



Economic and Social Council

Distr.: General
30 May 2012

Original: English

Committee on Economic, Social and Cultural Rights

Forty-eighth session
30 April-18 May 2012

Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

Concluding observations of the Committee on Economic, Social and Cultural Rights

Peru

1. The Committee on Economic, Social and Cultural Rights considered the combined second to fourth periodic reports of Peru on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/PER/2-4) at its 6th, 7th and 8th meetings, held on 2 and 3 May 2012 (E/C.12/2012/SR.6-8), and adopted, at its 28th meeting held on 18 May 2012, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined second to fourth periodic reports of Peru, albeit with a significant delay, and the written replies to its list of issues. It also notes with appreciation the high level of the State party's delegation, and its positive and constructive engagement with the Committee.

B. Positive aspects

3. The Committee notes with appreciation efforts made by the State party in promoting the implementation of economic, social and cultural rights. It notes that the State party has made significant progress since the Committee's previous interactive dialogue in 1997, and notes with appreciation the State party's commitment to place human rights and social inclusion at the centre of its policies.

4. The Committee welcomes in particular:

(a) The adoption of the Equal Opportunities for Men and Women Act (No.28983) on 16 March 2007;

(b) The adoption of the 2011-2016 National Action Plan to Combat Human Trafficking;

(c) The adoption of the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation (No.29785) on 6 September 2011.

C. Principal subjects of concern and recommendations

5. The Committee notes with concern that there is no specific legislation prohibiting discrimination against persons based on sexual orientation, and that lesbian, gay, bisexual or transgender persons have faced such discrimination in employment, housing, and access to education and health care (art.2).

The Committee recommends that the State party expedite the adoption of specific legislation prohibiting discrimination against persons based on sexual orientation and take measures, in particular awareness-raising, to ensure that LGBT persons are not discriminated against on the basis of their sexual orientation and gender identity.

6. The Committee notes with concern that, despite legislative steps, persons with disabilities still face discrimination in accessing employment (art.2).

The Committee recommends that the State party take steps to promote the employment of persons with disabilities, as well as to protect them from discrimination in the workplace. The Committee also recommends that the State party ensure effective compliance by public institutions with the 3 per cent quota accorded to persons with disabilities.

7. The Committee is concerned that, despite the strong increase in GDP in the State party, the rate of underemployment remains high, especially in rural areas. (art.6)

The Committee recommends that the State party take effective measures to increase the rate of employment, particularly in rural areas, and to overcome the difficulties in framing and implementing its employment policies.

8. The Committee notes with concern the use of forced labor, in particular in the logging sector. (art.6)

The Committee recommends that the State party take legislative measures to penalize forced labor, and prioritize the combating of forced labour, including through effective implementation, resourcing, and, where necessary, reviewing of the National Plan of Action for the Eradication of Forced Labour.

9. The Committee notes with concern the significant wage gap between men and women (art.7).

The Committee recommends that the State party take measures to ensure equal remuneration for men and women for work of equal value, as provided for in national legislation, and provide information on the impact of such measures in its next periodic report.

10. The Committee notes with concern that 30 per cent of salaried workers are paid less than the national minimum wage. It is also concerned about the volume of non-registered employment as well as the low investigative capacity of labour inspection units.

The Committee recommends that the State party ensure that employees are guaranteed and paid a salary at least at the level of the national minimum wage. It also urges the State party to take urgent steps to further strengthen the capacity of the National Labour Inspectorate.

11. The Committee notes with concern that workers in the agricultural exports sector receive wages that do not allow them and members of their family an adequate standard of

living. The Committee also notes with concern that such workers often face excessively long working hours (art.7).

The Committee recommends that the State party amend the Agricultural Promotion Act (Act No.27360) in order to ensure that workers in the agricultural exports sector receive salaries not lower than the minimum wage, are not required to work excessively long working hours, and receive compensation in the case of unfair dismissal.

12. The Committee notes with concern that foreign and migrant workers face restrictions regarding their right to join trade unions. The Committee is also concerned that the 1997 Labor Productivity and Competitiveness Act allows for dismissal without stating the grounds, and that the Act has reportedly been used in reaction to trade union activity of employees. (art.8)

The Committee recommends that the State party take legislative and other measures to ensure that all workers, including foreign and migrant workers, can join trade unions. It also urges the State party to take effective measures to ensure that workers are protected from any retaliatory actions following their involvement in trade unions, and to amend the 1997 Labor Productivity and Competitiveness Act accordingly.

13. The Committee notes with concern that a large proportion of wage earners in the private sector have no social security cover. It is also concerned that only 1.4 per cent of persons with disabilities are covered by social security programmes (art.9).

The Committee recommends that the State party take steps to ensure universal social security coverage, and extend the coverage of social security to all workers in the private sector, as well as persons with disabilities. The Committee draws the attention of the State party to its general comment No. 19 (2007) on the right to social security.

14. The Committee is concerned about the prevalence and extent of domestic violence, including violence and sexual abuse of children. The Committee is also concerned at the fact that domestic violence is not specifically defined as an offence in the State party's Criminal Code, and at the obstacles in accessing justice for victims of domestic violence, in particular for indigenous and rural women, and the lack of enforcement measures (art.10).

The Committee recommends that the State party amend its Criminal Code in order to make domestic violence a specific offence and to intensify its efforts to prevent and combat domestic violence, including through awareness-raising measures aimed at the judiciary, law enforcement officers, prosecutors, teachers, health-care and social workers and the media. It also urges the State party to ensure that all cases of domestic violence are investigated and that perpetrators are promptly prosecuted and sentenced.

15. The Committee is concerned that child labour in the State party remains extensive, in particular in the informal sector, and that children are exposed to dangerous and/or degrading work, in particular in mines, garbage dumps and battery recycling. The Committee is also concerned that the minimum age for admission to employment is set at 14 years, which is below the age of the end of compulsory education, set at 15 years (art.10.)

The Committee recommends that the State party take urgent steps to address child labour, including through ensuring effective enforcement of legislation protecting children from economic exploitation and exposure to hazardous or abusive work. The Committee also urges the State party to expedite the process of adoption of the Bill amending the Child and Young Persons Code, raising the minimum age for admission to employment to 15 years.

16. The Committee is concerned about the situation of street children in the State party, as well as their high numbers (art.10).

The Committee recommends that the State party address the situation and the high number of street children, with the aim of protecting these children and preventing and reducing this phenomenon. The Committee also recommends that these efforts focus on recovery and social reintegration services, as well as on ensuring adequate nutrition, housing, health care and educational opportunities.

17. The Committee is concerned that, despite progress in recent years, a large section of the rural population still lives in poverty. The Committee is particularly concerned about the high incidence of poverty and extreme poverty in sierra and jungle regions, where indigenous communities are concentrated. It also notes with regret the lack of disaggregated statistical data accurately reflecting the living standards of these communities (art.11).

The Committee recommends that the State party step up its efforts to combat poverty in rural areas. The Committee recommends that the State party intensify measures to combat poverty and extreme poverty among indigenous communities and monitor progress in this regard, inter alia, by compiling disaggregated statistical data. The Committee draws the State party's attention to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights adopted on 4 May 2001 (E/2002/22-E/C.12/2001/17, annex VII).

18. The Committee is concerned that a significant number of children still suffer from malnutrition, in particular those living in rural and remote areas (art.11).

The Committee recommends that the State party intensify its efforts to combat and prevent malnutrition amongst children, in particular those living in rural and remote areas.

19. The Committee is concerned about the serious housing deficit and the absence of legislation and policy to protect tenants living in poverty or to prevent forced evictions. The Committee is also concerned about the insufficient provision of water and sanitation services, in particular in peripheral urban areas and rural regions (art.11).

The Committee recommends that the State party take steps to address the housing deficit and take into special consideration the needs of the disadvantaged and marginalized individuals and groups, including through the upgrading of existing housing and the ensuring of security of tenure, especially in rural areas, in conformity with the Committee's general comment No.4 (1991) on the right to adequate housing. The Committee recommends that the State party ensure the provision of safe and affordable drinking water and sanitation. It also recommends that the State party adopt measures, legislative or otherwise, governing forced evictions that are in line with the Committee's general comment No.7 (1997) on forced evictions.

20. The Committee is concerned about the high percentage of the population that does not benefit from health-care coverage. It is also concerned about the inadequate access to and quality of health services, especially in rural and remote areas (art.12).

The Committee recommends that the State party ensure the effective implementation of the 2009 Framework Law on Universal Health Care Insurance (Law No.29344). The Committee also recommends that the State party take steps to improve access to and quality of health-care services, especially in rural and remote areas, including by addressing economic, cultural and social barriers to such access. The Committee requests the State party to include in its next periodic report data on the access to and quality of health services, disaggregated by region.

21. The Committee is concerned about the high rate of teenage pregnancies, and the lack of adequate sexual and reproductive health services. It is concerned that the Criminal Code classifies consensual sexual relations between adolescents as statutory rape, which in practice inhibits the access of adolescents to reproductive health services. The Committee is concerned about the high maternal mortality rate in rural regions, which is still above the MDG target. It is also concerned that the conditions under which therapeutic abortions can be performed are not nationally regulated, and that abortions are penalized in cases of pregnancy resulting from rape (art.12).

The Committee recommends that the State party intensify its efforts to address the high rate of teenage pregnancies and ensure the accessibility and availability of sexual and reproductive health services, including delivery attendance, institutional birth services and emergency contraceptives, particularly in rural areas. It recommends that the Criminal Code be amended so that consensual sexual relations between adolescents are no longer considered as a criminal offence and that abortion in case of pregnancy as a result of rape is not penalized. It also recommends that the State party establish a domestic protocol for the performance of therapeutic abortions.

22. The Committee is concerned about the adverse effects as a result of the extractive industries' activities on the health of the population, in particular on the access to safe drinking water. It is also concerned that independent impact assessments on water, air and soil conditions are not always carried out prior to the granting of licenses to companies (art.12).

The Committee recommends that the State party ensure, as part of its National Environmental Policy, that comprehensive independent impact assessments are carried out prior to the setting up of mining projects, and ensure that such activities are not a threat to health and do not adversely impact water, air or soil quality, in particular in rural and remote areas.

23. The Committee is concerned that effective consultation and prior informed consent of indigenous peoples is not systematically sought in decision-making processes relating to the exploitation of natural resources in their traditional territories (art. 15).

The Committee recommends that the State party ensure that the implementation of the National Environmental Policy, Section 5, on mining and energy, as well as Act No.29785 on the Right of Indigenous or Aboriginal Peoples to Prior Consultation, involves effective consultation and prior informed consent of indigenous peoples relating to the exploitation of natural resources in their traditional territories.

24. The Committee is concerned that women who were subjected to forced sterilizations under the National Reproductive Health and Family Planning Program between 1996 and 2000 have not yet received reparations (art.12).

The Committee recommends that the State party effectively investigate, without further delay, all cases of forced sterilization, guarantee adequate resourcing for these criminal investigations, and ensure that victims receive adequate reparations.

25. The Committee notes with concern that the State party, whose population relies heavily on affordable generic medicines, nevertheless concluded the US-Peru Free Trade Agreements in December 2005, which incorporates TRIPs plus provisions severely restricting future access to new, affordable generic medicines (art.12).

The Committee recommends that, in all future cases, the State party carefully assess the impacts on Covenant rights before entering into international agreements. The Committee also recommends that the State party take steps to ensure the accessibility, affordability and availability of essential medicines, if necessary through subsidies.

The Committee draws the attention of the State party to its general comment No.14 (2000) on the right to the highest attainable standard of health.

26. The Committee is concerned about the discrepancies in quality and infrastructure between urban and rural schools. It is furthermore concerned about the very high dropout and repetition rates, in particular for girls in rural areas, and the illiteracy rate among the indigenous and Afro-Peruvian communities (arts. 13 and 14).

The Committee recommends that the State party take steps to improve the quality of instruction in and physical infrastructure of schools in rural areas. It also recommends that the State party take urgent steps to increase attendance rates, address the high dropout and repetition rates, in particular for girls in rural areas, and address the illiteracy rate among children of indigenous and Afro-Peruvian communities.

27. The Committee is concerned that the use of indigenous languages is gradually declining (art. 15).

The Committee urges the State party to take urgent steps to preserve and promote the use of indigenous languages.

28. **The Committee recommends that the State party adopt temporary special measures, in line with the Committee's general comment No.20 (2009) on non-discrimination in economic, social and cultural rights, to promote the realization of all Covenant rights for disadvantaged and marginalized indigenous communities and Afro-descendants. The Committee also requests that the State party include in its next periodic report data on progress made in this regard, including statistical data.**

29. **The Committee encourages the State party to sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

30. **The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular among State officials, the judiciary and civil society organizations, translate and publicize them as far as possible and inform the Committee of the steps taken to implement them in its next periodic report. It also encourages the State party to engage all the relevant actors, including non-governmental organizations and other members of civil society, in the process of discussion at the national level prior to the submission of its next periodic report.**

31. **The Committee requests the State party to submit its fifth periodic report, prepared in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2), by 18 May 2017.**