



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### 107th session

#### Summary record of the 2964th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 19 March 2013, at 3 p.m.

*Chairperson:* Sir Nigel Rodley

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*The meeting was called to order at 3.05 p.m.*

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

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

1. *At the invitation of the Chairperson, the delegation of Peru took places at the Committee table.*
2. **The Chairperson** welcomed the delegation.
3. **Ms. Rivas Franchini** (Peru) said that her country was endeavouring to strengthen the democratic system, the rule of law, stability and political cooperation. The promotion and protection of human rights was one of the Government's priorities, and many measures had been taken since the consideration of the previous report. Peru already had a National Human Rights Council, a multisectoral evaluation body which included civil society. In December 2011, the Ministry of Justice had been renamed the Ministry of Justice and Human Rights, and a Vice-Ministerial Office for Human Rights and Access to Justice had been established, as had the Human Rights Department, which was responsible for drawing up national plans and programmes such as the National Human Rights Plan.
4. The National Human Rights Plan had been drafted in consultation with civil society organizations. It was currently under consideration by the executive and would receive the necessary political support and financial resources for its implementation. The Plan's focus areas were respect for human rights, the development of a human rights training system, compliance with the country's international obligations in that area and the promotion of the rights of vulnerable groups such as children, indigenous people and persons with disabilities. The Comprehensive Reparations Programme was the mechanism under which the Government would compensate the victims of the violence committed between 1980 and 2000. To that end, the Reparations Council, which was attached to the Ministry of Justice and Human Rights, was responsible for preparing the Single Register of Victims. Under the programme of individual financial reparations, total compensation of more than 96 million soles had been paid out to some 15,800 persons in 2012. Under the programme of collective reparations for rural and indigenous communities, meanwhile, 203 projects had been implemented in 201 communities in 2012. The objective of the programme of symbolic reparations was to conduct activities aimed at promoting reconciliation, such as identifying victims buried in mass graves and giving them a decent burial.
5. Several new institutions were involved in the protection of human rights, including the unit established in the Office of the Public Prosecutor to prosecute crimes against humanity and human rights violations, as well as the criminal chambers specializing in such cases. The Ministry of Development and Social Inclusion was responsible for the eradication of poverty and the Office of the Deputy Minister for Intercultural Affairs of the Ministry of Culture was responsible for the protection of the rights of indigenous population and Afro-descendant communities. A new policy for the management of dialogue had been adopted in 2012 with a view to preventing and managing social conflicts, particularly in the mining sector. The Office of Dialogue and Sustainability was responsible for its implementation. In the event of a crisis or particularly severe natural disaster, the President of the Republic was permitted under the Constitution to declare a state of exception for limited periods and to restrict the exercise of the rights to freedom and personal security, the inviolability of the home and freedom of assembly and of movement. The procedure was subject to monitoring by Congress and did not affect judicial guarantees such as habeas corpus and *amparo*.
6. The Peruvian Government had also taken measures to promote indigenous peoples (Act on prior consultation giving effect to International Labour Organization (ILO)

Indigenous and Tribal Peoples Convention, 1989 (No. 169)) and gender equality (adoption of the National Equal Opportunity Plan for Men and Women and the National Plan for Gender Equality 2012–2017). There was a quota for female candidates in elections to municipal and regional councils, the Andean Parliament and the Congress, and the number of female members of parliament and ministers was on the rise. The Government was also endeavouring to combat the serious problem of prison overcrowding by improving facilities and reducing recourse to pretrial detention.

7. **Mr. Ávila Herrera** (Peru), introducing the State party's written replies to the list of issues, as contained in document CCPR/C/PER/Q/5/Add.1, said that with regard to the implementation of the Covenant by the courts, he recalled the landmark ruling handed down in the case of former President Alberto Fujimori, in which the provisions of the Covenant concerning the prohibition of torture and the right to redress for victims of human rights had been invoked. Measures had been taken to protect the rights of women, including the establishment of a standing high-level, multisectoral commission to monitor the implementation of the National Plan to Combat Violence against Women. The Government was endeavouring to improve the information provided to women and adolescent girls on sexuality and reproduction and to further reduce the maternal mortality rate. The human rights unit of the Office of the Public Prosecutor had investigated the case of the 2,000 women victims of forced sterilization. Legislative measures had also been taken to combat discrimination, including the Act recognizing the right of persons with disabilities to participate equally in political and public life. The National Plans of Action for Children and Adolescents and the National Plan for the Restoration of Identity had yielded positive results. With regard to the treatment of foreigners and asylum seekers, Peru strictly applied the principle of non-refoulement and there had been no cases of persons being expelled or extradited who would have been subjected to violations of their fundamental rights in the country of destination.

8. Human rights training programmes had been set up to guarantee that those rights were respected during army and police operations. Investigations and judicial procedures concerning excessive use of force by the police came under the ordinary justice system, as did cases of human rights violations committed by military personnel. Cases of torture identified in Peru were isolated incidents and were not systematic or widespread. The victims identified under the Comprehensive Reparations Programme had received free medical care and, in the event that they had suffered from the after-effects of torture, financial compensation. A draft law to designate the Ombudsman as the national preventive mechanism against torture was currently under consideration. Following the visit of the Special Rapporteur on contemporary forms of slavery in 2011, a series of measures had been developed with a view to eradicating forced labour, and the National Commission against Forced Labour was currently finalizing a second national plan (2012–2016) in cooperation with ILO. The State had adopted a National Plan for the Prevention and Eradication of Child Labour, and 48 companies had been sanctioned in 2011 for employing minors.

9. Given the rate of prison overcrowding (113 per cent), exceptional emergency measures had been taken to re-establish order and security in prisons, speed up the completion of infrastructure projects and hire additional prison staff; 15 new prisons would be built by 2016. The draft National Human Rights Plan 2012–2016 provided for the decriminalization of offences against honour, which included insults, slander and defamation. There was no policy of persecution of journalists and human rights defenders in Peru. There was a programme to provide assistance to victims and witnesses, and the jurisdiction of the National Criminal Division had been extended so that the court could rule in cases of homicide, serious injury, abduction and extortion of journalists.

10. **Mr. Neuman** asked whether, as well as being used to interpret national law, the provisions of the Covenant were ever applied directly by the courts as a limit on the actions of Government officials and, if not, whether judges and lawyers should not be trained in the Covenant and its interpretation. Reviewing the reparations granted by the State in a number of past cases, he noted that the application of the Committee's conclusions in the individual communications was not entirely satisfactory, and wondered whether the State party should not adopt a more effective mechanism to ensure follow-up.

11. He asked whether the State party considered discrimination against indigenous and Afro-Peruvian communities in Peruvian society to be a serious problem and whether there had been any prosecutions for racial discrimination against those groups. With regard to discrimination based on sexual orientation, he would be interested to know what specific action the public authorities were taking to combat violence on that ground, whether such action also targeted transgender persons, and whether data was compiled on alleged or verified cases of violence based on sexual orientation or identity. He also wished to know why the gap between the representation of women and men in certain sectors appeared to be widening rather than closing, whether it was true that political parties often did not respect the 30 per cent quota for women candidates in electoral lists or placed the names of women candidates at the end of the list, and how soon the proposal to alternate the names of female and male candidates on electoral lists could be voted on.

12. On the issue of violence against women, he asked the delegation to explain the reasons for the increase in the number of women beaten to death by their partners, and what percentage of perpetrators of such violence was punished. The delegation might also comment on the view expressed by NGOs that police officers, judges and prosecutors did not yet fully understand the extent of the harm caused to women by less extreme forms of domestic violence. With regard to refugees and others requesting protection, he wished to know the status of the bill that would extend the application of the principle of non-refoulement to persons who did not come under the definition of refugees. Given the concerns expressed with regard to non-compliance with the principle in the north of the country, he wondered whether it might be necessary to improve training of border guards so as to ensure that persons who requested protection were not sent back before examination of their refugee status or their need for protection.

13. **Mr. Salvioli** asked whether the National Human Rights Plan had already been adopted and whether indigenous and workers' organizations were represented on the National Human Rights Council. He wished to know why the State party was delaying implementation of the recommendation made by the Committee and other bodies to make it possible in practice to have an abortion for medical reasons, as provided for by law in Peru. He would also be interested to hear whether therapeutic abortion was permitted only if the physical health of the woman was in danger or whether her mental health was also taken into account, and whether such a procedure was affordable. He also asked about the status of the bill that would decriminalize abortion following rape, and whether it was true that abortion following marital rape was more severely punished than if the rape was committed outside marriage. The delegation could perhaps provide information on the measures taken in the area of sexual education and the provision of information on contraception.

14. Given that some provinces had been living under a state of exception for more than six years and that there had been reports of cases of arbitrary detention, disproportionate use of force and the destruction of crops, he would like the delegation to comment on whether the State party considered the system to be working properly, and whether the acts reported had resulted in prosecutions and convictions. On the issue of human rights violations committed during the armed conflict from 1980 to 2000, he asked what measures the State party was taking to oblige the Ministry of Defence to inform the prosecutors of the identity of the military personnel present at the time of the incidents at the bases where the

violations had taken place. As to reparations, he asked what specific measures were being taken to advance the implementation of the exhumation programme, as recommended by the Truth and Reconciliation Commission, and to ensure that the victims of sexual violence committed during the armed conflict had access to justice. He also wished to know whether it was still possible to be entered in the victim register, and what criteria were used to ensure that each victim's compensation was proportionate to the injury suffered.

15. **Ms. Waterval** asked for additional information on the practical implementation of the laws adopted in 2011 and 2012 that had removed the restrictions on persons with disabilities, as, according to some sources, in practice persons with disabilities still could not marry or vote. In addition, as voting was compulsory in Peru, she wished to know what the consequences would be for a person with a disability who was not in a position to vote, and what proposals had been made by the working group set up to resolve the problem. She also asked the delegation to indicate whether, once entered in the civil register, as authorized by the new legislation, persons with disabilities would have access to health and social services. With regard to the 2,085 women who had been subjected to forced sterilization she wished to know whether reparations had been made to the victims or their families.

16. **Mr. Rodríguez-Rescia** requested further details on the conditions for the use of force by the security forces and the establishment of the state of exception. With regard to the latter, given that armed operations against hostile groups in the interior of the country had to be carried out in compliance with either international humanitarian law and the Geneva Conventions or international human rights law, he wished to know which criteria the Peruvian authorities applied to classify conflict situations. He also asked what was understood by the terms "hostile group" and "members of a hostile group".

17. He also requested additional information on the repression of social protests, as some operations to restore public order had resulted in the death of persons not participating in the demonstrations, including minors. He would also like details of the arms used during such operations, as well as the training provided to members of the police and the Armed Forces in that regard, particularly the treatment of vulnerable groups, given that most interventions were connected with protests by indigenous groups against expropriation. He also asked the delegation to provide information on the functioning and level of autonomy of the Police Inspectorate and its resources, as well as ongoing internal investigations into cases of excessive use of force and any disciplinary sanctions applied.

18. Noting that a new draft Criminal Code was currently being prepared, in which the provisions on torture would be in line with those of the Rome Statute of the International Criminal Court, he asked whether there was any intention to make the crime of torture imprescriptible. The current definition of torture in the Criminal Code was not in line with that of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, particularly with regard to the purposes for which torture was used. Torture was often "invisible", as investigations often centred on acts described as "assault and battery". In conclusion, he wished to know whether the Peruvian authorities were addressing the issue of the State's objective responsibility in cases in which it had facilitated the commission of acts of torture by act or omission.

19. **Mr. Shany** said that the number of abortions — most of them backstreet abortions — was not decreasing and there were currently more than 3,000 per year according to NGOs, which was very worrying. There was a movement in Peru in favour of decriminalizing abortion, particularly for therapeutic reasons or in the event of foetal abnormality or rape. He wished to know whether the State party planned to review its position on the matter, given that the current policy contributed considerably to the still high maternal mortality rate.

20. He requested additional information on the many acquittals pronounced following the proceedings involving human rights violations committed during the armed conflict from 1980 to 2000. According to NGOs, the acquittals had resulted from the military authorities' lack of cooperation with the investigating bodies.

21. **Ms. Seibert-Fohr** asked for further details on the enforcement in practice of the legislation on the protection of foreigners, particularly asylum seekers, against ill-treatment or forced expulsion. She would welcome statistics on the number of immigrants identified as such at the borders, the number returned and the number who would risk ill-treatment if returned. The delegation might explain how the State party ensured that the requesting State's assurances were in fact respected in the event of extradition.

22. **Mr. Bouzid** asked about the exact role of Congress in the establishment of a state of exception and in which situations the police intervened on their own or with the army during a state of exception.

*The meeting was suspended at 5.25 p.m. and resumed at 5.45 p.m.*

23. **Ms. Rivas Franchini** (Peru) said that the social protests themselves did not constitute an offence but that excesses, such as roadblocks, were subject to sanctions. It was rare for the security forces to use force during demonstrations. In the *Conga* case, in which the security forces had been accused of causing the deaths of several people, including children, the use of force had not been motivated by the demonstrations themselves, but by the misbehaviour to which they had given rise. The state of exception had been declared in order to protect the population and had been lifted after a week. In such situations, the Government always endeavoured to facilitate dialogue. A state of exception had recently been declared in three of the country's departments because of the presence of terrorists and drug traffickers, and not because of social protests. It was the responsibility of the Office of the Deputy Minister for Human Rights and Access to Justice to ensure follow-up of the United Nations bodies' recommendations.

24. **The Chairperson** thanked the members of the delegation for their responses and invited them to continue the dialogue with the Committee at the next meeting.

*The meeting rose at 6 p.m.*