



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

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

Concluding observations on the initial report of Peru

Addendum

**Information received from Peru on follow-up to the
concluding observations***

[Date received: 4 July 2018]

* The present document is being issued without formal editing.



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

1. Pursuant to Legislative Decree No. 1350¹ on migration, whose implementing regulations are contained in Supreme Decree No. 007-2017-IN, new regulations on migration have been established that simplify and organize the relevant legislation to protect the fundamental rights of citizens and foreign nationals and strengthen national security.
2. It should be noted that the Legislative Decree removes the obstacles, legal gaps and content that directly impede compliance with the commitments undertaken by Peru in this area. The new legal framework organizes the relevant legislation and makes it much more understandable, realistic and adaptable, thereby protecting the fundamental rights of foreign nationals and promoting their integration into Peruvian society in line with national development considerations and the strengthening of national security.
3. In addition to the above, it should be noted that one of the main changes is the incorporation of section one aimed at establishing the principles applying to the implementation of the law, including the principles of: respect for fundamental rights, recognition of the contribution of migrants to the country's development, freedom of movement, the integration of migrants, family unity, the best interest of the child, the non-criminalization of irregular migration, non-discrimination, comprehensiveness and the formalization of migration status.
4. The new law defines two migration categories with regard to foreign nationals depending on their activities in the country: (i) temporary, for persons who come to the country for short periods with no plans to live there; and (ii) residency, which enables foreign nationals to live in Peru. These migration categories make it easier for highly qualified foreign nationals to enter and remain in the country and for their relatives to have access to residency. In addition, they facilitate the volunteer work carried out by foreign nationals, who no longer have to leave the country every 90 days in order to process their re-entry. Furthermore, it should be noted that foreign nationals are eligible for work or service contracts with the public sector.
5. It is worth noting that the law protects fundamental rights, especially those of vulnerable persons, and gives the National Migration Authority the power to take decisions on the provision of assistance to such persons.
6. Furthermore, the law provides for the roll-out of the Migration Data Register, which will strengthen the State's interoperability, in other words the electronic exchange of data between State entities in order to implement online services, and bring about organized migration and internal security.
7. The law also provides for administrative penalties, thereby safeguarding the rights of foreign nationals in terms of due process at the administrative level.
8. To complement Legislative Decree No. 1350 and its implementing regulations and with a view to facilitating and opening up the migration process, two supreme decrees have been promulgated: (i) Supreme Decree No. 001-2017-IN on guidelines for the issuance of temporary residency permits to foreign nationals with underage Peruvian children or adult children with permanent disabilities; and (ii) Supreme Decree No. 002-2017-IN on guidelines for the issuance of temporary residency permits to Venezuelan nationals, which was adopted with the aim of protecting and safeguarding the rights of Venezuelans in Peru.
9. Subsequently, new guidelines for the issuance of temporary residency permits to Venezuelan nationals were approved through Supreme Decree No. 023-2017-IN, which was adopted in response to the fact that, since the entry into force of Supreme Decree No. 002-2017-IN, over 8,000 Venezuelans have arrived in Peru according to estimates of the National Migration Authority, making it necessary to take steps to protect their rights.

¹ Published in the Official Gazette on 7 January 2017.

10. More recently, guidelines for the issuance of temporary residency permits to Venezuelan nationals who enter the country prior to 31 December 2018 have been adopted through Supreme Decree 001-2018-IN. It should be noted that this decree, contrary to the previous two, does not make legal entry into the country an eligibility requirement.

11. Regarding the implementation of the first two supreme decrees, it should be noted that a total of 12,415 applications for temporary residency permits (951 under Supreme Decree No. 001-2017-IN and 11,464 under Supreme Decree No. 002-2017-IN) were filed nationwide, of which 10,111, or 81.44 per cent, were approved.

12. Efforts to strengthen domestic legislation have extended to institutional management documents, in particular on administrative procedures. Ministerial decision No. 1791-2016-IN updated the consolidated text on administrative procedures of the National Migration Authority by amending and/or removing over 180 requirements that created bureaucratic barriers and prolonged the procedures undertaken by Peruvians and foreign nationals alike.

13. On 27 April 2017, Supreme Decree No. 015-2017-RE on the 2017-2019 National Migration Policy was adopted with the aim of ensuring respect for and the protection of migrant rights and promoting equality, fairness, inclusiveness, integration and the observance of national security through the efficient management of the migration process.

14. As for returns, Act No. 30525 amending articles 1 to 3 of Act No. 30001 on the social and economic reintegration of returning migrants was adopted on 15 December 2016, renewing for a period of three years the tax benefits that had expired in August 2016. As a consequence of the changes introduced by Act No. 30525, Supreme Decree No. 158-2017-EF was subsequently adopted on 2 June 2017 to amend the regulations on eligibility for the tax benefits provided for in article 3 of Act No. 30001 on the social and economic reintegration of returning migrants, as approved through Supreme Decree No. 205-2013-EF.

15. While tangible progress has been made, the State will continue to step up its efforts to ensure that the legal framework described above is appropriately implemented by strengthening its institutions and fully respecting the rights of foreign nationals in Peru. In this connection, Peru adopted its 2018–2021 National Human Rights Plan, through Supreme Decree No. 002-2018-JUS. The Plan's third line of action on the design and implementation of policies for groups requiring special protection, including migrants, contains 10 strategic actions designed to guarantee the rights of migrants.

Paragraph 27: The Committee recommends that the State party amend article 5 of the Supreme Decree and any other measure that might give rise to any kind of persecution, discrimination or racism against migrant workers in the State party. It also urges the State party to take immediate and effective measures of public education and to conduct awareness campaigns in order to combat prejudice and the social stigmatization of migrant workers in general, and especially those of particular nationalities.

16. The principles recognized in section one of Legislative Decree No. 1350 on migration include: (i) respect for fundamental rights (art. 1) and the dignity of all persons as enshrined in the Constitution; (ii) the non-criminalization of irregular migration (art. 7), which is a basic tenet of the Government's migration policy; and (iii) non-discrimination (art. 8), whereby the State promotes the elimination of all types of discrimination and prejudice in migration matters, especially xenophobia and racism.

17. It is in this context that Supreme Decree No. 007-2017-IN was adopted to repeal Supreme Decree No. 001-2015-IN, which contained measures to tighten migration controls. It should be noted, however, that article 5 of the Supreme Decree, on a citizen's alert mechanism, was not applied by the National Migration Authority.

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

18. Pursuant to article 184 (1) of the implementing regulations of the legislative decree on migration, the National Migration Authority can, within its remit, impose sanctions in proceedings against Peruvian or foreign nationals, international transport companies, legal persons that provide accommodation services and companies operating or managing ports, airports or land, sea, air or lake terminals in connection with breaches of the legislative decree or its implementing regulations.

19. 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 international treaties and conventions to which Peru is a party.²

20. Nevertheless, in order to establish clear guidelines regarding police custody in the context of breaches of migration law and the enforcement of obligatory departures and expulsions, the eleventh final supplementary provision of the regulations provides for the suspension of articles 200 (4) and 212 (2) of the regulations pending the adoption of the corresponding provisions. The intention is to regulate police custody with a view to grounding it in the law and complying with relevant international obligations.

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

21. Sanctions imposed by the National Migration Authority can be appealed within 15 working days from the day following the notification.³

22. The execution of sanctions imposed by the Authority is the responsibility of the Peruvian National Police, which has the power to hold an offender in order to ensure he or she leaves the country. Foreign nationals are informed of their right to contact a consular representative in keeping with the international treaties and conventions to which Peru is a party.⁴

23. Without prejudice to the above, article 185 of the implementing regulations stipulates that the Authority's power to impose sanctions is governed by the principles set forth in article 230 of the General Administrative Procedure Act. The following principles contained in section one of Legislative Decree No. 1350 also apply to the imposition of sanctions: (i) the principle of family unity, meaning that the Authority prioritizes the family unity of foreign nationals and citizens when handing down a sanction that implies obligatory departure or expulsion from the country; and (ii) the principle of the best interest of the child.

² Article 200 (4) of the implementing regulations of the legislative decree on migration.

³ Article 211 of the implementing regulations of the legislative decree on migration.

⁴ Article 212 of the implementing regulations of the legislative decree on migration.

24. It should be stressed that, consistent with article 64 of Legislative Decree No. 1350 and the principles of family unity and of the best interest of the child, the Authority may consider suspending obligatory departure orders in cases where it is demonstrated that these principles are at clear and imminent risk of being violated in keeping with the conditions and procedures defined in the implementing regulations. Articles 195 and 197 of the implementing regulations stipulate that prohibitions on re-entry and the duration of such prohibitions should be decided taking into account a person's income and resources, family support and the circumstances that justified the obligatory departure or expulsion.
