



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the eighteenth to twenty-first periodic reports of Peru*

1. The Committee considered the combined eighteenth to twenty-first periodic reports of Peru, submitted in a single document (CERD/C/PER/18-21), at its 2301st and 2302nd meetings (CERD/C/SR.2301 and 2302), held on 14 and 15 August 2014. At its 2315th and 2316th meetings (CERD/C/SR.2315 and 2316) held on 25 and 26 August 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the eighteenth to twenty-first periodic reports of the State party in a single document. The Committee expresses its satisfaction at the frank and constructive dialogue that it held with the high-level delegation of the State party.

B. Positive aspects

3. The Committee welcomes the following measures adopted by the State party:

- (a) The adoption of the National Human Rights Plan 2014–2016;
- (b) The establishment in 2013 of the National Office for Dialogue and Sustainability, attached to the Office of the President of the Council of Ministers; and
- (c) The creation in 2010 of the Ministry of Culture and the Office of the Deputy Minister for Intercultural Affairs.

4. The Committee welcomes the creation of the Ministry of Development and Social Inclusion and the Ministry of Justice and Human Rights — the latter acting as the lead agency with regard to human rights — and the establishment of the Office of the Deputy Minister of Human Rights and Access to Justice, which is responsible for formulating, coordinating, implementing and monitoring national human rights policy.

* Adopted by the Committee at its eighty-fifth session (11–29 August 2014).



5. The Committee warmly welcomes the adoption of the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation (the Right to Prior Consultation Act) in September 2011 and the Regulations to the Act in April 2012.

6. The Committee notes in particular the efforts made by the State party to combat racial discrimination through the creation of the National Commission against Discrimination and the launch of the virtual platform called “Warning against racism” in 2013.

7. The Committee welcomes the ratification by the State party of the International Convention for the Protection of All Persons from Enforced Disappearance on 26 September 2012.

C. Concerns and recommendations

Structural discrimination

8. The Committee notes with concern that members of indigenous peoples and Afro-Peruvians continue to be subjected to structural discrimination and are constantly faced with a lack of economic opportunities, poverty and social exclusion (arts. 1, 2 and 5).

In the light of its previous recommendation (CERD/C/PER/CO/14-17, para. 10), the Committee recommends that the State party should adopt a comprehensive national policy against racism and racial discrimination that will promote social inclusion and reduce the high levels of inequality and poverty affecting members of indigenous peoples and Afro-Peruvians.

Definition of racial discrimination

9. The Committee welcomes the recognition of the principle and fundamental right to equality contained in article 2, paragraph 2, of the Constitution of Peru. It is, however, concerned at the lack of a specific definition of racial discrimination containing all the elements of article 1 of the Convention (art. 1, para. 1, and art. 2, para. 1 (d)).

On the basis of its general recommendation No. 14 (1993) on article 1, paragraph 1, of the Convention, the Committee urges the State party to incorporate in its domestic legislation a definition of racial discrimination that includes all the elements contained in article 1, paragraph 1, of the Convention and that covers acts of direct or indirect discrimination in all fields of law and public life.

Racial discrimination offences and racist hate speech

10. Although article 323 of the Criminal Code relates to the offence of “Discrimination or incitement to discrimination”, the Committee notes with concern that neither acts of racial discrimination nor the actions listed in article 4 of the Convention are clearly defined in Peruvian criminal legislation (art. 1, paras. 1 and 4).

In the light of its general recommendations No. 7 (1985) on legislation to eradicate racial discrimination (art. 4) and No. 15 (1993) on article 4 of the Convention, the Committee urges the State party to include in its criminal legislation the offence of racial discrimination and an offence that combines all the elements of article 4 of the Convention while also conforming with general recommendation No. 35 (2013) on combating racist hate speech. The Committee also recommends that the State party should ensure that racial motivation is considered an aggravating circumstance when sentence is passed.

Statistical data and census

11. The Committee continues to be concerned at the absence of disaggregated data on the composition of the population of the State party and, in particular, regrets the absence of data and indicators on the Afro-Peruvian population, which makes it difficult to obtain a clear and objective vision of the urgent needs of this sector of the population (arts. 1 and 2).

The Committee reminds the State party of the importance of compiling and publishing disaggregated statistical data on the composition of its population. Bearing in mind that the next census will take place in 2017, the Committee urges the State party to compile data and indicators on the Afro-Peruvian and indigenous population, disaggregated by sex, age and disability, to facilitate active participation by indigenous peoples and the Afro-Peruvian population in developing the methodology to be used and to ensure that such a methodology is based on the criterion of self-identification.

Institutional measures

12. The Committee takes note of the creation of the National Commission against Discrimination but is concerned at the lack of precise information on the resources allocated to the Commission and on its functions, particularly with regard to the fight against racial discrimination. The Committee also regrets that the National Institute for the Development of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) has been merged with the Ministry of Culture, which will be detrimental to its technical nature and its independence (art. 2, para. 1).

The Committee recommends that the State party should take the necessary legislative and administrative measures to provide a clear definition of the mandate and functions of the National Commission against Discrimination with regard to combating racial discrimination and ensure the allocation of sufficient human and financial resources to enable it to carry out its functions effectively. The Committee reiterates its previous recommendation (CERD/C/PER/CO/14-17, para. 22) and encourages the State party to strengthen INDEPA by ensuring its independence, visibility and effectiveness.

Afro-Peruvian population

13. The Committee is concerned at the discrimination and invisibility experienced by the Afro-Peruvian population, particularly in the areas of employment, education and health. Despite the creation of an Afro-Peruvian working group in the Congress of the Republic, the Committee regrets that there is still a low level of participation by Afro-Peruvian men and women in politics and in the development and approval of public standards and policies (arts. 2 and 5).

On the basis of general recommendation No. 34 (2011) on racial discrimination against persons of African descent, the Committee urges the State party to adopt general and specific measures, including the allocation of human and financial resources, to ensure that Afro-Peruvians can exercise their rights. It also invites it to adopt mechanisms aimed at ensuring that Afro-Peruvian communities participate in politics, in the design and approval of public standards and policies and in the implementation of projects affecting them directly or indirectly.

Implementation of the Right to Prior Consultation Act

14. The Committee welcomes the adoption of the Right to Prior Consultation Act and its Regulations, and also the information provided by the State party on the 16 consultation processes currently taking place. However, the Committee is concerned by information

received on the lack of resources or a proper methodology for the implementation of the consultation process. The Committee also regrets the exclusion from the consultation process of projects relating to the mining sector and the constraints placed on determining which peoples should be consulted (arts. 2 and 5).

The Committee recommends that the State party should:

(a) Adopt an appropriate methodology for conducting prior consultation procedures in conformity with international standards and ensure the allocation of sufficient resources;

(b) Ensure that all projects on the development and exploitation of natural resources, including mining operations, are submitted to the consultation process with a view to obtaining the free, prior and informed consent of communities that may be affected;

(c) Guarantee that all indigenous communities, either from the Andean or the Amazonian region, that may be affected, directly or indirectly, by the adoption of a legislative or administrative measure should be duly consulted.

Indigenous peoples and exploitation of natural resources

15. Despite the measures adopted to guarantee protection for the rights of indigenous peoples, the Committee is concerned that concessions for the extraction of natural resources continue to infringe the rights of indigenous peoples over their lands, traditional and ancestral territories and natural resources, including waters, and generate environmental problems, such as the pollution of aquifers. The Committee expresses its concern at the lack of effective implementation of the measures adopted to mitigate environmental impacts (art. 5).

In the light of general recommendation No. 23 (1997) on the rights of indigenous peoples and the recommendations of the Special Rapporteur on the rights of indigenous peoples in his report on the situation of indigenous peoples' rights in Peru with regard to the extractive industries (A/HRC/27/52/Add.3), the Committee urges the State party to:

(a) Redouble its efforts to strengthen the legislative and administrative framework for the protection of indigenous peoples with regard to the exploitation of natural resources;

(b) Guarantee the full and effective enjoyment by indigenous peoples of their rights over the lands, territories and natural resources that they occupy or use, by such means as the appropriate issuance of deeds of title;

(c) Ensure the effective implementation of protection measures and safeguards against environmental impacts;

(d) Guarantee that indigenous peoples affected by natural resource activities in their territories receive compensation for damage or loss suffered and participate in the benefits arising out of such activities.

Indigenous peoples in a situation of voluntary isolation or initial contact

16. The Committee welcomes the measures taken by the State party to protect indigenous or aboriginal peoples in a situation of voluntary isolation or initial contact but is concerned at the gaps in their implementation. The Committee reiterates its concern about the plan to extend the exploration and extraction of natural gas in the Kugapakori-Nahua-Nanti Reserve, which may put at risk the physical well-being of the indigenous peoples living in the area and infringe their rights (art. 5).

The Committee recommends that the State party should intensify the protection that it provides to indigenous peoples in a situation of voluntary isolation or initial contact and adopt the measures required to ensure their due implementation. The Committee urges the State party to comply with the recommendations of the Special Rapporteur on the rights of indigenous peoples in his report (A/HRC/27/52/Add.3) with regard to indigenous peoples in a situation of voluntary isolation or initial contact, particularly those living in the Kugapakori-Nahua-Nanti Reserve.

Multiple forms of discrimination

17. The Committee is concerned that indigenous and Afro-Peruvian women continue to encounter multiple forms of discrimination in the areas of education, employment and health, that they continue to be victims of gender-based violence and that they face difficulties in gaining access to justice. The Committee is also dismayed by reports of discrimination suffered by many female domestic workers owing to their ethnic origin (arts. 5 and 6).

The Committee recommends that the State party should take into account its general recommendation No. 25 (2000) on the gender-related dimensions of racial discrimination (art. 5) in all policies and strategies for combating racial discrimination in order to address the multiple forms of discrimination affecting women. The Committee also urges the State party to take measures with an intercultural focus to improve access by women who are victims of discrimination and violence to education, employment, health and justice. The Committee urges the State party to adopt effective measures to protect domestic workers and speed up the pace of ratification of the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189).

Disparity in education

18. The Committee is concerned at the difficulties facing children whose mother tongue is not Spanish as regards access to quality education and also at the high levels of illiteracy among boys and girls belonging to indigenous or Afro-Peruvian communities (art. 5).

The Committee recommends that the State party should adopt the necessary measures to eradicate illiteracy and improve the quality of education in rural areas inhabited by boys and girls belonging to indigenous communities and to ensure effective implementation of the national policy of intercultural bilingual and rural education in order to consolidate the intercultural approach and ensure the use of indigenous languages in primary and secondary education.

Right to identity

19. Despite the efforts by the State party in setting up the National Identity and Civil Status Registry (RENIEC), the Committee is concerned that a significant number of indigenous women and girls continue to face difficulty in gaining access to the birth register and obtaining identity documents, particularly in the indigenous communities of the Amazonian and Andean regions (art. 5 (d)).

The Committee recommends that the State party should redouble its efforts to guarantee access to the birth register for all indigenous peoples, particularly those in remote areas of the Amazonian and Andean regions, and to ensure that they can obtain birth certificates and identity documents.

Forced labour practices

20. The Committee notes with concern that members of indigenous peoples, especially in the Madre de Dios and Ucayali regions, are deceived into engaging in forced labour practices and servitude in the forestry and mining sectors (arts. 2 and 5).

The Committee recommends that the State party should:

- (a) Intensify its efforts to eradicate forced labour by strengthening and allocating sufficient resources to the National Committee against Forced Labour;**
- (b) Undertake the immediate investigation and trial of those responsible for such acts and provide victims with assistance, protection and adequate reparation;**
- (c) Comply fully with the recommendations of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, following her visit to Peru (A/HRC/18/30/Add.2).**

Refugees and asylum seekers

21. Notwithstanding the information provided by the State party with regard to the treatment of refugees and asylum seekers, the Committee is concerned that such people continue to face racial discrimination and are impeded them in the effective exercise of their economic, social and cultural rights and, in particular, access to health and employment (art. 5 (d) and (e)).

The Committee urges the State party to take all the measures required to promote the integration of refugees and asylum seekers, guaranteeing them access to education, employment and health services without discrimination. The Committee also recommends that the State party should intensify the human rights training that it offers to public officials with regard to this sector of the population.

Implementation of the Comprehensive Collective Reparations Plan

22. The Committee is concerned at the delays in the implementation of the Comprehensive Collective Reparations Plan, particularly with regard to members of indigenous peoples who were victims of the armed conflict between 1990 and 2000, and the lack of proper participation by such persons in developing and implementing reparation programmes. The Committee is dismayed to learn of the decision of the Supra-Provincial Criminal Prosecutor's Office of Lima to close the investigation into the case of over 2,000 women, mainly indigenous women, who were subjected to forced sterilization between 1996 and 2000 (arts. 2 and 6).

The Committee urges the State party to:

- (a) Adopt the necessary measures to ensure the speedy and effective implementation of the Comprehensive Collective Reparations Plan, including the allocation of sufficient resources;**
- (b) Facilitate the participation of indigenous peoples in developing and implementing reparation programmes;**
- (c) Reopen the investigation into the case of victims of forced sterilization and ensure that those responsible are duly punished and that the victims receive appropriate reparation.**

Social conflict arising out of projects involving natural resource exploitation

23. The Committee welcomes the action taken by the State party to prevent social conflicts by setting up discussion forums. However, it is sorry to learn that acts of violence

arising out of opposition to projects involving natural resource exploitation continue to occur and that, as in the case of the tragic events in Bagua, they are not exhaustively investigated. The Committee notes with concern information received recently about criminal prosecutions and the disproportionate use of force against members of indigenous peoples opposed to extractive projects. The Committee is also concerned by the negative impact that may be felt by indigenous peoples of the adoption of the recent amendments to the Criminal Code (Act No. 30151), exempting law enforcement officials from criminal liability when they cause injury or death as a result of the use of force in the course of their duties (arts. 5 (a) and 6).

The Committee urges the State party to:

(a) Strengthen mechanisms to prevent social conflict by promoting the effective participation of members or representatives of indigenous peoples to enable them to express freely their opposition to projects involving natural resource exploitation;

(b) Conduct an exhaustive inquiry into violations of human rights that arise out of opposition to extractive projects;

(c) Adopt the necessary measures to guarantee respect for the principle of proportionality and strict necessity in the recourse to force against persons belonging to indigenous peoples;

(d) Consider repealing Act No. 30151 and ensure that those responsible for the excessive use of force, to the detriment of members of indigenous peoples, are brought to trial.

Combating racial stereotypes

24. Despite the measures adopted to combat racial discrimination, including administrative measures directed at the media, the Committee remains concerned by the discriminatory attitudes that are still deeply rooted in Peruvian society and regrets that the media persist in propagating negative stereotypes of indigenous peoples and Afro-Peruvians, as in the case of the television programme *La Paisana Jacinta* (art. 7).

In the light of its earlier recommendation (CERD/C/PER/CO/14-17, para. 19) and its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party should:

(a) Take appropriate steps in accordance with the general recommendation to prevent the propagation of messages, programmes and advertisements that continue to perpetuate the stigmatization of indigenous peoples and Afro-Peruvian communities through the representation of stereotypes;

(b) In accordance with the commitment expressed during the interactive dialogue, speed up the preparation and adoption of a code of ethics under which the media will undertake to respect the dignity, identity and cultural diversity of indigenous peoples and Afro-Peruvian communities;

(c) Conduct extensive awareness-raising and education campaigns among the general public on the negative effects of racial discrimination and promote understanding and tolerance among the various racial and ethnic groups in the country.

D. Other recommendations

25. In view of the indivisibility of all human rights, the Committee encourages the State party to consider acceding to the Convention on the Reduction of Statelessness of 1961 and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance of 2013.

Amendment of article 8 of the Convention

26. The Committee recommends that the State party should ratify the amendment to article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee recalls General Assembly resolutions 61/148, 63/243 and 65/200, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Durban Declaration and Programme of Action

27. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its national legislation, the State party should take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party should include specific information in its next periodic report on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dissemination of reports and concluding observations

28. The Committee recommends that the State party should make the Committee's concluding observations available to the general public, disseminating them in the official languages and in other commonly used languages of the State party.

Follow-up to concluding observations

29. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 15, 22, 23 and 24 above.

Paragraphs of particular importance

30. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 8, 14 and 17 above and requests it to provide detailed information in its next periodic report on the specific measures taken to implement them.

Preparation of the next report

31. The Committee recommends that the State party should submit its twenty-second and twenty-third periodic reports by 29 October 2016, taking into account the treaty-specific guidelines on reporting adopted by the Committee at its seventy-first session

(CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports (see the harmonized guidelines on reporting set out in document HRI/GEN/2/Rev.6, paragraph 19).
