



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 282nd meeting

Held at the Palais Wilson, Geneva, on Thursday, 11 April 2019, at 10 a.m.

Chair: Ms. Janina

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The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention *(continued)*

Initial report of Peru (continued) (CED/C/PER/1; CED/C/PER/Q/1 and CED/C/PER/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Peru took places at the Committee table.*
2. **Mr. Landa Burgos** (Peru) said that, as of April 2019, the Public Prosecution Service had registered a total of 345 cases of enforced disappearance. The majority of those cases were being processed by prosecution services in the Ayacucho and Huancavelica regions, and all corresponded to the period of violence that had lasted from 1980 to 2000. Hence, there were no new cases. The investigation into alleged enforced disappearance in the 1983 Acocro case was currently pending; it had been expanded in February 2019, with an order to obtain statements from former members of the military who had knowledge of the events and could assist in identifying the perpetrators.
3. An office had been set up within the Public Prosecution Service to provide legal, psychological and social assistance to victims and witnesses participating in judicial proceedings. In addition, in recent years, the Public Defence Service had assigned priority to the attention to be given to victims during such proceedings. Moreover, under article 357 of the Code of Criminal Procedure, judges were responsible for the protection of the persons involved in the proceedings before the court over which they presided, including the accused, and had discretion to reserve certain hearings exclusively for participants in the proceedings, as a means of protecting their privacy and physical integrity.
4. **Mr. Rodríguez Tineo** (Peru), responding to the question of whether police or military personnel accused of human rights violations, including enforced disappearance, could continue to discharge their duties and obtain a promotion, said that the principle of the presumption of innocence was enshrined in the Constitution and the new Code of Criminal Procedure. Therefore, anyone accused of a criminal offence, including law enforcement personnel, was treated as innocent until proven guilty by means of a final judgment. According to the new criminal procedural model, the burden of proof lay with the Public Prosecution Service, as investigating judges no longer existed, and judges were now responsible exclusively for the trial of cases.
5. Under the disciplinary regulations applicable to the national police, officers under investigation for an alleged criminal offence could be suspended temporarily and thus barred from their duties for as long as the measure remained in force. However, a suspension did not constitute a presumption of guilt, and the regulations did not expressly prescribe ineligibility for promotion in that situation. Disciplinary regulations for the armed forces, on the other hand, did stipulate that service members under investigation for a serious offence were ineligible for promotion for the duration of the investigation. Despite that rule, the presumption of innocence nevertheless remained applicable in such cases.
6. There was a legal framework in place governing access to judicial information concerning individuals who were subject to indictment or trial. Under the Act on transparency and access to public information, documents relating to human rights violations or to the Geneva Conventions of 1949 could not be classified. Judicial personnel were therefore able to access information that might otherwise be considered as classified or secret.
7. There were rules under article 184 of the Code of Criminal Procedure stipulating that any person in possession of documentary evidence relevant to a case was obliged to provide it to the court, unless legally exempt from doing so. Under article 188 of the same Code, during the preliminary investigation, the judge or the public prosecutor could request information from any public or private records. Persons failing to supply such information, delaying its delivery, or concealing or falsifying it were liable to the payment of a fine.
8. In relation to concerns about the reluctance of the armed forces to supply information on alleged offences of enforced disappearance, he reported that the Secretary General of the Ministry of Defence had established declassification boards that ruled on

whether information should be released or its classified status maintained. However, there were sometimes significant discrepancies between the law and its implementation. The judicial branch intended to strengthen the Judicial Observatory with a view to providing detailed information on those matters to the Committee, as well as to the other treaty bodies.

9. **Mr. Sánchez Velásquez** (Peru) said that the delegation would provide the Committee with written information on the bill providing for the incorporation of the Rome Statute into domestic law. The bill, which was still being debated, was an illustration of his Government's respect for international law, including the Convention. Information would also be provided to the Committee on the inter-institutional protocol that was part of the mechanism to implement the recommendations of the treaty bodies, which could serve as a model of best practices for other States parties. Details on the laws relating to cases of enforced disappearance committed after the year 2000 would also be included; however, the Government was not aware of any such cases. The law clearly stipulated that all cases of enforced disappearance were to be investigated and the perpetrators brought to justice.

10. A missing persons protocol had recently been introduced, and information would be provided to the Committee on the legal framework and data that had been gathered by the Ministry of the Interior and recorded in the missing persons' register over the past three years. The Committee would also be provided with information on the budget of the General Directorate for the Search for Disappeared Persons of the Ministry of Justice and Human Rights. More than 4 million soles had been earmarked to pursue and improve the work of the Directorate.

11. The Government was working on the issue of enforced disappearance using a cross-cutting approach that involved various bodies. The Judicial Observatory would be strengthened in order to improve the monitoring of cases of enforced disappearance by the Supreme Court; it would also make information on those cases available to the public, so as to enable civil society to monitor them as well. A process was under way to provide for the inter-operability of the information systems used by the police, prosecutors and judicial personnel and to make electronic case files available to those bodies online.

12. The Government was also engaged in efforts to facilitate access to information on all judicial proceedings currently in progress in the country. To that end, it was negotiating an agreement with the World Bank and the Inter-American Development Bank. Furthermore, a legislative decree had been adopted in 2018 that sought to ensure that citizens also had access to information on judicial proceedings. An inter-institutional meeting would be held with the relevant public bodies to identify ways in which to facilitate such access.

13. **Ms. Galvis Patiño** (Country Rapporteur) said that she would like to know what legislative measures had been taken to ensure that a person was not deported or extradited to another State where there were substantial grounds for believing that he or she risked being subjected to enforced disappearance. She asked what mechanisms existed and what criteria were used to determine such grounds. Given that, under the Legislative Decree on Migration, migration decisions were to be executed immediately, she would like to know how such decisions could be appealed.

14. She would appreciate further information on the protocol mentioned in paragraph 61 of the replies to the list of issues ([CED/C/PER/Q/1/Add.1](#)), including details on its content; which authority was responsible for its implementation; and how the protocol related to the principle of habeas corpus. She would be welcome concrete examples of cases in which habeas corpus or the protocol had been invoked to prevent a deportation or an extradition. Given that secret detention was prohibited under the Convention and the Peruvian Constitution, she would like to know whether there were any recorded cases of detention in locations that were not officially recognized or controlled by the State.

15. She understood that the right of persons deprived of their liberty to communicate with their families and lawyers could be restricted by order of a judge. She would be interested to know how that restriction worked; how long it could last; whether it was subject to any limitations; and how the families of the persons deprived of their liberty were notified of it. She would like to know whether there were measures in place to prevent the

transfer of persons deprived of their liberty without the knowledge of their families. It would be interesting to know whether measures had been taken to include in the registers of persons deprived of their liberty all of the information set out in article 17 (3) of the Convention.

16. She would welcome further information on the proposal of the Centre for International Humanitarian Law and Human Rights of the armed forces to standardize human rights training courses for soldiers. The delegation should indicate the scope and content of the courses; whether they were a prerequisite for enlistment or promotion; and whether the courses were offered and updated regularly.

17. **Mr. Huhle** (Country Rapporteur) said that, although the 2016 Act on the Search for Persons who Disappeared during the Violence of 1980–2000 did not include a general definition of “victim”, it did provide a definition of “relative”, who was a person who could benefit from the provisions of the Act. He asked whether that definition was consistent with the very broad definition of “victim” contained in article 24 (1) of the Convention. He wondered whether lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, or other persons considered victims under article 24 of the Convention, enjoyed equal rights under the Act.

18. The Comprehensive Reparations Plan, adopted by means of Act No. 28592, contained a comprehensive definition of “victim”, which covered persons or groups of persons who had suffered acts or omissions that violated the provisions of human rights law. Such a definition necessarily included the relatives of victims. Yet, the Act also referred to the relatives of victims. He would welcome an explanation of the reason for that repetition.

19. Given that members of subversive organizations were excluded from the definition of “victim” and therefore from the right to obtain reparation, he wished to know how it could reliably be determined that an individual belonged to such an organization and how that definition met the requirements of the Convention. He was concerned at the fact that such individuals’ relatives could also be denied reparation. He wondered how many persons had tried to register with the Central Register of Victims of the Reparations Council; whether there were any obstacles to registering; why so many applications had been rejected; whether legal assistance was given to persons who were not members of the armed forces in order to help them to register; and what role the Ombudsman played in the reparation process. He asked whether the Government planned to review and make the necessary changes to the criteria to be met for inclusion in the register.

20. He would be interested to hear what strategies were in place for searching for victims of enforced disappearance, how cases were assigned priority and whether the same degree of effort was devoted to searching for individuals who had disappeared without any trace as for those whose identities and whereabouts were known. He wondered how effective coordination was ensured between the specialized forensic team of the Institute of Forensic Medicine of the Public Prosecution Service and the forensic search project of the search commission. He asked what steps had been taken to investigate cases of enforced disappearance that had occurred since 2000 and what mechanisms had been set up to prevent and tackle acts of enforced disappearance. Was a protocol in place, for instance, to ensure that the competent authorities were prepared to deal with such cases?

21. Given that, during the period of violence from 1980 to 2000, it was estimated that 10 per cent of the victims of enforced disappearance had been minors, he would like to have more information on the circumstances of their disappearance, such as whether they had been kidnapped, disappeared with their communities, removed from their parents or born in detention. Lastly, he wondered whether the existing legislation was in conformity with article 25 (1) (a) and (b) of the Convention, which dealt with the wrongful removal of children who were subjected to enforced disappearance and the falsification, concealment or destruction of documents attesting to their true identity.

22. **Mr. Ravenna** said that he would appreciate further clarification of the conventionality review process in the State party, the circumstances in which it was carried out and how it differed from a constitutionality review.

23. **Ms. Kolaković-Bojović** said that she would like to know exactly how much training in enforced disappearance was given to prosecutorial, judicial and military personnel as part of the general courses referred to in paragraphs 84 and 85 of the replies to the list of issues. With regard to compensation procedures, she wondered what criteria were in place to determine the amount of compensation allocated to victims of enforced disappearance and the average length of those procedures.

24. **Mr. Ayat** said he was concerned that the definition of “victim” contained in the State party’s laws was limited in time and in terms of the persons it covered, given that it excluded, for example, persons belonging to subversive organizations. To give civil servants the discretion to deny such persons the status of “victim” could amount to victimizing them, or at the very least, to excluding them from the protection of the law. In his view, that was a situation that must be corrected.

25. **Mr. Ravenna** said that it would be useful to know the law under which membership in a subversive organization was classified as an offence under criminal law.

26. **Mr. Landa Burgos** (Peru) said that the Institute of Forensic Medicine had plans to set up specialized forensic teams in Huánuco and Junín and to build the capacity of the specialized forensic teams of Ayacucho and Huancavelica. Those were districts which, according to the Truth and Reconciliation Commission, had the highest percentages of persons who had disappeared during the period of the violence. The specialized forensic team of the Institute of Forensic Medicine had two offices that provided each other assistance where necessary. The office in Lima covered forensic work for the whole country, except for the Ayacucho and Huancavelica districts, which were covered by the Ayacucho office.

27. The Institute of Forensic Medicine re-examined cases whose victims had not been identified using the traditional methods employed by the laboratory at the Ayacucho office. The Institute also verified the reliability of previously identified cases by carrying out quality control procedures. The main functions of the specialized forensic team included conducting preliminary investigations prior to exhumation and exhuming clandestine graves resulting from the violence that occurred during the period from 1980 to 2000.

28. **Mr. Briceño Salazar** (Peru) said that the Peruvian legislation on extradition was fully compatible with the Convention. Individuals could be extradited when the charges against them constituted an offence in both Peru and the requesting State; the offence carried a penalty of at least two years’ imprisonment in both States; and the individual had been charged prior to the extradition request. All bilateral extradition treaties signed by Peru since 2012 stipulated that extradition was to be denied where there was reason to believe that an individual would be subjected to cruel or inhuman treatment in the requesting State. The same provision would be included in the approximately 30 international treaties on judicial cooperation that were currently being negotiated by the State.

29. The new Code of Criminal Procedure specified that extradition could not be granted if the extradited individual risked being subjected to the death penalty in the requesting State. That provision was interpreted more broadly, in practice, so that a request for extradition was also denied if there was a risk that the extradited individual would be subjected to cruel or inhuman treatment, including enforced disappearance, in the requesting State. Administrative action taken for the purposes of deportation was halted if a constitutional legal safeguard, such as an application for habeas corpus, was granted. The proceedings initiated in response to an extradition request could be halted in the same manner.

30. **Ms. Lecaros Terry** (Peru) said that efforts to prevent the crime of enforced disappearance included the training of civil servants, judges, prosecutors, members of the armed forces, and law enforcement and other security officials. The Public Prosecution Service Training Institute had provided training on national and international laws relating to enforced disappearance to 91 persons in 2015, 286 persons in 2017 and 37 persons in 2018. The judiciary provided continuous training in human rights through its special commissions, such as the gender justice commission, which had trained 798 judges and

members of the judiciary in 2017. In 2018 and 2019, the training given to the Peruvian National Police had included a component on national and international terrorism.

31. The Ministry of Health had developed a training programme to strengthen the capacity of health professionals in providing psychosocial care to persons affected by the violence that had taken place during the period 1980–2000. The training programme, which had been carried out in 12 regions, had been attended by a total of 585 health professionals who specialized in psychology, general medicine, nursing, odontology or social work. Guidelines had also been drafted for the provision of targeted support to LGBTI victims. Moreover, informative and working meetings on health reparations had been held with 184 regional government authorities, and activities had been carried out with 610 representatives of victims' associations to promote the enrolment of victims in a dedicated scheme of the Comprehensive Health Insurance System.

32. On 24 September 2018, the first humanitarian-focused international seminar on searching for disappeared persons had been held with a view to promoting and facilitating the exchange of experiences between professionals, academics, students and social actors from Latin America and the wider global community. The event had highlighted the progress made by Peru, as well as the significant challenges that it still faced.

33. **Mr. Rodríguez Tineo** (Peru) said that article 139 of the Constitution enumerated due process guarantees for detainees, including the right to a defence at all stages of the proceedings and the right to be informed immediately in writing of the cause of their detention. The new Code of Criminal Procedure, which had been in force since 2006, provided for a new accusatory procedural model that recognized those guarantees. Consequently, there were no exceptions in the Peruvian legal order that applied to defendants' rights to communicate with their lawyer, their relatives, and in the case of foreign detainees, their consular representative.

34. Regarding reviews of constitutionality and conventionality, there was no explicit law in the Constitution or the ordinary law that required judges to conduct such reviews; instead, they were carried out on the basis of mandates derived implicitly from the case law and practice of the higher courts. Judges in Peru could apply what was referred to as "diffuse control" in order to declare as inapplicable any rule that they considered to be unconstitutional; the Constitutional Court had "concentrated control" over such matters. In a judgment handed down in 2000, the Constitutional Court granted constitutional rank to international treaties in Peru. That obviated the need, for example, to incorporate the provisions of international conventions into the Criminal Code. Moreover, article 5 of the preliminary chapter of the Code of Constitutional Procedure provided that the content and scope of constitutional rights must be interpreted in conformity with international human rights treaties.

35. In connection with its recent review of the pardon of former President Fujimori, the Supreme Court had reaffirmed the obligation of the courts to ensure, through a review of conventionality, that national laws were interpreted and applied in accordance with the State's international human rights obligations. Previously, in the case of Santiago Martín Rivas, who had led the so-called Colina group, which had been responsible for extrajudicial executions, the Inter-American Court of Human Rights had invalidated the decision of the military tribunal that had ruled in favour of the group, on the ground that the provisions of the American Convention on Human Rights had primacy. The Inter-American Court of Human Rights formed an essential pillar of the human rights architecture at the regional level, and Peruvian courts frequently made references to its case law.

36. The crime of terrorism was defined in full in Act No. 25475. Article 2 of the Act prescribed that the crime was punishable by a sentence of no less than 20 years' imprisonment, while article 3 prescribed a range of penalties, including life imprisonment. Penalties for terrorism were imposed on the basis of an individual's criminal liability as a perpetrator, co-perpetrator or accessory. Courts applied a restrictive rather than extensive interpretation of liability, and penalties could not be extended to an individual's relatives, friends or associates.

37. **Mr. Sánchez Velásquez** (Peru) said that there were no secret or clandestine places of detention in Peru. All places of detention were subject to visits by monitoring and

oversight bodies, including the Ombudsman's Office. Detainees were transferred when their conditions of detention posed a risk to national security or to their own well-being. In cases where transfers could not initially be made public for reasons of security, family members were later informed through the National Register of Detainees and Persons Sentenced to Imprisonment. The Government would take steps to improve the Register on the basis of the Committee's comments and recommendations.

38. The definition of "victim" in the Peruvian legal system reflected the need for reparations to serve as a mechanism of reconciliation, as well as a means of redress, and the prevailing opinion was that granting reparations to members of terrorist organizations hindered rather than facilitated that objective. The Reparations Council was the autonomous technical body mandated to grant victim status; it was composed of a number of individuals, including victims' representatives. In cases where the Council had good reason to believe that an agent of the State had flagrantly violated human rights, that official was excluded from the list of victims entitled to receive reparations under the Comprehensive Reparations Plan. Notwithstanding, relatives of victims of enforced disappearance who were connected to terrorist organizations could appeal for compensation through the national court system or the Inter-American Court of Human Rights.

39. Although Act No. 30470 on the search for disappeared persons contained a rather limited definition of "victim", the definition included in the plan on the search for disappeared persons had been broadened to include a disappeared person's extended family and community, as well as those with whom they shared close emotional ties and who had a legitimate claim for being considered as such. Despite the fact that, under the Peruvian legal order the basic family unit had traditionally been seen as composed of a heterosexual couple, courts had recently begun including same-sex partners in that definition. That was a particularly important development, given that LGBTI persons had been disproportionately targeted by subversive groups during the violence. The Government was taking measures to include same-sex partners in protection mechanisms for victims and to remove the social stigma surrounding LGBTI persons.

40. A total of 425 applications for inclusion in the Central Register of Victims had been unsuccessful. Of those, 48 had been rejected, and the rest were pending, meaning that the Reparations Council had been notified and the applicants had been requested to supply further information.

41. In the past, the legal aid offered by the Public Defence Service had been provided to accused persons. However, under the provisions of a legislative decree adopted in 2018, access to free legal aid had been extended to victims, and victim's advocates had been appointed to support victims in judicial proceedings. In 2018, legal aid had been provided in three cases relating to enforced disappearance. There were plans to appoint more victims' advocates, with a view to further strengthening the victim support system. The Office of the Ombudsman was responsible for the oversight of State activities and the proper provision of public services but was not involved in the provision of legal aid.

42. Different strategies were applied in investigations into enforced disappearances, depending on the information available. In cases where the victim's burial site was known, the work focused on retrieving and identifying the victim's remains. In other cases, the investigation focused on obtaining evidence to establish the victim's whereabouts. The General Directorate for the Search for Disappeared Persons investigated all cases of enforced disappearance, and the approach that was adopted depended on the circumstances of the particular case.

43. To date, the efforts of the State had focused on the period 1980–2000. However, measures had been taken to introduce legislation to criminalize enforced disappearance, develop preventive mechanisms and establish procedures for investigating and prosecuting any act of enforced disappearance, including any such act committed after that period. If further interaction between the organs of the criminal justice system was required, the Government would take steps to develop the relevant protocols.

44. In the past, there had been little coordination between the Office of the Attorney General and the General Directorate for the Search for Disappeared Persons. Efforts were being made to remedy that situation, including the drafting, with support from the

International Committee of the Red Cross (ICRC), of guidelines to promote better cooperation between the two bodies. Indeed, joint projects had already been undertaken, including on cases relating to Los Cabitos military barracks.

45. Many of the children registered as disappeared had vanished in the context of attacks on entire communities. Indeed, thousands of communities had experienced human rights violations, including forced disappearances, during the period 1980–2000. Abductions had also been carried out by terrorist groups, such as the Shining Path. The Ministry for Women and Vulnerable Groups was working to provide culturally sensitive support to victims of enforced disappearance, including children born in captivity, and to help them reintegrate into society.

46. **Ms. Galvis Patiño** asked what criteria were used to establish whether persons to be deported might be at risk of enforced disappearance in the destination country. On the issue of victims' rights, she would welcome additional information on the civil status of victims of enforced disappearance, including an indication as to whether some cases were registered as presumed deaths. Such a practice was incompatible with the Convention, in that the status of disappeared persons whose cases had not been clarified was uncertain. The Committee usually asked States parties to handle the civil problems that arose from enforced disappearance by registering the disappeared persons as "absent due to enforced disappearance".

47. **Mr. Huhle** said that he was concerned at the large number of persons who were excluded from the Comprehensive Reparations Plan and asked whether agents of the State were excluded on the same basis as members of subversive groups. Information on the total number of people excluded from the Comprehensive Reparations Plan would be appreciated, including information on whether they had access to judicial recourse, the total number of such cases brought before the courts and the relevant court decisions.

48. The delegation had indicated that, with regard to the Central Register of Victims, the cases of the majority of rejected applicants were still pending. He asked what steps the Government was taking to expedite those cases, in order to prevent the revictimization of the applicants. He encouraged the State party to consider amending the Act on the Search for Persons who Disappeared during the Violence of 1980–2000 to include the definition of "victim" that was contained in the plan on the search for victims of enforced disappearance, which had been formulated pursuant to that Act.

49. **Ms. Lecaros Terry** (Peru) said that the Centre for International Humanitarian Law and Human Rights of the Ministry of Defence was developing training programmes on human rights and humanitarian law, including in the Convention and regional human rights treaties. The core capacity-building programme comprised four-week courses for officers and three-week courses for technical and junior staff. An advanced course was available to judicial and police officials, and a three-day workshop was also provided. To date, more than 15,000 staff had received training.

50. **Mr. Sánchez Velásquez** (Peru) said that in each deportation or extradition case, an analysis was conducted of the human rights situation in the destination country and the risk to the individual concerned. For cases handled by the Special Commission for Refugees, the results of that analysis were provided by the Office of the United Nations High Commissioner for Refugees (UNHCR). If there was a risk of enforced disappearance, the individual was not deported, and coordinated efforts were made to find an alternative solution. The same evaluation was carried out by the commissions related to extradition and were part of a regulated process that included the approval of the Council of Ministers.

51. Procedures for registering cases of absence by reason of enforced disappearance had previously fallen under the aegis of the Office of the Ombudsman. The process had been laborious and complicated, involving multiple stages and both administrative and judicial procedures. A working group whose members included the relatives of disappeared persons was looking into the introduction of more effective legislative procedures in that regard, with a view to providing greater legal certainty to relatives.

52. Decisions concerning access to reparations were taken within the framework of a rigorous process; all cases were evaluated in accordance with strict guidelines, and

oversight was provided by several bodies. A range of evidence was taken into consideration, including witness statements, legal sources and the opinion of the Truth and Reconciliation Commission. Reparations in cases of enforced disappearance included financial compensation, which was provided for by law, as well as other forms of reparation, including access to health care and support, education grants and subsidies, and measures to ensure the restitution of rights. Of a total of more than 200,000 registered victims of enforced disappearance, only a very small percentage was linked to State agencies such as the police force, the armed forces or self-defence committees.

53. **Mr. Huhle** said that he welcomed the progress made by the State party in overcoming the country's legacy of violence. The fact that Peru had ratified the Convention and had made the declaration to recognize the Committee's competence to receive individual communications reflected its will to protect human rights. It was hoped that the Committee's recommendations would contribute to resolving pending human rights issues. He was gratified by the constructive dialogue that the Committee had held with the delegation and encouraged the State to develop policies that did not depend on the particular government that was in power.

54. **Mr. Sánchez Velásquez** (Peru) said that the Committee's recommendations would help to strengthen and guide the Government's efforts to provide effective protection against enforced disappearance, as part of its policy to promote and protect human rights, which included the enactment of relevant legislation and cooperation with international bodies such as ICRC. A great deal had been achieved in recent decades, based on key lessons from the past.

55. In 2021, Peru would celebrate 200 years of independence. Within the framework of efforts to ensure the full realization of the right to truth, justice and guarantees of non-repetition, the Government's Bicentennial Plan affirmed its policy of dialogue and reconciliation, whose aim was to promote human rights and honour the memory of the victims of human rights violations.

56. **The Chair** thanked the delegation for its open and constructive dialogue with the Committee concerning the State party's achievements and the challenges it had encountered in its efforts to improve the promotion and protection of human rights in Peru.

The meeting rose at 12.55 p.m.