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特定群体和个人：移徙工人

移徙者人权问题特别报告员
加芙列拉·罗德里格斯·皮萨罗的报告 *

增 编

对秘鲁的访问 **

* 本报告的提要以所有正式语文分发。本文件附件所载的报告本身仅以原文和英文分发。

** 根据大会第 53/208 号决议 B 部分第 8 段说明如下：本报告迟交是为了列入最新资料。

内 容 提 要

特别报告员应秘鲁政府的邀请于 2004 年 9 月 20 日至 30 日访问了该国。

该次访问使特别报告员达到了以下这个目的：从各方面收集关于秘鲁公民前往外国的第一次资料，从而更好地评估对国外的秘鲁人提供领事援助和保护的政策改革。特别报告员也调查了在利马监狱被监禁的外国人的情况。

在她访问期间，特别报告员访问了利马、塔克纳和通贝斯。特别报告员的结论是人口中的许多部分，特别是青年人，认为移民是解救失业和贫穷的唯一出路。最近几年来该国所经历的经济增长根本没有导致劳工市场显著的改善，从而使年轻人能够就业和减少失业以及非正式部门。此外，国境内还有许多地区继续存在着显著的社会疏忽和政治上的莫不关心状态，因此其人民不得不前往邻国寻找工作，作为生存的战略。

政府已意识到这种现象的规模以及其公民大批出走（其中大部分没有正式身份）所引起的问题。特别报告员鼓励政府继续改革其关于保护、援助和促进国外秘鲁社群的政策，并通过其外交和领事人员予以落实，并加强领事作为人民公仆的形象。秘鲁政府作出的努力还不足以制止移民的偷渡和人口的非法贩卖。

特别报告员此外也对外国人在秘鲁所遭受的严酷监狱情况深表关切，她认为这是违反了这方面的人权原则和标准。

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Introduction

1. The Special Rapporteur on the human rights of migrants visited Peru from 20 to 30 September 2004 at the invitation of the Peruvian Government, which she would like to thank for its full cooperation during her visit. She would also like to thank the office of the United Nations Development Programme (UNDP) in Peru for providing valuable assistance, which considerably eased her task.
2. The visit enabled the Special Rapporteur to meet her objective of compiling first-hand information from a large number of sources on the departure of Peruvian citizens to other countries, the better to assess the reform of the policy of consular assistance and protection to Peruvians abroad. The Special Rapporteur was also able to investigate the situation of foreigners deprived of liberty in Lima's prisons.
3. The Special Rapporteur would like to express her thanks to the many representatives of civil society and private individuals she was able to interview, and particularly the National Human Rights Coordinating Committee, for its help in organizing thematic meetings. The Special Rapporteur would like to acknowledge publicly the work of the Episcopal Commission for Social Action (CEAS) in Peruvian prisons and the work with migrants conducted by the Pastoral Group on Human Mobility of the Episcopal Conference.

I. PROGRAMME OF THE VISIT

4. During her visit, the Special Rapporteur visited Lima, Tacna and Tumbes. In Lima, she had meetings with the following members of the Government: the Deputy Minister Secretary-General of Foreign Affairs, the Under-Secretary for Peruvian Communities Abroad, the Director of Human Rights, the Deputy Minister of the Interior, the Deputy Minister for Women, the Deputy Minister of Labour and the Deputy Minister of Justice. She also had meetings with the Director-General and departmental heads of the Department of Migration and Naturalization (DIGEMIN), officials of the Ministry of the Economy and Finance, the head of the Balance of Payments Department of the Central Reserve Bank, the Cross-sectoral Standing Working Group on Trafficking in Persons, the chairman of the Congressional Foreign Affairs Committee, the chairman of the National Youth Council, the Vice-President of the National Penitentiary Institute (INPE) and the acting Ombudsman.
5. The Special Rapporteur held consultations with the United Nations Resident Coordinator, representatives of United Nations agencies in Peru, the regional director of the International Organization for Migration (IOM) and the Secretary-General of the Andean Community. The Ministry of Foreign Affairs convened a meeting with the consuls of Ecuador, Japan, Spain and Switzerland, the vice-consuls of Argentina and the United States of America and the adviser to the Italian consul.
6. During her stay in Lima, the Special Rapporteur met representatives of the National Human Rights Coordinating Committee, the NGO Movimiento El Pozo, international NGOs, the Pastoral Group on Human Mobility of the Episcopal Conference and members of groups of displaced persons.

7. In Tumbes, she held working meetings with representatives of the regional government, members of the security forces, the Director-General of the Department of Migration and Naturalization, the director of the Migration Office, the regional director of the Decentralized Office of the Ministry of Foreign Affairs, officials of the Decentralized Office of the Ombudsman and the Peruvian consuls in Loja and Macará. The Special Rapporteur also met members of the Tumbes Inter-Institutional Forum on Migrants and Human Rights and Peruvians living in Cuenca, Ecuador.

8. In Tacna, she met local government representatives, the director of the Migration Office, the regional director of the Decentralized Office of the Ministry of Foreign Affairs, the Peruvian consuls in Arica and Iquique and officials of the Decentralized Office of the Ombudsman. She also interviewed representatives of the Pastoral Group on Human Mobility of the Episcopal Conference in Tacna, Iquique and Arica, ADEHSUR, and migrant and human rights organizations in Santiago, Chile. The Special Rapporteur had the opportunity to hear the testimony of Peruvian migrant workers in an irregular administrative situation employed in domestic service, machine shops and farms in Arica, Chile.

9. During her mission, the Special Rapporteur visited two prisons in Lima: the Sarita Colonia prison in Callao and the Santa Mónica prison in Chorrillos. She had meetings with foreign prisoners in these establishments, in private and with no prison officials present, and also talked with several of them individually.

II. INTERNATIONAL LEGAL FRAMEWORK

10. Peru is a party to the core United Nations human rights instruments,¹ with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Ministry of Foreign Affairs informed the Special Rapporteur that the President of Peru was due to sign this convention in New York on 22 September 2004, enabling the internal procedures for its ratification to be initiated. At the regional level, Peru is a party to the American Convention on Human Rights.

11. With reference to the instruments adopted by the International Labour Organization (ILO), Peru has ratified the Forced Labour Convention, 1930 (No. 29), but not the Migration for Employment Convention (Revised), 1949 (No. 97) or the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

12. The United Nations Convention against Transnational Organized Crime, as well as the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplement the Convention, entered into force on 29 September 2003. Peru has also ratified the Inter-American Convention on International Traffic in Minors, signed in Mexico City on 18 March 1994.

III. PERUVIAN EMIGRATION

13. At the time of the Special Rapporteur's visit, the Office of the Under-Secretary for Peruvian Communities Abroad estimated that in all there were 1,783,973 Peruvians outside Peru. The Office acknowledged, however, that this was a conservative figure compared with other

sources that put the number of Peruvians abroad at over 2.5 million, or around 10 per cent of the total population of Peru. The statistics provided by the Department of Migration and Naturalization show an increase in the number of Peruvians who left the country during the period 2002-2003, particularly to go to South America, in equal numbers for both sexes.

14. Traditionally, the main destination for Peruvian emigrants has been the United States of America, which at the present time reportedly has approximately 1 million Peruvians on its territory. The first major movement of Peruvian emigrants to the United States and Europe took place during the first half of the twentieth century. During the 1970s, the oil boom in Venezuela made this country a new destination for Peruvian emigrants. Subsequently, Peru's domestic armed conflict² during the 1980s and 1990s and the profound economic crisis in the country at that time gave rise to flows of migrants to Australia, Canada and Japan and to European countries like Italy and Spain. Within the region, Argentina, Bolivia and Chile are the countries with the biggest influx of Peruvians.

15. The Deputy Minister of Labour informed the Special Rapporteur that Peru had a population of more than 27 million inhabitants and an economically active population of 11 million, to which some 300,000 young people were added each year. The Deputy Minister explained that, despite the economic growth of the last four years, rates of unemployment (10 per cent), underemployment (55 per cent) and "informal employment" (employment in the underground economy, 60 per cent) remained high.³

16. According to information provided by the Department of Migration and Naturalization, the sectors of the workforce most likely to emigrate in the period 2000-2004 were young people between the ages of 25 and 29, as a result of the difficulties they encounter in obtaining access to the labour market, and individuals between the ages of 40 and 49, because of the termination of employment contracts in this sector of the active population. The consular authorities confirmed the employment-related nature of Peruvian emigration, citing the shortage of jobs as the principal cause of emigration by Peruvians seeking to provide for their families. Young people with vocational or academic training were the population group applying for most visas.

17. The Ministry of Foreign Affairs informed the Special Rapporteur that Peru had signed agreements on regularizing the status of migrants with Argentina (in 1998) and Bolivia (in 2002), and similar agreements were being negotiated with Panama and Ecuador, while discussions had been initiated on the subject with Japan. Peru has completed or is involved in negotiations with various countries on consular cooperation on migration matters, student visas and short stays, labour migration, social security, recognition of driving licences and transit of persons. During the first half of 2004, an agreement was signed with Mexico with a view to taking joint action to regularize the nationals of both countries in an irregular administrative situation in the United States.⁴

18. As part of its migration policy, the Ministry of Foreign Affairs planned a series of activities in the short and medium term to create awareness and provide training for diplomatic and administrative officials in consular services, train migration officials to detect bogus travel documents, modernize the migration monitoring system, develop strategies for the integration of migrants in host countries, etc. Studies on migration, comparative studies of foreign legislation and compilations of best practices in this regard have also been planned.

19. Officials of the Ministry of the Economy and Finance and the head of the Balance of Payments Department of the Central Reserve Bank mentioned the importance of remittances from Peruvian migrant workers. The Central Bank Supervisory Board expected remittances from migrant workers in 2004 to amount to US\$ 1,100 million. During the first half of the year, US\$ 500 million had been received, half of it from the United States. No Peruvian industry could generate that amount of money, which represents a significant contribution to Peru's balance of payments.

20. The Special Rapporteur has borne in mind in her work the rural exodus and the internal displacement which have had a huge impact on the rural population of Peru since the early 1980s. The NGOs that helped plan her visit were of the view that the situation of persons displaced internally by the domestic armed conflict between 1980 and 2000 needed to be considered in order to understand Peruvian emigration. The Special Rapporteur observed, however, that the resources of this vulnerable group were so limited that they could not even consider the possibility of emigrating. The majority of this displaced population is concentrated in shanty towns around Lima, which are also the very poorest districts, with poor education and health services and no access to adequate housing. The Special Rapporteur drew attention to the risks involved when so many internally displaced persons, and in some cases their children, had no identity documents.

A. The dynamics of migration at borders

Peruvian-Ecuadorian border

21. The increase in the unemployment rate in northern Peru, Ecuador's conversion to a dollar economy and the gradual depopulation of rural areas in Ecuador would appear to be behind the recent migratory pressures at this border.

22. The Migration Office in Tumbes explained to the Special Rapporteur that the transit of persons at this border was regulated by the 1998 Extended Agreement on Integration, Development and Residence.⁵ The nearest border crossing after Tumbes is Aguas Verdes (Peru)-Huaquillas (Ecuador), where there is a border integration zone stretching 5 km into Ecuadorian territory, to the Zarumilla canal, and 3 km into Peruvian territory.⁶ Nationals of both countries can enter the zone on production of their national identity document. Both nationalities require an Andean migration card⁷ to travel beyond the border checks located at either end of the zone. According to the Migration Office, the zone generates a floating population of some 30,000 individuals, which distorts the data on movements of persons. Peruvian migrant workers cross the border with their identity document and migration card but the majority do not have work permits. Some buy and sell essential goods during the day and others go to the neighbouring country for seasonal farm work.

23. The Director of the Migration Office in Tumbes said that the Ecuadorian authorities had expelled or deported 881 Peruvian citizens between January and July 2004. He expressed concern about a series of incidents on the other side of the border in which Ecuadorian employers apparently reported the irregular administrative situation of their own Peruvian workers to the competent Ecuadorian authorities in order not to have to pay daily wages. There

had also been complaints about the detention conditions of Peruvians who had been expelled and deported, alleging that they received inadequate food, were detained with common prisoners and held for periods exceeding the 72-hour maximum established in the Convention on the Transit of Persons, Vehicles, Maritime and River Vessels and Aircraft (annex II of the 1998 Agreement). The Special Rapporteur received detailed information on some of these cases, including cases of mass expulsions⁸ and the sexual aggression of a Peruvian woman held in Machala prison (in Ecuador) on 17 May 2004. The Ombudsman's Office in Tumbes corroborated this information and stated that this situation had led the Peruvian Ombudsman to sign a cooperation agreement with his Ecuadorian counterpart in July 2004, in order to consolidate their efforts to protect the human rights of the citizens of both countries.

24. The Peruvian consuls in Loja and Macará told the Special Rapporteur that they were not informed of the detentions carried out by the Ecuadorian authorities nor were they given copies of the expulsion decisions. They said that during expulsion and deportation the travel documents of Peruvian migrant workers were marked or destroyed by the Ecuadorian authorities. It has been reported that on one occasion in Tumbes, Peruvians who had been expelled or deported did not lodge complaints so that they would be able to go back to Ecuador to work.

Peruvian-Chilean border

25. Peruvian emigration to Chile intensified during the 1990s, when Chile became one of the destinations of choice because of its economic stability and development. The main feature of this emigration is that it is predominantly female; Peruvian women who emigrate to Chile are looking for jobs to enable them to support their families and, generally speaking, they easily find work in domestic service. Some of the women who emigrate to Chile and work in domestic service have nursing certificates but cannot find a job in Peru.

26. The Special Rapporteur visited the town of Tacna, the destination of Peruvians from the neighbouring high Andean regions looking for jobs; if they do not find work there, they go to Arica or Iquique in Chile. From Tacna, the nearest border crossing is at Santa Rosa (Peru)-Chacalluta (Chile); between 8,000 and 9,000 persons pass through it daily, the majority of whom are retail traders who return to Peru the same day. The rest are unskilled workers who are hired at the bus terminal in Arica for work in domestic service, construction or agriculture. The women and girls are employed in domestic service for about US\$ 100 per month, and, generally speaking, return to Tacna at weekends. During the week, some of them leave their children in lodgings while others take them with them. According to testimonies compiled during the visit, migrant workers from Peru do not lodge complaints despite the frequent abuses and aggression they experience in order to be able to continue going to Chile to work. The Special Rapporteur heard testimonies from Peruvian migrant workers in an irregular administrative situation working in domestic service, machine shops and farms in Arica.

27. Peruvians can enter Chile with their identity document as far as Arica, where a safe conduct allows them to remain up to seven days. After this, there is a second immigration check before they reach Iquique, where they are asked for their passports, duly stamped at the border post, and required to prove possession of travel money consisting of US\$ 30 in cash for each day of their stay; this requirement has generated a lucrative black market in "money renting". Illegal

migrants enter Chile across the *pampas* (farmland) near the Santa Rosa-Chacalluta border crossing; this route is also said to be used for smuggling goods and drugs. The Special Rapporteur was told there are mined areas in the Chilean sector,⁹ which would involve an additional risk to illegal migrants using this border; for this reason clandestine entry to Chile from Tacna is sometimes effected through Bolivia, where border controls are less stringent. It appears that some Peruvians enter Chile with their identity document and once in Arica present a passport with a bogus entry stamp previously obtained in Tacna. In Arica, migrant-smugglers operate in the bus terminal, charging between US\$ 1,500 and 4,000 for clandestine passage through the second checkpoint, while some bus drivers are said to charge about US\$ 100 to include illegal migrants on the lists of passengers whose papers are in order.

28. According to information received, on 25 January 2004 the Arica Port Authority informed the Consulate-General of Peru in the city about an incident that had taken place in the vicinity of the Chilean lighthouse adjacent to boundary marker No. 1 at the border between the two countries, and had resulted in the death of an undocumented citizen, presumably of Peruvian nationality, who was shot several times as he attempted to enter Chilean territory. The injured man was taken to the Juan Noe hospital in Arica, to which the Peruvian consul immediately went in order to give him the necessary support and assistance. A few hours later, the Chilean authorities reported that the presumed Peruvian citizen had died. Without prejudice to the results of the investigation and identification of the dead man, the Ministry of Foreign Affairs of Peru expressed its surprise and disapproval at the disproportionate use of force by the members of the Chilean navy manning the guard post, and requested, through the Peruvian consular office in Arica and the Chilean Embassy in Lima, a thorough investigation in order to elucidate the facts, determine who was responsible and, if necessary, apply the appropriate sanctions.¹⁰

29. Peruvians in an irregular situation intercepted by Chilean plain-clothes police officers are held in administrative detention centres and expelled as a group from Arica. The Peruvian consuls in Arica and Iquique told the Special Rapporteur that their compatriots only went to the consular offices when they had a problem and that they appeared to be somewhat afraid of the consular authorities. The consulates in Arica and Iquique had intervened in several cases of sexual abuse against Peruvian women who had allegedly been lured with false offers of work and then faced arbitrary decisions by Chilean border officials concerning the travel money requirement. Peruvian migrant workers in Tacna and Iquique rarely reported physical attacks or unpaid wages to their consulates, but when they did, their complaints were transmitted to the prefect. The Special Rapporteur was informed that persons who were expelled or deported were often not accompanied to the border following identification but were taken by regular bus services to Tacna, thus avoiding intervention by the Peruvian authorities.

30. Itinerant traders and small retailers¹¹ told the Special Rapporteur that the Peruvian consular authorities did not defend their rights when they were the object of frequent racist and xenophobic attacks by gangs of violent youths in Arica, to the apparent indifference of the population.

The Triple-border region between Brazil, Colombia and Peru

31. The Human Rights Commission of the Apostolic Vicariate of San José del Amazonas informed the Special Rapporteur about movements of migrants along the border between Peru,

Brazil and Colombia, which Peruvians from different parts of the country arrive at on their way to Manaus, Brazil. In Colombia, the city of Leticia also attracts migrants to some extent, although Colombia's domestic conflict and stringent monitoring of the movement of persons would appear to discourage flows of migrants in that direction. Undocumented Peruvian traders are reportedly expelled from Leticia every day and their wares confiscated. The Special Rapporteur was informed that the conditions of work of Peruvians in an irregular administrative situation in the Colombian and Brazilian sectors of the triple-border region were subhuman.

B. Protection of the human rights of Peruvians abroad

Consular protection and assistance to Peruvians abroad

32. The Office of the Under-Secretary for Peruvian Communities Abroad, which reports to the Ministry of Foreign Affairs, is responsible for the promotion and protection of the rights of Peruvian citizens abroad. This work is carried out by its departments for consular affairs, legal support and humanitarian assistance and by Peru's consular offices abroad.

33. The Office informed the Special Rapporteur that in September 2001 the Ministry of Foreign Affairs had instructed all its consular offices to promote the establishment of "advisory councils" for Peruvian communities abroad. These councils are autonomous, independent, non-profit making associations that aim to be representative of Peruvian communities living abroad. The councils are set up as forums for dialogue and consultation with the head of the consular office and their functions include: the transmission of requests and suggestions for the improvement of consular services; basic legal and humanitarian assistance; the protection of the rights of Peruvian migrants; and encouragement for the integration of their compatriots into the country and society in which they live. Regulations on the organization and functions of the advisory councils¹² were drawn up to regulate their establishment and operation. The councils are composed of not less than 3 and not more than 10 Peruvian citizens elected by Peruvians of full legal age resident in the jurisdiction of the consular office. To date, 80 advisory councils have been elected in 80 consular offices.

34. The Office commented that in some cases problems had arisen in the relations between the advisory councils and the consular offices due to differences in the interpretation of the regulations governing the councils, the predominance of private or group interests over the general interest, excessive checking or monitoring of the authorities and the use of the councils as a political platform.

35. In a letter the Special Rapporteur received during her visit, the former chairmen of the advisory council of the Swiss cantons of Geneva, Vaud and Valais¹³ said that they believed it was a matter of extreme importance to maintain the forum for participation created by these councils.¹⁴ They acknowledged that the experience had not been without difficulties since it involved a learning process in democratic participation both for Peruvian citizens and for the diplomats and officials concerned. They confirmed that there had been numerous situations in which the councils had been divided as a result of citizens' political or personal problems. They added, however, that some diplomats had been reluctant to dialogue with the councils and had had difficulty in accepting the participation of Peruvian emigrants in consular affairs. Despite these problems, they considered that the overall balance was positive. The former chairmen of

this council, however, deplored the discriminatory and contemptuous treatment that Peruvians often met with in their country's consular offices.¹⁵

36. The Ombudsman reported that an inter-institutional cooperation agreement had been signed on 19 January 2004 between the Ministry of Foreign Affairs and the Ombudsman's Office to defend the fundamental rights of Peruvians abroad. This agreement enables the Ombudsman's Office, at the request of the Peruvian consular offices and in coordination with its counterparts in the host country, to collaborate with the Ministry of Foreign Affairs when Peruvian citizens require humanitarian or legal support. For its part, the Ministry undertakes to install letter boxes in the consular offices to receive complaints addressed directly to the Ombudsman's Office. This initiative enables the latter to receive first-hand information about problems that Peruvians may have in their relations with the consular offices and the authorities in the host country. In the first case the complaints are transmitted to the Ministry of Foreign Affairs and in the second the Ombudsman's Office contacts its counterpart in the host country. The Ombudsman's Office has set up a system for doing this, and already had agreements with the ombudsman's offices in Argentina, Bolivia, Colombia and Ecuador and with human rights NGOs in Chile.

37. The Ombudsman's Office has been informed of cases of young Peruvian girls being ill-treated and sexually abused (in Switzerland); Peruvians deprived of liberty and not given legal assistance (in Colombia) or refused humanitarian assistance by the consulate (in Ecuador); non-compliance with the duty of consular protection (in Switzerland); ill-treatment and discrimination in attending to Peruvians in consular offices, processing delays, high consular fees and a lack of interest in the situation of Peruvians living within the jurisdiction of the consulates (in Argentina and Switzerland); and irregularities in the election of the advisory councils (in Spain and Switzerland).

38. The Ombudsman's Office promoted the adoption of the Declaration of the Andean Council of Ombudsmen on the protection and promotion of the rights of migrants in the Andean region, signed in Lima on 2 February 2004. In this document, the ombudsmen of the subregion expressed their concern at the situation of the migrant population in the countries of the subregion; reiterated their willingness to cooperate in dealing with violations of the human rights of migrants; and expressed their desire to coordinate their activities with the consulates with regard to the protection of migrants and to supervise the conduct of the former closely. They also expressed concern at the discriminatory treatment of migrants and refugees from the subregion in the industrialized countries, and their desire to establish an Andean ombudsmen's network for the rights of migrants so that the ombudsman's offices could serve as an intermediary between the State and the migrant.

39. The chairman of the Congressional Foreign Affairs Committee reported on the activities of the working group on Peruvians abroad. This group had proposed the establishment under the Electoral Act of a special electoral district for nationals abroad, so that they could vote for their own representatives, either as voters enrolled in their district of origin or through the creation of a special district. The working group is behind the Migration Incentives Act¹⁶ which, pending the adoption of the appropriate regulations for implementation, offers economic benefits to Peruvian migrant workers returning to Peru, such as a customs exemption for the import of household goods, a vehicle and professional tools. Other projects being developed include the

organization of associations of family members of Peruvians abroad, which could propose legislation on behalf of this group of people and establish cultural centres to be known as “Casas del Perú”. In the opinion of the chairman of the Foreign Affairs Committee, the advisory councils and the Casas del Perú could set up charitable associations to make sure that Peruvians living in poverty abroad did not find themselves neglected, as the emergency fund of the Ministry of Foreign Affairs had proved inadequate. The chairman of the Committee considered that in the future it might be proposed to tax remittances to offset the lack of State resources for dealing with such cases. He also expressed concern at high consular fees¹⁷ and pointed out that the earnings of consulates under this heading were not published. Lastly, the Foreign Affairs Committee had apparently found evidence that Peruvian nationals were receiving unfavourable treatment at the front desk in Peruvian consulates and that when they were the victims of abuses they did not dare to report them.

Smuggling of immigrants

40. The Department of Migration and Naturalization, in conjunction 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 contributes to preventing trafficking in children by detecting false documents.¹⁸

41. The consular authorities of various countries that are destinations for Peruvian emigrants explained to the Special Rapporteur the difficulties caused by the use of false documents in applications for entry visas to their countries. The false documents detected in consular offices included passports, contracts, diplomas and birth certificates. Monitoring mechanisms had been introduced for that reason, including fingerprinting or the checking of personal data with banks, which made it possible to collaborate with the Peruvian authorities in combating the smuggling of migrants.

42. Article 303-A of the Criminal Code provides for prison sentences of between one and four years for “any person who unlawfully organizes, promotes, encourages or facilitates the entry to or exit from the country of third parties for the purpose of obtaining a pecuniary advantage for himself or for another person”. The Code provides for prison sentences of between four and eight years if the offence is committed by an official or public servant with responsibility for the administration and control of migration or if the conditions of transport jeopardize the physical or mental safety of the person who is the object of the trafficking.

43. The Special Rapporteur, however, was informed that since this criminal classification came into force no criminal charges had been brought by the Public Prosecutor’s Office or criminal proceedings initiated in this regard, and that no one had been convicted of smuggling migrants. The Special Rapporteur was also informed about places in Lima and Tacna where false documents could be easily obtained.

Trafficking in persons

44. The Special Rapporteur observed that major progress has been made in devising an institutional and legislative framework to combat trafficking in persons. In 2004, a special section was set up in the National Police Criminal Investigation Department to investigate and

prevent trafficking in persons. The Cross-sectoral Standing Working Group on Trafficking in Persons¹⁹ was also established; its duties include coordinating action to prevent trafficking, promoting the adoption of preventive measures and measures to protect victims and witnesses, and proposing legislative measures for effectively suppressing trafficking. Act No. 28.251 of 7 June 2004 amended article 182 of the Criminal Code and established prison sentences of 5 to 10 years for promoting or facilitating “the recruitment of a person for the purposes of leaving or entering the country or of relocating within the territory of the Republic with a view to having them engage in prostitution, or submitting them to sexual slavery, pornography or other forms of sexual exploitation”. The prison sentence is between 10 and 12 years when one of the following aggravating circumstances exists: the victim is under 18 years of age; violence, threats or abuse are employed; the victim is a spouse, child or grandchild or other relative; or the victim is handed over to a procurer.²⁰

45. The Special Rapporteur was given no official data about trafficking in persons in Peru, but she observed that the attention given by the Peruvian media to an obscure incident in Gabon involving Ms. Ivette Santa María Carty (Miss Peru) had sparked off a public debate on this type of crime.

46. During her visit, the Special Rapporteur had the occasion to meet Ms. Y.O., a 31-year-old Peruvian, who said that she had travelled to Japan in 1998 to work in a plastics company and once there had been forced into prostitution. She had been able to escape but claimed that the Peruvian consular authorities in Japan had told her that they could not give her financial assistance to return to Peru, and had advised her to contact her family. Once back in Peru, Y.O., had been duped by a television channel (Canal 5) into describing her case in exchange for protection. When the *Panorama* programme was broadcast again, on 4 April 2004, her face had been shown and she had been identified by name without her consent. After this, the Minister for Women had announced that the Ministry for Women and Social Development would provide Y.O. and her family with protection. In a letter dated 3 September 2004 sent to the Ombudsman, however, Y.O. said that she feared for her life since she had been located by the Yakuza, the criminal organization which had captured her, and complained that she felt “completely abandoned” by a State that afforded her no help or protection. She felt that the authorities and security forces had only taken an interest in her case in order to obtain information.

47. The Tacna Prosecutor’s Office reported the existence of employment agencies in the city which used bogus offers of domestic employment to recruit young women who would subsequently be forced into prostitution in Arica and Iquique (both in Chile). The Special Rapporteur was also informed about disappearances of children in rural areas such as Ayacucho, as reported by the Asociación Bartolomé Aripaylla early in 2004.

48. The office of the International Organization for Migration (IOM) in Lima informed the Special Rapporteur about its programmes and activities to support the Peruvian Government in combating trafficking in persons and the smuggling of migrants. The Organization had prepared, inter alia, a project on international trafficking in women from the Andean region for exploitation in the sex industry, which included investigation activities and a free phone-in service. Through this service, IOM and the NGO Movimiento el Pozo had been advising victims and their families since January 2004 and received complaints of cases of trafficking in women.

IV. FOREIGNERS IN PERU

49. The Department of Migration and Naturalization (DIGEMIN), which answers to the Ministry of the Interior, is the administrative body “with responsibility for the administration, coordination and monitoring of the migration of nationals and aliens; it issues ordinary passports and safe conducts and issues naturalization cards in accordance with the law and government policy”.²¹ It has its headquarters in Lima and has 13 migration offices in the border points under heaviest pressure from migrants.

50. The Aliens Act²² establishes that a visa is the permit attesting to migrant status granted by the Department of Migration and Naturalization to an alien for admission, stay or residence in Peruvian territory. A temporary visa allows admission and residence for up to 90 days and may be extended, while a resident’s visa permits one year’s residence and may also be extended. Aliens resident for a minimum of two consecutive years may apply for naturalization as Peruvian citizens.²³ Aliens in an irregular administrative situation on Peruvian territory are expelled from the country under the expulsion procedure of articles 64 to 66 of the Aliens Act and the provisions of Ministerial Decision No. 548-95-IN.

51. Peruvian legislation on labour immigration is fairly flexible and encourages the hiring of foreign workers, particularly in medium-sized and large companies. Under the Hiring of Foreign Workers Act of 4 November 1991, up to 20 per cent of the total staff of national or foreign companies may be foreign, but the sum of these workers’ salaries may not exceed 30 per cent of the firm’s total wage bill, although exceptions to these restrictions are permitted in some categories (arts. 4 and 6).

Situation of foreigners deprived of liberty

52. According to statistical information provided by the National Penitentiary Institute (INPE), there were 764 foreign prisoners in Peru in August 2004, representing 2.3 per cent of the total prison population. Although the percentage of foreign prisoners remained constant in relation to the national prison population, in real terms the number of foreigners in prison has increased considerably compared with previous years.²⁴ The Institute has built a new wing for foreign prisoners and provided new places in some prisons. At the initiative of the Institute, the Ministry of Foreign Affairs contacted the consuls of countries with nationals deprived of liberty in order to establish a channel for dialogue and coordination on behalf of this group of persons.

53. The statistics provided show up to 60 different nationalities among the foreign prison population, the majority of whom are Spaniards, followed by Colombians and Ecuadorians, nearly all of them charged with or convicted of illicit drug trafficking (arts. 296 and 297 of the Criminal Code). The Ombudsman’s Office and some NGOs expressed concern to the Special Rapporteur about the situation of this group. The Special Rapporteur observed the following serious problems in the prisons visited.

54. Foreign prisoners of both sexes reported serious inadequacies in the health services provided, inadequate medical care and a lack of medicines and health equipment. It is claimed that the lack of medicines and health personnel has contributed to the development of infectious

or contagious conditions (multi-drug-resistant tuberculosis, sexually transmitted diseases and meningitis) which are not properly treated and create a public health problem. Drugs are also apparently consumed on a massive scale inside prisons. It was complained that there were no medical specialists (paediatricians or others) and that the cost of transfer to hospital had to be paid for by the prisoners themselves. In the prison in Chorrillos a complaint of sexual harassment had been filed against one of the prison doctors.

55. The prisons visited had a population up to three times greater than that for which they were built.²⁵ The President of the National Penitentiary Institute, in an official communication (No. 671-2004-INPE/01) of 30 September 2004, acknowledged that “the budgetary, organizational and logistical limitations of the institution do not allow for compliance with the right to enjoy an appropriate environment, because of the overcrowding in many of Peru’s prisons”. This situation forces a large proportion of the prison population to sleep on the floor. In the prison in Chorrillos, the prisoners spoke about a “prevention” cell - a tiny cell with a toilet - in which there were about 70 women.

56. The Special Rapporteur observed the poor hygiene and unsanitary conditions in the kitchen in the prison in Callao, while the inmates of the prison in Chorrillos complained of a similar situation there, as well as the lack of a dining hall. Individual cookers had been banned in the prison in Callao, but prisoners were getting them back by making surreptitious payments to prison officials. This prison apparently had running water three times a day for 45 minutes, from a well that had not been cleaned in recent years and a pump that was also used for the drainage and sewerage system. The prisoners said that they suffered from gastrointestinal illnesses and skin complaints for that reason. They had themselves carried out maintenance work on the electrical system to prevent fire risks.

57. In both prisons, the inmates said that they suffered from depression because they were afraid of being transferred to other prisons where the conditions were worse. No cases of torture were reported.

58. Of the 261 foreigners in the prison in Callao, only 61 had been sentenced and in the prison in Chorrillos 98 foreign women prisoners had been charged and 37 sentenced. The Special Rapporteur spoke to prisoners who had spent up to 25 months without being sentenced. The maximum period of detention for a person who has not been convicted was increased in 2001 from 15 to 18 months and doubled to 36 months for some offences such as illicit drug trafficking (and could be extended up to 72 months in complex cases).²⁶ Both male and female foreign prisoners called for administrative decisions to be expedited, opportunities for dialogue between judges, prisoners and the Ombudsman’s Office to be restored and the decisions in their trials to be sent to them so that they would be better able to defend themselves.

59. The documents necessary for the recognition of prison privileges include a copy of the enforceable sentence and the person’s criminal record, reports by the technical processing body and a certificate of residence. This last-mentioned requirement has given rise to a black market in certificates of residence inside the prisons, since foreign prisoners who have no residence or relatives in Peru buy them from Peruvian prisoners. Prisoners commented that the granting of

prison privileges took account of their attendance at workshops, for which they were required to pay for enrolment and materials. This requirement was detrimental to pregnant women and to individuals who did not have access to the workshops because there were not enough places or because they had been excluded.

60. In the case of foreign prisoners who obtain prison privileges, problems occur during the privilege stage since they cannot work and have no identity documents or passports and Peruvian legislation does not allow them to leave until they have completed their full sentence and paid the corresponding civil compensation. As a result, in some cases, following intervention by the Ombudsman's Office, judges have apparently authorized the departure of foreigners to their country of origin, where they must sign a monthly attendance register at the relevant consulate and undertake to pay the civil compensation. Foreign prisoners complained that on completion of their sentence their passports and identity documents were not being returned to them, which meant that they were frequently forced to leave the country clandestinely.

61. Foreign prisoners of both sexes encountered difficulties in obtaining family visits during the stay of their family members in Peru. Conjugal visits were apparently only permitted between married individuals and had been organized once in the case of married couples who were prisoners in these two centres. In the prison in Chorrillos there were 25 telephones for nearly 1,000 female prisoners, who could use them for only 10 minutes on Mondays, Tuesdays, Thursdays and Fridays from 9 a.m. to 1 p.m. and from 2 to 5 p.m. Post was received twice a month and letters could not be sent directly from the prison.

62. The governors of the two prisons visited both said that few consulates concerned themselves with the situation of their compatriots. During her visit to the prison in Callao, the Special Rapporteur met the Spanish consul in Lima. Both male and female prisoners said they rarely received visits from their consulates, and these were restricted to handing over money. The main request of the foreign prisoners was that the consular officials should keep an eye on their legal situation and provide free legal advice. Some complained that they had been swindled by the lawyers representing them, who had sometimes been recommended by the consular offices. The Special Rapporteur spoke to prisoners who claimed to have had no contact with their country's consular office in Lima. Latin Americans and Africans appeared to have been completely abandoned by their consular authorities. The Ombudsman's Office had apparently recorded complaints from consular representatives that the police were not complying with article 36 of the Vienna Convention on Consular Relations.²⁷

63. According to the Ombudsman's Office, nearly half of all foreign prisoners are not of Spanish mother tongue, which means that while serving their sentence they need the help of other prisoners in their dealings with the prison authorities, which are only possible in Spanish. The use of prisoners as interpreters gives no assurance of the quality of the translation in the statements and instructions of the authorities. This situation appears to have a direct effect on the assessments of the professionals on the expert body making the mandatory evaluations for the granting of prison privileges. The prisoners considered that foreigners were not guaranteed the right to a fair trial in Peruvian courts, since during the criminal proceedings they did not have the services of official interpreters, thereby preventing the effective exercise of the right of defence. The information provided to foreign prisoners on their rights and obligations is apparently only available in Spanish.

64. The Special Rapporteur transmitted these complaints to the Deputy Minister of Justice, while complaints in writing will be transmitted to the Ministry of Foreign Affairs.

V. THE ANDEAN COMMUNITY

65. Peru is a State member of the Andean Community, along with Bolivia, Colombia, Ecuador and Venezuela. The Secretary-General of the Community explained to the Special Rapporteur that the Andean countries had decided to pool their efforts so that their citizens can travel freely in the subregion, whether for tourism or for work.

66. The Andean Charter for the Promotion and Protection of Human Rights contains provisions relating to migrants.²⁸ In 2001, with the adoption of Decision No. 503, the Community recognized national identity documents as the only document needed by nationals and foreigners resident in the member countries to travel in the subregion as tourists. The Andean Council of Ministers of Foreign Affairs adopted its Decision No. 545 on an “Andean Labour Migration Instrument”²⁹ in June 2003; its objective is to establish standards progressively and gradually to permit nationals of States members of the Andean Community to travel freely and live anywhere in the subregion for the purpose of taking up an employment contract (art. 1). Subsequently, Decision No. 548 established an Andean cooperation mechanism for consular assistance and migrant affairs, for individuals who are nationals of any of the States members of the Andean Community and for various reasons are outside their country of origin (art. 2). In accordance with this instrument, a national of any Community country who is in the territory of a third State, or in a place where his or her country of origin has no diplomatic or consular representation, may receive protection from the diplomatic or consular authorities of any other member State³⁰ (art. 4).

67. The agenda of the Community features the adoption of a Community standard for the recognition of academic degrees and professional diplomas. Mechanisms will be established to facilitate residence and make it possible to respond to offers of employment in the subregion, and common standards will be established for work, social security, health and security of employment.

68. The Secretary-General of the Community said that one of the problems which had to be dealt with was the scarcity of resources for the protection, assistance and integration of migrants; in his opinion, international cooperation agencies could make a contribution in that respect. The meeting of the Special Rapporteur with the Secretary-General of the Community took place at the same time as the 10th Meeting of the Andean Committee of Migration Authorities, held in Lima from 30 September to 1 October 2004. The agenda for the meeting included the regulations for Decision No. 548 and the adoption of a joint position within the South American Conference on International Migration for the High-Level Dialogue on International Migration and Development due to be held at the United Nations General Assembly in 2006.

VI. CONCLUSIONS AND RECOMMENDATIONS

69. In the light of this report, the Special Rapporteur invites the Government of Peru to consider the following conclusions and recommendations.

70. Broad sectors of the population, particularly young people, see emigration as the only solution to unemployment and poverty. Peru's economic growth in recent years has not yet been reflected in any significant improvement in the labour market that would enable young people to find work or that would reduce unemployment or the size of the informal sector. There continue to be large areas of the country where social neglect and political indifference, force the population to seek work in neighbouring countries as a survival strategy.

71. The Government is aware of the dimensions of the phenomenon and the problems caused by the mass departure of its citizens, many of them without the necessary papers. The Special Rapporteur encourages the Government to complete the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and to consider ratifying ILO Conventions Nos. 97 and 143.

72. The Special Rapporteur also encourages the Ministry of Foreign Affairs to continue to promote bilateral agreements on migration and the implementation of the activities scheduled in the short and medium term. She encourages the Government to be proactive in defence of the rights of Peruvian emigrants in regional and international consultations on the management of migration.

73. The irregular situation of many Peruvian migrants abroad results in considerable restrictions on the exercise of their rights. The Special Rapporteur considers that the discrimination and abuse suffered by Peruvian emigrants should be energetically combated by the institutions of the Peruvian State. She encourages the Government to continue working on the reform of its policy for the protection, assistance and promotion of Peruvian communities abroad, to implement it through its diplomatic and consular offices and to reinforce the image of the consul as a public servant. Migration policies can be ameliorated, inter alia, through contributions from social partners, NGOs and academics.

74. Peruvian consular officials need to have appropriate training to be able to ensure the protection of the human rights, including the labour rights, of their fellow citizens abroad, irrespective of their migratory situation. The Ministry of Foreign Affairs should attach due importance and relevance to consular work and should adapt the curriculum of the Diplomatic Academy to reflect reality in Peru today. The Ministry should adopt such measures as it may deem necessary to provide consular offices with the human and material resources needed to ensure access to effective consular protection. The Ministry should consider providing for employment attachés in its consular offices to assist and protect the labour rights of Peruvian migrant and border workers.

75. The Special Rapporteur considers that the advisory councils are an important step forward in consolidating the new policy for the protection, assistance and promotion of Peruvian communities abroad. She proposes a revision of the regulations governing the

councils which are proving difficult to implement, in order to make the most of the opportunities provided by these important forums for dialogue.

76. The Special Rapporteur welcomes the initiatives taken by the Ministry of Foreign Affairs and the Ombudsman's Office to protect Peruvian emigrants and hopes that they will help remedy and eliminate discriminatory treatment in Peruvian consular offices. She acknowledges the efforts made by both institutions to promote and protect the human rights of Peruvian emigrants.

77. The Andean Labour Migration Instrument seems an appropriate framework for finding solutions to the problems currently generated by migratory pressures on the border with Ecuador.

78. The efforts of the Peruvian State are still inadequate to deal with the smuggling of migrants and trafficking in persons. What is needed is an institutional structure that is capable of combating these forms of crime and ensuring that the perpetrators are brought to justice.

79. The Special Rapporteur observed the professionalism of the senior officials of the Department of Migration and Naturalization but believes that its human and material resources need to be strengthened in order to improve its activities in migration control, the detection of counterfeit passports and the provision of in-service training courses for its personnel. The Special Rapporteur urges the National Registry of Identity and Civil Status to continue its initiatives to ensure that no part of the population, including internally displaced persons and their children, is undocumented. The Special Rapporteur considers that it is important to develop a system of documentation for minors. The work done by the National Registry, which, according to information provided by the Government, is in the initial stages of providing all Peruvian children with a national identity document, is a step in the right direction.

80. The international definition of trafficking in persons also includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. For this reason she recommends that the Criminal Code should be brought into line with the definition of trafficking contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Working Group on Trafficking in Women and Children should be given periodic information originating in places where this type of criminal activity is observed and should draw up programmes to protect and support victims. The Special Rapporteur considers that the presence of women in the Working Group will ensure gender equity.

81. The Special Rapporteur would like to express her profound concern at the grim prison conditions of foreigners in Peru, which in her opinion violate human rights principles and standards. It is of prime importance that essential medicines should be supplied and prescribed for serious illnesses and first aid, along with effective legal assistance, upgraded electrical systems in prisons and fire extinguishers in the different buildings. Consular offices should assist their fellow citizens who are deprived of liberty

in Peru, protect their rights and draw up programmes for legal assistance and the preservation of family links. Consular offices should also make it easier to obtain certificates of residence. The Special Rapporteur would like to thank the National Penitentiary Institute for its cooperation during her visit, which allowed her to hold private meetings with large groups of foreign prisoners.

82. The Special Rapporteur urges the Government to request United Nations support under the UNDP “Action 2” programme to strengthen its national system for the promotion and protection of the human rights of potential migrants and foreigners in Peru.

Notes

¹ The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

² See the final report of the Truth and Reconciliation Commission of Peru (<http://www.cverdad.org.pe/ifinal/index.php>).

³ In the analysis of these data it should be borne in mind that in 2002 54.3 per cent of a total population of 26,748,972 inhabitants were poor and 23.9 per cent were living in extreme poverty. “Hacia el cumplimiento de los objetivos de desarrollo del milenio en el Perú”, UNDP-Peru, p. 19.

⁴ “Main agreements initiated by the Ministry of Foreign Affairs in the context of its migration policy”, Ministry of Foreign Affairs, Office of the Under-Secretary for Peruvian Communities Abroad.

⁵ Adopted by Legislative Decision No. 26995.

⁶ The border integration zones are regulated by Decision No. 501 of the Andean Community, adopted in June 2001 by the Andean Council of Ministers of Foreign Affairs.

⁷ This is the only document for migration control and statistical purposes that is compulsory for persons entering or leaving the territory of the member countries of the Andean Community (Decision No. 397 and Resolution No. 433). Peruvians entering Ecuador with a migration card may remain up to a maximum of 60 days for the purposes of tourism.

⁸ On 16 September 2004, 118 Peruvians were allegedly deported and handed over to the Peruvian authorities at the Zarumilla border control post by the Ecuadorian Migration Office.

⁹ The second phase of Chile’s National Mine Clearance Plan is believed to include the destruction of the anti-personnel mines on the Chilean-Peruvian border.

¹⁰ Official communiqué No. RE/006-04 of the Ministry of Foreign Affairs, dated 26 January 2004.

¹¹ Retailers, principally of Aymara origin, who deal in foodstuffs and other items on both sides of the border in accordance with the 1929 Treaty on the Transit of Goods between Tacna and Arica.

¹² Adopted by Ministerial Decision No. 1197 of 8 November 2002 (<http://www.rree.gob.pe/portal/misrree.nsf/CC5496D58B83899F05256D100064966B>).

¹³ The administrative area of the Peruvian consulate in Geneva includes these three cantons, where it is estimated that 10,000 Peruvians are living.

¹⁴ The other activities of this council include the preparation of a useful guide to the protection of Peruvian maids abroad, which was circulated by the Peruvian Ministry of Foreign Affairs to all consulates and advisory councils.

¹⁵ This problem was publicly acknowledged by the Minister for Foreign Affairs, Mr. Manuel Rodríguez Cuadros, when he maintained that diplomatic officials should abandon the notion of the consul as prefect and adopt that of the consul as public servant. Source: press release No. 217-04 of the Ministry of Foreign Affairs.

¹⁶ Act No. 28182 of 23 February 2004.

¹⁷ The Ministry of Foreign Affairs nevertheless adopted a new Table of Consular Fees (Supreme Decree No. 045-2003-RE) on 26 February 2003, which would seem to have considerably reduced the fees for migration formalities and civil status documents for Peruvians abroad.

¹⁸ In 60 per cent of cases of trafficking in children false birth certificates were presented, in 30 per cent authorizations to third parties to process children's passports were bogus and in 10 per cent other documents, such as the national identity document, were counterfeit.

¹⁹ Established recently by Supreme Decree No. 002-2004-IN and composed of representatives of the ministries of the interior, women and social development, health, justice, education, labour and the promotion of employment, and foreign affairs, and two representatives of civil-society institutions specializing in this area. The Ministry of the Interior provides the Working Group with the technical secretariat that implements the Group's decisions.

²⁰ See also articles 153, 153-A, 179-A and 181-A of the Criminal Code. The Constitution of Peru, in article 2, paragraph 24 (b), prohibits trafficking in persons in any of its forms.

²¹ Article 27 of Legislative Decree No. 370, Ministry of the Interior Organization Act, adopted on 4 February 1986.

²² Legislative Decree No. 703 of 11 May 1991.

²³ They must also comply with the requirements of article 8 of the legislative decision.

²⁴ In 2004, the growth rate was 13.3 per cent.

²⁵ At the time of the visit, the prison in Chorrillos (maximum capacity 300 persons) had 929 women prisoners, 135 of whom were foreign. The prison in Callao (maximum capacity 570 persons) had around 1,400 inmates, of whom 261 were foreign. This centre had been declared to be in a state of emergency over two months earlier and since then there had been no new admissions.

²⁶ Article 137 of the Code of Criminal Procedure.

²⁷ Ratified by Peru on 17 February 1978.

²⁸ See section IX (“Rights of groups object of special protection”), Subsection E (“Rights of migrants and their families”), signed during the Andean Presidential Council held in Guayaquil, Ecuador, on 26 July 2002. The programme of work for the dissemination and implementation of the Andean Charter was adopted in 2004. In a final provision, the Charter envisages the possibility that it will become binding at some time in the future as the result of a decision by the Andean Council of Ministers of Foreign Affairs.

²⁹ The decisions of the bodies of the Cartagena Agreement (Council and Commission) are binding.

³⁰ With regard to the actions set out in article 7 of Decision No. 548.
