



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Forty-eighth session

#### Summary record of the 6th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 2 May 2012, at 3 p.m.

*Chairperson:* Mr. Pillay

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*The meeting was called to order at 3 p.m.*

### **Consideration of reports**

#### **(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant** *(continued)*

*Combined second to fourth periodic reports of Peru (E/C.12/PER/2-4; E/C.12/PER/Q/2-4 and Add.1; HRI/CORE/PER/2010)*

1. *At the invitation of the Chairperson, the delegation of Peru took places at the Committee table.*

2. **Mr. Jiménez Mayor** (Peru), introducing his country's combined second to fourth periodic reports (E/C.12/PER/2-4), said that Peru faced multiple challenges as it endeavoured to redress the complex social and economic problems that were the legacy of years of dictatorship and political instability. The new Government, which was the third since democracy had been restored in 2000, was committed to economic stability and people-oriented change and favoured policies predicated on respect for democratic institutions and the constitutional order, a belief in peace, freedom of expression, transparency and citizen participation, compliance with treaties, environmental protection and, above all, human rights.

3. The Ombudsman's Office (Defensoría del Pueblo), whose mandate extended beyond resolving complaints from citizens to include alerting the authorities to problem areas, had a central role in upholding human rights and had so far issued over 150 reports on issues as diverse as the situation of children with disabilities, deficiencies in the prison system, and educational policy for indigenous peoples. The Constitutional Court also had a pivotal role and its case law, in which the provisions of international law and the jurisprudence of international bodies were routinely invoked, was a key source of information on human rights issues.

4. The Government was still fighting to eradicate the vestiges of the corruption and kleptocracy that had consigned over half the country's people to poverty for so many years and continued to undermine the efficacy and credibility of its institutions. However, human rights, social inclusion, equal opportunities and affirmative action would henceforth guide the political agenda and Government policy would be focused on redistributing public resources, reducing poverty through inclusive growth, enhancing social programmes and fostering community consultation. Act No. 29785 on the Right of Indigenous or Aboriginal Peoples to Prior Consultation had been adopted in 2011 to support the latter objective.

5. The Government recognized that it still lacked a cohesive human rights policy but was determined that human rights would in future be a uniting rather than dividing factor in society. It also recognized that, to achieve that end, the thousands of victims of past human rights violations must receive due reparation. That commitment had been symbolically honoured in a recent memorial ceremony in the Andean village of Lucanamarca — the scene of a brutal massacre in 1983 — at which President Humala had laid a plaque bearing the inscription "*El Estado nunca más abandonará a sus hijos*" (The State will never again abandon its children). In order to accelerate the distribution of reparation and facilitate compliance with Act No. 28592 establishing the Comprehensive Reparations Programme, the assigned budget had been increased sevenfold, to 140 million soles, in 2012.

6. The Government was also working to raise the profile of the National Human Rights Council and give greater visibility to human rights issues in general. The creation, in 2011, of the Ministry of Justice and Human Rights, which incorporated a Vice-Ministry of Human Rights and Access to Justice, was central to that endeavour. In conjunction with civil society, the new Ministry, which was responsible for mainstreaming human rights

issues in public policy and ensuring adherence to minimum international human rights standards at all levels of government, was currently formulating a National Human Rights Plan for 2012–2016. Thus, the Government was building a new model that should enable it to bridge the remaining gaps in its human rights infrastructures.

7. Poverty was the greatest impediment to the enjoyment of economic, social and cultural rights in Peru and for that reason poverty reduction was a core policy focus. That focus, coupled with sustained economic growth, had halved the percentage of the population that lived in extreme poverty over the past two decades and, as a result, Peru had already achieved the relevant target under the first Millennium Development Goal. Significant advances were also evident in various other indicators, including the country's ranking in the Human Development Index, maternal, child and infant mortality rates and figures for inflation, foreign direct investment, exports, consumption and employment. The Government recognized that advances at the national level were not uniformly reflected across the country and that in rural areas poverty reduction remained a major challenge, but it was committed to securing the investment and opportunities that would help lift vulnerable Peruvians out of poverty.

8. **Mr. Dasgupta** (Country Rapporteur), thanking the Peruvian delegation for its informative introductory statement, remarked that 15 years had elapsed since Peru had submitted its initial report; he hoped that interaction with the State party would be more regular in future. He commended the State party's economic progress and welcomed recent, albeit long overdue, Government initiatives including the new Equal Opportunities for Men and Women Act (No. 28983 of 2007) and the Right of Indigenous or Aboriginal Peoples to Prior Consultation Act (No. 29785 of 2011). Those laws marked significant advances towards fulfilment of the recommendations concerning gender equality and the discrimination and marginalization that afflicted indigenous populations contained in the Committee's concluding observations on the initial report of Peru (E/C.12/1/Add.14).

9. He noted that only 15 of the 32 concerns raised by the Committee in the list of issues (E/C.12/PER/Q/2-4) had been addressed by the State party in its official replies (E/C.12/PER/Q/2-4/Add.1). Although the additional information contained in a document without a symbol distributed prior to the meeting presumably filled some of the gaps, its late submission had prevented Committee members from giving its content due consideration prior to the interactive dialogue. He urged the State party to ensure the timely submission of all information in future reporting processes.

#### *Articles 1 to 5 of the Covenant*

10. **Mr. Ribeiro Leão**, noting that the report referred to the substantial case law of the Constitutional Court in the area of non-discrimination, asked whether statistics indicating the number of times that the Covenant had been invoked in those cases were available.

11. **Mr. Atangana** said that he would appreciate clarification as to the specific circumstances in which Congress had the authority to conduct investigations of the type referred to in paragraph 24 of the core document (HRI/CORE/PER/2010), in view of the courts' absolute independence and the fact that all court decisions with the force of res judicata were definitive, binding and immediately enforceable. He would also welcome up-to-date information on the constitutional status of certain human rights enumerated in the Covenant that had been recognized in the 1979 Constitution but had not been expressly incorporated in the 1993 Constitution, recalling paragraph 13 of the concluding observations on the initial report of Peru (E/C.12/1/Add.14) in which the Committee had expressed concern about that omission.

12. **Mr. Tirado Mejía** asked how the Government planned to ensure that the fruits of the sustained growth and foreign direct investment that Peru was currently enjoying were

used to reduce poverty, improve education and social services and mitigate inequality. In times of prosperity, economic, social and cultural rights should be accorded the priority that in less fortunate times was often reserved for civil and political rights and for that reason he suggested that those rights should be the main focus of the National Human Rights Plan for 2012–2016 referred to in the introductory statement.

13. Although the report acknowledged that some minority groups suffered discrimination, it made no mention of discrimination against homosexuals. Details of any legislative or other measures in place to protect homosexuals and ensure that persons living in same-sex relationships were not denied enjoyment of their economic, social and cultural rights were therefore needed, especially in light of information indicating that certain homophobic acts and propaganda did not constitute criminal offences. An explanation of the reasons for the reported gradual decline in the use of indigenous languages and details of any Government measures to redress that situation would also be welcome.

14. **Ms. Shin Heisoo** said she had the impression that the State party's core document had been prepared primarily with the requirements of the Committee on the Rights of Persons with Disabilities in mind rather than focusing on the common information required by all treaty bodies. She would appreciate the delegation's comments on that observation. She would also like to know whether the State party had a timeline for ratification of the Optional Protocol, given that it was apparently on the agenda of the National Human Rights Council. Information about any concrete plan to make the legal reforms that, according to paragraph 45 of the core document, were a key goal of the current Government, would also be appreciated.

15. The State party's introductory statement indicated that the Constitutional Court was fully conversant with the provisions of international human rights treaties and jurisprudence. It would be interesting to know whether that knowledge was replicated among district, higher and supreme court judges and, if so, how that knowledge was imparted and acquired and how the authorities ensured that judges were equipped to apply it.

16. She also enquired why the report lacked information on measures to ensure the equality of rights recognized in article 3 of the Covenant and whether the National Gender Equality Plan for 2012–2017 had been finalized. Since there were reports of considerable grass-roots dissatisfaction with Government plans and policies for women, she would appreciate reassurance that women's groups had had the opportunity to contribute to the plan's development or, if the plan was not yet finalized, that the opportunity to do so was still available.

17. **Mr. Kedzia** said that, although duly ratified international human rights treaties constituted part of domestic law, in response to the Committee's request for information about cases in which the Covenant had been invoked before domestic courts the State party had provided no more than a list of cases and judgements. He would therefore welcome detailed information about a few specific cases that demonstrated the precise role of Covenant provisions in domestic jurisdiction.

18. Noting with concern that in two individual cases considered by the Human Rights Committee and the Committee on the Elimination of Discrimination against Women (*K.L. v. Peru*, CCPR/C/85/D/1153/2003, and *L.C. v. Peru*, CEDAW/C/50/D/22/2009, respectively), victims of grave human rights violations had been denied the right to an effective remedy guaranteed under domestic law, he asked the delegation to explain how, in complex circumstances such as those applying in the cases concerned, the Government intended to guarantee the exercise of that right in future.

19. **Ms. Barahona Riera** said that Peru, like many of its neighbours, had made huge advances in the constitutional interpretation of human rights. The Constitutional Court had

issued numerous innovative judgements that had enriched constitutional law. It had also recognized that international human rights treaties were of immediate application and that the rights established therein did not need to be expressly enumerated in the Constitution. However, since theory was often not easy to apply in practice, she wondered whether the Government might consider the possibility of making a constitutional amendment, similar to a recent amendment enacted in Mexico, that recognized the indivisibility and interdependence of all international human rights and would thus obviate the need for further recognition of individual rights not expressly enunciated in the Constitution. Since she had heard that the Constitutional Court had on past occasions applied an expanded interpretation of the right to the highest attainable standard of health set forth in the Committee's general comment No. 14, she would also be interested in details of any Constitutional Court rulings in which the right to health had been expanded to include, for example, the right to safe drinking water and adequate housing.

20. The State party's efforts to eliminate illegal mining and minimize the environmental impact of mining were commendable. However, as a major source of income and wealth, mining activity would inevitably continue to increase, attracting substantial investment, including from overseas, that must be handled sensitively. For that reason, she would like to know how the Government aimed to minimize the adverse effects for communities and ensure that at least some of the proceeds were reinvested locally. As the first law of its kind, Act No. 29785 was certainly a positive development. However, since its provisions applied only to indigenous communities, she would like to know about similar mechanisms protecting other communities affected by mining. Additionally, since it appeared that decisions reached in the prior consultations provided for under the Act were not legally binding in their effect and that mining companies could, technically, choose to ignore objections raised, she sought clarification as to whether communities had a right of veto and whether their consent was a prerequisite.

21. Lastly, she wished to express her concern that the budget earmarked for implementation of the National Gender Equality Plan for 2012–2017 appeared insufficient to support the actions envisaged.

22. **Mr. Texier** said that precise information about the percentage of mining proceeds that went to foreign investors and the percentage that was reinvested in the local community was needed. He also wished to know how local communities were compensated when negative effects outweighed benefits.

23. **Mr. Sadi** asked whether the rapid growth that Peru had been experiencing since 2001 had facilitated fulfilment of its obligations under the Covenant and whether the impact on those obligations of the major trade agreements concluded with China, the United States of America and Korea, among other countries, had been considered prior to their signature. Lastly, he invited the delegation to comment on information suggesting that, while an efficient law in theory, the Equal Opportunities for Men and Women Act had so far failed to deliver tangible advances in practice.

24. **Mr. Jiménez Mayor** (Peru), responding to the Committee's questions, said that there was no doubt whatsoever that international human rights instruments had constitutional status in Peru and that their provisions were binding and could not be ignored, revoked or superseded by Act of Congress. Peru also had binding jurisprudence based on the primacy of international law. The judiciary had absolute autonomy, including in respect of its budget, and judges' rulings were independent and impartial. That independence was expressly guaranteed in an article of the Constitution stipulating that no authority could intervene in or suspend proceedings once a judge had assumed jurisdiction and a trial had begun. Congress did, on the other hand, have the authority to conduct investigations and initiate impeachment proceedings against high-ranking State officials, including ministers, former presidents and members of the Supreme Court. However, if

those proceedings determined that the officials in question had a case to answer the file would be referred to the Public Prosecution Service. The impeachment process was strictly regulated in the Constitution and was an important tool in the fight against corruption, misappropriation of State funds and human rights violations.

25. He could assure the Committee that economic, social and cultural rights would be a central component of the Government's social plan for the years ahead and that grass-roots input to the plan's development was extensive.

26. International conventions and the jurisprudence of the Inter-American Court of Human Rights in particular had been invoked for the first time in a Peruvian court in a case tried during the dictatorship by Judge Antonia Saquicuray, who had based herself on the human rights principles enshrined in those texts to declare inapplicable a domestic law giving amnesty to perpetrators of human rights violations. Ms. Saquicuray had since assumed a pivotal role in teaching judges in Peru and other Latin American States to follow her example. As a result, the jurisprudence of the Inter-American Court, the provisions of international conventions and the recommendations of committees including the Inter-American Commission on Human Rights were cited in legal proceedings with increasing frequency and were considered to be binding. Although Peruvian judges were for the most part fully conversant with the Covenant, the rapid increase in their number over recent years had undoubtedly generated a considerable training requirement for the Academy of the Judiciary. However, as a professor at the Academy, he could personally attest to the substantial and systematic investment in training in international human rights and humanitarian law that had been made in recent years. Furthermore, that investment had been replicated in training for the police and armed forces.

27. Concerning the impact of mining activity, he wished to emphasize that no project could proceed without a favourable environmental impact assessment. The assessment process was overseen by the recently established Ministry of the Environment and regulated by stringent legislation that imposed the highest possible standards for pollution and emission measurement and control. Additionally, in Peru no construction or development project of any kind could proceed without a social licence granted following extensive consultation with community stakeholders. As officials often worked to tight deadlines and consultations were inevitably a source of delay, complying with that requirement was not always easy. However, the Government was convinced that prior consultation was not only the best way to ensure sustainability but also a key plank in the relationship between State and society. That conviction was embodied in Act No. 29785, a pioneering piece of legislation that expressly applied the principles enunciated in the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). With regard to the legal effect of decisions reached on the basis of the prior consultation provided for in the Act, the Constitutional Court had indicated that, although local communities did not have a right to veto a proposed activity, the companies concerned were under a legal obligation to mitigate the adverse effects of that activity and to provide direct compensation to the persons affected.

28. **Mr. Villena Petrosino** (Peru) said that, by law, half of the national tax income generated in the State party by mining activities was passed on to the regional and local governments of the areas affected by mining. The State was also bound by law to ensure that the remaining revenue earned from taxes on mining profits, which were growing as a result of rising commodity prices, were distributed equitably across the entire country. The State spent a considerable portion of its mining tax revenue on areas such as health care and education. Budget spending on education, for instance, had increased by 60 per cent annually in recent years.

29. Pursuant to rulings by the Constitutional Court, the International Covenant on Economic, Social and Cultural Rights could be invoked in courts and in disputes with the

public administration. In that light, the right to a pension had been recognized as a fundamental right and the *Pensión 65* initiative had been launched to provide pensions to elderly persons who had previously had no access to social security benefits. The State party made its trade agreements with other States conditional on respect for labour rights enshrined in international human rights treaties.

30. **Mr. Burneo Labrín** (Peru) said that the Constitutional Court of Peru had ruled in 2006 that all international treaties ratified by the State party had constitutional status. As a result, such treaties took precedence over amnesty laws passed in 1995, which had also been declared incompatible with international human rights instruments ratified by Peru by the Inter-American Court of Human Rights in the *Barrios Altos* case in 2001. Article 3 of the Constitution encompassed rights emanating from the right to human dignity and thereby underlined the constitutional status of international human rights treaties.

31. **Ms. Huaita Alegre** (Peru) said that under the Equal Opportunities for Men and Women Act, the Government was obliged to submit annual progress reports to Parliament. Those reports covered matters relating to: the participation and representation of women, especially those from vulnerable groups, in the country's process of democratic development; labour market access; protection against sexual violence; sexual and reproductive health; prenatal care and maternal mortality; and access to health care and education. Efforts were being made to reduce illiteracy, to promote bilingual education in indigenous communities, to include gender as a cross-cutting issue in the public administration and to train civil servants in gender issues.

32. A nationwide survey had been conducted to gather data on how families divided up work and household duties, with a view to promoting equal responsibility. Equal opportunity plans had been adopted in 17 out of 25 regions but funding for their implementation had yet to be made available.

33. The third National Equal Opportunity Plan for Men and Women, 2012–2017, had been drafted after consultations with women across a broad cross-section of social groups. The plan set out eight strategic objectives, six of which were related to economic, social and cultural rights, including: increased awareness of gender as a cross-cutting issue at all levels of government; promotion of equal access to education; improvement of women's health care; strengthening of equal economic rights for women; reduction of sexual violence; and broadening of participation by men and women in political life and decision-making.

34. **Ms. Suárez Salazar** (Peru) said that the right to health care was guaranteed under article 10 of the Constitution. The Covenant and other international human rights treaties had been invoked in cases related to health matters brought before the Constitutional Court.

35. **Mr. Jiménez Mayor** (Peru) said that rulings of the Constitutional Court could be viewed on the Court's website.

36. **Mr. Villena Petrosino** (Peru) said that the Government was obliged by law to maintain contingency funds in order to deal with unforeseen events, and to submit annual three-year funding projections to Parliament as a prerequisite for passing the budget. Such forward planning had enabled the State party to emerge relatively unscathed from the global financial crisis of 2008–2009. The contingency funds could be directed to specific disaster-struck areas of the country as required.

37. **Mr. Sadi**, noting that communities in the State party had no power of veto over mining projects, asked whether they had access to any protection measures should they be adversely affected by mining. He said that he would also like to know more about the human rights curriculum in schools and at which level such education began.

38. **Ms. Shin Heisoo** said that she would like to receive a copy of the National Equal Opportunity Plan for Men and Women, 2012–2017, and observed that the absence of statistics in the combined periodic reports on the mainstreaming of gender as a cross-cutting issue appeared to indicate that little progress had been made in that area.

39. **Ms. Barahona Riera** requested clarification on how the State negotiated concessions with private mining companies and how much tax revenue accrued to communities affected by mining. She also asked whether, in the light of the boom in commodity prices in recent years, older mining contracts had been reviewed.

40. **Mr. Jiménez Mayor** (Peru) said that Act No. 29785 on the Right of Indigenous or Aboriginal Peoples to Prior Consultation was designed to facilitate intercultural dialogue and agreement between the State or private companies wishing to launch mining or other projects and the communities that stood to be affected by such projects. Under article 15 of the Act, agreements reached under the Act were binding on all sides. When the parties failed to reach agreement, the State was obliged to take all necessary measures to guarantee the collective rights of the indigenous and aboriginal communities concerned, which could request compensation for any damage they might suffer. The Ministry of Culture was drawing up a list of indigenous and aboriginal communities and of private and State entities whose projects could affect their collective rights.

41. **Mr. Villena Petrosino** (Peru) said that the commodities boom of recent years had been accompanied in the State party by improved environmental protection measures and an agreement between the State and mining companies that the latter should make an additional contribution to the State on the basis of their increased profits. That agreement had allowed the State, between 2006 and 2011, to raise an additional US\$ 943 million in revenue, which in turn had been ploughed back into the regions where mining was carried out. That agreement had since been made a legal obligation ensuring that the State would receive a steady share of mining profits. Negotiations on the granting of mining concessions were no longer restricted to the State and the companies concerned, but also involved regional civil society groups. Communities affected by mining projects thus had greater access to information about the implications of such projects and participated in the development associated with them.

42. **Ms. Cong Jun** said that she would like to know whether the impact of mining on the environment was monitored once concessions had been granted and work had begun.

43. **Mr. Tirado Mejía**, noting that rising world commodity prices were fuelling an increase in illegal mining and that criminal organizations were possibly making more from mining than from the illicit drugs trade, asked what policies the State party had developed to confront the issue.

44. **Mr. Jiménez Mayor** (Peru) said that, in spite of the strict regulations in place in the State party, illegal mining was a significant problem. In the Madre de Dios region alone, 30,000 people were employed in illegal mining, which was destroying the environment. International organized crime was involved and the Government was moving to draft legislation to criminalize such activities. Peru was working with other member States of the Organization of American States to combat the problem.

#### *Articles 6 to 9*

45. **Ms. Cong Jun** said that she regretted the failure of the State party to collect data on unequal remuneration for work of equal value and asked how it planned to remedy that situation, given that the problem could not be resolved without statistics measuring its extent. The Committee would like to see year-on-year statistics on the matter.

46. **Mr. Texier** said that he would like to know what measures the State party was taking to generate jobs and whether it took the informal sector into account when calculating the rate of unemployment. He also asked for more information on what was being done to eliminate forced labour in Peru. Noting that the State party had acknowledged in its combined periodic reports that almost 50 per cent of private-sector employees were paid less than the minimum wage, he asked how much the minimum wage was and whether it was an offence for employers to pay their employees less. According to reports before the Committee, the situation of farm labourers was characterized by low wages, job insecurity and the absence of trade union representation. Was it true that, in violation of article 8 of the Covenant, seasonal workers were not allowed to join trade unions?

47. **Mr. Martynov**, noting that at least 3 per cent of jobs in the public sector were supposed to be earmarked for persons with disabilities, asked how that requirement was enforced. He said that he would like to know what percentage of the population had disabilities and how many of them were unemployed, and requested relevant statistics at the national and regional levels. Information before the Committee indicated that only 1.42 per cent of persons with disabilities were covered by social security and that 81 per cent had no access to rehabilitation services. He asked whether the State party had taken any measures to address the issue. He also wished to know how large the informal sector of the economy was and what efforts were being made to regularize it. Had the Government of Peru responded to concerns expressed in the Committee's concluding observations of 1997 (E/C.12/1/Add.14) about shortcomings in the State pension system?

48. **Mr. Abdel-Moneim** said that, while he could accept that the State party might encounter difficulties in implementing strategies in pursuit of the goals of full and productive employment, he failed to understand why it should have trouble in framing such strategies.

49. **Mr. Dasgupta** said that he would like to know what percentage of children in the Amazon region had not had their birth registered.

*The meeting rose at 5.55 p.m.*