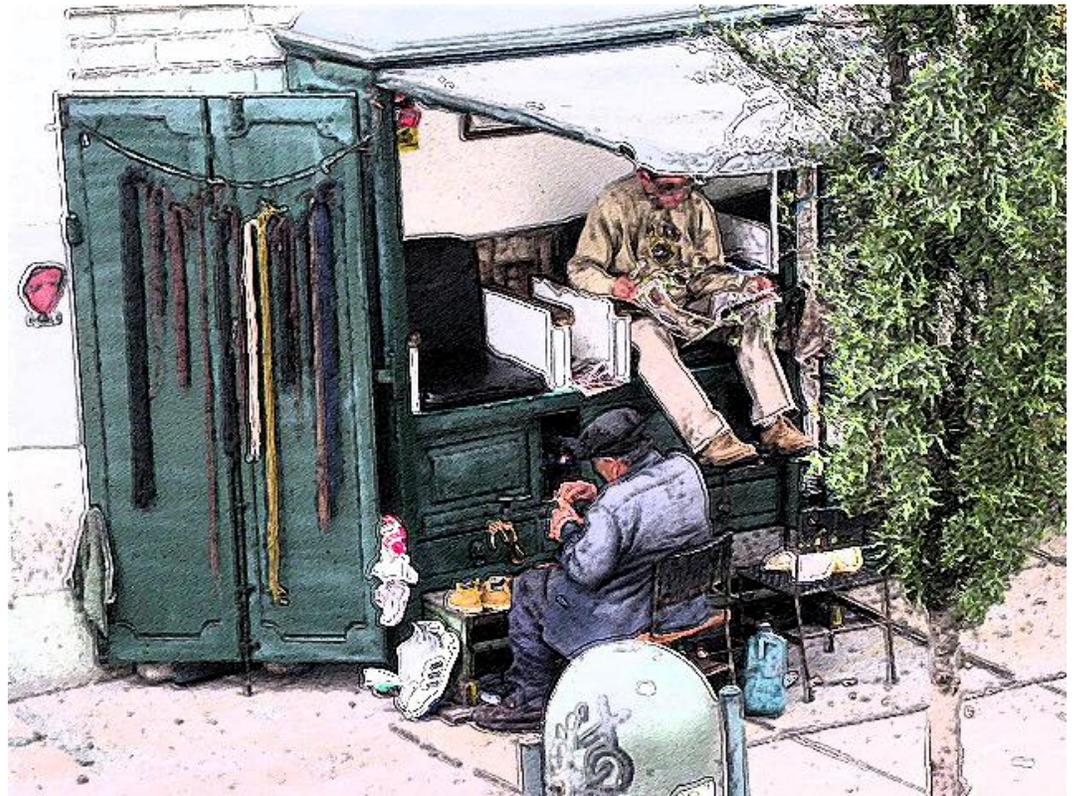


SOUTH AMERICAN DREAM



Rachel Odio

Migration Policies in Chile and Peru

Notre Dame Law School
Program on Law and
Human Development

In the face of changing national politics and economics, both Chile and Peru are beginning to conceive of migration as an opportunity and a responsibility rather than as simply a national security concern.



Program on Law and Human Development

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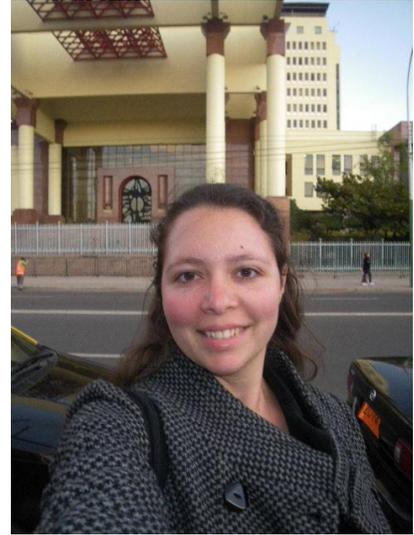
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About the author

Rachel Odio (Candidate for Juris Doctor, 2012; B.A., College of Idaho, 2008) compared migration issues in Chile and Peru and split her summer between Santiago and Lima. While in Santiago, she was hosted by Professor Macarena Rodríguez of the Consultorio Inmigrantes at Universidad Alberto Hurtado. She interviewed officials from international organizations and the Chilean government, along with a wide range of individuals from civil society working on immigration. In Lima, where Ms. Odio was hosted by the Centro de Investigación de la Universidad del Pacífico, her research shifted to Peruvian emigration and to governmental and civil society responses to this phenomenon.

"[My] experience raised questions about human reaction to the 'other.' At the same time, it was inspiring to discover the care and support some dedicate to marginalized members of society, like immigrants. Their compassion testifies to another element of human nature."



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About the program



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EXECUTIVE SUMMARY

In the face of changing national politics and economics, both Chile and Peru are beginning to conceive of migration as an opportunity and a responsibility rather than as simply a national security concern. Though Chile's antiquated immigration policies result in limited and often erratic promotion of migrants' human development, today both civil society and government ministries often take matters into their own hands to bridge the policy gaps while waiting for the national government to institute reforms. Meanwhile, as Peru grapples with the depth of emigration's impact on its economy, it also celebrates some successes in developing effective strategies to promote safe and productive emigration.

Historically, migration in Chile came predominantly from Europe. Today, Chile's political reforms and burgeoning economy, coupled with political and economic crises in neighboring countries and tightening migration policies in Europe and the United States, spur regional immigration. Though the immigration rate in Chile is in fact still low relative to other developed nations, the Chilean public views the recent increases in the number of immigrants with mounting concern, particularly in the Metropolitan Region where immigration is concentrated. Visions of giant waves of immigrants coming ashore only exacerbate the tendency of Chileans to reduce immigrants to stereotypes of unruly gatherings or delinquent teens and threaten to undermine public support for migration. Nevertheless, in some ways tensions surrounding immigration have abated in recent years. Chileans now acknowledge Peruvian cuisine, for example, as a positive cultural addition, and they are thankful that immigrants take on occupations that Chileans themselves no longer find desirable, such as domestic service and manual labor.

Immigration matters in Chile are regulated primarily by the *Ley de Extranjería* (Aliens Law) of 1975, which was established during the Pinochet dictatorship. Under the law, the most common way for migrants to enter the country is through the Visa Subject to Contract, which is available to persons who travel to Chile for the purpose of fulfilling a work contract, or who are in the country

and seek to fulfill a work contract. Many interviewees indicated that immigrants tolerate hardships such as long hours, poor working conditions, and even verbal abuse in order to maintain their work contract, which is their key to the Visa Subject to Contract.

Another element of Chile's immigration system is border control, which numerous interviewees identified as problematic. Because Chile's migration framework grants substantial discretion to border officials regarding who may enter or exit the country, these officials may impose additional requirements, such as screening interviews or proof of financial sustainability, based on a person's nationality or appearance. In the experience of many migrants at the border control stations, official discretion all too often shades over into official abuse.

Gaps in the law are another area of concern for migrants in Chile. Increasingly, Chilean government ministries laudably attempt to bridge gaps in the Aliens Law through administrative action, but such efforts often must overcome various bureaucratic obstacles. For example, in spite of several ministries' efforts to guarantee migrant children's right to education, it is still not possible to officially register grades for irregular migrant students. Similarly, ministerial commitments to healthcare for migrants have not come to fruition.

Chile does not have an anti-discrimination law, but most interviewees noted that state institutions do not directly discriminate against migrants. On the other hand, none of the interviewees claimed that state

Visions of giant waves of immigrants coming ashore only exacerbate the tendency of Chileans to reduce immigrants to stereotypes of unruly gatherings or delinquent teens and threaten to undermine public support for migration.

institutions offer much in the way of concrete aid to migrants attempting to navigate the legal system in search of rights or benefits. Consequently, most NGOs working with migrants spend a significant amount of time assisting their clients with unfamiliar procedures and substantive law.

Social discrimination against migrants roughly parallels discrimination against Chileans of similar socioeconomic backgrounds. Whether native or foreign-born, for example, metropolitan residents of limited financial means must tolerate substandard housing and exploitative rental practices. Such discrimination tends toward the "ghetto-ization" of the city and relegates most migrants to unsanitary and even dangerous living conditions.

In contrast with Chile, immigrants in Peru are largely invisible. Instead, a great deal of Peru's attention and energy focuses on emigration, about which there is a growing concern and sense of responsibility. Between 1990 and 2009, approximately 7% of Peru's total population lived abroad. The state accordingly has a vested interest in safeguarding and developing its human capital by effectively addressing issues of pre-emigration, emigration, and return.

Though migration is difficult and expensive, many Peruvian families may decide that it is necessary for a family's survival. Migration can be a source of empowerment, particularly for women. At the same time, migration can be a traumatic or painful experience, especially for those whose families are torn apart. Where separated from immediate family in Chile, Peruvian migrants depend heavily on established networks of fellow Peruvians and extended family to accomplish tasks such as finding a job or a place to live.

Between 1990 and 2009, approximately 7% of Peru's total population lived abroad.

For Peruvians contemplating migration, Peru offers pre-emigration services that aim to help Peruvians make informed decisions about migration, to make them aware of their rights as migrants, and to keep them apprised of their destination country's requirements for regular migration. In Chile, as in other countries, Peru also assists current emigrants through consular services. The Peruvian state's attentions are

at least partially motivated by the significant remittances sent by migrants, approximately \$3 billion annually. Monetary remittances possess the potential to stimulate the economy while helping to improve the quality of life of the recipients. Peru therefore seeks to support the sustainable investment of those remittances.

Another aspect of emigration that Peru deals with is the return of migrants. With only a minority of returning migrants finding employment, the returnees may be received as a burden on their families. Some return mistakenly expecting that their years of hard work and contributions to their host countries' social security programs will translate into social security benefits in Peru.

This sketch of migrant situations in both Chile and Peru is predominantly based on interviewees' observations. Most of the interviewees agreed that Chile needs a number of structural and procedural changes in its immigration system. Transparency on the part of the state would go a long way toward alerting migrants as to their rights and responsibilities. Likewise, limiting migration officials' discretion would curb abuses and any real or perceived discrimination. Every interviewee noted that legislative reforms should begin with elimination of the Visa Subject to Contract in favor of a new, less restrictive work visa that would remove migrants' dependence on labor contracts. Chile should also consider adopting housing and anti-discrimination laws as a remedy for victims of discrimination.

While Peru appears to be committed to protecting and promoting the welfare of emigrant citizens in Chile, it should also take significant steps within Peru to strengthen citizens' access to those health, education, and labor rights necessary for human development so that the choice to migrate will be voluntary, not coerced by a lack of basic opportunities.

South American Dream

MIGRATION POLICIES IN CHILE AND PERU

INTRODUCTION

In the face of changing national politics and economics, Chile and Peru are beginning to conceive of migration as an opportunity and a responsibility rather than as simply a national security concern. In Chile, antiquated immigration policies result in limited and often erratic promotion of migrants' human development. Both civil society and government ministries attempt to work around the policy gaps by taking matters into their own hands while awaiting the necessary national reforms. In Peru, the state is coming to grips with the depth of emigration's impact on its political economy and seeks to develop effective strategies to promote safe and productive emigration.

This paper portrays the experiences of labor-migrants in both countries by examining scholarship that relates to their plight and by offering insights gleaned through interviews with the scholars, government officials, and civil society leaders in the two countries who work with the migrants. Part I briefly introduces the Human Capabilities Approach to human development and Catholic Social Teaching, both of which provide a valuable prism through which to view and judge the situation in Chile and Peru. Part II focuses on Chile's experience with modern migration, providing an overview of migration demographics in Chile, a general description of Chile's legal framework for migration, and an evaluation of that framework based on interviewees' experiences and observations. Part III focuses on Peru's experience with emigration, beginning with a brief description of Peruvian emigration statistics and government agencies' interaction with emigration and continuing with a description of government programs designed to assist emigrants before emigration, during emigration, and upon return. The section also considers the economic and non-economic effects of emigration, such as remittances, family relationships, and the exercise of political power.



I. BRIEF OVERVIEW OF HUMAN DEVELOPMENT & CATHOLIC SOCIAL TEACHING

"For I was . . . a stranger and you welcomed me."

The Human Capabilities Approach and Catholic Social Teaching provide the broad backdrop for this paper. The Human Capabilities Approach (HCA) focuses on the development of each individual within a society—that is, "the freedoms or opportunities created by a combination of personal abilities and the political, social, and economic environment."¹ Human capabilities can also be described as opportunities: the presence of a capability means that an individual possesses an opportunity or an ability to choose to exercise a right or value.² Capabilities, it must be understood, refer to external opportunities, not innate abilities; the two may be interrelated, but capabilities might exist without abilities.³

What capabilities, then, are necessary for an individual to flourish in society? Martha Nussbaum, one of the most important contributors to HCA theory, proposes that governments must provide ten Central Capabilities in order for individuals "to pursue a dignified and minimally flourishing life": life,⁴ bodily health,⁵ bodily integrity,⁶ senses/imagination/thought,⁷ emotions,⁸ practical reason,⁹ affiliation,¹⁰ other species,¹¹ play,¹² and control over one's political and material environment.¹³ For purposes of illustrating how these capabilities might play out in a single concrete context, consider a person at work; she should be able to work with all the dignity owed to a human being, to exercise "practical reason," and to engage in meaningful relationships with one's coworkers.¹⁴

As one educational document reminds its readers, "The baby child Jesus was a refugee."

While grounded in a different starting point, Catholic Social Teaching shares some of the same conclusions as the Human Capabilities Approach in terms of what conditions are needed for the flourishing of migrants. Fundamentally, Catholic Social Teaching addresses migration on the basis of (1) Biblical accounts of asylum, displacement, and mobility, (2) general principles of justice, and (3) the values of the Catholic lived tradition.

¹ MARTHA NUSSBAUM, CREATING CAPABILITIES 20 (2011).

² *Id.* at 20–21.

³ *Id.* at 21. Nussbaum cites as an example the capability of innate creativity without the ability of free speech. *Id.*

⁴ Life means the opportunity to live a normal lifespan, without dying prematurely or being harmed in such a way as to make one's life "not worth living." *Id.* at 33.

⁵ Bodily health includes reproductive health, basic nutrition, and adequate shelter.⁵ Bodily integrity includes freedom of movement, freedom from violent assault, sexual satisfaction, and reproductive choice. *Id.*

⁶ Bodily integrity includes freedom of movement, freedom from violent assault, sexual satisfaction, and reproductive choice. For both Bodily Health and Bodily Integrity, freedom from assault includes freedom from both sexual assault and domestic violence. *Id.*

⁷ Senses, imagination, and thought refer to the opportunity to think creatively and rationally, to be informed, to receive at least a basic education, and to experience or otherwise interact with religion, literature, and music. *Id.*

⁸ Emotions includes the ability to attach emotionally to "things" and people; to love, to grieve, to long, to feel gratitude, and to feel anger. It includes the ability to exercise freedom of expression and religious freedom, the ability "to have pleasurable experiences," and the ability "to avoid nonbeneficial pain." It extends to a freedom from debilitating or incapacitating fear or anxiety. In practice, supporting this capability may require supporting relationships crucial to emotional development. *Id.* at 34.

⁹ Practical reason means the opportunity to develop critical thinking about good and evil and one's personal future. *Id.*

¹⁰ Affiliation has two parts: (1) the opportunity to live with others, to interact socially and show concern for other people, and the ability to empathize, and (2) the opportunity to have self-respect and be respected by others, to be treated with dignity and to avoid discrimination. *Id.*

¹¹ Other species refers to the opportunity to live with respect and concern for nature, including animals and plants. *Id.*

¹² Play means the opportunity to enjoy life: "to laugh, to play, to enjoy recreational activities." *Id.*

¹³ Control over one's environment also has two parts. The first element is political. This capability concerns the opportunity to have the right and the ability "to participate effectively in political choices that govern one's life." *Id.* at 33–34. It includes political rights like free speech and freedom of association. The second element is material. It includes the opportunity to hold property, to seek employment, and to be free "unwarranted" invasions of privacy—all "on an equal basis with others." *Id.*

¹⁴ *Id.*

In Catholic Social Teaching, the Bible is a rich source of inspiration, even for a contemporarily contentious topic like immigration. As one educational document reminds its readers, "The baby child Jesus was a refugee."¹⁵ Another passage invokes God's admonition to Israel regarding foreigners: "You shall treat the alien who resides with you no differently than the natives born among you; have the same love for him as for yourself; for you too were once aliens in the land of Egypt."¹⁶

Supplementing such Biblical sources are general principles of justice that relate to immigration. According to the U.S. Conference of Catholic Bishops, such principals include the individuals' rights to "find opportunities" in one's homeland and to migrate in support of oneself and one's family; the states' "right to control their borders"; the need to protect refugees and asylum-seekers; and the need to respect the human rights and dignity of undocumented migrants.¹⁷

Finally, to give just one example of a document that reflects Catholic lived tradition, Pope Benedict XVI's Encyclical Letter *Caritas in Veritate* addresses numerous concepts that he instructs must be included for a Catholic vision of human development. These concepts include consideration of the community¹⁸ and the common good,¹⁹ fraternity,²⁰ knowledge,²¹ duties,²² the environment,²³ family²⁴ and other human relationships, and the integrity of the human person.²⁵

Though the Human Capabilities Approach and Catholic Social Teaching spring from considerably different perspectives and assumptions, the two overlap in important topics, such as health, education, relationships, and the individual's role in the community. Accordingly, this paper's general review of Chile's and Peru's migration policies and their effects on labor migration includes consideration of the impact of those policies on migrants' health, education, relationships, and political participation.

¹⁵ *Catholic Social Teaching and Migration, Justice for Immigrants*, www.justiceforimmigrants.org/documents/immigration-and-catholic-social-teaching.pdf (last visited Oct. 18, 2011).

¹⁶ *A Guide to Understanding Catholic Social Teaching on Immigration and the Movement of Peoples*, U.S. Conference of Catholic Bishops (2011), <http://nccbuscc.org/mrs/cst.pdf> (citing *Leviticus* 19:33–34).

¹⁷ *Strangers No Longer: Together on the Journey of Hope*, U.S. CONFERENCE OF CATHOLIC BISHOPS (Jan. 22, 2003), <http://usccb.org/issues-and-action/human-life-and-dignity/immigration/strangers-no-longer-together-on-the-journey-of-hope.cfm>.

¹⁸ Pope Benedict XVI, Encyclical Letter, *Caritas in Veritate*, para. 53 (2009).

¹⁹ *Id.*, para. 7.

²⁰ "Underdevelopment has an even more important cause than lack of deep thought: it is 'the lack of brotherhood among individuals and peoples.'" *Id.*, para. 19.

²¹ *Id.*, para. 30.

²² "[I]ndividual rights, when detached from a framework of duties which grants them their full meaning, can run wild, leading to an escalation of demands which is effectively unlimited and indiscriminate *The sharing of reciprocal duties is a more powerful incentive to action than the mere assertion of rights.*" *Id.*, para. 43.

²³ *Id.*, para. 48.

²⁴ "The decline in births, falling at times beneath the so-called 'replacement level', also puts a strain on social welfare systems, increases their cost, eats into savings and hence the financial resources needed for investment, reduces the availability of qualified labourers, and narrows the 'brain pool' upon which nations can draw for their needs States are called on to *enact policies promoting the centrality and the integrity of the family* founded on marriage between a man and a woman, the primary vital cell of society, and to assume responsibility for its economic and fiscal needs, while respecting its essentially relational character." *Id.*, para. 44.

²⁵ "In *development programmes*, the principle of the *centrality of the human person*, as the subject primarily responsible for development, must be preserved. The principal concern must be to improve the actual living conditions of the people in a given region, thus enabling them to carry out those duties which their poverty does not presently allow them to fulfill." *Id.*, para. 47.

II. THE RECEIVING STATE: CHILE

We hope that each day we will be capable of advancing towards a more inclusive country, a less discriminatory country, a more humane and solidary country.

Michelle Bachelet²⁶



Historically, migration to Chile from Europe far outweighed migration from other South American states, but today Chile's political maturity and economic reforms—coupled with political and economic crises in neighboring countries—have spurred regional immigration.²⁷ In addition, immigration as a whole is increasing, as indicated by the latest census of 2002, which identified 1.2% of the population as foreign, compared to 0.9% in 1992.²⁸ That 2002 foreign population was heavily regional in origin, with 77% coming from the Americas (26% Argentina, 21% Peru, 6% Bolivia, 5.5% Ecuador, and 4% United States) and only 17% from Europe.²⁹ The 2002 census also indicated that approximately 60% of immigrants reside in the *Región Metropolitana* (Metropolitan Region), in or near the capital of Santiago.³⁰

The next census is due in 2012. Meanwhile, the Alien Status & Immigration Office (*Departamento de Extranjería y Migración, DEM*) estimates that the current number of foreigners residing in Chile is approximately 350,000, representing a 72% increase over the 2002 census count.³¹ The estimates also

indicate that the trend away from European to regional migration continues, though the specific countries of origins have shifted somewhat. The estimated breakdown of the regions and countries of origin are 73% from

²⁶ Office of the United Nations High Commissioner for Refugees [UNHCR], *Chile País de Acogida*, available at www.google.com/url?sa=t&source=web&cd=2&ved=0CCMQFjAB&url=http%3A%2F%2Fwww.unhcr.org/refugees/pdf/44d3ea0d27_Folleto%2520ACNUR%2520Chile%2520País%2520de%2520Acogida.pdf&ei=GpRTs7vE6bt0gGgoPCGBw&usq=AFQjCNE6z4J_UcDGpzDdYAkZ-2ZVgifCQ (translated from Spanish by the author).

²⁷ ECONOMIC COMMISSION FOR LATIN AMERICA [ECLAC], *MIGRACIÓN INTERNACIONAL EN AMÉRICA LATINA Y EL CARIBE: NUEVAS TENDENCIAS, NUEVOS ENFOQUES* [INTERNATIONAL MIGRATION IN LATIN AMERICA AND THE CARIBBEAN: NEW PATTERNS, NEW FOCUSES], at 126–27, U.N. Sales No. LC/R.2170 (2011), available at <http://www.eclac.cl/publicaciones/xml/4/43634/lcr2170.pdf>. Former President Michelle Bachelet called the phenomenon the "new immigration" and declared Chile a *país de acogida*, a receiving state. Instructivo Presidencial Perú, que Imparte Instrucciones sobre "Política Nacional Migratoria," Gab. Pres. No. 009, (Sept. 2, 2008), available at <http://transparenciaactiva.presidencia.cl/Otros%20Antecedentes/16.-%20Inst.%20N%20%209.pdf>.

²⁸ ECLAC, *supra* note 27, at 127.

²⁹ *Id.* at 127. The data indicates a significant change in the demographics of Chile's immigrants.

³⁰ *Id.* at 129.

³¹ *Id.* at 126.

the Americas (37% Peru, 17% Argentina, 7% Bolivia, 5.5% Ecuador, and 3.5% Colombia, and 2.8% United States) and less than 5% from Europe.³²

Notably, the DEM's expanded estimate of 350,000 foreigners is only 2.3% of Chile's total population, but the figure nonetheless represents a substantial increase in immigration over the 1982 figures, in which foreigners accounted for less than 1% of the population.³³ These numbers help explain why the public perceives a significant increase in immigration in recent years, particularly in the Metropolitan Region where immigration is concentrated, even though Chile's percentage of foreign-born residents is in fact low compared to other developed countries. This illusion of giant waves of immigrants coming ashore, coupled with unfair stereotypes of migrants in unruly gatherings or as delinquent teens, threatens to undermine public support for migration into Chile. Ironically, over 850,000 Chileans resided abroad in 2005, far outnumbering the projected number of foreigners in Chile.³⁴

[W]hile foreigners actually represent a small segment of Chile's population, the sudden increase in Peruvian immigration gave rise to an image of an *oleada*, a "wave" of Peruvian immigration that led to tensions, prejudices, and discrimination.

Nationality is not the only changing demographic among Chile's immigrants. Today female migrants outnumber male migrants,³⁵ and, interestingly, some of those migrant women have found a niche in Chilean society. While Chilean women have lower employment rates than other Latin American countries, they are increasingly active outside of the home—and immigrant women are replacing them *inside* the home by taking responsibility for care of the children, the home, and the elderly.³⁶

In fact, according to a U.N. Economic Commission for Latin America and the Caribbean (ECLAC) study, the primary markets drawing on migrant labor in Chile are domestic service and retail trade.³⁷ For example, the Center for Women's Studies estimates that approximately 70% of Peruvian women work in domestic service in Chile.³⁸ Most interviewees also identified construction work as an important, and perhaps the primary, source of employment for migrant men. The ECLAC study notes that some professional niches, such as medicine, are facilitated through the regional Andrés Bello Convention addressing title validation,³⁹ but interviewees were less optimistic about this agreement's effectiveness in practice.

To a small extent, armed conflict and insecurity also play a role in Chile's immigration flows, as some countries, notably Colombia, send "mixed flows" of economic and security-oriented emigration.⁴⁰ Most Latin American migration today, however, is motivated by weak economies and low employment rates in the sending states.⁴¹ Increasingly restrictive migration policies in many former destination states, such as Spain, also affect migration within the region.⁴²

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 132.

³⁵ Centro de Estudios de la Mujer (CEM) [Center for Women's Studies], Remarks at the Encuentro con legisladores: "Cuidados, Trabajo Doméstico y Migraciones: derechos y responsabilidades compartidas," Valparaíso, Chile (June 9, 2011).

³⁶ Women's employment rates were under 30% until the 1990s, increased to almost 36% in 2002, and rose again to 43% in 2009. Luz María Ferrada & Pilar Zarzosa, *Diferencias Regionales en la Participación Laboral Femenina en Chile*, 47 CUADERNOS DE ECONOMÍA 249, 249 (2010), available at <http://www.scielo.cl/pdf/cecon/v47n136/art05.pdf>.

³⁷ *Id.* at 129.

³⁸ CEM, Encuentro con legisladores, *supra* note 35.

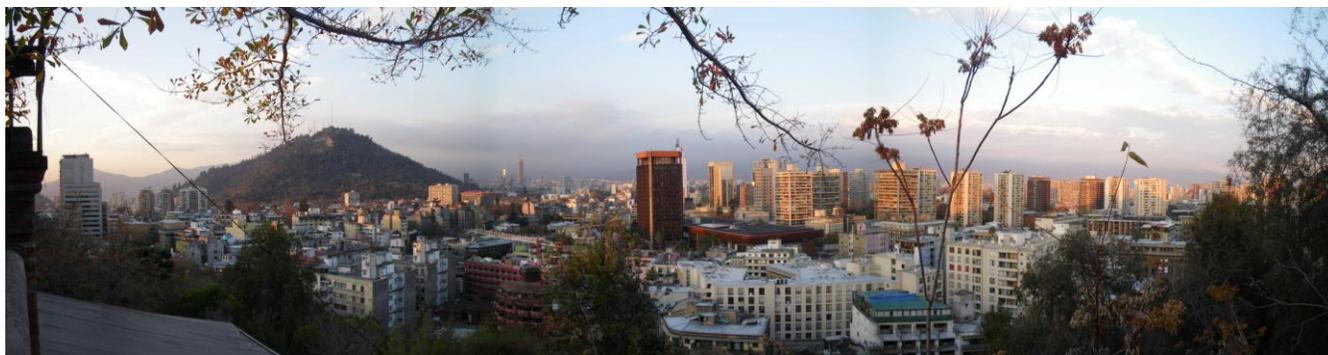
³⁹ ECLAC, *supra* note 27, at 129.

⁴⁰ *Id.* at 128.

⁴¹ *Id.*

⁴² For more information about increasingly restrictive migration policies, see, e.g., the chapters written by Víctor Abramovich, Lelio Mármora, and Javier de Lucas in *POLÍTICAS MIGRATORIAS Y DERECHOS HUMANOS* (Pablo Ceriani Cernadas & Ricardo Fava eds., 2009).

With this general sketch of Chile as a receiving state in mind, it is instructive to turn to Chile's history with one particular sending state: Peru. The reasons behind Peruvian immigration into Chile can be traced to a variety of factors. Sociologist Leonardo Polloni⁴³ attributes the sudden increase in the 1990s to Fujimori's rise to power in Peru.⁴⁴ Indeed, the first flow of Peruvian immigrants corresponded with Fujimori's presidency, suggesting those immigrants were political dissidents fleeing the country.⁴⁵ The second flow appears to indicate a tide of family reunification with the first set of immigrants.⁴⁶ The scenario is unsurprising as, in general, stable immigrant communities consist of networks that facilitate the migration of friends, relatives, and acquaintances by offering assistance such as advice on the journey and documentation requirements, hosting newly arrived migrants, helping find employment, and more.⁴⁷



Within Chile, the Peruvian immigrants were attracted to an increased demand for domestic labor triggered in part by an aging population and in part by Chilean women's growing rates of employment outside of the home. Nicolás Torrealba, director of the DEM from 2000 to 2005, also adds climate to the list of factors motivating Peruvian migration to Chile, particularly the droughts caused by the *El Niño* phenomenon in the 1990s.⁴⁸ Simultaneously, Chile's political and economic stability increased the demand for labor, especially domestic workers.⁴⁹

Another interviewee, Raúl Hidalgo Gallegos, Deputy Consul General of Peru in Santiago, suggested that in the past eight years, employment concerns within Peru motivated migration to nearby Chile, where the economy is more stable and developed.⁵⁰ He corroborates the pattern that heads of household tend to arrive first, followed by family and later by their friends.⁵¹ According to Hidalgo, these immigrants generally intend to remain in Chile if they are successful.⁵²

For these various reasons, the interviewees agreed that Peruvians were (and are still) migrating to Chile—but they had different theories about what prompted Chilean animosity against these Peruvians. Polloni stated that, while foreigners actually represent a small segment of Chile's population, the sudden increase in Peruvian immigration gave rise to an image of an *oleada*, a "wave" of Peruvian immigration that led to tensions,

⁴³ Leonardo Polloni specialized in International Migration Integration (*Diplomado en Integración de la migración internacional*) at the University of Chile. He is a researcher for Fundación Ideas, a civil-society organization promoting deliberative and participatory democracy in Chile, and there he helped develop the program *Todos Somos Migrantes* (We are All Migrants). See generally SOMOS MIGRANTES, www.somosmigrantes.cl (last visited Dec. 23, 2011) and FUNDACIÓN IDEAS, www.ideas.cl/ (last visited Aug. 5, 2011).

⁴⁴ Interview with Leonardo Polloni, Fundación Ideas, in Santiago, Chile (June 7, 2011).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Interview with Nicolás Torrealba, Former Director (2000–2005), Alien Status & Immigration Office, in Santiago, Chile (June 24, 2011).

⁴⁹ *Id.*

⁵⁰ Interview with Raúl Hidalgo Gallegos, Deputy Consul General of Perú, in Santiago, Chile (June 23, 2011).

⁵¹ *Id.*

⁵² *Id.*

prejudices, and discrimination.⁵³ Many interviewees noted that Chile's geographical and cultural isolation and sense of superiority⁵⁴ also generated suspicion and prejudices against foreigners, particularly Latin American immigrants.⁵⁵ Polloni also suggested that ingrained Chilean classism tends to discriminate against all working-class groups, whether foreign or local.⁵⁶

On a more positive note, Polloni predicted that tensions would calm as the public begins to understand that migration is a normal element of human nature and globalization.⁵⁷ For that reason, Polloni recommends educating the public about how immigration can benefit Chile. Chileans now recognize Peruvian cuisine, for example, as a positive addition to Chilean culture. It might also be helpful to point out that immigrants often willingly take on occupations that Chileans no longer find desirable, such as domestic service and manual labor, and that a large proportion of immigrants possess technical education. In addition, foreign-educated immigrants represent a cost-free benefit, in the sense that they bring valuable skills and knowledge without drawing on Chile's educational resources.⁵⁸

A. Migration Framework in Chile

As with all receiving states, Chile has a patchwork of laws and legal procedures to deal with migrants. Immigration matters are regulated primarily by the *Ley de Extranjería* (Aliens Law) of 1975,⁵⁹ a law established during the Pinochet dictatorship that continues to address “foreigners’ entry, residence, exit, reentry, expulsion and control.”⁶⁰ Under the law, most visa and authorization matters are delegated to the Ministry of the Interior.⁶¹ As discussed below, other ministries also participate in migration questions as necessary, issuing directives to fill the gaps left by the Aliens Law, such as irregular migrant children's right to an education.⁶²

In the Chilean legal system, there is no central control of immigration. The Aliens Law delegates authority to the Ministry of the Interior⁶³ to determine the requirements for visas, extensions, and permanent residency.⁶⁴

⁵³ Interview with Leonardo Polloni, *supra* note 44.

⁵⁴ Asked for an example of Chilean nationalism, one interviewee offered that Chileans more highly esteem a diploma from Chile's Universidad Católica than one from Harvard University. On the other hand, other interviewees observed that European and North American foreigners, and sometimes Argentineans, are the subjects of positive discrimination, i.e. they are automatically perceived as a potential boon to the country. The latter perception was offered as an example of Chileans' general sense of inferiority about their home country.

⁵⁵ Argentineans appear to be regarded more favorably than other Latin American groups. Notably, a little over half of Chileans residing abroad choose to live in Argentina. ECLAC, *supra* note 27, at 132.

⁵⁶ Interview with Leonardo Polloni, *supra* note 44.

⁵⁷ *Id.*

⁵⁸ *Id.* A recent meeting between academics, activists, and Congresswomen illustrated the range of current opinion regarding immigrants. One *diputada* (Representative) described immigration's important contribution to economic growth during this period when Chile's birth rates remain low; another admitted a need for immigrant labor and noted the need to avoid “ghetto-building,” in light of France's negative experiences; and a third spoke of foreign spies and child-abusing Peruvian nannies. Remarks of various participants at Encuentro con legisladores: “Cuidados, Trabajo Doméstico y Migraciones: derechos y responsabilidades compartidas,” Valparaíso, Chile (June 9, 2011).

⁵⁹ Ley de Extranjería, Decreto Ley No. 1094, Julio 14, 1975, DIARIO OFICIAL [D.O.] (Chile).

⁶⁰ *Id.*, art. 1 (translated by the author). The original reads “El ingreso al país, la residencia, permanencia definitiva, el egreso, el reingreso, la expulsión y el control de los extranjeros se regirán por el presente decreto ley.”

⁶¹ *Id.*, art. 6.

⁶² See, e.g., Oficio Circular No. 1179, Ministerio del Interior, Enero 28, 2003, available at <http://www.extranjeria.gov.cl/filesapp/Oficio%20Circular%201179.pdf>. This circular is a joint directive of the Ministry of the Interior, the Ministry of Health, the Ministry of Education, and the executive branch concerning the inclusion of irregular migrants in public services (namely, children in education and pregnant women in healthcare).

⁶³ The Ministry of the Interior regulates migration through the *Departamento de Extranjería y Migración* (Alien Status & Immigration Office, DEM).

⁶⁴ Decreto Ley No. 1094, July 14, 1975, art. 13 (Chile), available at <http://www.leychile.cl/Navegar?idNorma=6483>. An unofficial English translation of Decreto Ley No. 1094 is available at http://www.extranjeria.gov.cl/ingles/filesapp/Ley%201094%20y%20Reglamento%20de%20Extranjeria_ingles.pdf.

The Investigative Police (*Policía de Investigaciones*, PDI)⁶⁵ control foreigners' entry and exit and report any violations to the Ministry of Interior. Where the PDI does not have local offices, local police units (*carabineros*) or coast guards control migration.⁶⁶

Transportation companies also play a part in immigration control. For example, airlines who bring foreigners into Chile must verify passengers' documentation.⁶⁷ If a passenger is subsequently denied entry into the country for lack of appropriate documentation, the airline must bear the cost of returning the passenger to the country of origin.⁶⁸ Transportation companies are also required to present lists of international travelers to the authorities so that officials may identify travelers before they either board or disembark.⁶⁹

Under the Aliens Law, certain categories of persons are barred from entering Chile. For example, people with criminal records or people who may (for economic or medical reasons) become a burden to the state are not permitted to enter.⁷⁰ In keeping with its ties to the Pinochet dictatorship, the Aliens Law also restricts entry based on security themes⁷¹ and forbids entry to union members or people with reputations as activists.⁷² Anyone who enters despite these prohibitions, engages in illegal activity while in the country, or becomes a public burden may be expelled and barred from re-entry.⁷³

Like most countries, Chile issues visas for a variety of persons, including diplomatic personnel, students, employees, tourists, temporary and permanent residents, refugees, and asylees.⁷⁴ The most common way to enter Chile is with a tourist visa, which is issued at the entry checkpoint. Tourist visas are valid for ninety days and may be renewed if necessary.⁷⁵ Tourists cannot participate in remunerated activities unless they receive special permission.⁷⁶ In general, persons sanctioned for violating these and other provisions of the Aliens Law cannot leave the country without fulfilling the terms of the sanction,⁷⁷ which can include fines and imprisonment.

An important visa for migrants is the Visa Subject to Contract,⁷⁸ which is available to persons who travel to Chile for the purpose of fulfilling a work contract, or who are in the country and seek to fulfill a work contract. The work contract must include a clause by which the employer promises to pay the employee's return fare at the end of the contract (*cláusula de viaje*). The requirement attempts to ensure that the foreigner will leave Chile at the end of his or her employment. This extra expense of the return fare makes some employers

⁶⁵ The PDI was previously known as the *Dirección General de Investigaciones* (Investigations Department, DGI). See *77 años de la Policía de Investigaciones*, Gobierno de Chile (June 18, 2010), www.gob.cl/especiales/77-anos-de-la-policia-de-investigaciones/.

⁶⁶ Decreto Ley No. 1094, July 14, 1975, art. 10.

⁶⁷ *Id.*, art. 11.

⁶⁸ *Id.*

⁶⁹ *Id.*, art. 12.

⁷⁰ *Id.*, art. 15, para. 2–8.

⁷¹ The law automatically forbids entry to persons who, "through any means," promote "violent changes" to Chilean government or society; persons who committed acts criminalized under Chilean law as contrary to national security or order; and persons whose "acts" are "contrary to the interests of Chile or constitute a danger to the State," irrespective of whether the act is criminalized in Chile or in the country in which it is performed. The law does not define the terms "means" and "promote," leaving them open to interpretation. Conceivably, membership in a particular political party or other forms of association could bar entry. *Id.*

⁷² *Id.*, art. 15, para. 1 ("Los que se propaguen o fomenten de palabra o por escrito o por otro cualquier otro medio, doctrinas que tiendan a destruir o alterar por la violencia, el orden social del país o su sistema de gobierno, los que estén sindicados o tengan reputación de ser agitadores o activistas de tales doctrinas y, en general, los que ejecuten hechos que las leyes chilenas califiquen de delito contra la seguridad exterior, la soberanía nacional, la seguridad interior o el orden público del país y los que realicen actos contrarios a los intereses de Chile o constituyan un peligro para el Estado."). The provision against union members does not appear to be enforced. For example, during the author's entry to Chile, she was never asked about union membership. This provision, among others, indicates changes in actual practice despite the absence of formal legal reform.

⁷³ *Id.*, art. 17.

⁷⁴ *Id.*, art. 22.

⁷⁵ *Id.*, art. 44.

⁷⁶ *Id.*, art. 48.

⁷⁷ *Id.*, art. 57.

⁷⁸ *Visa sujeta a contrato. Id.*, arts. 23–26.

reluctant to hire foreigners. Unfortunately, employers sometimes agree to hire immigrants only if they agree to forgo such a work contract, allowing the employer to avoid the passage payment but forsaking the immigrant to undocumented status. Without a proper employment contract containing the return clause, the immigrant cannot apply for a Visa Subject to Contract. If the immigrant does not qualify for any other visa and agrees to forgo the work contract, she will likely lapse into undocumented status. Without a visa of some sort, immigrants often avoid contact with the authorities, even to seek enforcement of their labor rights. As a result, immigrants working without a contract are rarely, if ever, paid the social security benefits (*imposiciones* or *cotizaciones*) owed by law to all workers.⁷⁹

The Visa Subject to Contract is valid for up to two years, but it expires as soon as the contract is terminated. It is the visa holder's responsibility to report the contract's termination within fifteen days, at which point the individual may apply for a new visa or, if eligible, for permanent residency. Most importantly, beneficiaries of a Visa Subject to Contract are eligible for permanent residency after living and working in Chile under the visa consecutively for two years.⁸⁰ Permanent residency grants permission to reside within Chile indefinitely and to participate in any legal activities.⁸¹ Permanent residency is valid indefinitely (subject to regular renewal periods), unless the foreigner is continuously absent from the country for more than one year.⁸²

B. Irregular Migration

The above outline of Chilean immigration law provides the necessary backdrop for understanding irregular migration. Irregular migration can refer to three different groups of people: migrants who entered Chile using false documents, migrants who entered clandestinely, and migrants who entered regularly but who remained after their visa expired. Only the first two are criminal violations, while the third is an administrative violation.

According to the Deputy Consul General of Peru, the DEM estimates that there are only 5,000 irregular Peruvian migrants.⁸³ The Deputy Consul claims Peruvians avoid irregular migration and do not use "coyotes" because they are familiar with the system and have the support of friends and family on both sides of the border.⁸⁴ Of course, no one knows for sure the number of irregular migrants, Peruvian or otherwise. At a discussion between members of Congress, academics, and activists, Representative María Angélica Cristi Marfil claimed to have received confidential data concluding that there are nearly 300,000 irregular immigrants in Chile.⁸⁵

Neither of these two estimates comports well with past experience. Former DEM Director Nicolás Torrealba explained that in 1998, Chile allowed roughly 22,000 undocumented migrants to regularize their status, and approximately 18,000 of those applicants were Peruvian,⁸⁶ suggesting that the Deputy Counsel General's estimate is low. A similar program in 2007—awarding Temporary Visas granting work authorization for one year, at which point applicants were eligible to apply for Permanent Residency—received 50,000

⁷⁹ Interview with Macarena Rodríguez Atero, Director, Universidad Alberto Hurtado Legal Clinic, in Santiago, Chile (May 31, 2011). Women, Bolivians, and Peruvians reportedly face the most difficulty obtaining work contracts and, therefore, accessing the Visa Subject to Contract. ECLAC, *supra* note 27, at 129–30.

⁸⁰ *Id.*

⁸¹ Decreto Ley No. 1094, July 14, 1975, art. 41.

⁸² Absences of more than one year may be excused in certain circumstances. *Id.*, art. 43.

⁸³ Interview with Raúl Hidalgo Gallegos, *supra* note 50.

⁸⁴ *Id.*

⁸⁵ María Angélica Cristi Marfil, Diputada (Representative), Remarks at the Encuentro con legisladores: "Cuidados, Trabajo Doméstico y Migraciones: derechos y responsabilidades compartidas," Valparaíso, Chile (June 9, 2011). In contrast, in 2009 the DEM estimated that there were only 350,000 foreigners in Chile. ECLAC, *supra* note 27, at 126.

⁸⁶ Interview with Nicolás Torrealba, *supra* note 48. According to the Ministry of Interior, the first regularization process granted 44,000 temporary visas and culminated in approximately 18,000 permanent residency permits. MINISTRY OF THE INTERIOR, EVOLUCIÓN DE LA GESTIÓN GUBERNAMENTAL DESDE 1990: DESARROLLO DEL FENÓMENO MIGRATORIO EN CHILE [EVOLUTION OF GOVERNMENTAL ACTIONS SINCE 1990: DEVELOPMENT OF THE MIGRATION PHENOMENON IN CHILE], <http://www.extranjeria.gov.cl/filesapp/migraciones.pdf> (last visited Dec. 22, 2011).

applications.⁸⁷ If Representative Cristi's claim that 300,000 irregular migrants are living in Chile were accurate, more migrants probably would have come forward to attempt to regularize their status.

Former DEM Director Torrealba explained that two types of irregular entry are criminalized: entering clandestinely and using false documents.⁸⁸ He noted, however, that such criminalization is merely theoretical, because violators are expelled and barred from re-entry⁸⁹ but are not prosecuted.⁹⁰ Torrealba noted that the DEM attempts to help undocumented immigrants regularize their status by explaining the legal requirements.⁹¹

Notwithstanding assurances regarding the DEM's efforts, numerous interviewees identified Chile's border system as problematic. They blamed Chile's migration framework, which grants substantial discretion to the PDI regarding who may enter or exit the country.⁹² Entry and exit through an airport is considered largely routine and standardized, but border crossing, particularly in the north, is described as unpredictable.⁹³ PDI officials may impose additional requirements (such as screening interviews or proof of financial sustainability) on the basis of a person's nationality or appearance.⁹⁴ Torrealba identified the PDI's practices on the northern border as a cause of irregular migration, because migrants of particular nationalities or ethnicities attempt to circumvent official entry points knowing they will be subjected to additional screenings.⁹⁵

According to Torrealba, irregular migration is a problem. He considers that the government should facilitate regular migration for a variety of reasons. From a security perspective, irregular migration creates a large group of unidentified people who are then difficult for the state to monitor and control.⁹⁶ On a humane level, irregular migrants hesitate to defend their rights and become exploitable.⁹⁷ At an economic level, the vulnerability of irregular migrants distorts the labor market, producing unnaturally cheap labor;⁹⁸ migrants' labor rights then become intricately interrelated with the labor rights of nationals.⁹⁹ On the whole, he noted, migration in general represents a valuable human resource: the migrant's determination and ambition to make the journey invariably translate into hard work and dedication, which, in turn, are a boon to any country's economy.¹⁰⁰

⁸⁷ Interview with Nicolás Torrealba, *supra* note 48.

⁸⁸ *Id.*

⁸⁹ See Decreto Ley No. 1094, July 14, 1975, art. 15, art. 2–8.

⁹⁰ Interview with Nicolás Torrealba, *supra* note 48.

⁹¹ *Id.*

⁹² Decreto Ley No. 1094, July 14, 1975, art. 10.

⁹³ Interview with Nicolás Torrealba, *supra* note 48.

⁹⁴ Including race or ethnicity. *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

C. Reflecting on the Framework

We do not have a law; we have an administrative policy.
Representative María Antonieta Saa Díaz¹⁰¹

With the notable exception of the Deputy Consul General of Peru, interviewees nearly unanimously criticized Chile's 1975 Aliens Law. Some went so far as to describe it as "illegitimate" and "anachronistic."

One of the first reforms recommended by nearly all interviewees is elimination of the Visa Subject to Contract. Interviewees associate the Visa Subject to Contract with the vulnerability of migrants both to employers and to the system. This suggestion is particularly relevant for Peruvian migrants who, along with Bolivian migrants, have the most difficulty obtaining work contracts.¹⁰²

Sociologist Leonardo Polloni argued that the law fails to acknowledge the reality that the labor market is flexible: people do move from one job to another and may accept temporary or seasonal positions. The Visa Subject to Contract creates temporal spaces during which workers may become irregular while seeking new employment.¹⁰³ It also creates an asymmetrical relationship between employer and immigrant employee, as the latter depends on the former for legal residency in Chile. Immigrants willingly tolerate abuses such as long hours or poor working conditions or even harassment in order to maintain their work contract, which is their key to the Visa Subject to Contract.



Gaps in the law are another area of concern. Increasingly, government ministries attempt to bridge the gaps in the Aliens Law through direct administrative actions.¹⁰⁴ For example, a 2003 memorandum from the Interior Ministry to provincial governors describes inter-ministry efforts to address migrants' rights to health and education.¹⁰⁵ According to the memorandum, irregular children may apply for a student visa upon proof of school enrollment, and pregnant women may apply for a temporary visa, allowing them to access local public health services during their pregnancy.

Lamentably, such internal efforts to bridge gaps in the Aliens Law can run into bureaucratic roadblocks. Margarita Becerra, director for the Universidad Alberto Hurtado Psychological Services for Immigrants and Refugees Project (PRISMA), offered a clear illustration of this problem by explaining how difficult it can be

¹⁰¹ "No tenemos ley, tenemos política administrativa." María Antonieta Saa Díaz, Diputada (Representative), Remarks at the Encuentro con legisladores: "Cuidados, Trabajo Doméstico y Migraciones: derechos y responsabilidades compartidas," Valparaíso, Chile (June 9, 2011).

¹⁰² ECLAC, *supra* note 27, at 130. A high proportion of Peruvian women in Chile work in domestic service, a "highly informal market" that impedes access to a work contract and, subsequently, a Visa Subject to Contract. *Id.*

¹⁰³ Workers have a limited time period during which they may officially seek a new work contract. Decreto Ley No. 1094, July 14, 1975, arts. 23–26.

¹⁰⁴ Local governments also address migrants' needs. Some municipalities, for example, instituted microcredit programs. Interview with Idenilson Bortolotto, Executive Vice President, Instituto Católico Chileno de Migración [Chilean Catholic Institute of Migration] [INCAMI], in Santiago, Chile (June 15, 2011).

¹⁰⁵ Oficio Circular No. 1179, Ministerio del Interior, Enero 28, 2003, available at <http://www.extranjeria.gov.cl/filesapp/Oficio%20Circular%201179.pdf..>

for migrants to obtain medical treatment visas (*visa para tratamiento medico*).¹⁰⁶ On the one hand, she says, it is a simple visa: the migrant need only turn in the appropriate paperwork from an authorized physician. Yet, if the migrant is irregular, she cannot access the public healthcare system and must pay for the initial medical examination to obtain the necessary physician documents. Immigrants, however, are often unable to pay for such services, particularly if the exam requires expensive tests. Thus the system often results in a frustrating paradox: without the medical exam, the migrant cannot obtain the necessary paperwork for the visa; without the visa, the migrant cannot access the public healthcare system.¹⁰⁷

Despite ministries' efforts to enable migrants to receive basic education and health services,¹⁰⁸ public-service providers must continue operating within official parameters when trying to provide these services to irregular migrants. Consider a seemingly mundane example: in order for an educator to enter a student's grades into the official system (General Education Information System, *Sistema de Información General de la Educación*, SIGE), she or he must provide the student's RUN (*Rol Único Nacional*), a national identification number issued by the Chilean government.¹⁰⁹ A RUN, however, is issued to foreign children only if they possess a student visa or a temporary residence visa.¹¹⁰ To comply with the law, the Provincial Department of Education in Iquique goes so far as to instruct schools to hold students back (repeating the same grade level for up to three years) if the child's parents fail to present the documentation necessary to process the visas.¹¹¹ These same children are also barred from health and other programs administered by public schools and cannot access scholarships or certain student loans.¹¹² Despite these problems, ECLAC estimates that approximately 97% of immigrant children have access to public education, a rate that is comparable to Chilean children's access.¹¹³

Similar issues arise in the public healthcare system, where irregular migrants may access the public health system's emergency services but must pay for those services in full.¹¹⁴ For other medical needs, irregular migrants are limited to private healthcare, where access depends on the ability to pay. ECLAC estimates that approximately 16% of all foreigners cannot access public healthcare in Chile through any means and must pay for private services.¹¹⁵

While the various Chilean ministries and government agencies collectively aspire to construct a coherent migration policy, intra-governmental efforts can sometimes become muddled. As recently as 2010, for example, the Civil Registry relied upon a determination by the DEM that irregular migrants are temporary visitors (*transeúntes*). Under the law, all persons born in Chile (as well as citizens' children born abroad) receive citizenship, except for the children of foreign governments' civil servants and the children of temporary

¹⁰⁶ Medical treatment visas are not limited to pregnancy and are even available for mental health treatment. Interview with Margarita Becerra Lizana, Dir., Universidad Alberto Hurtado, Psychological Services for Immigrants and Refugees Project (PRISMA), in Santiago, Chile (June 6, 2011).

¹⁰⁷ PRISMA facilitates the visa process by contacting medical associations or volunteers to perform the initial exam free of charge. *Id.*

¹⁰⁸ See, e.g., Oficio Circular No. 6.232, Departamento de Extranjería y Migración, Mayo 2003, available at http://www.extranjeria.gov.cl/filesapp/Circular_6232_mayo_2003_DEM.pdf; Oficio ORD. No. 07/1008 (1531), Ministerio de Educación, Agosto 4, 2005, available at http://www.extranjeria.gov.cl/filesapp/Of_07_1008_MINEDUC.pdf (addressing migrant children's right to education); and Resolución Extenta No. 1.914, Marzo 10, 2008, available at

http://www.extranjeria.gov.cl/filesapp/R.E%20N_1914_MINSAL.pdf (addressing migrant children's right to healthcare).

¹⁰⁹ Red Chilena de Migración e Interculturalidad [RedMI], *Informe Alternativo: Chile: Convención Internacional Sobre la Protección de los Derechos de Todos los Trabajadores Migratorios y de sus Familias* [Shadow Report to the U.N. Comm. on Migrant Workers] 25 (July 2011), <http://www.monitoreandoderechos.cl/ficha/303>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 26.

¹¹³ ECLAC, *supra* note 27, at 130.

¹¹⁴ *Id.* at 27–28.

¹¹⁵ ECLAC, *supra* note 27, at 130.

visitors.¹¹⁶ As a result of the DEM's determination that irregular migrants are temporary visitors, the Civil Registry refused to recognize the citizenship of children born in Chile whose parents were undocumented.¹¹⁷ Yet in 2011, the DEM reversed its position in a hearing before Chile's Supreme Court, arguing that such children are entitled to citizenship under the Constitution.¹¹⁸ Nonetheless, the Civil Registry continues to apply the DEM's previous determination, refusing to recognize the citizenship of the children of irregular migrants.

D. Discrimination and Navigation

Chile does not have an anti-discrimination provision in its domestic law.¹¹⁹ When asked whether the state discriminates against migrants, interviewees across the board noted that there is no blatant discrimination,¹²⁰ but that Chile's administrative system is notoriously difficult to navigate, a feature that can cause injustices tantamount to overt discrimination.¹²¹ A migrant who fails to follow unknown procedures, whether or not those procedures are directly related to immigration, can jeopardize his legal status in the country. For example, obtaining a Visa Subject to Contract depends on a proper work contract, but a migrant may be unaware of the legal requirements for such a contract.

For this reason, most NGOs working with migrants spend a significant amount of time assisting their clients with the legal system. The Legal Aid Clinic for Migrants at the Universidad Alberto Hurtado, for example, focuses on orienting migrants to the Chilean immigration system and regularly represents and accompanies migrants to government offices in order to ensure that they receive proper attention from the authorities.¹²²

Getting lost in the system can cause a wide range of problems for migrants.

Getting lost in the system can cause a wide range of problems for migrants. PRISMA, the Psychological Services for Immigrants and Refugees at Universidad Alberto Hurtado, helps connect patients with organizations that can assist them with nonmedical problems. PRISMA partners with the Legal Aid Clinic for Migrants at the Universidad Alberto Hurtado because migrants' mental health problems are often manifestations of their social, political, and legal vulnerability.¹²³ Irregular migrants in particular are highly vulnerable. For example, irregular migrants with medical needs suffer because they often cannot afford a private physician but lack access to public healthcare services. Consequently, an ordinary illness can cause great anxiety for the irregular migrant, because she does not know where to go for help. In the employment setting, irregular migrants may suffer from abuse, sub-minimum wages, and a constant fear of being

¹¹⁶ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 10. Applicants for nationalization must be permanent residents who have resided in Chile for a continuous five-year period and be at least 21 years of age (or 18 if the child of a nationalized Chilean). *Carta de Solicitud de Nacionalización*, Departamento de Extranjería y Migración, www.extranjeria.gov.cl/carta_solicit_nac.html (last visited Aug. 18, 2011).

¹¹⁷ See Corte Suprema de Justicia [C.S.J.] [Supreme Court], 7 de mayo de 2010, "Kelly Vanessa Huamán Cuadros," Rol de la causa: 8562-2009 (Chile), civil. www.extranjeria.gov.cl/carta_solicit_nac.html

¹¹⁸ See Corte Suprema Justicia [C.S.J.] [Supreme Court], 15 de marzo de 2011, "Gamarrá Palma Mery," Rol de la causa: 8808-2010 (Chile).

¹¹⁹ ECLAC, *supra* note 27, at 147. In 2005, Chile's Labor Code was amended to prohibit discrimination intended to "annul or alter equal opportunity or equal treatment in employment and occupation." Cód. TRAB. (Labor Code), Art. 2. In addition to being limited to employment discrimination, this provision is weak because the intent is difficult to prove and the law does not provide for remedies. Yet Chile is party to, among other treaties, the Convention on the Elimination of Discrimination Against Women and the International Convention on the Elimination of all Forms of Racial Discrimination.

¹²⁰ Sociologist Polloni did describe accounts of persons turned away from public services on account of their nationality. He also noted that immigrants may submit complaints regarding the treatment they receive from public employees but that many immigrants are unaware of this option or of how to initiate the process. Interview with Leonardo Polloni, *supra* note 44.

¹²¹ Interview with Carlos Baeza, Director of Social Works, Servicio Jesuita a Migrantes, in Santiago, Chile (June 10, 2011); Interview with Margarita Becerra Lizana, *supra* note 106.

¹²² The clinic's work includes assisting clients in labor and family law matters as well as immigration matters, such as applying for visas. Interview with Macarena Rodríguez Atero, *supra* note 79.

¹²³ Interview with Margarita Becerra Lizana, *supra* note 106.

discovered by the authorities. In many cases, once PRISMA resolves a client's legal problems, the client's mental health troubles diminish or disappear.¹²⁴

Do migrants face discrimination in Chile's private sector? Nearly all interviewees equated social discrimination against migrants with larger issues of Chilean marginalization and discrimination. That is, interviewees believe discrimination against migrants correlates with discrimination on a broader level that is based on social class and income level. To the extent that migrants experience social discrimination, it is roughly the same discrimination that affects Chileans of similar socioeconomic backgrounds.

The housing situation for migrants aptly illustrates the practical impact of such discrimination. Chile does not require minimum housing standards to protect renters against poor-quality housing and, as a consequence, neither migrants nor other low-income groups have legal recourse against landlords for providing substandard living quarters. Sociologist Polloni noted that landlords who choose to discriminate against or exploit migrants in the housing market can do so without penalty because housing is private property. For example, lessors sometimes post notices in windows indicating that they will not rent to specified nationalities, such as Peruvians. Other lessors find opportunity for profit in nationalities rejected by other landlords. They simply rent substandard houses out by the room—a room in which an entire family might live↓—and not cheaply. In order to cope with the exploitative housing market, some migrants adopt a sublease system of their own, filling houses with multiple families.¹²⁵

In a survey of migrants, ECLAC found that over 50% of them lived in precarious, overcrowded, and unsanitary housing.¹²⁶ Though these living conditions are uncomfortable and can expose them to such dangers as house fires and earthquakes, the migrants have nowhere else to go.¹²⁷ This system nurtures a "ghetto-ization" of Santiago, isolating migrants in specific sectors of the city. The tensions and conflicts inherent in these living conditions also generate stress within the low-income community as a whole, but especially between the different nationalities.¹²⁸

Many organizations, like the Servicio Jesuita a Migrantes (SJM, Jesuit Service for Migrants)¹²⁹ and even the Peruvian consulate, develop projects to help alleviate these tensions and facilitate migrants' social integration. The Chilean Catholic Institute of Migration (*Instituto Católico Chileno de Migración*, INCAMI), for example, organizes a "*Jornada del día del migrante*," a week-long event featuring cultural celebrations and promoting dialogue on important topics. Father Bortolotto, INCAMI's executive vice-president, explained that public understanding of cultural diversity—derived from, say, developing an appreciation of Peruvian cuisine or migrants' work ethics—helps to facilitate the integration of migrants into the community.¹³⁰ Peru's Deputy Consul General Raúl Hidalgo Gallegos noted that such integration has advanced significantly in recent years.¹³¹

¹²⁴ *Id.* The clinic is funded in part by Amnesty International and the United Nations High Commissioner for Refugees. *Id.*

¹²⁵ Crowded living conditions means little private space for the family or play space for children and teenagers, who consequently move into public spaces such as neighborhood streets and sidewalks. As a result, Chilean neighbors often perceive migrants as loud, invasive, and disruptive, which only reinforces stereotypes and further heightens tensions within high-stress low-income neighborhoods. Interview with Leonardo Polloni, *supra* note 44.

¹²⁶ ECLAC, *supra* note 27, at 130.

¹²⁷ See, e.g., RedMI, *supra* note 109, at 29–30.

¹²⁸ Interview with Leonardo Polloni, *supra* note 44.

¹²⁹ The SJM considers multiculturalism and interculturalism to be particularly important and under-addressed topics in Chile. Interview with Carlos Baeza, *supra* note 121.

¹³⁰ INCAMI also offers a variety of other services in Santiago and throughout Chile, including social programs (for example, clothing, food, medical attention), legal assessment (in partnership with university legal aid clinics), job training, and an employment program. Between 4,000 and 5,000 people participate in these programs every year. Interview with Idenilson Bortolotto, *supra* note 104.

¹³¹ Interview with Raúl Hidalgo Gallegos, *supra* note 50.

E. Political Rights

The political rights of migrants are tied to their legal status. Thus, permanent residents cannot hold public office, but they can vote.¹³² Nationalized citizens may hold public office five years after nationalization.¹³³

Ironically, Chilean permanent residents are granted suffrage, but Chilean citizens who emigrate to other countries cannot vote from abroad. The Constitution does not explicitly limit the voting rights of Chileans residing abroad; the state simply lacks a mechanism for absentee voting. Professor Rocío Faúndez García, formerly Director of the Master's Program in Social Studies & Latin American Politics at the Universidad Alberto Hurtado, related that while participating in a doctoral program in Spain, she could not vote; yet she was obliged to report to the local consulate in order to excuse herself from voting in upcoming elections."¹³⁴

III. THE SENDING STATE: PERU

In contrast with Chile, immigrants to Peru are largely invisible. A great deal of Peru's attention and energy focuses on emigration outflows, an issue for which there is growing interest, concern, and a sense of responsibility. The numbers of citizens choosing to leave Peru is stark: between 1990 and 2009, over 2.38 million Peruvians lived abroad, representing approximately 7% of Peru's total population.¹³⁵ Consequently, the government directly incorporated international migration into its 2010–2021 National Strategic Plan, which calls for the liberalization of global migration policies.¹³⁶

A. Peruvian Emigration

Nearly 10.5% of Peruvian households experience emigration.¹³⁷ A survey conducted in one school in San Juan de Lurigancho, a low-income neighborhood in the Lima metropolitan region, found that over 50% of students have a relative abroad and 10% have at least one parent working outside of Peru.¹³⁸ Some research shows that students who grow up with one or both parents abroad often perform more poorly in school and may spend remitted money without consideration of future financial needs.¹³⁹

Migration is difficult and expensive, but it may be necessary for a family's survival. It can also be a source of empowerment, particularly for women¹⁴⁰ from patriarchal societies who discover and develop their personal

¹³² CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 14 (requiring five years of residence).

¹³³ *Id.*

¹³⁴ Interview with Rocío Faúndez García, former Dir., Univ. Alberto Hurtado Master's Program in Soc. Studies & Latin Am. Politics, in Santiago, Chile (June 24, 2011). During discussions leading up to reform of Chile's electoral system in early 2012, however, some commentators asserted that establishing mechanisms for absentee voting would require a Constitutional amendment. The reform establishes that voting is now voluntary instead of compulsory and provides for automatic voter registration. Automatic voter registration applies to expatriate Chilean citizens but does not provide absentee voting mechanisms. Ley No. 20.568, Enero 31, 2012, DIARIO OFICIAL [D.O.] (Chile).

¹³⁵ Between 2005 and 2009, an annual average of nearly 214,000 Peruvians emigrated. Aníbal Sánchez Aguilar et al., *Perú: Estadísticas de la Emigración Internacional de Peruanos e Inmigración de Extranjeros, 1990–2009* [Peru: Peruvian Emigration and Foreigner Immigration Statistics, 1990–2009], at 14–15, INT'L ORG. FOR MIGRATION [IOM] (2010), available at www.oimlima.org.pe/docs/emigracion2010digitalFINAL.pdf. According to Peru's 2007 census, over 1.6 million Peruvians registered a foreign residence. Aníbal Sánchez Aguilar et al., *Migración Internacional en las Familias Peruanas y Perfil del Peruano Retornante* [International Migration in Peruvian Families and Profile of the Returning Peruvian] 17, INT'L ORG. FOR MIGRATION [IOM] (2009), available at www.oimlima.org.pe/docs/publicacion2009-1.pdf. An estimated 50% of Peruvians abroad are irregular migrants. Interview with Teófilo Altamirano Rúa, Professor, Pontificia Universidad Católica del Perú, in Lima, Peru (July 4, 2011).

¹³⁶ Aníbal Sánchez Aguilar et al., *Perú: Remesas y Desarrollo* [Peru: Remittances and Development] 179, INT'L ORG. FOR MIGRATION [IOM] (2010), available at www.oimlima.org.pe/docs/remesas.pdf.

¹³⁷ Sánchez Aguilar et al., *International Migration in Peruvian Families*, *supra* note 135, at 15.

¹³⁸ Interview with Jean-Marie Ansión, Professor, Pontificia Universidad Católica del Perú, in Lima, Peru (July 12, 2011).

¹³⁹ Teófilo Altamirano Rúa, "Impacto de la Migración Humana en el desarrollo nacional," Address at the Conferencia Magistral at the Semana Nacional del Migrante y su Familia 2011 (July 1, 2011).

¹⁴⁰ As of 2009, approximately 52% of Peruvian emigrants are women. Sánchez Aguilar et al., *Peruvian Emigration and Foreigner Immigration Statistics*, *supra* note 137, at 20. In some receiving countries, such as Spain and Chile, some 65% of Peruvian immigrants are women. Interview with Teófilo Altamirano Rúa, *supra* note 135. Because Latin American women earn approximately 30% less income than men and normally pay domestic workers out of their own income, domestic labor must be cheap and flexible. Thus, legislation in receiving

capacities through migration.¹⁴¹ At the same time, for families torn apart by migration, it can be a traumatic or painful experience that can lead to divorce or estrangement.¹⁴²

Sociologist Jean-Marie Ansión noted that emigrants depend heavily on established networks in their destination country, whether large networks of fellow Peruvians or an intimate network of relatives. Most emigrants make the move to a new country without a job in the receiving state, so they depend on these networks to help them navigate the journey, find housing, and obtain a job.¹⁴³

Emigration is not cheap; it is not an option for the poorest segment of society.¹⁴⁴ In addition to the costs of the journey itself, administrative procedures like applying for a passport or the appropriate visas require time and money.¹⁴⁵ Many make the journey thanks only to loans provided by friends or family; as a result, the first paychecks of many emigrants are often dedicated to repaying those loans.¹⁴⁶

Among the Peruvian government actors attending to the many issues related to emigration are the Ministry of Labor, which operates a service that helps potential emigrants make informed decisions about emigration; the Ministry of Foreign Relations, which runs programs to incentivize emigrants' return; and the Ministry of the Interior, which oversees the General Office of Immigration and Naturalization (*Dirección General de Migraciones y Naturalización del Perú, DIGEMIN*).¹⁴⁷ The state also established the *Mesa Intersectorial para la Gestión Migratoria*, an intersectional working group composed of multiple ministries and civil society representatives, including the ILO. This working group addresses the needs of actual groups (emigrants, potential emigrants, incarcerated foreigners, and actual and returnees) and studies seven subtopics



states tends to grant domestic workers fewer benefits and less protection. Interview with Mariana Mendiola Hidalgo, Consultant, Comisión Andina de Juristas [Andean Commission of Jurists] [CAJ], in Lima, Peru (July 14, 2011). This topic deserves further research.

¹⁴¹ Interview with Teófilo Altamirano Rúa, *supra* note 135.

¹⁴² Altamirano, Address at the Conferencia Magistral, *supra* note 139.

¹⁴³ Interview with Jean-Marie Ansión, *supra* note 138.

¹⁴⁴ *Id.*

¹⁴⁵ Several interviewees noted, however, that the state recently reduced the passport fees in order to facilitate emigration. *Id.*; Interview with María Luisa De La Torre Vicente, Centro de Políticas Públicas y Derechos Humanos—Perú Equidad, in Lima, Perú (July 6, 2011). De La Torre aided the formation and registration of the Región La Libertad (Trujillo Province, its districts and other provinces) migrant family association and now helps organize Asociación de Familiares de Migrantes Peruanos y Peruanas en la Región Lima—Metropolitana—AFAMIPER in Lima Metropolitana.

¹⁴⁶ Interview with Jean-Marie Ansión, *supra* note 138.

¹⁴⁷ The Ministry of the Interior also organizes an interdepartmental initiative against human trafficking. The author was unable to interview any representatives of the *Defensoría del Pueblo*, but this office apparently also plays a role in Peruvian migration. In 2009, for example, the *Defensoría* published a report analyzing the international rights of migrants, evaluating the demographics of Peruvian emigrants, and weighing its own ability to intervene on emigrants' behalf. See Defensoría del Pueblo, *Migraciones y Derechos Humanos: Supervisión de las políticas de protección de los derechos de los peruanos migrantes [Migrations & Human Rights: Supervising Policies Protecting Peruvian Migrants' Rights]*, Serie Informes Defensoriales, Informe No. 146 (2009), available at http://www.mintra.gob.pe/migrante/pdf/migracion_derechos_humanos-supervicion.pdf.

(immigration, health, welfare, emigrants' rights abroad, culture and education, employment, and housing). By working jointly on these problems, the ministries can bridge gaps and develop integrated strategies.¹⁴⁸

B. Pre-Emigration Programs

In order to avoid the loss of human resources, to stem the emotional pain associated with and caused by emigration, and to minimize the precariousness that defines the lives of many migrants, Peru must tackle the roots of the emigration problem. Migration is motivated in large part by lack of opportunity. Therefore, social-inclusion projects, poverty-combating programs, and other activities designed to increase social and



economic opportunities within Peru must be among some of the state's first-level responses to emigration.¹⁴⁹

In 2010, the Ministry of Labor and Promotion of Employment (*Ministerio de Trabajo y Promoción del Empleo*) launched a new service called Perú Infomigra, recently renamed *Servicio de Información al Migrante* (Information Service to the Migrant).¹⁵⁰ This service seeks to fulfill Peru's obligations under a regional agreement to create a Labor Migration Office (*Oficina de Migración Laboral*).¹⁵¹ At the same time, it helps ensure that Peruvians can make an informed

decision to migrate, are aware of their rights, and have knowledge of their destination country's requirements for regular migration. Through this service, the state partners with potential emigrants, identifying strong labor markets and applicable bilateral agreements.

According to Dr. Marianela Torres Torres of the Labor Migration Office, the most important function of the new service is providing information. She explained that strict migration laws may penalize irregular migration, leaving irregular migrants vulnerable and bereft of opportunities to develop themselves as workers in the receiving state. By informing Peruvian emigrants and returnees, as well as immigrants into Peru, about

¹⁴⁸ See Marco Nuñez-Melgar Maguñá, *Las Migraciones Internacionales: ¿Problema o Posibilidad?* [*International Migrations: Problem or Possibility?*], 119–31 (2010), available at oimperu.org/docs/marco%20NM.pdf; Sánchez Aguilar et al., *Remittances and Development*, *supra* note 136, at 180.

¹⁴⁹ Interview with Gustavo Yamada, Professor & Researcher, Universidad del Pacífico, in Lima, Peru (July 5, 2011).

¹⁵⁰ Since the research for this paper was conducted, the service's name has been changed from Perú Infomigra to "Information Service to the Migrant" (*Servicio de Información al Migrante*). Email from Marianela Torres Torres, Dirección de Migración Laboral [Labor Migration Office], Ministerio de Trabajo y Promoción del Empleo [Ministry of Labor and Promotion of Employment] (Nov. 28, 2011, 16:41 EST) (on file with author). Other changes may have been made.

¹⁵¹ Decision 545 of the Andean Community requires Peru and other countries to open labor migration offices in order to facilitate regularized labor migration and improve migrants' standard of living. Interview with Marianela, Dirección de Migración Laboral [Labor Migration Office], Ministerio de Trabajo y Promoción del Empleo [Ministry of Labor and Promotion of Employment], in Lima, Peru (July 4, 2011). See also Consejo Andino de Ministros de Relaciones Exteriores de la Comunidad Andina [C.A.] Decision 545, 21st Meeting, 3.28.38 (June 24–25, 2003), available at www.digemin.gob.pe/documentos/decision_545.pdf.

procedural and administrative requirements, the Labor Migration Office hopes to improve overall outcomes and experiences.¹⁵²

The Information Service attends migrants at their main hub in Lima as well as at a smaller office at the General Office of Immigration and Naturalization. Services include offering tips for finding employment in Peru to prevent desperate emigration and assisting exiting Peruvians to ensure regular (i.e., authorized and documented) migration. The Information Service is also training regional government officials to ensure that the same information is available outside of Lima. Another means of reaching migrants and potential migrants is through a web portal, which provides advice, warnings, and information on topics such as required documentation for legal migration to various countries or into Peru, statistics on the labor market, incentive programs for returning Peruvians, and relevant bilateral agreements or international organizations.¹⁵³ To provide just one example, the website allows Peruvians residing in any country to request information about employment opportunities in Peru.

While an important and recent advancement, the Information Service still has a distance to go in order to meet its goals. The information provided on its website is limited and may not be easily accessible to all interested persons. For example, for foreign labor markets, the portal includes only two links: one to a European Union website, "The European Job Mobility Portal," providing labor information and a search engine, and an Andean website, "Observatorio Laboral Andino," offering statistics, legal overviews, news, and other information.¹⁵⁴ The portal does not provide similar information for other popular migration destinations such as the United States, Chile, and Argentina. It is also questionable whether potential emigrants have easy access to the Internet.¹⁵⁵ One interviewee expressed some doubts on that point. Another interviewee agreed that some potential emigrants may be unable to access the Internet but confirmed that many do use the website. Either way, the project is a good start and will hopefully grow into its potential to serve as an informative and accessible guide.

C. Consular Services

As a result of the importance of emigrants' vote in the 2011 presidential elections, consular assistance recently garnered political attention.¹⁵⁶ Amazingly, the political power of emigrants has reached such an important level in Peru that the government is now discussing the creation of a congressional district for emigrants.¹⁵⁷ Consular services play a key role in preserving that political power. In its efforts to improve emigrants' access to consulates, the government has tried reserving Saturdays exclusively for attending to emigrants,¹⁵⁸ establishing dedicated hotlines,¹⁵⁹ providing itinerant consulates to meet emigrants who cannot leave work to travel to a regular consulate, and instituting special commissions to collaborate with migrant associations on issues such as remittances, return, and development.¹⁶⁰

Notwithstanding these efforts, emigrants took advantage of recently elected President Ollanta Humala's campaign for absentee votes to make known their dissatisfaction with the current consular services, prompting

¹⁵² Interview with Marianela Torres Torres, *supra* note 151.

¹⁵³ *Id.* See also *Servicio de información al Migrante*, TRABAJO, www.trabajo.gob.pe/migrante/ (last visited Dec. 24, 2011).

¹⁵⁴ See *Servicio de información al Migrante*, TRABAJO, www.trabajo.gob.pe/migrante/ (last visited Dec. 24, 2011).

¹⁵⁵ One survey found that only 13.5% of households with emigrant relatives have access to the Internet in the home. Sánchez Aguilar et al., *International Migration in Peruvian Families*, *supra* note 135, at 15.

¹⁵⁶ See Section H "Political Participation" below for more information on voting.

¹⁵⁷ Lucía Alvites, Advisor to Alberto Adrián, Remarks at Red Peruana de Migraciones y Desarrollo [Peruvian Network on Migrations & Dev.] [Red PEMIDE] (July 13, 2011). Mr. Adrián is a Peruvian representative to the *Parlamento Andino* [Andean Parliament].

¹⁵⁸ Not processing visas for foreigners, for example.

¹⁵⁹ For instance, a hotline is dedicated to providing legal advice for irregular Peruvian migrants, who constitute as much as 50% of the Peruvian population in the United States.

¹⁶⁰ Interview with Teófilo Altamirano Rúa, *supra* note 135.

plans to further reform the system. At a meeting between representatives of the new government and a network of migrants' rights activists (the Peruvian Migrations and Development Network, *Red Peruana de Migraciones y Desarrollo*, RedPEMIDE), a government researcher noted that emigrants complained during the campaign trail that the government fails to protect or adequately serve its citizens abroad. The researcher



admitted that the state previously lacked a public policy concerning the nearly three million Peruvians abroad. In addition, she noted that consular services lack a targeted budget and operate on only 0.3% of GDP, despite Peru's high income from remittances (discussed below).¹⁶¹

To address these concerns, the new administration intends to propose a specialized vice-ministry within the executive branch. Operating on a rights-based approach,¹⁶² the new ministry would be in charge of reforming Peru's migration system and would receive its own budget. The General Office of Immigration and Naturalization (DIGEMIN) would also be transferred to the purview of the vice-ministry.¹⁶³ Under the proposal, embassies and

consulates would receive increased resources in order to extend service hours and to provide free legal aid.¹⁶⁴ The new vice-ministry would also seek to reduce the cost of sending remittances.¹⁶⁵

In terms of current practice, the Peruvian consulates tackle emigration issues in various ways. The consulate in Santiago, for example, attempts to organize those in the Peruvian community to help each other. Toward that end, the consulate often organizes workshops to help Peruvians understand procedural requirements for relevant activities.¹⁶⁶ The consulate hopes that these workshops will have a multiplier effect, with participants returning home to tell their neighbors about what they learned. The consulate also helped form a housing committee to improve Peruvians' living conditions in Santiago by providing advice on saving money and assisting qualified applicants¹⁶⁷ to select a construction company. Such assistance is important because construction companies, which often produce substandard housing after long delays (not only for foreigners but for Chileans as well) can be notoriously difficult to deal with. As part of the program, the Peruvian government provides a subsidy (an initial portion of the total cost, while the applicant promises to pay the remainder) and loans to help applicants fund their new house. The consulate also supports Peruvian victims of discrimination by submitting formal complaints to relevant branches of the Chilean government.¹⁶⁸

¹⁶¹ Lucía Alvites, Remarks at Red PEMIDE, *supra* note 157.

¹⁶² As opposed to a national security perspective.

¹⁶³ DIGEMIN is currently a part of the Ministry of the Interior.

¹⁶⁴ The researcher referenced an ECLAC study indicating that the quality of life of both emigrants and the families they left behind improves when emigrant groups receive support from their home government. *Id.*

¹⁶⁵ Emigrants tend to use regional companies (connecting Peru, Bolivia, and Chile, for example), which charge a fee of 3%, because large companies like Western Union are too expensive. Furthermore, the government would seek to include a migration clause concerning residency permits in all future bilateral agreements. Lucía Alvites, Remarks at Red PEMIDE, *supra* note 157.

¹⁶⁶ For example, the embassy assists Peruvian emigrants' professional advancement through workshops about professional certification in Chile, disseminating information about scholarships and other educational opportunities, and providing technical training to immigrants who lack such skills.

¹⁶⁷ Eligibility for the Chilean housing assistance program requires permanent residency for two years and additional low-income requirements. Interview with Raúl Hidalgo Gallegos, *supra* note 50.

¹⁶⁸ *Id.*

D. Other Programs for Emigrants

In response to emigrants' complaints about the difficulties of accessing credit in Peru while abroad, a recent reform allows emigrants to access *Mi Vivienda*, a credit program for purchasing homes.¹⁶⁹ Previously, emigrants could only purchase homes through a relative resident in Peru, in whose name the title would be issued.¹⁷⁰ *Mi Vivienda* now aids emigrants by providing access to Peruvian credit while residing abroad. El Banco Financiero offers similar assistance for Peruvian emigrants resident in the United States, Spain, or Italy.¹⁷¹ If emigrants reside in these countries, they must contact an office in Peru in order to apply.¹⁷²

Peru also enacted a new universal health insurance law in 2009. The new law facilitates emigrants' access to healthcare services while visiting family in Peru or upon returning to the country permanently.¹⁷³ Previously, emigrants lost access to public healthcare because they did not pay Peruvian social security taxes while abroad. The reform allows emigrants to contribute towards their families' and even their own coverage through remittances.

E. Remittances

Behind the numbers, there are human beings with memories, hopes, and dreams.

Dr. Teófilo Altamirano Rúa, Professor¹⁷⁴

Peru receives approximately \$3 billion annually¹⁷⁵ through remittances sent to approximately 640,000 families. The sum rivals Peru's income from the mining industry¹⁷⁶ and surpasses foreign direct investment.¹⁷⁷ In addition to the fees imposed by the companies facilitating the transfers, remittances are subject to a 0.8% transfer tax collected by the Peruvian government.¹⁷⁸

Monetary remittances help improve the quality of life of the recipients in Peru by financing property purchases, improvements to the family home, or education.¹⁷⁹ While remittances are used primarily for domestic matters (food, construction, televisions, etc.) and education, they also are used to invest in micro-enterprises.¹⁸⁰

¹⁶⁹ See *Compra de Inmuebles para Peruanos que Residen en el Exterior*, Fondo MIVIVIENDA (June 2011), www.mivivienda.com.pe/portal/Canales/Comprador/Remesas%20de%20Peruanos%20en%20el%20Exterior.aspx.

¹⁷⁰ Without credit in Peru, emigrants are less likely to make direct investments in Peru (such as property purchases), and they are less likely to return if they do not own a home in the country. Interview with Teófilo Altamirano Rúa, *supra* note 135.

¹⁷¹ *Compra de Inmuebles para Peruanos que Residen en el Exterior*, *supra* note 169.

¹⁷² *Id.*

¹⁷³ *Ley Marco de Aseguramiento Universal en Salud*, Law No. 29344, Marzo 30, 2009 (Peru), available at <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/29344.pdf>.

¹⁷⁴ Altamirano, Address at the Conferencia Magistral, *supra* note 139.

¹⁷⁵ TEÓFILO ALTAMIRANO RÚA, *MIGRATION, REMITTANCES AND DEVELOPMENT IN TIMES OF CRISIS 26* (2010), available at www.unfpa.org/webdav/site/global/shared/documents/publications/2010/migrationbook.pdf. Strikingly, low-income emigrants, especially women, send larger and more regular remittances. *Id.* at 85.

¹⁷⁶ Interview with Teófilo Altamirano Rúa, *supra* note 135.

¹⁷⁷ Altamirano, Address at the Conferencia Magistral, *supra* note 139; Lucía Alvites, Remarks at Red PEMIDE, *supra* note 157.

¹⁷⁸ VÍCTOR VÁSQUEZ VILLANUEVA, *EMIGRACIÓN PERUANA: REALIDAD Y OPORTUNIDADES 207* [PERUVIAN EMIGRATION: REALITY AND OPPORTUNITIES], FAMIPERU (2010), available at www.remesasydesarrollo.org/uploads/media/Emigracion_Peruana.pdf.

¹⁷⁹ Remittances may include non-monetary forms such as gifts, and "social remittances," the cultural by-products of emigration. Altamirano, Address at the Conferencia Magistral, *supra* note 139. For example, migrants abroad may become more religiously devoted. When they return home, whether temporarily or permanently, they bring this increased religiosity back with them, or direct certain portions of their monetary remittances toward a religious activity or symbol. In Peru's case, emigration is related to a revival of devotion to the Señor de los Milagros. Interview with Teófilo Altamirano Rúa, *supra* note 135.

¹⁸⁰ At the same time, remittances implicate other important topics. Migrants may work two or three jobs, 12- to 14- hours per week, in order to send one-third of their salary to their family. Despite economic or natural crises, emigrants maintain a steady flow of remittances, suggesting special efforts to prevent a reduction in the support sent to their families. Interview with Teófilo Altamirano Rúa, *supra* note 135.

Migration represents a significant sacrifice that may be meaningless if it is not a "productive" contribution toward either the migrants' own development or the development their families. For that reason, anthropologist and renowned Peruvian migration researcher, Dr. Teófilo Altamirano Rúa, indicated that both state and civil society seeks to encourage efficient investment of these remittance resources. This topic is particularly critical where remittances constitute the primary source of income for families in Peru and where emigrants send most of their savings home; as a result, if an emigrant decides to return home, she may have no savings to bring with her, and her family simultaneously loses her vital financial support. In those circumstances, returning emigrants may be considered a financial burden: one more mouth to feed, plus the loss of the emigrant's own financial contributions. Returning emigrants may even be subject to social discrimination, considered "traitors" for abandoning Peru when it was in trouble and returning to "steal jobs" now that it is in better condition.¹⁸¹

Because remittances are so significant to emigrants and their families, to communities of origin, and to the country at large, there is growing public debate about how best to promote the sustainable investment of remittances. Toward that end, the Huancayo Municipal Savings Bank offers a special credit line called *Crediremasas*, "Remittance Credit,"¹⁸² with loans worth ten times the amount received by the borrower each month in remittances under the condition that the loan be invested in a new small business or microenterprise.¹⁸³ Government initiatives include developing remittance insurance for Peruvians working abroad,¹⁸⁴ additional microcredit programs, savings programs, financing for home purchasing, and investment in social programs.¹⁸⁵ Civil society, including migrant family associations like the Family Association of Peruvian Migrants' Relatives (Asociación de Familiares de Migrantes Peruanos y Peruanas de la Región Lima, AFAMIPER),¹⁸⁶ likewise participate in the development and dissemination of investment programs for remittances.



¹⁸¹ *Id.*

¹⁸² ALTAMIRANO RÚA, *supra* note 175, at 104. See also Caja Huancayo, www.cajahuancayo.com.pe/ (last visited Aug. 21, 2011).

¹⁸³ ALTAMIRANO RÚA, *supra* note 175, at 104.

¹⁸⁴ The insurance helps cover beneficiaries' basic necessities (food, water, electricity, phone services, and education) should the remittance-sending relative suffer some incapacitation, and it funds the emigrant's trip home in the event of a family emergency. Sánchez Aguilar et al., *Remittances and Development*, *supra* note 136, at 140.

¹⁸⁵ *Id.* at 184–85.

¹⁸⁶ The first association for returned emigrants and their families appeared in Trujillo and was officially registered between 2007 and 2008. Today the unofficial Asociación de Familiares de Migrantes Peruanos y Peruanas de Lima Metropolitana (Association of Peruvian Migrants' Families of Metropolitan Lima, AFAMIPER of Lima) is working to raise the necessary funding to become an official, registered

F. Programs for Returning Emigrants

After arrival in their receiving state, most migrants cannot return home because of financial or legal constraints. Irregular migrants are much less likely to go home for visits, because they risk being unable to re-enter the receiving state. Successful emigrants, on the other hand, tend to settle permanently in the receiving community and then relocate their families.¹⁸⁷ But what is the fate of those who do return?

Emigrants who do decide to return home face various challenges. Only a minority return to employment. Others may spend their younger years abroad and then return without retirement support.¹⁸⁸ Some return in the same condition in which they left, with basically nothing. A few may return with new skills acquired abroad that require recertification in Peru.¹⁸⁹ Many, however, confront the reality that years of hard work and of contributions to their host countries' social security programs do not translate into social security benefits in Peru.¹⁹⁰

Given these challenges, some programs aim to facilitate or incentivize emigrants' return—but the programs are typically not applicable to the majority of Peruvian emigrants. The Consejo Nacional de Ciencia y Tecnología (National Science and Technology Council, CONCYTEC), for example, developed a special fellowship program to help bring Peruvian scientists back to Peru.¹⁹¹ The fellowship connects highly qualified Peruvian candidates with Peruvian universities or research centers for a two-year period.¹⁹² The Ministry of Foreign Relations (*Ministerio de Relaciones Exteriores*) developed a program aiming to incentivize emigrants' return to Peru by facilitating importation of property (for example, reducing taxes¹⁹³ for importing cars or machinery).¹⁹⁴ The law's benefits are limited to Peruvians who lived abroad for at least five years.¹⁹⁵ The law expires in 2013,¹⁹⁶ and the Comisión Andina de Juristas notes that from 2008 to 2010, fewer than 500 persons participated in the program.¹⁹⁷

G. Emigration and the Family

Migration has a profound impact on family life, in matters that range far beyond monetary remittances. Altamirano warns that relationships and marriages can suffer as a result of the forced separation associated with migration; even when marriages remain intact, the return of a spouse who was away for years may feel like an invasion by a stranger. Children's emotional health may also suffer, affecting academic performance. Altamirano also suggested that emigration appears to have affected the fertility rate, which continues to

organization. For grassroots organizations, the initial registration cost of approximately \$600–\$700 can be challenging, but the documentation can be processed within two months. Interview with María Luisa De La Torre Vicente, *supra* note 147.

¹⁸⁷ Interview with Jean-Marie Ansión, *supra* note 138.

¹⁸⁸ Interview with María Luisa De La Torre Vicente, *supra* note 147.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Interview with Gustavo Yamada, *supra* note 149.

¹⁹² Neither irregular nor temporary migrants may participate, as the program requires applicants to submit a copy of their passport with the residence permit from their host country. Only persons who acquired their PhD or doctoral degree abroad and later spend at least two years developing research projects abroad are eligible. Candidates must also agree to remain with their Peruvian host university or research center for at least four years. *Convocatoria del Concurso de Becas de Reinserción - 2010*, FONDECYT (June 11, 2010), <http://portal.concytec.gob.pe/index.php/areas-de-la-institucion/fondecyt/becas/becas-de-reinsercion.html>.

¹⁹³ *Tributos*.

¹⁹⁴ Interview with Teófilo Altamirano Rúa, *supra* note 135. See Ley de Incentivos Migratorios, Ley N° 28182, March 1, 2005 (Peru), available at <http://www.rree.gob.pe/portal/aconsular.nsf/0/DCEBF601149D93940525701B00793697?OpenDocument>

¹⁹⁵ Ley N° 28182, art. 2. Eligible persons may import without charge up to \$30,000 worth of household goods, one car valued up to \$30,000, and professional equipment or capital worth up to \$100,000. *Id.*, art. 3. Beneficiaries lose this special tax exemption if they transfer the property to a third party within five years. *Id.*, art. 4.

¹⁹⁶ *Id.*, art. 6; Interview with Mariana Hidalgo, *supra* note 140 (explaining that article 6 was interpreted to mean that the law, rather than each individuals' benefits, expires after five years).

¹⁹⁷ Interview with Mariana Mendiola Hidalgo, *supra* note 140.

drop.¹⁹⁸ Ansi3n and AFAMIPER consultant Mar3a Luisa De La Torre Vicente agreed that the stress of familial separation can lead to anti-social behavior such as fights at school, yet they point out that neither schools, communities, nor the families themselves normally consider or address the social and psychological impact of familial separation.¹⁹⁹ Ansi3n adds that children generally are not prepared for parents' departure and are given little counseling after the parent leaves. Meanwhile, Peruvian schools are seemingly oblivious to their students' situation, failing, for example, to give them special consideration on Mother's Day or Father's Day.²⁰⁰

H. Political Participation

Peruvian participation in presidential elections is strong even from abroad. Votes from abroad attracted particular attention during the most recent presidential elections, during which candidates Ollanta Humala and Keiko Fujimori campaigned abroad in order to bridge the narrow gap between each other in the run-off election.²⁰¹ Voting is not mandatory for those who are abroad, but participation remains high.²⁰² For the 2011 presidential election, the Peruvian Consulate expected 62,000 of the 130,000 Peruvians resident in Chile to vote.²⁰³ The Consulate organized five voting stations in Santiago, plus additional voting stations in other regions.²⁰⁴ Voting requires presentation of one's National Identity Card (*Documento Nacional de Identificaci3n, DNI*), but expired DNI were also accepted as proof of a Peruvian's right to vote.²⁰⁵

IV. RECOMMENDATIONS

Chile's current migration policies do not conform to those of the welcoming *pa3s de acogida* (receiving state) Chile proclaims itself to be,²⁰⁶ and reformation of those policies does not appear to be a priority of the new administration.²⁰⁷ If the political will to reform resurges, the state should listen carefully to the experiences and recommendations of those civil society organizations serving migrants, such as the members of the Migration and Interculturality Network (*Red de Migraciones e Interculturalidad, RedMI*).

Based on the observations of interviewees, reforms should target transparency and should also encompass structural and procedural changes. At present, numerous civil society organizations spend time guiding foreigners through Chile's migration system, indicating that the state needs to (1) make those policies and procedures simpler and clearer and (2) better disseminate information to migrants so that they know their rights and responsibilities. Likewise, in order to curb abuses of authority and any real or perceived discrimination towards migrants, the state should limit the discretion of migration officials through clear guidelines, increased transparency, and accountability and implementation of an appeals system. Such a reform appears to be particularly important in border-crossing stations.

¹⁹⁸ Interview with Te3filo Altamirano R3a, *supra* note 135.

¹⁹⁹ Interview with Jean-Marie Ansi3n, *supra* note 138; Interview with Mar3a Luisa De La Torre Vicente, *supra* note 147.

²⁰⁰ Interview with Jean-Marie Ansi3n, *supra* note 138.

²⁰¹ *Id.*

²⁰² *Id.* The Peruvian embassy in Chile estimates that there are approximately 120,000 Peruvian citizens in Santiago. Roughly 55,000 are registered to vote. Of those, approximately 80% voted in the 2011 presidential election. Interview with Ra3l Hidalgo Gallegos, *supra* note 50.

²⁰³ *Conozca los lugares de sufragio en Chile para las elecciones de Per3* [*Know the Voting Places in Chile for the Peruvian Elections*], COOPERATIVA.CL (April 9, 2011), www.cooperativa.cl/conozca-los-lugares-de-sufragio-en-chile-para-las-elecciones-de-peru/prontus_notas/2011-04-08/234514.html.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Instructivo Presidencial 009 que Imparte Instrucciones sobre "Pol3tica Nacional Migratoria," *supra* note 27.

²⁰⁷ For example, in response to a formal request for information concerning the intersectorial migration working group nominally established by former President Bachelet in Gab. Pres. No. 009, the Ministry of the Interior admitted in 2009 that the working group had never convened. Divisi3n Jur3dica, Subsecretar3a del Interior, Ministerio del Interior, Oficio No. D-18097, Oct. 19, 2009. As of the author's visit to Chile, no immigration reforms were pending in Chile's Congress.

Legislative reforms should begin with elimination of the Visa Subject to Contract in favor of a new, less restrictive work visa that would remove migrants' dependence on labor contracts and thus render migrants less vulnerable to exploitative employers. Chile should also consider instituting housing and anti-discrimination laws. Minimum housing standards would protect all renters, whether foreign or national, from substandard, unsafe, and unsanitary housing. Anti-discrimination laws should provide a remedy for persons discriminated against on the basis of their sex, race, religion, or national origin. Lastly, Chile should also establish mechanisms for absentee voting in order to respect the political rights of emigrant Chileans.

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Peru currently appears to be committed to protecting and promoting the welfare of emigrant Peruvians. As it admonishes other states to respect Peruvians' rights abroad, however, Peru should remember to "walk the walk" as well as "talk the talk." Though unexamined for purposes of this paper, Peru's own migration policies appear to suffer from the same focus on national security that underlies Chile's policies. Peru could set an example by reforming its internal legislation while continuing to promote the welfare of emigrant Peruvians. Peru could also take significant steps to strengthen domestic access for its citizens to health, education, and labor rights necessary for human development in the local community, so that the choice to migrate will be voluntary—**not** compelled by a lack of basic opportunities in Peru.

Both Peru and Chile should strive to deal with the many issues related to migrants through the work of an intersectorial working group on migration. (Former President Bachelet instructed the creation of such a group in 2008,²⁰⁸ but the group apparently never convened.²⁰⁹) The haphazard efforts of Chilean ministries to promote migrants rights through ministerial declarations and ad hoc actions has proven ineffectual, and an intersectorial working group could improve communication and the coordination of holistic migration policies. Peru's *Mesa Intersectorial para la Gestión Migratoria*, though still new, already appears to facilitate data-sharing and complementary policy-building.²¹⁰

Both countries should also seek to implement existing and future international, regional, and bilateral agreements concerning migration. In 2006, alongside a bilateral free trade agreement, Chile and Peru signed a memorandum of understanding concerning migration.²¹¹ The agreement addressed international labor rights such as freedom of association, elimination of discrimination, and the prohibition of forced and child labor. Both the free trade agreement and the memorandum on migration came into force in 2009. The two countries also ratified a bilateral convention on social security in 2003, seeking to increase pension portability between the two states.²¹² Full implementation of these and other international agreements signed and ratified by Chile and Peru would go a long way toward promoting the human development of both nations' migrants, whether temporary, circular, or long-term.

²⁰⁸ Instructivo Presidencial 009 que Imparte Instrucciones sobre "Política Nacional Migratoria," *supra* note 27.

²⁰⁹ División Jurídica, Subsecretaría del Interior, Ministerio del Interior, Oficio No. D-18097, Oct. 19, 2009. As of the author's visit to Chile, no immigration reforms were pending in Chile's Congress.

²¹⁰ Peru also created a working group on human trafficking, which combats trafficking and aids victims through health, counseling, relocation, and other services.

²¹¹ ECLAC, *supra* note 27, at 140.

²¹² Chile and Peru signed a social security convention in 2002, yet the convention has not been implemented. Convenio de Seguridad Social Entre la República de Chile y la República del Perú [Social Security Convention between the Republic of Chile and the Republic of Peru], Aug. 23, 2002, available at http://www.safp.cl/safpstats/stats/sist_previsional/convenios_extranj/convenio_peru.html.