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КОНКРЕТНЫЕ ГРУППЫ И ЛИЦА

ТРУДЯЩИЕСЯ-МИГРАНТЫ

**Вербальная нота Постоянного представительства Перу при Отделении
Организации Объединенных Наций в Женеве от 18 марта 2005 года
в адрес Управления Верховного комиссара Организации
Объединенных Наций по правам человека**

Постоянное представительство Перу при Отделении Организации Объединенных Наций в Женеве свидетельствует свое уважение Управлению Верховного комиссара Организации Объединенных Наций по правам человека и имеет честь представить замечания правительства Перу к докладу Специального докладчика по вопросу о правах человека мигрантов Габриэлы Родригес Писарро, подготовленному по итогам ее визита в Перу (E/CN.4/2005/85/Add.4).

Постоянное представительство Перу будет весьма признательно Управлению Верховного комиссара за распространение настоящей вербальной ноты и приложения^{*} в качестве официального документа Комиссии по правам человека на ее шестьдесят первой сессии.

^{*} Приложение воспроизводится в полученном виде только на испанском и английском языках.

Annex

EVALUATION OF THE DRAFT VERSION OF THE REPORT PREPARED BY THE SPECIAL RAPPORTEUR OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS ON THE HUMAN RIGHTS OF MIGRANTS, MS. GABRIELA RODRÍGUEZ PIZARRO, CONCERNING HER VISIT TO PERU IN SEPTEMBER 2004

It was with great interest that the Government of Peru received the draft version of the report prepared by the Special Rapporteur of the United Nations Commission on Human Rights on the human rights of migrants describing her visit to Peru from 20 to 30 September 2004.

Peru reaffirms its commitment to make every effort within its power to examine the steps needed to overcome the obstacles to the full and effective protection of the human rights of migrants. These are tasks which the Government will pursue in coordination with international agencies and with organizations representing civil society, just as it did in the three-sided coordination effort between the Government, civil society and UNDP in drafting the agenda for the Special Rapporteur's visit to Peru.

While it generally endorses the description of the situation regarding migration in Peru as outlined in the draft version of the Special Rapporteur's report, the Government wishes to make a few clarifications and comments.

Chapter II - International legal framework

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (para. 10). In a clear demonstration of its political will to protect migrant workers, Peru signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 22 September 2004. This important step will enable such persons to exercise their human rights and fundamental freedoms fully and effectively, whatever their legal status.

ILO Convention No. 97 (para. 11). Peru has implemented the adaptation procedure in relation to Convention No. 97 on migrant workers (1949) (revised), and has noted that its domestic legislation was not sufficiently developed to allow the incorporation of the provisions of the Convention, but it has ratified the eight key or fundamental ILO conventions on labour rights: Nos. 29, 87, 98, 100, 105, 111, 138 and 182.

Bilateral agreements on regularizing the status of migrants (para. 17). In relation to the ongoing negotiation of bilateral agreements on regularizing the status of migrants, referred to in the Special Rapporteur's report, it should be mentioned that the discussions initiated with Japan have come up against the fact that Japan has redoubled its efforts to cut the number of illegal immigrants by means of an amendment to the Immigration Act which has been in force since 2 December 2004 and which provides for the voluntary deportation of illegal aliens and the establishment of an advanced system of information on persons wishing to enter Japan.

Concerning the negotiations with Ecuador, the Peruvian Foreign Ministry has submitted a counterproposal to the Convention on Residence in the Border Zone. The negotiations are continuing.

Lastly, the Foreign Ministry has initiated negotiations with Panama on regularizing the status of migrants. However, faced with an excessively restrictive counterproposal, efforts are being made to reach a political accommodation with Panamanian officials.

Training and creation of awareness for officials (para. 18). In the context of training and creation of awareness, it should be mentioned that at the initiative of the Ministry of Foreign Affairs, through the office of the Deputy Secretary for Peruvian Communities Abroad, an academic seminar entitled "International migration and globalization" has been organized with the Graduate School of the Catholic University of Peru and will be held between March and June 2005, as part of the master's courses in the university. The course has been included in the Foreign Ministry's training programme this year, and financial support will be supplied to make it easier for diplomatic personnel to participate.

Remittances (para. 19). One of the guiding principles governing the Foreign Ministry's work in the consular field is related to the policy of establishing ties with Peruvians abroad in a context of productive activities, which also implies making productive use of their remittances to their families. In this context three support programmes have been drawn up:

- *Family remittance programme*: this seeks to encourage participation by the banking and related sector in the supply of better services for the safe, rapid and low-cost transfer of remittances by Peruvians living abroad to their families in Peru.
- *Savings and mortgage loan programme*: this is designed to ensure the productive use of remittances by improving access for migrants to the "Mi Vivienda" (My housing) and "Techo propio" (My own roof) funds for the purpose of buying a family home, using credits made available by Peruvian banking institutions.

- “Solidarity with my people” programme: designed to attract donations of up to US\$ 3,000 from associations of Peruvians abroad who wish to help in launching microprojects which have a social impact in their home provinces, as a contribution to the objective of combating poverty.

Peruvian-Chilean border (para. 28)

The Foreign Ministry has tried without success to locate the relatives of Peruvian citizen José Segundo Rubio Paredes, who was killed on the southern border in January 2004 by Chilean military personnel guarding the border post. It has been decided to repatriate his body and bury it in Tacna public cemetery.

The civil and military authorities in Arica have been asked to investigate the case and punish those responsible if they are found to have exceeded their authority.

Consular protection and assistance to Peruvians abroad (heading B)

One of the fundamental elements in the consular policy adopted by the Foreign Ministry concerns qualitative improvement in the service provided in consulates, which now includes better service and infrastructure, extended opening hours, including Saturdays, and even 24-hour service in emergencies. The aim of this new policy is to achieve a paradigm change, so that Peruvians no longer encounter a consul who is an authority figure, but a consul who is a public servant.

The policy of legal protection for Peruvians abroad includes the provision of information and advice concerning the legal system of the host country, as well as efforts to combat trafficking in and smuggling of persons. Large numbers of people have been attended to under the humanitarian assistance policy. Between July 2002 and June 2004, 928 requests for individuals to be located, 612 requests for repatriation, 1,937 cases of detention and deportation and 580 visits to Peruvians in penal institutions were handled.

Migration Incentives Act (para. 39). Under Supreme Decree No. 028-2005-EF, issued on 1 March 2005, approval was given to the regulations pursuant to Act No. 28182, the Migration Incentives Act, which will enable Peruvians who have been abroad for five years or more and wish to return to Peru to benefit from a number of tax incentives, to enable them to engage in professional or business activities on their return.

The policy on returning Peruvians is especially significant for Peru, since it is a way of retrieving human capital with experience acquired abroad which is very useful for the country's development. This ties in with the concern at the loss of skilled professionals and the contributions they might make to the country on the basis of their academic training, as well as the capital, experience and know-how they acquire in the foreign companies which employ them.

These arrangements enable the Government to create conditions in which Peruvians can exercise the right to return voluntarily with the intention of pursuing economic activity which will help to generate productive employment and broaden the tax base.

Peru has taken a major step in the formulation of a national migration policy, **having been the first country in the region to adopt a law offering incentives for the return of its citizens** who had left the country for various reasons.

Children's passports (para. 40). Paragraph 40 of the report requires correction, since the second part has been overtaken by events. The statement that **"minors appear in their parents' passports"** could be misleading, since every individual now holds a passport, the practice of including under-age children in a father's passport having been eliminated. It should therefore be made clear that there is still a wide variety of identification papers for children, although the National Registry of Identity is in the initial stages of providing all Peruvian children with a national identity document.

Advisory councils. In September 2001 the Ministry of Foreign Affairs instructed all its consular offices to organize meetings of Peruvians living in the areas they covered in order that they should, in a pluralistic and independent manner and without interference by the Consulate in nominations, elect the members of the advisory councils that would constitute forums in which the Peruvian community could engage in dialogue and provide advice to the head of the consular office in relation to all aspects connected with the improvement of the coverage and efficiency of the consular services, cultural functions and the integration of Peruvians in their host societies.

In short, civil society was invited to democratically organize itself and elect its representatives to enter into a dialogue with the Consul and jointly seek ways and means of improving the service offered to the Peruvian community. As a result, Peruvians living abroad are now participating for the first time in activities which previously fell within the exclusive competence of consular officials.

A process is under way whereby the regulations governing the advisory councils are to be adapted to take account of changes since their establishment (para. 75). To this end all the consular offices and the councils themselves have been asked to suggest changes in the regulations for evaluation with a view to possible incorporation in a new version.

Chapter III - Peruvian emigration

The Migration Department of the Ministry of the Interior states that it is in agreement with the views of the Special Rapporteur contained in chapter III, on Peruvian emigration. In this regard it highlights the fact that, during her visits to the cities of Tumbes and Tacna, the Rapporteur held meetings with local authorities and civil society (legal and illegal migrants), one of the conclusions reached being that large groups among the population, especially young people, view emigration as the only way out of unemployment, poverty and lack of jobs. It was also noted that the report contains the information provided by the Department that the main group of migrants is composed of young people aged between 25 and 29, but that there is another large group of persons between 40 and 49 years of age who migrate after losing their jobs.

The Department indicates that in paragraph 40 of the report the Special Rapporteur states that the Department, together with the Aliens Police, plays a significant role in breaking up criminal networks of migrant-smugglers who use Peru en route to the United States, and also contributes to preventing trafficking in children by detecting false documents.

The Department suggests changes in the drafting of paragraph 50 and the corresponding footnotes. The Department points out that visas are defined in article 12 of Legislative Decree No. 703, while temporary and residents' visas are defined in articles 13 to 18. In that regard, footnote 22 mentions only the Legislative Decree, but not the corresponding articles. In addition, the Department suggests that footnote 23 should refer to article 8 of the regulations pursuant to the Nationality Act.

The Department wishes to draw the Special Rapporteur's attention to the fact that a commission has been established to update the Aliens Act, and that the Department has recommended distribution of the Special Rapporteur's report to all main migration offices throughout the country.

Trafficking in persons. The Peruvian State is aware that trafficking in persons is a canker that violates the dignity of the individual and affects not only victims' physical safety but also their psychological integrity.

The problem is a social one of global proportions, with international gangs trafficking in persons who are defenceless or in need, taking advantage of their vulnerability to force them into certain types of work, in some cases condemning them to conditions of slavery.

This does not mean that the State should abandon its prevention policies, which must be implemented on all social fronts. The State reaffirms its obligation to promote such policies in all areas in order to help Peruvian society root out such crimes, which diminish and degrade human beings.

It is for that reason that the State established, under Supreme Decree No. 002-2004-IN of 20 February 2004, a Cross-sectoral Standing Working Group on Trafficking in Persons composed of representatives of the Ministries of Foreign Affairs, the Interior, Women and Social Development, Labour and the Promotion of Employment, Education and Health, the judiciary and the Public Prosecutor's Office, as well as representatives of civil-society associations.

The Working Group thus comprises State institutions as well as civil-society organizations. Its duties include:

- Coordinating action by the various State and non-State bodies involved in efforts to combat trafficking in persons, including joint action;
- Coordinating and promoting the establishment of a statistical method for gathering and organizing data on trafficking in persons in Peru;
- Promoting the adoption of preventive measures and measures to protect victims and witnesses;
- Coordinating with regional and international bodies with a view to enhancing the effectiveness of domestic anti-trafficking measures and ensuring Peru's membership of multinational or international working groups on the prevention, monitoring and control of trafficking in persons;
- Proposing legislative measures for effectively suppressing trafficking in persons; and
- Providing support for prevention-oriented educational and publicity campaigns.

One of the members of the Working Group, the Director of Child Protection and Health and Safety at Work, of the Ministry of Labour, has stated that she concurs with the draft version of the report on the situation of migrant workers in Peru prepared by the Commission's Special Rapporteur on the human rights of migrants.

The Director of the Executive Office for Transparency and Protection of Health Rights believes publicity should be given to the risks and consequences of trafficking in persons and the damage it can cause to physical and mental health, thereby preventing the attainment of the highest levels of physical, mental and social well-being. He recommends initiatives targeting the most vulnerable sectors, such as women and minors, with a view to preventing trafficking in persons and ensuring that particular attention is paid to health concerns relating to physical, mental and sexual violence, sexual and reproductive health, HIV/AIDS, substance abuse and access to health care.

The representative of the Public Prosecutor's Office notes that, as part of her Office's policy, the Public Prosecutor's Office Strategic Plan on Children and Young Persons 2004-2010 was approved by decision of the Office of the Attorney-General (No. 1419-2004-MP-FN of 15 October 2004).

With regard to paragraphs 44 to 48 of the draft of the Special Rapporteur's report, the Public Prosecutor's Office reports that the Cross-sectoral Working Group took the following major initiatives in 2004:

- The Abduction Investigation Division of the National Police Criminal Investigation and Judicial Support Department was restructured and a special section to investigate trafficking in persons was set up;
- The Public Prosecutor's Office and the NGO Corporación Peruana para la Prevención de la Problemática de las Drogas y la Niñez en Alto Riesgo Social (OPCION, an association working to prevent drug abuse among highly vulnerable children) organized a joint workshop on drugs, social violence and trafficking in persons for the staff of various institutions, including the Public Prosecutor's Office, the judiciary, the National Police and the Ministries of the Interior and Women and Social Development;
- On 30 January 2004, the Public Prosecutor's Office submitted to Congress draft special legislation to punish trafficking in persons and migrant smuggling. The Working Group is now following its progress through Congress to ensure its approval.

The aim this year is to concentrate on preventive action and on training for persons involved in the system of justice who are dealing with the offence of trafficking in persons, and to bring the definition of the offence into line with the Palermo Convention. To that end, the Congress's Justice Commission will continue work on the draft legislation submitted by the Public Prosecutor's Office, which is scheduled to be considered during the next session of Parliament, due to start on 15 March.

As to the Special Rapporteur's comments in paragraph 78, regarding the need for an institutional structure that is capable of combating these forms of crime, in the view of the Public Prosecutor's Office the Cross-sectoral Standing Working Group on Trafficking in Persons was established precisely to provide institutional, organized support for those efforts, which already have the backing of civil-society organizations working on the various forms of trafficking, and of international organizations such as the International Organization for Migration (IOM), the International Labour Organization (ILO) and the United Nations Children's Fund (UNICEF).

Consideration is being given to providing infrastructure to strengthen the Trafficking Unit of the National Police, and assigning it the task of compiling statistics on cases of trafficking. Peruvian and foreign cooperation agencies will be asked for their support in this regard.

Chapter IV of the report: Foreigners in Peru

Situation of foreigners in Peruvian prisons. The National Penitentiary Institute (INPE) presents the following comments on the draft of the report prepared by the Special Rapporteur, and specifically regarding health care, corruption, overcrowding and Callao prison.

Health care. INPE notes that, under article 76 of the Code of Penal Enforcement, the prison administration is responsible for making the necessary provision for preventive health care and the promotion and recovery of health. Accordingly, INPE makes every effort to ensure that all prisoners without exception have access to appropriate medical care and medication.

Although the INPE budget is severely limited, its administration has prioritized medical care and the provision of medication, since the right to health is a basic right. The following action has been taken in these areas:

1. The 2004 budget for the purchase of medicines was 2,424,369 soles, or 10 times the 2003 budget. This has made it possible to purchase medicines in reasonable quantities and supply all prisons up to September 2005.
2. In order to ensure that medicines reach the inmates, a control mechanism has been instituted whereby the lists of medicines distributed to prisons each month are regularly

sent to the independent bodies at work in prisons, such as the Church, the Office of the Ombudsman and the International Committee of the Red Cross (ICRC).

3. During 2004, INPE concluded cooperation agreements which will make for substantial improvements in health care for the prison population. The following are among the most noteworthy:

- Global Fund to fight AIDS, Tuberculosis and Malaria: A US\$ 3 million contribution for the first phase (up to the end of 2005) will enable capacity at clinics and first-aid centres in the country's nine major prisons to be expanded. High-tech medical equipment for priority treatment of HIV/AIDS and tuberculosis will be acquired and medicines purchased; and training will be provided to health workers.
- International Committee of the Red Cross: ICRC and INPE cooperated during 2004 to provide training for health workers and also for inmate health promoters (prisoners who assist in health matters). These activities are to continue in 2005.
- Ministry of Health: The agreement with the Ministry of Health will facilitate the gradual extension of central government health policies to cover the prison population, and provide hospital care for prisoners of limited means.

Admittedly, for all INPE's efforts, there are still shortcomings in prison health services that affect both Peruvian and foreign prisoners. Nevertheless, INPE is confident that the impact of its new prison policy will soon be visible in improved comprehensive health care for the inmates of all Peru's prisons.

Corruption. In her preliminary report, the Special Rapporteur refers to prisoners' allegations regarding payments made in exchange for certificates of residence and for transfers, drug trafficking within prisons and threats of lanchadas or unannounced transfers.

In this regard, INPE observes that, being aware that corruption is ingrained in the public administration, it set up the Transparency and Anti-Corruption Commission to introduce control mechanisms parallel to the regular prison administration and conduct awareness-raising activities for prison workers.

While INPE's anti-corruption policy in prisons has had some success, supervision of prison procedures on privileges and transfers needs tightening up, in coordination with independent bodies working in prisons.

In addition, while it is true that lightning transfers of prisoners - so-called *lanchadas* - have been used by INPE as a means of enforcing order and imposing its authority in prisons, there has been a total ban on the practice since March 2004 in view of its arbitrary nature and its adverse effects on prisoners and their families. Transfers are now carried out only where warranted and on strict and duly substantiated security grounds.

Lastly, INPE has acquired, through the United Nations Office for Project Services (UNOPS) and under its 2004 budget, various electronic security devices (metal and drug detectors) for use in the Lima and Callao prisons to prevent the entry of banned objects and substances. The second phase of installation of security equipment in Peru's prisons will continue under the 2005 budget.

Overcrowding. Despite the fact that the number of prisoners in Peru's prisons exceeds capacity by around 69 per cent, limiting opportunities for inmates to work or attend classes, INPE introduced various measures and services designed to improve prisoners' quality of life in 2004; this policy will continue to be applied in 2005, as reflected in the relevant budget provision.

In addition to measures to improve sanitation and health in prisons, the following initiatives and services are planned:

1. Expansion of the accommodation at Lurigancho prison to 700 units, by upgrading the industrial wing and No. 16 wing. The expansion will involve upgrading of both cells and adjoining workshops, to accommodate prisoners who will be engaged in work of some kind.
2. In Cañete prison, a wing has been adapted to take 80 prisoners; it will hold only foreigners, and these will be selected from among convicted prisoners in Callao prison.
3. In order to make the best use of the space in prisons, a redistribution of the prison population in Lima region has been ordered; and prison directors have been instructed to establish "pilot" wings for first-time and more experienced inmates, regardless of nationality, who wish to work.
4. Three new wings are planned under the 2005 budget: one for the Ica prison, with 600 places; one for the Piura prison, with 180 places; and one for the Ayabaca prison in Piura, with 100 places.

5. Lastly, once the Piedras Gordas prison in Ancón (capacity 1,000 maximum security prisoners) is fully operational, it will be possible to transfer a considerable number of inmates from the most overcrowded prisons. This process began in December 2004 with the transfer of 96 prisoners to Piedras Gordas, and will continue until full capacity is reached in April 2005.

Callao prison. With regard to the allegation by prisoners at Callao that the well pump was also used for the drainage system, the INPE Department of Infrastructure reports that the submersible electric pumps and boosters for drinking water and waste water are completely independent and use separate power sources. Basic health considerations make the prisoners' reports difficult to credit.

As to the failure to clean the well, from information obtained, it appears that although the prison's drinking water chlorination system is operating, it does require preventive maintenance and cleaning, and arrangements have been made to carry this out under the 2005 budget.

Chorrillos prison. The Chorrillos women's prison has 890 inmates. Its infrastructure is in poor condition and there is severe overcrowding. In such circumstances it is impossible to use the main refectory and restrictions have had to be placed on the use of public telephones so as to allow as many prisoners as possible to use the service.

The medical staff have been rotated and an investigation ordered into the alleged incident. With regard to conjugal visits, the applicable directive authorizes visits from either spouses or partners in all prisons. Any restriction imposed may be seen as an isolated case, and instructions have been issued to comply fully with the directive.

Chapter V of the report - Andean Community

The Andean Committee of Migration Authorities (CAAM) held its eleventh meeting in the form of a telephone conference on 17 November 2004, chaired by the Ministry of Foreign Affairs of Peru, to review each chapter of the draft regulations of the Andean Labour Migration Instrument, adopted at the tenth meeting of CAAM. Technical consensus was reached on the draft on 19 November, paving the way for the next steps established in decision No. 545 regarding the adoption of the regulations by decision of the Office of the Secretary-General of the Andean Community.

Lima, March 2005
