
ADVANCE UNEDITED VERSION

Human Rights Committee

Concluding observations on the fifth periodic report of Peru, adopted by the Committee at its 107th session (11 – 28 March 2013)

Prepared by the Committee

1. The Committee considered the fifth periodic of Peru (CCPR/C/PER/5) at its 2964th and 2965th meetings (CCPR/C/SR.2964 and CCPR/C/SR.2965), held on 19 and 20 March 2013. At its 2975th meeting (CCPR/C/SR.2975), held on 27 March 2013, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Peru and the information presented therein. It expresses appreciation for the constructive dialogue with the State party's high-level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/PER/Q/5/Add.1) to the list of issues (CCPR/C/PER/Q/5), which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the ratification or accession by the State party of the following international instruments:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance on 26 September 2012;

(b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol on 30 January 2008;

(c) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14 September 2006; and

(d) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 14 September 2005.

4. The Committee also welcomes the following legislative and other steps taken by the State party:

- (a) The adoption of the General Law on Persons with Disabilities (No. 29973) on 13 December 2012;
- (b) The adoption of the Law on Equal Opportunities for Men and Women (No.28983) on 12 March 2007;
- (c) The adoption of the Comprehensive Reparations Plan (Law No. 28592) on 20 July 2005; and
- (d) The establishment of a Vice-Ministry for Human Rights and Access to Justice within the Ministry of Justice and Human Rights by Law 29809 from 5 December 2011.

C. Principal matters of concern and recommendations

5. While taking note of the improvements in the framework for follow-up and the measures taken by the State party in relation to the Views adopted under its individual complaints procedure, the Committee is concerned at the present inadequate degree of implementation of the said Views (art. 2).

The Committee calls upon the State party to intensify its efforts to give full effect to all the recommendations contained in the Views in which the Committee has found violations of the Covenant by the State party under the Optional Protocol. The Committee also encourages the State party to continue engaging with its Special Rapporteur for follow-up on Views.

6. The Committee takes note of the information provided by the State party's delegation concerning the draft National Human Rights Plan, but regrets that the plan is still under review (art. 2).

The State party should expedite the adoption of a comprehensive National Human Rights Plan and ensure that it adequately and effectively addresses the issues raised by civil society, the Committee itself and other human rights mechanisms. The State party should also ensure that, once adopted, the plan is effectively implemented through, *inter alia*, the allocation of sufficient human and material resources as well as the establishment of monitoring and accountability mechanisms, involving representatives of all sectors of civil society.

7. The Committee, while taking note of the measures adopted by the State Party to combat racial discrimination, is concerned at the fact that indigenous peoples and Afro-descendants continue to be the victims of discrimination (arts. 2, 26 and 27).

The State party should strengthen its efforts to prevent and eradicate discrimination against indigenous and Afro-descendent persons by, *inter alia*, carrying out broad education and awareness-raising campaigns that promote tolerance and respect for diversity. The State party should ensure the effective implementation of the legal provisions that reflect the State party's obligations under the Covenant with regard to the principle of non-discrimination. It should also take appropriate measures to ensure that such acts of discrimination are investigated, and that the victims receive reparation.

8. The Committee is concerned at reports of discrimination and acts of violence suffered by lesbian, gay, bisexual and transgender (LGBT) persons on the basis of their sexual orientation or gender identity (arts. 2, 3, 6, 7 and 26).

The State party should state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transexuality, or discrimination or violence against persons because of their sexual orientation or gender identity. It should also amend its laws with a view to prohibiting discrimination on the basis of

sexual orientation and gender identity. The State party should provide effective protection to LGBT individuals and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity.

9. While noting the steps taken by the State party to promote equality between women and men and the progress made, the Committee is concerned that women are underrepresented in decision-making positions in the public sector (arts. 2, 3, 25 and 26).

The State party should strengthen its efforts to ensure effective equality between women and men in all parts of the country, if necessary through appropriate temporary special measures. In particular, it should take concrete steps to increase the representation of women in decision-making positions in the public sector. The State party should also develop strategies to combat stereotypes on the role of women, including by sensitizing its population on the need to ensure the enjoyment by women of their rights.

10. The Committee takes note of the measures taken to prevent and combat violence against women, but is nonetheless concerned about the persistence of this phenomenon (arts. 3, 6 and 7 of the Covenant).

The State party should strengthen its efforts to prevent and combat all forms of violence against women, including by ensuring the effective implementation of the existing relevant legal and policy frameworks. The State party should adopt legislation criminalizing all forms of domestic violence. The State party should also facilitate complaints from victims; ensure that all reports of violence are investigated and perpetrators brought to justice; and ensure that victims have access to effective means of protection, including an adequate number of shelters available in all parts of the country.

11. While acknowledging the efforts made by the State party to investigate the human rights violations committed during the armed conflict between 1980 and 2000 and the obstacles experienced by the State party in this regard, the Committee is concerned about :

- (a) The low number of convictions and high number of acquittals;
- (b) The difficulties faced by female victims of sexual violence during the conflict to report cases, as well as the low number of investigations and lack of sentences in that respect;
- (c) The slow progress of the process of exhumations, identification and return of remains to the next of kin of the victims;
- (d) The requirement set by the National Criminal Court that evidence for violations should be direct and documented, thus omitting testimonies of victims and their relatives;
- (e) Reports of lack of full cooperation from the Ministry of Defence and the Armed Forces; and
- (f) The information provided by the delegation that, at the time of the conflict, the units of the security forces engaged in armed actions were not required to report on how they conducted such actions, which the Committee is concerned may have been intended to ensure impunity for violations of human rights (arts. 2, 6 and 7).

The State party should redouble its efforts to ensure that the serious human rights violations perpetrated during the armed conflict between 1980 and 2000, including those involving sexual violence, do not go unpunished. The State party should take appropriate measures to expedite the judicial investigations and the process of

exhumations, identification and return of remains to the next of kin of the victims. Furthermore, the Committee invites the State party to revisit the criteria to be used with regard to evidence of violations and urges the State party to ensure that the Ministry of Defence and the Armed Forces fully cooperate with the investigations and provide all available information to the requesting authorities without delay. The State party should also establish any legal responsibility for the practice of non-reporting at the time of the conflict.

12. The Committee notes with appreciation the efforts of the State party with regard to reparations related to the armed conflict between 1980 and 2000, in particular the establishment of the Comprehensive Reparations Plan. However, the Committee is concerned at delays in the implementation of the Plan; and that not all victims of torture or sexual abuse are covered by the economic reparations program. The Committee is also concerned at the closure, on 31 December 2011, of the process for determining and identifying the beneficiaries of the Economic Reparations Program following the implementation of Supreme Decree No. 051-2011-PCM (art. 2).

The State party should intensify its efforts to ensure that all victims of the armed conflict between 1980 and 2000, including all victims of torture and of sexual abuse, receive reparation. The State party should also ensure that reparations are adequate and that the process for determining and identifying the beneficiaries of the Economic Reparations Program is reopened in order that all victims of the conflict may receive economic reparation.

13. While welcoming the reopening in 2012 of the investigations concerning more than 2000 women who were subjected to forced sterilizations between 1996 and 2000, the Committee is concerned at the fact that, despite the significant number of years that have passed, the victims have not yet received reparation and the perpetrators have not yet been punished (arts. 2, 3 and 7).

The Committee urges the State party to expedite the investigation; allocate sufficient economic, human and technical resources to the organs responsible for the investigation; ensure that the perpetrators are brought to justice and adequately sanctioned; and that all victims receive adequate forms of reparation without further delays.

14. The Committee, recalling its previous Concluding Observations (CCPR/CO/70/PER, par. 20), expresses concern at the high percentage of abortion-related maternal deaths; at the fact that abortion resulting from rape or incest is still criminalized; and at the lack of a national protocol regularizing the practice of therapeutic abortions. The Committee is further concerned about the high rates of maternal mortality in rural areas and of adolescent pregnancies. Furthermore, the Committee regrets the decision adopted by the Constitutional Court prohibiting the free distribution of emergency oral contraceptives (arts. 2, 3, 6, 17 and 26).

The Committee recommends the State party to:

- (a) Review its legislation on abortion and make provision for additional exceptions in cases of pregnancy resulting from rape or incest;**
- (b) Swiftly adopt a national protocol regulating the practice of therapeutic abortion;**
- (c) Increase its efforts to reduce adolescent pregnancy and maternal mortality, in particular in rural areas, and ensure that adequate sexual and reproductive health services, which include emergency oral contraceptives, are accessible in all regions of the country; and**

(d) Increase and ensure the effective implementation of education and awareness-raising programmes at the formal (schools and colleges) and informal (mass media) levels on the importance of contraceptive use and on sexual and reproductive health rights.

15. The Committee notes with concern the frequency with which the State party has declared states of emergency and derogated from Covenant rights, even in relation to social protests, whereas derogations should occur only in truly exceptional situations. The Committee also notes with concern the allegations of serious human rights violations during the states of emergency, such as arbitrary detentions, killings and torture. In this connection, it regrets the lack of concrete information from the State party on the specific measures taken pursuant to such derogations (arts. 4, 6, 7 and 9).

The State party should limit the use of states of emergency and ensure strict respect for the human rights enshrined in the Covenant and systematic compliance with all the conditions set out in article 4 of the Covenant. The State party should also ensure that reports of serious human rights violations committed during the states of emergency are promptly and effectively investigated, and that those responsible are brought to justice.

16. The Committee is concerned about reports of excessive and disproportionate use of force, including the use of lethal weapons, by law enforcement officials and members of the security forces in the context of social protests, which in some instances resulted in loss of lives (arts. 6 and 7).

The State party should continue to take steps to effectively prevent and eradicate the excessive use of force by law enforcement officials and members of the security forces, including by intensifying and providing regular human rights training with special emphasis on alternatives to the use of force and firearms. It should also ensure that all allegations of excessive use of force are promptly, impartially and effectively investigated, and those responsible brought to justice.

17. While welcoming the assertion by the State party that investigations concerning human rights violations, crimes against humanity and other international crimes always fall under the jurisdiction of civil courts, the Committee is concerned at reports indicating that Legislative Decree No. 1095 may have the effect of extending military jurisdiction with regard to cases of excessive use of force or human rights violations. The Committee is further concerned at the broad definition of “hostile group” provided for in Legislative Decrees No. 1094 and 1095, which could be potentially interpreted so as to include individuals taking part in demonstrations or social movements and therefore have detrimental and deterrent effects on the enjoyment of the human rights enshrined in articles 19 and 21 of the Covenant (arts. 2, 6, 7, 19 and 21).

The Committee recommends that the State party review Legislative Decrees No. 1094 and 1095 so as to bring them into line with its human rights obligations as contained in the Covenant and to ensure that, as explained by the State party, human rights violations remain outside the jurisdiction of military courts.

18. The Committee is concerned by the absence of a legal framework for protection of migrants who do not satisfy the international refugee definition but who face a real risk of death, torture, or ill-treatment if expelled from the territory of the State party (arts. 6 and 7).

The State party should adopt and implement laws guaranteeing respect for the principle of *non-refoulement* in cases involving risks of death, torture or ill-treatment not covered by the refugee definition, and should ensure appropriate training for officials engaged in migration control, especially in the Northern border region.

19. The Committee is concerned that there are still allegations of torture and ill-treatment by State officials and at the fact that acts of torture are sometimes investigated as other offenses such as causing injury. While taking note of the draft laws empowering the Ombudsman's Office to act as the National Preventive Mechanism (NPM) for the purposes of the Optional Protocol to the Convention Against Torture, the Committee regrets that this mechanism has not yet been established (art. 7).

The State party should intensify its efforts to prevent and eradicate torture and ill-treatment, including by intensifying human rights training for law enforcement and security officials. It should also ensure that all allegations of torture or ill-treatment are promptly, thoroughly and independently investigated; that perpetrators are brought to justice; and that victims receive adequate reparation, which includes health and rehabilitation services. Furthermore, the State party should ensure that judges, prosecutors, health and other relevant professionals involved in the documentation and investigation of cases of torture and other ill-treatment are adequately trained on the Istanbul Protocol and on the international standards concerning torture and ill-treatment, with special emphasis on how to adequately classify incidents of torture. The State party should also expedite the adoption of the necessary legal measures for the establishment of an independent NPM, as provided for in the Optional Protocol to the Convention against Torture, and ensure that it is provided with adequate human and financial resources so as to function efficiently.

20. While taking note of the measures taken by the State party to combat trafficking in persons, forced labour and domestic servitude as well as the commitment expressed by the State party's delegation to comply with the recommendations made by the Special Rapporteur on contemporary forms of slavery, (A/HRC/18/30/Add.2), the Committee is concerned about the persistence of such practices in the State party (art. 8).

The State party should increase its efforts to prevent and eradicate trafficking in persons, forced labour and domestic servitude, including by ensuring the effective implementation of the existing relevant legal and policy frameworks. It should also take appropriate legislative measures to ensure that forced labour and domestic servitude are prohibited and punished in accordance with article 8 of the Covenant. The Committee further recommends the State party to ensure that allegations of these practises are thoroughly investigated, those responsible brought to justice, and that victims receive adequate care, free legal assistance and reparations, including rehabilitation.

21. The Committee is concerned that, despite the measures taken and planned, the level of overcrowding in places of detention is still very high and that conditions of detention, in particular with regard to security and access to medical care, remain poor. The Committee, recalling its previous concluding observations (CCPR/CO/70/PER, par. 14), remains concerned at the conditions in the Yanamayo and, particularly, Challapalca prisons (art. 10).

The State party should expedite its efforts to reduce overcrowding, including by resorting to alternatives to imprisonment, and to improve the conditions of detention, particularly with regard to security and medical care, in accordance with the Covenant and the Standard Minimum Rules for the Treatment of Prisoners. The Committee, recalling its previous concluding observations, recommends the State party to consider closing the Yanamayo and Challapalca prisons.

22. The Committee is concerned at reports of acts of violence perpetrated against human rights defenders and journalists. The Committee is also concerned at the fact that defamation remains a crime under national law, which represents a threat to the exercise of freedom of expression and access to plurality of information (arts. 9, 14 and 19).

Recalling its general comment No. 34 (2011) on freedoms of opinion and expression as well as its previous concluding observations (CCPR/CO/70/PER, para. 16), the Committee recommends the State party to fully guarantee the right to freedom of opinion or expression in all its forms. It also recommends the State party to conduct effective investigations of reports concerning attacks or violence perpetrated against human rights defenders and journalists, and to bring those responsible to justice. It urges the State party to consider adopting legislation decriminalizing defamation, as has been proposed in Parliament.

23. The Committee is concerned that the rate of child labour in the country remains high (arts. 8 and 24).

The State party should strengthen its efforts to ensure the effective implementation in all parts of the country of the existing policies and laws that are designed to prohibit child labour. The State party should ensure violations of these laws are effectively investigated, prosecuted and punished, and should keep reliable statistics on this phenomenon.

24. The Committee welcomes the adoption of the Law on the Right of Indigenous or Original Peoples to Prior Consultation (No. 29785). However, it remains uncertain about which indigenous communities will be entitled to be consulted. While noting that Law No. 29785 requires prior consent before indigenous peoples are transferred from their lands and before storage or handling of dangerous materials occurs, the Committee is concerned that legislation in force does not provide for free, prior and informed consent of indigenous communities concerning all measures which substantially compromise or interfere with their culturally significant economic activities (art. 27).

The State party should ensure that the existing legal framework providing for informed prior consultations with indigenous communities for decisions relating to projects that affect their rights is implemented in a manner compliant with article 27 of the Covenant, including by ensuring that all affected indigenous communities are involved in the relevant consultation processes and that their views are duly taken into account. The State party should also ensure that free, prior and informed consent of indigenous communities is obtained before adopting measures which substantially compromise or interfere with their culturally significant economic activities.

25. The State party should widely disseminate the Covenant, the Optional Protocol to the Covenant, the text of the fifth periodic report, the written replies it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into all the official languages of the State party. The Committee also requests the State party, when preparing its sixth periodic report, to broadly consult with civil society and non-governmental organizations.

26. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 11, 16 and 20 above.

27. The Committee requests the State party, in its next periodic report, due to be submitted on 28 March 2018, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.