



**International Convention on
the Elimination
of All Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-fifth session
3-28 August 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

PERU

1. The Committee considered the fourteenth to seventeenth periodic reports of Peru, submitted as one document (CERD/C/PER/14-17), at its 1934th and 1935th meetings (CERD/C/SR.1934 and 1935), held on 3 and 4 August 2009. At its 1963rd and 1964th meetings (CERD/C/SR.1963 and 1964), held on 24 August 2009, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the periodic report submitted by Peru, despite the 10-year delay in submission. It also welcomes the replies to the list of issues transmitted by the State party in advance of its delegation's visit. On the other hand, the Committee considers that the report does not address adequately or in sufficient detail all the provisions of the Convention. The Committee acknowledges receipt of some of the additional information and replies to questions and concerns raised by the experts, which the delegation had agreed to provide in writing.

3. The Committee welcomes the fact that the State party designated a high-level delegation to submit, elaborate on and discuss the report. The Committee also appreciates the information provided in relation to the cases submitted under its early warning procedure.

B. Positive aspects

4. The Committee notes with satisfaction the establishment of the National Institute for the Development of the Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) on 16 April 2005 as a decentralized public body enjoying financial, operational, administrative and organizational independence. It notes that INDEPA is responsible for promoting and monitoring compliance with national policies and coordinating with regional governments in carrying out projects and programmes to promote, defend, investigate and assert the rights of the Andean, Amazonian and Afro-Peruvian peoples and their “development with identity”. It further notes that INDEPA is a specialized public body recognized as a leader in promoting, protecting, defending and coordinating the cultural, economic and social development of the Andean, Amazonian and Afro-Peruvian peoples, thereby strengthening their cultural identity.
5. The Committee notes with satisfaction that INDEPA participates in and organizes working groups aimed at raising the awareness of government officials and the population in general regarding the importance of developing intercultural and inclusive public policies to protect the Afro-Peruvian people, and that it also participates in technical support activities with relevant non-governmental organizations.
6. The Committee notes with satisfaction the celebration of Afro-Peruvian Culture Day on 4 June of each year, as well as the establishment of the first museum of Afro-Peruvian culture in recognition of the significant contribution of the Afro-Peruvian community to the country’s identity.
7. The Committee notes with satisfaction efforts to combat racial discrimination in Peru, such as legislation protecting consumers from discrimination and forbidding discrimination in job advertisements.
8. The Committee welcomes the action taken by the State party in electoral matters, such as introducing participation quotas for indigenous peoples and laws governing municipal and regional elections that require quotas for persons of indigenous origin on party lists of candidates for the posts of mayors and municipal councillors and for seats on regional councils.
9. The Committee welcomes the bill on the consultation and participation of indigenous peoples in environmental matters, which aims to ensure that any infrastructure projects or works that might affect the rights of indigenous peoples have the prior, free and informed consent of these peoples and that national legislation is adapted in order to provide for the right of indigenous peoples - recognized in the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) - to prior, free and informed consultation.

C. Concerns and recommendations

10. Bearing in mind that the 1993 Constitution recognizes and protects the ethnic and cultural diversity of the Peruvian nation, the Committee remains concerned that a high proportion of persons among the indigenous peoples and Afro-Peruvian communities continue to suffer in practice from racism and structural racial discrimination in the State party.

The Committee recommends that the State party combat racial discrimination by drawing up a comprehensive national policy against racism and racial discrimination. The Committee also calls on the State party to include in its next report indicators on the enjoyment by the various indigenous peoples and Afro-Peruvian communities of the rights guaranteed in the draft Constitution, disaggregated by urban or rural population, age and sex.

11. The Committee takes account of the fact that the State party promotes and guarantees the protection of the individual and collective rights of indigenous peoples established as campesino communities in the Andes or as native communities in the Amazon region. The Committee notes furthermore that for the purposes of implementing the rights enshrined in ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples, the authorities in the State party consider the categories “campesino communities” and “native communities” as belonging to the category “indigenous peoples” as it is currently used in international human rights law and which the indigenous peoples want to appear in the Constitution. In addition, the Committee expresses concern for the situation and rights of the indigenous peoples and Afro-Peruvian communities not yet established as campesino or native communities. The Committee takes note of the efforts of the State party to adopt a framework law on indigenous peoples.

The Committee recommends that the State party continue to promote the urgent adoption of a framework law on the indigenous peoples of Peru covering all communities, while endeavouring to equate and harmonize terminology in order to ensure the effective protection and promotion of the rights of all indigenous peoples and Afro-Peruvian communities.

12. The Committee notes the State party’s proposal to replace the 1994 ethnolinguistic map with a new one that was submitted to Congress on 9 February 2009. In addition, the Committee notes with satisfaction that the updated information contained in this map will enable the State party to develop public policies reflecting the needs of the various ethnic and linguistic population groups of Peru. While the Committee welcomes the statistical data on the ethnic make-up of the State party contained in the periodic report, it has noted limitations in the preparation of the 2007 national census. It therefore requests additional information on the characteristics and specific situation of the various ethnic groups, and emphasizes the need for information on the use of native languages and the situation of Afro-Peruvian communities.

The Committee recommends that the State party continue to improve its census methodology to reflect the ethnic complexity of Peruvian society, bearing in mind the principle of self-identification, in keeping with the Committee’s general recommendation No. 8 and with paragraphs 10-12 of the guidelines for the Committee-specific report to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1). In this context, the Committee requests the State party to include in its next periodic report disaggregated statistics on the composition of the population. The Committee further recommends that special emphasis be placed on obtaining updated information on the Afro-Peruvian community and on the use of the native languages of Peru.

13. The Committee notes with concern the gradual decline in the use of native indigenous languages occurring in Peru, as reflected in the 2007 national census. It considers that the bilingual education initiatives taken by the State party should be an opportunity to consolidate the use of two languages rather than lose the native language in favour of Spanish.

The Committee recommends that the State party find out why the use of indigenous languages has declined, in order to develop an appropriate response. It recommends the speedy adoption of the bill on the preservation and use of the native languages of Peru, since it has already been approved by the Committee on Andean, Amazonian and Afro-Peruvian Peoples, the Environment and Ecology. The Committee also recommends the urgent adoption of the bill on the translation and dissemination of legislation in the official languages, since all legislation adopted by the State party will affect the entire population of Peru.

14. While noting the positive steps taken by the State party in this area, the Committee reiterates its concern at the considerable tension, even leading to violence, generated in the country by the exploitation of the subsoil resources of the traditional territories of the indigenous peoples. The Committee also notes that in some cases the right of indigenous peoples to be consulted and to give their informed consent prior to the exploitation of natural resources in their territories is not fully respected in practice. It further expresses concern at the negative impact on health and the environment of companies' extractive activities conducted at the expense of the exercise of the right to land and the cultural rights of the indigenous peoples concerned.

The Committee urges the State party to adopt the bill on the consultation and participation of indigenous peoples in environmental matters, taking into account the Committee's general recommendation No. 23 (para. 4 (d)), in which it urges States parties, to ensure with reference to indigenous peoples "that no decisions directly relating to their rights and interests are taken without their informed consent". In the light of that general recommendation, the Committee urges the State party to consult the communities of the indigenous peoples concerned at each step of the process and to obtain their consent before plans to extract natural resources are implemented.

15. The Committee expresses deep concern at the violence triggered by conflicts between projects aimed at the exploitation of natural resources and the rights of indigenous peoples, such as that which occurred in Bagua on 5 and 6 June 2009. The Committee notes the positive steps taken by the Government of Peru to alleviate the violence related to events in Bagua, such as repealing decrees Nos. 1081 and 1094 and launching an investigation into the facts. The Committee welcomes the visit to Peru from 17 to 19 June 2009 by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. James Anaya, and his ensuing recommendations.

The Committee urges the State party to follow the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. James Anaya, following his visit to Peru, and to take urgent steps to set up an independent commission that includes indigenous representatives to carry out a thorough, objective and impartial investigation. It also recommends that the commission's findings should feed into the State party's discussions concerning the bill on the consultation and participation of indigenous peoples in environmental

matters and the relevant regulations for the mining and oil sectors submitted by the Ministry of Energy and Mines. The Committee looks forward to receiving information on the proceedings, establishment, findings, conclusions and recommendations of the commission. Likewise, it supports the Special Rapporteur's appeal to the indigenous persons and peoples concerned to make their demands and hold their demonstrations in a peaceful manner, respecting the human rights of others.

16. The Committee expresses concern at the limited enjoyment of economic, social and cultural rights by indigenous peoples and Afro-Peruvian communities, in particular with regard to housing, education, health and employment, despite the economic growth in the State party.

The Committee recommends that the State party take the necessary steps to achieve effective protection from discrimination against the indigenous peoples and Afro-Peruvian communities in various domains, in particular, employment, housing, health and education. The Committee also requests that the State party include information in its next report on the impact of programmes aimed at giving effect to the economic, social and cultural rights of the indigenous population, as well as statistical data on progress in this regard.

17. The Committee expresses concern at the low profile of the Afro-Peruvian communities in Peru, as reflected in, for example, the scant information provided about them in the national report, in the national census and in public policies relating to all areas of public life in the country.

The Committee urges the State party to carry out a study on the Afro-Peruvian population that would enable the State party to identify its needs and draw up effective plans of action, programmes and public policies relating to all areas of the public life of the Afro-Peruvian communities.

18. While the Committee takes note of the progress made recently in efforts to combat illiteracy within the indigenous and Afro-Peruvian population, it continues to be concerned at the illiteracy rate among the indigenous peoples and Afro-Peruvian communities. Furthermore, while the Committee welcomes efforts to establish a bilingual educational system, it is concerned at the shortcomings in applying the intercultural bilingual system in practice.

The Committee encourages the State party to take action in the short and medium term to implement effective measures that will reduce illiteracy among indigenous people and Afro-Peruvians. Also, the next report of the State party should include specific data on the percentage of indigenous people and Afro-Peruvians who have access to primary, secondary and university education.

19. The Committee is concerned at the racial discrimination directed against indigenous peoples and Afro-Peruvian communities in the media, including stereotyped and demeaning portrayals of those peoples and communities in television programmes and in the press. The Committee is also concerned at the evidence of racial discrimination in everyday life and at information it has received on acts of racial discrimination committed by government officials.

The Committee recommends that the State party take appropriate steps to combat the racial prejudice, that leads to racial discrimination in the media, both in public and private channels and in the press, as well as in everyday life. The Committee also recommends that, in the area of information, the State party foster understanding, tolerance and friendship among the various racial groups in the State party, including through the adoption of a media code of ethics that would commit the media to showing respect for the identity and culture of the indigenous peoples and Afro-Peruvian communities.

20. The Committee stresses that the sustainable management of natural resources is a complex task and takes note of the State party's efforts to improve its legislation and practice in this area, particularly in relation to water resources. In this context, the Committee welcomes the information provided by the State party on the construction of four new wells in the community of Ancomarca, a case that was considered under the early warning procedure. However, the Committee expresses concern at the impact that the management of catchment basins may have on the wetland areas of Peru and on the way of life of indigenous peoples.

The Committee recommends that the State party's water management policy should take into account the needs and wishes of the communities likely to be affected by the policy. The Committee also reiterates its appeal to the State party to guarantee the use and enjoyment of water by the residents of the community of Ancomarca and to provide compensation for the damage and harm suffered by this community.

21. The Committee takes note of the information provided by the State party on the implementation of the Dorissa Agreement concerning the Achuar people affected by oil-drilling in the Río Corrientes area.

The Committee encourages the State party to make every possible effort to ensure that the Dorissa Agreement is implemented without delay and to prevent similar cases from occurring in future oil-drilling projects.

22. The Committee notes the importance of ensuring that INDEPA has the necessary financial and human resources to perform its valuable work.

The Committee recommends that INDEPA be strengthened by providing it with the necessary financial and human resources to perform its valuable work.

23. The Committee expresses its concern at the conflicts that may arise as a result of the lack of consensus with regard to national policy on the part of Peruvian society as a whole, in all its multicultural and multi-ethnic diversity, in particular in the areas of education, development projects and environmental protection.

The Committee recommends that the State party conduct a participative, inclusive process aimed at determining which vision of the Nation best represents the ethnic and cultural diversity of a country as rich as Peru, since a shared and inclusive vision can guide the State party in drawing up public policies and development plans.

24. The Committee expresses its concern at the lack of information on legal actions and penalties for acts of racial discrimination.

The Committee recommends that, in its next periodic report, the State party provide more complete information and statistics on legal actions and penalties for acts of racial discrimination.

25. Given the indivisibility of all human rights, the Committee encourages the State party to consider ratifying all international human rights instruments that it has not yet ratified.

26. The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted on 8 September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the final document of the Durban Review Conference held in Geneva in April 2009, when incorporating the Convention into its domestic legal system. The Committee requests that the State party include in its next periodic report specific information on plans of action and other measures it has taken with a view to implementing the Durban Declaration and Programme of Action at the national level.

27. The Committee recommends that, in conjunction with the preparation of its next periodic report, the State party continue to consult and expand its dialogue with civil society organizations engaged in the defence of human rights, in particular those engaged in combating racial discrimination.

28. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, which were adopted on 15 January 1992 during the Fourteenth Meeting of States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination and endorsed by the General Assembly in resolution 47/111 of 16 December 1992. Along these lines, the Committee refers to General Assembly resolution 61/148, in which the General Assembly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General in writing of their agreement to the amendment.

29. The Committee recommends that the reports of the State party be made available and accessible to the public at the time of their submission, and that the concluding observations of the Committee concerning these reports also be published in the official language of the country and in other commonly used languages, as appropriate.

30. Taking note of the fact that the State party submitted its core document in 1994, the Committee encourages the State party to submit an updated version of that document, in conformity with the compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties (HRI/GEN/2/Rev.4).

31. In accordance with article 9, paragraph 1, of the Convention and with rule No. 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 the implementation of the recommendations included in paragraphs 12, 17 and 20 above.

32. The Committee also draws the State party's attention to the particular importance of recommendations 11, 14 and 16, and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement these recommendations.

33. The Committee recommends that the State party submit the eighteenth to twentieth periodic reports of Peru submitted as one document by 29 October 2012 at the latest, taking into account the Guidelines for the CERD-specific document (CERD/C/2007/1), which the Committee adopted at its seventy-first session, and to refer to all the points raised in these concluding observations.
