

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review -

PERU

I. Background Information

Peru is a State Party to the *1951 Convention relating to the Status of Refugees and its 1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*). Peru applies the regional refugee definition envisaged in the *Cartagena Declaration on Refugees* (1984).

Peru's national legal framework dealing with refugee protection is primarily contained in Refugee Law No. 27891 and its complementary regulations. The Refugee Law established the Special Commission for Refugees (CEPR) to receive, examine, process and decide on refugee status applications. Applications can be channeled through UNHCR, but can equally be submitted directly at airports, ports or police stations. In the latter case, the Ministry of Interior should refer these cases to the CEPR within 15 days.

The Secretariat of the CEPR carries out the registration of asylum applicants and conducts the eligibility interviews. However, the Secretariat does not elaborate written eligibility assessments on individual cases.

By the end of 2011, Peru hosted 1,144 recognized refugees and 494 asylum-seekers, who were awaiting a first-instance decision of the refugee status determination (RSD) procedure. Of the 494 asylum-seekers, 466 persons applied for asylum during 2011. Of the total number of refugees, approximately 52% are of Cuban origin; 27% are of Colombian origin; and the rest are from Africa, the Middle East and South America.

Peru has not implemented legal mechanisms to address the protection and assistance needs of persons in need of international protection who cannot be considered refugees under the conventional or regional definitions, including persons fleeing the consequences of natural disasters who remain unable to return to their countries of origin.

Peru is not a State Party to the *1954 Convention relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*.

The Government has demonstrated its willingness to enhance cooperation with UNHCR on refugee and statelessness issues, resulting in pledges formulated at the intergovernmental event to commemorate the 60th anniversary of the *1951 Convention relating to the Status of Refugees* and the 50th anniversary of the *1961*

Convention on the Reduction of Statelessness on 7-8 December 2011 in Geneva, Switzerland. During the event, the Government of Peru pledged to:

- 1) Accede to the *1954 Convention relating to the Status of Stateless Persons* and *1961 Convention on the Reduction of Statelessness*;
- 2) Promote the adoption/amendment of national legislation to ensure the implementation of international standards to prevent statelessness;
- 3) Facilitate asylum-seekers' and refugees' access to employment opportunities by establishing simplified procedures for the approval of labour contracts and the issuance of professional driver's licenses;
- 4) Ensure asylum-seekers' and refugees' access to public health services via the Universal Insurance Health System.

II. Achievements and positive developments

Peru passed Refugee Law No. 27891, adopted in December 2002, which generally complies with international refugee law standards. Both the *1951 Convention* refugee definition and the regional refugee definition from the *Cartagena Declaration* are reflected in the law. In addition to establishing the CEPR to adjudicate asylum claims, the law establishes the Reviewing Commission for Refugee Issues to resolve appeals. The law also sets out regulations governing RSD procedures and applicable guidelines in cases of mass influx. Under the law, refugees who enter Peru as part of a mass influx are entitled to temporary protection for three months, though it can be extended for up to one year. The Government generally respects the following principles: a) *non-refoulement*, b) access to borders; and c) not imposing sanctions due to illegal entrance.

III. Challenges, constraints and recommendations

Issue 1: Stateless persons

Peru is not a State party to the *1954 Convention relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*. However, at UNHCR's Ministerial Meeting in 2011, the Government of Peru pledged to accede to both of these conventions.

There is no information available on the extent of a possible stateless population in the country, and no steps have been taken in order to identify any such population. At the Ministerial Meeting, the Government of Peru also pledged to regulate statelessness issues, which in practice would mean establishment of a procedure by which stateless persons in the country may be identified.

Peruvian nationality legislation is generally in conformity with international standards but does lack some safeguards to prevent statelessness, including provisions to ensure persons renouncing their nationality are prevented from doing so, unless they possess another nationality or have obtained assurances to that effect.

A survey conducted by the Peruvian National Statistics Institute in 2007 showed that 5% of the population does not possess any type of national identification documentation. In addition, the 2010 UNICEF Report on the State of the World's

Children highlights the problem of undocumented children in the Loreto Department (border with Colombia). According to UNICEF data, one out of five children in this area of the country does not count with birth registration and identity documentation.¹ UNHCR is particularly concerned about the situation of children born in isolated communities in Peru near the Colombian/Peruvian border of Colombian parents. The Regional Office undertook two missions to the area in 2009 and 2010 and met with relevant local authorities that expressed their complaints regarding problems in birth registration and access to identity documentation. Although, according to the law, these children are Peruvian citizens through birth on the territory (*jus soli* principle), in practice they are not able to register at birth and to access to proper personal documentation. Furthermore, lack of birth registration renders populations at risk of statelessness as they may not be able to prove evidence of their birthplace or the nationality of their parents. The documentation problems of the population residing in isolated areas of the Peru-Colombia border were discussed during a seminar organized in Iquitos by IOM and the Andean Commission of Jurists (CAJ) in the framework of a project on border management.²

Accession to the *1954 Convention relating to the Status of Stateless Persons* is important because the Convention ensures minimum standards of treatment of stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to identity and travel documents, administrative assistance, education, employment, housing, and public relief. The *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth. Stateless persons are often discriminated against in their enjoyment of fundamental rights. An increase in the number of States Parties to these conventions is essential to strengthening international efforts to prevent and reduce statelessness.

Recommendation:

UNHCR looks forward to the completion by Peru in the near future of the two pledges in relation to statelessness that it delivered during the Ministerial Meeting. In addition, Peru is encouraged to review its legislation to bring it into line with international standards contained in the 1961 Statelessness Convention and to ensure that all children born in Peru have access to birth registration.

Issue 2: Rights of asylum-seekers and refugees

Despite the efforts made by the CEPR, asylum-seekers and refugees continue facing obstacles in fully exercising their right to work. Refugees and asylum-seekers residing in Peru are mainly employed in the informal market because they often do not have access to the formal labor market and encounter difficulties in obtaining tributary codes (Registro Único de Contribuyentes-RUC) that would allow them to work independently. The validation of professional degrees is another important barrier to the full enjoyment of refugees' right to work. No special mechanism or procedure has been put in place to facilitate the validation of refugees' professional certificates obtained abroad. Refugees and asylum-seekers are also unable to obtain professional driving licenses.

¹ Fondo de las Naciones Unidas para la Infancia (UNICEF), *Estado de la Niñez en el Perú*, UNICEF, Lima, Perú, 2011.

² Information on the Project implemented by IOM and the CAJ is available at: <http://fronterasseguras.com>

Additionally, asylum-seekers are excluded from the Universal Health Insurance System (*Sistema de Aseguramiento Universal en Salud*), a public health program addressed to persons that do not benefit from private health insurance, because their temporary documents are not recognized as valid for enrollment in the program. Although the regulations permit enrollment if refugees present their residence identity cards, in practice, refugees face significant difficulty in enrolling due to the inadequate training of administrative officers.

UNHCR is also concerned about the situation of elderly refugees who have been residing in Peru for many years and who have no access to social security programs.

Recommendation:

The Government of Peru should ensure the inclusion of refugees and asylum-seekers in the Universal Health Insurance System and other social programs that would facilitate their local integration and access to health care.

Issue 3: Refugee Protection

A great number of asylum-seekers enter the country through its frontiers. Therefore, it is of utmost importance to provide special training and capacity-building activities to the respective governmental officials, in order to prevent rejection and *refoulement* at border check points.

Recommendation:

The Government of Peru should continue seeking UNHCR's support and assistance to implement capacity-building and training activities on refugee protection for relevant government officials/agencies, especially those working in border areas. The establishment of mechanisms to ensure the referral to the asylum procedure of persons seeking asylum at the borders, has been identified as a priority to address the existing protection gap.

Issue 4: Children's Asylum-Seekers

No mechanism has been established to deal with the protection and assistance needs of unaccompanied and separated children (UASC) seeking asylum. Cases of UASC are dealt with on an *ad hoc* basis. No coordination mechanisms are in place to ensure the appropriate referral of these children to the national child protection system, or ensure the adequate legal representation before the RSD procedure and there are no special care arrangements.

Recommendation:

UNHCR encourages the Government of Peru to apply UNHCR's Guidelines on International Protection on Child Asylum Claims issued on 22 December 2009³, which offer substantive and procedural guidance on carrying out RSD in a child-sensitive manner.

Issue 5: Women Refugees and Asylum-Seekers

Asylum claims from female asylum seekers are examined under RSD procedures which do not necessarily take into consideration their special protection and assistance needs. No special mechanism is in place to refer individual cases of women survivors of SGBV to medical-psychological services. It is important to ensure that RSD

³ UN High Commissioner for Refugees, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08, available at: <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>.

procedures respond to the specific protection needs of female asylum-seekers. Standard operating procedures for the prevention of and response to sexual and gender-based violence (SGBV) should be adopted as a matter of priority. Information guides on women's rights and the available mechanisms to prevent and to respond to SGBV have been produced and distributed to the refugee population.

Recommendation:

The Government of Peru should ensure the assessment of asylum claims in a gender-sensitive manner. In addition, a comprehensive plan of action on preventing SGBV and for protecting and assisting victims of SGBV should be prepared.

Issue 6: Registration of persons of concern

Despite the recent decentralization of some instances of the RSD procedure in the decentralized offices of the Ministry of Foreign Affairs (MFA), asylum-seekers normally only manage to register, when they physically reach the CEPR, UNHCR's implementing partner premises in Lima, and/or its protection networks, mainly the Ombudsman's office and the Church in the border areas. UNHCR is concerned about the potential presence in border areas of persons of Colombian origin in need of international protection that do not have access to registration and/or RSD procedure. Persons in need of international protection in isolated communities are not able to become registered and have their claims processed due to the lack of funds, inadequate communication facilities, as well as security considerations in border regions. Therefore, there is no effective access to the RSD procedure and individual identity documentation for asylum-seekers in isolated areas, such as in the Putumayo River border area, for example.

Recommendation:

The Government of Peru should urgently put in place a mechanism to register asylum claims in border areas and to ensure proper documentation for every person in need of international protection. Authorities, such as the police and the army, who, according to the Peruvian asylum law, are entitled to register such claims, should be trained in refugee law and RSD, as well as equipped with the necessary tools.

Issue 7: Database of Information of Refugees and Asylum-Seekers

The Government of Peru does not issue accurate and updated statistical information on refugees and asylum-seekers living in the country since. Their failure to release this information prevents UNHCR from discharging its supervisory role under Article 35 of the *1951 Convention*.

Recommendation:

The Government authorities should work with NGOs and civil society to update statistical information on refugees and asylum-seekers and it should make their statistical reports available to the UNHCR Regional Office to allow it to compare the information with regular reports prepared by UNHCR's implementing partner.

Issue 8: Human Trafficking

Peru continues to be a source, transit and destination country for trafficking in persons and smuggling. An increasing number of Peruvians have been trafficked internally and externally, most frequently for the purpose of forced labor and prostitution. The social situation of asylum-seekers and refugees and the absence of special programs to facilitate their local integration in the country make refugees, particularly refugee women, especially vulnerable to human trafficking for sexual exploitation. However, no special provisions have been adopted to prevent refugees, asylum-seekers and

other persons of concern to UNHCR from being trafficked. In addition, there are no special mechanisms in place to identify victims of trafficking, who are in need of international protection and to refer them to special asylum procedures.

Recommendation:

The Government of Peru should adopt relevant measures to better protect vulnerable persons of concern to UNHCR from human trafficking. In particular, UNHCR recommends that the Government establish a system to properly identify victims of trafficking and to refer them to the RSD procedure so that their rights to seek and to be granted asylum are fully and duly respected.

Issue 9: Complementary Forms of Protection

Peru has not established complementary forms of protection or humanitarian statutes to address the situation of persons in need of international protection that do not necessarily fall under the refugee definition, such as persons fleeing the consequences of natural disasters who are unable to return to their countries of origin, or persons protected against *refoulement* by Article 22.8 of the Inter American Convention on Human Rights and Article 3 of the Convention Against Torture.

The Regional Office is aware of the efforts of several governmental institutions and civil society organizations to promote a migratory legislation amendment to ensure the adoption of a humanitarian visa.

Recommendation:

The Government of Peru, without undue delay, should consider adopting and implementing legislation that establishes complementary forms of protection for persons in need of international protection that do not necessarily fall under the refugee definition. The Government should promote an amendment to introduce the possibility to grant humanitarian visa.

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March 2012**