



**Convention on the
Rights of the Child**

Distr.: General
1 May 2015
English
Original: Spanish
English, French and Spanish only

Committee on the Rights of the Child

**Consideration of reports submitted by States parties
under article 12, paragraph 1, of the Optional
Protocol to the Convention on the Rights of the Child
on the sale of children, child prostitution and child
pornography**

Reports of States parties due in 2004

Peru*

[Date received: 17 February 2014]

* The present document is being issued without formal editing.



Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1-5	3
II. General information.....	6-8	4
III. Information on the government agencies responsible for implementing the Optional Protocol.....	9-17	4
IV. Information on the articles of the Optional Protocol.....	18-184	7
Article 1.....	18-31	7
Article 2.....	32-43	8
Article 3.....	44-64	10
Article 4.....	65-69	14
Article 5.....	70-82	15
Article 6.....	83-91	17
Article 7.....	92-95	19
Article 8.....	96-136	19
Article 9.....	137-173	26
Article 10.....	174-178	32
Article 11.....	179-184	33

I. Introduction

1. Peru herewith submits to the Committee on the Rights of the Child its initial report on the implementation of and compliance with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (hereinafter the Optional Protocol). This document sets out the measures taken, progress made, and challenges faced by Peru in implementing the provisions of the Optional Protocol.

2. Under Supreme Decree No. 078-2001-RE, Peru ratified the Optional Protocol which entered into force in our country on 12 February 2002;¹ by virtue of article 12 of the Optional Protocol, the State party is obliged to report on a regular basis, with comprehensive information on the measures it has taken to implement the provisions of the Protocol.

3. A planned and participative approach was adopted in preparing the present report. On account of its role as lead agency for child and adolescent issues, the Ministry for Women and Vulnerable Groups (MIMP) took responsibility for compiling information and preparing the first draft. The draft was shared with the members of the National Human Rights Council,² which comprises government³ institutions and representatives of civil society.⁴ Finally, the report was approved by the Office of the Deputy Minister for Human Rights and Access to Justice of the Ministry of Justice and Human Rights (MINJUS), whose lead role in human rights matters in Peru includes final approval of periodic reports and of any reports which Peru is required to submit to the international human rights bodies.⁵

4. The present report was drafted taking into account the revised guidelines regarding initial reports to be submitted by States parties under article 12, paragraph 1 of the Optional Protocol (CRC/C/OPSC/2).

5. In accordance with the above-mentioned documents, the present initial report of Peru contains specific information on the application of articles 1 to 11 of the Optional Protocol and on the measures adopted in order to implement the provisions of the

¹ Adopted by the United Nations General Assembly on 25 May 2000 and signed by Peru on 1 November 2000. Congress of the Republic. Legislative Decision No. 27518 under which the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was approved. Official Gazette, *El Peruano*, 13 September 2001: Ministry of Foreign Affairs. Ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Supreme Decree No. 078-2001-RE. Official Gazette *El Peruano*, 6 October 2001.

² A multisectoral body established by Supreme Decree No. 012-86-JUS of 6 September 1986, as amended by Supreme Decree No. 011-2012-JUS of 20 April 2012 (The National Human Rights Council was established under the Ministry of Justice and Human Rights and charged with issuing opinions and advising the Executive on the development of policies, programmes, projects and plans in the field of human rights. CNDH is chaired by the Deputy Minister for Human Rights and Access to Justice of the Ministry of Justice and has a technical secretariat which provides it with technical and administrative support.

³ Office of the President of the Council of Ministers, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Defence, Ministry of the Interior, Ministry of Education, Ministry of Health, Ministry of Labour and Job Creation, Ministry for Women and Vulnerable Groups, Ministry of the Environment, Ministry of Energy and Mining, Ministry of Culture, Ministry of Development and Social Inclusion, the Judiciary, the Public Prosecutor's Office and the Office of the Ombudsman.

⁴ National Human Rights Coordination Coalition, Evangelical Council of Peru, Peruvian Episcopalian Association, National Confederation of Private Business Institutions and the Peruvian Press Council.

⁵ MINJUS. Supreme Decree No. 011-2012-JUS, Approving Regulations on the Organization and Functions of the Ministry of Justice and Human Rights. *El Peruano*, 20 April 2012. Art. 16 para. g.

Optional Protocol until December 2012, with references to significant developments in 2013.⁶

II. General information

6. A number of provisions for the protection of boys, girls and adolescents have been introduced on the basis of the relevant provisions of the Constitution of Peru.⁷ Specifically, the Code on Children and Adolescents⁸ regulates all government measures concerning children and adolescents and recognizes their right to respect for and protection of their moral, psychological and physical integrity and to free development and well-being, with particular attention to the harmful effect on personal integrity of prostitution, trafficking, sale and all other forms of exploitation of children and adolescents.⁹

7. According to information from the National Institute for Statistics and Information, on 30 June 2013, the population of Peru was 30,475,144, of whom 11,647,958 were minors under the age of 19.¹⁰

8. Children and adolescents are disproportionately affected by poverty (45 per cent of children and adolescents), a situation that is worse for those living in rural areas where poverty affects 68.5 per cent of children and adolescents, which is 2.3 times the level in urban areas (29.3 per cent). In this environment, a third of children live in extreme poverty.¹¹

III. Information on the government agencies responsible for implementing the Optional Protocol

9. In recent years, Peru has created institutions designed to promote social development and respect for human rights. To that end, the Ministry for Women and Social Development was transformed into the Ministry for Women and Vulnerable Groups; it maintained its position as the lead agency for child and adolescent affairs while acquiring an intersectoral perspective. The Ministry of Culture, the Ministry of Development and Social Inclusion and the Ministry of Justice and Human Rights were created along the same lines, in order to develop an integrated approach to social affairs and focus attention on attaining a higher level of protection and respect for human rights.

10. Following the creation of the Ministry of Culture, the ethnic and cultural diversity of the nation became one of the four programme areas for action over which the new Ministry would exercise its powers, functions and duties.¹² Similarly, the Office of the Deputy Minister for Intercultural Affairs was created with, among other functions, the formulation, execution and monitoring of policies and standards that

⁶ No information from the year 2013 is available to date, however compilation of the data is currently under way.

⁷ Constitution of Peru. "Article 4. The community and the State shall afford special protection to children, adolescents, mothers and neglected elderly people ...".

⁸ Congressional Act No. 27337, approving the Code on Children and Adolescents. *El Peruano*, 7 August 2000.

⁹ *Ibid.* Art. 4.

¹⁰ INEI. Population. Population estimates and projections. Total population on 30 June 2013, according to gender and age groups. Consulted on 17 December 2013. Available at: <http://www.inei.gob.pe/estadisticas/indice-tematico/poblacion-y-vivienda/>.

¹¹ INEI, UNICEF. "Estado de la Niñez en el Perú (The State of Children in Peru)", Lima, February 2011.

¹² Congressional Act No. 29565, Act establishing the Ministry of Culture. *El Peruano*, 22 July 2010.

promote practices to prevent discrimination against the citizens and peoples of the country.¹³ The Office of the Deputy Minister also has a duty to promote and guarantee social equality and respect for the rights of the peoples of the country. In addition, it is the technical agency for indigenous affairs within the Executive branch, in accordance with the provisions of the Act on the Right to Prior Consultation.¹⁴

11. The Ministry of Development and Social Inclusion was created in 2011¹⁵ in order to ensure that social policies and programmes were coordinated so as to closing gaps in access to public services.¹⁶ The Ministry is competent for: (a) social development, poverty eradication and promotion of social inclusion and equity; and (b) social protection of populations in situations of risk, vulnerability and abandonment.

12. Similarly, with the approval in December 2011 of Act No. 29809, the Ministry of Justice¹⁷ was given responsibility as the lead agency for human rights in the country. This demonstrates the determination of Peru to foster a national policy of respect, protection and promotion of human rights by mandating the Ministry of Justice to accomplish that aim by proposing policies that focus on vulnerable people and ensuring compliance with the State's relevant legal obligations. In order to achieve those ends, the Office of the Deputy Minister for Human Rights and Access to Justice was established, with responsibility for formulating, coordinating, implementing, executing and monitoring national human rights policy, as well as approving periodic reports and any reports which Peru is required to submit to international human rights bodies.¹⁸

13. Two principal national policies have been adopted in order to establish a multisectoral coordinating mechanism to address the key issues covered by the Optional Protocol. First of all, the national Government has adopted the National Plan of Action for Children and Adolescents 2012-2021, which aims to develop public policy on childhood and adolescence with six main guiding principles: the best interests of the child; equality of opportunity; recognition of the legal personality of boys and girls; gradual self-determination; and the family as a fundamental institution for the development of the individual and a vehicle to guarantee the full development of children.¹⁹

¹³ Ibid., art. 15, para. (e).

¹⁴ Congressional Act No. 29785. "Act on the Right of Indigenous Peoples to Prior Consultation recognized in Convention No. 169 of the International Labour Organization (ILO)". It was one of the first measures taken by this Government which was affirmed in September 2011 with the approval of Congress. The Act sets out the contents, principles and procedures on the right of indigenous peoples to prior consultation with respect to legislative or administrative measures that directly affect them. It is interpreted in accordance with the obligations set out in ILO Convention No. 169, ratified by Peru under Legislative Decision 26253.

¹⁵ Congressional Act No. 29792, Act on the creation, organization and functions of the Ministry of Development and Social Inclusion. *El Peruano*, 20 October 2011.

¹⁶ The Ministry must undertake two basic functions: as the body carrying out targeted and temporary social programmes for coordinated and effective intervention in order to provide goods and services to sectors of the population requiring direct support from the State; and as the lead body on national social policy that ensures that different sectors and levels of Government in Peru act implement social programmes and policies in a coordinated manner. Ministerial Decision No. 012-2013-MIDIS, approving the Ministry's Plan on Advertising Strategy, p. 3.

¹⁷ Congressional Act No. 29809, Act on the Organization and Functions of the Ministry of Justice and Human Rights. *El Peruano*, 8 December 2011.

¹⁸ Ibid., arts. 12 and 16

¹⁹ National Plan of Action for Children and Adolescents 2012-2021. PNAI 2021. Approved by Supreme Decree No. 001-2012-MIMP. Consulted on 27 December 2013. Available at: http://www.mimp.gob.pe/files/planes/Plan_Nacional_PNAIA_2012_2021.pdf.

14. In order to monitor and contribute to the attainment of the National Plan's goals, objectives, expected outcomes and ensure the successful implementation of its strategies, a multisectoral permanent commission²⁰ was set up, chaired by the Deputy Minister for Vulnerable Populations with a Technical Secretariat provided by the Directorate-General for Children and Adolescents of the Ministry for Women and Vulnerable Groups. The Commission's membership includes representatives of the Executive²¹ and of various public bodies.²²

15. The other national policy of relevance to the obligations established under the Optional Protocol is the National Plan to Combat Trafficking in Persons 2011-2016, whose overall objective is to coordinate activities for combating trafficking in persons in Peru in order to ensure that Peru is organized and prepared through an integrated approach, and that by 2016 its Government has envisioned and implemented activities for prevention, the prosecution of traffickers and the protection and assistance of the victims of people trafficking in 2016.²³

16. The National Plan to Combat Trafficking in Persons has the following eight guiding principles: a decentralized approach; the involvement of civil society; participation in international cooperation; involvement of the private sector; coordination with other national plans; a gender perspective; the best interests of the child; and equality.

17. Multisectoral coordination, monitoring and evaluation of the Plan at the national, regional and local levels is the responsibility of the Technical Secretariat of the Multisectoral Standing Working Group against Trafficking in Persons, which reports to the Ministry of the Interior. The Group was established in 2006²⁴ comprising representatives of the Government²⁵ and civil society, who determine action to be taken in respect of policy implementation on this issue.

²⁰ Supreme Decree No. 011-2012-MIMP (14 April 2012) established the Multisectoral Permanent Commission on implementation of the National Plan of Action for Children and Adolescents 2012-2021.

²¹ The Deputy Ministers for: Childhood Management, from the Ministry of Education; Health, from the Ministry of Health; Internal Order, from the Ministry of the Interior; Work from the Ministry of Labour and Job Creation; Human Rights and Access to Justice from the Ministry of Justice; Tourism, from the Ministry of Foreign Trade and Tourism; Interculturality, from the Ministry of Culture; Social Policy and Evaluation, from the Ministry of Development and Social Inclusion; Environmental Management, from the Ministry of the Environment; and Communications, from the Ministry of Transport and Communications; and the Secretary General of the Office of the President of the Council of Ministers.

²² Head of the National Institute of Statistics and Information, the Executive President of the National Commission for Development and Life without Drugs, the Head of the National Civil Defence Institute, the Head of the National Identity and Civil Status Register, the President of the Supreme Court of Justice of the Republic and the Attorney-General and invited participants from the National Forum Against Poverty, UNICEF and a representative of the Advisory Committee on Children and Adolescents.

²³ National Plan to Combat Trafficking in Persons 2011-2016 (PNLTP). Approved by Supreme Decree No. 004-2011-IN. Consulted on 27 December 2013. Available at: <http://www.mininter.gob.pe/userfiles/DS-MIN-004-2011%281%29.pdf>.

²⁴ MININTER. Supreme Decree No. 002-2004-IN. Which established the Multisectoral Permanent Working Group against Trafficking in Persons. *El Peruano*, 20 February 2004.

²⁵ Representatives of MININTER, MIMP, MINSA, MINJUS, MINEDU, MTPE, MRE, MINCETUR and the Judiciary, the Ministry of Public Affairs, the Public Prosecutor and INEL.

IV. Information on the articles of the Optional Protocol

Article 1

18. Peru prohibits and punishes the sale of children, child prostitution and child pornography through, inter alia, legal administrative and institutional measures, criminal penalties and through preventive and civil measures.

1. Sale of children

19. The sale of children is prohibited by virtue of Peru's ratification of the Optional Protocol, and of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).²⁶

20. In January 2007, pursuant to Act No. 28950 on combating trafficking in persons and smuggling of migrants, article 153 of the Criminal Code was amended.²⁷ Article 153-A regulates the aggravating circumstances of the offence, taking into consideration whether the victim is between 14 and 18 years of age, and establishes a second level of aggravating circumstances if the victim is under 14 years of age.

21. Criminal law, in accordance with the provisions of the Palermo Protocol, defines the offence of trafficking and establishes the aim of the trafficker as exploitation, sale of children, prostitution, sexual slavery or other forms of sexual exploitation, begging, forced labour or services, servitude, slavery, slavery-like practices or other forms of labour exploitation, or the removal of human organs or tissue or trafficking therein.

2. Child prostitution

22. Child prostitution is prohibited by various criminal and administrative provisions. Pursuant to Act No. 28251 of 8 June 2004, several articles of the Criminal Code relating to prostitution were amended.

23. Article 179 of the Criminal Code on facilitating prostitution establishes the specific offence of facilitating prostitution when the victim is under 18 years of age. Offences relating to procuring and pandering have also been amended; for both offences the fact that the victims are under 18 years of age (arts. 180 and 181 of the Criminal Code) or under 14 years of age (art. 180) constitute aggravating circumstances.

24. Article 179-A on users and clients punishes sexual or similar acts with persons between 14 and 18 years of age in exchange for payment or any type of reward, which is considered sexual exploitation of children. The law also establishes the offence of child sex tourism, which is punishable under article 181-A of the Criminal Code.

25. In 2009, tourism legislation was updated, and important safeguards against the sexual exploitation of children were adopted. Act No. 29408 or the General Act on Tourism (17 September 2009) defines the offence of sex tourism set out in the Criminal Code as sexual exploitation when it occurs in the context of tourism and prescribes increased sentences of from 4 to 8 years when the victim is between 14 and 18 years of age, from 6 to 8 years when the victim is under 14 years of age, and of 10 years when the offence is committed by a public official with authority over, or a

²⁶ Adopted by Legislative Decision No. 27527 of 4 October 2001 and ratified by Supreme Decree No. 088-2001-RE issued on 20 November 2001. The Protocol entered into force in Peru on 29 September 2003.

²⁷ Executive. Legislative Decree No. 635. Criminal Code. *El Peruano*, 8 April 1991.

person entrusted with the care of the victim. The Act also vests in the Ministry of Foreign Trade and Tourism the authority to coordinate, formulate and propose the issuance of regulations required to prevent and combat the commercial sexual exploitation of children and adolescents in the context of tourism, at the same time requiring regional and local governments to adopt measures to prevent the commercial sexual exploitation of children and adolescents in the context of tourism. With regard to tourist service providers, article 43 of the Act establishes the obligation to communicate, disseminate and publish the provisions on the prevention and punishment of commercial sexual exploitation of children and adolescents.

3. Child pornography

26. Child pornography is also prohibited and penalized. Article 183-A of Act No. 27459 introduced the offence of child pornography into the Criminal Code; the article punishes those who possess, promote, produce, distribute, display, offer, sell or publish any type of material with pornographic content. This provision has been amended by Act No. 28251, and more recently by Act No. 30096 of 22 October 2013, which increases the sentence from 6 to 10 years when the victim is between 14 and 18 years of age and from 10 to 12 years when the victim is under 14 years of age.

27. Act No. 30096 on combating cybercrime establishes the penalties for persons who use information or communication technologies to contact children under 14 years of age to ask for or obtain pornographic material or to engage in sexual acts in violation of the sexual integrity and freedom of children and adolescents.

28. The prohibition of access by minors to websites with pornographic content is a first step towards the protection of minors, and “filter programmes” are mandatory in public Internet “booths” (Act No. 28119 of 12 December 2003).

29. The most noteworthy national policies related to the prohibition of the sale of children, child prostitution and child pornography are the National Plan of Action for Children and Adolescents 2012-2021 and the National Plan of Action to Combat Trafficking in Persons 2011-2016.

30. Pursuant to Ministerial Decision No. 0105-2006-ED, the ongoing “I have the right to fair treatment” campaign is being promoted in the regional directorates of education, local education management units and educational institutions at the national level in order to promote fair treatment and prevent ill-treatment, sexual abuse and sexual exploitation of children and adolescents.

31. Moreover, since 2008 the Ministry of the Interior, through the Peruvian National Police, has had an investigation department to combat child pornography in the Advanced Technology Crime Division of the Directorate of Criminal Investigation, whose mission is to provide appropriate protection to Peruvian children through virtual operations and coordination and collaboration with its international counterparts.²⁸

Article 2

1. Sale of children

32. Under Peruvian legislation the sale of children is one of the constituent elements of the offence of trafficking. Trafficking is criminalized under article 153 of the Criminal Code, as amended by Act No. 28950, and is defined as promoting, encouraging, financing or facilitating the recruitment, transport, transfer, harbouring,

²⁸ Ministry of the Interior. Note No. 000598-2013/IN/DGSD, dated 4 June 2013.

receipt or retention of a person in the territory of the Republic or to enable a person to leave or enter the country, by means of, inter alia, gifts, payments or rewards, for the purposes of exploitation, sale of children, etc.

33. The National Plan of Action 2011-2016 defines the purchase and sale of children and adolescents as “any act or transaction whereby they are transferred by any person or group of persons to another in exchange for remuneration or any other consideration”,²⁹ in accordance with the guidelines of the Ministry for Women and Vulnerable Groups for intervention in areas of commercial sexual exploitation of children and adolescents.³⁰

34. It also points out that international networks are regularly behind such offences and that children and adolescents are abducted, kidnapped or taken away from their families in exchange for money.

35. The National Plan of Action also establishes that the sale of children and adolescents constitutes exploitation, regardless of its purpose, and highlights the difficulty of detecting the sale of children for a number of reasons, particularly the absence of complaints due, in most cases, to the parents’ or guardians’ active involvement in the commission of the offence.

2. Child prostitution

36. Child prostitution is covered by various legal provisions. Under the Criminal Code, acts related to child prostitution are considered aggravating circumstances to the offences of facilitating prostitution (art. 179), procuring (art. 180) and pandering (art. 181).

37. Article 179-A refers specifically to the act of engaging in sexual acts with persons between 14 and 18 years of age in exchange for payment or any type of reward.

38. Article 181-A establishes the offence of commercial sexual exploitation of children and adolescents in the context of tourism and defines it as any act that promotes, advertises, encourages or facilitates commercial sexual exploitation in the context of tourism, by leaflets or any written, printed, visual, audio, electronic or magnetic means or via the Internet, in order to offer sexual relations of a commercial nature with children or adolescents.

39. The National Plan of Action for Children and Adolescents 2012-2021 defines sexual exploitation of children as “the use of children and adolescents in sexual or erotic acts to satisfy the interests and desires of any person or groups of persons in exchange for payment, promise of payment or any other type of reward”.³¹ Some forms of such exploitation are described below.

40. The use of minors in sexual acts that are paid for in money or in kind, and carried out in the street or in closed premises such as bars, nightclubs, massage parlours or hotels.

²⁹ National Plan of Action to Combat Trafficking in Persons in Peru 2011-2016, adopted by Supreme Decree No. 4-2011-IN. *El Peruano*, 19 October 2013, p. 18.

³⁰ Guidelines of the Ministry for Women and Vulnerable Groups, the lead agency in the national system of comprehensive care for children and adolescents, on intervention in areas of commercial sexual exploitation of children and adolescents, adopted by Ministerial Decision No. 624-2005-MIMDES of 21 September 2005 and raised to the level of supreme decree by Supreme Decree No. 014-2006-MIMDES.

³¹ National Plan of Action for Children and Adolescents. Adopted by Supreme Decree No. 001-2012-MIMP. *El Peruano*, 20 April 2012, p. 79.

41. Sexual exploitation in the context of tourism occurs when people travel outside their country or community to engage in sexual acts with children and adolescents.

3. Child pornography

42. Article 183-A of the Peruvian Criminal Code establishes penalties for any person who possesses, promotes, manufactures, distributes, displays, offers, sells, publishes, imports or exports by any means objects, books, documents, images, video or audiotapes or who organizes live pornographic shows in which children or adolescents are used.

43. The National Plan of Action defines child pornography as “any representation, by whatever means, of a child or adolescent engaged in real or simulated explicit sexual acts or any representation of his or her sexual parts for sexual purposes on the Internet”.³²

Article 3

1. Current provisions of criminal law that cover and criminalize the acts and activities described in the Optional Protocol

44. Peruvian criminal legislation to combat the sale of children, child prostitution and child pornography is incorporated into the Criminal Code. The Code has been amended by various laws relating to these offences, such as Act No. 27459, which introduced child pornography into Peruvian legislation — incorporating article 183-A into the Criminal Code, Act No. 28251, which amended the Criminal Code by establishing the criminal offences of and custodial sentences for various forms of rape, seduction, indecent assault, facilitating prostitution, procuring, pandering, trafficking in persons, obscene exhibitions and publications and child pornography and by incorporating user-client and child sex tourism offences and Act No. 28950 on combating trafficking in persons and smuggling of migrants.

45. The following offences contained in the Criminal Code (vol. II, sect. IV) are related to the Optional Protocol:

- (a) Chapter IV (violation of sexual freedom):
 - Article 153. Trafficking in persons;
 - Article 153-A. Aggravated forms of trafficking in persons;
- (b) Chapter X (procuring):
 - Article 179. Facilitating prostitution;
 - Article 179-A. User-client;
 - Article 180. Procuring;
 - Article 181. Pandering;
 - Article 181-A. Commercial sexual exploitation of children and adolescents in the context of tourism;
 - Article 181-B. Aggravated forms;
- (c) Chapter XI (acts of public indecency):

³² National Plan of Action to Combat Trafficking in Persons in Peru 2011-2016, adopted by Supreme Decree No. 4-2011-IN. *El Peruano*, 19 October 2013, p. 23.

- Article 182-A. Advertising in the media of acts which constitute offences relating to minors' sexual freedom;
- Article 183. Obscene exhibitions and publications;
- Article 183-A. Child pornography;
- Article 184. Punishment for accomplices;
- Article 303-A. Smuggling of migrants.

2. Trafficking in persons

46. In Peru, the sale of children is a punishable offence that is classified as a form of trafficking under article 153 of the Criminal Code when perpetrated with any of the following intents:

- Prostitution;
- Sexual slavery or other forms of sexual exploitation;
- Forced begging;
- Forced labour or services;
- Servitude;
- Slavery, slavery-like practices or other forms of labour exploitation;
- Removal of or trafficking in human organs or tissues.

47. Article 153 thus complies with article 3.1 (a) (i) and (b) of the Optional Protocol. The offence applies to anyone who recruits, transports, transfers, harbours, receives or retains children or adolescents for purposes of exploitation, even in the absence of violence, threat or other forms of coercion, deprivation of liberty, fraud, deception, the abuse of power or of a position of vulnerability or the giving or receiving payments or rewards. In other words, the article provides comprehensive protection against any act that might lead to the violation of the fundamental rights of a child or adolescent subjected to any form of trafficking.

48. Peru is also a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which establishes the obligation to criminalize trafficking in persons. The Protocol states that when any of the acts described as trafficking in persons affect a child, they will be considered an offence even if they do not involve coercion, fraud or deception.

49. The offence of trafficking in persons, which the Criminal Code classifies as a criminal offence and which penalizes and, inter alia, the sale of children (art. 153) is considered to be aggravated when the victim is between 14 and 18 years of age (art. 153-A, subpara. 4) and the sentence shall be no less than 25 years when the victim is under 14 years of age (art. 153-A, second part, subpara. 2).

50. On 15 January 2007, Act No. 28950 on combating trafficking in persons and smuggling of migrants was enacted, thereby amending the Criminal Code to include trafficking in persons as an offence against freedom. The Act criminalizes the means used, the acts and purposes of the offence, and brings national legislation into line with international instruments. It also establishes public policies on prevention, victim support and protection and provides for international cooperation to combat trafficking, including effective collaboration and prison benefits.

51. The implementing regulations of the Act³³ were subsequently adopted to provide an appropriate legal framework to combat trafficking in persons and migrant smuggling; the regulations establish the responsibilities of the State institutions involved in promoting and implementing measures to prevent, prosecute, protect and provide assistance, while taking into account the focus on human rights and vulnerable groups, together with risk factors, research, training, information and dissemination.

52. The regulations include the principle of the best interests of the child and adolescent and prioritize the interests and rights of children and adolescents who have been victims of trafficking in persons and migrant smuggling.

53. They establish migratory control measures for Peruvians leaving the country. With regard to minors, in addition to meeting general requirements, they are required to present travel authorization issued by a family judge or a notarized permit (if the authorization is granted in Peru) or consular authorization issued by the Ministry of Foreign Affairs (MRREE) (if granted abroad). The authorizations will be valid for no more than 60 days and, in all cases, for a single journey.

Adoption

54. With respect to the act of improperly inducing consent, as an intermediary, for the adoption of a child in violation of the applicable international legal instruments on adoption, pursuant to paragraph (ii), it should be noted that the criminal law establishes aggravating circumstances for trafficking in persons when the person who commits the offence is, inter alia, the adoptive parent, guardian or custodian of the child (art. 153-A).

Child pornography

55. With regard to the obligation to adopt measures to ensure criminal legislation covers the production, distribution, dissemination, importation, exportation, offer, sale or possession of child pornography, as defined by article 2 of the Protocol (art. 3.1 (c)), it should be noted that child pornography is subsumed under the offence of encouraging prostitution, which punishes those who promote or encourage the prostitution of another person.

56. Act No. 27459 (26 May 2001) incorporated article 183-A on child pornography into the Criminal Code.³⁴ The penalties for the offence have been amended and increased by Act No. 28251, and more recently by Act No. 30096 on combating cybercrime (22 October 2013); which establishes sentences of 6 to 10 years when the victim is between 14 and 18 years of age and of 10 to 12 years when the victim is under 14 years of age for persons who use information or communication technologies to contact children under 14 years of age to solicit or obtain pornographic material or to engage in sexual acts. Both acts violate the sexual integrity and freedom of children and adolescents.

57. The definition of child pornography encompasses the behaviour of those who possess, promote, manufacture, distribute, display, offer, sell, publish, import or export by any means objects, books, documents, images, video or audiotapes or who organize live pornographic shows in which persons between 14 and 18 years of age are used. The involvement of children under 14 years of age and the dissemination of pornographic material through information and communication technologies are

³³ Ministry of the Interior. Supreme Decree No. 007-2008-IN of 30 November 2008. Implementing regulations of the Act on combating trafficking and smuggling of migrants.

³⁴ Congress of the Republic. Act No. 27459. Incorporated article 183-A on child pornography into the Criminal Code. *El Peruano*, 26 May 2001.

considered aggravating circumstances. This is consistent with the definition of child pornography set out in article 2.

Sexual exploitation of children

58. The disturbing increase in the incidence of sexual exploitation of children in the context of tourism led to the incorporation into article 181-A, of the offence of child sex tourism, under Act No. 28251. The Act establishes two types of sentence: (a) if the victim is between 14 and 18 years of age, imprisonment of 2 to 6 years; and (b) if the victim is under 14 years of age, imprisonment of 6 to 8 years. The Act also classifies advertising of child prostitution, child sex tourism or trafficking in persons under 18 years of age in the media as an offence.

59. Act No. 29408 or the General Act on Tourism (17 September 2009) was subsequently enacted; the Act redefines the offence of child sex tourism contained in the Criminal Code as sexual exploitation in the context of tourism and imposes harsher penalties. Offences committed against victims between 14 and 18 years of age are punishable by imprisonment of 4 to 8 years.

60. With regard to child sex tourism, the National Plan of Action states that it “links the sex industry with the tourism industry, as the sex market is the greatest source of tourism. Some tourist agencies use this demand to attract tourists and do so with relative impunity. Children and adolescents are the main victims of this criminal activity.”³⁵

3. Attempts to commit any such acts

61. With respect to article 3.2, it should be noted that article 16 of the Criminal Code defines attempted crimes as acts in which the perpetrator begins to commit an offence that he or she has decided to commit, without completing it. This applies to all offences, including those concerned by the Optional Protocol.

62. Article 25 of the Criminal Code punishes complicity in its primary and secondary forms, and determines that those who intentionally provide assistance for the commission of an offence, without which the offence would not have been committed, are to receive the same sentence as the perpetrator.

4. Severity of penalties

63. Article 3.3 establishes the obligation to make such offences punishable by appropriate penalties that take into account their grave nature. It should be noted that the sale of children, which is considered a form of trafficking in persons under Peruvian criminal law, is punishable by 8 to 15 years imprisonment. The law establishes two categories of aggravating circumstance: (a) when the victim is between 14 and 18 years of age, which carries a sentence of 12 to 20 years imprisonment; and (b) when the victim is under 14 years of age, which carries a sentence of 6 to 8 years imprisonment.

64. The age of the victim may also constitute an aggravating circumstance for the offences of procuring (art. 180) and pandering (art. 181). Criminal legislation thus expands the spectrum of protection provided to victims of trafficking in persons, and lays down harsher penalties for persons who commit the crime against children and adolescents.

³⁵ National Plan of Action to Combat Trafficking in Persons in Peru 2011-2016, adopted by Supreme Decree No. 4-2011-IN. *El Peruano*, 19 October 2013, p. 16.

Article 4

1. Statute of limitations for offences

65. The Criminal Code³⁶ defines the time limit for bringing a criminal action as the maximum sentence established by law for the offence, if the penalty is imprisonment. In the event of a real concurrence of offences, the time limits for prosecution are applied separately within the periods specified for each. In the event of a multiple offence, the time limit for bringing criminal actions is equal to the maximum sentence for the most serious crime. Either way, the time limit may not exceed 20 years.

66. Plenary Accord No. 9-2007/CJ-116³⁷ of 16 November 2007, issued by the standing and transitional criminal divisions of the Supreme Court, has clarified the calculation of time limits for bringing criminal actions. In such cases, exceptional measures do not apply to the main offence of trafficking in persons, which carries a maximum sentence of 25 years' imprisonment, but they do apply to offences that are punishable by 35 years' or life imprisonment (with respect to other related offences).

2. Provisions establishing the jurisdiction of the State

67. Under the Criminal Code, Peruvian criminal law applies to anyone who commits an offence in the territory of the Republic, subject to the exceptions set forth in international law. It also applies to offences committed on publicly-owned Peruvian vessels or aircraft, regardless of their location, or on private Peruvian vessels or aircraft on the high seas or in airspace over which no State exercises sovereignty.³⁸

3. Extraterritorial jurisdiction of the State party over such offences

68. Article 2 of the Criminal Code evokes the principle of extraterritorial jurisdiction. According to this principle, Peruvian criminal law applies to any offence committed abroad when:³⁹

(a) The perpetrator is a public official or public servant acting in the course of his or her duties;

(b) The offence threatens public safety or peace or involves offences such as money-laundering, provided the offences produce their effects in the territory of the Republic;

(c) The offence threatens the State and national defence, the authorities and the constitutional or monetary order;

(d) The offence is committed against or by a Peruvian and is an extraditable offence under Peruvian law, provided that it is also punishable in the State in which it occurred and the perpetrator in any way enters Peruvian territory;

(e) Peru is bound to punish the offence by international treaty.

69. The Code provides for exceptions in the application of the principle of extraterritorial jurisdiction. Such exceptions include when the criminal proceedings have been terminated in accordance with one body of legislation or another, when the accused has been acquitted abroad, when the convicted person has served the sentence

³⁶ Criminal Code, art. 80. 8 April.

³⁷ Judiciary. Plenary Accord No. 9-2007/CJ-116. On the time limits for prosecuting offences that are punishable by imprisonment, in accordance with articles 80 and 83 of the Criminal Code. Date: 16 November 2007. Para. 12.

³⁸ Cf. Criminal Code, art. 1.

³⁹ Criminal Code, art. 2. Article amended by article 1 of Legislative Decree No. 982 of 22 July 2007.

or when the sentence has been time-barred or suspended. However, if the perpetrator has not served the entire sentence, the proceedings may be resumed before the courts of the Republic, but the part of the sentence that has been served will be taken into account.

Article 5

70. In Peru, extradition is one of the rights included in the section of the Constitution on political rights and duties, article 37 of which empowers the Executive the authority to grant extradition, on the basis of a report from the Supreme Court, and in accordance with the principle of reciprocity. Extradition will not be granted if it is requested with a view to prosecuting or punishing a person on the grounds of religion, nationality, opinion or race.⁴⁰

71. On the basis of this premise, Peruvian legislation systematically regulates international judicial cooperation, particularly in respect of extradition, in order to strengthen its capacity to address crimes, particularly serious offences such as those set forth in the Optional Protocol. Peru is a party to important multilateral international instruments that regulate this form of international judicial cooperation. These include:

- (a) The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- (b) The United Nations Convention against Transnational Organized Crime and the three Protocols thereto;
- (c) The United Nations Convention against Corruption;
- (d) The Inter-American Convention against Corruption;
- (e) The Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography;
- (f) The Agreement on Extradition (Bolivarian Congress, Caracas);
- (g) The Convention on Rights and Duties of States (Montevideo Convention).

72. Peru has also concluded 17 bilateral treaties on extradition with Argentina, Belgium, Brazil, Chile, China, Ecuador, France (which will shortly enter into force), Guatemala, Italy, Mexico, Panama, Paraguay, the Plurinational State of Bolivia, the Republic of Korea, Spain, the United Kingdom of Great Britain and Northern Ireland (which applies to, inter alia, Australia and Canada) and the United States of America and is negotiating other agreements (with the Russian Federation).

73. Under these treaties, the minimum sentence (of 1 year's imprisonment or more) is the basis for determining extraditable offences. The same criterion is adopted by domestic legislation, in article 517 of the new Code of Criminal Procedure (NCPP), whereby the penalties for the acts described in the Optional Protocol make them extraditable offences.

⁴⁰ Peruvian Constitution. Extradition:

“Article 37. Extradition may be granted only by the Executive, on the basis of a report from the Supreme Court, in conformity with the law and treaties and according to the principle of reciprocity. Extradition is not granted if it is considered to have been requested for the purpose of prosecuting or punishing a person on the grounds of religion, nationality, opinion or race. Extradition is not applicable to persons prosecuted for political offences or related acts, which do not include genocide, assassination or terrorism.”

74. It should be noted that the extradition treaty of 1874 between Peru and France is still in force. The treaty contains a list of extraditable offences, which, on account of the date of the treaty, does not include the acts described in the Optional Protocol. However, in the light of article 508 of the new Code of Criminal Procedure, whereby international judicial cooperation is governed, first and foremost, by treaties signed by Peru, these offences will be incorporated into the treaty as extraditable offences, in accordance with article 5.1 of the Optional Protocol.

75. In this sense, treaty provisions and domestic legislation (article 37 of the Peruvian Constitution, articles 513 to 527 of volume VII of the new code of Criminal Procedure and Supreme Decree No. 016-2006-JUS⁴¹) regulate the extradition conditions and procedures for any offence that is punishable by 1 year or more in prison, including the offences set forth in article 3 of the Optional Protocol.

76. It should be noted, however, that in accordance with article 508 of the Code of Criminal Procedure, Peru does not require the existence of a treaty as a condition for extradition. Under the law, Peru may request or grant extradition on the basis of a bilateral or multilateral instrument, such as the Optional Protocol, or under the principle of reciprocity in a context of respect for human rights. Domestic law applies in the latter case, as well as in matters not provided for by international instruments.

77. With regard to the place in which the offence occurred (Optional Protocol, art. 5.4), Peru may require extradition for offences committed in its territory or abroad, in the cases provided for in Peruvian legislation. Under article 1 of the Criminal Code, Peruvian criminal law applies to any offence committed in the territory of the Republic, subject to the exceptions set forth in international law. It also applies to offences committed on publicly-owned Peruvian vessels or aircraft, regardless of their location, or on private Peruvian vessels or aircraft on the high seas or in airspace over which no State exercises sovereignty.

78. Moreover, Peruvian law applies, under article 2 of the Criminal Code, to any offence committed abroad, when:

(a) The perpetrator is a public official or public servant acting in the course of his or her duties;

(b) The offence threatens public safety or peace or involves offences such as money-laundering, provided the offences produce their effects in the territory of the Republic;

(c) The offence threatens the State and national defence, the authorities and the constitutional or monetary order;

(d) The offence is committed against or by a Peruvian and is an extraditable offence under Peruvian law, provided that it is also punishable in the State in which it occurred and the perpetrator in any way enters Peruvian territory.

79. With regard to Peruvian offenders, there is no constitutional or legal obstacle preventing the surrender of Peruvian nationals to requesting States. However, if extradition is not granted for this reason and the offence is one for which prosecution is instituted automatically, as is the case of the offences set forth in the Optional Protocol, it will fall under domestic jurisdiction in accordance with article 3 of the

⁴¹ Ministry of Justice. Supreme Decree No. 016-2006-JUS. "Rules governing the conduct of the judiciary and the Government in relation to extraditions and transfers of convicted persons." *El Peruano*, 26 July 2006. This directive was issued in order to harmonize the scope of the provisions contained in the new Code of Criminal Procedure in relation to extraditions and transfers of convicted persons, based on the need to regulate their scopes and to establish the functions carried out by various entities involved in extradition procedures and transfers of convicted persons.

Criminal Code⁴² (which establishes the principle of *aut dedere aut judicare*) and Peruvian criminal law will apply in accordance with articles 1 and 2 of the Code, as appropriate, to ensure the person against whom proceedings have been brought does not benefit from impunity.⁴³

80. It should be noted that, with regard to refugees, the law establishes regulations and special treatment, as article 5 of the Refugee Act No. 27891 states that:

“Article 5. Right to non-refoulement

5.1 Any person claiming refugee status may enter the country and not be rejected, returned, expelled, extradited or subjected to any measure that might result in his or her return to the country where his or her life, integrity or freedom is threatened for the reasons set out in article 3 of this Act. (...)”

81. Accordingly, when an extradition request in respect of any offence is made for a person who enjoys refugees status, regardless of the type of offence, the provisions of article 3 must be taken into account.

82. Lastly, the International Judicial Cooperation Unit of the Attorney General’s Office, the central authority for international judicial cooperation, has no record of any extradition requests for the offences set forth in article 3 of the Optional Protocol.

Article 6

83. Under the Peruvian legal system, Peru may request or provide international judicial assistance on the basis of bilateral or multilateral agreements or under the principle of reciprocity and domestic legislation, which is also applicable in matters not provided for in those instruments, subject to observance of human rights (art. 508 of the new Code of Criminal Procedure). The purpose of international judicial assistance is to ensure that necessary legal procedures are complied with and evidence obtained for investigations or criminal proceedings under way in the requesting State.

84. Peru is a party to multilateral instruments on international judicial assistance and instruments that contain provisions on the type of international judicial cooperation mentioned above. It is not only a party to the instruments listed in relation to article 5 (see paragraph 71 (a) to (e)), but also to the Inter-American Convention on Mutual Assistance in Criminal Matters.

85. Peru has also concluded bilateral treaties on international judicial assistance with Argentina, Brazil, Canada, China, Colombia, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Italy, Mexico, Panama, Paraguay, the Plurinational State of Bolivia, the Republic of Korea, Spain, Switzerland and Thailand. It is also in the process of negotiating treaties with India, Portugal and the Russian Federation and is finalizing a treaty with France at the national level.

86. The conditions and procedures for international judicial assistance are covered in articles 528 to 539 of volume VII (on international judicial cooperation) of the new Code of Criminal Procedure, while possible forms of such assistance are specified in article 511 of the Code. International judicial assistance may be provided for:

(a) Notification of judgements and orders, as well as notification of witnesses and experts so that they may testify;

⁴² Executive. Legislative Decree No. 635, Criminal Code. *El Peruano*, 8 April 1991. Principle of representation. Art. 3: Peruvian criminal law may be applied when an extradition request has been made and the person is not handed over to the competent authority of a foreign State.

⁴³ Note No. 874-2013-JUS/DJR of the Department of Justice and Worship of the Ministry of Justice.

- (b) Reception of evidence and statements from witnesses;
- (c) Presentation and submission of judicial documents or copies of such documents;
- (d) Delivery of documents and reports;
- (e) Investigations and inspections;
- (f) Examination of objects and sites;
- (g) Blocking accounts, seizure or attachment of criminal assets, impoundment of assets, home searches, raids, monitoring of communications, identification or location of the proceeds of assets or instruments used in the commission of an offence, and other restrictions on rights;
- (h) Provision of information and evidence;
- (i) Temporary transfer of detainees who are subject to criminal proceedings, convicted persons who have been summoned to testify as witnesses or of free persons;
- (j) Performance of procedural measures abroad;
- (k) Supervised delivery of criminal assets.

87. The following conditions apply to international judicial assistance: the offence must be punishable by at least 1 year in prison and must not be an exclusively military offence; the accused must not have been acquitted, convicted, pardoned or amnestied for the offence from which the request originated; the procedure must not have been launched with a view to prosecuting or punishing an individual on the grounds of sex, race, religion, nationality, ideology or social status; the request must not be issued by special courts or ad hoc special commissions; the request must not affect public order, sovereignty, security or the vital interests of the State and must not concern a tax offence, unless the offence involved a deliberately false declaration or deliberate omission to hide income from another offence.

88. With respect to the requirement set forth in article 7 for international judicial assistance, it must comply with the principle of double jeopardy, regardless of the classification of the offence under the legislation of the requesting and requested States.

89. In 2013, the International Judicial Cooperation Unit of the Attorney General's Office, the central authority for international judicial cooperation, registered the following outgoing and incoming requests relating to child pornography and sexual exploitation of minors:

- (a) Outgoing:
 - Requests relating to child pornography offences:
 - Five requests have been made to the United States of America, one of which was rejected and four of which are pending approval;
 - One request has been made to the Kingdom of Saudi Arabia and is pending approval;
- (b) Incoming:
 - Requests relating to trafficking in persons in the form of sexual exploitation of minors:
 - One request from Ecuador, which was granted;
- (c) Requests relating to child pornography offences:

- Four requests made to Spain have been granted.

90. One of these cases marks a significant achievement for international judicial cooperation. The Peruvian Government received a request for international judicial assistance from the competent authority in Spain relating to a child pornography offence. The request, which was processed by the Third National Criminal Court and the First Provincial Office of the Special Prosecutor for Organized Crime, was granted.

91. This case also led to an investigation in Peru, as a result of which a member of an international criminal organization involved in the production and marketing of child pornography was arrested. This brought about the seizure of pornographic material portraying some 500 under-age victims from Argentina, Chile, Peru, Spain and Ukraine.⁴⁴

Article 7

Seizure of assets

92. The Government of Peru has a comprehensive system for the receipt, inventory, classification, custody, safe storage, preservation, management, lease, temporary or permanent assignment and auction of property, instruments, goods and proceeds generated by offences committed against the State, including offences under the Optional Protocol.

93. Legislative Decree No. 1104, amending the Forfeiture Act, applies, inter alia, to offences involving trafficking in persons and, through the Act's provisions, establishes that ownership of property, instruments, goods and proceeds generated by such offences shall be transferred to the State by decision of the judicial authority, subject to due process.⁴⁵

94. The Decree also establishes that international agreements on judicial cooperation and legal assistance, and any other international agreement regulating international cooperation in relation to the forfeiture, location, identification, recovery, repatriation, loss or expropriation of assets, are applicable to the cases covered by Legislative Decree No. 1146,⁴⁶ including cases of trafficking in persons.

95. The National Committee on Confiscated Goods (CONABI), attached to the Office of the President of the Council of Ministers,⁴⁷ was established to ensure compliance with the Decree's provisions.

Article 8

1. Measures to protect the rights and interests of child victims in the criminal justice process

96. The right to a defence is guaranteed under Act No. 29360 on the Public Defence Service Act⁴⁸ and its implementing regulations, enacted by Supreme Decree No. 013-2009-JUS.⁴⁹ Free legal assistance and expert advice in the fields expressly specified is

⁴⁴ Available at www.europapress.es/latam/peru/noticia-peru-detenido-mayor-depredador-sexual-infantil-habla-hispana-operacion-policia-conjunta-espana-peru-20131130133216.html and at www.abc.es/sociedad/20131130/abci-detenido-mayor-depredador-sexual-201311300846.html.

⁴⁵ Executive branch, Forfeiture Act, Legislative Decree No. 1104. *El Peruano*, 19 April 2012. Art. 2.

⁴⁶ Legislative Decree No. 1104, art. 9.

⁴⁷ *Ibid.*, second final additional provision.

⁴⁸ Congress of the Republic. Act No. 29360 on the Public Defence Service. *El Peruano*, 14 May 2009.

⁴⁹ Ministry of Justice. Supreme Decree No. 013-2009-JUS, approving the implementing regulations of

available to persons who lack financial resources and in all other cases expressly provided by law.⁵⁰

97. In accordance with the aforementioned Act, public defenders⁵¹ are empowered, inter alia, to institute proceedings and provide legal defence whenever the injured parties in offences against life, bodily integrity and health include children and adolescents. In cases involving offences against personal freedom, public defenders are empowered to act only in cases of trafficking in persons and smuggling of migrants.

98. The Legal Defence Service for Victims was created specifically to provide for such situations. The Service is attached to the Directorate of Legal Aid and Victim Defence, which forms part of the Ministry of Justice and is responsible for providing free legal assistance to persons who have suffered human rights violations of any form, including offences of trafficking in persons.⁵²

99. On 19 and 20 September 2013, the Directorate of Legal Aid and Victim Defence ran a nationwide campaign against trafficking in persons, under the slogan “No permitas que te usen como mercancía” (Don’t let them treat you like merchandise), through which it was able to extend advice and guidance to 70,956 people.⁵³

2. Measures relating to the age of victims

100. The Code on Children and Adolescents states that: “Should there be any uncertainty as to a person’s real age, the person shall be considered to be a child or adolescent unless it is proven otherwise.”⁵⁴

3. Ensuring that the best interest of the child is a primary consideration in the treatment of child victims by the criminal justice system

101. The Constitutional Court⁵⁵ has indicated in this regard that: “The constitutional basis for the protection afforded to children and adolescents under the Constitution rests in the specificity of their situation — i.e. the fact that they are in the midst of their comprehensive development as individuals. Because of their situation, in addition to providing the necessary conditions for their free development, the State must also guarantee their safety and well-being.”

102. Accordingly, the implementing regulations of Act No. 28950 on trafficking in persons and smuggling of migrants, adopted by Supreme Decree No. 007-IN-2008 of 30 November 2008, stipulate that the best interests of children and adolescents shall be the guiding principle of the measures adopted by Government agencies and NGOs.⁵⁶

103. The Public Prosecution Service has provided 10 Gesell chambers, or single interview rooms, in the High Court of Lima North. Eight of these chambers were

Act. No. 29360 on the Public Defence Service, 23 September 2009.

⁵⁰ Act No. 29360, art. 2.

⁵¹ Ibid., art. 9, para. 3 (a).

⁵² Ministry of Justice. Victim Defence. Consulted: 19 November 2013. Available at www.minjus.gob.pe/defensapublica/interna.php?comando=1032.

⁵³ Ministry of Justice. Results of the campaign against trafficking in persons. Consulted: 19 November 2013. See www.minjus.gob.pe/defensapublica/contenido/estadisticas/239_239_32_beneficiados1.pdf

⁵⁴ Article I of the first section of the Code on Children and Adolescents, adopted by Act No. 27337.

⁵⁵ Constitutional Court. Case No. 03330-2004 PA/TC. Ground no. 35. Consulted: 19 November 2013. Available at: www.tc.gob.pe/jurisprudencia/2005/03330-2004-AA.html.

⁵⁶ Ministry of the Interior 2008. Supreme Decree No. 013-2009-IN. Implementing regulations of the Act on trafficking in persons and smuggling of migrants (Act No. 28950) article 2.4.

installed under the VAESI project⁵⁷ to combat the child sexual exploitation and abuse and trafficking of persons. In addition, through Decision No. 589-MP-FN-2009, of 28 April, a guide for single interviews with child and adolescent victims of violence, sexual abuse and exploitation was adopted, establishing a formal institutional framework for single interviews and providing for their use in cases of sexual violence against children and adolescents.

104. In this connection, Court of Justice Plenary Decision No. 1-2011/CJ-116 on evaluating evidence in offences against sexual freedom states that, in order to prevent secondary victimization, especially in cases where minors have been victims of sexual abuse, the following rules should be taken into account: (a) Privacy of the proceedings should be ensured; (b) The victim's identity should not be revealed; and (c) Use of the single victim statement system should be fostered and encouraged.⁵⁸

4. Training persons who work with victims of such offences

105. The Ministry for Women and Vulnerable Groups has overseen the following training activities:

- (a) Organization of the first National Congress on Child Sexual Exploitation (November 2008);
- (b) Development of a training and capacity-building strategy for service providers who care for child and adolescent victims of sexual exploitation and abuse;
- (c) Development of an intersectoral road map for the comprehensive care and protection of victims of child sexual exploitation, sexual abuse and trafficking for purposes of sexual exploitation.

106. With the enactment of Decision No. 012-2009-DIREDDUD-PNP/SDACA of the Executive Directorate of Education and Doctrine of the Peruvian National Police, dated 12 January 2009, the Ministry of the Interior approved national syllabuses for the National Police Academy and Advanced Technical Colleges throughout the country which provide for trafficking in persons and forced labour to be addressed in the human rights curriculum.

107. In 2009, with assistance from the NGO Capital Humano y Social Alternativo, capacity-building activities for police personnel were carried out in 10 regions:

- IV Territorial Police Department (DIRTEPOL) Tarapoto — Amazonas police region;
- VIII DIRTEPOL Huancayo — Huancavelica police region;
- XVI DIRTEPOL Apurímac;
- XVII DIRTEPOL Pasco;
- XI DIRTEPOL Arequipa — Tacna police region;

⁵⁷ The multisectoral VAESI (the State and civil society against violence, abuse and the commercial sexual exploitation of children, 2007-2010) project was implemented by seven government bodies — the Ministry for Women and Social Development (now the Ministry for Women and Vulnerable Groups), Ministry of Health, Ministry of Education, Ministry of the Interior, Ministry of Foreign Trade and Tourism, the Public Prosecution Service and the Judiciary — in the regions in which the greatest number of sexual exploitation cases had been detected, namely, Lima, Loreto, Cusco and Madre de Dios.

⁵⁸ Judicial branch. Court of Justice Plenary Decision No. 1-2011/CJ — 116. Evaluating evidence in offences against sexual freedom. Date: 6 December 2011. Para. 38. Consulted: 19 November 2013. Available at: http://www.pj.gob.pe/wps/wcm/connect/58fa71804bc52be18dc4dd40a5645add/acuerdo_01_Apreciacion_prueba_delito_Violacion_Sexual.pdf?MOD=AJPERES&CACHEID=58fa71804bc52be18dc4dd40a5645add.

- XII DIRTEPOL Puno;
- XVIII DIRTEPOL Tumbes;
- V DIRTEPOL Iquitos;
- VII DIRTEPOL Lima;
- VII DIRTEPOL Huancayo.

108. Activities to raise awareness and secure the commitment of senior police commanders were also carried out in three regions (Puno, Huancavelica and Amazonas). In addition, 23 regional workshops were organized at which 488 police officers learned how to prevent and investigate trafficking offences and how to protect victims.

109. Specialist police divisions in seven regions also received training in how to investigate trafficking offences and the Police Training and Specialization Academy ran its third blended learning course in trafficking in persons, which lasted two months and was completed by 45 commissioned and non-commissioned officers.

110. In 2008, the Ombudsman's Office adopted guidelines for action by the Office in cases of sexual violence against children and adolescents, especially in cases of trafficking. In 2009, the Office's Department for Children incorporated trafficking in human beings into its workplans and became an observer member of the multisectoral standing working group on trafficking in persons.

111. In conjunction with the regional ombudsman's office in Madre de Dios and the special support unit in Jaén, the Department for Children has overseen the formation of consultation groups on child sexual exploitation, composed of representatives of State agencies and civil society organizations, to devise and implement action plans for combating violence of this kind, which especially affects minors. Also in Madre de Dios, the department, working jointly with the Office of the Special Prosecutor for Crime Prevention and the Office of the Special Prosecutor for Family Law Cases has taken action to eradicate activities linked to trafficking in children and adolescents such as sexual exploitation in tourism and labour exploitation in informal mining.

112. More specifically, the progress report of the National Plan of Action for Children and Adolescents states that: "In 2012, the number of regional consultation groups and regional anti-trafficking networks increased two-fold, from 7 in 2011 to 14 by the end of 2012.⁵⁹ Coordinating bodies of this kind currently exist in Cajamarca, Tumbes, Piura, La Libertad, Huánuco, Callao, Ayacucho, Arequipa, Loreto, Junín, Ucayali, Madre de Dios, Moquegua and Puno."

113. As part of the effort to enhance institutional management, more than 3,000 State officials and civil society representatives have received training in trafficking-related issues through workshops, regional consultations exercises and awareness-raising events. The Centre for Legal and Psychological Support has handled a total of 137 cases, including 32 trafficking cases, either in person, by telephone or online and has succeeded in rescuing 52 persons from situations of sexual exploitation in Iquitos (since the start of the "Prepárate para la Vida" project in 2006) and enabling 37 children and adolescents in exploitative situations in Loreto to continue their studies.

114. The victims in 25 cases of trafficking for purposes of sexual and labour exploitation identified by the courts in Lima and Loreto (22 cases of sexual exploitation and 3 cases of labour exploitation) have been provided with support and

⁵⁹ UNICEF. Progress report on the National Plan of Action for Children and Adolescents. Consulted: 19 November 2013. P. 36. Available at: <http://www.unicef.org/peru/spanish/primer-informe-anual-avances-plan-nacional-accion-infancia-adolescencia-2012-2021.pdf>.

assistance, along with members of their families. The victims are receiving specialist care in support centres and are successfully returning to their place in society. Victims who were abducted and removed from their place of origin have been able to return to their families.

115. Cesvi Perú⁶⁰ organizes training activities to draw attention to the sexual exploitation of children and adolescents and to the applicable legislation in the southern part of Lima; the activities involve educational communities, organized women's groups, organized youth groups, social communicators and municipal teams. So far it has organized 90 workshops. It has also worked with 11 secondary schools (3 in San Juan de Miraflores, 6 in Villa María del Triunfo, 1 in Villa El Salvador, and 1 in Lurín), providing training for head teachers and teachers, running preventive activities and referring cases in which children and adolescents are thought to be at risk.

116. Cesvi has also overseen the development of action plans for children and adolescents in the San Juan de Miraflores and Lurín areas and the establishment of three municipal committees for the rights of children and adolescents, and of a management committee to implement the district plan for children and adolescents in Villa El Salvador, coordinating action taken to prevent and combat the sexual exploitation of children and adolescents in application of the National Plan of Action for Children and Adolescents 2012-2021.

117. Through its lobbying activities, Cesvi has secured the commitment of government officials (the mayors of San Juan de Miraflores, Villa El Salvador, Villa María del Triunfo and Lima Metropolitana, and of the Congress of the Republic) to the effort to combat child sexual exploitation in the southern part of Lima by means of an agreement concluded on 23 September 2011.

118. Cesvi has also supported the Metropolitan Municipality of Lima through the development of a prevention and protection programme for children and adolescents and the establishment of a home for child victims of sexual exploitation in Lima, with assistance from public and private sector institutions.

5. Measures to protect the safety and integrity of persons and organizations involved in prevention, protection and victim rehabilitation activities

119. Through its residential care centres,⁶¹ the National Comprehensive Family Welfare Programme (INABIF)⁶² provides assistance for children and adolescents who have been abandoned or are at risk socially, including victims of sexual exploitation.⁶³

⁶⁰ Cesvi is a global, independent humanitarian not-for-profit foundation. It promotes the development of institutional educational plans with a focus on prevention and decent treatment and provides support for the development process. As a result of its work, 11 schools have adopted plans of this kind. Through its service network, Cesvi also provides comprehensive support for women, children and adolescents who have been victims of abuse of any form.

⁶¹ The management of residential care centres is regulated, inter alia, by the following texts: (a) Decision No. 576-2010-MIMDES, of 3 September 2010, adopting the directive on technical assistance in the oversight of residential care centres for children and adolescents. (b) Ministerial Decision No. 081-2012-MIMP, of 5 April 2012, approving the handbook for the accreditation and oversight of programmes for children and adolescents without parental care in Peru.

⁶² INABIF is a programme run by the Ministry for Women and Vulnerable Groups, which is responsible for promoting the interests of and providing care and support for children, adolescents, young people, women, older persons and, in general, any person who is at risk, has been abandoned or has psychosocial or physical problems that impede their development. The aim is to securing their well-being and personal development and foster and strengthen their ability to become useful members of society, their community and, particularly, their families. As an executive unit of the Ministry for Women and Vulnerable Groups, INABIF has functional, technical and administrative autonomy, subject to the administrative regulations in force. INABIF forms part of the Office of the Deputy Minister for Vulnerable Groups. It has its central office in Lima but operates throughout the

120. The purpose of the residential care centres is to provide the people they shelter with decent living conditions and guaranteed access to education, health care, occupational and vocational training, and social and psychological assistance. Assistance is also provided to members of residents' families, the aim being to achieve effective family and social reintegration.

121. Through INABIF, 73 child victims of sexual exploitation have been cared for at the Santa Rosa residential home for women in El Callao, where they have received comprehensive assistance.⁶⁴

122. In order to ensure appropriate physical and psychological care for children and adolescents living in its residential care centres, INABIF also coordinates its activities with the Ministry of Health. Health services provided include counselling on early and unplanned pregnancies, assistance in childbirth and psychoprophylaxis. Support is also available for physical and psychological health problems including, among others, drug dependence, depression, behavioural and emotional disorders, suicidal tendencies and the consequences of sexual violence. Persons living in residential care centres benefit from comprehensive health insurance and receive help from social workers and nursing staff for the corresponding formalities.

123. The emergency centres for women operated under the National Programme to Combat Domestic and Sexual Violence provide specialist care in cases of sexual exploitation throughout the country. In 2009, they cared for 33 persons (25 of whom were under 18 years old and 8 aged 18 or over); in 2010, 46 persons received assistance (35 under 18 years old and 11 aged 18 or over); and, in 2011, 68 persons were assisted (61 persons under 18 years old and 8 aged 18 or over).

124. The Directorate-General for Children and Adolescents, forming part of the Ministry for Women and Vulnerable Groups, liaises with the emergency centres for women on an ongoing basis regarding the provision of legal and psychological assistance in cases of trafficking in persons, especially when children and adolescents are involved. The Directorate also liaises with the residential care centres to ensure that comprehensive support is provided for girls and adolescents who have been victims of trafficking for purposes of sexual exploitation and find themselves in situations of abandonment.

125. Through Ministerial Decision No. 2570-2006-IN/0105, of 29 December 2009, the Ministry of the Interior formally established an institutional system for registering cases of trafficking in persons and associated offences and compiling the relevant statistics. The system was designed to serve as a technical tool for logging complaints filed with the police related to trafficking in persons and associated offences. It provides data on complaints, police investigations, locations, events, the identification of persons and the categorization of trafficking offences and, more generally, on any offences involving sexual exploitation, labour exploitation, trafficking of human organs and tissues, smuggling of migrants, abandoned minors, disappeared persons and rape.

country (Source: Article 3 of the INABIF operating handbook). Consulted: 20 January 2014. Available at: <http://www.inabif.gob.pe/portalweb/institucion.php>.

⁶³ Residential care centres for children and adolescents were established pursuant to Act No. 29174 of 23 December 2007. The implementing regulations were enacted by Supreme Decree No. 008-2007-MIMDES, of 29 September 2009.

⁶⁴ UNICEF. Progress report on the National Plan of Action for Children and Adolescents. Consulted: 19 November 2013. P. 31. Available at: <http://www.unicef.org/peru/spanish/primer-informe-anual-avances-plan-nacional-accion-infancia-adolescencia-2012-2021.pdf>.

126. Oversight and monitoring of the registration and statistics system, and the system's ongoing development and appropriate use, are the responsibility of the Directorate of Fundamental Rights for Governance of the Directorate-General for Democratic Security within the Ministry of the Interior and the Directorate of Criminal Investigations and Support for Justice of the Peruvian National Police.

127. The main system server is located on the premises of the Directorate of Criminal Investigations and Support for Justice. In order to ensure the system's smooth operation, a new modem router and eight Internet protocol addresses reserved solely and exclusively for the system server have been acquired. A police officer specializing in information technology and network management has been assigned and the number of workstations within the police unit responsible for the system has been increased.

128. According to information from the Ministry of the Interior,⁶⁵ between 2004 and April 2013 the registration and statistics system logged 959 cases of trafficking in persons. With regard to the various possible purposes of this offence, according to the system 641 were for purposes of sexual exploitation, 247 for purposes of labour exploitation, 53 for purposes of begging, 5 for purposes of the sale of children and 1 for purposes of the extraction or trafficking of human organs and tissues. In the 12 remaining cases, the purpose of the offence was not specified.

129. Between 2004 and December 2013, the registration and statistics system logged 2,692 victims of trafficking in persons, most of whom were from Cusco (27.69 per cent), Loreto (20.0 per cent), Lima (15.38 per cent), Huánuco (7.69 per cent), Apurímac (6.15 per cent), Junín (6.15 per cent) or Ucayali (6.56 per cent).⁶⁶

130. Of the total number of registered victims, 901 (33.47 per cent) were minors, 790 were women and 111 were men. The victims were exploited mainly in the regions of Lima, Cusco, Puno, Junín, Madre de Dios and La Libertad. The age group most affected was the 18- to 30-year-old bracket, which accounted for 1,459 or 54.2 per cent of total victims, most of them women.⁶⁷

131. In order to strengthen the system and extend the protection it affords, a toll-free anti-trafficking hotline (0800-2-3232) was established by Ministerial Decision No. 0491-2010-IN/0105, of 20 May 2010. The hotline's operation has been entrusted to the Permanent Secretariat of the National Human Rights Committee of the Ministry of the Interior. Rules and procedures for the operation of the anti-trafficking hotline were adopted on 31 May 2010 by Directive No. 04-2010-IN/0105.

132. Ministerial Decision No. 0002-2007-IN/0105, of 5 January 2007, conferred official status upon the Disappeared Persons Information System accessible at www.peruanosdesaparecidos.org, a website managed by the NGO, Capital Humano y Social Alternativo. The Decision provides for the Directorate of Criminal Investigations and Support for Justice of the Peruvian National Police to log information on persons reported as disappeared on the aforementioned website.

133. In addition to the foregoing, whenever a disappearance is reported in which the victim is assumed to have been abducted and trafficked for the purpose of some form of exploitation, the case is referred to the Trafficking in Persons and Smuggling of Migrants Division of the National Police for investigation, together with a request to forward information on the state of health of the rescued child or adolescent so that comprehensive assistance can be provided.

⁶⁵ Ministry of the Interior. Report No. 00039-2013/IN/DGSD/DPDFG.

⁶⁶ Ibid.

⁶⁷ Ibid.

134. With a view to preventing the sexual exploitation of children and adolescents in the Lima South area, an interdistrict committee to combat the sexual exploitation of children and adolescents in Lima South and Metropolitan Lima has been established.⁶⁸

135. The Child Pornography Investigation Department of the Advanced Technology Crime Division of the Directorate of Criminal Investigations of the National Police has identified two victims of child pornography as a result of its activities, which involved drawing up 148 investigation reports, taking 11 statements, making 6 arrests and processing 328 incident reports.⁶⁹

136. Lastly, a campaign entitled “Más Control, Menos Rutas de Explotación” (more monitoring, fewer paths to exploitation) is currently being implemented in conjunction with the Ministry of Transport and Communication’s Superintendency for Land Transport of Persons, Cargo and Goods, with the aim of preventing trafficking in children and adolescents.⁷⁰ A total of 26 regional governments have been briefed about the campaign and, through them, outreach materials have been distributed nationwide. As a result of this activity: (a) 20 land transport companies in Metropolitan Lima have received, and themselves disseminated, outreach materials for the campaign; and (b) 1,000 people, including land transport drivers, counter staff, land transport owners and advisers have been briefed about the campaign at workshops and information fairs in Lima, Ica and Junín.

Article 9

1. Prevention and awareness-raising measures

137. The implementing regulations of Act No. 28950 on trafficking in persons and smuggling of migrants⁷¹ assign joint responsibility for the prevention of trafficking in persons and smuggling of migrants to the following bodies: the Ministry of Education, the Ministry of Women and Social Development (now the Ministry for Women and Vulnerable Groups), the Ministry of Health, the Ministry of the Interior, the Ministry of Foreign Trade and Tourism, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Transport and Communications, the Ministry of Labour and Job Creation, the Public Prosecution Service and the Judiciary, together with regional and local governments.⁷²

138. The Ministry for Women and Vulnerable Groups is responsible, within its specific area of expertise, for coordinating and overseeing support services related to the prevention of trafficking in children and adolescents⁷³ and for sharing information on the implications of trafficking in children and adolescents with international and national adoption agencies, residential care centres and biological and pre-adoptive parents.⁷⁴

139. The Ministry of Foreign Trade and Tourism is empowered to promote the signature of agreements to prevent trafficking in persons, primarily children and adolescents, in the tourism sector.⁷⁵

⁶⁸ UNICEF. Progress report on the National Plan of Action for Children and Adolescents, p. 31.

⁶⁹ Ibid.

⁷⁰ Ibid., p. 36.

⁷¹ Ministry of the Interior Supreme Decree No. 013-2009-IN enacting the implementing regulations to Act No. 28950 on trafficking in persons and smuggling of migrants. *El Peruano*, 30 November 2008.

⁷² Ibid., art. 6.

⁷³ Ibid., art. 8 (c).

⁷⁴ Ibid., art. 8 (e).

⁷⁵ Ibid., art. 11 (b).

140. The Ministry of Foreign Trade and Tourism has been tasked with drawing up guidelines to ensure that transport operators require a national identity document, birth certificate or travel authorization, as appropriate, to be presented before issuing travel tickets to minors.⁷⁶

141. The responsibilities assigned to the Ministry of the Interior include monitoring the transport of children and adolescents and ensuring that minors in transit carry identity documents or birth certificates and that their travel authorizations comply with current legislation.⁷⁷

142. By Ministerial Decision No. 0491-2010-IN/0105, the Ministry of the Interior established an anti-trafficking telephone hotline to serve as a cornerstone of its institutional anti-trafficking policy. The hotline is a free, nationwide service which provides assistance, makes referrals and processes complaints and requests for information related to trafficking in persons from victims, potential victims and the public in general.⁷⁸ It also provides specialist advice and counselling on trafficking-related issues.⁷⁹

143. A multisectoral standing working group on trafficking in persons has been established to assume responsibility for proposing guidelines, policies, plans and comprehensive anti-trafficking strategies to the executive branch and developing outreach, prevention, communication and training strategies in conjunction with the registration and statistics system for human trafficking and related offences.

144. Action line No. 24 of goal No. 8, strategic objective No. 3 of the National Plan of Action to Combat Trafficking in Persons (2011-2016)⁸⁰ — a tool for implementing public policy that will facilitate the coordination of actions taken nationwide in the three areas of the fight against trafficking in persons (prevention, prosecution and protection)⁸¹ — is to design and implement mechanisms to help municipal offices of the ombudsman for children and adolescents to address the related issues.⁸²

145. The establishment of tutoring and educational guidance offices, overseen by the Ministry of Education, constitutes another significant advance. Located in primary and secondary educational schools, these offices offer students support in morning and afternoon sessions encompassing tutoring, sexual education, human rights and democratic coexistence at school.⁸³

146. In addition, the regional offices of foreign trade and tourism operated by regional governments are empowered, within their area of jurisdiction, to sanction tourist guides who fail to report to the competent authority any incident linked to the commercial sexual exploitation of children and any other unlawful criminal activity of which they become aware in the course of their work, including by withdrawing the guide's professional licence.⁸⁴

⁷⁶ Ibid., art. 14 (b).

⁷⁷ Ibid., art. 10 (f).

⁷⁸ Ministry of the Interior Decision No. 0491-2010-IN/0105. Recognition of the institutional status of the 0800-2-3232 telephone hotline. *El Peruano*, 31 May 2010.

⁷⁹ Ministry of the Interior 2010. Directive No. 04-2010-IN/0105. Rules and procedures for the operation of the 0800-2-3232 anti-trafficking telephone helpline. P. 2. 31 May. Consulted: 19 December. Available at: <http://spij.minjus.gob.pe/graficos/peru/2010/mayo/31/RM-0491-2010-IN-0105.pdf>.

⁸⁰ Ibid., p. 71.

⁸¹ Ibid.

⁸² Ministry of the Interior Supreme Decree No. 4-2011-IN, adopting the National Plan of Action to Combat Trafficking in Persons (2011-2016); *El Peruano*, 19 October 2011.

⁸³ Ibid., p. 54.

⁸⁴ Ministry of Foreign Trade and Tourism Supreme Decree No 001-2013-MINCETUR, approving the system of fines and penalties for tourist guides. *El Peruano*, 15 February 2013. Article 1.

147. The Ministry for Women and Vulnerable Groups was also the coordinator of the VAESI (State and civil society against violence, abuse and the commercial sexual exploitation of children) project designed to strengthen the system of State intervention in cases of violent sexual abuse and sexual exploitation of children and adolescents by coordinating the various forms of intervention.⁸⁵

148. Another problem is that street children sometimes become involved in situations of sexual exploitation as a means of survival. For this reason, street educators attached to the National Comprehensive Family Welfare Programme (INABIF) work closely with the children, who are at greater risk because of the sexually transmitted diseases they might contract.⁸⁶

149. The National Plan of Action for Children and Adolescents 2012-2021⁸⁷ — the instrument of national policy on children and adolescents, in that it sets the agenda for action to 2021 — recognizes that child sexual exploitation violates the rights of the child. For this reason, one of the desired outcomes of the Plan is that adolescents should not be subjected to sexual exploitation.⁸⁸ The goals of the Plan also include a reduction in the number of children and adolescents living in situations of sexual exploitation.⁸⁹

150. With this goal in mind, the Plan sets out the following implementing strategies:

(a) To increase the capacity of the dial 100 telephone hotline operated by the Ministry for Women and Vulnerable Groups and to position it as the principal State mechanism for reporting sexual exploitation of children and adolescents;

(b) To reintegrate adolescents in educational and job training programmes;

(c) To engage children and adolescents in communication and education campaigns, so as to prevent sexual exploitation both in family environments and outside the home;

(d) To raise awareness of mechanisms for reporting incidents of this nature;

(e) To run awareness-raising campaigns, principally targeting men, to prevent sexual exploitation of children and discourage complicity and tolerance;

(f) To promote and/or facilitate the gathering of information (studies, statistical data, research) which affords a better understanding and appreciation of the problem;

(g) To secure tour operators' commitment to the task of eliminating hotspots of child sexual exploitation.

151. Responsibility for implementing the Plan is shared between the Ministry of Education, the Ministry of Development and Social Inclusion, the Ministry of the Interior, the Ministry of Health, the Ministry of Justice, the Ministry of Transport and Communication, the Ministry of Foreign Trade and Tourism, the Ministry of the Environment, the Judiciary and the Public Prosecution Service.⁹⁰

152. The Ministry of Foreign Trade and Tourism carries out awareness-raising activities about the prevention of sexual exploitation of minors.⁹¹ It has also hosted

⁸⁵ Ministry for Women and Vulnerable Groups Supreme Decree No. 001-2012-MIMP, approving the National Plan of Action for Children and Adolescents (2012-2021). *El Peruano*, 14 April 2012. P. 54.

⁸⁶ *Ibid.*, p. 53.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, p. 79.

⁸⁹ *Ibid.*, p. 80.

⁹⁰ *Ibid.*

⁹¹ For example, it sponsored performances of the play *Voces en el Silencio* in Lima and Callao in

workshops to validate the training provided to future tourism professionals on the prevention of sexual exploitation of minors and organized briefings for staff of the regional offices of foreign trade and tourism in Huánuco, Ayacucho, Cusco, Lambayeque, Tumbes, La Libertad, Madre de Dios, Loreto, Piura, Arequipa, Trujillo, Pucallpa, Moyobamba and Lima.⁹²

153. The Family, Civic Participation and Civil Security Directorate of the Peruvian National Police has run four training courses on trafficking in persons and the commercial sexual exploitation of children and adolescents at the Academy for Family Participation and Civil Security. The courses were attended by 140 officers of the Family, Civic Participation and Civil Security Directorate and the Lima Regional Police, and by 1 officer of the National Police of Ecuador.⁹³

154. The judiciary has established a virtual classroom as a tool for running courses and is using various other media to raise awareness of, inter alia, the content of Act No. 28251. So far, 90,000 people have been trained in this way.⁹⁴

155. The Ministry of the Interior has trained 1,827 members of non-police bodies, regional committees and municipal security services, teachers, pupils and university students. Through their civic participation offices, Pasco and Huancavelica Territorial Police Departments have organized 70 briefings as part of their efforts to prevent such offences, benefiting a total of 2,424 children and adolescents enrolled in educational establishments.⁹⁵

2. Assistance measures

156. Article 7 of Act No. 28950 on combatting trafficking in persons and smuggling of migrants imposes an obligation on the State to provide — either directly or in coordination with other States, international agencies, NGOs and civil society — safe repatriation, temporary accommodation, medical, psychological, social and legal assistance and social integration mechanisms for victims, informers, witnesses, experts and their immediate relatives.⁹⁶

157. The implementing regulations of Act No. 28950, approved by Supreme Decree No. 007-2008-IN,⁹⁷ require the Ministry of Foreign Affairs to train consular staff on how to support Peruvian nationals abroad and provide assistance to victims of trafficking in a manner that safeguards their human rights and is in the best interests of the child.⁹⁸

158. The regulations also require the Ministry of the Interior to train staff of the Peruvian National Police and the General Directorate of Migration and Naturalization on how to make referrals and provide assistance and protection for victims of trafficking, from a human rights perspective and in the best interest of the child.⁹⁹

2012.

⁹² Ministry for Women and Vulnerable Groups. First annual progress report on the National Plan of Action for Children and Adolescents 2012-2021, 2012. Consulted: 19 December 2013. P. 73. Available at: http://www.mimp.gob.pe/files/direcciones/dgna/informe_anual_2012_PNAIA2021.pdf.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid., p. 85.

⁹⁶ Congress of the Republic. Act No. 28950 on trafficking in persons and smuggling of migrants. Article 7. *El Peruano*, 16 January 2007.

⁹⁷ Ministry of the Interior Supreme Decree No. 013-2009-IN enacting the implementing regulations to Act No. 28950 on trafficking in persons and smuggling of migrants. *El Peruano*, 30 November 2008.

⁹⁸ Ibid. art. 27.4.

⁹⁹ Ibid., art. 29.4.

159. The regulations also establish responsibilities for the Ministry for Women and Vulnerable Groups, through its various programmes, to provide social care for children and adolescents who are direct or indirect victims of trafficking in persons.¹⁰⁰ These responsibilities include licencing, monitoring and overseeing the private sector institutions that provide assistance and protection services for women victims of trafficking in persons,¹⁰¹ and keeping a register of child, adolescent and women victims of trafficking who have received assistance.¹⁰²

160. For its part, the Ministry of Health is empowered to establish support mechanisms for police officers attached to the specialist anti-trafficking and child pornography units in those areas where the National Police's Health Directorate is unable to provide services.¹⁰³

161. Through Decision No. 589-2009-MP FN,¹⁰⁴ the Public Prosecution Service has adopted procedural guidelines for interviewing child and adolescent victims of sexual abuse, sexual exploitation and trafficking for purposes of sexual exploitation.

162. Through the Directorate-General of the Public Defence Service,¹⁰⁵ the Ministry of Justice provides free legal assistance in criminal proceedings when elderly persons, children and adolescents are affected by offences against life, body and health, and also in cases involving offences against personal freedom, including cases of trafficking of persons and illegal smuggling of migrants.

163. The National Plan of Action for Children and Adolescents 2012-2021¹⁰⁶ sets out the following implementing strategies to guarantee appropriate support for child victims of sexual exploitation of children: placing the children in prevention, care and rehabilitation programmes; training service providers on how to care for child and adolescent victims of sexual exploitation; and enhancing psychosocial support, family integration, shelter and care programmes for child and adolescent victims of such offences.¹⁰⁷

164. A supreme decree has been drafted to approve the Intersectoral Road Map for the Provision of Comprehensive Care and Protection for Victims of Child Sexual Exploitation, Abuse and Trafficking for Purposes of Sexual Exploitation and its Single Protocol.¹⁰⁸ A blended learning course on child sexual exploitation and the trafficking and smuggling of children and adolescents, designed for government officials directly involved in this field, has been run with support from the Inter-American Children's Institute, which delivered the online phase, while the Ministry for Women and Vulnerable Groups delivered the classroom phase.

¹⁰⁰ Ibid., art. 30.1.

¹⁰¹ Ibid., art. 30.7.

¹⁰² Ibid., art. 30.9.

¹⁰³ Ibid., art. 31.4.

¹⁰⁴ Ministry of the Interior Supreme Decree No. 4-2011-IN, adopting the National Plan of Action to Combat Trafficking in Persons (2011-2016). *El Peruano*, 19 October 2011. P. 38.

¹⁰⁵ Ministry of Justice Supreme Decree No. 13-2009-JUS, adopting the implementing regulations of Act. No. 29360 on the Public Defence Service. *El Peruano*, 30 September 2008. Art. 9.

¹⁰⁶ Ministry for Women and Vulnerable Groups Supreme Decree No. 001-2012-MIMP adopting the National Plan of Action for Children and Adolescents (2012-2021). *El Peruano*, 14 April 2012.

¹⁰⁷ Ibid., p. 80.

¹⁰⁸ Ministry for Women and Vulnerable Groups. First annual progress report on the National Plan of Action for Children and Adolescents 2012-2021, 2012. Consulted: 19 December 2013. P. 5. Available at: http://www.mimp.gob.pe/files/direcciones/dgna/informe_anual_2012_PNAIA2021.pdf.

165. Comprehensive assistance consisting of food, clothing, accommodation, education, health care, emotional support, social integration, psychological care, social assistance and vocational training has been provided to 73 child victims of sexual exploitation in the specialist residential care centre run by INABIF.¹⁰⁹

3. Prohibition measures

166. Article 1 of the aforementioned Act No. 28950 on trafficking in persons and smuggling of migrants,¹¹⁰ which amended articles 153 and 153-A of the Criminal Code, prohibits trafficking in persons and defines the sale of children for prostitution, sexual slavery and other forms of sexual exploitation as trafficking offences carrying a custodial sentence of not less than 8 and not more than 15 years.¹¹¹

167. Within their respective area of jurisdiction, the regional offices of foreign trade and tourism operated by regional governments prohibit providers of accommodation services from taking in minors who are not accompanied by a parent or duly identified guardian or legal representative,¹¹² and from facilitating and/or permitting the sexual exploitation of children and adolescents on their premises. Service providers who breach the regulations are subject to administrative penalties consisting, in the first instance, of withdrawal of their licence to provide tourist services,¹¹³ and, in the second, withdrawal of their rating and/or accreditation certificate.

168. Providers of restaurant services that facilitate and/or allow the sexual exploitation of children and adolescents on their premises face administrative penalties entailing the withdrawal of the establishment's rating and/or accreditation certificate.¹¹⁴

169. Providers of travel agency and tourism services likewise face administrative penalties if they facilitate or permit the sexual exploitation of children and adolescents on their premises, and are liable to have their licence to engage in tourism activities withdrawn.¹¹⁵

170. Similarly, concession holders and service providers operating medicinal mineral spas for tourists are prohibited from encouraging or allowing the sexual exploitation of children and adolescents on their premises and are punished for such offences by the withdrawal of their concession.¹¹⁶

171. Providers of land transport for tourists are likewise prohibited from promoting the sexual exploitation of children in their vehicles and facilities, and tourist transport companies that violate this prohibition face punishment in the form of withdrawal of their accreditation as a provider of tourist services.¹¹⁷

¹⁰⁹ Ibid., p. 72.

¹¹⁰ Congress of the Republic. Act No. 28950 on trafficking in persons and smuggling of migrants. *El Peruano*, 16 January 2007.

¹¹¹ Ibid., art. 1.

¹¹² Ministry of Foreign Trade and Tourism Supreme Decree No. 7-2007-MINCETUR, adopting the implementing regulations of the Act which empowers the Ministry of Foreign Trade and Tourism to criminalize, by regulation, offences committed in the provision of tourism services and categorization of accommodation and establishes the applicable penalties (Act No. 28868). *El Peruano*, 7 June 2007. Art. 13, para. 13.16.

¹¹³ Ibid., art. 13, para. 13.17.

¹¹⁴ Ibid., art. 14, para. 14.11.

¹¹⁵ Ibid., art. 15, para. 15.12.

¹¹⁶ Ibid., art. 16, para. 16.15.

¹¹⁷ Ibid., art. 17, para. 17.4.

172. Mountain guides are also prohibited from promoting and/or permitting the sexual exploitation of children and adolescents in the course of their activities, and are punished for such offences by the withdrawal of their respective carnet.¹¹⁸

173. The Child Pornography Investigation Department of the Advanced Technology Crime Division of the Directorate of Criminal Investigations of the Peruvian National Police has identified two victims of child pornography as a result of its activities, which involved drawing up 148 investigation reports, taking 11 statements, making 6 arrests and processing 328 incident reports.¹¹⁹

Article 10

1. Measures to strengthen international cooperation for the prevention, detection, investigation, prosecution and punishment of those responsible for offences involving the sale of children, child prostitution, pornography or sex tourism

174. The Peruvian Government has signed a number of international agreements aimed at preventing sexual exploitation of children and adolescents. The Ministry of the Interior, for example, signed a cooperation agreement with the University of Granada in Spain on 11 April 2011. Under the terms of the agreement, the University is to provide the Directorate of Criminal Investigations of the Peruvian National Police, which has a modern DNA laboratory, with the kits and equipment needed to collect, analyse and process the biological samples used for the DNA tests that permit the genetic identification of children and adolescents, and also their missing relatives, within the framework of the DNA-Prokids programme.

175. In addition, the Ministry of Foreign Trade and Tourism cooperates with the Regional Action Group for the Americas, exchanging experiences of best practice for the prevention of commercial sexual exploitation of children and adolescents in tourism.

176. Similarly, the implementing regulations of the General Act on Tourism, adopted by Supreme Decree 003-2010-MINCETUR, dated 16 January 2010, provides that regional and local governments shall, using their own resources or funds raised through international cooperation, plan and execute action to implement measures to prevent the commercial sexual exploitation of children and adolescents.

177. The International Organization for Migration, the Inter-American Development Bank and the Ricky Martin Foundation have contributed funds for the implementation of the free 0800-2-3232 telephone hotline for reporting cases of trafficking in persons.¹²⁰

2. Measures to facilitate and promote international cooperation

178. Goal No. 25 under strategic objective No. 8 of the National Plan of Action to Combat Trafficking in Persons 2011-2016 provides for cooperation between the Peruvian authorities and the authorities of the country of destination and/or transit of Peruvian victims in issues of residence, return/repatriation and access to assistance

¹¹⁸ Ibid., art. 18, para. 18.17.

¹¹⁹ Ministry for Women and Vulnerable Groups, first annual progress report on the National Plan of Action on Children and Adolescents 2012-2021, 2012. Consulted: 19 December 2013, p. 73. Available at: http://www.mimp.gob.pe/files/direcciones/dgna/informe_anual_2011_PNAIA2021.pdf.

¹²⁰ Ministry of the Interior Ministerial Resolution No. 0491-2010-IN-0105, recognizing the institutional status of the 0800-2-3232 human trafficking telephone hotline. *El Peruano*, 31 May 2010.

programmes.¹²¹ It also provides that action taken in implementation of the Plan shall include the establishment of cooperation and coordination mechanisms within the Ministry of Foreign Affairs to ensure due assistance in cases of trafficking abroad in which the victims are children.¹²²

Article 11

179. The provisions of the Optional Protocol are to be interpreted and applied in line with the Convention on the Rights of the Child, international human rights treaties ratified by the State and the international instruments on judicial cooperation.

Legal status of the Optional Protocol in national legislation and its applicability in domestic courts

180. The Optional Protocol was approved by the Congress of the Republic by Legislative Decision No. 27518 of 13 September 2001 and ratified by the executive branch through Supreme Decree 078-2001-RE of 6 October 2001. It has been in force for Peru since 12 February 2002.

181. With regard to the legal status of the Optional Protocol, article 55 of the Constitution of 1993 provides that treaties ratified by the State and which have come into force form part of national law. International human rights treaties have constitutional rank and constitute an integral part of the constitutional corpus, as established by the Constitutional Court, the chief interpreter of the Constitution, which has stated that the constitutionally protected nature of the rights recognized by the Constitution derives not only from the relevant constitutional provision, but also from the provisions of international human rights law.¹²³

182. The fourth final and transitional provision of the Constitution of 1993 stipulates that the rules relating to constitutional rights and freedoms are to be interpreted in conformity with the Universal Declaration of Human Rights and such relevant international treaties and agreements as Peru has ratified. This interpretation is also echoed in article 5 of the first section of the Code of Constitutional Procedure, which states:¹²⁴

“Article V. The content and scope of the constitutional rights protected by processes governed by the present Code are to be interpreted in accordance with the Universal Declaration of Human Rights, human rights treaties, and the decisions adopted by international human rights tribunals constituted under treaties to which Peru is a party.”

183. The provisions of the above paragraphs and the decision of the Constitutional Court of Peru, to the effect that international human rights treaties have constitutional status and prevail over domestic law, support the conclusion that the definition of racial discrimination set forth in the Constitution is in line with the definition contained in article 1 of the International Convention on the Elimination of All Forms

¹²¹ Ministry of the Interior Supreme Decree No. 4-2011-IN, adopting the National Plan of Action to Combat Trafficking in Persons (2011-2016). *El Peruano*, 19 October 2011. P. 80.

¹²² Ibid.

¹²³ Constitutional Court. Decision of 29 November 2005, issued in Case No. EXP. No. 4587-2004 AA/TC, F.44, second paragraph.

¹²⁴ Congress of the Republic. Code of Constitutional Procedure. Act No. 28237. *El Peruano*, 31 May 2004.

of Racial Discrimination, namely, that it covers discrimination based on race, colour, descent or national or ethnic origin.¹²⁵

184. Similarly, article III of the first section of the Code on Children and Adolescents provides that the Code shall be interpreted and applied in accordance with the principles and provisions of the Convention on the Rights of the Child and other international treaties ratified by Peru. It can therefore be concluded that the Optional Protocol forms part of the Peruvian legal order and thus constitutes currently applicable law.

¹²⁵ Constitutional Court. Decision of 25 April 2006, Case No. 0025-2005-PI and No. 0026-2005-PI.