

PERU

CERD 29TH No.18 (A/9618) (1974)

243. The Committee noted with regret the initial report of Peru did not fulfill the requirements of article 9, paragraph 1, of the Convention; in fact, doubt was expressed whether it should be considered a report at all. For it consisted of the statement that, “since there does not exist, nor has there ever existed, any racial discrimination in Peru, no legal provisions exist on the subject and, obviously, no study or report is called for on racial discrimination in Peru.” The Committee recalled that, in article 9, paragraph 1, of the Convention, every State Party had undertaken to submit reports at specified intervals; and a State Party’s undertaking to submit such reports was not contingent upon the existence or non-existence of racial discrimination on its territory.

244. At its 214th meeting, held on 21 August 1974, the Committee unanimously decided to request the Government of Peru to submit its report as soon as possible but no later than the opening of the eleventh session, and, in the absence of a representative of that Government, to convey its decision to the Government of Peru by means of a communication to be sent through the Secretary-General. The text of the communication, prepared by the Rapporteur, was approved by the Committee at its 215th meeting, held on 22 August 1974, and may be found in annex IV, section D, below.

CERD A/31/18 + Corr. 1 (1976)

76. The second periodic report of Peru (incorporating, as suggested by the Committee at its twelfth session, the supplementary report requested at the tenth session), was considered together with a document entitled “Perfil de la Polbacion del Peru”, made available to the Committee in the Spanish language. The Committee noted with satisfaction the extensive range of the information contained in those documents and the co-operativeness manifested in the submission of such a comprehensive volume of information. It noted also that the report contained valuable background analysis of the situation and the texts of many of the legislative provisions cited. Some members wondered, however, whether all the information contained in the report was relevant to the provisions of the Convention and to the direct concerns of the Committee; and it was noted regretfully that, despite its wide range, the report contained little information on the implementation of the provisions of articles 2 (para. 1 (e)), 3 and 7 of the Convention, or on the subject matter of general recommendation III, and that far more emphasis was placed on constitutional and legislative provisions than on administrative and other measures which might have been adopted in order to implement those legislative provisions.

77. Members of the Committee took note of several positive features of the report. It was observed that - according to the information at hand - the various rights listed in article 5 of the Convention were guaranteed by the Constitution or other Peruvian laws; that the exercise of those rights was not impaired by racial discrimination; that a broad-ranging programme of economic, social and cultural reforms had been launched with the aim of creating a more dynamic society based on social equality and justice; and that that programme was being implemented without any racial discrimination. Note was taken also of the information showing that Peruvian legislation conferred equality of civil rights upon both nationals and non-nationals; and that any individual, whether or not a national of Peru, who was the victim of an act violating his constitutional rights, could appeal to the courts and obtain reparation on a completely equal basis, as required by article 6 of the Convention. Several members emphasized the importance of a decree promulgated in 1975 recognizing Quechua as an official language on the same footing as Spanish, making the teaching of Quechua compulsory at all levels of education, and requiring that “court cases the parties to which are able to speak only Quechua shall be conducted in that language” - and viewed that measure as a step in the direction of racial equality and as a fulfilment of some of the requirements of articles 1 (para. 4), 2 (para. 2) and 6 of the Convention.

78. On the other hand, some concern was expressed at the position of the Government of the reporting State towards the implementation of articles 2 (para. 1 (d)), 4 (paras. (a) and (b)) and 5 (para. (c)) of the Convention; and inquiries were made in relation to the implementation of the provisions of article 6 of that instrument. It was pointed out that the undertaking in accordance with article 2 (para. 1 (d)) of the Convention was not contingent upon the actual practice of racial discrimination in a given country, but was mandatory in all situations as a preventive measure against possible racial discrimination. The provisions of article 4, paragraphs (a) and (b), were viewed by all members of the Committee as mandatory, requiring positive legislation by all States parties whose existing legislation did not already give effect to those provisions. Article 86 of the Peruvian Constitution appeared to introduce discrimination between Peruvian citizens by granting the right to vote only to citizens able to read and write; in as much as a large proportion of the Indian

population in Peru did not meet requirement, it was excluded from political life, contrary to the provisions of article 5 (para. (c)) of the Convention. And article 26 of the Peruvian Constitution, which provided that “complaints regarding violations of the Constitution may be submitted to Congress”, was too narrow in its scope to constitute a discharge by the reporting State of all its obligations under article 6 of the Convention.

79. In addition to the questions raised by members of the Committee in connection with the observations summarized in the foregoing paragraph, the following specific questions were asked: (a) Were the rights guaranteed by the labour legislation of Peru enjoyed by non-nationals also? (b) Was access to the public service guaranteed to all sectors of the population? (c) What were the “special laws” which, under article 23 of the Peruvian Constitution, “may be promulgated where required by the nature of things” and to which the report referred in a number places? (d) What specific measures had the Peruvian Government taken to eliminate the vestigial prejudices, inherited from the colonial era, against large groups of inhabitants who were underprivileged and placed in a marginal situation? (e) Had the Government of the reporting State taken any measures - other than the recognition of Quechua as an official language - to protect the rich cultural heritage of the non-European element of the population, which constituted over 47 per cent of the total population? (f) Inasmuch as article 63 of the Peruvian Constitution referred to the author and the publisher of a publication “found guilty”, were there provisions in the laws of Peru which included the acts mentioned in article 4 of the Convention among the offences punishable by law? (g) Inasmuch as article 236 of the Penal Code of Peru referred to a “lawful public meeting”, were there provisions in the laws of Peru which declared meetings for the purposes mentioned in article 4 of the Convention among the categories of unlawful meetings?

80. The representatives of the Government of Peru, referring to the observations summarized in paragraph 78 above, stated that his Government interpreted article 2 (para. 1 (d)) of the Convention to mean that it was for each State party, depending on the particular circumstances, to decide whether or not to enact legislation in pursuance of the Convention in general, and of article 4 in particular; that the fact that illiterates were not allowed to vote could not be regarded as racial discrimination; and that under article 133 of the Peruvian Constitution, individuals had access to the courts, without prejudice to the political responsibilities of ministers. He replied to some of the questions enumerated in the foregoing paragraph, as follows: Regarding question (a), he said that, except in the matter of political rights, foreigners in Peru enjoyed the same rights and duties as nationals. Regarding question (c), he mentioned as an example the institution of trial marriages among the rural population where a couple could cohabit for a certain period of time without being officially married; under a special law, the legal validity of de facto marriages was recognized by formally including the wives and children concerned in family legislation. Regarding question (d), he stressed that, while the report of his Government acknowledged the existence of certain prejudices which might be regarded as having racial overtones, the decisive factors in that respect were economic and cultural reasons and that it was those very factors that his Government was trying to combat through its current legislation and programmes of reform. He offered to transmit other questions to his Government to be considered for inclusion in the next periodic report.

CERD A/33/18 (1978)

84. Although the third periodic report of Peru was voluminous and very extensive, the material it contained was not organized in accordance with the guidelines laid down by the Committee and much of it was not directly related to the Committee's competence and concerns. Some members viewed it as useful "background information", explaining the philosophy of the Government and describing the social and economic measures which had been - or were being - taken in order to eliminate the conditions which could give rise to racial discrimination; but it was felt that greater selectivity in the supply of information would have been preferable.

85. Some of the concerns expressed during the Committee's consideration of the second periodic report of Peru at the thirteenth session ^{14/} were voiced again in connection with the examination of its third periodic report.

86. The arguments advanced in the report in explanation of the non-adoption of legislative measures to give effect to the provisions of the Convention - namely, that all Peruvian legislation was based on respect for the rights inherent in the human being, including the right to equality, and on the prohibition of any differentiation on grounds of race; and that in any case there was "no discrimination of any kind at all" in Peru - did not appear to be consistent with the mandatory and unconditional nature of the obligations laid down in article 4 of the Convention or with the undertaking, under article 2, paragraph 1 (d), to prohibit racial discrimination by persons or groups. The reporting State was urged to take the nature of those obligations into account. In his reply, the representative of Peru assured the Committee that the next periodic report "would reflect his Government's steadfast intention to eliminate any deficiency that might give rise to any manifestation of racial discrimination." He informed the Committee that "the forthcoming Constituent Assembly would, from June onwards, be drafting a new political Charter for the State which would incorporate all provisions designed to prevent any manifestation of racial discrimination" and that, "in that way, the Government of Peru expected to comply more rigorously" with the provisions of the Convention.

87. Information was lacking about compliance with the obligations under article 7 of the Convention which, as the Committee had already stated in general recommendation V, were "binding on all States Parties, including States which declare that racial discrimination is not practised on the territories under their jurisdiction", and "must be fulfilled by them".

88. Focusing, as it did, on legislative measures, the report provided no information on the implementation of those measures; and a wish was expressed that future reports from Peru would contain such information.

89. In connection with their discussion of the position of the reporting State regarding the enactment of legislation in compliance with the requirements of the substantive articles of the Convention, some members of the Committee inquired whether the acceptance of international instruments by

^{14/} [Official Records of the General Assembly], Thirty-first Session, Supplement No. 18 (A/31/18 and Corr. 1), paras. 76-80.

the Government was sufficient to ensure their automatic implementation, or whether further legislative action was needed. In his reply, the representative of Peru stated: "Just as the Universal Declaration of Human Rights was already part of the Constitution of Peru, other international covenants and agreements were to be incorporated into the new political Charter".

90. Most of the questions asked by members of the Committee related to Legislative Decree No. 20653, which was designed to help the indigenous population: was that legislation to be viewed as falling within the purview of article 1, paragraph 4 and article 2, paragraph 2 of the Convention? What other measures had been taken to integrate the indigenous groups into the population of the country as a whole? And, apart from measures relating to the socio-economic status of those groups, were there other measures relating to such matters as schooling, legal processes and the use of the languages of the indigenous populations for official purposes? In particular, articles 8 and 13 of the Legislative Decree under consideration gave rise to several questions. What was the intent of the provision of article 8 that "a person who resides outside the Community Territory for more than 12 consecutive months shall forfeit Community-member status?" Did it not in effect force Community members to remain within the borders of their respective Territories for fear of losing their special socio-economic status? And what legislation guaranteed the legal status of any Community member who did choose to leave the Community Territory? With regard to the provision of article 13, that the State "shall give preference to local professionals and technicians in appointments to public office within the Communities", the question arose why that legislation was apparently limited to facilitating employment in the Community itself and not - as would be desirable - outside it as well. In his reply, the representative of Peru stated that the purpose of articles 8 and 13 of the Legislative Decree under consideration was "to strengthen the indigenous Community by discouraging unnecessary movement by Community members, promoting the over-all development of the regions of the country which were farthest away from industrial centres and preventing admission to the Community for the sole purpose of taking advantage of benefits covered by Community-member status".

91. The representative of Peru expressed the hope that his Government's next report would avoid some of the problems of form and organization to which members of the Committee had referred and would furnish the information requested, particularly on the implementation of the legislation on racial discrimination.

CERD A/35/18 (1980)

96. The fourth periodic report of Peru (CERD/C/18/Add.7) was considered by the Committee together with the introductory statement of the representative of the reporting State who informed the Committee that a new Constitution had been adopted in Peru and would come into force on 28 July 1980, and that its electoral provisions were already applicable to the general elections to be held on 18 May 1980. In this connection, she provided detailed information on the articles of the new Constitution which contained provisions in compliance with the provisions of the Convention and stated that, according to the new Constitution, the provisions of international instruments in the field of human rights to which Peru was a party, were given the status of constitutional rules. She also informed the Committee that in conformity with its general recommendation III, Peru did not maintain any diplomatic, economic or other relations with the racist régimes of southern Africa.

97. The Committee expressed its satisfaction with the report submitted by the Government of Peru and welcomed the information on the new Constitution provided by its representative.

98. Members of the Committee expressed the hope that information on the legislative action taken and extracts from legislative texts adopted to give effect to the provisions of the new Constitution and of the Convention, in particular those contained in articles 4, 5 and 7 of the Convention, would be included in Peru's next report.

99. In connection with article 2, paragraph 2, of the Convention, members of the Committee welcomed the action taken by the Peruvian Government to encourage the economic development and to protect the indigenous populations in the Selva and Ceja de Selva regions, and further information was requested about the "priorities, facilities and exemptions" granted to the tribal populations of those forest regions by Legislative Decree No. 22175. It was also asked what might be the effect of the "various benefits and promotional measures," accorded under Legislative Decree No. 22178 to settlers in the Selva, Ceja de Selva, Sierra and Costa regions, on the development of the indigenous populations of those regions and whether tax incentives might involved the risk of encouraging the exploitation of the indigenous population by newcomers.

100. Members of the Committee noted with satisfaction that the articles of the new Peruvian Constitution appeared to be in conformity with the provisions of article 5 of the Convention. In this connection, clarification was requested as to the meaning of the expression "civic qualifications" in article 65 of the new Constitution, since, according to that article, the ability to read and write was no longer a required qualification for the exercise of the right to vote. With reference to article 27 of the Constitution, which recognized the right of the Quechua, Aymara and other indigenous communities to receive basic education in their own dialect or language, it was asked how that education was provided in practice, inasmuch as those communities represented the majority of the population and were to a large extent illiterate.

101. In connection with article 6 of the Convention, further information was requested on the remedy of amparo and of habeas corpus provided for in Peruvian legislation.

102. Members of the Committee were also interested in receiving detailed information on the

implementation of article 7 of the Convention.

103. Replying to comments and questions by members of the Committee, the representative of Peru assured them that the text of the new Peruvian Constitution would be made available with the next report and that every effort would be made to include therein information on, and extracts from, the administrative and legislative provisions of interest to the Committee that would have been enacted in pursuance of the Constitution. She also pointed out that the provisions relating to the forest regions referred to in the report concerned not only the indigenous population but also other population groups; efforts were being made to encourage people to migrate to the remote regions and to settle there in order to strengthen the peasant communities.

CERD A/39/18 (1984)

313. The fifth and sixth periodic reports of Peru, submitted in one document (CERD/C/90/Add.7), were considered by the Committee together with the introductory statement made by the representative of the reporting State, who highlighted the provisions of the new Constitution of Peru relevant to the Convention and focused on his Government's policy for the elimination of racial discrimination both internally and internationally. He informed the Committee, in particular, that on 24 July 1984 the Government had promulgated a new Civil Code, which would enter into force in November 1984, and that Peru had recognized the jurisdiction of the Human Rights Committee under article 41 of the Covenant on Civil and Political Rights, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Furthermore, he stated that, in keeping with its policy of rejecting any form of racism and racial discrimination, his country had taken various measures to combat apartheid.

314. The Committee commended the Government of Peru for the report submitted and for the great efforts it was making to promote the equality of all human beings within a framework of non-discrimination and to chart a political course on democratic lines. It was pointed out that the report of Peru was particularly important for the Committee because a new Constitution and many enactments and decrees had recently come into force. In this connection, members agreed that more specific information should be provided on the legislation that had been enacted since the submission of the present report and that such further developments should be incorporated in the next periodic report. They requested, in particular, the text of those provisions of the new legislation that were relevant to the implementation of articles 4, 5, 6 and 7 of the Convention.

315. With reference to article 2, the Committee wished to be provided with more detailed information on the situation of indigenous populations; members asked whether any other languages, apart from Quechua and Aymara, were being developed as local languages, or whether Spanish was being introduced in the areas where such languages were spoken, and what practical measures in the field of education and information the Government had taken to put the Constitutional principles based on justice, freedom and equality into effect in the daily lives of the people. Information was requested on the effect of Peru's external debt on the living conditions of the indigenous populations in the country. Further information on the progress being made to eradicate illiteracy, especially among the indigenous populations, was requested in the next periodic report, together with relevant statistics. Moreover, it was asked how the law was being applied in regions inhabited by indigenous populations and which settlers from other regions had been permitted to acquire land in those regions: whether tax incentives to the newcomers might have the effect of encouraging exploitation of indigenous populations; and how the indigenous populations benefited in the shares of revenue from concessions made in respect of natural resources such as oil, timber and ore deposits. Clarifications were requested on the way in which the rights of indigenous communities in respect of the agricultural development of forest areas were guaranteed when forest areas were thrown open to settlement in the interest of more modern farming. Some information was also required regarding the relative size of the indigenous populations and an explanation of the reasons for any increase or decrease in the size of particular groups. Referring to such expressions as "primitive peoples, Indians and semi-civilized persons" used in the Penal Code, members expressed the view that, at the current stage of development of the Committee's work, such words were out of place in the

report of a State party to the Convention. Some information was requested on the situation of foreign workers, in particular, whether any measures had been taken to guarantee their rights.

316. More information on the implementation of article 4 was needed. A copy of the relevant provisions of the Penal Code would be welcome, especially of those provisions which give discretionary power to courts dealing with indigenous peoples and which concern the implementation of article 4 (b).

317. In connection with article 5, the Committee asked for additional information regarding freedom of movement in Peru, with particular reference to the forfeiture of community member status under article 8 of Legislative Decree No. 20653 and the legal status of any community member who chose to leave the community territory; and it was asked whether that Legislative Decree restricted the movement of some citizens, as well as their right of equal access to and free choice of employment. Clarification was also requested on the right of all strata of the population to take part in public affairs.

318. With regard to article 6, some members, referring to the report which stated that citizens could appeal to international bodies if they felt that they had suffered from any form of discrimination, requested information on the Government's policy concerning the possibility of making the declaration under article 14 of the Convention.

319. Furthermore, it was asked what measures had been taken in the field of education and information (art. 7), namely whether the teaching of human rights also included international instruments.

320. In replying to questions raised by the members of the Committee, the representative of Peru provided additional information concerning the new legislation adopted since the submission of his country's fourth periodic report in 1979. Those included some provisions of the new Political Constitution of 1979, the Habeas Corpus and Amparo Act, the Act Establishing the Court of Constitutional Guarantees, the General Education Act, the Employment of Physically, Sensorially and Intellectually Handicapped Persons Act and Regulations made thereunder.

321. Referring to Peru's ratification of the International Covenants on Human Rights, the representative pointed out that, in accordance with the Constitution, all the international instruments ratified by Peru formed part of domestic law and could be invoked directly before the courts. He also said that Peru was giving effect to the International Covenant on Economic, Social and Cultural Rights through job creation, house building, health plans and development of social security, in addition to the literacy programmes. However, Peru was a developing country and that imposed a number of constraints on the possibility of meeting all the needs of its people. Until a new international economic order was brought into being - and Peru was working with other interested countries to achieve that objective - it would be impossible to give effect to human rights in the third world countries.

322. With reference to the language question, he said that Spanish was the official language but that, according to the law, Quechua and Aymara were also official languages in those areas. In accordance with the Constitution, the indigenous populations had a right to receive primary

education, which was compulsory, in their own language. In those communities whose mother tongue was not Spanish, after primary education in the indigenous language, the students gradually learnt Spanish so as to acquire the socio-cultural characteristics of modern society. In accordance with the Constitution and the Code of Penal Procedure, every person had the right to use his own language in judicial proceedings and, where necessary, the court would provide interpreters. Furthermore, Peru considered the right to education and to culture as inherent to the human being. For that reason, a systematic study of the Constitution and of human rights was compulsory in all educational centres. The main aims of education were to enable every person to be fully aware of his rights and obligations, to eradicate illiteracy and to teach him the true meaning of the national character. Under the Five Year Education Plan 1980 - 1985, illiteracy had been reduced by 15 per cent and by the end of 1985, some 55 per cent of illiterate persons aged between 15 and 40 would have been taught to read and write.

323. Referring to the question of how rural communities were guaranteed their land tenure, he said that the Constitution contained an express provision to that effect. Such communities had legal personalities and were free to organize their work and the use of their land, as well as their economic and administrative matters, within the limits laid down by law. The State respected and protected the traditions of rural and indigenous communities, and the land of rural and indigenous communities was inalienable, except when it was appropriated for reasons of public utility and where a majority of two thirds of the members of a community voted in favour of selling the land. In accordance with the interests of society and within the limits laid down by law, the State was providing economic and technical support to agriculture in general and to agro-industries in particular by carrying out irrigation work, land reclamation and other such activities. He also pointed out that agrarian reform was the instrument for rural restructuring with the aim of bringing about a fair and equitable system of ownership, land tenure and agricultural work in the interests of the economic and social development of the whole nation.

324. As to the phrase "primitive peoples, Indians and semi-civilized persons" mentioned in the Penal Code, he pointed out that the Code had been enacted on 10 January 1924 and that his Government was currently drawing up a new Penal Code, more in keeping with modern conditions and the aim of social rehabilitation.

325. With reference to questions raised under article 5, the representative stated that the Constitution granted all persons aged 18 and over, including illiterate persons, the right to take part in public affairs, provided only that they were entered on the electoral register. He said, in particular, that all such persons were supplied with simplified ballot papers in the general elections of 1980 and in the municipal elections of 1983, and that the same would also be the case for the elections of April 1985 for a new President and Legislature.

326. Referring to foreign workers, the representative stated that under Peruvian law such workers could not make up more than 20 per cent of the work-force of any commercial or industrial undertaking.

327. He said that his Government was studying the question of making the declaration provided for in article 14 of the Convention and assured the Committee that he would transmit its interest in the matter to his Government.

CERD A/42/18 (1987)

186. The seventh periodic report of Peru (CERD/C/117/Add.7) was considered by the Committee at its 760th and 761st meetings on 10 and 11 March 1986 (CERD/C/SR.760-SR.761).

187. In introducing the report, the representative of Peru pointed out that it had been submitted before the change of Government in Peru. The new democratically-elected Government had been concerned with integrating into the life of the country those who, for historical or geographical reasons, had been excluded from the mainstream of development, especially the indigenous people. The Government had decided to give priority to the development of an area of some 260,000 square kilometres in the Andes where the poorest 20 per cent of the Peruvian population lived. In the next five years, the Government would invest 16 per cent of public funds in that area, which contained nearly two thirds of the country's rural population. The new Government had also reorganized the police force, removing those officers involved in acts against the security of citizens and dismissing civilian, police and military officials responsible for violations of human rights. In order to maintain living standards, the new Government had decided to limit external debt servicing, which had been preventing the State from fulfilling its social functions.

188. Members of the Committee commended the Peruvian Government for its efforts to combat discrimination. The report was clear and concise and had been prepared in accordance with the Committee's guidelines (CERD/C/70/Rev.1).

189. In relation to the information on the demographic and ethnic composition of the population requested in the Committee's guidelines, members observed that the report stated that it was not possible to supply information on the racial composition of the country because "the race of an individual cannot be indicated in any official document in Peru". In that connection, they pointed out that article 1 of the Convention referred to discrimination based "on race, colour, descent or national or ethnic origin" and that the Peruvian authorities might be able to provide information according to one of those criteria. They also pointed out that racial discrimination often coincided with economic and social discrimination and that in that context the breakdown of the population according to ethnic composition was useful. In addition, the Government presumably obtained information on the percentage of the population speaking the various languages in Peru in order to ascertain how many teachers were needed to teach the children of the various regions their own regional language. It was also pointed out that the Government must have some means of estimating the numbers and needs of the various ethnic groups in order to implement its policy of employing indigenous people in proportion to their share in the total population.

190. With regard to the implementation of article 2 of the Convention, members wished to know what impact the steps referred to in the report had had on improving the living standards of the indigenous people and what other measures were being taken to achieve the new Government's social aims with regard to such people.

191. As to the implementation of article 3, members asked whether Peru had any economic ties with the Government of South Africa and what had been done by the Peruvian Government to apply further sanctions against South Africa.

192. In relation to article 4, members stated that it was encouraging that since presentation of its first report, Peru had taken into account the Committee's recommendations regarding the implementation of that article. They pointed out that only a few gaps remained to be filled to comply with the provision of article 4. They also noted that two commissions were preparing a new Penal Code and a new Code of Penal Procedure. In that connection, they asked whether the commissions were updating existing legislation or whether they were developing new legislation with a new philosophy of penal justice based on the prohibition of racial discrimination. They also wished to know when those Codes would be in force and what progress had been made in connection with the implementation of article 4. In addition, they wished to know whether the statement in the report that there had been no cases of racial discrimination in the country implied that no instances of discrimination had occurred, or whether it meant that existing legislation did not contain adequate provisions for dealing with such instances.

193. As far as article 5 was concerned, information was requested regarding the difficulties encountered in practice concerning the right of illiterate citizens to vote and it was asked whether the right of indigenous people to stand for election was affected by their culture and level of education and whether they encountered any restrictions in that regard.

194. Replying to questions and observations by members of the Committee, the representative of Peru said that efforts would be made to update the demographic statistics required for evaluating the progress achieved in different areas of social promotion. Legislation to promote handicrafts had raised the income and therefore the standard of living in the rural indigenous population, enabling that community to participate in the Peruvian economy while contributing to the country's cultural and technological development. The most densely populated and most homogenous rural communities of the south-east, in the so-called "Andean quadrant," were the poorest and most backward. The Government had therefore decided to give that region priority in the area of public investment. The Quechua and Aymara groups were predominant there, making it imperative to increase the number of teachers of those languages. The lack of demographic data was an obstacle to the education programme. The most recent statistics on bilingualism dated from 1975. The educational materials available in local languages for bilingual education did not meet the country's requirements and mass media support for bilingual education was insufficient.

195. Peru saw unequal terms of trade as a symbol of the disparities between rich and poor in the world. Protectionism and the overvalued dollar compounded the problem of external debt. Since orthodox and traditional solutions to that problem were of no avail, Peru had adopted a unilateral decision to earmark only 10 per cent of its export earnings for debt servicing. Peru maintained no relations with South Africa in the areas of politics, diplomacy, transport, sport or culture.

196. A new Penal Code and Code of Penal Procedure had been completed and were undergoing final study by reviewing committees for promulgation in 1986. They were not simply revised versions of earlier ones, but rather reflected modern legal thought. There had been no trials on grounds of racial discrimination because in Peru that kind of offence had never been committed, and there was no specific legislation in that area. Peruvian law did not tolerate discrimination on any grounds and protected individuals who claimed that their human rights had been violated.

197. The high proportion of votes in the 1985 general election in areas where illiteracy was

widespread showed that illiterates had not encountered major difficulties in exercising their right to vote. No complaints had been received from either political parties or people's organizations. All members of the indigenous population had been entirely free to elect officials and to stand for election themselves. The Government recognized the need to accelerate the integration of the indigenous population into Peruvian cultural and political life. However, the members of that population group were not subject to discrimination and participated fully in the civilian and military sectors of public administration.

198. Finally, the representative of Peru expressed the hope that his country's declaration under article 14 of the Convention would encourage other countries to intensify and expand their co-operation with the Committee.

CERD A/50/18 (1995)

179. The eighth, ninth, tenth and eleventh periodic reports of Peru, submitted in one document (CERD/C/225/Add.3), were considered by the Committee, at its 1083rd and 1084th meetings, held on 7 and 8 March 1995 (CERD/C/SR.1083 and 1084).

180. The reports were introduced by the representative of the State party, who indicated that the Government of Peru, democratically elected in 1990, had worked hard to rebuild the economy and combat terrorism and drug-trafficking. While the process of national peace-building was not yet complete, the Government had succeeded in disbanding many terrorist organizations, thanks to its - necessarily strict - anti-terrorist legislation, which was now being progressively relaxed. The international bodies concerned with human rights had acknowledged the sharp fall in the number of allegations of violation of human rights in Peru. The new Constitution had been adopted in 1993 and endorsed by the people in a referendum. The Constitution stated that all persons were equal before the law and expressly prohibited discrimination on the grounds of origin, race or language. The Government had drawn up a preliminary draft of a law which would cite acts of racial discrimination as aggravating factors in offences already described in the existing criminal law, thus reflecting the provisions of article 4 of the Convention.

181. The representative said that any discussion of racial problems in Peru must necessarily refer to the situation of the indigenous communities. Peru was the most ethnically varied country in South America, with no less than 14 different families of languages. Indigenous communities enjoyed a whole range of rights and prerogatives which protected their existence as legal entities and their autonomy in respect of organization, communal work and the free use of their lands. The Constitution delegated many legal functions to the traditional indigenous authorities in accordance with customary law, provided that the fundamental rights of the individual were not infringed. Other legislation and development projects dealing with indigenous communities were mentioned by the representative. The Government, he said, had also given a high priority to education.

182. Members of the Committee welcomed the resumed dialogue with the reporting State and noted with satisfaction that the Government of Peru had ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

183. In connection with article 2 of the Convention, members of the Committee noted that the report failed to give a clear account of Peru's "national integration" policy. It made no mention of concrete measures, as required by the Convention, and was confined to general statements. Statistics showed that public resources were concentrated in Lima, where the white population was mostly located, whereas the regions and departments with the largest indigenous populations were neglected, although the people were the poorest, the least educated and the least developed. It was felt that, although economic and social policies in general might be successful in some ways, they often marginalized the rural poor, who in many cases were descendants of indigenous peoples, and thus had the effect of failing to guarantee their social and economic rights and increasing inequalities. Members of the Committee wished to know to what extent there were policy consultations between the Government and non-governmental organizations, and whether there had been responses to their views on the question of national integration. Regarding the status of the Black minority of Peru,

members requested information as to what was done to redress the situation of pervasive discrimination, social prejudice and persistent poverty.

184. Members of the Committee observed that very little information had been provided concerning the implementation of article 4 of the Convention. In particular, it was not clear whether article 371 of the Peruvian Penal Code met the standards of article 4 of the Convention.

185. With regard to the implementation of article 5 of the Convention, more information was needed on the extent to which the measures described in the report were effective. In particular, regret was expressed at the lack of any information in the report on the protection from racial discrimination of the right to housing, provided for under article 5 (e) (iii) of the Convention. Referring to the right to equal participation in cultural activities, established in article 5 (e) (vi), and in particular to the mass media, it was asked whether there was any consultation with multiracial, integrationist associations to ascertain their views concerning representation in the media. Referring to the statement that Quechua, Aymara and the other aboriginal languages had official status under the law, members of the Committee asked whether interpretation was, as required, provided in the courts, how many people spoke those languages and whether translations into those languages had been made of various legislative documents, notably those relating to labour law and the rules governing detention, release from detention and sentencing. Concerning possible violations of the rights enumerated in article 5 of the Convention and the right of individual recourse, consequent to Peru's declaration under article 14, to the help of international bodies such as the Committee when domestic remedies had been exhausted, members of the Committee asked whether people in general were in fact aware of their rights, of the constitutional guarantees that protected them, and of the remedies available to them if they suffered discrimination. Concerning the ancestral peasant and indigenous communities' right of ownership to their lands, mentioned in the report, it was asked to what extent those communities were actual participants in or beneficiaries of programmes for the exploitation and development of natural resources in those lands. Further information was also requested on the customary courts authorized by the Constitution and on the relationship between those special courts and the regular justice system. Members of the Committee asked how the New Criminal Code was organized, and what arrangements there were for persons who, because of their ethnic background, were unable to understand the regular legal procedures.

186. As to article 6 of the Convention, members of the Committee recognized that many remedies were available, but they wished to know to what extent they were effectively used and how expensive it was for a person who had suffered discrimination to take advantage of those remedies. Commending Peru's acceptance of the individual complaints procedure under article 14, they asked whether some research could be carried out in order to ascertain the extent to which people were aware of the recourse procedures available to them. More information was also needed on the working of the court system and its expected restructuring. Members of the Committee noted that it would have been appreciated if some significant examples of complaints, prosecution and convictions for acts of racial discrimination had been given. It was emphasized that actual complaints were a measure of public confidence in the legal system and that actual prosecutions and sentences were the yardstick whereby the effective application of the Convention could be gauged. Where racial discrimination was concerned, evidence of judicial intervention, including repressive measures, had a symbolic and even pedagogic function in society at large. On the contrary, there was a substantial body of evidence from sources, including the Human Rights Committee, that much

violence affecting peasant and indigenous groups was being committed in Peru by the military, the paramilitary, the police and armed Government-controlled groups, in a persistent pattern of impunity.

187. Replying to the questions and comments of the Committee, the representative of the State party said that Peru's policy was one of integration, rather than of assimilation or destruction of values, and aimed to preserve the values and customs of local communities. That policy took due account of the benefits of modern life, while taking care not to destroy indigenous culture, but to maintain contacts between it and with the rest of the country. With regard to the ethnic composition of the population, he said that questions concerning ethnic or racial origin had not been included in the questionnaires used in the 1993 national census, since it was national policy not to emphasize racial differences. He also informed members of the Committee that he would let them have a copy of the official ethno-linguistic map of Peru, which had been drawn up recently by the Instituto Indigenista Peruano, and that the results of the national census would also be communicated to them immediately after the present session. As for the results of the other two major censuses, which had been respectively concerned with indigenous communities and the rural population, he said that the Government of Peru would transmit them to the Committee as soon as they were published.

188. In the area of education, the Government had launched an inter-cultural bilingual education programme (1995-2005) directed at indigenous communities throughout the country. Sixty bilingual teachers were being trained, and they in turn would train 2,400 other teachers.

189. With regard to customary law, there were good reasons for protecting it, since it was made up of usages having force of law which played an effective regulatory role within the various groups in which it had originated. On the other hand, the Penal Code took account of "errors of fact due to cultural conditioning" to allow judges to pass less severe sentences than would normally be incurred by individuals found guilty of particular offences who had acted in accordance with the principles of their own culture.

190. With regard to the issue of the political representation of indigenous people in the Parliament, he explained that it was neither required nor prohibited under the Constitution. Ethnic representation in the Parliament and in the Executive took the most varied forms, as it did in the media, the press and radio and in all the country's activities.

191. With regard to the apparent conflict between the acknowledged property rights of peasant communities over their own land and the rights of the State, he said that article 69 of the Constitution, which stated that natural resources belonged to the State and was the basis for the national policy of maintaining biological diversity, was of a general nature. The autonomy of communities in respect of their organization and the use and free disposal of their land was subject to the general principles established by law.

192. Turning to the issue of bilingualism in the courts, he said that under the terms of the new Constitution all accused persons were entitled to the services of an interpreter.

193. With regard to the question of statistics on complaints of discrimination, he noted that such complaints had for the last two years been entered on a national register. Studies would be made of

acts of racial discrimination and the relevant conclusions would be included in the next report.

Concluding observations

194. At its 1095th meeting, held on 15 March 1995, the Committee adopted the following concluding observations.

(a) Introduction

195. The Committee welcomes the submission by the State party of a detailed report, prepared in accordance with the Committee's revised guidelines for the preparation of reports, and the resumption of the dialogue with the Government of Peru nine years after the consideration by the Committee of the previous report. The presence of a high-level delegation which provided additional information on most of the points raised by members of the Committee enables the Committee to obtain a better understanding of the efforts against racial discrimination in Peru, thus providing the basis for a frank and fruitful dialogue between the delegation and the Committee.

(b) Positive aspects

196. Measures recently adopted by the Government to improve the human rights situation are welcomed, as is continuing attention to the needs of indigenous communities. Satisfaction is expressed at the recent ratification by the State party of ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries. The Committee welcomes the additional information provided in the oral introduction of the report. The Committee takes note and welcomes the offer made by the Minister of Justice to provide the Committee with additional information as soon as possible.

(c) Factors and difficulties affecting the implementation of the Convention

197. It is noted that, as a consequence of violence linked with terrorist groups' activities and drug-trafficking, the State party has serious difficulties in the implementation of some provisions of the Convention. Structural problems such as the economic consequences of foreign debt have to be acknowledged.

(d) Principal subjects of concern

198. It is regretted that the State party has failed, since the submission of its seventh periodic report, to comply with its reporting obligations, so it has not been possible for the Committee to monitor the effects of Peru's fight against racial discrimination. It is further regretted that the Government failed to provide the Committee in its written report with accurate demographic data on Peru and that it did not contain sufficient information on the factual situation prevailing in Peru as far as protection against racial discrimination is concerned.

199. Concern is expressed that the socio-economic conditions of certain ethnic groups in Peru, particularly of indigenous communities living in rural areas and of indigenous, as well as Peruvians of non-European origin in urban society, remain disadvantageous compared to those of the white

population in the urban areas. It is further noted with concern that some effects of the economic and social policy of the Government threaten the enjoyment of the social and economic rights of persons belonging to indigenous communities. Furthermore, the report fails to give a clear picture of the substance and implementation of the "national integration policy" or of the way legal provisions protecting "cultural identity" are implemented.

200. It is noted that articles 129 and 317 of the Criminal Code do not fully meet the requirements of article 4 of the Convention. Concern is expressed about the lack of information contained in the State party's report on results of measures adopted to give effect to articles 4, 5 and 6 of the Convention.

201. As regards implementation of article 6, concern is expressed at the number of allegations of excessive use of violence committed in the past towards the rural population (most of whom are of indigenous descent) by the army and various armed groups as a reaction to terrorism. The role of military courts in this respect needs further explanation and assessment. The Committee is concerned whether impunity is not given too much weight in respect of the prosecution of human rights violations by military and paramilitary groups. Concern is also expressed regarding the adequacy of publicity given to the right of individuals claiming to be victims of racial discrimination to appeal to the Committee under article 14 of the Convention.

(e) Suggestions and recommendations

202. The Committee recommends that further efforts be undertaken by the Government to put into practice the provisions of the Convention, as well as the legislative, judicial and administrative measures referred to in the State party's report. The Committee also recommends that effective monitoring mechanisms be introduced to assess progress achieved in the protection of the rights of indigenous communities.

203. The Committee recommends that special efforts be made within the armed forces to terminate any unlawful violence towards civilians, including persons belonging to indigenous communities, and to secure that perpetrators of human rights violations are brought to justice.

204. The Committee requests the Government of Peru to provide, in its next report due on 30 October 1994, detailed information on the actual implementation of articles 4, 5 and 6 of the Convention.

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137. The Committee considered the twelfth and thirteenth periodic reports of Peru (see CERD/C/298/Add.5) at its 1317th and 1318th meetings (see CERD/C/SR.1317 and 1318), on 9 and 10 March 1999, and adopted the following concluding observations at its 1330th meeting, on 18 March 1999 (see CERD/C/SR.1330).

A. Introduction

138. The Committee welcomes Peru's submission of its twelfth and thirteenth periodic reports and the opportunity thus afforded to pursue a dialogue with the State party. The Committee thanks the State party for having sent a high-level delegation, led by the Minister of Justice, which provided additional information in reply to the many questions raised by the members of the Committee during the consideration of the report.

B. Positive aspects

139. The Committee takes note with satisfaction of the information provided on the marked decrease in the activities of subversive groups and on the fall in the number of complaints concerning human rights violations.

140. It also takes note with satisfaction of the information provided by the State party on the improvement in the country's economic situation.

141. It takes note with interest that Peru supports Agenda 21, adopted at the United Nations Conference on Environment and Development, one chapter of which deals with the role of indigenous communities and environmental preservation. Peru also took part in the establishment of a Special Commission on Indigenous Affairs in Amazonia and supported the creation of the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean.

142. The Committee takes note of the agreement reached with the International Labour Organization on the setting up of a special programme for the protection of indigenous communities, under which complaints concerning violations of human rights can be investigated and prosecuted.

143. The inclusion in school syllabuses of material intended to prevent racial discrimination is also noted with interest.

144. The Committee expresses satisfaction at the establishment of the Office of the Ombudsman and of its programme of activities for the indigenous population.

145. The Committee is pleased that Peru has made the optional declaration provided for in article 14 of the Convention, thereby accepting the procedure for individual communications.

C. Principal subjects of concern

146. The Committee regrets that the report provides only a partial response to the observations and recommendations made when the previous report was considered in 1995.

147. The Committee would like to know if the changes brought about by the 1993 Constitution regarding the status of international treaties, including the Convention, as opposed to national norms, could be detrimental to the implementation of the Convention.

148. The Committee notes with concern the close relationship between socio-economic underdevelopment and the phenomena of ethnic or racial discrimination against part of the population, chiefly the indigenous and peasant communities. In this respect, the Committee regrets the absence in the periodic report of information on the socio-economic indicators relevant to the situation of populations of indigenous, peasant or African origin. It nevertheless notes that the report acknowledges shortcomings in areas such as housing and health.

149. With regard to the implementation of article 2 of the Convention, the Committee reiterates its observations concerning the lack of information enabling it to know how the constitutional provisions guaranteeing the protection of the right to freedom from discrimination on racial or ethnic grounds are applied in practice.

150. With regard to article 4 of the Convention, the Committee notes with concern the lack of specific legislative provisions aimed at giving full effect to the Convention, though it acknowledges the existence of legislative initiatives aimed at making up for that lack.

151. The Committee regrets the absence of information on the number of complaints and court decisions concerning acts of racism and on the reparation awarded as a result. It notes with concern that in the cases brought before the courts, it was reportedly entirely up to the plaintiff to prove discrimination.

152. With respect to the right to equal treatment before the courts, the Committee notes with concern reports that interpreters are not in practice available to monolingual indigenous people and that legislation has not been translated into indigenous languages.

153. It is also worrying to learn that people who are in fact subjected to all sorts of pressure, from both subversive groups and the forces of law and order, are being charged with aiding and abetting terrorists. Allegations have further been made that indigenous communities are being forced to set up self defence committees under the armed forces and that young people from the most underprivileged sectors of the population are being conscripted by force.

154. The Committee takes note of reports that the indigenous population, the members of which often have no identity papers and are illiterate, is thus deprived of the possibility of exercising its civic and political rights.

155. The Committee takes note of the information on major shortcomings in the health services provided for the rural population in the Andes and in Amazonia, and of the allegations of forced sterilization of women belonging to indigenous communities. It also takes note of reports that there is a difference of almost 20 years between the life expectancy of people of indigenous origin and that

of the rest of the population.

156. With regard to the right to employment, the Committee takes note with concern of the reports that access to jobs and promotions is often influenced by racial criteria, while certain minor or disparaged jobs are left to persons of indigenous or African origin.

157. With regard to the right of access to all public places, the Committee takes note of the promulgation in late 1998, following complaints of discriminatory practices in that respect, of legislation prohibiting the owners of establishments open to the public from screening their clients on racial grounds. The Committee regrets, however, that this prohibition is not yet accompanied by any form of penalty.

158. The Committee is concerned about reports that the 1993 Constitution no longer totally guarantees that the communal property of indigenous populations is inalienable and unavailable for use.

159. With regard to the right to education, the Committee regrets the absence of information in the report on the number of children from communities of indigenous, peasant or African origin not attending school.

D. Suggestions and recommendations

160. Measures should be taken to guarantee the right of the most underprivileged members of the population to benefit from all the rights listed in article 5 of the Convention and the right to equal treatment before the courts and in the exercise of their political rights.

161. The Committee recommends that the State party bring its penal legislation into line with the provisions of the Convention, in particular with regard to article 4.

162. Programmes of instruction in human rights intended for justice administration personnel and members of the security forces should include training in the prevention of and protection against racial discrimination.

163. The Committee recommends that the State party take measures aimed at establishing a genuine dialogue between the Government and non governmental organizations in the fight against racial and ethnic discrimination.

164. In its next report, the State party should provide information on, *inter alia*: (a) the ethnic make up of the population, insofar as such information is available; (b) socio-economic indicators relevant to the situation of populations of indigenous, peasant or African origin; (c) the progress made to the benefit of those people on each of the rights listed in article 5 of the Convention; (d) the measures of legislative reform taken with a view to full compliance with the requirements of article 4 of the Convention and the punishment of all forms of racial and ethnic discrimination; (e) the follow-up to complaints from the victims of racial and ethnic discrimination and to their requests for reparation, in accordance with article 6 of the Convention; (f) the measures taken to train agents responsible for the implementation of legislation in terms of tolerance and inter-ethnic and

inter-racial understanding; (g) the measures taken to spread knowledge of the Convention and to publicize the Committee's reports and concluding observations.

165. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

166. The Committee recommends that the State party's next report, which was due on 29 October 1998, be an updating report and that it should cover all the suggestions and recommendations made in these concluding observations.