 9, national employment policy, sub-section 9.1 of article 2 of Supreme Decree No. 027-2007-PCM of 20 June 2011, promotes equal opportunities and non-discrimination in the workplace, as specified in Policy 5: "Promoting equal opportunity and treatment and non-discrimination in the labour market, and equal opportunities for men and women."

131. The Attorney-General's Office, in carrying out its task of upholding the law and the rights of citizens, takes measures to prevent and punish acts of discrimination, including any committed against migrant workers.

132. In accordance with the Universal Declaration of Human Rights, and the Constitution, the Judiciary makes no discrimination in the courts regarding the treatment, claims, dispute resolution, among other things, between Peruvians and migrants and their families. On the contrary, there is a typically Peruvian atmosphere of respect and friendship, particularly since article 7 of the consolidated text of the Consolidated Text of the Act organizing the judiciary enshrines the judicial guarantee and protection.

(c) *Guarantees of respect and safeguarding of the rights under the Convention without discrimination for all migrant workers and their families who are within Peruvian territory and jurisdiction*

133. In accordance with article 1 of the General Labour Inspection Act No. 28806,⁶⁰ one of the methods or mechanisms used by the State to ensure compliance with and enforcement of labour standards, including for foreign migrant workers,⁶¹ is the Labour Inspectorate.

⁶⁰ The Ninth Final and Transitional Provision of the Act states that it would enter into force 60 days after the date it is published in *El Peruano*.

⁶¹ General Labour Inspection Act, art. 3 – Functions of the Labour Inspectorate. "The Labour Inspectorate shall be responsible for carrying out inspections and all other duties assigned by social and labour legislation, the exercise of which may not restrict the actual performance of the inspection function, without prejudice to the authority and impartiality of the labour inspectors.

The purposes of inspection are:

To monitor and enforce the laws, regulations, agreements and conditions of contract in the social and labour legislation, whether relating to the standard or special regimes: (...)

(c) Employment and migration (...)

134. In this context, Title III – “Penalties” of the Implementing Regulation of the General Labour Inspection Act, approved by Supreme Decree No. 019-2006-TR has a chapter on “Offences in respect of the employment of foreign labour” which lists the offences in this area, classed as minor, serious and very serious.⁶² Without prejudice to the offences referred to in the aforementioned Regulation, this relates to offences in the field of labour relations.⁶³ The affected worker may also be a migrant or foreign, provided he or she was hired in accordance with the formalities laid down in Legislative Decree No. 689 – the Act on Employment of Foreign Labour.

135. Moreover, the implementing regulation for this Act also classes as a very serious offence discriminatory acts in employment and job placement (art. 31.3) or industrial relations (art. 25.17), committed on the basis of origin, race, colour, sex, age, language, religion, opinion, national extraction, social origin, economic status, exercise of freedom of association, disability, carrying the HIV virus or of any other kind, by fining the offending company with 5 per cent of 11 taxation units to 100 per cent of 20 taxation units, taking account of the number of workers affected.

(d) *Nationwide inspections*⁶⁴

136. The Labour Inspectorate’s Information System (SIIT) indicates that during the period 2007–2012⁶⁵ there was a national total of 897 inspection orders relating to foreign workers⁶⁶ covering 852 companies and 20,116 workers, of which 55 companies were found to have committed offences affecting 109 workers. The following table shows a sharp rise in the number of such orders in 2008 and 2009, when there were a total of 175 and 290 orders respectively.

(c)(2) Rules relating to labour migration and foreign labour. (...)”

⁶² Implementing Regulation of the Labour Inspection Act, “Chapter VI – Offences in respect of the employment of foreign labour

Art. 41 – Minor offences in respect of the employment of foreign labour. The following offences are classed as minor:

41.1 Offences affecting purely formal or documentary obligations, in the employment of foreign labour, provided they are not classed as serious offences.

41.2 Failing to provide a foreign worker, in accordance with the time limits and requirements, with a copy of his or her contract of employment approved by the competent authority.

Art. 42 – Serious offences relating to the employment of foreign labour. The following offences are classed as serious:

42.1 Failing to conclude contracts of employment with foreign workers in writing, in accordance with the requirements.

42.2 Failing to comply with any limits on the employment of foreign labour.

Art. 43 – Very serious offences relating to the employment of foreign labour. The following offences are classed as very serious:

43.1 Employing or hiring foreign workers without first obtaining the relevant administrative authorization.

43.2 Submitting false information or documentation to the competent authority to obtain exemption from the limits on hiring foreign labour.

43.3 Fraudulent employment of foreign labour.”

⁶³ Described in the Implementing Regulation of the General Labour Inspection Act, arts. 23, 24 and 25.

⁶⁴ Report No. 296-2012-MTPE/2/16.2, of the Operational Labour Inspection Directorate, an organizational unit under the Directorate-General for Inspections.

⁶⁵ The SIIT has been recording information since 2007.

⁶⁶ For statistical purposes, workers from Bolivia, Colombia and Ecuador are included. However, workers from those countries are treated as nationals, in accordance with Decision No. 545, the Andean Labour Migration Instrument.

Table 5
Peru: Inspections relating to foreign workers, 2007–2012

Year	No. of inspection orders	No. of companies inspected	No. of workers inspected	No. of offending companies	No. of workers affected
2007 ¹	5	5	5	0	0
2008 ²	175	134	685	10	21
2009 ³	290	286	4 575	10	33
2010 ⁴	9	9	592	1	1
2011 ⁵	18	18	535	5	7
2012 ¹	400	400	13 724	29	47
Total	897	852	20 116	55	109

Source: SIIT. Ministry of Labour and Employment.

Technical note: The recorded data correspond to the report of 31 July 2012.

¹ The recorded information corresponds to the region of Lima.

² The recorded information corresponds to the regions of Lima and Arequipa.

³ The recorded information corresponds to the regions of Lima, Cuzco, La Libertad and Arequipa.

⁴ The recorded information corresponds to the regions of Lima, Cuzco and Piura.

2. Article 83: right to an effective remedy

137. Under the Constitution, the Act organizing the Judiciary, the various adjective and substantive codes, and the specific laws, Peruvian citizens and foreigners and their families may opt for a number of legal remedies to defend their rights by bringing actions or judicial complaints to the competent court.

(a) Administrative appeals governed by the General Administrative Procedure Act (No. 27444)

138. Where administrative procedures are declared inadmissible for non-compliance with any requirement of the Consolidated Text of Administrative Procedures of the Directorate-General for Immigration and Naturalization, rather than for a breach of the Convention, foreigners exercising their right to an adversary procedure as provided for in paragraphs (a) and (b) of article 207 of the General Administrative Procedure Act (No. 27444) have lodged administrative applications for reconsideration and appeal. In order to guarantee the decisions in such challenges, the migration authority resolves them by applying the principle of due process by providing the appropriate guarantees and settling them within the statutory time limits.

139. Where rights under the Convention are infringed by the administrative apparatus of the national, regional or local Government or the various agencies, the constitutional *amparo* procedure may be invoked (Constitution, art. 200, para. 2) by bringing an action against the administrative decision, unless there are court rulings that have previously settled the same issue.

(b) Resources

140. In the event of the fundamental right to personal liberty being jeopardized or other related offences, a writ of habeas corpus is filed, while for rights other than personal freedom, an action for *amparo* should be brought. Both procedures are regulated by article 200 of the Constitution and the Code of Constitutional Procedure (Act No. 28237).

(c) *Complaints*

141. In the case of infringements in which someone is the victim of a crime or offence under criminal law, a complaint should be filed with the Public Prosecution Service which, in accordance with its powers, will assess the allegations with a view to formalizing the complaint. Please note that there are two procedural models in Peru today: criminal proceedings governed by the Code of Criminal Procedure (Act No. 9024) which is applied in 11 judicial districts, and criminal proceedings governed by the new Code of Criminal Procedure (Legislative Decree No. 957) which is applied in 21 judicial districts.

142. In criminal proceedings, sentences are handed down with respect to two aspects: the sentence imposed on the offender and civil damages. Criminal prosecutors are empowered to monitor compliance with the judgement with regard to the enforcement of the sentence. However, in regard to civil damages, it is for the injured party as a civil party to apply to the judicial authority for enforcement.

143. Accordingly, a migrant or foreign worker, hired in accordance with the provisions of national law, who considers that his or her labour rights have been infringed, may file a complaint with the Labour Inspectorate with a view to having a check carried out that the employer complies with the statutory labour obligations. Where submitted in writing, this complaint must satisfy certain requirements, in relation to which the competent authority, when assessing them, will issue the relevant inspection order and assign the investigation to an inspector who, on the basis of the allegations made, will determine whether the inspected party complies with the labour regulations and, if they have been infringed, will take the measures provided for by the legislation to ensure compliance.

3. Article 84: duty to implement the provisions of the Convention

(a) *Measures adopted by the State to implement the provisions of the Convention*

144. The reader is referred to the general information in this report on the legal framework for the implementation of the Convention.

145. In addition to this, the Judiciary is preparing a directive that emphasizes the main provisions of the Convention and full implementation of and compliance with the Convention at national level by its judicial bodies. Coordination is also planned with the Human Rights Secretariat of the Ministry of Justice so that they can make a joint contribution on the training of judges and court officials through the Judicial Academy and the country's high courts, especially if a virtual classroom and videoconferencing facilities are available.

146. The State, through the Ministry of Labour and Employment,⁶⁷ has action plans that include fundamental rights in the workplace, under which measures are being carried out aimed at promoting equal opportunities and non-discrimination in the workplace. These measures include one to promote freedom of association, the elimination of forced labour, the elimination of child labour, equality of opportunity and non-discrimination.⁶⁸

(b) *Other action of the Ministry of Labour and Employment*

147. Ministerial Resolution No. 009-2006-TR (12.01.2006) approved National Directive No. 004-2005-MTPE/DVMT/DNRT laying down the criteria that the Administrative Authority of Labour should apply at national level to comply with Ministerial Resolution

⁶⁷ Act No. 29381 on the structure and functions of the Ministry of Labour and Employment, art. 4, para. (a).

⁶⁸ Implementing regulation on the structure and functions of the Ministry of Labour and Employment, art. 52, approved by Supreme Decree No. 004-2010-TR.

No. 279-2004-TR⁶⁹ and Decision No. 545. It governs equal treatment — an aspect that was already addressed above — between Peruvian workers and Andean migrant workers. Furthermore, it exempts Andean workers from the percentage restrictions on hiring foreign labour and various formalities. On the other hand, it retains the obligations to apply for the necessary migrant status, evidenced by a work visa, and to submit the documentation laid down in the Consolidated Text of Administrative Procedures of the Ministry of Labour and Employment to the General Records Department (or equivalent office in the Regional Directorates or Offices of Labour and Employment Promotion).

148. Ministerial Resolution No. 318-2011-TR dated 17 December 2010 approved Directive No. 001-2010-MTPE/3/17.3 implementing the Virtual Registry of Andean Migrant Workers (SIVITMA) from January 2011, whereby the employer registers the Andean migrant's contract of employment, and automatically and securely obtains the Andean Migrant Worker's Certificate. SIVITMA is available on the website of the Ministry of Labour and Employment, and employers can access it 24 hours a day with their user ID.

149. Ministerial Resolution No. 105-2011-TR of 30 March 2011 approved the "Guidelines on Sectoral Labour Policy 2011–2015 for the Labour and Employment Promotion Sectors". This document guides the actions of the labour and employment promotion sector, and includes Guideline No. 6, designed to promote compliance with social and labour rights, fundamental rights in the workplace and health and safety at work, which is a fundamental labour right, promoting non-discrimination and equal opportunities in the workplace.

150. Furthermore, Directive No. 02-2011⁷⁰ "Directive for the Operation of the Offices of the National Employment Service" approved by RVM No. 003-2011-MTPE/3, states in paragraph 6.1.3 — section VI — that employment consultants must inform and guide citizens regarding job offers, warning them about the crimes of human trafficking, forced labour and smuggling of migrants, in compliance with the provisions of Supreme Decree No. 007-2008-IN, approving the implementing regulation of Act No. 28950 "Combating Trafficking in Persons and Smuggling of Migrants".

B. Part III of the Convention: Human rights of all migrant workers and members of their families

1. Article 8: right to leave any State, including one's State of origin, and to return

151. Peru observes the constitutional right to freedom of movement of persons (whether Peruvians or foreigners), established in article 2, paragraph (11). It is regulated by Procedures 2, 3, 4 and 5 of the Consolidated Text of Administrative Procedures of the Directorate-General for Immigration and Naturalization.⁷¹ Any limitations or restrictions are for health reasons, by court order or pursuant to the Aliens Act.

⁶⁹ This regulation was in force until December 2010. It implemented the Register of Andean Migrant Workers – RETMA.

⁷⁰ Published on 6 May 2011

⁷¹ Consolidated Text of Administrative Procedures of the Directorate-General for Immigration and Naturalization, approved by Supreme Decree No. 003-2012-IN.

Procedure 2 – Migration control of outgoing Peruvians.

Procedure 3 – Migration control of incoming Peruvians.

Procedure 4 – Migration control of incoming foreigners.

Procedure 5 – Migration control of outgoing foreigners.

- (a) *Guidelines, programmes, plans and strategies to safeguard the right to leave the country and return to it*

152. The Attorney-General's Office operates in the border areas and air, land and sea transport terminals, together with the border control authorities, to ensure that persons entering or leaving the country comply with the relevant legal requirements. The Attorney-General's Office has also made arrangements with the National Police to notify prosecutors immediately when any of these checkpoints observes events that appear to constitute customs offences, drug trafficking, trafficking or persons or crimes connected with migration.

- (b) *Restrictions on the free movement of migrant workers and their families*

153. In accordance with the Constitution, such restrictions may be imposed only for health reasons, by court order or pursuant to the Aliens Act.

154. In accordance with the provisions of the article of the Constitution cited above, articles 29 and 30 of Legislative Decree No. 703, the Aliens Act, lay down the prohibitions and restrictions on the entry of foreigners into the country. Account should also be taken of the requirements for employing foreign workers in Legislative Decree No. 689 and its implementing regulation (Supreme Decree No. 014-92-TR).

2. Articles 9 and 10: right to life, prohibition of torture; prohibition of cruel, inhuman or degrading treatment

- (a) *Standards, guidelines, measures, programmes, plans, strategies or other forms of action carried out by the sectors, to safeguard the right to life and the prohibition of torture and cruel, inhuman or degrading treatment⁷²*

155. In the case of the right to life, the investigation of the crimes of murder (articles of the Criminal Code) is the responsibility of criminal and mixed prosecutors at national level. An interagency manual has been approved for cases of violent or suspicious deaths, applicable to such investigations by Resolution No. 1954-2010-MP-FN of the Public Prosecution Service.

156. Regarding cases of femicide (gender-related murder of women), article 108-A of the Criminal Code criminalizes this act without distinction between Peruvian and foreign women who are in the country. The Public Prosecution Service keeps a Femicide Register, set up by Resolution No. 216-2009-MP-FN of the Public Prosecution Service, which contains details of gender-related murders of women reported in the course of its duties. The National Programme to Combat Domestic and Sexual Violence of the Ministry of Women and Vulnerable Populations also keeps a femicide register based on cases known to the emergency women's shelters under the programme.

157. Regarding the prohibition of torture, these crimes are investigated by the supra-provincial prosecutor's offices, which have specialized in the crimes against humanity set out in Title XIV-A of the Special Section of the Criminal Code (genocide, enforced disappearance, torture, discrimination and genetic engineering) as provided for in Resolution No. 1602-2005-MP-FN of the Attorney-General's Office, as amended. In judicial districts that do not have such specialized prosecution services, the investigation is conducted by criminal or mixed prosecutors.

⁷² Footnote applies only to the Spanish version.

- (b) *Penalties imposed on individuals or institutions which have carried out torture, or cruel, inhuman or degrading punishment on migrant workers and their families*

158. Article 321 of the Criminal Code defines the crime of torture in accordance with the provisions of the Inter-American Convention to Prevent and Punish Torture and the Convention against torture and cruel, inhuman or degrading treatment, providing for a custodial sentence of at least five and no more than ten years for offenders. If that torture causes the death of the victim or serious injury and the aggressor could have foreseen such an outcome, the custodial sentence shall, respectively, be no less than eight and no more than 20 years or no less than six and no more than 12 years.

3. Article 11: prohibition of slavery and forced labour

- (a) *Guarantees of the prohibition of slavery and forced labour*

159. Article 2.24, paragraph (b) of the Constitution of Peru recognizes the prohibition of slavery, forced labour and trafficking in persons in all its forms. Under that provision, and in fulfilment of its role of upholding the law and citizens' rights, the Public Prosecution Service takes action to prevent and punish conduct in contravention of the prohibition of slavery and forced labour, including any such conduct involving migrant workers.

160. Peru has ratified, *inter alia*, the following international instruments: ILO Conventions No. 29 and No. 105 concerning Forced Labour, No. 138 concerning Minimum Age for Admission to Employment, No. 182 concerning the Worst Forms of Child Labour, the Slavery Convention of the League of Nations, the Universal Declaration of Human Rights, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), which are regarded as national legislation and immediately applicable under the Constitution of Peru. In this regard, the Department for the Promotion and Protection of Fundamental Rights and for Health and Safety at Work of the Ministry of Labour and Employment notifies the Labour Inspectorate, the Public Prosecution Service and the National Police of Peru of cases or complaints of which it learns about violations of the fundamental labour rights of minors or adults, whether Peruvians or foreigners, and in the latter case also notifies the migration authority and the Ministry of Foreign Affairs to enable them to make the relevant checks.

- (b) *Labour Inspectorate*

161. The Labour Inspectorate hands down administrative penalties for infringement of labour regulations, such as forced labour or trafficking for labour purposes, without prejudice to informing the proper authorities where the acts concerned are of a criminal or non-administrative nature. In this way, it helps to ensure that no worker, whether male or female, Peruvian or foreign, is subject to any kind of slavery or forced labour in Peru.

- (c) *Legislative and administrative measures adopted to ensure the prohibition of slavery, servitude and forced labour of migrant workers and their families*

162. Article 152 of the Criminal Code criminalizes kidnapping with relevant aggravating circumstances. Also, articles 153 and 153-A of that Code contain provisions for the crime of human trafficking and relevant aggravating circumstances, respectively. Punishable acts of trafficking include those committed for the purpose of labour exploitation, slavery or practices similar to slavery.

163. The Public Prosecution Service also works together with the National Police and the Ministry of Labour to prevent and combat the crime of trafficking in persons, including trafficking for slavery and labour exploitation.

- i. National Commission to Combat Forced Labour, Supreme Decree No. 001-2007-TR of 12 January 2007

164. The Commission is established as an inter-institutional body, is chaired by a representative of the Ministry of Labour and Employment and has a representative of the Public Prosecution Service among its members. This Commission prepared the National Plan to Combat Forced Labour, which was approved by Supreme Decree No. 009-2007-TR.

165. Supreme Decree No. 004-2013-TR approved the second National Plan to Combat Forced Labour 2013–2017, which aims to contribute to the eradication of forced labour in the country. It provides for a system of comprehensive care for victims and puts in place conditions to prevent it recurring. The International Labour Organization estimates that there are over 20 million victims of forced labour, 9 per cent of whom are concentrated in Latin America and the Caribbean, which highlights the close relationship between labour migration and forced labour.⁷³ In Peru, forced labour is related to mining activities, logging in the Amazon, and informal mining and domestic work in various areas of the country.

166. A Special Inspectorate against Forced Labour has been set up, made up of labour inspectors specifically trained for the job and who have already carried out extensive inquiries into logging activities in the Loreto region.

- ii. National Steering Committee for the Prevention and Eradication of Child Labour⁷⁴ and National Strategy for the Prevention and Eradication of Child Labour 2012–2021

167. The National Steering Committee was established as an inter-institutional agency to promote and coordinate the efforts of the various agencies working to combat child labour. Moreover, the National Strategy for the Prevention and Eradication of Child Labour 2012–2021 was approved by Supreme Decree No. 015-2012-TR with the aim of eliminating child labour among children and adolescents, as an express policy of the present Government in this area.

- iii. National Plan of Action for Children and Adolescents – PNAIA 2012–2021

168. The National Plan of Action for Children and Adolescents (PNAIA) – 2012–2021, adopted in April 2012 by Supreme Decree No. 001-2012-MIMP includes among its findings that children aged 6 to 11 and girls aged 12 to 17 years are protected against dangerous work (outcome 8). The Multisectoral Standing Committee of the PNAI 2012–2021 coordinates multisectoral action for the achievement of those objectives.

- iv. National Plan of Action against Trafficking in Persons 2011–2016⁷⁵

169. The National Plan of Action against Trafficking in Persons includes the following among its objectives: to assist Peruvian nationals who are victims of trafficking abroad, to defend their rights in the country of destination or transit and to facilitate their voluntary return (repatriation), to assist foreign victims of trafficking in Peru or in transit.

⁷³ http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182010.pdf.

⁷⁴ Established by Supreme Decree No. 018-2003-TR, of 21 August 2003.

⁷⁵ Established by Supreme Decree No. 004-2011-IN, published on 19 October 2011.

170. In order to coordinate the activities, a Multisectoral Working Group on Trafficking in Persons was set up, composed of 14 sectors of the State, civil society and cooperation bodies, and chaired by the Ministry of the Interior.⁷⁶

- v. Guidelines for the prevention of forced labour: General Directive No. 003-2012-MTPE/3/18⁷⁷

171. The General Directive includes “trafficking of persons for labour exploitation in job offers”, with the aim of providing guidelines to help prevent false job offers, involving forced labour including trafficking in persons for labour exploitation.

4. Articles 12, 13 and 26: freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union

- (a) *State guarantees to respect the right to freedom of expression of migrant workers and their families*

172. Article 2.3 of the Constitution recognizes the right to freedom of thought, conscience and religion of all people, including migrant workers and their families. Where these rights are violated or threatened, a petition for relief (*amparo*) may be filed, which is a constitutional process governed by article 200, paragraph 2 of the Constitution and the Code of Constitutional Procedure (Act No. 28237).

173. Furthermore, article 2.4 of the Constitution recognizes the rights to information, opinion, expression and dissemination of ideas, including by migrant workers and their families. Again, where these rights are violated or threatened, a petition for *amparo* may be filed, a process governed by article 200, paragraph 2 of the Constitution and the Code of Constitutional Procedure (Act No. 28237). Article 169 of the Criminal Code also establishes the offence of violation of the right to freedom of expression.

- (b) *State guarantees to respect the right to freedom of thought, conscience and religion of migrant workers and their families*

174. Act No. 29635 on Religious Freedom⁷⁸ was enacted in 2010. Under this Act the State guarantees persons, individually or collectively, the freedom to manifest religious beliefs and activities, in public or in private. Moreover, article 9 of Act enshrines the right of students to opt out of the official religion course (Catholicism) on account of their religious beliefs, without this affecting their academic performance.

175. Supreme Decree No. 010-2011-JUS, of July 2011, regulates the Religious Freedom Act. However, in order to fine-tune the rules governing the right to freedom of conscience and religion, the Directorate-General of Justice and Worship, a line agency reporting to the Department of Justice, has prepared a new draft regulation, which is currently being assessed by the senior management of the Ministry of Justice and Human Rights.

176. On the other hand, article 13 of the Constitution states that parents have a duty to educate their children and the right to choose between educational institutions and participate in the educational process.

⁷⁶ They established the Standing Multisectoral Working Group Against Trafficking in Persons; Supreme Decree No. 002 2004-IN.

⁷⁷ Ministerial Resolution No. 119-2012-TR approved General Directive No. 003-2012-MTPE/3/18, published on 17 May 2012.

⁷⁸ Congress of the Republic Act No. 29635 on Religious Freedom. *El Peruano*, 21 December 2010.

(c) *Guarantees provided by the State in respect of the right of migrant workers to form a trade union*

177. Peruvian legislation on Collective Labour Law⁷⁹ allows for a system of trade union pluralism, as the Constitution⁸⁰ recognizes freedom of association in a broad sense. Accordingly, the implementing legislation upholds the right to trade union membership — in its positive expressions of forming trade unions or joining existing trade union organizations — within relatively broad parameters, whereby the collective bodies determine, through their own constitutions, the manner and conditions under which new members may join.

178. Article 2 of Legislative Decree No. 689 states that the employment of foreign labour is subject to the labour regulations governing private business and the limits laid down by the Act, and their services are covered by the labour regulations governing private business, namely Legislative Decree No. 728. Accordingly, migrant workers will enjoy workers' rights to freedom of association in Peru.

179. Peruvian law provides that, once the employment of a migrant worker has been formalized, there is no restriction on forming or joining a trade union, except for management staff or persons in positions of responsibility, as stated in article 12, paragraph (b) of the Consolidated Text of the Industrial Relations Act, approved by Supreme Decree No. 010-2003-TR, which may be overruled and allowed by the trade union's constitution. A migrant worker may therefore be a member of a trade union.

180. Furthermore, although there is no specific regulation on the fundamental rights of migrant workers in labour matters, article 23 of Supreme Decree No. 014-92-TR, implementing regulation of the Act on the Employment of Foreign Labour, states that in no circumstances may the pay, rights or benefits of foreign personnel be less than those laid down by the labour regulations governing private business. Article 168 of the Criminal Code also punishes the violation of the right to form trade unions.⁸¹

181. Peruvian law recognizes the right to organize, collective bargaining and strike.⁸² On the other hand, while Decision No. 545, the Andean labour Migration Instrument, mentions

⁷⁹ Supreme Decree No. 010-2003-TR of 30 September 2003 – Consolidated Text of Decree Law No. 25593 – Industrial Relations Act, regulates freedom of association, collective bargaining and strikes. Its scope covers workers subject to the labour regulations governing private business who work for private employers.

⁸⁰ Under the Political Constitution of Peru of 1993, art. 28, the State protects the collective rights of workers, including the right to organize, collective bargaining and strike.

⁸¹ Amended by the sixth additional amending provision of Act No. 29783 of 19 August 2011, relating to the violation of the right to work and freedom of association, it punishes by a custodial sentence not exceeding two years anyone forcing another person by violence or threats to perform any of the following acts:

Joining or not joining a trade union.

Performing work without proper remuneration.

⁸² Peruvian Constitution.

Art. 28. Collective rights of workers. Right to organize, collective bargaining and right to strike.

The State recognizes the right to organize, collective bargaining and strike. It protects the democratic exercise of those rights:

1. It guarantees freedom of association.

2. It fosters collective bargaining and promotes the peaceful settlement of labour disputes.

Collective agreements are binding for the field concerned.

3. It regulates the right to strike so that it is exercised in line with the public interest. It lays down exceptions and limitations.

only the right to organize and collective bargaining,⁸³ it does not preclude the right to strike, since according to a systematic interpretation of article 10 of that Instrument, equal treatment is given to all Andean migrant workers within the Community.⁸⁴

182. In accordance with the data provided by the Statistical Office of the Ministry of Labour and Employment from the spreadsheet, we report that from 2008 to June 2012, there were unionized Andean migrant workers. We detail below the number of unionized Andean migrant workers over that period.

Table 6
Unionized Andean migrant workers

<i>Country of nationality</i>	<i>Year</i>					<i>Total by country</i>
	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012*</i>	
Bolivia	70	239	177	176	110	772
Colombia	1 455	2 437	97	96	67	4 152
Ecuador	139	665	4	5	6	819

Source: Ministry of Labour and Employment/Office for Statistics and Information Technology/Statistical Office.

* Information as at June 2012.

183. The Public Prosecution Service, through the crime-prevention prosecutors, conducts operations in coordination with the Ministry of Labour inspectors with a view to ensuring that employers comply with the requirements of labour legislation and prevent workers' rights from being violated.

(d) *Restrictions or limitations on migrant workers and their families to form, join or participate in trade unions*

184. A systematic reading of articles 12 and 13 of Supreme Decree No. 010-2003-TR, the consolidated text of the Industrial Relations Act⁸⁵ makes it clear that the legislature does not acknowledge any restriction connected with the nationality of a worker regarding membership of a national trade union — since no condition for membership of such an organization or its management board refers to nationality — and because it establishes that membership of a trade union is an inherent right.

185. However, in the practice of industrial relations, it can happen that migrant workers' right to organize is called into question. This would happen if, in the exercise of its autonomy, a trade union had drafted its constitution so that only workers of Peruvian nationality were allowed to join the organization.⁸⁶ In that case, any migrant workers who were unable to exercise their right of membership could enforce their rights through

⁸³ Art. 11. Andean migrant workers shall have the right to organize and bargain collectively in accordance with the relevant national legislation and the international labour conventions ratified by the country of immigration.

⁸⁴ "The principle of equal treatment and opportunity is applied to all Andean migrant workers within the Community. In no case shall they be subjected to discrimination by reason of their nationality, race, sex, creed, social status or sexual orientation."

⁸⁵ In force in national law since 6 October 2003.

⁸⁶ On this point we would recall that art. 3 of ILO Convention 87 provides that "1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes".

constitutional or labour proceedings to petition a court to assess the constitutionality of the restriction in the trade union's constitution, so that if it were ruled (at the end of the proceedings) that such a restriction entailed an act of discrimination, it would be corrected by the final decision (judgement). Note also that such proceedings allow the filing of precautionary measures.

5. Articles 14 and 15: prohibition of arbitrary or unlawful interference with privacy, family, home, correspondence or other communications, prohibition of arbitrary deprivation of property

186. Peru's Political Constitution, in article 2, paragraphs 6, 7 and 10,⁸⁷ guarantees the right of people to personal and family privacy and confidentiality and the inviolability of their private communications and documents. These provisions are applied to all persons who are subject to the jurisdiction of the Peruvian State, without discrimination.

187. Act No. 29733, on the Protection of Personal Data,⁸⁸ lays down the terms under which the fundamental right to protection of personal data is guaranteed, through appropriate treatment under the provisions of article 2, paragraph 6 of the Constitution.

188. The Directorate-General for Personal Data Protection⁸⁹ is the line agency that reports to the Office of the Deputy Minister for Human Rights and Access to Justice of the Ministry of Justice and Human Rights, and acts as National Personal Data Protection Authority.⁹⁰

189. In order to regulate Act No. 29733 a multisectoral committee was set up to prepare the draft regulation, which is currently under review for approval.

190. Furthermore, the Public Prosecution Service keeps the records for the offences of violation of privacy described in articles 154 to 158 of the Criminal Code. However, the

⁸⁷ Art. 2. Everyone has the right:

6. To non-disclosure of information affecting personal and family privacy by public or private information services, whether computerized or not. (...).

7. To his honour and reputation, to personal and family privacy, and to his own voice and image. Any person affected by inaccurate statements or injured in any mass media outlet is entitled to demand a free, immediate and proportionate correction, other legal liabilities notwithstanding. (...)

10. To confidentiality and inviolability of private communications and documents.

Communications, telecommunications or any medium thereof may be opened, seized, intercepted or interfered with only with a reasoned warrant issued by a judge and with all statutory guarantees. Matters unrelated to the grounds for the examination of the correspondence must remain confidential.

Private documents obtained in breach of this rule shall have no legal effect.

Books, receipts and accounting and administrative documents are subject to inspection or audit by the competent authority in accordance with law. Any action taken in this respect may not include removal or seizure except by warrant.

⁸⁸ Congress of the Republic Act No. 29733, on the Protection of Personal Data. *El Peruano*, 3 July 2011.

⁸⁹ Supreme Decree No. 011-2012-JUS, Regulation on the Organization and Functions of the Ministry of Justice and Human Rights, dated 19 April 2012.

⁹⁰ The National Personal Data Protection Authority is responsible for managing and updating the National Personal Data Protection Register and settling complaints from owners of personal data, protecting their rights of access, correction, deletion and opposition. It also issues binding technical opinions on draft legislation governing personal data and issues guidelines for the proper application of the Personal Data Protection Act and its implementing regulation.

information recorded in respect of those offences does not indicate how many of these offences were committed against migrant workers.

6. Articles 16 (paras. 1 to 4), 17 and 24: right to liberty and security of person, protection against arbitrary arrest or detention, recognition as a person before the law

(a) Right to liberty and security of person of migrant workers and their families

191. The right to liberty and security of person is recognized in article 2, paragraph 24 of the Constitution. In the event of violations of or threats to personal freedom or related rights, an application should be filed for habeas corpus, a constitutional procedure regulated in article 200, paragraph 2 of the Constitution and the Code of Constitutional Procedure (Act No. 28237).

192. The Peruvian State is a party to a number of current international instruments on the transfer of sentenced persons and on the enforcement of criminal sentences, including:

(a) On the transfer of sentenced persons: Treaty with the Republic of Chile, Agreement with the Republic of El Salvador, Treaty with Switzerland, Agreement with the Dominican Republic and Agreement with the Republic of Argentina;

(b) On the transfer of sentenced persons: Treaty with the Government of the Federative Republic of Brazil, Agreement with the Government of the United Kingdom of Great Britain and Northern Ireland and Agreement with the Republic of Ecuador;

(c) On the execution of criminal sentences: Agreement with the Republic of Venezuela, Treaty with the Government of Canada;

(d) On the transfer of sentenced persons and minors under special treatment: Treaty with the Government of the Italian Republic, Agreement with the Government of the Republic of Bolivia, Treaty with the United States of America;

(e) On the transfer of persons sentenced to imprisonment and security measures involving deprivation of liberty, as well as minors under special treatment: Treaty with the Kingdom of Spain.

193. Similarly, Peru has adopted the Standard Minimum Rules for the Treatment of Prisoners,⁹¹ whose purpose is to establish the principles and rules of good prison organization and practice concerning the treatment of prisoners.

194. If foreigners, their families and children are in breach of the Aliens Act, they are not detained anywhere, whether in migration control posts, border control posts or in the Aliens Division of the State Security Department of the National Police of Peru. They remain under summons until the migration authority or the Ministry of the Interior issues its decision for the application of the relevant penalty.

195. The Public Prosecution Service is the guarantor of the law and civil rights. As such, citizens may report any irregular or illegal behaviour by the migration authorities to the Public Prosecution Service. Where there is evidence of the accused officer committing an offence, the prosecutor will lodge a formal complaint. In case of a corruption offence, it will be investigated by prosecutors specializing in that matter. Any other crime will be investigated by an ordinary criminal prosecutor.

⁹¹ Adopted by the 1st United Nations Congress on the Prevention of Crime and the Treatment of Offenders, signed in Geneva in 1955 and approved by the Economic and Social Council in its Resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

196. Criminal prosecutors having territorial jurisdiction in areas where there are prisons regularly carry out operations to check that the rights of inmates are being respected and that prison officials are acting in accordance with the law. In the event of any irregularities by the prison authorities, prosecutors may investigate the facts and lodge a formal complaint if they find evidence of crimes being committed.

197. In prisons, men are separated from women. There are men's and women's prisons (Legislative Decree 654 – Code of Criminal Enforcement).

(b) *Guarantees provided by the State to ensure that accused migrant workers and their families are separated from convicted persons subject to a different regime, appropriate to their status as unconvicted persons*

198. All prison inmates enjoy the same rights as free citizens apart from the restrictions imposed by the law and their respective judgements.⁹²

199. Due to overcrowding in the prison population, there is no separation of convicted persons from defendants; but there is a wing for foreign inmates in the following prisons: Ancon II, Miguel Castro Castro, Lurigancho and Chorrillos.

200. Inmates enter the prison only by court order, and must have attained the age of majority (18 years). In exceptional cases of alleged minors, they are temporarily located in areas separated from the prison population and the court is requested to try their cases immediately. In this case a birth certificate must be produced (no such cases have occurred with foreigners).

201. Foreign and domestic inmates have the same opportunities to participate in all employment, education, social, psychological, legal and health activities in the prisons where they are held.⁹³

202. Foreign inmates may also apply for prison privileges and presidential pardons (pardon, commutation of sentence). Thus, in 2011: 105 foreign inmates were granted a commutation of their sentence, 104 foreign inmates were released on parole, 102 foreign inmates were released on restricted liberty, five foreign inmates were pardoned on humanitarian grounds, nine foreign inmates were released after serving reduced sentences for work or study, while 55 foreign inmates were released after having their sentences commuted.

203. The National Prison Institute is also informing sentenced foreign inmates and advising them to serve the remainder of their sentences in their country of origin, in accordance with existing international treaties and, where there are none, according to the principle of reciprocity against a background of respect for human rights (in line with Supreme Decrees No. 016-2006-JUS and No. 010-2008-JUS, both relating to the behaviour of the judiciary and the government in relation to extraditions and transfers of sentenced persons, as amended, and the new Code of Criminal Procedure – Legislative Decree No. 957).

204. Foreign inmates awaiting transfer to their country of origin may apply to the appropriate judicial authority for exemption from civil damages and fines, provided the victim is the State (Act No. 29305, amending articles 542 and 544 of the new Code of Criminal Procedure on the conditions for the transfer of foreigners to serve out their sentences).

⁹² Code of Criminal Enforcement, art. 1 – Legislative Decree No. 654 and its implementing regulation, art. 10 – Supreme Decree No. 015-2003-JUS).

⁹³ See Code of Criminal Enforcement, arts. 44, 45, 48, 53 and 60 and all of Title III – Legislative Decree No. 654 and Titles V and VII of its implementing regulation – Supreme Decree No. 015-2003-JUS.

205. Where a foreign inmate is working or studying in the National Prison Institute, he may have his sentence reduced for work or study (where the Act allows, for the offence committed). A record and/or certificate of work or study carried out, as applicable, is attached to their personal file.

- (c) *State guarantees for minor family members of migrant workers, accused of criminal offences, to be separated from those convicted*

206. In line with the provisions of international human rights conventions and declarations on prisons, efforts are being made to ensure that adolescents awaiting trial for breaches of criminal law are separated from those who have been sentenced. To that end, criminal prosecutors having territorial jurisdiction in areas where there are prisons regularly carry out operations to check that the rights of inmates are being respected and that the prison officials are acting in accordance with the law. In the event of any irregularities by the authorities, prosecutors may investigate the facts and lodge a formal complaint if they find evidence of offences being committed.

207. Fundamental rights — including those relating to prisons — are recognized for all persons without distinction as to nationality or on other grounds, as stated in article 2, paragraph 2 of the Constitution.

208. Where a family member comes from abroad or the provinces, prison inmates who do not receive frequent family visits are allowed a special visit on a day other than the scheduled visiting days.

7. Articles 16 (paras. 5–9), 18 and 19: procedural safeguards

- (a) *State guarantees that, when a migrant worker or a family member is arrested, imprisoned or remanded in custody pending trial or subjected to any other form of detention, the consular or diplomatic authorities of their State of origin or of a State representing the interests of the State of origin are informed promptly, if requested by the detainee, of the detention or imprisonment and of the reasons for this measure*

209. The State takes action under the Vienna Convention on Consular Relations, which states that consular functions include protection of the interests of its nationals in the host country.

210. Article 139, paragraph 14 of the Constitution guarantees that every person must be informed, immediately and in writing, of the cause of or reasons for his arrest; Also, the right to personal liberty and security is recognized in article 2, paragraph 24 of the Constitution. The guarantees of due process also provided for in that article, together with the right of everyone to communicate in person with counsel of his own choosing and to be advised by the latter immediately he is summoned or detained by any authority, are applicable to administrative proceedings, as the Constitutional Court of Peru has recognized.

211. Where foreign nationals are detained in the country, the rules of international judicial cooperation set out in volume seven of the New Code of Criminal Procedure apply when reporting the arrest to the State of which the detainee is a national. Note that the articles in volume seven have been in force throughout Peru since 2006. Under these procedures, the Judicial Cooperation and Extraditions Unit of the Public Prosecution Service notifies the arrest to the Ministry of Foreign Affairs so that it, in turn, can notify the State concerned.

212. During arrest or pretrial detention, migrant workers and their families are entitled to receive visits from family members, both in the holding cells generally located in courthouses and in prisons. There is unrestricted freedom for visits, but sometimes owing to

their number, there is some separation by gender, also to prevent escapes and overcrowding of visitors, among other measures affecting inmates and visitors alike.

213. Furthermore, in accordance with the new Code of Criminal Procedure, the public or private attorney of a detainee, whether a migrant or Peruvian, may request the examining judge to clarify the measures affecting the rights of his clients under arrest or in pretrial detention, to ensure due process and respect for the fundamental rights of the persons concerned.

(b) *Notification of consulates*

214. Where a foreign national is detained, the Post-Prison Department, through the International Transfers Coordination Unit of the National Prison Institute, immediately notifies the consular representative, by email, giving the name of his compatriot, the prison where he is being held, the dossier number and the judicial authority (agreement of the working groups between the National Prison Institute and the Consulates, held in 2010 and 2011). These working groups are held in compliance with the Institutional Operating Plan for the years indicated above, for example Presidential Resolution No. 003-2010-INPE/P on the National Prison Institute approving the Institutional Operating Plan. There is no specific resolution setting up these Intersectoral working groups. This working group is one of the activities provided for in the Operating Plan, under budget target “Promoting the transfer of foreign inmates and released prisoners to their country of origin” under the responsibility of the Post-Prison Department of the National Prison Institute.

215. In addition, the National Prison Institute has given the embassies or consulates access and a password to the Integrated Prison System, after they asked to be able to view the status of their citizens on the National Prison Institute website.

(c) *State guarantees to give migrant workers and members of their families the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used when challenging the lawfulness of their detention*

216. Article 2, paragraph 19 of the Constitution of Peru establishes the right of foreigners to use their own language, through an interpreter, when they are summoned by any authority. In line with this provision of the Constitution, the Directorate-General for Public Defence and Access to Justice has qualified staff to advise and sponsor any person who meets the requirements to receive the public defence service, and has to communicate in a language other than Spanish.

8. Article 20: prohibition of imprisonment or deprivation of authorization of residence or work permit or expulsion merely on the ground of failure to fulfil an obligation arising out of a work contract

217. The National Migration Authority (formerly the Directorate-General for Migration and Naturalization) within the scope of its responsibilities ensures that a migrant worker is not deprived of his residence permit (the work permit is issued by the Ministry of Labour and Employment), thereby enabling him to carry out the relevant procedures, as detailed in

the Consolidated Text of Administrative Procedures⁹⁴ providing all the facilities and guarantees of due process as laid down in the Act (No. 27444)⁹⁵.

218. The Peruvian Criminal Code has not criminalized the breach of an obligation under a contract of employment, so there is no criminal penalty in that regard.

219. However, the Consolidated Text of Legislative Decree No. 728, the Labour Productivity and Competitiveness Act – Supreme Decree No. 003-97-TR of 21 March 1997, regulates the terms of employment of private businesses employing migrant workers in Peru, and states in article 22, paragraph 2 that fair grounds for dismissal may relate to the worker's capabilities or conduct.

220. Paragraph (a) of article 24 of that regulation states that one valid ground for dismissal related to the conduct of a worker is gross misconduct, defined as a failure by the employee to carry out of the essential duties under the contract, to the extent that the relationship cannot reasonably continue.

221. In this case, the disciplinary measures to which all workers are subject should apply, including migrant workers who fail to fulfil an obligation under the contract. Pursuant to article 2, paragraph (i) of Supreme Decree No. 039-91-TR of 30 December 1991, establishing the internal operating rules which determine the conditions to which employers and employees are subject in the performance of their obligations, these measures must be set down in the internal operating rules of the company.

222. Regarding deportation, Chapter 12 of Legislative Decree No. 703 — the Aliens Act⁹⁶ — of 25 September 2003, sets out the penalties applicable to aliens, as follows: fine, compulsory departure, cancellation of stay or residence and expulsion. The penalty applies to anyone: (a) failing to pay as required by the Aliens Regulation and other specific provisions; (b) failing to extend their stay or residence within the time specified in the Aliens Regulation.

223. Compulsory departure is ordered where the alien admitted is in an irregular migration situation following the expiry of their stay or residence permit and has missed the deadline for regularization laid down in the Aliens Regulation. Compulsory departure disqualifies the person from re-entering the country.

224. Stay or residence shall be cancelled where a person: (a) carries out acts against State security, internal public order or national defence; (b) does not have the financial resources needed to cover the costs of staying or residing in Peru; (c) is released after serving a prison sentence or more serious sentence of a Peruvian court; (d) falsifies information in documents or reports produced to acquire a particular migration status.

225. Expulsion from the country shall be ordered for: (a) illegal or fraudulent entry into Peruvian territory; (b) by order of the competent Judicial Authority; (c) anyone who has been given a compulsory departure order or their stay or residence has been cancelled and has not left Peruvian territory.

⁹⁴ Supreme Decree No. 003-2012-IN of 22 December 2012 approving the Consolidated Text of Administrative Procedures of the Ministry of Interior, which includes the administrative procedures and services for agencies such as the Directorate-General for Immigration and Naturalization. Note that Legislative Decree 1130, which set up the National Migration Authority, established that while the Directorate-General for Migration and Naturalization was being transferred, its functions, organizational structure and management tools would be maintained.

⁹⁵ General Administrative Procedure Act (No. 27444 — enacted on 10 April 2001).

⁹⁶ Legislative Decree No. 703 – Aliens Act, art. 64.

9. Articles 21, 22 and 23: protection from confiscation and/or destruction of identity and other documents, protection from collective expulsion, right to have recourse to the protection and assistance of the consular or diplomatic authorities

226. The National Identity Card is a public document owned by the holder. It may not therefore be withheld or confiscated unless otherwise ordered by a court and in specific cases, as laid down in article 14 of Act No. 17671 on the Identification, Registration and Classification of National Human Capital.

227. Legislative Decree No. 703 governs the procedure for the expulsion of foreigners from the country. Regarding the guarantees under that procedure, the Constitutional Court of Peru has recognized that due process, enshrined in article 139, paragraph 3 of the Constitution, is applicable to administrative proceedings and, in general, as the Inter-American Court of Human Rights has established, to any State agency exercising functions of a substantially jurisdictional nature and that is required to adopt resolutions based on the guarantees of due legal process (STC No. 2050-2002-AA/TC).

228. It should be stressed that there is no possibility for migrant workers and their families to be subject to collective expulsion measures. For a foreigner to be expelled, he must first be investigated by the Aliens Division of the Security Department of the National Police of Peru, before his case is considered by the Aliens Commission. The penalty must then be formalized by Ministerial Resolution, after the issue of the opinion of the General Legal Advice Office of the Ministry of the Interior.

229. The sanction of expulsion is formalized by Ministerial Resolution, a certified copy of which is delivered to the foreigner. The grounds for the decision adopted are set out in the preamble to the Resolution, which is drafted in Spanish.

230. If they are expelled from the country, migrant workers and their families are entitled to lodge administrative applications for reconsideration or appeal under article 207 of the Act No. 27444 on General Administrative Procedure, which must be formulated as detailed in article 67 of the Aliens Act.

231. On the other hand, there is no compensation where an expulsion decision already executed is revoked. We would add that no such cases have occurred to date. A foreigner will be denied entry to Peru only if he has received an expulsion order that is put into effect. Therefore, if his expulsion is revoked he will not be denied entry to the country.

(a) *Opportunities for a migrant worker subject to an expulsion order to settle any claims for wages and other entitlements due to him or her and any pending liabilities*

232. In this regard, all workers, whether Peruvian or migrant, are entitled to enjoy all the rights and benefits established by Peruvian law, including the protection afforded by the international conventions signed by Peru. Therefore, there is no restriction on the enjoyment or enforcement of labour rights by migrant workers, except in cases of maintenance obligations for minors, where the judge may order part of the worker's labour rights to be withheld in the higher interests of a child. If there is any labour right pending payment, the Ministry of Labour and Employment even offers a free administrative conciliation service, at the expense of the Department of Free Legal Defence and Advice for Workers of the Directorate for Conflict Prevention and Resolution; the employer and the worker are brought together to find a settlement that is satisfactory to the parties. If no agreement is reached, workers, whether Peruvian or migrant, may resort without limitation to the courts to claim payment of their employment benefits.

233. In labour-related claims, the migrant worker or his legal representative or attorney may have recourse under the New Labour Procedure Act No. 29497 to a court (Magistrates Court, Specialized Court or Higher Court) where his benefits are not recognized or paid.

(b) Expenses of the procedure for expelling a migrant worker

234. Where foreigners are expelled, they must bear the expenses of their departure from the country. In some circumstances, consular offices may offer them assistance.

(c) The State guarantees the enjoyment of the rights enshrined in the Convention despite the decision of a competent authority to expel a migrant worker

235. In the event of expulsion, the administrative procedures in migration matters are the responsibility of the Ministry of the Interior. However, decisions in the final instance may be challenged through administrative proceedings, as provided in article 148 of the Constitution. Where a decision handed down on appeal by the immigration authority is challenged in this way, administrative litigation proceedings are initiated. As part of this process, prosecutors specializing in administrative litigation must issue an opinion before the judge hands down a ruling. The prosecutor ensures legality and due process are observed in the context of such proceedings.

10. Articles 25, 27 and 28: principle of equal treatment in respect of remuneration and other conditions of work and terms of employment, and social security; right to receive urgent medical care

236. Article 13 of Act No. 28051 of 2 August 2003, amending article 6 of the consolidated text of Legislative Decree No. 728, states that remuneration, for all legal purposes, is constituted by the sum of what the worker receives for his or her services, in cash or in kind, in whatever denomination, provided those services have been freely rendered. Any sums of money paid directly to the worker in the form of main meals, such as breakfast, lunch or midday snack, or dinner, count as remuneration. Indirect meal subsidies do not count as remuneration for the purposes of calculating social security payments and contributions, nor for the purposes of any labour right or benefit.

(a) Action taken by the State to ensure that employers comply with their legal and contractual obligations and that they are not limited because of irregularities in workers' stay or employment

237. Act No. 27891⁹⁷ and its implementing regulation Supreme Decree No. 119-2003-EF provide for temporary approval of contracts of employment for foreigners seeking asylum in Peru, since article 14 of that Act and article 41 of the regulation state that, to ensure that the asylum-seeker and any family members can stay temporarily in the country until a final decision is taken regarding the requested protection, the asylum-seeker is authorized to work temporarily in the country. Note that in both cases, the contract of employment and any amendments to it must be approved by the Administrative Authority of Labour.

238. The Ministry of Labour and Employment is also the body responsible for approving contracts of employment of foreign personnel, and the respective amendments for asylum-seekers. These procedures are regulated by Procedures Nos. 42, 43 and 119⁹⁸ of the Consolidated Text of Administrative Procedures of the Ministry of Labour and Employment, approved by Supreme Decree No. 016-2006-TR, and that fall under the responsibility of the General Records Department which, according to Ministerial Resolution No. 152-2011-TR, has the following functions: "To administer the procedures

⁹⁷ Refugee Act (No. 27891), published on 22/12/2002.

⁹⁸ Procedure 42, Approval of contracts of employment for foreign personnel.

Procedure 43, Approval of extensions or amendments to contracts of employment for foreign personnel.

Procedure 119, Temporary approval of contracts of employment for asylum-seeking foreigners.

and records for which it is responsible and assess and propose any necessary improvements, to rule at first instance in proceedings under the regulations in force, relating to trade unions, registration of contracts of employment (...).” The Directorate for Conflict Prevention and Resolution is the body that settles the issue and is the final instance in administrative proceedings.

239. Procedure No. 50⁹⁹ has been the responsibility of the Directorate of Labour Migration since January 2011. Before that date — from January 2006 to December 2010 — the General Records Department was responsible for the procedure, under the name Register of Andean Migrant Workers – RETMA (manual register).

(b) *Register of Andean migrant workers (tables 7-A and 7-B)*

240. There was a growing trend of registration of Andean migrant workers over the period 2006–2011, with an increase of 28 per cent between 2010 and 2011.

241. Nationwide, the number of registrations in 2011 was 2616, 280 of which were observed while 2,336 were approved. Most of these (67 per cent) were for Colombian nationals, followed by Ecuadorians (22 per cent) and Bolivians (11 per cent).

242. Migratory movements are registered nationwide by the type of Andean migrant workers, the first place, in 2011, going to workers travelling as individuals: 61 per cent (1,420), followed by company workers at 34 per cent (787), seasonal workers at 5 per cent (117) and finally an insignificant number of frontier workers (12).

Table 7-A

Peru: records of Andean migrant workers by type of worker, year and nationality (2006–2010)

<i>Register of Andean Migrant Workers – RETMA*</i>					
<i>Year/Nationality</i>	<i>Type of worker</i>				<i>Total records</i>
	<i>Worker travelling as an individual</i>	<i>Company worker</i>	<i>Seasonal worker</i>	<i>Frontier worker</i>	
2006	163	26	7	-	196
Bolivia	17	1	-	-	18
Colombia	112	17	7	-	136
Ecuador	27	5	-	-	32
Venezuela	7	3	-	-	10
2007	520	135	12	-	667
Bolivia	117	25	-	-	142
Colombia	321	69	5	-	395
Ecuador	77	34	6	-	117
Venezuela	5	7	1	-	13
2008	1 340	167	1	-	1 508
Bolivia	201	11	-	-	212
Colombia	854	73	1	-	928
Ecuador	283	82	-	-	365
Venezuela	2	1	-	-	3

⁹⁹ “Register of contracts of employment for Andean migrant workers – SIVITMA”, virtual register.

<i>Register of Andean Migrant Workers – RETMA*</i>					
<i>Year/Nationality</i>	<i>Type of worker</i>				<i>Total records</i>
	<i>Worker travelling as an individual</i>	<i>Company worker</i>	<i>Seasonal worker</i>	<i>Frontier worker</i>	
2009	1 606	63	-	-	1 669
Bolivia	159	11	-	-	170
Colombia	1 072	44	-	-	1 116
Ecuador	374	8	-	-	382
Venezuela	1	-	-	-	1
2010	1 794	24	7	-	1 825
Bolivia	238	5	1	-	244
Colombia	1 221	10	3	-	1 234
Ecuador	335	9	3	-	347

Source: Ministry of Labour and Employment/Office for Statistics and Information Technology/Statistical Office.

* Note that RETMA existed until 2010.

Table 7-B

Peru: records of Andean migrant workers by type of worker, year and nationality (2011–2012)

* Information as at June 2012

<i>SIVITMA*</i>					
<i>Year/Nationality</i>	<i>Type of worker</i>				<i>Total records</i>
	<i>Worker travelling as an individual</i>	<i>Company worker</i>	<i>Seasonal worker</i>	<i>Frontier worker</i>	
2011	1 420	787	117	12	2 336
Bolivia	170	79	14	-	263
Colombia	901	560	88	3	1 552
Ecuador	349	148	15	9	521
2012**	920	626	65	1	1 612
Bolivia	175	97	1	-	273
Colombia	574	423	61	1	1 059
Ecuador	171	106	3	-	280

Source: Ministry of Labour and Employment/Office for Statistics and Information Technology/Statistical Office.

* SIVITMA came into force in accordance with the provisions of Ministerial Resolution No. 318-2010/TR of 21 December 2010 and pursuant to Decision No. 545 on the Andean Labour Migration Instrument.

** Information as at June 2012.

Figure 2
Annual trend of Andean migrant worker's certificates issued



Source: Ministry of Labour and Employment/Office for Statistics and Information Technology/Statistical Office/Directorate of Labour Migration.

* Information as at June 2012.

243. In this regard, note that the first cases are administrative procedures that have previously been assessed, thus requiring substantiation, and a decision by the body finally granting or denying registration of these contracts. This means that these procedures are an initial filter to verify whether or not the employer is complying with the relevant labour regulations in application of the principle of legality, and hence whether the migrant worker is being given the same treatment as a Peruvian regarding the application of the above-mentioned legislation on pay and working conditions.

- (c) *Guarantees of the Peruvian State of the same treatment of migrant workers as Peruvians with respect to social security, in so far as they fulfil the requirements provided for by the applicable legislation and treaties*

244. The implementing regulation of the Act on the Employment of Foreign Labour provides that “In no case may wages, rights or benefits of foreign personnel be lower than those recognized under the labour regulations governing private business”.

245. Article 3 of the Framework Act on Universal Health Insurance (No. 29344), states that universal health insurance is designed to ensure that the whole population resident in Peru has health insurance offering access to a number of preventive, promotional, restorative and rehabilitative health services, under proper conditions of efficiency, equity, timeliness, quality and dignity. This health insurance is modelled on the Essential Health Insurance Plan (PEAS).

246. Bilateral and/or multilateral treaties ratified by the State: Agreement on Social Security between the Republic of Peru and the Kingdom of Spain, ratified on 4 June 2004; Agreement on Social Security between the Republic of Peru and the Republic of Chile, ratified on 13 October 2003; Agreement on Social Security between the Republic of Peru and the Republic of Argentina of June 1979; the administrative agreement for the implementation of the agreement was ratified on 17 June 2011.

247. ILO Conventions on social security ratified by Peru:

- (a) No. 19 of 1925, Equality of Treatment (Accident Compensation), ratified on 8 November 1945;
- (b) No. 24 of 1927, Sickness Insurance (Industry), ratified on 8 November 1945;

- (c) No. 25 of 1927, Sickness Insurance (Agriculture), ratified on 8 November 1945;
- (d) No. 35 of 1933, Old-Age Insurance (Industry, etc.), ratified on 8 November 1945;
- (e) No. 36 of 1933, Old-Age Insurance (Agriculture), ratified on 1 February 1960;
- (f) No. 37 of 1933, Invalidity Insurance (Industry, etc.), ratified on 8 November 1945;
- (g) No. 38 of 1933, Invalidity Insurance (Agriculture), ratified on 1 February 1960;
- (h) No. 39 of 1933, Survivors' Insurance (Industry, etc.), ratified on 8 November 1945;
- (i) No. 40 of 1933, Survivors' Insurance (Agriculture), ratified on 1 February 1960;
- (j) No. 44 of 1934, Unemployment Provision, ratified on 4 April 1962;
- (k) No. 102 of 1952, Social Security (Minimum Standards), ratified on 23 August 1961.

11. Articles 29, 30 and 31: right of each child of a migrant worker to a name, to registration of birth and to a nationality; access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families

248. Since 2006, the National Registry of Identification and Civil Status (RENIEC) has issued a total of 1,802 birth certificates to children of a foreign father and mother. However, it is not possible to determine from this universe whether the parents registering their children had the status of migrants, since this is not a requirement for registration of the child.

249. If children of migrant workers are born in Peru, they are registered in RENIEC, except where one parent is Peruvian, in which case they can be registered in the Register of minor children of Peruvians abroad, the Register of adult Peruvian children born abroad and the Register of children of foreigners born abroad and resident in Peru from the age of 5 until adulthood.¹⁰⁰

250. Only in the cases indicated may the National Migration Authority grant Peruvian nationality to children of migrant workers under the provisions of the Nationality Act, its implementing regulations and the Consolidated Text of Administrative Procedures of the Directorate-General for Immigration and Naturalization.

251. The Aliens Act and associated guidelines make no reference to the principle of the "best interests of the child" in cases involving minors. For example, there are cases where

¹⁰⁰ Nationality Act (No. 26574 — enacted 3 January 1996).

Art. 2 – The following are Peruvian by birth: (...) Para. 3.

Art. 4 – The following may exercise the option to acquire Peruvian nationality: 1. Persons born outside the territory of the Republic, to foreign parents, who have been resident in Peru from the age of 5 and who, upon reaching adulthood, under Peruvian law, express the wish to the competent authority to become Peruvian. Paras. 2 and 3.

Implementing regulation of the Nationality Act – Supreme Decree No. 004-97-IN (enacted on 23 May 1997), arts. 5 and 16–26. Consolidated Text of Administrative Procedures of the Directorate-General for Immigration and Naturalization. Procedures 12, 13 and 14.

children who are not of Peruvian nationality but whose parents are Peruvian are required to stay in the country, against the will of the foreign parent, because the procedure for entry in the Peruvian register does not require the signature or approval of the foreign parent. This creates future problems regarding the custody of minors.

(a) *Right of children of migrant workers to have access to education on the basis of equality of treatment*

252. The implementing regulation of Act No. 28044, the General Education Act, (adopted on 7 July 2012) states in article 2 that education is a fundamental right of the individual and society, which is guaranteed by the State under the Constitution and the law. This is achieved through a comprehensive quality education for all and a universal and compulsory basic education. The family and society as a whole take part in improving it. Finally, since the International Convention on the Protection of the Rights of All Migrant Workers and their Families is a treaty ratified by the Peruvian State, the education sector complies with the Convention since article 55 of the Constitution states that all current treaties concluded by the State are part of national law.

253. It is the policy of the Peruvian State (Supreme Decree No. 011-2012-ED, art. 2, para. (“b”)) to provide opportunities and facilities for all students to continue studying in educational institutions in the country with no obstacle or hindrance on account of their cultural circumstances. The State is committed to offering an education that meets the needs of students in a variety of cultural contexts. Furthermore, article 20 of Act No. 28044 states that the Peruvian State guarantees that students are taught in their mother tongue and in Spanish as a second language, and subsequently learn foreign languages.

254. The national education system recognizes schools operating educational programmes with international curricula; these offer teaching in a foreign language in their curriculum.

255. Note also that the National Plan of Action for Children and Adolescents (PNAIA 2012–2021) includes as outcomes 4, 5 and 7 access to quality pre-school, primary and secondary education that is intercultural, inclusive, with an environmental culture and free of violence.

12. Articles 32 and 33: right to transfer earnings, savings and personal belongings to the State of origin, right to be informed of the rights arising out of the Convention and dissemination of information

(a) *Right of migrant workers and members of their families to transfer their earnings, savings and personal effects upon the termination of their stay in the State of employment*

256. The Income Tax Act states that the National Tax Office is the agency which, by a resolution of the Office, lays down the requirements and form of the affidavit, certificates of earnings and deductions and other documents that foreign migrant workers have to produce when entering the country to carry out income-generating activities in Peru.

257. Article 16 of Supreme Decree No. 014-92-TR states that upon termination of the employment relationship with the worker, the employer must provide the transport ticket(s) for the worker and his family to travel to their country of origin or other country agreed in the contract of employment.

258. Act No. 27883, on the transfer of welfare funds between the private pension scheme and other foreign pension schemes, and its implementing regulation, Supreme Decree No. 154-2003-EF, provides that workers who emigrate from the country to settle permanently abroad may apply for the funds from their funded benefits accounts to be

transferred to a pension fund abroad, provided they are members of a foreign pension scheme, and members of a foreign pension fund who establish themselves permanently in Peru may transfer their funds to the private pension scheme.

(b) *Right of migrant workers and their families to be informed about their rights arising out of the present Convention*

259. The National Migration Authority, within the scope of its responsibilities, provides information about the services it offers on its website (www.migraciones.gob.pe) in Spanish and English.

260. As stated in article 70 of the Aliens Act, when dealing with foreign nationals, the staff of the Aliens Division have the duty and responsibility to identify themselves, behave respectfully and courteously, providing appropriate, information, guidance and protection, to respect foreigners' rights under the Constitution and the law. However, with respect to their rights under this Convention, this responsibility falls to the immigration authority and the administrative authority labour when granting the status of migrant worker to foreigners applying for it.

(c) *Dissemination of the rights of migrant workers by employers or trade unions*

261. The trade union Central Unitaria de Trabajadores del Perú has a Technical Labour Migration Office, which aims to provide guidance and advice to migrant workers, both those wishing to leave the country and those wishing to keep informed about their labour rights.

C. Part IV of the Convention: Other rights of migrant workers and their families who are documented or in a regular situation

1. Articles 38 and 39: right to be temporarily absent without effect upon authorization to stay or to work; right to liberty of movement in the territory of the State of employment and to choose one's residence there

(a) *State guarantees for migrant workers and their families to be authorized to be temporarily absent without effect on their authorization to stay or to work in the State of employment*

262. For the Peruvian State, while the permit of stay or residence under the migration statuses of Worker, Designated Worker or Resident Family Member is in effect, migrant workers and their families may leave and re-enter the country with the same migration status and visa,¹⁰¹ unless their absence exceeds 183 consecutive or cumulative calendar days in any 12-month period (Aliens Act, art. 42, last para.), in which case they lose their "resident" migration status.

263. In this regard, article 42 of the Aliens Act states that resident aliens may leave and re-enter the country with the same migration status and visa, provided that they comply with the requirements and deadlines laid down by the Aliens Regulation or special rules.

¹⁰¹ Aliens Act:

Art. 40. Aliens admitted to the country shall comply with the requirements (...) when leaving the country.

Art. 42. Resident aliens may leave and re-enter the country with the same migration status and visa, provided that they comply with the requirements and deadlines laid down by special rules.

264. When registering the domicile on the national identity card, RENIEC allows a foreign address to be entered.

- (b) *State guarantees of the right of migrant workers and their families to liberty of movement in the territory of the State of employment and freedom to choose their residence there*

265. Since migrant workers and their families have the same rights as Peruvian nationals,¹⁰² they enjoy liberty of movement throughout the country under article 2, paragraph 11 of the Constitution.

2. Articles 40, 41 and 42: right to form associations and trade unions; right to participate in public affairs of their State of origin and to vote and be elected at elections of that State; procedures and institutions taking care of the needs of migrant workers and possible enjoyment of political rights in the State of employment

266. Note that pursuant to the provisions of ILO Conventions Nos. 87 and 98, ratified by Peru, there are two phases of the right to freedom of association: one individual and one collective, each of these phases containing two aspects: one regarding organization and the regarding activity.

267. In the case of Individual Freedom of Association, regarding the organizational aspect, there is the right of association which, in accordance with article 2 of Convention No. 87 means that every worker has the right to establish organizations of their own choosing, without previous authorisation. Accordingly, article 16 of Supreme Decree No. 010-2003-TR has regulated the process of establishing a trade union¹⁰³ as follows: "A meeting must be convened to form a trade union, approve its statutes and elect its executive body; all of these proceedings must be set forth in a record authenticated by a notary public or, in the absence thereof, by the local justice of the peace, specifying the place and date and containing a list of attendance." Notwithstanding the foregoing, the trade union must be entered in the Trade Union Register kept by the Ministry of Labour and Employment in order to obtain trade union status in the case of the private sector, and legal status in the case of public sector, unless the registrar has discretionary powers pursuant to articles 17 and 18 of DS 010-2003-TR, and article 7 of ILO Convention No. 87.

268. Article 2 of the Constitution recognizes everyone's right to participate in public affairs of their State of origin.

269. Furthermore, article 31 of the Constitution recognizes the right of every citizen (Peruvians over 18 years of age) to be elected and freely to elect their representatives in accordance with the conditions and procedures determined by organic law. Peruvians working abroad may exercise their right to elect their authorities through the consulates.

¹⁰² Aliens Act:

Art. 5. Aliens in the territory of the Republic have the same rights and obligations as Peruvians, with the exceptions laid down by the Constitution, this Act and other statutory provisions of the Republic.

¹⁰³ Procedure No. 18 of the Consolidated Text of Administrative Procedures of the Ministry of Labour and Employment approved by Supreme Decree No. 016-2006-TR, which is the responsibility of General Records Department in the first instance and the Directorate for Conflict Prevention and Resolution in the second instance and on appeal.

3. Articles 43, 54 and 55: principle of equality of treatment with nationals in respect of protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity

(a) *Regulatory measures, plans, programmes, strategies, etc. implemented, designed to ensure protection against dismissal and unemployment benefits*

i. Regulatory measures

270. The regulatory measures provided in Peruvian national law to protect migrant workers against dismissal include protection against arbitrary dismissal, protection against wrongful dismissal, compensation for time worked and the determination of national employment policies and strategies contained in these national employment policies.

271. Regarding protection against arbitrary dismissal, Supreme Decree No. 003-97-TR, Consolidated Text of Legislative Decree No. 728, the Labour Productivity and Competitiveness Act, provides that any worker may be dismissed only on just grounds provided for in law and duly substantiated, relating to the worker's capabilities or conduct¹⁰⁴ and provided that he has been given a reasonable time, of at least six days, to defend himself in writing against the charges made against him; except in cases of serious misconduct.

272. The dismissal is arbitrary if no grounds are stated or such grounds cannot be demonstrated in court, in which case the worker is entitled to payment of compensation, as the sole remedy for the damage suffered.¹⁰⁵ Furthermore, the Constitutional Court has established that under *amparo* proceedings a worker should be reinstated in this case. In other words, where there are no grounds for dismissal, namely where a worker is dismissed unilaterally by the employer, without stating any grounds relating to the conduct or capacity of the worker, or fraudulently, where the worker is dismissed in bad faith and with the intention to mislead, and hence contrary to true and correct labour relations. This applies even where grounds are stated and procedures are followed, such as accusing the worker of clearly non-existent, false or imaginary acts or of a misdeed not recognized by law, which runs counter to the principle of characterization.¹⁰⁶

¹⁰⁴ Art. 23. The following are fair grounds for dismissal relating to the capabilities of the worker:

- (a) Physical or mental deficiency or incompetence, preventing the performance of his duties;
- (b) Poor performance in relation to the worker's ability and the average performance for similar work under similar conditions;
- (c) The unreasoned refusal of the worker to undergo a medical examination previously agreed or established by law, required for employment, or to comply with prophylactic or therapeutic measures prescribed by the doctor to prevent illness or accidents.

Art. 24. The following are fair grounds for dismissal relating to the conduct of the worker:

- (a) Serious misconduct;
- (b) A criminal conviction for an intentional crime;
- (c) Loss of the worker's legal capacity.

¹⁰⁵ Art. 38 – Compensation for unfair dismissal is equivalent to one and a half months' regular pay for each full year of service up to a maximum of 12 months' pay. Fractions of a year shall be paid by twelfths and thirtieths as appropriate. Such compensation is due once the trial period is completed.

¹⁰⁶ Constitutional Court Decision No. 976-2001-AA, dated 13 March 2003.

273. Moreover, in cases of wrongful dismissal (as described in specific cases established by law, namely where fundamental rights are breached),¹⁰⁷ the worker is entitled to be reinstated in his job unless he opts for compensation under article 38 of the Labour Productivity and Competitiveness Act.¹⁰⁸

274. On the other hand, compensation for time worked (CTS) is a social welfare benefit to protect against redundancy, and to promote the worker and his family.¹⁰⁹ It is awarded to workers subject to the labour regulations governing private business, working at least four hours a day or 20 hours a week.¹¹⁰

275. Similarly, the National Employment Policies, approved by Supreme Decree No. 052-2011-PCM, lay down criteria and guidelines for State action to create decent employment in response to the problem of unemployment and underemployment in the country.¹¹¹

¹⁰⁷ Art. 29. Dismissal on the following grounds is wrongful:

- (a) Trade union membership or participation in union activities;
- (b) Standing as a candidate to represent workers or acting or having acted in that capacity;
- (c) Bringing a complaint or taking part in proceedings against the employer before the competent authorities, except in the case of serious misconduct described in art. 25, para. (f);
- (d) Discrimination on grounds of sex, race, religion, opinion or language;
- (e) Pregnancy, if dismissal occurs at any time during the pregnancy or within 90 days of delivery. It is presumed that the dismissal is on grounds of pregnancy if the employer fails to state any other grounds for dismissing a pregnant worker.

The provisions of this paragraph shall apply where the employer has been notified of the pregnancy in writing prior to the dismissal and does not affect the employer's right to dismiss the worker on fair grounds.(*)

(*) Paragraph amended by Act No. 27185 of 19/10/1999, art. 1.

¹⁰⁸ Art. 34. The dismissal of an employee on grounds related to conduct or capabilities does not entitle the latter to compensation.

If the dismissal is arbitrary because no grounds are stated or such grounds cannot be demonstrated in court, the worker is entitled to payment of compensation as per art. 38, as the sole remedy for the damage suffered. He may apply at the same time for payment of any other outstanding social right or benefit.

In cases of wrongful dismissal, if the worker's petition is upheld he shall be reinstated in his job, unless he opts for the sentence to take the form of compensation as provided for in art. 38.

¹⁰⁹ Consolidated text of the CTS Act, art. 1 – Legislative Decree No. 650.

¹¹⁰ Consolidated text of the CTS Act, art. 4 – Legislative Decree No. 650.

¹¹¹ The National Employment Policies are a set of specific measures proposed by Central Government, through the Intersectoral Committee on Employment (CIE), in response to the problem of unemployment and underemployment in the country. In keeping with the provisions of articles Nos. 22, 23, 27 and 59 of the Constitution of Peru; policy 14 of the National Agreement, Act No. 29518, on the organization of the Executive Branch; Supreme Decree No. 027-2007-PCM defining and establishing the mandatory national policies for national government agencies; the Consolidated Text of Legislative Decree No. 728, the Labour Productivity and Competitiveness Act, approved by Supreme Decree No. 003-97-TR; Act No. 29381, Act on the Organization and Functions of the Ministry of Labour and Employment, and Ministerial Resolution No. 105-2011-TR approving the Social and Labour Policy Guidelines 2011–2015 for the Labour and Employment sectors; Act No. 28983, Equal Opportunities for Men and Women Act, and in compliance with the commitments made by Peru under ratified international conventions and the Hemispheric Agenda 2006–2015, proposed by the International Labour Organization (ILO).

ii. Plans, programmes, strategies, etc. implemented

276. The Ministry of Labour and Employment has devised strategies to ensure protection against dismissal.

277. For example, Policy No. 2 of the National Employment Policies: “To promote formal productive integration into the labour market, and in decent jobs”, the Ministry of Labour and Employment has designed a series of strategies to implement Specific Policy 2.5: “To promote the protection of male and female workers against job loss”, namely: “2.5.1. To promote the extension of the coverage of compensation for time worked (CTS) to salaried male and female workers, through processes that promote formal employment; 2.5.2. To step up verification of compliance with the rules of CTS; 2.5.3. To safeguard the goal of CTS as an inherent social protection mechanism for male and female workers against job loss; 2.5.4. To assess and propose supplementary and/or alternative mechanisms to provide protection in the event of job loss.”

(b) *Regulatory measures, plans, programmes, strategies, etc. implemented, designed to guarantee and/or facilitate equal treatment for migrant workers in accessing educational institutions and/or services, vocational guidance and placement, vocational training and retraining, social and health services, access to housing and cultural life, and cooperatives and self-managed enterprises*

i. Regulatory measures

278. Regulatory measures provided by Peruvian national law to guarantee and/or facilitate equal treatment for migrant workers in accessing vocational guidance and placement, vocational training and retraining, include constitutional law, which creates the “One-Stop Job Centre” and national employment policies.

279. Article 2, paragraph 2 and article 26, paragraph 1 of the Constitution guarantee equal treatment for migrant workers in access to the services referred to.¹¹²

280. Moreover, pursuant to General Directive No. 02-2012-MTPE/3/18 “Guidelines for handling users of the One-Stop Job Centre”, approved by Ministerial Resolution No. 109-2012-TR, the Job Centre was set up as a mechanism to promote employment in the country, which in the same physical and IT space is gradually offering services promoting employment, employability and entrepreneurship provided by the State. These services are designed to be universal, of high quality, confidential, free of charge, discrete, and to offer equality of treatment and opportunity. The users are Peruvian citizens and young people, citizens and young people of Member Countries of the Andean Community of Nations, and citizens and young people whose countries of origin offer services to promote employment, employability and entrepreneurship to Peruvian nationals. The guidelines of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families are therefore being complied with.

281. As to the regulatory measures, national employment policies are also designed to promote equality of opportunity and treatment for vulnerable social groups.¹¹³

¹¹² Art. 2. Everyone has the right:

To equality before the law. No person shall be discriminated against on the basis of origin, race, sex, language, religion, opinion, economic circumstances or any other reason.

Art. 26. The following principles shall be observed in labour relationships:

Equality of opportunity without discrimination. (...)

¹¹³ Approved by Supreme Decree No. 052-2011-PCM.

ii. Plans, programmes, strategies, etc. implemented

282. The Ministry of Labour and Employment has devised programmes, strategies and services to ensure equal treatment in access to employment and vocational guidance and placement, vocational training and retraining, as detailed in the following paragraphs.

283. The National Programme for the Promotion of Employment Opportunities “VAMOS PERU”, established by Supreme Decree No. 016-2011-TR (19 September 2011), seeks to promote jobs, protect the employability of the unemployed and workers who are at risk of losing their jobs.¹¹⁴ In this regard, the “Vamos Perú” programme provides the following services: job training, technical assistance for entrepreneurs, labour skills certification and job brokerage.

284. Regarding ensuring access to employment and job placement for migrant workers, the Department for Employment and Vocational Training of the Regional Bureau of Lima provides employment services aimed at seekers of jobs and/or work experience who are registered at the employment exchange or work experience training exchange. This service trains beneficiaries in job-seeking and employability advice workshops so that they can then be brokered and/or placed in a company to help them get a decent job and improve their standard of living. Furthermore, the CERTIJOVEN scheme seeks to award the Standard labour certificate to young people aged 18 to 25 together with the information required by employers for access to a job. Note that these services are available to migrant workers and their families, and there are no restrictions on access to them in relation to Peruvian job-seekers.

285. Regarding strategies, Policy No. 5 of the National Employment Policies of the Ministry of Labour and Employment is: To promote equality of opportunity and treatment, and non-discrimination in the labour market, with equality of opportunity for men and women. It contains a number of specific policies which, together with corresponding strategies, help to ensure equal treatment in access to employment and participation of vulnerable social groups — including migrant workers, namely: “5.1. To promote equality of opportunity and treatment between men and women and non-discrimination in the labour market, ensuring the full exercise of the economic rights of women, particularly those in vulnerable situations; 5.2. To promote equality of opportunity and treatment and non-discrimination in the labour market of other vulnerable social groups; 5.3. To promote the participation of vulnerable groups in State employment services, programmes and projects; 5.4. To promote training, retraining and brokerage and job placement services, taking account of the particular needs of vulnerable groups.”

286. Finally, the One-Stop Job Centre provides the following services: (a) careers guidance: this service for job-seekers is provided through the Employment Exchange, counselling for job-seekers, the Standard labour certificate and temporary employment; (b) job placement: services are provided to improve employability through job training and skill certification; (c) vocational training and retraining: vocational guidance and occupational information for students and young people are provided through Sovio.¹¹⁵

¹¹⁴ There are currently 13 offices nationwide, in Lima, Arequipa, Ayacucho, Cajamarca, Cuzco, Huancavelica, Ica, Junín, Lambayeque, La Libertad, Piura, Puno and San Martín.

¹¹⁵ A free service is provided with the aim of guiding and facilitating the choice of a professional, technical or vocational career for young people when they leave school, under General Directive No. 001-2012-MTPE/3/19 “Regulations for technical implementation, operation and development of the Careers Information and Vocational Guidance Service (Sovio)” approved by Ministerial Resolution No. 117-2012-TR. It aims to promote the building of training pathways and/or training of persons to match their potential and the labour market context, thereby improving their employment prospects.

Migrants are also given information and guidance on the labour migration process, including assistance for returnees and training in the productive use of remittances.

4. Articles 44 and 50: protection of the unity of the families of migrant workers and family reunification; consequences of death of a migrant worker or dissolution of marriage

(a) State guarantees for the unity of the families of migrant workers and family reunification

287. Article 11, paragraph (u) of the Aliens Act defines the migrant status of “Resident family member”, who has a “Resident” visa. Family members of migrant workers are eligible for this migration status.

288. In this regard, article 4 of the Aliens Act states that, for purposes of the Act, an alien is a migratory unit and his migration status unit extends to the members of his family, consisting of his spouse, children under 18 years of age, unmarried daughters, parents and dependants, as provided in the Aliens Regulation.

289. Moreover, article 8 of the Code on Children and Adolescents¹¹⁶ states that “Children and adolescents have the right to live, grow and develop within their family. A child or adolescent who has no natural family deserves to grow up in proper family environment. Children and adolescents may not be separated from their families except in the special circumstances laid down in the Act and solely for their protection (...)”.

290. The Nationality Act (No. 26574) provides in subparagraph 2 of the first paragraph of article 4 that: “The following may exercise the option to acquire Peruvian nationality (...) 2. A foreigner married to a Peruvian and resident, in as a married person, in the territory of the Republic for at least two years, expressing their wish to the competent authority to become Peruvian.” It follows from the above that national legislation promotes the option to acquire Peruvian nationality to spouses of Peruvians or residents, in order to foster the family bond.

(b) Regulation of the stay of the families of migrant workers in the event of death of a migrant worker or dissolution of marriage

291. We would point out that if a female or male migrant worker had obtained residence through marriage to a Peruvian, if the marriage is dissolved, she or he may opt for another migration status in order to continue to reside in the country. On the other hand, if a female or male migrant worker has obtained Peruvian nationality, if the marriage is dissolved, the foreigner does not lose the nationality she or he has acquired.¹¹⁷

292. The Nationality Act (No. 26574) provides in subparagraph 2 of the second paragraph of article 4 that: “(...) A spouse naturalized by marriage shall not lose their Peruvian nationality in the event of divorce or the death of the spouse.”

293. Since 2006, the National Registry of Identification and Civil Status has issued a National Identity Document to a total of 190 naturalized Peruvians. Note that although once an alien chooses Peruvian nationality, he or she ceases to be a migrant, as defined in the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families, the National Registry of Identification and Civil Status must be

¹¹⁶ Approved in Congress on 21 July 2000 by Act No. 27337, published in *El Peruano*, 7 August 2000.

¹¹⁷ Under the implementing regulation of the Nationality Act, art. 16, para. (b), last subpara., approved by Supreme Decree No. 004-97-IN “a person naturalized by marriage shall not lose their Peruvian nationality in the event of divorce or the death of the spouse”.

considered to have implemented administrative procedures for granting a National Identity Document to foreign-born and naturalized Peruvians.

5. Articles 45 and 53: equality of treatment for members of the families of migrant workers in relation to the points indicated and measures taken to guarantee the integration of children of migrant workers in the local school system; right of members of a migrant worker's family freely to choose their remunerated activity

294. Under current legislation, the National Migration Authority gives equal treatment to both migrant workers and nationals in the procedures they carry out, within the scope of its responsibilities. Similarly, regarding measures to protect the unity of the families of migrant workers, our legislation provides for the migration status of "resident family member", for which parents, spouses and children of migrant workers are eligible.

295. Referring to the provisions of article 51 of the Convention, a migrant worker can only be in an irregular migration situation through the expiry of his permit to stay or of residence granted by the National Migration Authority.

296. The freedom of the members of a migrant worker's family to choose their remunerated activity has no effect on any residence permit they are given.

6. Articles 46, 47 and 48: exemption from import and export duties and taxes in respect of personal effects; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation

297. Regarding exemption from duties and taxes on imports and exports of personal effects, article 1 of the Act on the General Sales Tax (IGV)¹¹⁸ provides that the IGV is levied on the importation of goods.

298. However, subparagraph 2 of paragraph (e) of article 2 of that Act provides that goods for personal and household use, with the exception of vehicles, are not subject to IGV, and may be imported free of or exempted from customs duties under statutory measures, for no more than the amounts or time periods laid down therein.

299. Regarding the aforementioned exemption, article 4 of Supreme Decree No. 016-2006-EF¹¹⁹ provides for tax exemption for the entry into the country of the goods detailed in that article considered as baggage, meaning all new or used goods that a traveller may reasonably require, provided that he declares that they are for his use or consumption, in accordance with the purpose and duration of the journey and which in view of their quantity, type or variety, are presumed not to be intended for trade or industry.¹²⁰

300. Also, according to article 24 of the above-mentioned Supreme Decree, a single tax of 14 per cent is payable on the customs value upon entry into the country of goods regarded as household items, defined as the set of furniture and fixtures of a home, new or used, owned by the traveller and/or his family, in the case of a family unit.¹²¹

301. Exports of the goods referred to are not subject to taxation.

¹¹⁸ IGV is also regulated in Supreme Decree No. 055-99-EF, as amended.

¹¹⁹ Regulation on baggage and household goods, published on 15.2.2006.

¹²⁰ Goods regarded as baggage include clothing, toiletries for the use of the passenger, medicines for the personal use of the traveller, and a portable computer, with its own power source.

¹²¹ Household items are considered to include furniture in general, linens and bedding, cooking and baking items, cleaning equipment, domestic electrical appliances, bicycles and toys.

302. Thus, the import and export of migrant workers' baggage is not subject to IGV. When migrant workers enter the country with household goods, they are subject to a single tax of 14 per cent of the customs value.

303. Regarding the transfer of earnings and savings from the State of employment to the State of origin or any other State, imposition of taxes and the non-application of the principle of international double taxation; in accordance with the relevant legislation,¹²² since non-domiciled persons with a source of income in Peru are liable for tax, migrants are taxable on all income earned from sources in Peru, including that earned through their work in the country. However, this ceases to apply when the State of origin of the migrant worker has signed an agreement with Peru to avoid double taxation, in which case the provisions of the Convention would apply.

304. Furthermore, before they may leave the country, workers must provide the migration authorities with a certificate of income and deductions or evidence of having produced one to the National Tax Office. Otherwise, they must make the relevant payment using the appropriate form.¹²³

305. The Superintendent of Banking, Insurance and Private Pension Fund Administrators, as the agency responsible for regulating and supervising the Private Pension Scheme, participates as a liaison agency in the implementation of social security agreements that Peru has signed with other countries. In this context, one of the basic principles to be incorporated in such agreements is the "export of pensions" whereby the financial benefits are not subject to reduction or withholding because the beneficiary lives or is resident in the territory of the other Contracting Party, with the exception of the charges and taxes involved in the payment of the financial benefit which, in turn, is linked to the principle of equal treatment, foreigners and nationals being treated the same with respect to the non-reduction of the pension amount when it is payable abroad.¹²⁴

306. Similarly, in the case of funded benefit schemes such as the Private Pension Scheme, and provided that a social security agreement has been signed that makes provision for it, the worker's pension fund deposited in his personal account may be transferred into his personal account in the destination country. In this case, the migrant has the opportunity to draw a pension on the personal account of the country in which he plans to reside permanently (including Peru if he is a foreigner), so that he is not obliged to keep paying contributions in the country where he worked temporarily, arrange a pension under that legislation and, therefore, apply for the export of the pension to the country of permanent residence, as stated in the preceding paragraph, ultimately receiving parallel pensions. Under the fund transfer mechanism, the accounts are consolidated to obtain a single pension benefit in the country of destination of the resources.¹²⁵

¹²² The legislation on income tax is enshrined in Supreme Decree No. 179-2004-EF, as amended.

¹²³ Form No. 1073 – Payment Slip – R.S. 056-2011/SUNAT, published on 1.3.2011, is used.

¹²⁴ To date, Peru has signed social security agreements with Spain, Chile and Argentina, and is in the process of finalizing the agreements with Uruguay and Ecuador, while the agreement with Canada is still under negotiation. It is a party to the Instrument of Decision No. 583, the Andean Social Security Instrument.

¹²⁵ Under Peruvian law, notably Act No. 27883, approving the transfer of pensions Funds between the SPP and other foreign pension schemes, even in the absence of a social security agreement, a migrant worker may apply for the fund of his personal account to be transferred to the country of final residence. Through this mechanism, a migrant worker who has worked in Peru for a period of time and then returns to his country of origin, can migrate with his pension funds and is not obliged to arrange a pension under the Private Pension Scheme – SPP.

307. The Peruvian government guarantees migrant workers and their families exemption from import and export duties and taxes in respect of personal effects, imposition of taxes and avoidance of double taxation.

7. Articles 49 and 56: authorization of residence and authorization to engage in remunerated activity; general prohibition and conditions of expulsion

308. The authorization for residence and to engage in remunerated activity by a migrant worker is governed by paragraphs (q) and (r) of article 11 of the Aliens Act, which states that the technical agency specializing in migration policy can grant foreigners the status of Worker or Designated Worker under temporary or resident visas. The requirements are laid down in Procedures 6 and 9 of the Consolidated Text of Administrative Procedures of the Ministry of Labour and Employments (Visa/Change of migration status).

D. Part VI of the Convention: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

1. Article 65: appropriate services to deal with questions concerning the international migration of workers and members of their families

309. The Ministry of Foreign Affairs is the State agency of the executive branch responsible for devising and implementing the State's foreign policy. It works in coordination with the Peruvian ambassadors and consuls accredited with various countries and international organizations. It also coordinates, handles and negotiates with the embassies accredited with the Peruvian State in Lima, with foreign consulates accredited in various cities in Peru and with the international organizations which have headquarters or representations in the capital.

310. The Ministry of Foreign Affairs has 227 Consular Offices, 66 of which are Consulates-General, 122 are Honorary Consulates and 39 are Consular Sections.

(a) Programmes and mechanisms promoted by the Ministry of Foreign Affairs for Peruvian migrants

311. In this regard, the Ministry of Foreign Affairs, in implementing its guidelines: Support for involvement in productive activities, that are legal and respectful of human rights in host companies has fostered agreements on the recognition of studies and degrees, professional qualifications and certifications, including the "Agreement between the Government of Peru and the Government of Bolivia on the recognition of studies, academic qualifications and university degrees". This Agreement was ratified by Supreme Decree No. 003-2007-RE.

(b) "Ahorro mi Vivienda" programme

312. The programme entitled "Ahorro mi vivienda" (I'm saving up for my house) was also implemented to encourage Peruvians living abroad to buy a home in Peru through the new "Mi Vivienda" loan. It is in this regard, Directorate Decision No. 03-09D-2010, the new text of the rules of the new MI VIVIENDA loan, specifies Peruvians living abroad as the beneficiaries.

313. This programme enables Peruvians living outside the country to buy a home directly and without intermediaries, through correspondents of an intermediary financial institution (IFI) operating in Peru, and with the benefits of the MIVIVIENDA Fund programmes, one of which is called the "Premio al Buen Pagador" (Good Payer Premium).

314. In this regard, we would clarify that the dwelling to be purchased must be occupied by at least one family member of either spouse to the second degree by blood or marriage; i.e. parents, grandparents, brothers, nephews, children and/or grandchildren.

315. The procedure for buying a house is as follows:

(a) The Peruvian citizen abroad contacts a correspondent of one of the IFIs operating in Peru;

(b) The correspondent abroad explains to the Peruvian citizen the requirements he must satisfy to apply for a mortgage loan, and the documents submitted are assessed by the IFI;

(c) The house can be chosen in two ways: either directly by the Peruvian citizen, or from a property exchange offered to the client by the IFI;

(d) Gather information about signing contracts from the correspondent located in the country of residence, for example the Andean Union;

(e) Release of the loan to the IFI in Peru, and registration of the property in the name of the Peruvian abroad.

2. **Article 66: authorized operations and bodies for the recruitment of workers in another State**

316. The Ministry of Labour and Employment has been conducting intermediation services between the supply and demand for employment at the request of foreign entities since 2007. To that end, it adopted "Action Guideline No. 003-2007-MTPE/3/11.2" that regulates the procedures to be followed. As a result, there have been 26 calls to place Peruvian workers in Spanish firms, and 1,631 jobs have been filled. However, the job placement service was suspended due to the need to recast the regulations, with a view to ensuring greater security for the exercise of the labour rights of Peruvian migrants.

317. Accordingly, Ministerial Resolution No. 283-2009-TR of 24 September 2009 approved National Directive No. 005-2009-MTPE/3/11.2 "Procedure for the Labour Mediation Service Abroad".

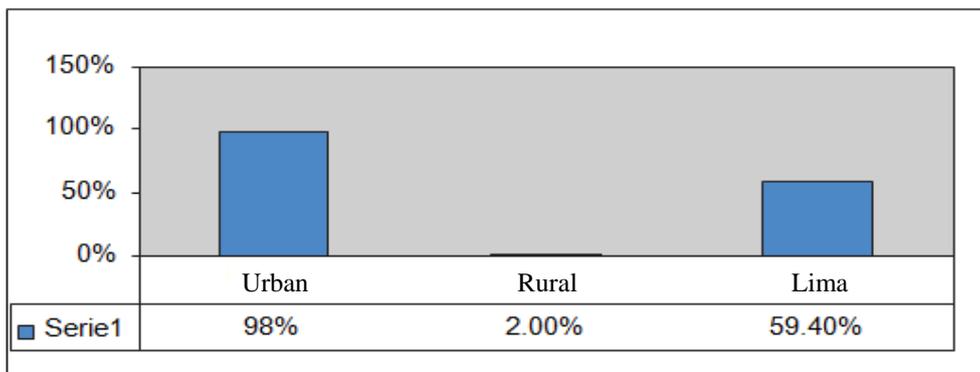
3. **Article 67: measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration**

318. According to the INEI,¹²⁶ there are 33,501 registered returnees.¹²⁷ Of these, 87 per cent are classed as economically active population (PEA) (aged between 15 and 64); 98 per cent of these are located in urban areas and only 2 per cent in rural areas, almost 60 per cent of whom are in Lima. Of this population, 30 per cent had secondary education, 29 per cent primary education, 14 per cent non-university higher education and 13 per cent full university education.

¹²⁶ IOM/INEI. Peru: International migration of the Peruvian families and profile of Peruvian returnees, p. 31 profile, IOM, 2009, pp. 100 *et seq.*

¹²⁷ The INEI defines a Peruvian returnee as Peruvians residing abroad five years before the date of the census, i.e. living permanently outside of our borders until 22 October 2002.

Figure 3
Population returning from abroad by residence



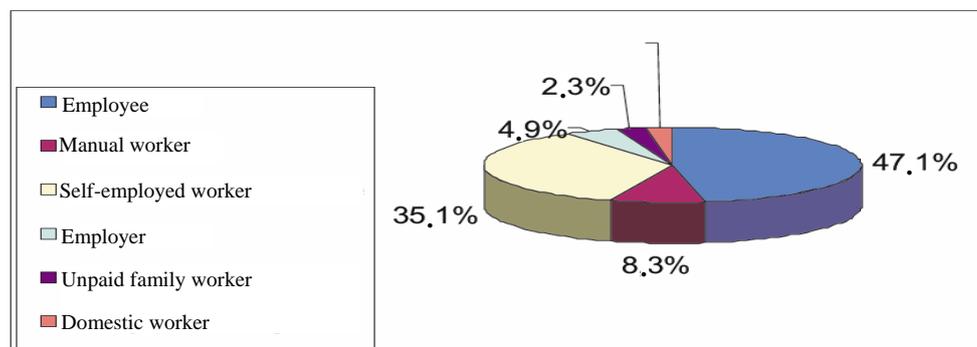
Source: International migration in Peruvian families and profile of Peruvian returnees (2009). IOM/INEI.

Prepared by: Office of the Ombudsman.

319. The INEI results also show that 66.2 per cent of Peruvian returnees belong to households in the country’s middle, lower-middle-and lower economic groups.

320. Furthermore, of all returnees in the economically active population, 94.2 per cent were employed. Of the total working-age returnees, 47.1 per cent worked as employees, while 35.1 per cent were self-employed.

Figure 4
Employed population aged 14 years and above returning from abroad

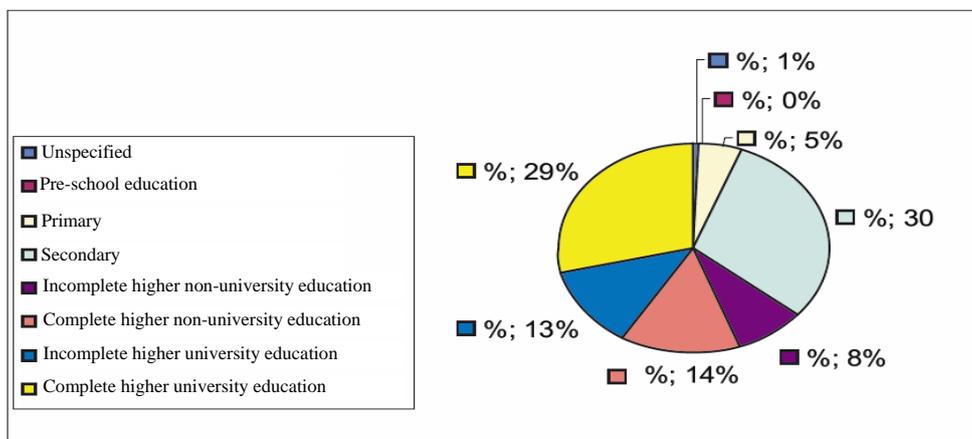


Source: International migration in Peruvian families and profile of Peruvian returnees (2009). IOM/INEI.

Prepared by: Office of the Ombudsman.

321. The educational level of 63 per cent of the returnee population in the economically active population have a non-university higher qualification, implying that their stay abroad was crucial to achieving a higher education qualification.

Figure 5
Returnee population aged 15 and above by educational attainment



Source: International migration in Peruvian families and profile of Peruvian returnees (2009).

Prepared by: Office of the Ombudsman.

4. Article 68: measures aimed at the preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation

322. Legislative Decree No. 703 establishes the general legal framework applicable to foreigners in the country.

323. A significant issue for Peruvian migrants is the insecurity of their rights, linked to the high rate of irregularity and consequent vulnerability and exposure to risk that their status entails. Irregular migrants face higher insecurity for the exercise and protection of their rights, because their migration status makes it difficult — and impossible in some cases — for them to use institutional channels to process their claims, grievances and complaints, creating impunity for any abuses affecting them, and leaving no traces in official records.

324. In this regard, Peru, as a State party to the Convention, is committed to preventing, punishing and eradicating transnational organized crime and assisting victims of it. Accordingly, it amended articles 153 and 153-A of the Criminal Code, in order to punish the crime of trafficking for sexual, labour or military exploitation, forced labour, slavery or the removal of organs.

325. To achieve that, it has a specialized unit of the National Police of Peru known as the Trafficking Investigation Division (DIVINTRAT) and has also been working in coordination with the Ministry of Labour and Employment, through the Directorate for the Promotion and Protection of Fundamental Rights and Health and Safety at Work, the Public Prosecution Service, DIVINTRAT and the Judiciary to punish those who engage in trafficking of persons, whether Peruvians or migrants.

326. In order to provide a service to Peruvians and foreigners that is modern, efficient and cohesive, the National Migration Authority has decentralized departments and offices located in Arequipa, Callao, Chiclayo, Chimbote, Cuzco, Huancayo, Ilo, Iquitos, Lima, Piura, Pucallpa, Puerto Maldonado, Puno, Tacna, Trujillo and Tumbes. These offices are responsible for implementing measures relating to migration control, passports,

immigration and nationalization, within their territorial jurisdiction, each reporting to the relevant department of the National Migration Authority.¹²⁸

5. Article 69: measures taken to ensure that migrant workers who are within the territory of the State party and are in an irregular situation do not remain in that situation and circumstances that should be taken into account in regularization procedures

327. People emigrating from Peru face many diverse difficulties, ranging from a lack of access to basic services, housing, high levels of labour informality and, especially abusive employment conditions that can amount to exploitation, discrimination and xenophobia, among others. A common theme is the insecurity of their rights, which tends to lead to vulnerability and exposure to risk, which they experience to a greater or lesser extent depending on their migration status (regular or irregular).

328. In order to regularize the migration status of foreigners in the country, which includes migrant workers and their families, the Peruvian government has signed the “Agreement on Residence for Nationals of the Republic of Peru and the Argentine Republic”, the “Peru-Ecuador Permanent Immigration Statute” and the “Agreement on Residency for Nationals of MERCOSUR member states and associated countries”. These are regulatory instruments under which the migration authorities — as part of the regularization process — grant residence only to foreign beneficiaries of those nationalities.

(a) *“Migrant Peru” project*

329. Some 100,000 Peruvians currently reside in Italy, over 13,000 of whom are irregular migrants. About half of them are in Lombardy, where in July 2010 it was calculated that there are some 48,000 Peruvian citizens — mostly women (58.4 per cent) — 11 per cent of whom are in an irregular situation.

330. In this context, the project “Promoting the rights of migrants and stepping up the fight against illegal trafficking of migrants from Peru to the European Union” known as “Migrant Peru”, which aims to take action to reduce the legal, social and economic vulnerability of current and potential migrants. Vulnerability arising from illegal trafficking of migrants from Peru to the European Union, particularly Italy and other countries in Latin America.

331. The project also aims to strengthening the mechanisms to protect the rights of migrants, coordinating the action and initiatives led by civil society organizations and public bodies involved in the migration process.

332. This international project to promote the rights of migrants and step up the fight against illegal trafficking of migrants from Peru to the European Union, was presented by the Office of the Ombudsman on 30 April 2011. The final beneficiaries are potential migrants, i.e. the Peruvian population living in cities with the highest flow of migrants abroad, which totals some 120,000 people. The initiative also targets members of associations of families of Peruvian migrants resident in Italy.

333. In Peru, Lima, Arequipa, Trujillo and Huancayo have been identified as cities with high rates of migration to the European Union. In Italy, Milan, Genoa and Turin have been identified as the cities with the highest numbers of Peruvians. To promote safe migration to Europe, especially Italy, and to help reduce illegal migration and the risks associated with it, the Office of the Ombudsman published the “Basic guide for Peruvian migrants travelling to Italy” (2012). Similarly, it has promoted the dissemination of the rights of

¹²⁸ Rules on the Organization and Functions of the National Migration Authority, art. 50.

migrants, through information tents, fairs and/or workshops organized by Ombudsman's Offices nationwide.

334. Another of the most important outcomes of the project is the website www.perumigrante.org where relevant and up-to-date information on migration legislation in Peru and the countries which are the main destinations for the Peruvian migrant community, relevant documents, articles and current press cuttings on the situation of migrants in the world. Similarly, the platform contains exchange forums where Peruvian migrants anywhere in the world can ask for information, exchange and share experiences or post their accounts of the situation they are in.

(b) *Project entitled "Peru: Promoting employment and small businesses for young people and managing international youth labour migration 2009–2012"*

335. There are State projects with multisectoral coordination and supported by international organizations, such as:

- The programme "Peru: Promoting employment and small businesses for young people and managing international youth labour migration 2009–2012" is being run as an interagency programme with the United Nations Population Fund, the International Labour Organization, the International Organization for Migration and the United Nations Programme for Development. The Peruvian counterparts are the National Secretariat for Youth, the Ministry for Women and Vulnerable Population Groups, the Ministry of Labour and Employment, the Ministry of Foreign Affairs and the National Institute of Statistics and Information Technology (INEI).
- The MIGRANDINA project, promoted by the ILO Subregional Office for the Andean countries, aims at building institutional capacity in the area of migration in order to contribute to the development of the countries of the Andean region (Bolivia, Colombia, Ecuador and Peru). It proposes as outcomes the creation or strengthening of the capacities of Governments and social stakeholders to manage labour migration and establish social and labour mechanisms that facilitate the voluntary return of immigrants, through appropriate policies enabling them to integrate quickly into the country's productive activity. These programmes and initiatives are evidence that the Peruvian State has not shied away from the issue of migrants.

(c) *Multisectoral committees*

336. The State also has two multisectoral bodies responsible for addressing two specific topics related to migration. They are the Special Committee on Refugees, reporting to the Ministry of Foreign Affairs, and the Multisectoral Working Group on Trafficking in Persons, representing 14 sectors of the State, civil society and cooperation bodies, and chaired by the Ministry of the Interior.

6. Article 70: measures taken to ensure that living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity

337. In this regard, the Peruvian State is guided by the principle of universality whereby health is a fundamental right enshrined in the Constitution and other documents and agreements signed by Peru, and other legislation. Universal Health Insurance is the guarantee of health protection for all persons resident in Peru, without discrimination, at all stages of life.

338. The Constitutional Court¹²⁹ has stated that article 10 of the Constitution recognizes that social security is a fundamental human right, which implies the right “of the individual to obtain life resources and solutions to certain predetermined problems through institutions and mechanisms provided by society” so that he can live in harmony with dignity, bearing in mind that the human person is the highest goal of society and the State.

339. Likewise, the Court¹³⁰ understands that the State has the duty to “(...) ensure a progressive and increasingly consistent quality of life by investing in the modernization and strengthening of all the institutions responsible for providing health services, and must adopt policies, plans and programmes to that end. Health services are therefore of vital importance in society not only because the achievement of higher living standards for its members depends on their existence and functioning, but also because the lives and safety of patients depend on efficient performance”.

340. Article 3 of Act No. 26790 on the modernization of Social Health Insurance states that regular members or their representatives and their entitled dependants are insured under the contributory Social Health Insurance scheme, and are entitled to the services provided by the Ministry of Health – Social Health Insurance (ESSALUD), provided that they have contributed for three consecutive months or four non-consecutive months within the six calendar months preceding the month in which the disorder commenced. It also states that regular members include active workers who are employed or partners in worker cooperatives.

341. As can be ascertained from the legislation and decisions cited, social security is evolving towards a universal service, with the aim of including other sectors of the community under its protective umbrella. This evolutionary process has led to protective measures being adopted not only for employees and their families, but also for self-employed workers and professionals, whether Peruvian or foreign.

342. Similarly, the Social Health Insurance scheme provides prevention, promotion, recovery and rehabilitation services, economic benefits and social benefits relating to the contributory Social Health Insurance scheme, for Peruvian workers and migrant workers as well as their entitled dependants, provided they are registered by their employers.

343. The Ministry of Health is responsible for the State scheme with the primary goal of providing comprehensive health care to people with limited economic resources and no access to other schemes or systems.

344. Social Health Insurance is based on the constitutional principles recognizing the right to welfare and guaranteeing free access to benefits provided by public, private or joint public-private agencies. It operates in a framework of equity, solidarity, efficiency and ease of access to health services.

345. In the light of the above, the right of migrant workers living in Peru and their families, to have social security and the right to receive emergency medical care, are manifested in two ways: (a) Through the Ministry of Health – Social Health Insurance where they have a formal employment relationship; this insurance provides the employee benefits that are included in their cover; and (b) Through Comprehensive Health Insurance (SIS) where they have no formal employment relationship or where they have a small business or work in one; this insurance provides health cover in line with the scheme they belong to.

346. Self-employed migrant workers can join the ESSALUD Independent Health Insurance scheme, established under the Universal Health Insurance Act, regardless of age

¹²⁹ Legal ground 10 of Constitutional Court judgement in Case No. 008-96-AI/TC.

¹³⁰ Legal ground 4 of Constitutional Court judgement in Case No. 01956-2004-AA/TC.

and open to any resident in Peru. It is designed for self-employed workers (professionals, technicians, programmers, craftsmen, traders, hauliers and artists), students and other entrepreneurs, and their dependants (spouse or partner, children under 18, adult children who are totally disabled and permanently unfit for work).

347. The Comprehensive Health Insurance scheme (SIS) is a public implementing agency of the Ministry of Health that provides care for residents of Peru who do not have health insurance and are living in poverty or extreme poverty, partly solving the problem of limited access to health services due to economic, cultural and geographical barriers, and contributing to the fulfilment of some of the Millennium Development Goals and targets, subscribed to by this country, primarily aimed at reducing infant mortality and maternal mortality. The SIS funds the benefits provided through the network of health facilities of the Ministry of Health to its members among the population.

348. In compliance with the above-mentioned regulations, the SIS has laid down a general rule that for all cases of SIS membership (nationwide), any person seeking access to insurance must satisfy the following requirements: (a) Have an identity document (national ID card or Alien's ID card); (b) Be entered in the General Household Register and be declared eligible by the Household Targeting System (SISFOH); (c) Do not have any other health insurance; and (d) Migrant workers resident in Peru and members of their families, may be covered by the Comprehensive Health Insurance scheme, provided they meet the statutory requirements.

Table 8

Persons insured under the Comprehensive Health System as at July 2012, by sex and country of origin

<i>Country</i>	<i>Sex</i>		<i>Total</i>
	<i>Male</i>	<i>Female</i>	
Argentina	3	8	11
Belgium	1	0	1
Bolivia	1	8	9
Chile	7	3	10
China	0	2	2
Colombia	10	25	35
Costa Rica	1	3	4
Croatia	1	0	1
Cuba	3	3	6
Dominican Republic	3	2	5
Ecuador	5	8	13
Finland	1	0	1
Germany	2	0	2
Guatemala	0	1	1
Haiti	0	1	1
Italy	6	2	8
Japan	41	47	88
Mexico	0	2	2
Other Asian countries	1	0	1
Other European countries	1	0	1

<i>Country</i>	<i>Sex</i>		<i>Total</i>
	<i>Male</i>	<i>Female</i>	
Panama	1	0	1
Paraguay	0	3	3
Poland	0	1	1
Portugal	1	0	1
Russia	0	2	2
Spain	3	4	7
Ukraine	0	1	1
United Kingdom	0	1	1
United States	1	2	3
Uruguay	1	0	1
Venezuela	3	3	6
Unspecified origin	0	1	1
Total	97	133	230

Source: Comprehensive Health System.

Prepared by: Ministry of Labour and Employment/Directorate-General for the Promotion of Employment – Directorate of Labour Migration.

349. The National Comprehensive Family Welfare Programme (INABIF) through the Comprehensive Protection Management Unit provides comprehensive protection service in Residential Care Centres.

350. These Centres provide comprehensive and specialized care for children and adolescents in situations of neglect and/or risk, with the aim of reintegrating them into their family environment, and helping them to become agents of change and development in the family and the society. It carries out comprehensive activities with children and adolescents entering the Residential Care Centres under court orders as a protective measure where they are in situation of moral danger or material neglect.

351. It provides its services in 38 homes nationwide (15 in Lima and 23 in the provinces) and is responsible for the Comprehensive Protection Management Unit. This programme includes the provision of the following services: (a) Attention to basic needs: Food, nutritional assessment, clothing and shelter; (b) Comprehensive health: Control and treatment of diseases and psychological treatment; (c) Social support: Obtaining identity documents, integration into the school system, reintegration into the family, employment and follow-up activities, management with local service institutions and organizations to arrange forms of cooperation for the welfare of the user population, coordinating prevention and promotion campaigns, establishing coordinated forms of community participation; and (d) Development and training: Workshop on social skills, gender, leadership, habits, rights and duties, school for parents, spiritual actions, self-esteem, values, workshops on the prevention of sexually transmitted diseases, psychoactive substances, first aid, violence, health, academic reinforcement, remedial teaching, preparation; technical and vocational training; therapeutic recreational activities; sports.

Table 9
Foreign population handled by the residential care centres of the National Comprehensive Family Welfare Programme

<i>Year</i>	<i>Total residents</i>	<i>Action taken to return them to their country of origin</i>
2006	2	Residents were given comprehensive care, plus the necessary arrangements were made with the courts, the Child Protection Investigation Unit and embassies for the transfer of each resident.
2007	3	
2008	5	
2009	8	
2010	7	
2011	8	
2012	6	
Total	39	

Source: INABIF.

Prepared by: INABIF.

(a) *Bilateral and multilateral agreements on social security ratified by the Peruvian State*

352. In this regard, note that social security agreements allow people who are or have been covered by the pension legislation of the contracting States to benefit from the contributions they have made in both countries and thus maintain continuity in their pension record.

353. The social security agreements that Peru has ratified that are in force are:

i. Argentina

354. The social security agreement was ratified by Supreme Decree No. 116-2003-RE and approved by Legislative Resolution No. 28067. It has been in force since 1 March 2004.

355. It recognizes as a fundamental right social security cover for workers moving within the territory of the contracting States, and ensuring that the social security legislation of the member states provides for the principle of equal treatment in terms of rights and obligations, and safeguards the right of migrant workers to receive social security benefits while retaining their acquired rights.

356. The administrative decision for the implementation of the social security agreement was ratified by Supreme Decree No. 077-2011-RE and came into force on 6 July 2011.

357. It is a practical instrument, indispensable for the implementation of the social security agreement. It establishes the procedure to be applied by the liaison institutions and agencies for the provisions of the agreement. Among other things, it determines the procedure and formalities for the financial benefits of retirement, disability and survivors' pensions and funeral expenses, and provisions for the payment of benefits and for administrative control and cooperation.

ii. Chile

358. This social security agreement, signed on 23 August 2002, governs relations between the two countries in the field of social security.

359. It applies to the private pension scheme (funded benefits), pension schemes administered by the State (pay-as-you-go), and health benefit schemes.

360. The agreement covers the following topics: (a) Equal treatment: Nationals or persons subject to the legislation of one Contracting State who reside in the other State shall have the same rights as nationals of the State in which the agreement is invoked; (b) Aggregation of periods: The periods of contributions made in one of the Contracting States may be taken into consideration for the acquisition of the right to a pension benefit in the other State; (c) Export of pensions: Pension benefits acquired in one of the Contracting States may be received in another State without reduction of the benefit or a requirement of residence in the first State. Also, the benefits granted by one of the States to nationals of the other State, residing in a third country, are paid under the same conditions and with the same scope as to its own nationals residing in that third country.

361. The administrative decision for the implementation of the social security agreement was ratified by Supreme Decree No. 104-2005-RE and came into force on 1 October 2006.

362. The decision approving the social security agreement has a new feature with respect to other agreements signed, as it allows pension funds accumulated in funded benefit schemes to be transferred when members move to live in another State.

iii. Spain

363. Social security agreement. This Convention was signed on 16 June 2003 in Madrid and entered into force on 1 February 2005.

364. It includes the regulation of health and pension benefits for workers and retirees under the contributory social security scheme who have been subject to Spanish law and Peruvian law.

365. Regarding health, people who have made social security contributions in one Contracting Party are entitled to treatment in the other Contracting Party, in a medical emergency and during a temporary stay, provided they are nationals of the latter. It also regulates the procedures to be followed by persons entitled to access health care or financial benefits (for temporary disability, maternity, breastfeeding, occupational risks during pregnancy, and burial).

366. Regarding pensions, it regulates the procedures for access to a pension in Peru and Spain based on the number of years of contributions in both countries. In particular, one article specifies how to determine the aggregation of periods among all pension schemes, including the private pension scheme.

367. The administrative decision for the implementation of the social security agreement was ratified by Supreme Decree No. 017-2008-RE and came into force on 1 July 2008.

368. This decision specifies the bodies liaising between the institutions of the two countries, the mechanisms for communicating between them, how to determine which institution should process the benefits, the forms to be completed, the application of specific rules and exceptions and other administrative details.

369. The main benefits covered are as follows: health care benefits; financial benefits for temporary disability, maternity, breastfeeding, occupational risks during pregnancy, and burial; permanent disability, invalidity, retirement and survivor's benefits; family benefits (Spain); and benefits for accidents at work and occupational diseases.

370. Regarding health, people who have contributed to the social security of one contracting party are entitled to treatment by the other contracting party, in a medical emergency and during a temporary stay. It also regulates the procedures to be followed by

persons entitled to access health care or financial benefits (for temporary disability, maternity, breastfeeding, occupational risk during pregnancy, and burial).

371. Regarding pensions, it regulates the procedures for access to a pension in Peru and Spain based on the number of years of contributions in both countries. In particular, one article specifies how to determine the aggregation of periods among all pension schemes, including the private pension scheme.

372. This year, under paragraph (a) of article 3 of the administrative decision on the implementation of the Peru-Spain Social Security Agreement,¹³¹ the sector responded to some 18 Spanish applications for certificates of temporary transfer and forwarded them to the competent institutions in Spain.

(b) *Bilateral and multilateral agreements on social security ratified and in the process of finalization*

i. Ecuador

373. The Social Security Agreement on financial and health benefits between the two institutions was signed on 22 July 2011. It is in the process of being finalized at national level.

374. Administrative decision for the implementation of the social security agreement between the Republic of Peru and the Republic of Ecuador signed on 29 February 2012, is not yet in force.

375. The Bilateral Technical Committee between the Social Health Insurance Peru (ESSALUD) and the Ecuadorian Institute of Social Security has been formed so that the agreement can enter into force.

(c) *Multilateral agreements*

376. The Ibero-American Multilateral Social Security Agreement, covering financial benefits for disability, old age, accidents at work and occupational diseases was signed on 10 November 2007 and is being finalized at national level.

377. The Draft Regulation of the Andean Social Security Instrument — Decision No. 583 — is currently being drafted in coordination with the Andean Committee of Social Security Authorities.

7. Article 71: repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to the death

378. In this regard, the relatives of the citizens deceased abroad are contacted or called to the Directorate for the Protection of and Assistance to Nationals of the Ministry of Foreign

¹³¹ Administrative decision for implementing the Peru-Spain Social Security Agreement:

Art. 3. Competent institutions.

For the application of the legislation specified in art. 2 of the Agreement, the following competent institutions are designated:

For Peru:

(a) For the specific case of arts. 8 and 22 of the Agreement, the Ministry of Labour and Employment.

Affairs¹³² in order to be given the necessary assistance to begin the formalities for repatriating the body or ashes.

379. To do this, the family members issue an authorization — duly legalized by a notary-public — to the relevant Consulate and/or the relative or person close to them living abroad so that they can carry out the relevant formalities on behalf of the family to have the body removed from the morgue and the ashes or body of the deceased Peruvian repatriated.

380. This authorization is submitted to the appropriate Consular Office to enable it to make the necessary arrangements for repatriation.

381. The Consul will inquire whether there is any insurance covering the costs of the transfer of the remains in that country, and whether there is any financial compensation from the any person responsible for the death, indemnity, labour benefits or any other source of assistance to cover the repatriation costs.

382. In principle, the relatives of the deceased are responsible for bearing the cost of repatriating mortal remains. Only if it is shown conclusively that there are no financial resources to cover the costs of repatriation will the Foreign Ministry bear the cost of repatriating the ashes.

383. To do so, they must prove that they are in poverty or extreme poverty, by means of a certificate of poverty issued by the municipality in which the family members are resident, in accordance with the guidelines on the implementation of the Humanitarian Assistance Programme, approved by Ministerial Resolution No. 1075-2005-RE. After a technical investigation and assessment, a financial subsidy is granted or denied for the repatriation of the ashes or body back from the foreign country to Peru. The Foreign Ministry bears the cost of the transfer to the airport only. The costs of funeral and burial services are borne by the relatives.

384. The relevant Consular office provides the repatriation data: arrival date, airline, flight number, storage at the airport. The Directorate for the Protection of and Assistance to Nationals coordinates with the national agencies in order to facilitate the procedures for the delivery of the body or ashes, as appropriate.

385. If the deceased suffered a violent death, our consular offices remain in contact with law-enforcement, judicial, medical and other relevant institutions in the country, in order to keep abreast of progress with the investigations into the death of our citizens abroad.

¹³² The Regulation on the Organization and Functions of the Ministry of Foreign Affairs (Supreme Decree No. 135-2010-RE) specifies the following function of the Directorate for the Protection of and Assistance to Nationals, reporting to the Directorate-General for Peruvian Communities Abroad and Consular Affairs:

Art. 119:

Assisting, coordinating and/or handling the repatriation of citizens in circumstances of high risk, extreme need or poverty, and the repatriation of the remains of Peruvian nationals dying in poverty abroad.