



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
7 November 2014
English
Original: French

Committee on the Elimination of Racial Discrimination Eighty-fifth session

Summary record of the 2302nd meeting

Held at the Palais Wilson, Geneva, on Friday, 15 August 2014, at 10 a.m.

Chairperson: Mr. Calí Tzay

Contents

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined eighteenth to twenty-first periodic reports of Peru (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Section, room E.5108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.14-14231 (E) 051114 071114



* 1 4 1 4 2 3 1 *

Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.



The meeting was called to order at 10.10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Combined eighteenth to twenty-first periodic reports of Peru (continued)
(CERD/C/PER/18-21; CERD/C/PER/Q/18-21; HRI/CORE/PER/2010)

1. *At the invitation of the Chairperson, the delegation of Peru took places at the Committee table.*
2. **Mr. Ávila Herrera** (Peru) said that, pursuant to the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation (Act No. 29785), adopted in 2011 to give effect to the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), the process of consultation with indigenous communities must be initiated by the State, through the Office of the Deputy Minister for Intercultural Relations. The database established in accordance with the Act contained information on the 52 indigenous peoples that had been recognized as such on the basis of the criteria set out in ILO Convention No. 169 and in Act No. 29785, including their official name and the name they used to identify themselves, their geographical location and culture, as well as the names of organizations representing them. Sixteen consultations had been held to date, six of which had resulted in an agreement.
3. The Truth and Reconciliation Commission had clearly stated in its report that the Shining Path was primarily responsible for the human rights violations committed between 1980 and 2000. His country's successive democratic Governments had taken measures to ensure that members of that terrorist group, which had caused the deaths of several thousand people, most of them indigenous, were brought to justice. The Government had publicly apologized to the families of the victims and had initiated a reparation programme. The programme had been criticized, however, for the fact that the maximum amount of compensation granted was only 10,000 nuevos soles per victim, which was equivalent to US\$ 3,000. To date, 75 per cent of the 85,000 identified victims and relatives of victims had received compensation. Approximately \$18 million in additional funds had been earmarked for collective compensation ranging from \$25,000 to \$30,000, to be paid to indigenous communities that had suffered violence at the hands of the Shining Path so that they could initiate economic development projects aimed at improving living conditions for the members of the community.
4. Following the events in Bagua in 2009, when police officers had opened fire on indigenous persons protesting against a decree authorizing multinational corporations to exploit natural resources on their ancestral lands, both the public authorities and Peruvian society as a whole had realized that the rights of indigenous minorities should not be subordinated to those of the majority and that the State must take measures to protect them. A legal and institutional framework had been established to prosecute and try the perpetrators of violence committed in such situations. In the Bagua case, the courts had appointed two intercultural mediation experts to facilitate communication between the parties. Five criminal proceedings connected with the events of 2009 were under way. After recapitulating in detail the information provided in the report on incorporating the definition of racial discrimination into national law (paras. 9–13), he said that his Government was of the view that the definition set out in the Constitution was consistent with the definition contained in article 1 of the Convention. It was becoming increasingly common for judges to invoke international human rights instruments — including the Convention — in their decisions, and to interpret constitutional norms in the light of the provisions of those instruments. In order to encourage that practice, training on human rights instruments would be included in the curricula taught by the judicial college.

5. The television series *La Paisana Jacinta* was clearly offensive to indigenous women, but, as Peru was a democratic State anxious to uphold freedom of expression, his Government preferred to combat racial discrimination in the media by drawing journalists' attention to the issue rather than by taking legal action. In that spirit, the authorities had launched an awareness-raising campaign aimed at eliminating racial discrimination in the media. In addition, the Ministry of Culture planned to draw up a draft code of conduct requiring the media to respect the identity and culture of the indigenous and Afro-Peruvian communities. The National Commission to Combat Discrimination, established in December 2013, comprised representatives from eight ministries. Its work, headed by the Ministry of Justice and Human Rights, consisted in making recommendations on public policies and strategies to combat discrimination. On 4 July 2014, the Commission had announced that it would draw up a draft national plan to combat discrimination and a draft anti-discrimination law.

6. Thanks to the establishment of the National Office for Dialogue and Sustainability, which was responsible for peacefully settling social conflicts by acting as an intermediary between the State and the indigenous communities, the number of such conflicts had fallen. As at July 2014, their number had stood at 39, nearly 70 per cent of which involved disagreements over mining projects and the use of natural resources. Round tables had been held with indigenous communities, particularly those in the Andean and Amazonian regions. During demonstrations, the national police were required to avoid confrontations, prevent violence and act in a considered and prudent manner. Trade union leaders were not arrested or prosecuted for their activities, and the authorities made a point of favouring dialogue even when demonstrators damaged public or private property or abducted public officials.

7. **Ms. Arias Rojas** (Peru) said that, following an event organized in January 2013 by members of the Ancomarca community to protest against the State's granting of a licence authorizing the MINSUR mining company to begin a gold mining project that was likely to pollute wetlands in the Tacna region, the local government and MINSUR had concluded an agreement under which MINSUR had made a commitment to respect the environment and the rights of the indigenous communities concerned. With regard to the communication submitted to the Committee concerning the construction of a hydroelectric plant to supply the city of Tacna, the national water management authority had taken measures to address the concerns of indigenous peoples. Both cases were being monitored by the regional government of Tacna, the Ministry of Agriculture and the National Office for Dialogue and Sustainability.

8. **Ms. Lozada Sotomayor** (Peru) said that the dissemination of ideas based on racial superiority and incitement to racial hatred were punishable by law. In addition, public officials who engaged in such acts would be dismissed from their posts. Pursuant to article 4 of the Code of Criminal Procedure, the burden of proof lay with the public prosecutor in cases of racial discrimination. The authorities were aware that the number of complaints of racial discrimination was still too low — which could be explained by the public's lack of trust in the police and the justice system given the country's history — and that they should take steps to encourage victims to file complaints. As part of wider efforts to promote interculturalism in the justice system, commissions had been set up to work on the issues of traditional justice in indigenous communities and on the role of justices of the peace. In 2009, the criminal division of the Supreme Court had ruled that all judges must recognize the existence of campesino patrols and that judges must take into account the multicultural nature of the country when dispensing justice. Justices of the peace travelled to remote areas to administer justice, pursuant to Act No. 29824 of 2012 on justices of the peace, which aimed to remove geographical, cultural and economic impediments to access to justice. They applied not only ordinary law but also the customary law of local indigenous communities.

9. The amendments made to article 20 of the Criminal Code through Act No. 3051 of 13 January 2014, whereby provisions were added exempting members of the Armed Forces and the police from criminal liability if they caused the bodily injury or death of an individual when using a weapon in the exercise of their duties, were applied only after a thorough investigation lasting up to eight months. There was therefore no reason to fear that judges would apply the new provisions without thoroughly examining the facts. Lastly, only one case of forced sterilization had been identified, namely that of *Mamerita Mestanza*. After it had been brought before the Inter-American Court of Human Rights, an amicable settlement had been reached. An investigation had been opened as part of that settlement and was still under way.

10. **Ms. Solari Escobedo** (Peru) cited as an example of the regional and local ordinances mentioned in paragraph 85 of the report the decree issued by the mayor of the Miraflores district prohibiting all forms of discrimination, particularly on premises open to the public. Article 2 of the decree read: "Discrimination shall be understood to mean acting with the purpose or effect of excluding and treating as inferior one or more persons on the ground that they belong to a specific group, as well as restricting their opportunities and options or nullifying or impairing the recognition of their rights on any ground, such as race, sex, religion, economic situation, social class, political opinion, dress, sexual orientation, occupation, state of health, disability, place of origin or residence, age or language." Pursuant to a decree of that nature, a nightclub had been convicted of refusing entry to an individual on the ground of ethnic origin.

11. Among the actions taken to assist vulnerable peoples in the Andean and Amazonian regions, 45 public officials had been dispatched to remote areas to raise awareness of the services provided by the State to protect women victims of domestic violence. In an effort to support children who faced discrimination by their peers at school because of their origin, Act No. 29719 promoting peaceful coexistence in schools provided for the appointment of school psychologists. Bilingual education was offered in 4,000 schools in Peru.

12. **Mr. Ávila Herrera** (Peru) said that the Ministry of Women and Vulnerable Populations had instructed a number of public officials to travel by boat to indigenous communities in the Amazon rainforest in order to provide health services to members of those communities, register them and issue them with national identity cards.

13. **Mr. Chávez Basagoitia** (Peru) said that national law guaranteed equal rights for foreigners and Peruvians alike, except with regard to entry and residence in the country and participation in political life. However, foreigners did have the right to vote in local elections and to be elected as mayor. Peruvian legislation also provided for the following two exceptions relating to the question of property ownership: foreigners could not, as stated in article 71 of the Constitution, "acquire or possess for any reason, directly or indirectly, mines, lands, forests, water, fuel or other energy sources, whether individually or in partnership ... except in cases of public need expressly determined by supreme decree adopted by the Council of Ministers"; and, pursuant to the Radio and Television Act, foreigners could not own more than 40 per cent of shares in radio broadcast companies. However, in 2007 the Constitutional Court had declared the latter provision unconstitutional.

14. Any person whose application for asylum in Peru was rejected could appeal the decision. Most asylum seekers were Haitians transiting through Peru en route to French Guyana, their final destination. An agreement on the free movement of persons had been concluded with Colombia within the framework of the Pacific Alliance. As to Cuban asylum seekers, his Government took the view that they did not meet the conditions for refugee status, and its practice was to invite them to apply for a residence permit under the regular immigration system governed by the law on foreigners. Indeed, the country was

receiving a growing number of asylum requests from persons who, in the vast majority of cases, did not qualify for refugee status.

15. **Mr. Ávila Herrera** (Peru) said that the rights of Afro-Peruvians were among the Government's political concerns, which was why it had issued a public apology to them. The Ministry of Health, the Ministry of Education and the Ministry of Development and Social Inclusion, among others, fully recognized that Afro-Peruvians should enjoy the same rights as other Peruvians; accordingly, the Ministry of Culture was developing various programmes to that end.

16. **Mr. Murillo Martínez** requested more detailed information about the legal and institutional framework for dealing with cases such as that of Negro Mama, a television personality who caricatured persons of African descent.

17. **Mr. Avtonomov** (Country Rapporteur) asked what the State party was doing to ensure the survival of indigenous peoples in voluntary isolation in the Kugapakori-Nahua-Nanti Reserve, given that in August 2013 the Committee had asked the State, through the early-warning procedure, to take the necessary measures to protect indigenous peoples in voluntary isolation or in initial contact. He also asked about the implementation of the Dorissa Accord to protect the Achuar people, who were affected by the extraction of hydrocarbons in the Corrientes river basin.

18. **Mr. Amir** asked whether Peruvian criminal legislation included any provisions to discourage the broadcasting of television programmes such as *La Paisana Jacinta*, which included a character who caricatured the indigenous peoples of Peru.

19. **Mr. Ávila Herrera** (Peru) said that Parliament was considering a bill on coordination between the ordinary courts and the indigenous or community courts, which would set out the competencies of both systems of justice and enshrine a whole series of principles, such as interculturalism. With regard to the protection of indigenous peoples in voluntary isolation or in initial contact, the National Register of Identity and Civil Status had conducted three campaigns to register members of the Nanti and Nahua indigenous peoples in the villages of Sagondoari, Marankiato and Montetoni, so that they could be recognized as Peruvian citizens and thus participate in public affairs and defend their rights and their land. At the request of the Ministry of Health, the National Intercultural Health Centre had developed technical health standards to be applied in cases of contact with indigenous peoples in voluntary isolation or in initial or recent contact. Health-care professionals working in remote areas inhabited by indigenous peoples regularly attended training courses to learn how to protect those peoples' right to remain in isolation while still receiving the health services they needed. The broadcasting of the television programme *La Paisana Jacinta* fell within the exercise of fundamental rights; thought should, however, be given to its withdrawal, as the broadcasting company concerned was not completely devoid of any sense of morality or ethics.

20. **Ms. Hohoueto** asked whether it was only indigenous children or all children who received bilingual education. She also asked whether there was any mechanism to ensure that indigenous peoples actually received the compensation paid by the Government, given that the country was plagued by corruption.

21. **Ms. Crickley** said that she wished to know more about the specific actions the State party was taking to combat racial discrimination and to combat prejudice and violence against women in particular, especially women belonging to minority groups.

22. **Mr. Ávila Herrera** (Peru) said that the bilingual intercultural education offered in Peru was the product of an intercultural education project that focused on preserving and advancing indigenous languages while also enriching the country's common language. A wide range of innovative teaching tools were used as part of the project. In addition,

preschool teachers were eligible for financial incentives to work in bilingual public schools located in rural or border areas.

23. **Ms. Solari Escobedo** (Peru) said that the national intercultural policy system made it possible for government bodies to coordinate their efforts to implement public policies on the Afro-Peruvian population and indigenous peoples — particularly those living in the Andean highlands — and on the fight against racial and ethnic discrimination. Since 2005, supervisors in secondary schools had received training on topics as diverse as sexual abuse, drug addiction, human trafficking, ethnic discrimination and harassment so as to raise awareness of those problems among parents and students. The Ministry of Women had also set up a network of organizations engaged in combating violence against women so as to inform women in all parts of the country about their rights and about the options available for bringing cases before the courts.

24. **Mr. Ávila Herrera** (Peru) said that the “Warning against racism” programme, established in February 2012 by the Ministry of Culture and launched one year later in 17 regions, enabled citizens to report incidents of racial and ethnic discrimination to the authorities so that they could investigate the cases, if appropriate. Awareness and press campaigns conducted concurrently with the programme had made it possible, for example, to impose penalties on three sports teams for discriminatory practices and to initiate 93 proceedings against perpetrators of racist acts. In 2010, civil society had submitted a complaint to the ethics tribunal of the National Radio and Television Society of Peru concerning the television show in which the Negro Mama character appeared. The tribunal had ruled that the show violated the dignity of certain groups of individuals and had banned it. The *Paisana Jacinta* programme, on the other hand, had provoked outrage among viewers but had never been the subject of a formal complaint by civil society.

25. **Mr. Vázquez** said that, according to information before the Committee, some indigenous peoples that met the ILO criteria for the identification of indigenous peoples had not in fact been recognized as such under the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation, and he wished to know whether any mechanism had been established to enable those peoples to request a review of their status. He also asked what practical changes had been brought about by the macroregional events held in Peru. With regard to the *Paisana Jacinta* television show, the State party was right to raise public awareness about stereotypes, but its efforts should be directed more towards the general public than public officials.

26. **Mr. Diaconu** said that article 2 of the Constitution of Peru was not fully in line with the definition of racial discrimination set out in the Convention, as indirect or unintentional discrimination was neither criminalized nor punished under the State’s Criminal Code. He asked the delegation where the burden of proof lay in civil proceedings involving discrimination.

27. **Mr. Ávila Herrera** (Peru) said that the Government gave priority to establishing education strategies — including for public officials — that aimed to instil a culture of fundamental human rights and democracy. With regard to the definition of discrimination in Peruvian law, regulations concerning the rights and liberties enshrined in the Constitution were interpreted in the light of the Universal Declaration of Human Rights and the international instruments ratified by Peru. It followed that the definition of racial discrimination set out in the Constitution was in line with the definition contained in article 1 of the Convention, as it prohibited discrimination on the grounds of race, colour, descent, or national or ethnic origin.

28. **Mr. Lindgren Alves** said that he did not endorse the television programmes that had been suspended by the Peruvian authorities but wished to remind the delegation and the Committee that *La Paisana Jacinta*, for example, was a humorous satirical programme

which, though politically incorrect, did not espouse a racist political ideology prohibited under article 4 of the Convention.

29. **The Chairperson** said that the Committee could not help but be concerned at the fact that *La Paisana Jacinta*, which had been suspended in 2011 because of its racist content, had recently been rebroadcast during prime time. On a different subject, he asked the delegation to explain what the Government meant by the term “rural interculturalism” and what exactly was encompassed by the terms “ethnic groups” and “indigenous peoples”. He also requested specific examples of positive measures taken to combat racial discrimination.

30. **Mr. Ávila Herrera** (Peru) said that his delegation would send the Committee detailed information at a later date on the precise legal definitions of the terms “ethnic groups” and “indigenous peoples” and on the content of the rural intercultural education programme. A commission comprising representatives of the Ministry of Justice and the Ministry of Foreign Affairs had been established to consider whether or not the State should ratify the ILO Domestic Workers Convention, 2011 (No. 189), and a decision would be taken on the matter shortly.

31. **Mr. Avtonomov** (Country Rapporteur) said that it was, of course, unreasonable to expect Peru to eliminate overnight the structural discrimination found in all sectors in the country. Accordingly, the Committee members had emphasized the need for the State party to show the necessary political will to shake off that centuries-old legacy. The concluding observations to be adopted by the Committee at the end of the session would undoubtedly make reference to the draft code of conduct for the press and the media that was currently under consideration, as well as certain persistent serious problems, such as debt bondage, forced labour and the lack of coordination between the ordinary courts and the customary courts.

32. **Mr. Ávila Herrera** (Peru) said that he welcomed the frank and fruitful dialogue that his delegation had just shared with the Committee. His Government was strongly committed to guiding Peru along the road to development while at the same time establishing a culture of respect for human rights, institutionalizing the rule of law and adopting policies to provide health and education for everyone.

The meeting rose at 1 p.m.