



PERU

Submission to the Committee on the Protection of the Rights
of All Migrant Workers and Members of their Families

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Submission to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

34th Session (March – April 2022) – List of Issues Prior to Reporting

Peru: Issues Related to Border Controls, Expulsions, Immigration Detention, and Migration Enforcement

The Global Detention Project (GDP) and the Grupo de Movilidad Humana de la Coordinadora Nacional de Derechos Humanos (CNDDHH) of Peru welcome the opportunity to provide information relevant to the list of issues prior to the presentation of Peru's report with respect to the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified by Peru in 2005.

The GDP is an independent research centre based in Geneva, Switzerland, that promotes the human rights of people of who have been arrested or detained for reasons related to their migration status.

The CNDDHH is a coalition of non-governmental experts and civil society organisations in Peru that work in the defense, promotion and education of human rights in Peru. The Grupo de Movilidad Humana within the CNDDHH focuses specifically on the rights on migrants, refugees and asylum seekers in the country.

This submission focuses on the state party's laws and practices concerning immigration and border controls, including deportation and detention measures.

1. Previous relevant comments by the Committee on Migrant Workers

In the concluding observations for its 2015 report on Peru, the Committee on Migrant Workers (CMW) reported specific concerns regarding the treatment of people in immigration measures, noting in particular the lack of information provided by the state party with respect to the number of migrants in detention, the places where migrants are detained, and conditions in detention sites. The Committee also noted the lack of information on the existence of "alternatives to detention." The CMW recommended that "the State party take the necessary measures to guarantee that detention of migrant workers in an irregular situation is a measure of last resort and that detention in all circumstances is conducted in accordance with Article 16 and 17, paragraph 2, of the Convention, and also with the Committee's general comment No. 2 on the rights of migrant workers in an irregular situation and members of their families. It also recommends that the State party should provide detailed information on this issue in its next periodic report."²

In its response to these concluding observations, Peru said that "the administrative procedure for imposing sanctions does not provide for detention in relation to any breach of migration law; there is only provision for the Peruvian National Police, within its remit, to hold an offender in order to ascertain his or her identity and migration status. Foreign nationals are informed of their right to contact a consular representative in keeping with the

² Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, "Concluding Observations on the Initial Report of Peru," CMW/C/PER/CO/1, 13 May 2015, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW%2FC%2FPER%2FCO%2F1&Lang=en

international treaties and conventions to which Peru is a party.”³ Yet, in a letter addressing the follow-up report by Peru, the CMW reiterated its recommendation for the country to “(i) guarantee that detention of migrant workers in an irregular situation is a measure of last resort (...); and (ii) provide, in its next periodic report, detailed information on the number of cases of detention and/or holding by reason of irregular migration; the places where such procedures are carried out and the conditions; the existence of alternatives to deprivation of liberty in the context of migration control procedures; and on the number of cases involving the detention or holding of migrant workers of Haitian origin and the relevant places, duration and conditions, prior to their obligatory departure.”⁴

2. Issues of concern since 2015

Militarisation of the border

Since the end of January 2021, military and police forces have been deployed at the country’s border with Ecuador in a bid to control the entry of people in a context where border entry points remain closed due to the COVID-19 pandemic. According to a press release from the Joint Command of the Armed Forces of Peru, “more than 50 vehicles including armoured vehicles, trucks and patrol cars and more than 1,200 troops were deployed.”⁵ In this scenario, situations of extreme violence took place, including shots to dissuade groups of migrants, including children⁶. According to the *Centro de Investigación* of the *Universidad del Pacífico*, several cases of pushbacks at the border have been documented as well as expulsions of people who were already in Peruvian territory. The research centre said this could lead to an increase in irregular entry and in the use of migrant smuggling networks, which can empower human trafficking networks.⁷ According to a survey by the UN Refugee Agency (UNHCR) in Tumbes, a city in Northern Peru, 56 percent of migrants and refugees paid to enter Peru.⁸

A similar situation occurred on the border with Brazil in February 2021, when a large group of Haitian migrants seeking to pass through Peru on their way to other countries was expelled in a joint operation between the Armed Forces and the National Police⁹

Peruvian law assigns the Armed Forces of Peru a role in border surveillance,¹⁰ however this role is not intended to include undertaking administrative immigration functions nor has the Armed Forces been properly trained to address the movements of migrants and refugees.¹¹ In the previously mentioned UNHCR report, the refugee agency expresses concern the vulnerabilities of migrants and refugees when treated by the Police and Armed Forces.

Expulsions

According to a 2020 report to the Committee on Migrant Workers (CMW) by the *Grupo de Movilidad Humana*, in 2019, the *División de Extranjería* expelled 262 Venezuelan migrants for offences related to the national migration law, representing 38,47% of the total non-

³ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, “Concluding Observations on the Initial Report of Peru – Addendum: Information Received from Peru on Follow-up to the Concluding Observations,” CMW/C/PER/CO/1/Add.1, 13 August 2018, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW%2fC%2fPER%2fCO%2f1%2fAdd.1&Lang=en

⁴ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (Ahmadou Tall – Chairperson), “Follow-up Letter Sent to the State Party,” CMW/followup/29/bs, 13 September 2018, https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/PER/INT_CMW_FUL_PER_32700_E.pdf

⁵ Universidad del Pacífico, Centro de Investigación, “Propuesta de Política Pública: La Militarización de la Frontera Norte de Perú y el Derecho a Solicitar Refugio: Hacia la Reapertura de la Frontera,” March 2021, <https://ciup.up.edu.pe/media/2432/ciup-ppp16-5.pdf>

⁶ Barnaby, B. and G. Ramos. Fronteras en la mira: el caso peruano. Agenda Estado de Derecho. March 2021, <https://agendaestadodederecho.com/fronteras-en-la-mira-el-caso-peruano/>

⁷ *Ibid.*, p.1.

⁸ UNHCR, “Reporte de situación en Tumbes N° 3. 7-20 febrero 2021. February 2021, <https://data2.unhcr.org/en/documents/details/85097>

⁹ Andina.pe. Madre de Dios: militares y policías expulsan a haitianos. 16 February 2021, <https://andina.pe/agencia/noticia-madre-dios-militares-y-policias-expulsan-a-haitianos-834038.aspx>

¹⁰ Art. 4 - Decreto Legislativo 1137 - Ley del Ejército Peruano

¹¹ Barnaby, B. and G. Ramos. Óp. Cit.

citizens expelled from the country that year (681 expulsions in total).¹² In January 2020 alone, 134 Venezuelan nationals were expelled from the country. Collective expulsions have also been reported. According to the *Grupo de Movilidad Humana*, five collective expulsions took place in 2019 and one in January 2020. Of the 134 Venezuelan nationals expelled in January 2020, 131 were expelled on the same night.¹³

The Ministry of Interior has approved the transfer of funds to the Ministry of Defense in order to execute the air transfer service of Venezuelan citizens to their country of origin. According to the Ministry of Interior's migration agency (*Superintendencia Nacional de Migraciones*, or SNM), 5,000 out of the planned 6,000 expulsions of foreigners have been carried out in the last two years.¹⁴ In December 2021, the Ministry of Interior tried to deport 42 Venezuelans because of "administrative offences."¹⁵

In addition, from the Peruvian Congress, draft laws are constantly proposed with a securitization approach that seeks on one hand, to criminalize migration; and on the other, to broaden grounds for expulsion with the supposed objective of safeguarding public order. In this line, draft laws such as 1280/2021-CR stand out. This proposes to modify the migration law to include drinking liquor on public roads or physically or verbally assaulting a Peruvian citizen among the reasons for expulsion.

Situation of Venezuelan migrants

In recent years, migration from Venezuela has increased considerably. According to SNM data, between 2014 and 2016 there were around 50,000 Venezuelan people entering each year. This figure subsequently increased to more than 223,000 in 2017.¹⁶ According to the UNHCR, in 2020, there were 4,895 refugees, 536,779 asylum seekers and 515,162 Venezuelans displaced abroad in Peru, representing a considerable increase from 2019 as there were 377,864 Venezuelan displaced abroad present in the country.¹⁷ This makes Peru the second destination country after Colombia and the first host country for Venezuelan asylum-seekers in the world.

According to the *Grupo de Movilidad Humana*, the adoption of the Legislative Decree N°1350 of 6 January 2017 represented a move forward for the country's migration legislation as the law adopted a human rights, inclusion, and gender-based approach. The Peruvian Government put in place a Temporary Permanence Permit (*Permiso Temporal de Permanencia* or PTP) specifically to regularise the immigration status of Venezuelan nationals. Nonetheless, changes in regulations and in administrative protocols have changed this initial perspective.¹⁸ For instance, towards mid-2018, more restrictive measures against Venezuelan migrants were adopted as was the case in August, when the government announced that the PTP would only be provided to those that had entered the country before the end of October 2018. Also, in August 2018, the country introduced the obligation for Venezuelans to present a passport for entry into the country, which led to many being unable to enter. At the start of 2019, this requirement remained in force except in cases that were classed as "humanitarian exceptions" which included asylum seekers,

¹² Grupo de Movilidad Humana, "Informe Alternativo al Comité de Protección de los Derechos de Todos los Trabajadores Migratorios y de Sus Familiares: Peru 2020," December 2020, <https://cdn01.pucp.edu.pe/idehpucp/wp-content/uploads/2020/12/21213437/Versi%C3%B3n-Digital-Informe-alternativo-diagramado.pdf>

¹³ Andina, "Más de 130 Venezolanos Implicados en Delitos Serán Expulsados Hoy del Perú," 27 January 2020, <https://andina.pe/agencia/noticia-mas-130-venezolanos-implicados-delitos-seran-expulsados-hoy-del-peru-782967.aspx>

¹⁴ UNHCR, "Peru Situation Report September 2021", 2021, <https://reliefweb.int/report/peru/peru-situation-report-september-2021>

¹⁵ El Comercio, "Bochornosa y fallida expulsión de migrantes", 23 December 2021, <https://elcomercio.pe/politica/actualidad/bochornosa-y-fallida-expulsion-de-migrantes-noticia/>

¹⁶ Superintendencia Nacional de Migraciones, "Presencia de Inmigrantes en Situación de Vulnerabilidad en el Perú," 2018, p.20, https://www.migraciones.gob.pe/wp-content/uploads/2018/04/Presencia_inmigrantes_situacion_vulnerabilidad_Peru.pdf

¹⁷ UNHCR, "Refugee Data Finder: Peru," accessed on 1 March 2022, <https://www.unhcr.org/refugee-statistics/download/?url=gAR51H>

¹⁸ Grupo de Movilidad Humana, "Informe Alternativo al Comité de Protección de los Derechos de Todos los Trabajadores Migratorios y de Sus Familiares: Peru 2020," December 2020, p. 14-15, <https://cdn01.pucp.edu.pe/idehpucp/wp-content/uploads/2020/12/21213437/Versi%C3%B3n-Digital-Informe-alternativo-diagramado.pdf>

children, and vulnerable persons. Subsequently, in June 2019, Peru announced that Venezuelan nationals would need a humanitarian visa to enter the country that could be obtained in the Peruvian consulate in Venezuela, Ecuador, or Colombia. According to the *Grupo de Movilidad Humana*, through the country's adoption of increasingly restrictive migration policies, irregular migration has in fact increased.¹⁹

However, in the past months there have been steps to move forward the regularisation of migrants in the country. In July 2021, the procedure for immigration regularisation (TUPA, its acronym in Spanish) under Decree N° 010-2020-IN to obtain a Temporary Residence Permit Card (CPP) came into effect. This process was supposed to benefit at least 360,000 migrants that remain undocumented in the country. That same month the Ministry of Foreign Affairs (MFA) and the SNM commenced the process to grant humanitarian residency directed to 530,000 asylum-seekers, a complementary protection status provided under the immigration law Decree 1359²⁰. We welcome these measures adopted by Peru to guarantee the effective enjoyment of rights for migrants, refugees, and asylum seekers.

COVID-19 response

Responding to the GDP's COVID-19 survey in July 2020, Peru's Ombudsman's office (Defensoría del Pueblo) said that to their knowledge, no one had been detained for migration related reasons during the pandemic and noted that there is no formal immigration detention estate in the country. In addition, the Ombudsman's office said that following the declaration of the state of emergency in the country in March 2020, the immigration authority (SNM) suspended, for a duration of 15 days, administrative sanctions related to overstaying visas and residence permits as well as for unauthorised entry onto the territory. In consequence, deportations for these immigration offences were also suspended. The measure was subsequently extended by a further resolution (Superintendency Resolution No. 107-2020) until the end of the state of emergency.²¹ However, on 9 May 2020, Peru's immigration authority voided the suspension in order to "help mitigate actions affecting public order, national security, or the security of Peru's citizens, by non-citizens in the country, especially during the state of emergency."

Furthermore, the Ombudsman said that there was no official information on the number of deportation orders issued by the country's immigration authority since the lifting of the suspension of administrative sanctions. The only case that was reported through a press release was that of two Ecuadorian citizens who entered Peruvian territory irregularly following a plane crash in Tumbes, and were then expelled to Ecuador on 10 June.²²

While no new immigration or asylum policies were adopted during the COVID-19 crisis, certain measures to mitigate the impact of COVID-19 have affected the country's immigration management strategies and the operation of Peru's asylum system. For instance, Peru closed its borders on 16 March through Supreme Decree No. 044-2020-PCM, and with it, the suspension of land, aerial, and maritime transport. This measure meant that, save for exceptional cases, the entry or exit of people to and from the country was not permitted. Also, the Ombudsman said that the measure could affect the right to seek asylum. In fact, between 16 March and 21 June 2020, no measures were reportedly taken by the government to guarantee access to the territory for asylum seekers. People who had entered the country shortly before the closure of borders, or entered the country

¹⁹ Grupo de Movilidad Humana, "Informe Alternativo al Comité de Protección de los Derechos de Todos los Trabajadores Migratorios y de Sus Familiares: Peru 2020," December 2020, p. 18-19, <https://cdn01.pucp.edu.pe/idehpucp/wp-content/uploads/2020/12/21213437/Versi%C3%B3n-Digital-Informe-alternativo-diagramado.pdf>

²⁰ Equilibrium CenDE, "la protección humanitaria a los solicitantes de refugio en Perú, una deuda pendiente", 2021, <https://equilibriumcende.com/proteccion-humanitaria-peru/>

²¹ Defensoría del Pueblo, Global Detention Project's COVID-19 Survey, 21 July 2020.

²² La República, "Expulsan a Ecuatorianos que Ingresaron Ilegalmente en Avioneta que se Estrelló en Tumbes," 10 June 2020, <https://bit.ly/3lzu1Rg>

irregularly during the state of emergency, said that they did not know where to go due to the closure of national institutions.²³

From 22 June 2020, the Special Commission for Refugees (Comisión Especial para los Refugiados) (CEPR), the body in charge of the operation of the Peruvian asylum system, established an online platform for people to be able to conduct the following procedures: apply for asylum; apply for the renewal of work authorisations for asylum seekers; filing appeals for reconsideration or appeal against a negative asylum decision; and applying for family reunification in cases of people with refugee status.²⁴

The CEPR announced that they were working to move all procedures they were in charge of, to online platforms, as face-to-face meetings could not be resumed then. It is not yet known whether this system has had positive or negative effects upon the determination of refugee status. However, the Ombudsman said it remained concerned that this could lead to barriers to accessing the asylum system due to the lack of access of asylum seekers to smartphones, laptops, computers, or the internet as well as the lack of knowledge on how to properly fill out the relevant applications.²⁵

3. Previous relevant comments by other Human Rights Bodies

The Committee against Torture (CAT), in its concluding observations in 2018, stated that it appreciated the efforts made by the country in relation to the large influx of asylum seekers and irregular migrants, most of which are nationals of the Bolivarian Republic of Venezuela. On the other hand, the Committee noted that although Peruvian legislation provides that asylum applications can be submitted to the Special Commission for Refugees, border posts, police stations as well as military posts, in practice, there is no other mechanism than the Special Commission that receives the applications. The Committee thus called on the “State party to adopt the necessary legislative and other measures to: (a) Ensure that no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture; (b) Guarantee that all persons in the territory or under the jurisdiction of the State party have effective access to the procedure for determining refugee status. In particular, the State party should establish a protocol under which applications for asylum may be submitted to the Special Commission for Refugees through border posts, police stations, and military posts and ensure that personnel in such places receive appropriate training.”²⁶

The Human Rights Committee also made relevant recommendations in 2013, when it recommended that the country “adopt and implement laws guaranteeing respect for the principle of non-refoulement in cases involving risk of death, torture or ill-treatment not covered by the refugee definition, as well as ensure appropriate training for officials engaged in migration control, especially in the northern border region.”²⁷

During the 3rd cycle of the Universal Periodic Review of Peru (37th session, February/March 2018), member states issued recommendations relevant to Peru’s immigration practices.²⁸ These included:

²³ Defensoría del Pueblo, Global Detention Project’s COVID-19 Survey, 21 July 2020.

²⁴ Defensoría del Pueblo, Global Detention Project’s COVID-19 Survey, 21 July 2020.

²⁵ *Ibid.*

²⁶ Committee against Torture, “Concluding Observations on the Seventh Periodic Report of Peru,” CAT/C/PER/CO/7, 18 December 2018, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fPER%2fCO%2f7&Lang=en

²⁷ Human Rights Committee, “Concluding Observations on the Fifth Periodic Report of Peru, adopted by the Committee at its 107th Session (11-28 March 2013),” CCPR/C/PER/CO/5, 29 April 2013,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fPER%2fCO%2f5&Lang=en

²⁸ Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Peru,” A/HRC/37/8, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/368/23/PDF/G1736823.pdf?OpenElement>

- Promptly ratify the International Labour Organisation Domestic Workers Convention, 2011 (No. 189) (Nicaragua) (para. 111.8);
- Take specific and effective measures to ensure migrant workers' access to basic education and health care; and their protection against ill-treatment by providing judicial and administrative remedy (Bangladesh) (para. 111.181);
- Ensure that asylum seekers have equal access to universal health-care services (Sierra Leone) (para. 111.182).

4. Priority Issues:

Based on the details provided in this submission, the GDP and the CNDDHH wish to highlight following issues as priorities for consideration in the report on Peru:

- Inquire about whether the fundamental principle of non-refoulement is upheld in all situations, including during expulsions at the border, to ensure that no-one is returned to a country where their life, freedom, and safety could be threatened.
- Request additional information regarding militarisation along Peru's border with Ecuador and incidents of violence towards groups of migrants and asylum seekers, including women and children.
- Request information about sensitisation and training for law enforcement officials engaged in border surveillance, including the police and armed forces, with particular respect to the specific vulnerabilities, rights, and needs of refugees and migrants.
- Request an update on the new immigration regularisation decree (TUPA) and information on the number of undocumented migrants who have been able to obtain a Temporary Residence Permit Card (CPP) under Decree N° 010-2020-IN.
- Request an update on the process of granting humanitarian residency to 530,000 asylum-seekers, a complementary protection status provided under immigration law Decree 1359.
- Request information on the impact of COVID-19 on migrants and refugees in the country, in particular with respect to access to vaccination, treatment, and prevention measures.
- Seek an update on border closure measures implemented during the COVID-19 pandemic and their impact on the right to seek asylum in Peru.
- Request disaggregated data on the numbers of migrants who are detained and deported for migration-related reasons, including information about the lengths of time each person faced in detention as they awaited deportation or other administrative measure; include gender and age disaggregated data on the number of men, women, children, older persons detained, as well as information on minority and vulnerable groups detained (for example, persons with disabilities, LGBTQI population)
- Request a list of any facilities that are used for immigration detention purposes;
- Assess whether draft laws currently under consideration contravene provisions in immigration and refugee law.