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Summary record of the 2965th meeting

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Chairperson: Sir Nigel Rodley

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

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Fifth periodic report of Peru (continued) (CCPR/C/PER/5, CCPR/C/PER/Q/5 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Peru resumed places at the Committee table.*
2. **The Chairperson** invited the delegation to continue its replies to questions raised by the Committee at the previous meeting.
3. **Mr. Ávila Herrera** (Peru) said that substantial progress had been made with regard to the use and invocation of the Covenant. Magistrates were increasingly making direct use of the provisions of human rights treaties, including the Covenant, to underpin and support their decisions. In addition, controls had improved, as had training; courses on human rights and the Covenant formed part of the curriculum at the Judicial Training School. The delegation would provide information on the specific cases raised by the Committee subsequently.
4. The National Human Rights Plan 2012–2016 contained guidelines on the need to strengthen human rights training for civil servants. In addition, the plan aimed to provide citizens with better information and would do so through a dedicated web page on fundamental rights, which would include information on how to draft individual communications.
5. The functions of the Vice-Ministerial Office for Human Rights included monitoring and following up on the opinions and recommendations coming from the regional and international human rights system and improving reporting to the human rights treaty bodies. The National Human Rights Plan 2012–2016, which was based on broad consultation with citizens and all the ministries, would be formally approved in the coming days.
6. The National Human Rights Council was composed of representatives of Government and civil society; proposals to include representatives of indigenous and peasant communities and workers were being studied.
7. States of emergency were exceptional and were regulated in accordance with paragraph 5 of the Committee's general comment No. 29. Human rights were not suppressed during states of emergency, although some restrictions could be imposed on the exercise of personal freedom. Actions taken under states of emergency were subject to political and judicial oversight to ensure that they were reasonable. Military courts were not competent to judge issues that might arise in connection with human rights protection in states of emergency; human rights were protected by habeas corpus and *amparo*, which were never suspended. The Secretary-General of the United Nations was informed of any declaration of a state of emergency. The importance of the role played by parliament under article 130 of the Constitution in monitoring and controlling the actions of the executive should be emphasized.
8. Measures had been adopted in Peru to ensure that interventions by the police and armed forces during states of emergency were appropriate and in line with the Covenant. The Ministry of Interior had established a legal framework with rules, regulations and procedures to ensure proper respect for human rights in those contexts, in line with the code of conduct for law enforcement officials and including the basic principles on the use of force and firearms by public officials. The armed forces could only intervene in states of

emergency at the request of the President and with his permission and were required to respect human rights and international humanitarian law.

9. The deadline for beneficiaries established under article 1 of the Comprehensive Reparations Programme was 31 December 2011. The Minister of the Economy was conducting a cost-benefit study and looking into the budgetary viability of reopening a single registry for victims. It was hoped that the Government could consider the possibility of keeping the registry open. At present, some 160,000 individuals were on the list.

10. **Mr. Peláez Bardales** (Peru) said that according to the statistics published by the Crime Observatory, under the Office of the Public Prosecutor, the incidence of femicides in Peru had followed a clear downward trend since 2009. The law drew a distinction between homicide, perpetrated by an intimate partner or former partner of the victim, and non-intimate femicide, perpetrated by a person known by or to the victim. Femicide had been incorporated as a specific offence under Act No. 29819 of 2011, enabling the police and prosecutors to bring charges and prosecute in such cases.

11. Some progress had been made in recovering human remains in connection with cases of enforced disappearance. The Forensic Medicine Institute had recovered some 2,000 human remains, had fully identified over 1,200 people and had returned the remains of some 1,000 of them to family members. In that task, the Forensic Institute had received substantial financial support from the Ministry of Justice and Human Rights.

12. The Office of the Public Prosecutor had policies in place to strengthen the Crime Observatory and generate detailed statistics on cases of torture. It had been developing projects with the World Bank in order to improve the administration of justice; in the context of one project, software purchased to register complaints of specific crimes would make it possible to disaggregate data on all offences, specifically crimes against humanity including torture. Another programme would enable the Office of the Public Prosecutor to use its database more systematically and to map offences and crimes. Investigations had recently been reopened into the case of forced sterilization; preliminary investigations into the case, which involved more than 10,000 individuals, were being carried out by a specialized prosecutor.

13. **Mr. Prado Saldarriaga** (Peru) said that the revised draft of the new Criminal Code expressly decriminalized abortion in the case of rape or sexual violation and in the case of eugenic abortion. The word “sentimental” was not an official term used to describe abortion but was a word that had been used by an eminent criminologist in that context. The national legislation and case law normally made reference to abortion for ethical or criminological reasons. References to health in the context of therapeutic abortion had always been interpreted to cover both physical and mental health.

14. The current definition of the crime of torture was being substantially revised, with a view to bringing it into line with international standards. The statute of limitations would no longer apply to the crime of torture, and the infliction of grievous bodily harm or death would be considered as an aggravating factor in sentencing. The current requirement that torture must cause serious harm in order to qualify as torture would be eliminated. Penalties and sentences for perpetrators and their accomplices would be considerably increased and legal persons would also be held criminally liable for involvement in or for acting as accessories to acts of torture. It would be possible to cumulate penalties and sentences.

15. **Ms. María Valdez** (Peru) said that the Ministry of Culture, established in 2010, sought to promote and protect social equality for indigenous peoples in Peru. Act No. 27270 prohibited labour discrimination against indigenous peoples and asserted their equal rights to employment. In addition, discriminatory acts, including dismissal, on grounds of race or language were also prohibited under the legislation in force; the Department of Labour Inspection was responsible for investigating discrimination complaints.

16. With regard to statistics, the Ministry of Culture had established a platform, “Alert Against Racism”, which provided updated information on ethnic and racial discrimination nationwide, through its complaints department. In connection with discrimination against lesbian, gay, bisexual and transgender (LGBT) persons, statistics issued by the Office of the Public Prosecutor indicated that some 7 per cent of intimate homicides were of homosexuals.

17. The National Plan for Gender Equality 2012–2017 aimed to strengthen a culture of respect for gender difference, through campaigns to eradicate stereotypes and discrimination based on gender differences. Strategic objective 4 of that plan, to improve women’s health and to guarantee the sexual and reproductive rights of men and women, had resulted in the implementation of care and health protocols with a focus on gender issues and sexual orientation. The National Plan to Combat Violence Against Women 2009–2015 covered homophobic violence and aimed to create a society in which women were guaranteed a life free from violence. In June 2012, a working group had been established to promote the rights of collective organizations of lesbians; the group functioned as a space for dialogue and coordination and for the development of proposals on gender equality and non-discrimination policies for women and lesbians.

18. The participation of women in the civil service had improved, as had their access to decision-making positions in traditional male preserves, including as candidates in elections and in the Ministry of Foreign Affairs. Although more women occupied such positions, further efforts were needed to improve women’s access in all sectors.

19. In 2012, the National Programme against Family Violence and Sexual Abuse had developed a comprehensive package of services for survivors and family members of victims of femicide, including legal, psychological and social services. The Ministry of Women and Social Development had submitted draft legislation in that same year with a view to reducing prison benefits for convicted perpetrators. A bill had also been submitted in 2013 that would temporarily suspend the parental authority of alleged perpetrators over any children born of their union with the victim and permanently remove it in the event of a conviction. The same bill gave probative value to mental and physical health certificates issued by State health establishments and to psychological evaluations issued by emergency centres for women in domestic violence cases and allowed them to quantify damages. The objective of those measures was to facilitate proof of violence and ensure that it was consistently qualified as a crime or offence, since in the absence of such qualifications cases were often merely classified as misdemeanours.

20. The Persons with Disabilities Act had been promulgated in 2012 and was based on the Convention on the Rights of Persons with Disabilities, repealing article 43 (3) of the Civil Code on impediments to marriage and other articles relating to the execution of wills, in order to allow persons with visual, speech or hearing impairments to execute valid legal acts freely. Moreover, the National Council for the Integration of Persons with Disabilities (CONADIS) had transmitted a request to Congress to establish the Civil Code Revision Commission on the legal capacity of persons with disabilities created under that Act.

21. **Ms. Suárez Salazar** (Peru) said that prior to the recommendations of the Human Rights Committee to Peru in respect of the case of *K.L. v. Peru*, therapeutic abortions had been authorized at the discretion of doctors. Earlier in 2012, the Ministry of Health had submitted a new technical guide on comprehensive care for the voluntary termination of pregnancy for therapeutic reasons below 22 weeks with informed consent, which was being assessed by the executive. The protocol of the National Institute of Maternal and Perinatal Care was the key guide to maternal and neonatal health and served as the benchmark for other guides, the aim of which was to standardize the surgical procedure for therapeutic abortion and the procedure whereby pregnant women could obtain the correct diagnosis from their physicians and access to health services. Health advice on obstetric and

gynaecological issues also covered complications in pregnancy, as well as incomplete abortions, with or without complications, and other surgeries to ensure the health of pregnant women. Priority was given to women in extremely poor areas.

22. Since 2011, the Ministry of Health had been standardizing processes to ensure that modern contraception formed part of family planning methods, as part of the national strategy for sexual and reproductive health. In that context, female condoms and monthly contraceptive injections were available to women free of charge at health centres throughout the country. Although the Constitutional Court had prohibited the distribution of the morning-after pill, alternative methods using combined oral contraceptive pills distributed free of charge were used. Since 2012, compulsory procurement of those contraceptive methods had been introduced to ensure that they were available throughout the country and, in particular, in isolated rural areas. Efforts were being made to improve the monitoring of supply; in addition, an awareness-raising campaign was being conducted through the Ministry of Health website that enabled any user to monitor delivery, supply and stock online. Moreover, the complaints system was being strengthened through the website with a view to ensuring that contraception could be provided to those who needed it in a timely manner. Funding for the budgetary programme for maternal and neonatal health, which included forecasts for family planning methods with a view to ensuring distribution, had been increased by 400 per cent since 2008.

23. While maternal, child and neonatal mortality rates had been reduced substantially, the 13 per cent rate of teenage pregnancies remained a source of concern for the Ministry of Health. Teenage pregnancies typically occurred among socially disadvantaged and vulnerable groups of girls and considerable variations in the rates of such pregnancies were evident in different geographical areas. The Ministry's sexual and reproductive strategy would place emphasis on prioritizing the needs of teenage girls for birth and postnatal care and seek to ensure that they enjoyed their full sexual and reproductive rights and access to health care. The main causes of neonatal and maternal mortality included haemorrhage, hypertension, post-partum infections and abortion. A special plan had been introduced to reduce the maternal mortality rate to 66 per 100,000 live births by 2015, in line with the Millennium Development Goals.

24. **Mr. Mesones Castelo** (Peru) said that Legislative Decree No. 1095 defined a hostile group as a group of organized individuals that had the capacity to confront the State with weapons for a prolonged period of time and that participated or collaborated in hostilities. The Armed Forces intervened only during states of emergency declared in accordance with current legislation, and only when intervention by the police was not sufficient to deal with violent groups attacking the State. Citizen protests were not criminalized in Peru.

25. Situations in which the Armed Forces confronted terrorist groups that threatened national security were governed by international humanitarian law. On the other hand, situations in which the Armed Forces intervened to support the police in clashes with violent protesters were governed by international human rights law. The amount of force used was proportional to the situation and could include the use of lethal or non-lethal weapons.

26. The situation of extreme violence experienced between 1980 and 2000 had obliged the Armed Forces to use security measures such as pseudonyms and the frequent rotation of soldiers on patrols. At that time, patrol leaders were not required to report on events that occurred during patrols, which had led to abuses by some soldiers who sought impunity. It was thus very difficult to locate the relevant information in the Armed Forces archives. Nevertheless, the Ministry of Defence and the Armed Forces were doing everything within their power to provide the information needed to investigate and prosecute such abuses. Legislative Decree No. 1095 currently stipulated that commanders must file a report at the start and end of every operation.

27. Training in human rights and international humanitarian law was compulsory for all military personnel and was provided on a continuous basis. For the past 10 years the Ministry of Defence had operated a centre for international humanitarian and human rights law, which had trained more than 6,000 instructors. Further information on the curriculum used in that centre would be provided in writing.

28. **Mr. Garro Gálvez** (Peru) said that Peru respected the principles of international human rights law, including non-refoulement. A bill on humanitarian visas was currently before the parliamentary committee on foreign affairs and, if approved by that committee, would then be debated by parliament in plenary. The bill would grant regular migrant status to stateless persons, persons displaced by climate change or natural or environmental disasters, and victims of trafficking in persons, illegal trafficking of migrants or human rights violations, who were afraid to return to their country of origin but did not qualify for refugee status. Although not all police officers and members of the Armed Forces received specific training in international refugee law, for the past eight years such training had been provided for immigration officials, police officers and members of the Armed Forces working in border areas.

29. **Mr. Delgado Uribe** (Peru) said that Legislative Decree No. 1150 on disciplinary measures for police officers and officials of the Ministry of the Interior had been enacted on 11 December 2012. The Decree had erroneously classified as a serious offence sexual relations with persons of the same sex that caused a scandal or damaged the image of the institution. The error had been corrected on 14 December 2012, and the provision had been reworded to cover any form of sexual relations that caused a scandal or damaged the image of the institution. Legislative Decree No. 1150 guaranteed the right to defence, the double-hearing principle and due process in police disciplinary hearings. Police disciplinary tribunals, made up entirely of civilians, held jurisdiction over minor and serious offences, and over very serious offences in first instance. Tribunals overseen by the Ministry of the Interior held jurisdiction over very serious offences in second instance and could overturn any acquittals handed down in first instance.

30. **Mr. Ávila Herrera** (Peru) explained that the Single Register of Victims of the violence that had occurred between 1980 and 2000 had not been closed. While monetary compensation was no longer available to the victims, they still had access to other programmes.

31. **Mr. Rodríguez-Rescia** said it was his understanding that two different bills on a national preventive mechanism had been drafted. The first bill established the Ombudsman's Office as the national preventive mechanism but also provided for a consultative mechanism to coordinate with civil society, while the second bill did not include such a provision. He asked how the Government planned to implement the best aspects of both bills, and how it would ensure that the Ombudsman's Office had sufficient financial resources to conduct its work.

32. **Mr. Salvioli** said that he wished to know the current status of the bill on decriminalizing abortion, and he hoped that mental health issues would be included as a permitted reason for abortion in the protocol being drafted, which should be broadly disseminated in hospitals.

33. **The Chairperson** wished to know the current status of the investigations into excessive use of force by members of the police and the Armed Forces during public protests.

34. **Mr. Salvioli** said that he wished to know: what tangible results had been produced by the measures taken to address the situation of domestic workers; whether the Government intended to amend the special labour regimes so that domestic workers could enjoy the same rights as other workers; whether the State intended to hold persons

responsible for labour exploitation criminally liable; whether victims of forced labour had access to free legal aid and compensation; and whether the State planned to criminalize domestic servitude.

35. Legislative Decrees No. 1094 and No. 1095 were open to interpretations that could give rise to human rights violations. For example, the Armed Forces were permitted to intervene against armed hostile groups, but that provision was not restricted to groups with firearms and might also be interpreted to include student protesters who used sticks or stones. He therefore asked if the Government would consider revising that legislation. Noting that in the past five years more than 300 attacks had been carried out against human rights defenders, he asked if the Government had planned any specific measures to protect persons in that group.

36. **Mr. Neuman** asked whether civilian deaths resulting from military intervention against hostile groups were prosecuted in military courts or civil courts and said that such cases could constitute violations of international human rights law. He expressed concern that not all indigenous communities had been included in the list of communities to be consulted about mining and energy activities on their land, and he asked what procedures were available to the groups not included to seek inclusion or to challenge that decision in court. Supreme Decree No. 023-2011-EM required the informed consent of indigenous communities only in a very limited set of circumstances, and the Committee believed that the scope of that provision should be expanded. He welcomed the participation of civil society in the preparation of the State party's report.

37. **Mr. Rodríguez-Rescia** wished to know what administrative reforms the Government had planned to address the problem of prison overcrowding, in addition to its stated plans to build new prisons. He asked whether the state of emergency that had been declared to address problems in the prison system had been extended, and whether the rights of detainees had been suspended under that state of emergency. He wished to know what measures the Government was taking to improve the safety, security and health of prisoners, particularly those held in the Challapalca Prison, where conditions were very harsh due to the high altitude and low temperatures. He wondered if some of the prisoners there could be transferred to nearby prisons. Lastly, he wished to know more about the Government's policy on youth offenders.

38. **Ms. Waterval** asked what amount of money was provided as compensation for victims of forced sterilization. She noted that, as at June 2012, 91.6 per cent of children under 18 years of age possessed a national identification card, and she asked whether that statistic applied to the country as a whole. She wished to know how the Government planned to implement the amendment to the Civil Code stipulating that children born out of wedlock could be registered using their father's name even in his absence, and she asked what practice had been followed prior to that amendment. She wished to know the number of illiterate persons in the country. While the minimum age for admission to employment was 14 years, schooling was compulsory up to the age of 15 years. She asked how the Government planned to address that discrepancy. She wondered whether the Government had sufficient financial and human resources to carry out the programmes it had set up to prevent and eradicate contemporary forms of slavery, forced labour and child labour.

39. **The Chairperson** welcomed the information that the right of habeas corpus was never suspended during states of emergency and asked what measures were taken in practice leading to the suspension of rights set out in article 9 of the Covenant during states of emergency.

The meeting was suspended at 11.35 a.m. and resumed at 11.55 a.m.

40. **Mr. Ávila Herrera** (Peru) said that the Special Rapporteur on contemporary forms of slavery had visited Peru in 2012 and had drafted a visit report that included about 15

recommendations, many of which touched on the same concerns that the Committee had raised. The Office of the Deputy Minister of Human Rights had made a commitment to ensure that those recommendations were carried out to the fullest extent possible.

41. It was true that two separate bills had been submitted on the establishment of a national preventive mechanism. One of the bills had been initiated by the executive branch and would thus have to be approved by the Cabinet. Both bills would then be debated jointly in parliament to establish the best possible framework for the mechanism. In the meantime, the Ombudsman's Office would conduct a study to determine the cost of implementing the mechanism, and the results of that study would be sent to the technical experts of the Ministry of the Economy. Ideally, the budget for the mechanism would already be decided by the time the bill establishing it had been adopted.

42. It was forecast that the prison population would stand at around 70,000 by the end of 2013. The Ministry of Justice planned to open 15 new prisons by 2016, thereby cutting the rate of prison overcrowding from the current 110 per cent to 30 per cent. The Ministry had also established a national policy council on crime, which would work on crime prevention and improving the prison system. A state of emergency had been declared in order to speed up the allocation of resources and personnel for the first five new prisons, which were due to open in 2014.

43. Prison heads were empowered to suspend some prisoners' rights in exceptional circumstances. Such measures were temporary and had been adopted in only two maximum security prisons for security reasons. The assistance of the Ministry of Health had been sought to prevent the spread of disease, including sexually transmitted diseases, which was a pressing concern in overcrowded prisons. The Ministry of the Interior was being asked for more manpower to maintain order in prisons.

44. The Challapalca maximum security prison would not be closed because it housed mainly members of organized criminal groups who could not be transferred to less secure facilities. The constitutional rights of its inmates were safeguarded. Those whose state of health precluded imprisonment there were sent to other facilities, and the right to family visits was guaranteed. There was no need to close Yanamayo prison, which was located only a short distance from the nearest city and housed only common criminals.

45. The State party would soon complete development of a national plan to curb juvenile crime, which would comply with international human rights law and concentrate on crime prevention. The possibility of decriminalizing insults, calumny and defamation was currently being discussed in Congress. It was expected that those offences would be removed from the Criminal Code.

46. **Mr. Mesones Castelo** (Peru) said that any ambiguity in Legislative Decree No. 1095 would be cleared up when its corresponding regulations had been adopted and, if necessary, by amendments to the decree adopted by Congress. The police and security forces were accompanied by public prosecutors when carrying out antiterrorism or other field operations and the latter were responsible for investigating deaths, abuse or any other incidents that took place in the course of such operations. Ensuing cases were tried in civilian courts. Cases of alleged human rights violations by military personnel were never heard by military courts.

47. **Ms. Santiago Bailetti** (Peru) said that the figure provided in the written replies to the list of issues on the registration of children was the national total. Legislation had been amended to make it easier for single mothers to change their children's family name to that of their fathers, where opportune, after initial registration. Under the National Plan of Action for Children and Adolescents 2012–2021, the Government aimed to ensure the right of all children to a name and identity. Funding had been allocated to that end and

procedures for the issue of birth certificates and national identity cards had been streamlined.

48. Funds had been allocated to implement a national strategy for the prevention and elimination of child labour, which was aimed at children below the age of 14. Pilot projects to help street children recover their identities and return to school would be carried out in areas of the country most affected by the scourge of child labour. Labour inspectors had carried out 1,100 workplace inspections in 2011. The Government planned to lift the minimum legal age for work from 14 to 15.

49. **Mr. Prado Saldarriaga** (Peru) said that Congress had made a priority of adopting the new Criminal Code, which contained some 600 articles, as soon as possible.

50. **Mr. Peláez Bardales** (Peru) noted that public prosecutors, who were human rights experts, always accompanied police and the security forces on pre-planned operations. Where the latter embarked on surprise operations, public prosecutors were sent in within 24 hours. The Office of the Public Prosecutor in the province of Cajamarca had reached an advanced stage in its investigations of the alleged ill-treatment by police officers of two lawyers, one of them a member of the Office of the Ombudsman, in June 2012.

51. **Mr. Ávila Herrera** (Peru) said that a law on prior consultation with indigenous peoples was in place in the State party and that the Supreme Court had adopted guidelines on improving the administration of justice among indigenous peoples.

52. **Mr. Rodríguez-Rescia** said that he would like more information about the proposed guide to treatment of psychological stress in victims of domestic violence. He also asked whether the Government planned to extend youth counselling services around the country.

53. **Mr. Neuman** asked what the State party was doing to protect isolated indigenous peoples, who could not readily be consulted, from the hazards resulting from mining and other activities near their home territory.

54. **Mr. Salvioli** asked whether the State party could provide specific information on the results of measures taken to combat human trafficking. He reminded the delegation that the State party, during its universal periodic review, had agreed to review Legislative Decrees No. 1094 and No. 1095 in order to make them fully consistent with international human rights law. It remained a source of concern that, under the Code of Criminal Procedure, members of the police or security forces could remove dead bodies from the scene of operations even if a public prosecutor was not present. He asked when women who had been forcibly sterilized would receive reparation and what procedures were in place to award reparation to victims of torture.

55. **The Chairperson** asked the delegation for details of investigations into clashes that had taken place between security forces and indigenous people in 2009 in the province of Bagua, in which civilians and members of the security forces had been killed.

56. **Mr. Ávila Herrera** (Peru) said that youth counselling services would be expanded and improved. The health authorities were planning to send vessels into remote jungle areas to bring health and other services to isolated indigenous communities.

57. **Mr. Peláez Bardales** (Peru) said that oral hearings were currently taking place on the incidents that had occurred in Bagua.

58. **Mr. Ávila Herrera** (Peru) said that the delegation would provide supplementary information to the Committee in writing.

59. **The Chairperson** said that the civil and political rights situation in the State party had improved greatly in the previous 20 years. The Committee was pleased to learn that civilian courts were dealing with matters that had formerly come under military

jurisdiction. It was to be hoped that legislation on abortion would be amended. Victims of serious criminal human rights violations committed by the State in the past should not be denied redress on the grounds of budgetary restraint. Noting that prison overcrowding could make day-to-day life for inmates intolerable, he said that the Committee was looking for a commitment from the State party to improve conditions of detention and to build new prisons. It should also consider alternatives to detention. Finally, he asked who was being prosecuted and for what crimes in the Bagua case.

The meeting rose at 12.50 p.m.