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# International Convention on the Elimination of All Forms of Racial Discrimination

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**Committee on the Elimination of Racial Discrimination**

## Reports submitted by States parties under article 9 of the Convention

### Combined eighteenth to twenty-first periodic reports of States parties due in 2012

## Peru*, **

[23 April 2013]

* This document contains the eighteenth to the twenty-first periodic reports of Peru, due on 29 October 2012. For the fourteenth to the seventeenth periodic reports and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/PER/14-17 and CERD/C/SR.1934, 1935, 1963 and 1964.

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*** The annexes are on file with the Committee secretariat.

# I. Introduction

1. Peru ratified the International Convention on the Elimination of All Forms of Racial Discrimination without reservations on 29 September 1971, and it entered into force on 29 October 1971. Pursuant to article 9 of the Convention, Peru undertook to submit a report on legislative, judicial, administrative or other measures it had adopted to implement the provisions of this important international instrument.

2. In follow up to the concluding observations made by the Committee on the Elimination of Racial Discrimination in 2009, Peru hereby submits to the Committee its eighteenth, nineteenth and twentieth reports, covering measures taken in 2009–2012.

3. This consolidated periodic report was prepared in a well-planned participatory process. The Office of the Deputy Minister of Intercultural Affairs of the Ministry of Culture coordinated the drafting of the report, to which end it requested information from public entities of the central and regional governments. Coordination with the public entities was maintained in order to identify the main accomplishments and challenges encountered in terms of racial discrimination and equal opportunity for all, especially with regard to the situation of indigenous and Afro-Peruvian peoples.

4. The preliminary version of the consolidated report was discussed with members of the National Human Rights Council,[1] which is comprised of state institutions[2] and representatives of civil society.[3] Finally, the report was approved by the Office of the Deputy Minister of Human Rights and Access to Justice of the Ministry of Justice and Human Rights, the duties[4] of which include giving the final stamp of approval to periodic or other reports required by the international human rights bodies.

5. In the area of institutional reform, a measure that was taken subsequent to submission of the 2009 report to the Committee, was the adoption in December 2011 of Act No. 29809, which outlines the competencies of the Ministry of Justice as the lead human rights agency in the country, and establishes the Ministry of Justice and Human Rights.[5] The adoption of this Act attests to the determination of the Peruvian Government to

[1] The National Human Rights Council of the Ministry of Justice and Human Rights was created pursuant to article 1 of Supreme Decree No. 012-86-JUS, of 6 September 1986, as amended by Supreme Decree No. 011-2012-JUS, of 20 April, 2012. The National Human Rights Council is the multisectoral body charged with issuing opinions and advising the executive branch on the development of policies, programmes, projects and plans in the area of human rights, especially in connection with the National Human Rights Plan. The Technical Secretariat of the Council provides technical and administrative support. The National Human Rights Council is presided over by the Deputy Minister of Human Rights and Access to Justice of the Ministry of Justice and Human Rights.

[2] The Office of the President of the Council of Ministers, the Ministry of Justice and Human Rights, the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of the Interior, the Ministry of Education, the Ministry of Health, the Ministry of Labour and Employment, the Ministry for Women and Vulnerable Population Groups, the Ministry of the Environment, the Ministry of Energy and Mines, the Ministry of Culture, the Ministry of Development and Social Inclusion, the Judiciary, the Public Prosecution Service and the Ombudsman's Office.

[3] The Office of the National Coordinator for Human Rights, Evangelical Council of Peru, the Peruvian Episcopal Association, the National Confederation of Private Entrepreneurial Institutions and the Peruvian Press Council.

[4] Ministry of Justice. Supreme Decree No. 011-2012-JUS, Adoption of the Regulations on Organization and Duties of the Ministry of Justice and Human Rights (*El Peruano*, 20 April 2012), article 16 (g).

[5] Congress of the Republic, Act No. 29809, on Organization and Duties of the Ministry of Justice and Human Rights (*El Peruano*, 8 December 2011).

promote a national policy of respect, protection and promotion of human rights. As the entity in charge of fulfilling this purpose, the Ministry of Justice and Human Rights sets policies that focus on the most vulnerable segments of the population and monitors compliance by the State with its legal obligations in that area. The Office of the Deputy Minister for Human Rights and Access to Justice was created and charged with formulating, coordinating, implementing and overseeing national human rights policies.[6]

6. Another important development was the creation in 2010 of the Ministry of Culture, as a result of which the ethnic and cultural pluralism of the country was established as one of the four programme areas of action in which this new sector has competence, duties and powers.[7] In addition, the Office of the Deputy Minister for Intercultural Affairs was set up to formulate, implement and monitor policies and rules for preventing manifestations of discrimination against the citizens and peoples of the country,[8] and to promote and guarantee attitudes conducive to social equality and respect for the rights of all the peoples of Peru. This Office serves as the executive branch's technical agency specializing in indigenous affairs, in accordance with the provisions of the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation.[9]

7. The Ministry of Development and Social Inclusion was created in 2011[10] with the mission of ensuring that social policies and programmes are implemented in a well-coordinated manner with a view to closing gaps in access to public services.[11] The Ministry of Development and Social Inclusion is responsible for (a) social development, the fight against poverty and promotion of inclusion and social equity, and (b) social protection of at-risk, vulnerable and neglected segments of the population.

8. This report was prepared bearing in mind the Harmonized guidelines on reporting under the international human rights treaties[12] and the Guidelines for the CERD-specific document to be submitted by States parties to the Committee on the Elimination of Racial

[6] Congress of the Republic, Act No. 29809, on Organization and Duties of the Ministry of Justice and Human Rights, article 12 (*El Peruano*, 8 December 2011).

[7] Congress of the Republic, Act No. 29565, on the Creation of the Ministry of Culture (*El Peruano*, 22 July 2010). In addition, pursuant to Supreme Decree No. 001-2010-MC (*El Peruano*, 25 September 2010), the National Institute for the Development of Andean, Amazonian and Afro-Peruvian Peoples was merged with the Ministry of Culture.

[8] Congress of the Republic, Act No. 29565, on Creation of the Ministry of Culture (*El Peruano*, 22 July 2010), article 15(e).

[9] Act No. 29785, on the Right of Indigenous or Aboriginal Peoples to Prior Consultation, recognized in International Labour Organization (ILO) Convention No. 169, was one of the first measures taken by the current Government and confirmed in September 2011 upon its adoption by the Congress of the Republic. The Act lays down the content, principles and procedures pertaining to the right of indigenous or tribal peoples to prior consultation regarding legislative or administrative measures that directly affect them. It is interpreted in the light of the obligations established in the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which was ratified by Peru in Legislative Decision No. 26253.

[10] Congress of the Republic, Act No. 29792, on the Creation, Organization and Duties of the Ministry of Development and Social Inclusion (*El Peruano*, 20 October 2011).

[11] The Ministry of Development and Social Inclusion has two basic duties: on the one hand, to serve as the executing agency for temporary targeted social programmes, it must ensure that interventions are well-coordinated and effective in terms of the supply of goods and assets to sectors of the population that require direct State support; on the other hand, as the lead agency for national social policies, it must ensure that the different sectors and levels of Government in charge of social programmes and policies work in a well-coordinated manner.

[12] United Nations, Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/MC/2006/3 and Corr.1, 10 May 2006).

Discrimination.[13] In accordance with these documents, the eighteenth to the twenty-first consolidated report of Peru contains specific information on the implementation of articles 1 to 7 of the Convention.

# II. Information relating to the articles of the Convention

## Article 1 of the Convention

## A. Definition of racial discrimination in domestic legislation

9. Article 2, paragraph 2, of the Political Constitution of Peru, on the fundamental rights of the person, establishes the right to equality as follows:

> "Article 2. Every person has the right: [...] 2. To equality before the law. No person shall be discriminated on the basis of origin, race, sex, language, religion, opinion, economic situation or any other reason."[14]

10. The Constitutional Court,[15] which is the supreme body responsible for interpreting and monitoring constitutionality, has established that the equality enshrined in article 2, paragraph 2, of the Constitution is both a principle and a fundamental right. As a principle, it is the assertion of an objective material fact which, as the value-based component of the fundamental constitutional order, is generally binding and extends to the entire system of laws. As a fundamental right, it entails the recognition of an authentic subjective right, i.e., the person's entitlement to a constitutional right, equality, which may be invoked against a third party. It is the recognition of a right to not be discriminated against for reasons that are prohibited by the Constitution itself, including race.[16]

11. The Fourth Final and Transitory Provision of the Constitution provides that rules concerning the rights and freedoms recognized by this Constitution are construed in accordance with the Universal Declaration of Human Rights and international treaties and agreements on those rights, which have been ratified by Peru. This interpretation is also reflected in Preliminary Title, article V of the Code of Constitutional Procedures,[17]which states the following:

> "Article V. The content and scope of the constitutional rights protected by the procedures covered by this Code shall be construed in accordance with the Universal Declaration of Human Rights, the international human rights treaties and the decisions of international human rights courts established under treaties to which Peru is a party."

12. It follows from the above paragraphs and the decision of the Peruvian Constitutional Court to the effect that international human rights treaties have constitutional rank and

[13] Committee on the Elimination of Racial Discrimination, Guidelines for the CERD-specific document to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1, 13 June 2008).

[14] Paragraph 19 of the aforementioned article on the fundamental rights of the person, enshrines the right to ethnic and cultural identity and provides that the State acknowledges and protects the ethnic and cultural diversity of the Nation.

[15] Congress of the Republic. Act No. 28301. Organization Act of the Constitutional Court, *El Peruano*, 23 July 2004, art. 1.

[16] Constitutional Court. Decision of 13 February 2009, Case No. 00033-2007-PL/TC.FJ57.

[17] Congress of the Republic. Code of Constitutional Procedures. Act No. 28237, *El Peruano*, 31 May 2004.

prevail over domestic legislation[18] that the definition of racial discrimination set forth in the Constitution is in line with the definition contained in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, namely, that it covers discrimination based on race, colour, descent or national or ethnic origin.

13. Finally, it should be noted that all domestic legislation is subject to the principle of constitutionality, i.e., it must not violate the Constitution. The Constitutional Court has stated that "No legal rule can be independent of the Supreme Law, which is what presides over, informs and is the foundation for the validity of the entire legal order".[19]

### 1. Prohibition against all forms of racial discrimination

14. The Constitutional Court has prohibited all forms of racial discrimination, whether direct or indirect. It has described indirect discrimination as unequal treatment that is not obvious or evident, making it necessary to draw upon additional evidence to prove that there has been discriminatory treatment.[20]

15. Article 2, paragraph 2, of the Political Constitution provides that every person has the right to equality before the law and that "no person shall be discriminated against on the basis of origin, race, sex, language, religion, opinion, economic situation or any other reason". This simply means that the Constitution recognizes those criteria which, for historical or social reasons, may be considered "potentially discriminatory" when they involve action or omission on the part of the State or of individuals.[21] It should be borne in mind, however, that this provision in the Constitution is an open one aimed at recognizing and protecting human rights, and that the list set forth in the article is indicative and not restrictive in nature.

16. This has been recognized by the Constitutional Court, which has added that "suspicious" or "especially heinous" categories should be understood as classification criteria that allude to certain social groups which, having been discriminated against throughout history, deserve special or differentiated protection under the law. In such cases, special protection means that any distinction that is based on criteria that are expressly prohibited shall be presumed to be unconstitutional and may only be changed when there is a strict, objective and reasonable justification for doing so.[22]

17. The Constitutional Court has concluded that when a given type of discrimination, either direct or indirect, affects a person's right to not be discriminated against for any of the reasons expressly prohibited by the Constitution, including race, the constitutional court judge must observe the following rules: (a) firstly, it is up to the defendant, not the plaintiff, to prove that the alleged discrimination has not occurred; (b) secondly, the proof offered must be carefully considered and checked; the aggressor must not only demonstrate that there was a legitimate purpose and rationale for the action taken, but he or she must also show that there was a pressing need for it; and finally (c) if there is any doubt, the court must rule that the measure in question was unconstitutional.[23]

### 2. Legislation regarding non-citizens

18. In keeping with the Guidelines for the CERD-specific-document and General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination, on

[18] Constitutional Court. Decision of 25 April 2006, Case No. 0025-2005-PI and No. 0026-2005-PI.
[19] Constitutional Court. Decision of 16 April 2003, Case No. 2050-2002-AA/TC. F.J. 4.
[20] Constitutional Court. Decision of 3 September 2010, Case No. 2317-2010-AA/TC. F.J. 31.
[21] Constitutional Court. Decision of 03 September 2010, Case No. 2317-2010-AA/TC. F.J. 33.
[22] Constitutional Court. Decision of 3 September 2010, Case No. 2317-2010-AA/TC. F.J. 32.
[23] Constitutional Court. Decision of 3 September 2010, Case No. 2317-2010-AA/TC. F.J. 34.

discrimination against non-citizens, the legislation relating to non-citizens and the relevant enforcement measures are described below.

19. Peru's immigration policy is governed by the Political Constitution, domestic legislation on migration, international human rights treaties to which Peru is a State party, and regional and bilateral agreements it has signed on the subject.

20. Aliens in the territory of Peru have the same rights and obligations as Peruvians, with the exceptions laid down in the Constitution, the Aliens Act and other legislation. These exceptions refer *inter alia* to nationality, territory, the right to elect and be elected and the right to own property. Peruvian immigration policy is based on the following key domestic laws and provisions:

- The Aliens Act, Legislative Decree No. 703, of 11 May 1991;
- The Nationality Act, Act No. 26574 and the Regulations thereto;
- Supreme Decree No. 017-2005-JUS, adopting the National Human Rights Plan;
- Supreme Decree No. 002-2004-IN, of 19 February 2004, creating the Multisectoral Standing Working Group on Human Trafficking;
- Consular Regulations adopted by Supreme Decree No. 076-2005-RE;
- The Immigration Incentives Act, Act No. 28182 and the Regulations thereto;
- The Refugees Act, Act No. 27891 and the Regulations thereto;
- The Asylum Act, Act No. 27849 and the Regulations thereto;
- Act No. 28950, Act against Human Trafficking and Smuggling of Migrants, of 15 January 2007, and the Regulations thereto;
- Act No. 26196, on the hiring of foreign workers;
- Ministerial Decision No. 009-2006-TR, adopting Instructions for enforcement of Decision No. 545, Andean Instrument on Migration of Workers;
- Supreme Decree No. 067-2011-PCM, setting up the Multisectoral Standing Committee on the Intersectoral Working Group on Migration Management.

## B. Special measures on behalf of groups of individuals protected by the Convention

21. The Peruvian legal system allows for special measures to be taken to ensure adequate protection for groups of individuals who are protected by the Convention. The Constitutional Court has ruled that not all unequal treatment before the law is constitutionally prohibited discrimination, given that it is not enough for a law to establish inequality, but rather that such a law must not be objectively justified.[24]

22. As a social and democratic State under the rule of law, Peru promotes differentiated treatment of certain groups, granting them advantages, incentives or more favourable treatment. This is what is known in constitutional doctrine as affirmative discrimination or affirmative action. According to the Constitutional Court, the purpose of such measures is to help certain groups overcome the actual inferiority they are experiencing through specific measures taken by the State.

[24] Constitutional Court. Decision of 6 November 2008, Case No. 05652-2007-PA/TC. F.J. 20.

23. Accordingly, it is not only constitutionally legitimate, but a duty for the State, through affirmative action, to work to promote material equality among persons.[25] When faced with tangible situations of inequality, the public authorities are required to promote conditions that will be conducive to liberty and equality and to remove any obstacles that might prevent them from being fully realized, as provided in article 59 of the Constitution, according to which "the State promotes those sectors suffering from unequal opportunities for advancement".[26]

24. In discussing the aforementioned provisions, a distinction must be made between two categories of constitutional law, namely, differentiation and discrimination. Thus, according to the Constitutional Court, differentiation is allowed by the Constitution, given that not all unequal treatment is discriminatory; in other words, there is differentiation when there are objective and reasonable grounds for unequal treatment. On the other hand, there is discrimination when unequal treatment is neither reasonable nor proportional, and hence, such unequal treatment is not allowable under the Constitution.[27]

## C. Ethnic diversity in Peru

25. To expand on the information provided in the core document for Peru, following are further details on the ethnic composition of the population. Peru does not conduct a specific census or survey at the national level to collect data on factors such as race, colour, descent or national or ethnic origin.

26. Nevertheless, in 2007, the National Institute of Statistics and Informatics carried out the following national censuses: the eleventh Population Census and sixth Housing Census and the second Census of Indigenous Communities in the Peruvian Amazon. For the purposes of these national censuses, populations whose mother tongue is not Spanish are called "indigenous". The Government of Peru is aware of the fact that with the statistical information available for the nation as a whole and for specific domains, it is only possible to identify the indigenous populations in terms of one of many dimensions of ethnicity, namely, the language learned in childhood, which is referred to as the "mother tongue". Thus, membership of an ethnic group, which involves both subjective and objective criteria, is not fully addressed, given that only this one objective aspect is taken into account.

27. Although it is obvious that language alone does not reflect the rich and varied ethnic diversity of the country, mother tongue is one of the few dimensions of ethnicity that can be accurately and uniformly reflected in censuses and household surveys. To that extent, it is a useful variable for the analysis of quantitative data at the national level.

28. According to the aforementioned national censuses, 4,045,713 persons over 3 years old, representing 16 per cent of all Peruvians in that age group, have an indigenous language as their first language. Within that group, most of the population referred to as "indigenous" speak Quechua (83 per cent) as their mother tongue; they are followed by the

[25] Constitutional Court. Decision of 1 April 2005, Case No. 0048-2004-AI.F.J. 63; Decision of 3 June 2005, Case No. 0050-2004-AI/TC, No. 0051-2004-AI/TC, No. 0004-2005-PI/TC, No. 0007-2005-PI/TC and No. 0009-2005-PI/TC. F.J.68; Decision of 13 February 2009, Case No. 00033-2007-Pi/TC, F.J. 58; Decision of 17 June 2010, Case No. 00016-2008-PI/TC, F.J. 24 and 25; and Decision of 9 November 2011, Case No. 02861-2010-PA/TC. F.J. 06.

[26] Constitutional Court. Decision of 17 June 2010, Case No. 00016-2008-PI/TC. F.J. 25.

[27] Constitutional Court. Decision of 9 November 2011, Case No. 02861-2010-PA/TC. F.J. 05.

Aymara mother tongue population (11 per cent), while the remaining 6 per cent speak an indigenous language from the Amazon region, mostly Ashaninka.[28]

**Population by mother tongue (2007)**

| | *Population* | *% of total population* | *% of population speaking a native language* |
|---|---|---|---|
| Quechua | 3 360 331 | 13.0 | 83.1 |
| Aymara | 443 248 | 1.7 | 11.0 |
| Ashaninka | 67 724 | 0.3 | 1.7 |
| Other native languages (Amazonian) | 174 410 | 0.7 | 4.3 |
| **Total native languages** | **4 045 713** | **15.7** | **100** |
| Spanish | 21 713 165 | 84.1 | |
| Foreign language | 21 434 | 0.1 | |
| Deaf-mute | 30 019 | 0.1 | |
| **Total** | **25 810 331** | **100** | |

*Source:* National Census 2007, National Institute of Statistics and Informatics. Compilation by the author.

*Note:* Population over age 3.

29. The Quechua- and Aymara-speaking populations — 46 per cent of Quechua speakers and 43 per cent of Aymara speakers — live mostly in urban areas. The populations referred to as "indigenous populations of the Amazon region" total over 242,000 persons (6 per cent of the population referred to as indigenous), and most of them (over 80 per cent) live in rural areas.

30. More specific data on the Amazonian indigenous population may be found in the second Census of Indigenous Communities in the Peruvian Amazon 2007 conducted by the National Institute of Statistics and Informatics.[29] This census covered 332,975 inhabitants of Amazonian indigenous communities in 11 departments in the northeast. This population belongs to 51 ethnic groups in 13 families of languages.[30] Among the population covered by the census, 52.2 per cent were male, and 47.8 per cent were female, totalling 173,758 men and 159,217 women.

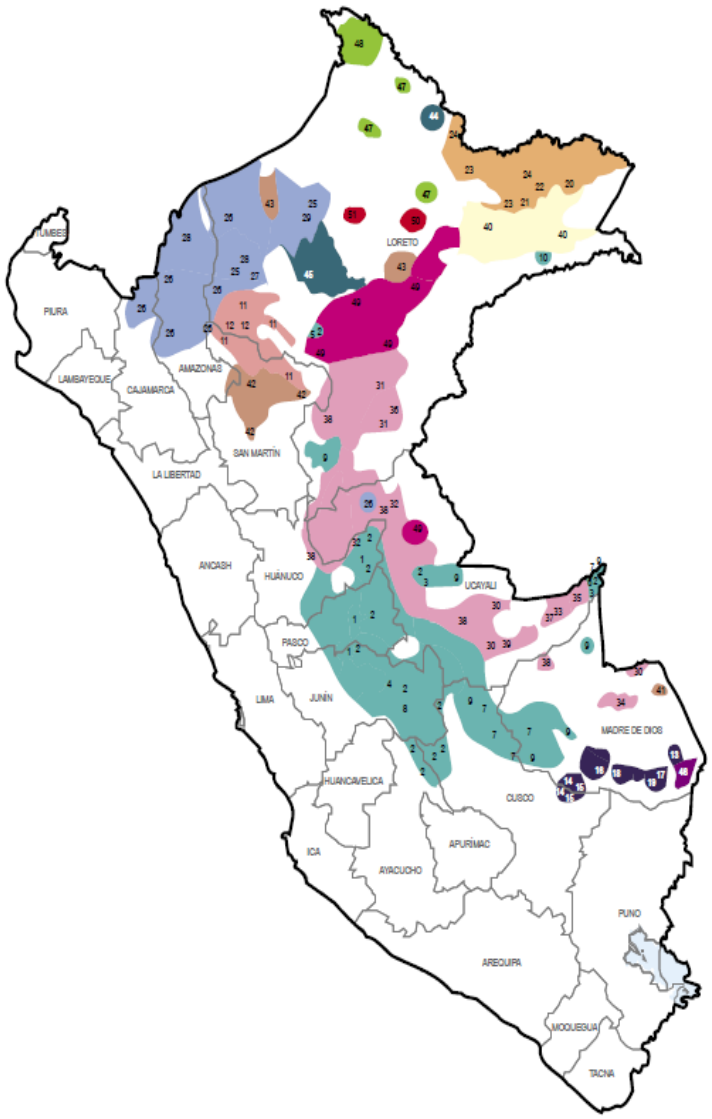
[28] National Institute of Statistics and Informatics, *Estado de la Niñez Indígena en el Perú*, Lima, National Institute of Statistics and Informatics and United Nations Children's Fund (UNICEF), August 2010.

[29] The databases available in the National Census 2007 include a limited breakdown of the population by mother tongue spoken, since it only takes into account Quechua, Aymara, Ashaninka and other indigenous languages; the category "other indigenous languages" includes 40 languages of the Peruvian Amazon.

[30] According to the National Institute of Statistics and Informatics, there are 60 ethnic groups in the Amazon region, but the second Census of Indigenous Communities in the Peruvian Amazon did not count nine of them: the Cujareño, Isconahua, Morunahua, Parquenahua and Pisabo (Pano family), Omagua (Tupi-Guaraní family), Aguano (unclassified family), Muniche (Tucano family) and Taushiro (Zaparo family). The reason is that some ethnic groups were absorbed by other peoples and others were in remote areas that were too difficult to reach.

**Map 1**

## Ethno-linguistic Groups in the Amazon Region




| Language family | | Ethnic group |
|---|---|---|
| Arahuaca | 1 | Amuesha (yanesha) |
| | 2 | Asháninka |
| | 3 | Ashéninka |
| | 4 | Caquinte |
| | 5 | Chamicuro |
| | 6 | Culina |
| | 7 | Matsiguenga |
| | 8 | Nomatsiguenga |
| | 9 | Piro |
| | 10 | Resigaro |
| Cahuapana | 11 | Chayahuita |
| | 12 | Jebero |
| Harakmbut-Harakmbet | 13 | Amarakaeri |
| | 14 | Arazaeri |
| | 15 | Huachipaeri |
| | 16 | Kisamberi |
| | 17 | Pukirieri |
| | 18 | Sapitieri |
| | 19 | Toyoeri |
| Huitoto | 20 | Bora |
| | 21 | Huitoto-meneca |
| | 22 | Huitoto muiname |
| | 23 | Huitoto-murui |
| | 24 | Ocaina |
| Jíbaro | 25 | Achual |
| | 26 | Aguaruna (awajún) |
| | 27 | Candoshi-murato (shapra) |
| | 28 | Huambisa |
| | 29 | Jíbaro |
| Pano | 30 | Amahuaca |
| | 31 | Capanahua |
| | 32 | Cashibo-cacataibo |
| | 33 | Cashinahua |
| | 34 | Marinahua |
| | 35 | Mastanahua |
| | 36 | Matsés |
| | 37 | Sharanahua |
| | 38 | Shipibo-conibo |
| | 39 | Yaminahua |
| Peba-Yagua | 40 | Yagua |
| Quechua | 41 | Kichwaruna |
| | 42 | Lamas (llacuash) |
| | 43 | Quichua |
| Sin clasificacion | 44 | Ticuna |
| | 45 | Urarina |
| Tacana | 46 | Ese ' Ejja |
| Tucano | 47 | Orejón |
| | 48 | Secoya |
| Tupi-guaraní | 49 | Cocama-cocamilla |
| Zaparo | 50 | Arabela |
| | 51 | Iquito |

*Source:* Second Census of Indigenous Communities in the Peruvian Amazon National Institute of Statistics and Informatics (2009–13).

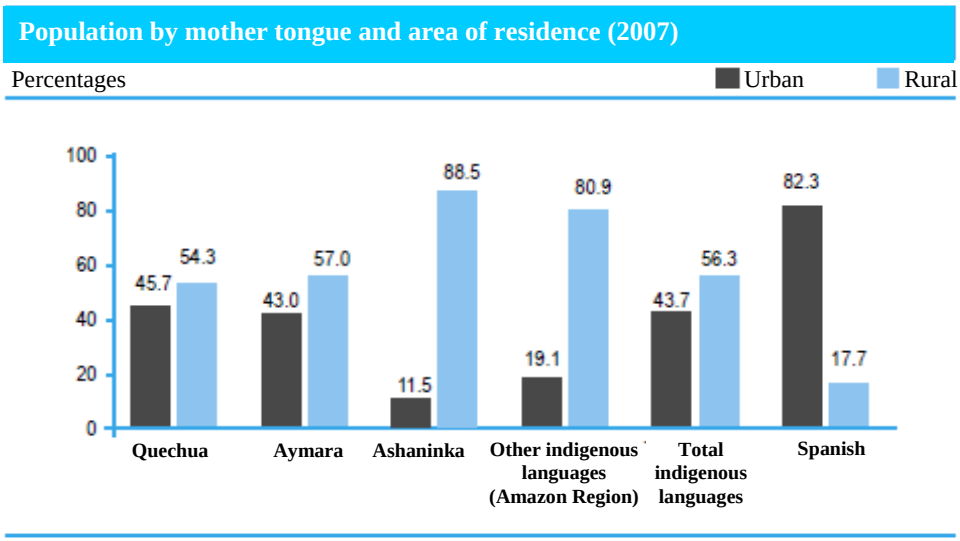
*Source:* National Institute for the Development of the Andean, Amazonian and Afro-Peruvian Peoples.

### 1. Population with a mother tongue other than Spanish, by area of residence

31. As mentioned above, Quechua is the mother tongue of 83 per cent (3,360,331) of the indigenous population. This is followed by Aymara, which is spoken by 11 per cent (443,248).

32. Most of the population belonging to these two groups lives in urban areas,[31] i.e., 45.7 per cent of Quechua speakers and 43 per cent of Aymara speakers.

33. Of the 242,134 persons (6 per cent of the indigenous population) whose mother tongue is Ashaninka (67,724) or another Amazonian language (174,410), 88.5 and 80.9 per cent, in that order, live in rural areas.




*Source:* National Census 2007, National Institute of Statistics and Informatics. Compilation by the author.
*Note:* Population over age 3.

34. Thus, 56.3 per cent of the population having an indigenous (other than Spanish) mother tongue lives in rural areas.

### 2. Population with a mother tongue other than Spanish mother tongue, by age

35. Peruvians under age 18 amount to a total of 8,410,904 inhabitants (32.6 per cent of the total population). There are 1,046,639 children and adolescents (26 per cent of the indigenous population) between the ages of 3 and 17 who speak an indigenous mother tongue.

**Population by mother tongue and age group (2007)**

| | *3–17* | | *18–44* | | *45 and older* | | ***Total*** | |
|---|---|---|---|---|---|---|---|---|
| | *Population* | *%* | *Population* | *%* | *Population* | *%* | ***Population*** | ***%*** |
| Quechua | 846 338 | 25.2 | 1 370 962 | 40.8 | 1 143 031 | 34.0 | **3 360 331** | **100** |
| Aymara | 85 668 | 19.3 | 195 595 | 44.1 | 161 985 | 36.5 | **443 248** | **100** |
| Ashaninka | 31 742 | 46.9 | 27 928 | 41.2 | 8 054 | 11.9 | **67 724** | **100** |

[31] "Urban areas" are defined in the National Census 2007 as capital districts of any size and populated centres with more than 100 contiguous dwellings.

| | *3–17* | | *18–44* | | *45 and older* | | ***Total*** | |
|---|---|---|---|---|---|---|---|---|
| | *Population* | *%* | *Population* | *%* | *Population* | *%* | ***Population*** | ***%*** |
| Other indigenous languages (Amazonian) | 82 891 | 47.5 | 69 673 | 39.9 | 21 846 | 12.5 | **174 410** | **100** |
| **Total indigenous languages** | **1 046 639** | **25.9** | **1 664 158** | **41.1** | **1 334 916** | **33.0** | **4 045 713** | **100** |
| Spanish | 7 351 963 | 33.9 | 9 800 616 | 45.1 | 4 560 586 | 21.0 | **21.713 165** | **100** |
| Foreign language | 2 430 | 11.3 | 9 182 | 42.8 | 9 822 | 45.8 | **21 434** | **100** |
| Deaf-mute | 9 872 | 32.9 | 13 653 | 45.5 | 6 494 | 21.6 | **30 019** | **100** |
| **Total** | **8 410 904** | **32.6** | **11 487 609** | **44.5** | **5 911 818** | **22.9** | **25 810 331** | **100** |

*Source:* National Census 2007, National Institute of Statistics and Informatics. Compilation by the author.
*Note:* Population over 3 years old.

### 3. Indigenous peoples

36. To respond to the concluding observations of the Committee on the Elimination of Racial Discrimination in 2009 following its review of the fourteenth to seventeenth periodic reports, regarding the need for additional information on the characteristics and specific situation of the various ethnic groups, as well as on the use of indigenous languages, the Ministry of Culture is currently developing an official database of indigenous or aboriginal peoples.

37. Pursuant to article 20 of Act No. 29875,[32] on the Right of Indigenous or Aboriginal Peoples to Prior Consultation, the official database will include the following information:

(a) The official name and the name by which the indigenous or aboriginal peoples identify themselves;

(b) Geographical coordinates and references used for access;

(c) Relevant cultural and ethnic information;

(d) Ethnolinguistic map showing the habitat in the regions occupied or used by indigenous or tribal peoples;

(e) System, organizational rules and statute adopted;

(f) Representative institutions and organizations, spheres of representation, names of leaders or representatives, terms and powers of representatives.

38. To identify indigenous peoples, Peru follows the criteria set forth in International Labour Organization (ILO) Convention No. 169. These criteria are both objective, such as those relating to the presence of tribal peoples, their connection with their territory and their cultural institutions, and subjective, such as the criterion of self-identification.[33]

[32] Congress of the Republic. Act No. 29785, on the Right of Indigenous or Aboriginal Peoples recognized in ILO Convention No. 169 to Prior Consultation. (*El Peruano*, 7 September 2011). For the purposes of this Act, the Office of the Deputy Minister of Intercultural Affairs of the Ministry of Culture is the specialized technical body responsible for indigenous affairs within the executive branch.

[33] Campesino and indigenous communities will be included in the database as organizations of indigenous communities provided it can be shown that they belong to an indigenous people group based on the proposed objective and subjective criteria. There may also be some populations living

### 4. The Afro-Peruvian population

39. The Afro-Peruvian population has usually lived on the coast, especially in the regions of Tumbes, Piura, La Libertad, Lambayeque, Lima and Ica, and in the areas of Arequipa and Tacna. According to the Continuous National Survey 2006,[34] populations identifying themselves as Afro-Peruvian live in the Andean highlands in the regions of Ancash, Ayacucho and Cajamarca, as well as in the Amazon and Loreto regions of the Peruvian rainforest. The Afro-Peruvian population lives in both urban and rural areas.

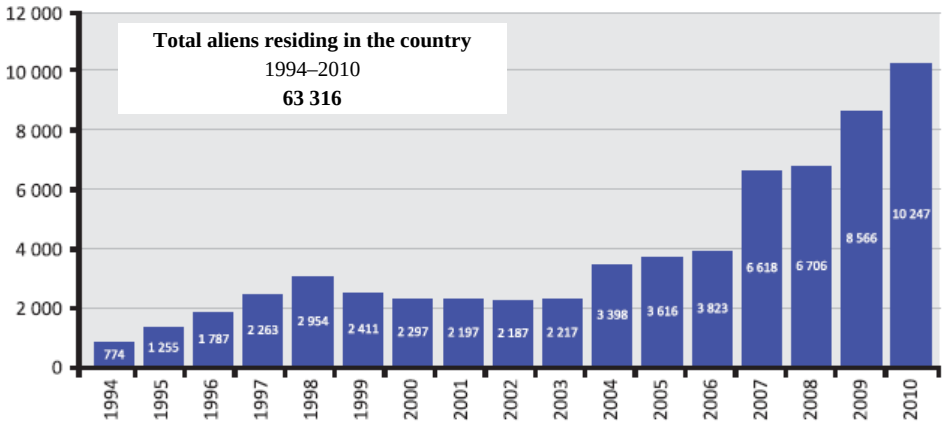
40. Owing to the lack of data and indicators on the Afro-Peruvian population, it is not possible to have a clear and objective idea of their most pressing needs. Although the data included in the National Household Survey[35] and the Continuous National Survey provide some information on the Afro-Peruvian population, the information is inadequate and needs to be expanded and improved.

41. The Ministry of Culture and the National Institute of Statistics and Informatics are currently drawing up a framework agreement on mutual cooperation. The agreement is expected to mark the beginning of joint efforts to establish both objective and subjective criteria, including the principle of self-identification, for identifying the Afro-Peruvian population through censuses and surveys.

### 5. The immigrant population

42. According to data supplied by the National Institute of Statistics and Informatics, as of 2010, there were 63,316 foreigners residing in the country.

**Peru: Immigration of aliens 1994–2010**




*Source:* National Institute of Statistics and Informatics – Statistics on International Emigration of Peruvians and Immigration of Aliens, 1990–2011. Compilation by the author.

outside of such communities that would be recognized as indigenous peoples. The Ministry of Culture is working to include an indicator for self-identification in the next censuses and surveys.

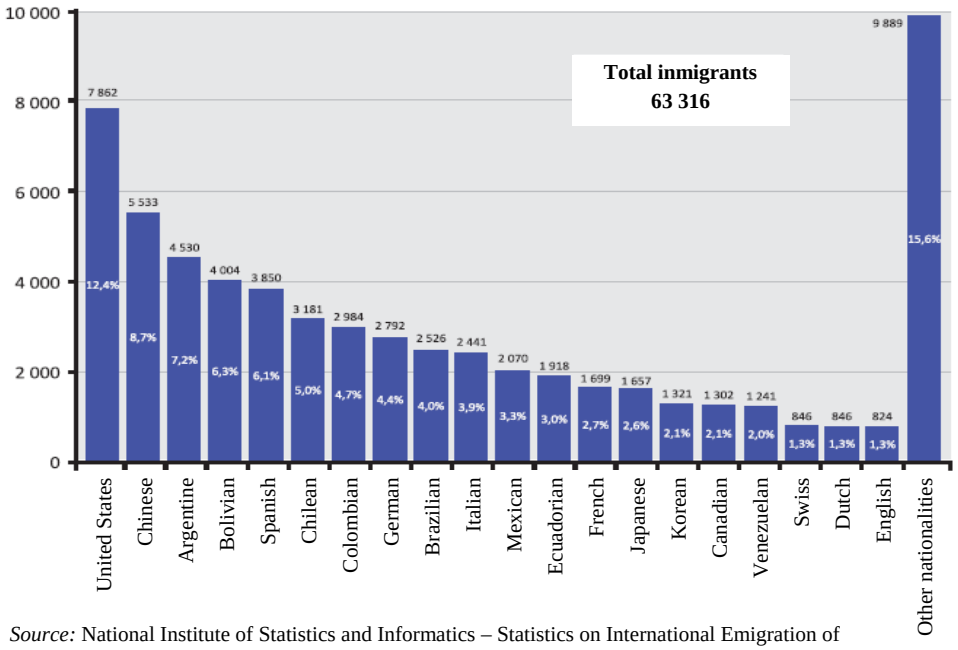
[34] National Institute of Statistics and Informatics, Continuous National Survey. This survey, which was designed and implemented by the National Institute of Statistics and Informatics, was only carried out in 2006.

[35] National Institute of Statistics and Informatics, National Household Survey. This periodic survey is a statistical tool which includes the variable of ethnicity and a question on self-identification.

43. By country of origin, most foreign immigrants residing in Peru come from the United States (12.4 per cent of the total); China, 8.7 per cent; Argentina, 7.2 per cent; Bolivia, 6.3 per cent; Spain, 6.1 per cent; Chile, 5.0 per cent; Colombia, 4.7 per cent; Germany, 4.4 per cent; Brazil, 4.0 per cent; Italy, 3.9 per cent; Mexico, 3.3 per cent, and Ecuador, 3.0 per cent.

44. Seven countries account for the greatest number of immigrants in Peru: over 50 per cent of aliens residing in Peru come from Argentina, Bolivia, Colombia, Chile, China, Spain and the United States.

**Peru: Immigration of aliens, by nationality, 1994–2010**




*Source:* National Institute of Statistics and Informatics – Statistics on International Emigration of Peruvians and Immigration of Aliens, 1990-2011. Compilation by the author.

45. The foreign immigrant population residing in the country are mostly male (60.2 per cent); 39.8 per cent of total immigrants are female.

46. In terms of age groups, most foreign immigrants (69.8 per cent) are between 15 and 54 years old.

## Article 2 of the Convention

47. Peru is respectful of the rule of law and the norms of the international legal order. Accordingly, it has taken steps to eliminate racial discrimination and provide equal opportunities for all and full, free and informed participation in the country's development.

# A. Legal framework and institutional framework

48. The Political Constitution of Peru includes a number of guarantees that are designed to provide equal protection for the human rights of all persons through procedures that can be initiated by any citizen. With regard to the right to equality and non-discrimination, article 200, paragraph 2, of the Constitution provides for the remedy of *amparo* for an act

or an omission by any authority, official or person, which violates or threatens a person's fundamental rights.[36]

49. Since the last report of the Peruvian State to the Committee, several measures have been adopted to protect the rights and promote equality for everyone under its jurisdiction. Following is a description of the most important measures adopted between 2009 and 2012.

50. Act No. 28983, on Equal Opportunities for Men and Women, was promulgated and published on 16 March 2007. This Act is aimed at preventing discrimination in all its forms and guaranteeing that men and women will be able to exercise their rights to equality, dignity, free development, wellbeing and autonomy on an equal footing both in public and in private life (art. 1).

51. Article 3(c) of the Act enshrines respect for cultural, linguistic and ethnic diversity and promotes social inclusion and interculturalism. It urges the executive branch and regional and local governments to collect statistical data broken down by sex, geographic area, ethnicity and other categories and to promote the design and implementation of policies targeting women, including rural, Andean, Amazonian and Afro-Peruvian women; this will in turn help to combat racial discrimination. Since the adoption of the Act, the executive branch has submitted six annual progress reports to Congress, most recently in March 2013.

52. The National Gender Equality Plan 2012-2017 is aimed at mainstreaming the gender approach in government policies at all three levels of government, guaranteeing equality and effective protection of rights for men and women, combating discrimination and ensuring the full development of their individual and collective potential and capabilities.

53. The National Gender Equality Plan includes objectives that are important to Afro-Peruvian, indigenous and/or migrant women, who suffer racial discrimination on a regular basis. Outputs of the Plan will include the publication of non-sexist messages designed to improve the way that the media deal with information about women and the image of women's diversity that they project. In addition, literacy programmes will be carried out for rural women; Quechua, Aymara and Amazonian students will be taught in their mother tongues; and health care establishments will have protocols incorporating the gender approach and multiculturalism, as well as respect for sexual orientation.

54. With regard to paragraph 15 of the Committee's concluding observations, on the need to set up a commission that includes indigenous representatives to carry out an investigation of the events of 5 and 6 June 2009 in Bagua, the Government of Peru reports that on 22 June 2009, representatives of indigenous organizations, regional governments and the ministries of agriculture, the environment and health, as well as what was then the Ministry of Women and Social Development, decided to set up working groups to address issues of concern to the indigenous peoples.[37] Working Group No. 1 was charged with

[36] Political Constitution of Peru, 1993.

"Article 200 – The constitutional protections are the following: [...] 2. The writ of *amparo*, which operates in case of an act or omission by any authority, official or person, which violates or threatens the other rights recognized by the Constitution, except those mentioned in the following paragraph. It does not take effect against against legal rules or court orders from regular judicial proceedings."

[37] Acta de Acuerdo de del Grupo Nacional de Coordinación para el Desarrollo de los Pueblos Amazónicos, http://www.minag.gob.pe/portal/download/pdf/especiales/pueblos_amazonicos/acta_de_acuerdoo22jun09.pdf.

drafting the final report on the investigation and analysis of the events in Bagua. The report was submitted in December 2009.[38]

55. Following is a description of the legal framework and the administrative measures adopted to eliminate racial discrimination, classified by target populations and spheres of state intervention.

### 1. Measures taken on behalf of the Afro-Peruvian population

56. The Working Group on Afro-Peruvian Women was set up by Ministerial Decision No. 294-2001-PROMUDEH, of 26 July 2001, as a forum for discussion, coordination and consensus building between the State and civil society, as well as to generate policy guidelines and propose actions to protect the rights of Afro-Peruvian women. In the years following its establishment, the Working Group was relatively inactive. On 14 June 2010, the Ministry of Women and Vulnerable Populations issued Ministerial Decision No. 427-2010-MIMDES, in order to reactivate the Working Group and ratify its commitment with Afro-Peruvian women and ensure non-discrimination.[39]

57. To allow for implementation of policies for eliminating discrimination against the Afro-Peruvian population, the Ministry of Culture has included in its proposed new regulations for organizations and functions a General Directorate of Intercultural Citizenship which would have a Directorate of Afro-Peruvian Policies that would guarantee and establish on a permanent basis the Government's agenda on the Afro-Peruvian population.[40]

58. The Office of the Deputy Minister for Intercultural Affairs of the Ministry of Culture is currently drafting a set of guidelines for public policies on the Afro-Peruvian population. It is also preparing a proposed development plan for the Afro-Peruvian population; consultations on the plan will be held with different sectors of the Government and civil society.

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[38] Informe final de la Comisión Especial para investigar y analizar los sucesos de Bagua, http://www.minag.gob.pe/portal/download/pdf/especiales/pueblos_amazonicos/informefinal_comisionespecial-investigaryanalizar-sucesosbagua.pdf.

[39] Since 2010, the Working Group on Afro-Peruvian Women has carried out a number of creative actions aimed at raising awareness in Peruvian society regarding the situation of Afro-Peruvian women. Among others, it carried out the following activities:

- A diagnostic study was conducted on gender issues and the situation of Afro-Peruvian women in Peru (2011), including proposed guidelines for public policy on the Afro-Peruvian population. The report on this study provides an in-depth view of the ethnic and racial discrimination suffered by Afro-Peruvian women in public and private life and in the mass media. It also describes their demographic, social, economic, cultural, educational and health situation, their participation in economic and political affairs and the unique nature of gender violence within this group.
- A discussion panel and photo exhibit entitled "Afro-Peruvian Women: Their History and Their Future" was held in December 2011. The study mentioned above was presented at this activity, as well as papers on the problems faced by Afro-Peruvian women that had been prepared by the Office of the Deputy Ombudsman for Human Rights of the Ombudsman's Office, the Ministry of Culture and others.

[40] This agenda includes preparing a statistical visualization of the Afro-Peruvian population and designing a development plan for the Afro-Peruvian population that would guarantee the civil, political, economic, social and cultural rights of this population. The Ministry of Culture and the National Institute of Statistics and Informatics will soon be signing a framework agreement on mutual cooperation. The agreement is expected to mark the beginning of a joint effort to draw up objective and subjective criteria for identifying the Afro-Peruvian population by means of censuses and specialized surveys.

59. The Ministry of Culture and the regional government of Ica have carried out a number of activities aimed at publicizing the demands and needs of the Afro-Peruvian population.[41]

### 2. Measures taken on behalf of the indigenous peoples

60. In 2010, the Ministry of Culture initiated discussions with representatives of the indigenous peoples on the content of public policies for guaranteeing their rights. The idea is to generate well-coordinated and systematic state action so as to identify and implement the institutional changes needed to implement those policies.

61. In 2012, two meetings were held to discuss the issue of public policies, the system and the institutions that work with indigenous peoples.[42] At these meetings, a discussion was begun on the challenges of implementing throughout different state agencies the mandate to promote and guarantee the rights of indigenous peoples.

62. These meetings led to the creation on 3 October 2012, by Ministerial Decision No. 361-2012-MC, of the Working Group on Public institutions concerned with indigenous or tribal peoples, which is comprised by representatives of indigenous organizations and a

[41] The Ministry of Culture carried out the following activities:

Multisectoral Meeting. In June 2012, a multisectoral meeting was held, with the participation of civil society, to identify and publicize actions that have been and will be carried out by the different sectors of the Peruvian State in connection with the development, visibility and integration of the Afro-Peruvian population.

Presentation of the documentary entitled *El Hatajo para el Niño.* In June, the Ministry of Culture presented a documentary entitled *El Hatajo para el Niño,* which describes the diverse cultural manifestations and traditions relating to the dance known as *Hatajo de Negritos* in Chincha province in the region of Ica. In addition, the *Hatajo de Negritos* and the *Pallas de El Carmen Chincha* were declared part of the cultural heritage of the nation, and five awards were given to distinguished Afro-Peruvian personalities for their contribution to the national heritage.

Round tables *(conversatorios).* In June and July 2012, five round tables were held on the following subjects: situation of Afro-Peruvian children and adolescents; Afro-Peruvian youth: context and challenges; Afro-Peruvian women, discrimination and violence; Afro-Peruvian population, public policies and affirmative action, and Afro-Peruvian women in the development agenda of the Afro-Peruvian people.

*Negro Luminoso* Exhibit. In July and August 2012, a photo exhibition was organized by the Spanish Cultural Centre, CEDET, the Afro-Peruvian Cultural Action Centre and the Office of the Deputy Minister for Intercultural Affairs of the Ministry of Culture. Thirty-two black-and-white portraits depicting different aspects of Afro-Peruvian culture were shown. At the presentation, the Deputy Minister for Intercultural Affairs stressed that the Ministry of Culture attached high priority to the Afro-Peruvian population and said that the Ministry was seeking to promote a well-structured decentralized policy on the Afro-Peruvian population.

The regional government of Ica carried out the following activities:

Seminar on Guidelines for Regional Policies on Behalf of the Afro-Peruvian Communities of Our City. On 24 October 2009, the regional government of Ica and the former Ministry of Women and Social Development carried out the aforementioned seminar.

Third Regional Seminar on Guidelines for policies to benefit the Afro-Peruvian communities of the region. The seminar was held on 20 March 2010.

Workshop on the Effect of Public Policies on Afro-Peruvians in the Southern Region of Peru: New vision, development and democracy. This workshop was held on 20 November 2010.

[42] The meetings were attended by representatives of several indigenous organizations, as well as of ILO, the Ombudsman's Office, the United Nations Development Programme (UNDP) (project on conflicts), UNICEF and the Technical Secretariat for Public Management of the Office of the President of the Council of Ministers.

representative of the Office of the Deputy Minister for Intercultural Affairs. The Working Group is charged with analysing and drawing up proposals on the nature of the entity that would be responsible for public policies on indigenous affairs, as well as on a mechanism for discussions between indigenous and tribal peoples and the Government on the design, monitoring and evaluation of indigenous policies.

63. A bill is currently being drafted on the creation of a functional system called the "national intercultural policy system", which would serve as a platform for coordinated and systematic action by public entities in regard to public policies on indigenous peoples, the Afro-Peruvian population and the fight against racial and ethnic discrimination.

64. In response to the recommendation contained in paragraph 14 of the Committee's concluding observations, Act No. 29785, on the Right of Indigenous or Aboriginal Peoples to Prior Consultation recognized in ILO Convention No. 169, was adopted in September 2011. This Act develops the content, principles and legal procedures to be followed in regard to the right of indigenous or aboriginal peoples to prior consultation with regard to administrative and legislative measures that directly affect them.

65. The regulations for implementation of the Act were adopted in April 2012 by Supreme Decree No. 001-2012-MC. Both the Act and the Regulations thereto follow the criteria established by ILO for identifying indigenous people.[43]

66. Act No. 29785, which was enacted after a lengthy effort to achieve consensus among indigenous organizations, civil society and the State, was adopted unanimously by the recently elected Congress of the Republic. Its adoption was welcomed by several international organizations,[44] many different sectors of the population and, in particular, by indigenous organizations of nationwide scope.[45]

67. Article 15 of the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation guarantees the right to life, integrity and full development of the indigenous peoples, bearing in mind that respect for indigenous peoples is a substantial element of the State's decision-making process. The Act expressly states that agreements reached between the State and the indigenous or aboriginal peoples as a result of the consultation process are binding on both parties. If no agreement is reached, the State entities must take all necessary measures to guarantee the collective rights of the indigenous or aboriginal peoples and their rights to life, integrity and full development.

68. Since the adoption of the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation, it has become necessary to develop certain tools to facilitate the consultation process. Thus, an Official Database of Indigenous or Aboriginal Peoples was developed, a Methodological Guide for Consultation with Indigenous Peoples was created,

[43] In addition, the Ministry of Energy and Mines issued Ministerial Decision No. 350-2012-MEM/DM of 20 July 2012, which describes the administrative procedures to be followed in the consultation process, the time frame for the process and the directorate responsible for conducting it.

[44] The United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Inter-American Commission on Human Rights, the Chair of the United Nations Permanent Forum on Indigenous Issues, the Regional Representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Permanent Representative of the United Nations in Peru, the Committee on Economic, Social and Cultural Rights, the ILO Expert Committee on the Application of Conventions and Recommendations.

[45] Asociación Interétnica de Desarrollo de la Selva Peruana, Confederación de Nacionalidades Amazónicas del Perú, Confederación Campesina del Perú, Confederación Nacional Agraria, Confederación Nacional de Comunidades del Perú afectadas por la minería, Organización Nacional de Mujeres Indígenas Andinas y Amazónicas del Perú.

training was offered to public officials and indigenous leaders,[46] as well as to interpreters of indigenous languages who will assist with prior consultation processes, and registries of interpreters of indigenous or aboriginal languages and of facilitators were set up. These tools will be described in greater detail in the section on progress made by Peru in connection with implementation of article 5 of the Convention.

69. In order to build capacities and improve knowledge regarding the scope of investment projects in communities bordering on mining and energy operations, the Ministry of Energy and Mines has set up an internship programme which in some cases benefits the indigenous population.

### 3. Indigenous and aboriginal peoples in isolation or at the stage of initial contact

70. During the period 2010–2012, the Office of the Deputy Minister for Intercultural Affairs of the Ministry of Culture set up a multisectoral commission to ensure that indigenous peoples in isolation or at the stage of initial contact receive adequate protection. The Commission is in charge of changing the status of the five territorial reserves to that of indigenous reserves.[47] The reserves are located in the regions of Cusco, Madre de Dios and Ucayali.

71. The Commission will also conduct an advance survey of indigenous peoples in isolation and at the stage of initial contact and an additional classification study to be used in setting the boundaries of the indigenous reserve. In August 2012, the Commission adopted the reports on the survey of indigenous peoples in isolation and at the stage of initial contact that were submitted by the Office of the Deputy Minister for Intercultural Affairs. This was a significant step towards completing the reclassification process.

72. Bearing in mind the regulations to Act No. 29785, on the Right of Indigenous or Aboriginal Peoples to Prior Consultation recognized in ILO Convention No. 169, which were adopted by Supreme Decree No. 001-2012-MC, and pursuant to the recommendation contained in paragraph 14 of the Committee's concluding observations, concerning environmental issues, the advance environmental impact statement of the Office of the Deputy Minister for Intercultural Affairs is binding whenever a natural resource the exploration or exploitation of which has been declared a public necessity is located in an indigenous reserve.

### 4. Measures taken to protect and promote ancestral knowledge

73. The National Commission against Biopiracy, created in 2004,[48] is one of the main bodies engaged in combating the unauthorized and unpaid use of the genetic resources of Peru and the traditional knowledge of the indigenous peoples.

74. In October 2012, the eleventh Conference of the Parties was held in Hyderabad, India. At that meeting, Peru explained the country's position on article 8 (j) of the Convention on Biological Diversity, relating to the protection of traditional knowledge

[46] A total of 303 persons had been trained as of October 2012, including 140 leaders of indigenous peoples, 113 central government officials and 50 regional government officials. Representatives of ILO have participated in the training programmes.

[47] Under Act No. 28736, indigenous reserves are lands that are set aside by the Peruvian State and declared temporarily intangible, for the benefit of indigenous peoples in isolation or in a state of initial contact. The procedures for reclassifying them as indigenous reserves and for creating such reserves are described in Act No. 28736, which for the first time establishes a single procedure for the recognition and creation of reserves set aside for indigenous peoples in isolation or in a state of initial contact. This is different from the process followed in creating the territorial reserves.

[48] The National Commission against Biopiracy was created by Act No. 28216, of 7 April 2004.

relating to biodiversity.[49] The national position paper on article 8 (j) of the Convention on Biodiversity was drafted with the participation of different specialized state agencies and the indigenous and aboriginal peoples, represented by their civil society organizations.[50]

75. At the same time, the Ministry of Culture has been promoting implementation of the Indigenous Peoples' Development Fund, pursuant to Act No. 27811, on the System for the Protection of the Collective Knowledge of Indigenous Peoples relating to Biological Resources.[51] The purpose of the Fund is to further the development of indigenous peoples by financing projects and other activities with resources from the state treasury and other donors.[52]

### 5. Measures taken in regard to workers

76. One of the most important measures taken to protect workers was the issuing of Supreme Decree No. 004-2009-TR, of 30 March 2009, which addresses against domestic workers in Peru. The decree lists the acts that are viewed as discriminatory against domestic workers, establishes a system to be followed by the Ministry of Justice in dealing with complaints and outlines informational campaigns to be conducted by the Ministry for Women and Vulnerable Population Groups and the Ministry of Labour and Employment.[53]

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[49] Article 8. *In situ* Conservation.

[50] The following organizations participated in the drafting of the document: Confederación Campesina del Perú, Confederación de Nacionalidades Amazónicas del Perú, Confederación Nacional Agraria, Confederación Nacional de Comunidades del Perú Afectadas por la Minería, Asociación Interétnica de Desarrollo de la Selva Peruana, Organización Nacional de Pueblos Indígenas del Perú, Coordinadora Nacional de Comunidades Campesinas e Indígenas del Perú, Confederación Nacional de Comunidades Campesinas y Nativas del Perú, Asociación Nacional de Conservacionistas de Vicuñas y Guanacos del Perú, Organización Nacional de Mujeres Indígenas, Andinas y Amazónicas del Perú, the Ministry of Culture, the Ministry of Foreign Affairs, the Ministry of the Environment, the Ministry of Agriculture, the Ministry of Production, the National Commission against Biopiracy, the Research Institute of the Peruvian Amazon (IIAP), the General Directorate for Bilingual and Rural Education of the Ministry of Education, the College of Physicians of Peru, the National Service for Protected Natural Areas (SERNAMP), the National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI), the National Intercultural Health Centre (CENSI), the Institute for Agrarian Innovation (INIA), the Museum of Natural History, the Peruvian Society of Environmental Rights (SPDA) and the Centre for Indigenous Cultures of Perú-Chirapaq.

The Technical Group on Genetic Resources and Traditional Knowledge of the National Commission on Biological Diversity of the Ministry of the Environment has been preparing the first national progress report on implementation of the programme of work on article 8 (j) and related provisions of the Convention on Biological Diversity. The report describes the key advances made by Peru in implementing and complying with the obligations arising from the signature and ratification of the Convention on Biological Diversity.

The National Commission on Biological Diversity was created by R.S No. 227-93-RE, with a view to coordinating activities pertaining to implementation of the Convention on Biological Diversity. Subsequently, by D.S No. 007-2009-MINAM, the work of the Commission was brought in line with the provisions of Legislative Decree No. 1013, Act on the Creation, Organization and Duties of the Ministry of the Environment. It was charged with monitoring the work of the different public and private sectors involved in implementing the commitments arising from the Convention on Biological Diversity. It was also entrusted with the design and promotion of the National Strategy on Biological Diversity, which lays down the general guidelines for national, sectoral and regional development strategies, plans and projects.

[51] The Fund was created by Act No. 27811, of 10 August 2002.

[52] The permanent and alternate members of the Board of Directors of the Fund were appointed by Ministerial Decision No. 185-2011-MC, of 2 June 2011.

[53] The Regional Directorate for Labour and Employment of the Lima Metropolitan Area, working through the Directorate for the Promotion and Protection of Fundamental Rights and Worker Safety

### 6. Measures taken to protect consumers

77. Article 38 of the Consumer Protection Code[54] prohibits discrimination of consumers based on origin, race, sex, language, religion, opinion or economic status. No such exclusion is allowed except for the security of an establishment, the peace of clients or other similar reasons.[55]

78. If consumers are treated differently, there must be objective and rational reasons for doing so, and the end pursued must be proportional to the differential treatment provided. Article 39 of the Code stipulates that when there are signs of discriminatory practices, it is up to the consumer concerned, or to the administration, when it acts ex officio, to prove the allegation.[56]

79. Between 2009 and 2012, the National Institute for the Defence of Competition and Protection of Intellectual Property reported 26 citizen complaints of discrimination; 17 of the complaints were considered to involve racial discrimination. Nine of the 17 complaints were declared unfounded, two were justified, and six are being processed[57] (see annex 1).

### 7. Measures taken in regard to education

80. The subject of Citizen and Civic Education was included in the school curriculum by Ministerial Decision No. 0440-2008-ED and has been taught in all secondary education centres since 2009. The courses deal with discrimination based on physical features, ethnicity, gender and other factors.

81. In 2009, 15,000 copies of a document outlining tutoring sessions on human rights and international humanitarian law (Sesiones de Tutoría en Derechos Humanos y Derecho Internacional Humanitario) were printed and distributed. This publication includes a lesson

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and Health, has carried out several activities aimed at informing male and female domestic workers and the general public about the content of Act No. 27986, on Domestic Workers. It has also carried out activities relating to protection of the rights mentioned in the information provided by the Ministry of Labour and Employment.

[54] Act No. 29571, of 2 October 2010.

[55] "Chapter V – Protection of social and economic interests

Article 38 – Prohibition of discrimination against consumers

38.1 Providers shall not practice discrimination of any kind based on origin, race, sex, language, religion, opinion, economic status or any other reason, with respect to consumers, regardless of whether they are in or are likely to be in a consumer relationship.

38.2 The exclusion of persons is prohibited absent a concern for the security of the establishment or the peace of its clients or similar reasons.

38.3 If consumers are treated differently, there must be objective and rational reasons for doing so. Any preferential treatment in an establishment must be justified by actual situations, and the end pursued must be proportional to the differential treatment provided", http://www.indecopi.gob.pe/repositorioaps/0/8/jer/legislacion_lineamientos/CodigoDProteccionyDefensaDelConsumidor(1).pdf.

[56] "Article 39 – Burden of proof

The burden of proof for the existence of unequal treatment shall be up to the consumer concerned, when he or she initiates the complaint, or to the administration, when it initiates the complaint. The complainant does not need to belong to a specific group in order to demonstrate the existence of a discriminatory circumstance. The provider of the product or service must establish the existence of an objective and justifiable cause. If the provider demonstrates the existence of an objective and reasonable cause, it is up to the other party to show that that is actually an excuse or a pretence to justify discriminatory practices. To that end, the use of evidence and other proofs shall be allowed."

[57] See the table on the National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI).

on discrimination in primary schools and another one on secondary schools. The text provides tools that teachers can use to teach on prevention of all forms of discrimination.

82. Act No. 29719, on Promotion of Non-Violence in Educational Institutions, of 25 June 2011, establishes mechanisms for diagnosing, preventing, avoiding, punishing and eradicating violence, harassment, intimidation and other acts that are viewed as harassment among students at educational institutions.[58] The regulations to the Act were issued by Supreme Decree No. 010-2012-ED.[59]

83. The National Registry of Intercultural Bilingual Educational Institutions in Peru was created by Ministerial Decision No. 008-2012-ED.[60] This decision, dated 9 January 2012, makes it possible to target and provide more relevant services to educational institutions that need to offer intercultural bilingual education. The registry will be updated with information sent by the regional governments. The Educational Statistics Unit of ESCALE will cross-reference the information with the geographical location of the educational institutions.

### 8. Measures adopted in regard to prisons

84. Prisons are responsible, through their treatment, security and administrative departments, for complying with regulations designed to eliminate all types of discrimination and for respecting the human rights of the prison population. This includes activities such as classification, placement, health care, intervention programmes, legal counsel, psychological and social support and spiritual support.[61]

### 9. General measures for eliminating racial discrimination

85. The fight against discrimination is an effort that involves all state entities and civil society. As of 2012, 58 regional and local anti-discrimination ordinances had been issued in Apurímac (3), Amazonas (1), Arequipa (17), Ayacucho (4), Cajamarca (2), Callao (1), Cusco (2), Huancavelica (1), Junín (6), Lambayeque (7), Lima (8), Madre de Dios (1), Piura (2), San Martín (1), Tacna (2) and Ucayali (1).[62]

86. This increase in the number of ordinances issued since Peru's last report is evidence of a greater awareness not only of the national Government but also of regional and local

[58] Article 1 of Act No. 29719, of 25 June 2011.

[59] In addition, a booklet on Prevention and intervention in educational institutions dealing with bullying among students was prepared for use by teachers. http://ditoe.minedu.gob.pe/Materiales%20DITOE/cartilla_bullying.pdf.

[60] Ministerial Decision No. 008-2012-ED, of 9 January 2012. Taken from http://www.minedu.gob.pe/files/3042_201204250921.pdf.

[61] The Manual on human rights applied to prison operations (Manual de derechos humanos aplicado a la función penitenciaria) includes provisions on ensuring unrestricted respect for the fundamental rights of persons deprived of liberty; however, Part Three, Chapter I, section (4) deals specifically with the requirements that must be met when dealing with vulnerable groups. The Manual specifies that this section refers to minority inmates who, for reasons relating to certain personal characteristics such as age, sex, sexual preference, ethnicity, nationality, physical or psychological capacity, health or similar reasons, tend to be mistreated physically or psychologically or to receive discriminatory treatment on the part of prison authorities, other inmates or any individual involved with the prison. See the Manual at http://www2.inpe.gob.pe/portal/archivos/upload/trabajos/Manual_De_Derechos_Humanos.pdf.

[62] See the table on Regional and Local Anti-discrimination Ordinances, contained in Report No. 009-2012-DP/ADHPD of the Office of the Deputy Ombudsman, and Regional Ordinance No. 275, of 15 November 2010. The regional government of Ica also prepared a draft anti-discrimination ordinance.

governments, regarding the importance of ensuring respect for human rights, especially the right to be free from discrimination.[63]

87. Between 2009 and 2012, the Ombudsman's Office received 182 complaints of alleged discrimination, 12 of them based on the race or ethnic identity of the complainants. The conducts in question involved insults and maltreatment in educational institutions, in the workplace and in public offices or private establishments, relating to skin colour, language or customs.

88. In response to the complaints of discrimination, the Ombudsman's Office, acting under its constitutional mandate to protect the fundamental rights of persons and to monitor compliance by public entities with their duties, recommended to the competent authorities that steps should be taken to put an end to acts of discrimination and that investigations should be conducted to clarify the complaints and, if necessary, to impose the appropriate sanctions.[64]

89. In addition to dissemination, consciousness-raising and training events carried out by the Ombudsman's Office, the anti-discrimination strategy has also included activities aimed at public officials and civil servants, as well as the general public.[65]

90. The Ombudsman's Office has presented its reports at public events and has distributed them widely. In 2009, the Office of the Deputy Ombudsman for Human Rights and Persons with Disabilities issued the aforementioned report, No. 005-2009-DP/ADHPD, on State action with regard to discrimination: Cases considered by the Ombudsman's Office. The report includes recommendations to public bodies on how to deal with cases of discrimination and raise awareness among citizens about the need to reject discriminatory practices and reach consensus so as to stand against and eliminate such practices. The report discusses cases of discrimination that were registered with the Ombudsman's Office during the period 2007–2008 and the action taken by the entities responsible for investigating and punishing such behaviours.[66]

[63] The regional government of Junín adopted a human rights plan for 2009–2015 by means of Regional Ordinance No. 096-2009-GRJ/CR.

[64] Deputy Ombudsman's Report No. 008-2013-DP/ADHPD.

[65] In 2009, five training activities were conducted on the issue of discrimination in Peru and action taken by the State; this event was aimed at public officials and civil servants in the regions of Ayacucho, Huancavelica, Junín, Lima and Ucayali. Similar events were carried out in 2010 in Iquitos and Tarapoto. In the same year, information and sensitization activities focusing on the importance of the right to non-discrimination were also carried out for approximately 3,526 citizens, through information tents set up in Arequipa, Ayacucho, Cajamarca, Cusco, Huancavelica, Huánuco, Iquitos, Lima, Moquegua, Moyobamba, Rioja, Tacna, Tarapoto and Tumbes. Along the same lines, in December 2011, an Information Fair to celebrate the anniversary of the Universal Declaration of Human Rights was held, with the slogan "Speak up. Say NO to racial discrimination"; the event focused on disseminating and promoting the right to equality and non-discrimination, with special emphasis on the International Year of Persons of African Descent. Approximately 1,500 persons received information on issues such as human rights, discrimination and inclusion. The Ombudsman's Office organized nine master lectures on the problems of discrimination in the municipalities of Miraflores, La Perla and San Juan de Lurigancho; the Judiciary Academy; the military and police courts; the National Institute of Higher Police Studies; the Officers School of the National Police, and in the regions of Huancavelica and Ucayali. The lectures were directed at municipal employees, justices of the peace, police and military personnel and regional and local authorities, in that order. See Deputy Ombudsman's Report No. 008-2012-DP/ADHPD.

[66] Deputy Ombudsman's Report Series – Report No. 005-2009-DP/ADHPD. Actuación del Estado frente a la discriminación. Casos conocidos por la Defensoría del Pueblo. See at http://www.defensoria. gob.pe/modules/Downloads/informes/varios/2009/Informe-005-2009-DP-ADHPD-vf.pdf.

91. In response to the observation contained in paragraph 17 of the Committee's concluding observations, in 2011 and 2012, the Peruvian State, acting through the Ombudsman's Office, presented and disseminated Deputy Ombudsman's Report No. 003-2011-DP/ADHPD, on persons of African descent in Peru, their situation and the exercise of their rights.[67] The report describes the status of the Afro-Peruvian population, as well as the problems they encounter in exercising their rights, especially in regard to their access to education and health.

92. Between 2009 and 2010, the Indigenous Peoples Programme made presentations and carried out informational activities in several public institutions, especially in the health sector, on the conclusions and recommendations of Ombudsman's Report No. 134, on the health of indigenous communities: a challenge for the State.[68] In 2011, special priority was given to the dissemination of Ombudsman's Report No. 152, on contributions to a national policy of intercultural bilingual education on behalf of the indigenous peoples of Peru;[69] this report was distributed among public education officials at the national and regional levels, as well as to civil society and indigenous organizations.

93. During the first quarter of 2012, a round table with different state sectors was held, in coordination with the Ministry of Culture, to report on follow up to the recommendations of the Ombudsman's Office. This made it possible to mainstream the ethnic-racial approach in different sectoral policies. One specific outcome of the activity was the creation, in the Ministry of Education, of the National Commission on Intercultural Bilingual Education, on which representatives of the Afro-Peruvian peoples are involved in the development, design and implementation of educational policy.

94. The Ministry of Health has been promoting a number of thematic studies on the health of the Afro-Peruvian population. As a result of sensitization and training activities for public officials at all levels, several anti-discrimination ordinances have been issued, especially by local governments.[70]

95. In 2010 and 2011, the Ministry of Health, the Directorate for HIV-AIDS Prevention and the National Health Institute undertook efforts to mainstream an intercultural approach that would include the Afro-Peruvian population.

96. In March 2012, in the context of the International Day for the Elimination of Racial Discrimination,[71] a sensitization campaign was carried out with the slogan "Let's change from within, for a Peru free of racism". The general public and the different sectors of Government and civil society were urged to eliminate racism.[72]

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[67] Deputy Ombudsman's Report No. 008-2012-DP/ADHPD and Deputy Ombudsman's Report No. 003-2011-DP/ADHPD. Los Afrodescendientes en Perú: Una aproximación a su realidad y al ejercicio de sus derechos. See: http://www.defensoria.gob.pe/modules/Downloads/informes/varios/2011/Informe-003-2011-DP-ADHPD.pdf.

[68] Ombudsman's Report No. 134, La salud de las comunidades nativas: un reto para el Estado. See: http://www.defensoria.gob.pe/temas.php?des=5.

[69] Ombudsman's Report No. 152, Aportes para una Política Nacional de Educación Intercultural Bilingüe a favor de los pueblos indígenas del Perú, http://www.defensoria.gob.pe/modules/Downloads/informes/defensoriales/Informe-Defensorial-152.pdf.

[70] Deputy Ombudsman's Report No. 008-2012-DP/ADHPD.

[71] This event was carried out by the Ministry of Culture in coordination with the Ombudsman's Office, the Afro-Peruvian Museum, the Directorate for Social Responsibility of the Pontifical Catholic University of Peru, the Ministry of Health, the Ministry of Justice, the Andean Parliament and the Municipality of Lima.

[72] The sensitization campaign included a press conference and an artistic activity entitled *Acción Callejera* (Street Action). A documentary entitled *Choleando* and a documentary entitled *El Racismo* were screened, the draft anti-discrimination bill was introduced, a round table was held, the cancelling

### 10. Measures taken to raise awareness of authorities on respect for human rights

97. During the period 2009–2012, the Ministry of the Interior, working with the National Human Rights Commission, now the Directorate for Protection of Fundamental Rights for Governance, provided training for National Police personnel on police techniques and procedures in the context of human rights.[73]

98. The National Prisons Institute, referring to the manual on human rights applied to work in prisons,[74] has laid down rules requiring unrestricted respect for the human rights of persons who are deprived of their liberty, in particular, of those who belong to a vulnerable group.[75] Prison authorities must also organize prison procedures with full respect for the human rights of inmates, prohibiting all forms of racial, social, political, religious, economic, cultural or other types of discrimination.[76] The National Prisons Institute is

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stamp for the International Day for the Elimination of Racial Discrimination was presented, and a thousand decals and pins on the theme of non-discrimination were printed.

[73] The following training activities were carried out, in the years noted:

2009: Training was provided for 2,055 officers, subordinate officers and students of the Peruvian National Police, on intervention procedures and techniques in the context of human rights and the use of force in the jurisdictions of Lima, Arequipa, Piura, Cusco, Huancayo, Satipo, Tarapoto, Tingo María Santa Lucía and Huánuco.

2010: Training was provided for 2,386 officers, subordinate officers and students of the Peruvian National Police and personnel of the Ministry of the Interior in the jurisdictions of Lima, Tacna and Piura on subjects such as the use of force, human trafficking, gender equity and violence against women.

2011: Training was provided for 3,060 officers, subordinate officers and students of the Peruvian National Police and non-police staff of the Ministry of the Interior in the jurisdictions of Chimbote, Arequipa, Lima, Moquegua, Ayacucho, Piura and Tumbes, on intervention procedures and techniques in the context of human rights, use of force, human trafficking, equal opportunities, leadership, use of the RETA PNP system and child labour.

2012: During the first quarter, training was provided for 145 policemen in the city of Lima on the use of force in the context of specialization and training courses for the Peruvian National Police. Thirty police instructors received refresher courses in human rights according to standards of the progressive and differentiated model of the use of force, improvement of psycho-motor activities in connection with the use of physical restraint techniques, techniques for the use of incapacitating non-lethal weapons and techniques for levels of use of force in accordance with the Manual on human rights applied to police work *(Manual de derechos humanos aplicados a la función policial)*.

During the second quarter, police officers received training in the use of force in procedures and techniques for police intervention in the context of human rights, in the cities of Pucallpa (300), Piura (200), Huancayo (100) and Cajamarca (350).

During the same period, the annual training course for instructors of human rights applied to police work was held, with 25 policemen graduating who must replicate the knowledge acquired on the use of force at the national level. See Report No. 016-2012-IN-DGSD-DPDFG.

[74] Manual de derechos humanos aplicado a la función penitenciaria, adopted by Presidential Decision No. 411-2008-INPE/P, of 18 July 2008. See: http://www2.inpe.gob.pe/portal/archivos/upload/trabajos/Manual_De_Derechos_Humanos.pdf.

[75] The Manual includes in this group minority inmates who, owing to a personal characteristic such as age, sex, sexual preference, ethnicity, nationality, physical or psychological abilities, health or similar situations, are likely to be abused physically or psychologically, or to be discriminated against by prison authorities, other inmates or anyone involved with the prison establishment.

[76] Presidential Decision No. 411-2008-INPE/P.

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"[...] Sentences shall be applied without torture or inhumane or degrading treatment or any other act or procedure that violates the dignity of the inmate. The prison system must be operated with due

required to enforce the regulations to the Criminal Enforcement Code,[77] which guarantee the physical and psychological integrity of inmates belonging to campesino or indigenous communities, as well as the preservation of their ethnic and cultural identity.[78]

### 11. Draft legislation[79]

99. Five bills are currently under consideration which seek to eradicate discrimination and promote respect for the rights of vulnerable populations.[80]

## Article 3 of the Convention

100. The domestic legal order establishes the principle of equality and non-discrimination; hence, all forms of racial segregation or apartheid are contrary to the Constitution and the international human rights treaties that have been ratified by the Peruvian State. Peru has publicly condemned the practice of apartheid in the past; it ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid and adopted it by means of Decree Law No. 22280, of 5 September 1978.

101. In addition, by Legislative Decision No. 25029, of 23 May 1989, Peru adopted the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the

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respect for the human rights of inmates, and racial, social, political, religious, economic, cultural or any other type of discrimination is prohibited."

[77] The Criminal Enforcement Code was adopted by Supreme Decree No. 015-2008-JUS, of 11 September 2003.

[78] Criminal Enforcement Code.

Article 47 – If persons who are deprived of liberty belong to a campesino or indigenous community, the prison administration must include that information in their records and take all necessary measures to place them in the prison in a location where their physical and mental integrity can be guaranteed and their right to preserve their ethnic and cultural identity will not be violated. The location to which they are assigned must not entail their being isolated from other inmates.

[79] Report No. 001-2012-2013/LCHM-GECT.

[80] The following bills are aimed at eradicating discrimination and promoting respect for the rights of vulnerable populations:

(a) 515-2011/CR: Act establishing the participation of indigenous peoples and campesino and indigenous communities in the economic benefits arising from natural-resource extraction activities. This bill is currently under consideration by the Commission on Andean, Amazonian, Afro-Peruvian Peoples, Environment and Ecology.

(b) 609-2011/CR: Bill on combating criminal actions based on discrimination, submitted on 6 December 2011. This bill is currently under consideration by the Commission on Andean, Amazonian, Afro-Peruvian Peoples, Environment and Ecology.

(c) 756-2011/CR: Anti-discrimination Act, submitted on 17 January 2012. This bill has been referred to the Commissions on the Constitution and on Rules of Procedure and the Commission on Social Inclusion, which are currently considering it.

(d) 785-2011/CR: Act recognizing and protecting the territorial rights of indigenous communities in the Amazon, submitted on 31 January 2012. This bill proposes regulations relating to the demarcation, recognition, titling and assignment for use of lands occupied by indigenous communities, in order to guarantee effective protection and safeguard their rights in the territories on which they carry out their most important economic activities. This bill is currently under consideration by the Commission on Andean, Amazonian, Afro-Peruvian Peoples, Environment and Ecology.

(e) 1183-2011-CR: Proposes adoption of the Legislative Decision amending the Rules of Procedure of the Congress of the Republic and incorporates an appendix specifying the procedure for prior consultation in legislative proceedings. This bill is currently under consideration by the Commission on the Constitution and Rules of Procedure.

protection of victims of international armed conflicts (Protocol I), which in article 85, paragraph 4(c) stipulates that the practice of apartheid is a grave breach of international humanitarian law. Peru also adopted, by Legislative Decision No. 27517, of 13 September 2001, the Rome Statute of the International Criminal Court, which in article 7, paragraph 1(j) establishes that the crime of apartheid is a crime against humanity. Although discrimination is a criminal offence that is covered by article 323 of the Criminal Code, a bill on crimes against international human rights law and international humanitarian law is currently under discussion in the Congress; in this bill, apartheid is defined as a crime against humanity.

102. The Peruvian State condemns all types of racial segregation and apartheid, and has no policy that might cause the State to practice any type of racial discrimination. However, the State has taken steps to ensure that there will not be any discrimination whatsoever in terms of respect for the rights of populations that might be subjected to racial discrimination. Those steps are discussed in the section on measures taken to put into practice the provisions of article 5 of the Convention.

## Article 4 of the Convention

103. As noted earlier, article 323 of the Criminal Code provides that discrimination, as well as incitement to discrimination, is an offence that is punishable with a prison term of no less than two years. The Political Parties Act (Act No. 28094, of 1 November 2003) stipulates, in article 2(c), that one of the purposes of political parties is to contribute to the observance of human rights. Should any party or movement conduct itself in an antidemocratic manner that involves the systematic violation of fundamental liberties and rights, its registration will be cancelled.

104. The following legislative, judicial and administrative measures seek to eradicate incitement to or promotion of racial discrimination during the period 2009–2012:

105. With regard to the observation contained in paragraph 19 of the Committee's concluding observations, it should be noted that Legislative Decree No. 1044,[81] on the Suppression of Unfair Competition, prohibits and punishes acts involving unfair competition, as well as violations to the rules governing commercial advertising. Article 18 of the Act provides that the dissemination of advertising that has the effect of leading to the commission of an illegal act or a discriminatory or offensive act based on origin, race, sex, language, religious opinion, economic status or any other kind of discrimination shall be considered an act against the principle of social correctness *(adecuación social)*.

106. The purpose of the decree is to establish restrictions on advertisers and the media in connection with the dissemination of advertising that might induce the target audience to commit illegal or discriminatory acts.[82]

107. The Consumer Protection Code[83] prohibits acts of discrimination against consumers on the basis of race, sex, language, religion, opinion and economic status, as explained in paragraph 77 above.

108. The Institute for the Defence of Competition and the Protection of Intellectual Property has only punished discriminatory advertising on one occasion. In 2005, the

[81] Executive Branch, Legislative Decree No. 1044, *El Peruano*, 26 June 2008.

[82] The Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI) is responsible, among its other duties, for protecting the rights of consumers. It is the institution in charge of implementing Legislative Decree No. 1044 and punishing those who violate the rules governing commercial advertising.

[83] Congress of the Republic, Act No. 29571, *El Peruano*, 2 September 2010.

Commission for Oversight of Unfair Competition punished the Backus company for disseminating advertising that included the statement, "Do they want to make us seem like *cholitos*?" The penalty was confirmed by the Protection of Competition Chamber of the Institute's Tribunal in 2006, which imposed a fine of 30 tax units (UIT – *unidad impositiva tributaria*). No complaints of discriminatory advertising are currently pending.[84]

109. The National Radio and Television Institute has taken steps to prevent dissemination of advertising containing racist ideas in state radio and television programmes.[85]

110. Many of the measures taken between 2009 and 2012 to eradicate incitement to or promotion of racial discrimination are discussed in the section on measures taken to implement the provisions of article 2 of the Convention.

111. Finally, in February 2012, the Ministry of Culture developed the virtual platform called "Warning against racism",[86] whereby citizens can report cases of ethnic and racial discrimination so that the authorities can conduct the necessary investigations. This platform was launched in February 2013.

## Article 5 of the Convention

## A. Respect for civil and political rights

### 1. Right to equal treatment before the tribunals and all other organs administering justice

112. As reported by Peru in the context of the Committee's consideration of its fourteenth to seventeenth reports, the Truth and Reconciliation Commission pointed out in its final report that the process of violence, combined with socioeconomic gaps, had highlighted the seriousness of ethno-cultural inequalities that had prevailed in the country at that time. The Commission determined that 75 per cent of the victims who had died in the political violence spoke Quechua or other indigenous languages as their mother tongue.

113. In the light of those findings, over the last few years, Peru has implemented a number of measures that will enable victims of violence to obtain the truth, justice and fair reparations.

114. Between 2004 and 2013, the judiciary considered 96 cases in which sentences were handed down by the National Criminal Chamber,[87] which considers in the first instance offences that come under the competence of the specialized subsystem. In those trials, 60 persons had been sentenced, and 220 had been acquitted.

115. Although the National Criminal Chamber is located in Lima, it has conducted hearings in several parts of the country, acting as an itinerant body. In 2011, working with the Office of the Public Prosecutor, it held seven trials in the judicial districts of Ayacucho,

[84] See the decision of the first instance (119-2005-CCD) at http://www.indecopi.gob.pe/RepositorioAPS/0/4/par/EXPEDIENTE_N_003_2005_CCD/119-2005.pdf and the decision of the second instance (979-2006-TDC).

[85] The National Radio and Television Institute is the State institution that produces, broadcasts and disseminates news and educational, cultural and entertainment programming. One of the principles of this institution is to carry out internal monitoring of the quality of materials before broadcasting any commercial advertising or promotions; in other words, it verifies that the material is not harmful to public morals or decency and that it does not involve the practice of racism or discrimination.

[86] The portal may be found at http://alertacontraelracismo.pe/.

[87] Judiciary Branch. Table showing sentences for human rights offences brought before the National Criminal Court, March 2013.

Puno and Huaura. These areas were especially affected by the violence between 1980 and 2000.

116. On the issue of reparations, a high-level multisectoral commission which has been set up to monitor State action and policies regarding peace, collective reparation and national reconciliation[88] has been implementing the Comprehensive Reparations Plan.[89]

117. Between 2007 and 2012, the State allocated 218,338,805 nuevos soles (approximately US$ 85 million) to the Collective Reparations Programme.[90] This made it possible to finance a total of 1,877 programmes to provide production infrastructure or improve basic services in 1,852 indigenous and campesino communities or population centres that were most affected[91] as a result of the violence.[92] Within the universe of communities that benefit from the Programme, 1,305 are located in rural areas, which are the areas with the highest percentage of indigenous peoples.

118. In 2012, to encourage women to participate in execution of the Collective Reparations Programme, a provision was included in the general guidelines for the Programme to add the requirement that at least one woman must be included in the management and community oversight committees[93] to be set up once the project to be financed by the Collective Reparations Programme has been selected.

119. Implementation of the Economic Reparations Programme for victims and their families began in July 2011. During that year, benefits totalling 11,161,845 nuevos soles

[88] The high-level multisectoral commission tasked with monitor State action and policies regarding peace, collective reparation and national reconciliation was created by Supreme Decree No. 011-2004-PCM, of February 2004, with the mission of coordinating, monitoring and evaluating implementation of the Comprehensive Reparations Plan created by Act No. 28592, on behalf of the victims of the violence experienced by Peru between 1980 and 2000. Up until December 2011, the High-Level Multisectoral Commission was under the Office of the President of the Council of Ministers. On 31 December 2011, by Supreme Decree No. 102-2011 PCM, it was placed under the Ministry of Justice and Human Rights, as was the Reparations Board in charge of the Central Register of Victims.

[89] The Comprehensive Reparations Plan, created by Act No. 28592, of 9 July 2005, was established to provide for payment of reparations to victims and help consolidate peace among Peruvians and promote national reconciliation. This Act is the main legislation on reparations. The Comprehensive Reparations Plan establishes the reparation programmes, defines the legal concept of victim and identifies the beneficiaries of the reparation programmes; the High-Level Multisectoral Commission serves as the coordinating body for the Plan.

[90] The purpose of the Collective Reparations Programme is to contribute to the reconstruction of the social and institutional, material and economic-productive capital of rural and urban communities affected by the violence. The Programme provides up to 100.000 nuevos soles (approximately US$ 38,4 million) for projects selected by population centres affected by the violence. The local governments of jurisdictions in which the population centres are located are responsible for executing the projects.

[91] The degree to which an area was affected is determined by the concentration of individual violations, razing, enforced displacement, breakdown of community institutions, loss of family infrastructure and/or loss of community infrastructure.

[92] In 2012, the High-level Multisectoral Commission approved the financing of 228 projects in the same number of campesino and/or indigenous communities, for a total of 22.8 million nuevos soles (approximately US4 8.7 million).

[93] The committees are set up at general meetings held in the communities and/or population centres. They are created once the community and/or population centre has chosen the project to be financed by the Collective Reparations Programme. Their membership must include at least five residents of the community. They must include at least two victims of violence, one woman and a member of the self-defence committee, if there is one.

(approximately US$ 4.2 million) were granted to 1,878 persons.[94] In 2012, economic reparations were granted to 15,774 beneficiaries, for a total amount of 96,188,029 nuevos soles (approximately US$ 36 million).

120. Under the Health Reparations Programme, the State increased[95] the coverage provided by the comprehensive health insurance programme for victims of violence by adding physical and mental health benefits. As of December 2012, the Ministry of Health had provided services for 65,000 beneficiaries through the comprehensive health insurance programme. In 2006, a mental health programme was set up with trained professionals to provide services to affected individuals, communities and population centres. As of this date, services have been provided to 57,739 persons in the 11 regions that were most affected. The Guidelines for psychosocial services to relatives of disappeared persons were approved during the first half of 2012.[96]

121. In 2011, an amendment to Act No. 28592 was adopted to include the following in the Education Reparations Programme: (a) systems for reserving vacancies in higher education institutes and universities; (b) provisions for waiving fees for degrees and certificates; and (c) provisions for granting scholarship vouchers for victims of violence.[97] During the second half of 2012, the National Scholarship Programme of the Ministry of Education offered the REPARED Scholarship, which provides full funding for professional training at the university or technical level. Forty-three scholarships were offered initially, and it is expected that another 200 will be granted during the first half of 2013.

122. In 2012, the following activities, among others, were carried out under the Symbolic Reparations Programme: (a) letters of condolence signed by the highest authorities of the Republic were sent to the victims; (b) public workshops were organized to explain and discuss the human rights violations that occurred during the period of violence; (c) public tributes were paid to the victims; (d) assistance was provided for the delivery of remains to relatives of victims of enforced disappearance; (e) the pilot project on construction of community memory was launched. The high-level multisectoral commission transferred the amount of 1.1million nuevos soles (approximately US$ 420,000) to the Office of the Public Prosecutor for the purchase of reagents and inputs for DNA testing of 1,500 skeletal remains of disappeared persons.

123. For the present year, the State has assigned a budget of 48.184 million nuevos soles (approximately US$ 16 million) for implementation of the Comprehensive Reparations Plan. This amount will allow for economic reparations to 6,281 persons and will fund approximately 100 collective reparations projects.

[94] The process of identifying beneficiaries and establishing criteria for determining the amount, distribution and prioritization of payments was concluded pursuant to Supreme Decree No. 051-2011-PCM, of 16 June 2011. On 15 November 2011, the High-level Multisectoral Committee approved a proposed amendment to Supreme Decree No. 051-2011-PCM whereby the Central Register of Victims was reopened, the amount of reparations was increased from 10,000 nuevos soles to 10 UITs (tax units, equivalent to 36,500 nuevos soles), and prioritization by ages was eliminated. The Executive Secretariat of the High-level Multisectoral Committee transmitted the text of this decision, along with a technical report, to the Office of the President of the Council of Ministers.

[95] Ministry of Health. Supreme Decree No. 006-2006-SA (*El Peruano*, 21 March 2006) and the amendment thereto contained in Supreme Decree No. 015-2006-SA (*El Peruano*, 22 July 2006).

[96] Ministry of Health. Ministerial Decision No. 299-2012-MINSA, of 17 April 2012.

[97] Office of the President of the Council of Ministers. Supreme Decree No. 047-2011-PCM, amending the regulations to the Comprehensive Reparations Plan (*El Peruano*, 24 May 2011).

124. The Reparations Board[98] is in charge of the Central Register of Victims[99] which was set up in 2007. As of October 2012, Book One (individuals) of the Central Register of Victims[100] listed 157,720 persons, and Book Two (indigenous communities, campesino communities and groups of displaced persons) included 5,697 campesino and/or indigenous communities and 46 organized groups of non-returning displaced persons. Of the total number of individuals in Book One of the Central Register of Victims, 31,891 victims (including deceased and disappeared persons, victims with disabilities and victims of rape) and 74,439 relatives of deceased and/or disappeared persons have been found to be entitled to economic reparations.

### 2. The right to security of person and protection by the State against violence or bodily harm

125. In recent years, Peru has experienced significant economic growth; a steady increase in investments has opened up opportunities for consolidating a development process that is both inclusive and democratic. Nevertheless, as noted by the Committee in its analysis of Peru's fourteenth to seventeenth reports, the economic expansion and modernization have led to social tensions among local communities, the private sector and the State in areas where production projects, especially in the extractive industries, are located.

126. These tensions can give rise to acts of violence, for example, in cases where underground natural resources are exploited in territories traditionally belonging to the indigenous peoples. In view of this situation, Peru has taken steps to deal with these tensions within a culture in which dialogue is the key.

127. The Office of the President of the Council of Ministers promoted the creation in 2012 of the National Office for Dialogue and Sustainability[101] as the specialized technical

[98] The Reparations Board is in charge of identifying individual beneficiaries and implementing the Central Register of Victims (both individual and collective). The information on the victims that appears in the Central Register of Victims is transmitted to the High-level Multisectoral Commission, which is the body responsible for coordinating implementation of reparations programmes.

[99] The Central Register of Victims is a tool created by Act No. 28592 to identify the victims of the violence suffered by Peru between 1980 and 2000, and the beneficiaries of the Comprehensive Reparations Plan. The Central Register of Victims, which is drawn up by the Reparations Board, is made up of two Books: Book One lists individual victims, and Book Two lists the indigenous communities, campesino communities and groups of persons who were displaced as a result of the violence.

[100] Ministry of Justice and Human Rights. Supreme Decree No. 015-2006-JUS, Regulations to Act No. 28592, creating the Comprehensive Economic Reparations Plan (*El Peruano*, 6 July 2006). "Article 38. Cases to be considered in determining and identifying the beneficiaries of the economic reparations programme. Bearing in mind the lists referred to in article 42, the Reparations Board shall determine and identify the beneficiaries of the Economic Reparations Programme from among the following cases: (a) relatives of deceased and/or disappeared persons; (b) victims of enforced disappearance; (c) persons who as a result of attacks, aggression or torture, have a permanent, partial or total physical or mental disability (recognized by the National Commission on Disability); (d) victims of rape."

[101] Office of the President of the Council of Ministers. Supreme Decree No. 106-2012-PCM (*El Peruano*, 25 October 2012). The Office of the President of the Council of Ministers, working through the National Office for Dialogue and Sustainability, launched the Willaqniki Report to fulfil its commitment to keep citizens informed about the policy on prevention and treatment of social conflict. As of February 2013, three reports had been published: the first report presents a compilation of quantitative data and information on the classification and treatment of cases of conflict in the country. It may be found at: http://www2.pcm.gob.pe/popup_PCM/willaqniki.pdf. The second issue of the Willaqniki Report, on the matter of territorial demarcation and the challenges it poses for integration and development (Demarcación territorial: retos para la integración y el desarrollo), addresses one of the issues that has led to considerable social tension in the country since the

body in charge of coordinating the activities of different sectors in dealing with social conflict. It facilitates negotiation processes, and the different sectors of the national executive branch take on commitments as necessary. The Office carries out three types of intervention:[102] the first is preventive,[103] while the other two have to do with managing dialogue during conflict, i.e., treatment[104] and follow up.[105]

128. Between August and December 2012, the National Office for Dialogue and Sustainability participated in and actively contributed to the solution of 24 conflicts throughout the country.[106] The most important cases that were resolved during that period had to do with energy (seven), hydrocarbons and labour issues (four each), and mining, water resources and territorial demarcation (two each). Those conflicts occurred in 12 different regions, and the Office also dealt with cases at the national and multiregional level; its efforts at the national level made a positive contribution to the solutions reached.[107]

129. The Early Warning and Response System is a key element of the National System for the Prevention of Social Conflicts. This is a goal of the Government that was announced by the President of the Republic in his speech of 28 July 2012.[108] The prevention system is essential to enable the State to work within a new social scenario in the context of its economic growth and development policies; it is currently under construction and will gradually be established on a permanent basis.[109]

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beginning of the Republic, namely, territorial demarcation; it is available at http://www2.pcm.gob.pe/comunicados/willaqniki2.pdf. The third Willaqniki report deals with the topic of cultures and conflict in Peru, and their sociocultural contexts (Las Culturas y el conflicto en el Perú: Contextos Socioculturales), and is available at http://www.pcm.gob.pe/transparencia/willaqniki/willaqniki03.pdf.

[102] The National Office for Dialogue and Sustainability works actively to promote dialogue, as it strives to work within a culture of peace. Its basic objectives are: (a) To help strengthen democratic governance and development, bearing in mind the relationship between citizens and the State; (b) To transform social conflicts into opportunities for development by preventing and managing them through institutional policies of dialogue and sustainable development.

[103] This entails acting before social conflict is unleashed or, if that is not possible, before it scales up or turns into a crisis. The Early Warning and Response System plays a strategic role, as it makes it possible to identify and issue timely warnings about a problem while it is still at the level of a difference or a dispute.

[104] This takes place when social conflict has become open and evident, and could even become a crisis. When this happens, the Office seeks to scale down the conflict, trying to channel it towards a solution by fostering dialogue and negotiation.

[105] This consists of monitoring and following up on any mechanisms that have been set up to resolve the conflict (such as discussions, working groups and others). The idea is to be able to detect in timely fashion any potential problems that might lead to a resurgence of the conflict.

[106] A conflict is considered resolved when the parties have negotiated and signed an agreement, and the points on which consensus has been reached are being regularly complied with or implemented.

[107] Office of the President of the Council of Ministers. Segundo Informe Diferencias, Controversias y Conflictos Sociales. Willaqniki2. Lima, January 2013, pp. 24, 25. Multiregional conflicts (four), as well as those resolved in Ancash and Cusco (three each), Junín, Loreto, Pasco, and at the national level (two each) are the most important ones in relative terms.

[108] Office of the President of the Council of Ministers. Tercer Informe Diferencias, Controversias y Conflictos Sociales.Willaqniki2. Lima, February 2013, p. 31. President Ollanta Humala said that "We are going to establish the national system for the prevention and management of conflicts. The current Conflicts Unit of the Office of the President of the Council of Ministers will soon become a General Directorate having representatives throughout the national territory through agreements with the regional governments".

[109] Office of the President of the Council of Ministers. Tercer Informe Diferencias, Controversias y Conflictos Sociales. Willaqniki2. Lima, February 2013, p. 31.

130. In January 2013, work began on implementation of the Early Warning and Response System. Several training workshops were held for regional and provincial governors, who will play a decisive role in the operation of this tool.[110]

131. The National Office for Dialogue and Sustainability organized workshops for all the regional governors in the country and provincial governors of eight regions, with a view to integrating them into the system and training them in the use of tools that focus on prevention of and response to social conflicts. Over 100 political authorities received the training, with the goal being for all public officials to learn to manage conflicts early on and to consistently use dialogue for the settlement of disputes.[111]

132. The intervention of the Armed Forces is governed by Legislative Decree No. 1095, which lays down rules for the use of force. The decree identifies two spheres of application: on the one hand, in situations that are covered by the standards of international humanitarian law (art. 5, para. 1) and on the other hand, situations in which international humanitarian law does not apply, such as cases of domestic tension and disturbances, in which international human rights law is applicable (arts. 16 and 22).

133. Pursuant to the terms of articles 139 and 173 of the Constitution and the jurisprudence of the Constitutional Court and the Supreme Court of Justice, victims of human rights violations committed by members of the Armed Forces are ensured that such cases will be investigated, tried and punished by the ordinary courts.

134. On this point, it should be noted that the national criminal courts[112] and the National Criminal Chamber[113] are the bodies that have competence to consider the crimes against humanity envisaged in title XIV-A, chapters I, II and III of the Criminal Code, common offences that involve violations of human rights, and related offences.[114]

135. In the case of criminal offences, complaints are received and offences are prosecuted by the Supraprovincial Criminal Prosecutors' Offices and the body above them, namely, the National Criminal Prosecutor's Office.[115]

[110] *Ibid.*, pp. 31–32.

[111] *Ibid.* The workshops strengthened understanding of concepts and stressed the need to identify and register cases at an early stage. The final training activity was held in Lima with the regional governors, as the closing event for the workshops carried out in Arequipa, Ayacucho, Cusco, Loreto, Moquegua, Piura and Puno, which strengthened the capacities of more than 100 political authorities. The activities were organized with the support of a strategic inter-institutional partnership comprised of the Organization of American States, the National Office for Subnational Levels of Government of the Ministry of the Interior and the Centre for Conflict Analysis and Resolution of the Pontifical Catholic University of Peru.

[112] Administrative Decision No. 150-2012-CE-PJ, of 25 July 2012, changing the name of the supraprovincial criminal courts *(juzgados penales supraprovinciales)* to national criminal courts *(juzgados penales nacionales)*.

[113] Formerly the National Chamber *(Sala Nacional)*, it became the National Criminal Chamber *(Sala Penal Nacional)*. The "criminal courts specializing in terrorism" became the supraprovincial criminal courts. Administrative Decision No. 170-2004-CE-PJ, published in the Official Journal *El Peruano* on 30 September, 2004.

[114] Administrative Decision No. 170-2004-CE-PJ, published in the Official Journal *El Peruano*, on 30 September, 2004.

[115] Formerly Provincial Prosecutor's Offices specializing in terrorism offences and the Superior Prosecutor's Office specializing in terrorism offences. Office of the Attorney General Decision No. 1645-2004-MP-FN, published in the official journal *El Peruano*, 25 November 2004. See also Office of the Attorney General Decision No. 1336-2005-MP-FN, published in the official journal *El Peruano*, on 7 June 2005 and Decision No. 1602-2005-MP-FN, published in the official journal *El Peruano*, on 13 August 2005.

136. Finally, unconstitutionality proceedings (No. 22-2011-PI/TC)[116] were brought by civil society organizations in respect of the Act granting legislative powers to the executive branch[117] and in respect of certain articles of Legislative Decrees Nos. 1094 and 1095.

137. Peru is a party to the Convention Relating to the Status of Refugees and the 1967 Protocol thereto. Accordingly, it provides international protection to aliens who request it in circumstances in which their life, liberty or personal integrity is in jeopardy in their country of origin, under the principle of *non-refoulement*.[118]

138. The principle of *non-refoulement* is specifically set out in article 5 of Refugees Act No. 27891 and in article 3, paragraph 3 of Asylum Act No. 27840, which refers to political asylum.[119] Moreover, if a person's request for diplomatic asylum is denied, he or she cannot be returned unless the territorial State expressly guarantees that the person's physical integrity is not at risk.[120]

139. Extradition is governed by the Constitution and domestic legislation. Under article 37 of the Constitution, extradition is granted by the executive branch once the Supreme Court issues a favourable opinion, in accordance with the law, the relevant treaties and the principle of reciprocity.

[116] Unconstitutionality proceedings against the single article of Act No. 29548; against articles 60, 62, 63, 64, 65, 66, 67, 68, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 95, 96, 97, 131, 132, 140 and 142 of Legislative Decree No. 1094, adopting the new Military and Police Criminal Code; and against articles 3f, 5.1., 7, 8.1, 9, 13.2 and 27 of Legislative Decree No. 1095, establishing new rules for the use of force by the armed forces on the national territory.

[117] Congress of the Republic. Act No. 29548, granting powers to the executive branch to legislate on military and police matters, the use of force and procedural rules for prisons relating to military and police personnel who have been tried or convicted, *El Peruano*, 3 July 2010.

[118] On this subject, the State has undertaken commitments under the following instruments: article 3, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; article 22, paragraphs 7 and 8, of the American Convention on Human Rights (adopted by Decree Law No. 22231 of 11 July 1978); fourth paragraph of article 13 of the Inter-American Convention to Prevent and Punish Torture (adopted by Legislative Decision No. 25286 of 12 December 1990); article 33, paragraph 1, of the Convention Relating to the Status of Refugees (adopted by Legislative Decision No. 15014 of 16 April 1964). It has also developed regulations for implementation of those instruments. In many cases, these rules have made it possible to set up mechanisms for complying with the obligations in question.

[119] Article 5 of Act No. 27891, on Refugees, enshrines and develops this principle, stating that anyone who invokes refugee status may enter the national territory and may not be rejected, returned, expelled, extradited or subjected to any measure that might entail that person's being returned to a country in which his or her life, integrity or liberty is in jeopardy for the reasons stated in article 3 of the aforementioned Act. Article 3 (b) of the regulations to the Act furthermore stipulates that a person who requests refugee status may remain in the country until the process of qualification has concluded with a definitive decision. Likewise, the purpose of Act No. 27840, on Asylum, is to establish procedures for the protection granted by the State within its territory to aliens who are deemed to be persecuted for political reasons or crimes, and whose liberty or life is in danger; it therefore stipulates that no one who requests asylum shall be subjected to any measure that might require him or her to return to the territory where his or her life, physical integrity or liberty are in jeopardy.

[120] To evaluate diplomatic asylum, an evaluation group is set up (art. 13), and the request for asylum is submitted to the Deputy Minister for Foreign Affairs, who takes a decision. The same procedure is followed in regard to territorial asylum (art. 22). However, if asylum is refused or lost, the national authorities shall not return the applicant to the country in which his or her life, liberty or integrity are in jeopardy.

140. Article 516 of the New Code of Criminal Procedure[121] stipulates that extradition shall be granted subject to the existence of guarantees that justice will be imparted fairly in the requesting State. This rule provides that the Attorney General of the Nation and the Ministry of Foreign Affairs shall be empowered to report on whether there are any questions regarding the administration of justice in the requesting State. Likewise, article 517 of the New Code of Criminal Procedure provides that extradition shall not be granted if the proceedings to be brought against the extradited person do not meet international standards of due process.

141. The New Code of Criminal Procedure also stipulates that if the offence for which extradition is requested is punishable with the death penalty in the requesting State, and the requesting State does not offer assurances that the death penalty will not be applicable, the extradition shall not be granted (art. 517). Over the last few years, these rules have been successfully applied in several cases, thus preventing the return of persons whose liberty and integrity would have been at risk had they been extradited.

142. Expulsion proceedings begin with a police report issued by the Aliens Division of the State Security Department of the Peruvian National Police. Once the report is received, the police take a statement from the foreign offender, who may indicate whether there are credible reasons to believe that he or she would be in danger if expelled. It should be noted that the person will be expelled to a neighbouring country that is not known to have practiced torture.[122]

143. Before an alien refugee in Peru can be expelled, the case must be reviewed by the Special Commission for Refugees or by the high-ranking authorities of the Ministry of Foreign Affairs, in the case of a person who has been granted political asylum. This means taking into account the situation in the country to which the person would be sent and the implications of such action for the safety and integrity of the person concerned. In addition, when there are well-grounded reasons to consider that the alien to be expelled is in danger of being subjected to torture, the constitutional procedure of habeas corpus can be followed. The content and scope of this process must be interpreted in accordance with the Universal Declaration of Human Rights and the human rights treaties to which Peru is a party.

### 3. The right to vote and to stand for election

144. Article 191 of the Political Constitution of Peru states that the law determines the minimum percentage to facilitate representation of women, rural and indigenous communities and aboriginal peoples in regional councils.[123] The same arrangement applies to municipal councils. Under that premise, the Municipal Elections Act (No. 26864) and the Regional Elections Act (No. 27683) provide that at least 15 per cent of candidates standing for election to municipal and regional councils must be representatives of indigenous and aboriginal peoples for every province or region in which those communities exist, as determined by the National Elections Board.

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[121] Adopted by Legislative Decree No. 957 of July 2004. Book VII, on international cooperation, entered into force in February 2006.

[122] Expulsion is carried out pursuant to a decision of the Ministry of the Interior, which first seeks the opinion of the Commission on Aliens. The Commission bases its opinion on the police report issued by the Aliens Division of the Peruvian National Police in accordance with article 66 of the Aliens Act. Article 67 of the Aliens Act provides that the alien against whom expulsion has been ordered may appeal or request reconsideration of the measure taken against him or her.

[123] Political Constitution of Peru. Article 191: “Regional governments enjoy political, economic and administrative autonomy on pertinent matters within their jurisdiction. They coordinate with municipalities without interfering in their functions and authorities. [...] The law determines the minimum percentage to facilitate representation of women, rural and indigenous communities, and aboriginal peoples in regional councils. The same applies for municipal councils.”

145. The aforementioned measures have made it possible to improve the participation of aboriginal peoples and indigenous communities in elections. Thus, in regional elections in 2006, there were 312 candidates from indigenous communities, and 12 were elected.

146. According to the National Elections Board, in local elections at the provincial level, 450 candidates were members of indigenous communities, and of these, 14 were elected. The statistics show a slight increase in participation. Thus, in the 2010 regional elections, there were 507 candidates from indigenous communities, and 14 were elected. Likewise, in provincial municipal elections 34 out of 468 candidates from indigenous communities were elected.

147. In order to ensure that all citizens are well informed and are able to participate freely in elections, and to strengthen the exercise and practice of democracy by the people, the National Election Procedures Office has carried out a number of activities designed to educate the public during off-election periods. Between January and August 2012, 89 educational talks were given; 21 of these were carried out in the forest *(selva)* region (Iquitos, Ucayali, Amazonas and San Martín) and 46 in the Andean areas (Apurímac, Ancash, Ayacucho, Junín, Puno, Cajamarca and Huánuco).[124]

148. With support from the Italo-Peruvian Fund, the National Election Procedures Office is currently carrying out several activities among the Andean and Amazonian populations as part of a project focusing on validation of intervention strategies and tools for promoting the exercise of women's political rights in poor districts of the county. The programme, which focuses on gender and interculturalism, is designed to encourage women in poor rural areas to exercise their political rights.[125]

### 4. The right to citizen participation

149. During the period 2009–2012, the different sectors of government set up mechanisms to allow for enabling indigenous populations to participate in the process of developing standards and the adoption of other measures. Between 2009 and 2011, the Ministry of Agriculture and the Congress of the Republic promoted the participation of indigenous populations in the drafting and approval of the Forest and Forest Wildlife Act (Act No. 29763), which was promulgated on 22 June 2011.[126]

150. In 2012, the Ministry of Agriculture adopted methodological guidelines for strengthening the forestry sector through a decentralized participatory process.[127] The guidelines describe the objective, output, methodology and time frame for the nationwide process, which is aimed at organizing citizen participation, generating contributions, encouraging creative dialogue and building consensus between the State and society, as well as ensuring that prior consultations are held with indigenous peoples, as required by national and international law. The goal is to achieve maximum convergence of interests

[124] National Election Procedures Office. Memorandum No. 1648-2012-OGPP/ONPE. Document No. 1616-2012-SG/ONPE, of 17 August 2012.

[125] *Idem.*

[126] The Ministry of Agriculture will organize national round tables to encourage indigenous peoples and Afro-Peruvian populations to contribute to improvement of the National Forestry Policy and implementation of the National Forest and Wildlife Management System and the National Forest and Wildlife Commission. The Ministry of Agriculture also has plans for promoting public participation through the portal of the General Directorate of Forestry and Wildlife.

[127] Ministry of Agriculture. Guía metodológica Proceso participativo y descentralizado para el fortalecimiento del sector forestal: Política nacional forestal y de fauna silvestre, Sistema nacional de gestión forestal y de fauna silvestre y Reglamento de la ley forestal y de fauna silvestre, Act No. 29763. Lima, May 2012.

and the commitment of all stakeholders, so as to promote efficient, inclusive, decentralized and competitive management of the country's forests and wildlife.

151. In addition, the Mining Subsector of the Ministry of Energy and Mines adopted regulations for citizen participation in the mining subsector (Supreme Decree No. 028-2008-EM) and approved guidelines for citizen participation in the mining subsector (Ministerial Decision No. 304-2008-MEM-DM). The regulations for citizen participation in carrying out activities in the hydrocarbon subsector were adopted by Supreme Decree No. 012-2008-EM, and guidelines for citizen participation in that subsector were approved by Ministerial Decision No. 571-2008-MEM/DM. In regard to the electricity subsector, the guidelines for citizen participation were approved by Ministerial Decision No. 223-2010-MEM/DM.

152. The purpose of the aforementioned regulations and guidelines is to establish rules for responsible participation by the populations involved in defining and applying measures, actions or decisions of the competent authorities in connection with the sustainable development of mining and energy activities.

153. Finally, it is worth mentioning that the Working Committee on Peoples of African Descent in the Andean Community was established recently.[128] This body coordinates the efforts of State entities, representatives of civil society and the ombudsman's offices of the Plurinational State of Bolivia, Colombia, Ecuador and Peru. The Working Committee held its first session in November 2012 and plans to meet from time to time to recommend policies for the promotion and participation of peoples of African descent at both the Community and the national levels. In addition, the Consultative Council of the Andean Community Indigenous Peoples[129] was created in 2007.

### 5. Right of indigenous peoples to prior consultation

154. The Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation (Act No. 29875)[130] was enacted in 2011. A temporary multisectoral commission was created by Supreme Decision No. 337-2011-PCM,[131] published on 16 November 2011, with the charge that it should issue a report proposing draft regulations to the aforementioned Act.[132] In that context, the representatives of the Government and of the indigenous

[128] The Working Committee was established by Decision No. 758 of 22 August 2011 by the Andean Council of Ministers of Foreign Affairs of the Andean Community. For more information, see http://www.comunidadandina.org/Seccion.aspx?id=86&tipo= TE&title=afrodescendientes.

[129] See Decision No. 674 of 26 September 2007, adopted by the Andean Council of Ministers of Foreign Affairs of the Andean Community. For more information, see http://www.comunidadandina.org/ingles/normativa/D674e.htm.

[130] Congress of the Republic. Act No. 29785, Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation recognized in ILO Convention No. 169 (*El Peruano*, 7 September 2011). Under this Act, the Office of the Deputy Minister for Intercultural Affairs of the **Ministry** of Culture serves as the technical body specializing in indigenous affairs of the executive branch.

[131] Office of the President of the Council of Ministers. Supreme Decision No. 337-2011-PCM (*El Peruano*, 16 November 2010). The Multisectoral Commission was comprised by different State sectors, representatives of nationwide indigenous organizations; representatives of the United Nations, the Ombudsman's Office and the National Coordinator for Human Rights participated as observers.

[132] The Commission was made up of the Deputy Ministers of Justice, of the Ministry of Justice; of the Economy, of the Ministry of the Economy and Finance; of Mines, of the Ministry of Energy and Mines; of Transport, of the Ministry of Transport and Communications; of Environmental Management, of the Ministry of the Environment; of Agriculture, of the Ministry of Agriculture; of Labour, of the Ministry of Labour and Employment; of Educational Management, of the Ministry of Education; of Health, of the Ministry of Health; of Policies and Social Evaluation, of the Ministry of Development and Social Inclusion; of Public Order, of the Ministry of the Interior; of Foreign Affairs,

organizations participated in the drafting of the proposed regulations. After extensive consultations[133] with representatives of indigenous organizations, the Regulations to the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation were adopted in May 2012.[134]

155. Article 3 of Act No. 29785 provides that the purpose of consultation is to achieve agreement or consent between the State and the indigenous or aboriginal peoples with regard to legislative or administrative measures that directly affect them through an intercultural dialogue guaranteeing that they will be included in the State's decision-making processes and that the measures adopted will respect their collective rights.[135]

156. In connection with the implementation of the right of indigenous peoples to prior consultation, the Office of the Deputy Minister for Intercultural Affairs of the Ministry of Culture trained 283 public officials and 361 indigenous leaders. In addition, 82 interpreters of indigenous languages received training for their role in the prior consultations, in which they will have the task of translating into their indigenous tongues the meaning of the right

of the Ministry of Foreign Affairs; and of Intercultural Affairs, of the Ministry of Culture. The indigenous organizations were represented by the Asociación Interétnica de Desarrollo de la Selva Peruana, Confederación de Nacionalidades Amazónicas del Perú, Confederación Nacional de Comunidades del Perú Afectadas por la Minería, Confederación Campesina del Perú, Confederación Nacional Agraria and Organización Nacional de Mujeres Indígenas Andinas y Amazónicas. The second meeting of the Multisectoral Commission was held on 9 January 2012. It was attended by representatives of the Office of the Deputy Minister of Women's Affairs of the Ministry of Women and Vulnerable Populations, the Office of the Deputy Ministers of Foreign Trade and of Tourism of the Ministry of Foreign Trade and Tourism and the Office of the Deputy Minister of Small and Medium-sized Enterprises and Industry of the Ministry of Production. The Federación Nacional de Mujeres Campesinas, Artesanas, Indígenas, Nativas y Asalariadas del Perú and the Unión Nacional de Comunidades Aymaras were represented at the third meeting of the Multisectoral Commission, held on 17 February 2012. In that regard, it should be noted that the executive branch had accepted the application for incorporation of the Federación Nacional de Mujeres Campesinas, Artesanas, Indígenas, Nativas y Asalariadas del Perú and of the Unión Nacional de Comunidades Aymaras, which had been submitted to the Multisectoral Commission; however, the indigenous organizations belonging to those organizations considered that they did not need to be included, since they were already represented. A request for reconsideration of the original decision was subsequently submitted and was communicated to the Unión Nacional de Comunidades Aymaras and the Federación Nacional de Mujeres Campesinas, Artesanas, Indígenas, Nativas y Asalariadas del Perú, as noted in the minutes of the Multisectoral Commission for 17 February 2012.

[133] Ministry of Culture. Document No. 270-2012-DGIDP/VMI/MC, of 17 July 2012. P. 02 and 03. Six macroregional events were held in connection with the drafting of the preliminary version. The average attendance at the macroregional events was 272 in Chiclayo, 280 in Pucallpa and 274 in Iquitos. Attendance at the macroregional meetings held in Cuzco, Bagua, Huancayo and Lima averaged 439, 200, 319 y 520 in that order. Finally, after eight discussion meetings of the Multisectoral Commission, the Regulations to the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation recognized in ILO Convention No. 169, were adopted.

[134] Ministry of Culture. Supreme Decree No. 001-2012-MC (*El Peruano*, 3 April 2012). "Article 4: [...] the text of the legislative or administrative measure adopted or promulgated, on which the consultation is held, must be consistent with the competencies of the entity promoting it and respect the rules of public order, as well as the fundamental rights and guarantees laid down in the Political Constitution of Peru and in the legislation currently in force. The text of the measure must comply with environmental legislation and preserve the survival of the indigenous peoples."

[135] Likewise, article 1.3 of the Regulations to Act No. 29785 expressly provides that "the right to consultation is established in order to guarantee the collective rights of the indigenous peoples who are recognized as such by the Peruvian State in the Constitution, the international treaties ratified by Peru and the laws".

of their communities to prior consultation, and they will be participating in the actual consultation process.[136]

157. On 20 July 2012, the Ministry of Energy and Mines, acting in compliance with the provisions of the aforementioned Act on prior consultation and the Regulations thereto, issued Ministerial Decision No. 350-2012-MEM/DM, approving the necessary administrative measures for conducting prior consultations relating to the energy subsector.[137] The Ministry of Energy and Mines is still considering the timing of prior consultations on certain administrative procedures in the mining subsector.[138]

### 6. The right to an identity

158. The National Identity and Civil Status Registry empowers the Department of Identity Restoration and Social Support to propose and implement guidelines and institutional policies with a view to reducing the number of undocumented persons among marginalized groups, including indigenous peoples and Afro-Peruvian populations.[139]

159. The budget programme on access of the population to an identity, which is implemented by the National Identity and Civil Status Registry, is designed to enable the identification and vital statistics services to increase their coverage by issuing national identity documents and birth certificates for adults and minors throughout the country. In 2009, a budget of 28 million nuevos soles (approximately US$ 10.7 million) was allocated

[136] Article 16 of Act No 29875: "For the purposes of the consultation, the linguistic diversity of the indigenous or aboriginal peoples shall be taken into account, particularly in those areas where the majority of the indigenous population does not speak the official language. To that end, the consultations must be conducted with the support of interpreters who have received appropriate training on the subjects to be discussed in the consultations. The interpreters must be duly registered with the technical body of the executive branch that specializes in indigenous affairs."

[137] In the case of activities relating to hydrocarbons, Ministerial Decision No. 350-2012-MEM/DM states that the following administrative procedures are subject to prior consultation: concessions for transport of oil by pipeline; concessions for distribution of natural gas, amendments to concessions (only for extensions), authorizations for installation and operation of pipelines for primary and own use, amendments or transfers of authorizations for installation and operation of oil pipelines for primary and own use (only if for expansion of property for pipeline operation), Supreme Decrees approving the signing of exploration and drilling contracts of oil and gas lots, technical reports in favour of installing refinery and oil processing plants and service stations. In the case of electricity-related activities, the following administrative procedures are subject to prior consultation: granting of definitive concessions for generation, transmission and distribution, granting of rural concessions, amendments to definitive concessions for generation and transmission (only when new areas will be occupied), granting of authorizations for thermo-electric generation, granting of authorizations for exploration of geothermal resources and granting of concessions for operation of geothermal resources.

[138] In the case of the mining subsector, the Ministry of Energy and Mines is considering the timing of prior consultations relating to procedures such as the granting of processing/smelting concessions, authorization to initiate exploration activities in metallic and non-metallic mining concessions, authorization to initiate exploitation operations (including mining and waste-disposal plans) in mining concessions. In this regard, once the assessment has concluded, the relevant decision will be issued to approve the list of administrative procedures that are subject to prior consultation.

[139] As established in the second paragraph of article 183 of the Constitution and in the Act establishing the National Identity and Civil Status Registry (Act No. 26497), the Regulations governing its organization and operations, adopted by Administrative Decision No. 855-2010-JNAC/RENIEC 29SET2010, in articles 111 and 112, empowers the Department of Identity Restoration and Social Support to propose and implement guidelines and institutional policies designed to attain a sustainable reduction in the number of undocumented persons among the marginalized groups, including indigenous peoples and Afro-Peruvian populations.

for the programme. In 2012, the budget was increased to 229.8 million nuevos soles (approximately US$ 88 million).

160. The results to date as regards improvement of access to identity have been satisfactory. As of June 2012, 91.6 per cent of minors aged 0 to 17 had a National Identity Document;[140] this represents an increase from 2008, when only 27.5 per cent of minors had identification documents. As regards adults, 99.2 per cent of all persons aged 18 and over had a National Identity Document (29,883,988). Of that total, 15,007,252 were men (99.4 per cent of the male population), and 14,876,736 were women (99 per cent of the female population).[141]

161. In March 2012, the Ministry of Health, in coordination with the National Identity and Civil Status Registry, began implementing the information system for online registration of live birth certificates[142] at the national level. Health workers are trained to immediately enter, at the health establishment, an online record of the information about the mother and the newborn child, for purposes of issuing the Live Birth Certificate.[143] As of January 2013, 76,013 births had been recorded in 85 public and private health establishments in 18 regions of the country. It is expected that in 2013, the system will be implemented in 138 establishments, thus covering every region in the country.

162. In terms of percentages, the highest percentages of undocumented persons are in the rural forest areas. Several interventions have been carried out to reverse the situation; thus, document-processing fees are waived, travel by river is provided, and indigenous inhabitants are involved in the civil registry and identification process. Since June 2011, under a strategic partnership between UNICEF and the National Identity and Civil Status Registry, interventions have been carried out in 69 indigenous Amazonian communities in the Loreto region.[144]

163. The National Identity and Civil Status Registry records births in rural areas through its civil registry offices.[145] In 2012, there were 2,576 civil registry offices in municipalities of population centres, indigenous communities and population centres. Between 2005 and 2012, those offices recorded a total number of 153,266 births in rural areas.

164. The National Identity and Civil Status Registry has been implementing the National Plan 2011–2015 to eliminate the number of persons who are undocumented. The ultimate purpose of the Plan is to sustainably reduce the rates of undocumented persons, especially among priority groups, including the indigenous and Afro-Peruvian peoples.

[140] Daily Statistical Report of the National Identity and Civil Status Registry, of 16 May 2012.

[141] National Identity and Civil Status Registry. Document No. 0001048-2012/SGEN/RENIEC, of 25 June 2012. P. 2.

[142] System established in the Administrative Directive establishing the procedure for registering Live Birth Certificates in all health establishments, adopted by Ministerial Decision No. 148-2012/MINSA of 5 March 2012.

[143] Pursuant to article 25 of the Regulations for entering records in the National Identity and Civil Status Registry, in order to record births at the Civil Registry Office, the father and the mother who jointly or individually record the birth of their newborn children must possess a birth certificate issued by a doctor, an obstetrician or a nurse with a State-recognized degree or a certificate granted by an individual authorized by the Ministry of Health, who assisted with or witnessed the birth.

[144] National Identity and Civil Status Registry. Document No. 0001048-2012/SGEN/RENIEC, of 25 June 2012. P. 26.

[145] These offices operate in municipalities of population centres, in indigenous communities and in auxiliary civil registry offices in population centres. Article 129 of Act No. 27792, on Municipalities.

### 7. The right to own property

165. According to the Ministry of Agriculture, information provided by the regional governments of Pasco, Amazonas, San Martín, Ucayali and Loreto shows that 555 indigenous communities have requested recognition, issuance of land titles, expansion or transfer-for-use contracts (see annex 2).

166. In 2010, the multisectoral commission in charge of monitoring and facilitating compliance with decisions adopted by the National Coordinating Group for the Development of the Amazonian Peoples was created, by Supreme Decree No. 107-2010-PCM. The General Directorate of Forestry and Wildlife of the Ministry of Agriculture serves as the technical secretariat for the multisectoral commission.

167. The multisectoral commission has been tasked with drawing up proposals for implementation of the decisions of the National Coordinating Group in regard to the issuance of land titles, transfer-for-use arrangements on lands that are suitable for forestry production and protection and classification of soils according to their usability. To date, seven working meetings have been held which have produced some important results and documents.[146]

## B. Respect for economic, social and cultural rights

### 1. The right to housing

168. In Peru, 143,000 new households are established every year, increasing the demand for housing. Households grow at a rate of 2.5 per cent, while the population increases at a rate of 1.6 per cent, and the highest number in the population pyramid is accounted for by persons of reproductive age.[147]

169. The number of housing units increased as follows: nationwide, in 2002, there were 5,991,000 units; in 2007, 6,655,000; and in 2010, 7,178,000.[148]

170. The overall population is distributed unevenly throughout the country. It is highly concentrated in a small number of cities but widely scattered over the rural areas; 85 per cent of a total of 94,926 rural population centres have up to 150 inhabitants; taken together,

[146] Some of the key results were: (a) Adoption of rules of procedure and working methods and the Plan of Work; (b) Drafting of a report on communities awaiting recognition, land titles or expansion provided by different institutions and organizations: the Commission for the Formalization of Informal Properties submitted information covering up to 2008; the Office of the National Superintendent of Public Registries, to October 2011; Asociación Interétnica de Desarrollo de la Selva Peruana, to 2011, and the regional governments of Cajamarca, Cusco, Puno, Pasco y Apurímac, to 2011; (c) the Commission for the Formalization of Informal Property submitted model transfer-for-use contracts which are being reviewed and analysed by Commission members, with a view to editing and approving them; (d) it was decided that based on the criteria for registering indigenous communities that were posted by the Office of the National Superintendent of Public Registries on its website, suggestions will be made for improvements so as to enable the indigenous communities to comply with them; (e) a new outline for a socioeconomic study relating to the land-titling process was prepared which will be shared with the regions, requesting their views, approval and implementation; (f) working groups have been set up to develop technical and legal proposals for improving the rules currently in force for the issuance of titles for campesino and indigenous communities.

[147] Ministry of Housing, Construction and Sanitation. Document No. 2512-2012-VIVIENDA-SG, of 6 September 2012.

[148] National Institute of Statistics and Informatics – National Household Survey.

these population centres have a population of approximately 2.5 million, and one million housing units.[149]

171. The sparseness of the population poses a challenge for the State's efforts to guarantee the right to adequate housing and to provide infrastructure services and equipment. The Rural Habitat Programme[150] was created in January 2012 to serve the most vulnerable population, especially in rural areas. The purpose of the programme is to improve the quality of life of the poor and extremely poor populations living in rural population centres or remote areas, by providing or improving housing units and making infrastructure services and equipment more accessible, thus contributing to their social inclusion and strengthening the State's presence in the rural environment.[151]

172. The programme serves people who live in rural population centres, preferably those averaging 150 inhabitants (at altitudes of over 3,000 m) and includes plans for creation of the Centre for Support Services to Rural Habitat, also known as *Tambo*,[152] where state actors join forces to provide infrastructure services, equipment and training directly to the community and surrounding areas, in order to improve the quality of life.[153]

173. According to the 2007 National Census: Eleventh Population Census and Sixth Housing Census, there was a total housing deficit[154] of 1,860,692; the quantitative deficit was 389,745, and the qualitative deficit was 1,470,947.

174. The qualitative deficit accounts for the highest percentage of housing deficits nationwide, as it represents 79.1 per cent of the total and is due mostly to overcrowding (39.5 per cent). In the rural areas, qualitative issues account for 97.8 per cent, or 639,036 housing units; of these, 57 per cent (341,014) are in the 800 poorest districts of the country.[155]

175. In order to guarantee the right to adequate housing, the Peruvian State has been implementing a number of programmes, including the National Rural Sanitation Programme.[156] This programme is aimed at making quality water and sanitation services available on a sustainable basis to the rural population. The intervention covers rural

[149] Information taken from the preamble to Supreme Decree No. 001-2012-vivienda, of 7 January 2012.

[150] Ministry of Housing, Construction and Sanitation. Supreme Decree No. 001-2012-VIVIENDA (*El Peruano*, 7 January 2012).

[151] Article 1, Supreme Decree No. 001-2012-VIVIENDA, of 7 January 2012.

[152] The Tambos are designed to become not only centres for housing sector operations, but also as poles to generate development in the area. To that end, efforts will be made to bring improvements in other public services, such as health, education and transport, to rural areas. The idea is to provide overnight facilities for professionals from other sectors, as well as a modern and comfortable place where different stakeholders can provide services to the population living within the Tambo's area of influence.

[153] Available at http://www.vivienda.gob.pe/popup/Documentos_presentaciones/02_17012012_ TAMBOS.pdf.

[154] National Institute of Statistics and Informatics. Mapa del Déficit Habitacional a Nivel Distrital, 2007, p. 14. Available at http://www.inei. gob.pe/biblioineipub/bancopub/Est/Lib0868/libro.pdf. The qualitative deficit takes into account deficiencies in the quality of housing, including material problems (walls and floors), living space (overcrowding) and basic services (potable water, plumbing and electricity). Housing is considered to be overcrowded when the ratio is greater than 3, i.e., degree of overcrowding is an index according to which housing units are classified as overcrowded when the number of persons per room is higher than 3; housing units in which that is not the case are classified as not crowded.

[155] National Institute of Statistics and Informatics. Mapa del Déficit Habitacional a Nivel Distrital, 2007, p. 14. Available at http://www.inei.gob.pe/biblioineipub/bancopub/Est/Lib0868/libro.pdf.

[156] Ministry of Housing, Construction and Sanitation. Supreme Decree No. 002-2012-VIVIENDA (*El Peruano*, 7 January 2012).

population centres throughout the country, with priority being given to the rural districts served by the CRECER Strategy.[157]

176. The Generating Urban Land Programme (Programa Generación del Suelo Urbano)[158] is designed to meet the demand for urban land for low-cost housing and supplementary urban infrastructure services and urban equipment.

177. The purpose of the Comprehensive Neighbourhood Improvement Programme (Programa Mejoramiento Integral de Barrios) is to help improve the quality of life of the urban population living in marginalized neighbourhoods and to provide or supplement comprehensive infrastructure and equipment services, as well as encourage organizational processes.

### 2. The right to health

178. Since 2004, the Ministry of Health has been implementing the National Health Strategy for Indigenous Peoples,[159] whereby services are provided to the most vulnerable population. The National Centre for Intercultural Health[160] is in charge of this programme. The purpose of the Strategy, as stated in its general plan for the period 2010–2012, is to implement health services that are relevant in terms of interculturalism, narrowing the gaps in health services and improving patient services.

179. To date, the National Health Strategy for Indigenous Peoples has been implemented in the Amazon, Cajamarca, Junín, Loreto, Madre de Dios, San Martín and Ucayali regions. In the Andean regions, it is carried out in Ancash, Apurímac, Ayacucho, Cusco, Huánuco, Huancavelica, La Libertad, Moquegua, Pasco, Puno, Tacna and Lima provinces. In fifty per cent of the regions in which the Strategy is carried out, strategic partnerships have been established between the Ministry of Health and the regional governments for the purpose of improving the health of indigenous or tribal peoples.[161]

180. In fulfilling its objectives as an institution, as well as those of the National Health Strategy for Indigenous Peoples, the National Centre for Intercultural Health drew up a

[157] CRECER is a coordinated intervention strategy carried out by public entities that make up the national, regional and local governments; private entities, international cooperation agencies and civil society in general. The aim is to improve living conditions of the population living in poverty and extreme poverty and to reduce chronic malnutrition among children, especially children under 5.

[158] Ministry of Housing, Construction and Sanitation. Supreme Decree No. 003-2012-VIVIENDA, *El Peruano*, 7 January 2012.

[159] The National Health Strategy for Indigenous Peoples was created by Ministerial Decision No. 771-2004/MINSA.

[160] The National Centre for Intercultural Health is the technical, standard-setting agency of the National Health Institute, which works under the Ministry of Health. It is responsible for proposing policies and standards for intercultural health, as well as carrying out research, teaching, programmes and services, technology transfer and integration of traditional medicine, alternative medicine and complementary medicine with academic medicine, so as to help improve the health of the population. Taken from http://www.ins.gob.pe/portal/jerarquia/7/15/acerca-del-censi/jer.15, accessed on 16 October 2012.

[161] The Satipo network is one example of how the Strategy works. Thanks to its strategic partnership with the municipality of the district, ordinances have been issued that have made it possible to hire health personnel who speak the local language. The regional directorate for Junín has printed and distributed a handbook for community agents working in the indigenous language and has set up a network of healthy municipalities in which meetings are held to provide training in prenatal services and care of newborn infants. As regards the regional government of Ancash, between 18 and 20 July 2012, technical meetings were held on the incorporation of intercultural services and traditional medicine and inclusion of the ethnicity variable in health services. Also, a training course on the subject of interculturalism was offered for trainers in the intercultural health network of Ancash.

proposal for an intercultural health policy for the period 2010–2012, approval of which is pending. The proposed policy consists of four general policies aimed at guaranteeing: (a) the right to health, social inclusion and equity in health services; (b) the promotion of traditional medicine and its articulation with academic medicine; (c) strengthening of capacities in intercultural health; and (d) strengthening of cultural identity and participation of indigenous, Afro-Peruvian and Asian-Peruvian peoples in the health services.

181. Several meetings were held between 2010 and 2012 with a view to developing a consensus-based and participatory intercultural health policy that reflects needs and provides perspective on the health situation and that is consistent and relevant. The meetings were attended by representatives of indigenous organizations of national scope, Afro-Peruvian organizations, universities, professional colleges and non-governmental organizations.[162]

182. On the question of traditional medicine, the National Centre for Intercultural Health has proposed a methodology for identifying the agents of traditional medicine. It has also compiled information on therapeutic resources of traditional medicine, including more than 300 species of medicinal plants and over 1,200 scientifically identified herbal species. In addition, 18 monographs are available for the national herbal pharmacopoeia and the National Inventory of Medicinal Plants.[163]

183. The Ministry of Health, working through the National Centre for Intercultural Health, has been using the ethnic self-identification variable on the Health Information System (HIS) form,[164] in order to identify the ethnic groups served, along with their most frequently recurring ailments. During the present year, pilot tests have been conducted using the HIS form in the regions of Ucayali and Madre de Dios.[165]

184. The Observatory on Interculturalism and Rights of Indigenous and Afro-Peruvian Peoples was set up in 2008. This effort, which is coordinated by the National Centre for Intercultural Health, provides opportunities for working with civil society in order to coordinate actions and guarantee that the information is widely used and that the indigenous and Afro-Peruvian peoples are able to participate fully. The Observatory is comprised by a Steering Committee and focal points in the Amazonas, Cajamarca-Jaén, Cusco, Huánuco, Loreto, La Libertad, Madre de Dios and Ucayali regions. The main tools available to the Observatory are the reports of focal points on progress made in programmes that are carried out for the benefit of the indigenous peoples.[166]

185. To strengthen the capacities of health professionals in the area of interculturalism and promotion of Peruvian traditional medicine, between 2007 and 2011, a total of 717 health professionals received technical assistance to enable them to mainstream the intercultural approach in their work.[167] The regional governments have been working hard to reduce child malnutrition and improve health care.[168]

[162] National Health Institute – National Centre for Intercultural Health.

[163] National Health Institute – National Centre for Intercultural Health.

[164] A daily record of services and other activities in the health sector, known by the English acronym HIS (Health Information System).

[165] National Health Institute. National Centre for Intercultural Health.

[166] Number of reports: 2009 (3), 2010 (12), 2011 (17), 2012 (5) http://www.ins.gob.pe/portal/jerarquia/7/92/informacion-y-vigilancia/jer.92 (accessed on 16 October 2012).

[167] National Health Institute. National Centre for Intercultural Health.

[168] Thus, for example, the regional government of Cajamarca has taken steps to reduce maternal mortality through initiatives such as the Reduction of Perinatal Maternal Mortality Plan, the Consensus-based Development Plan for the Health Sector and Management Agreements for the Reduction of Maternal Mortality. Likewise, during 2011, the project on reduction of chronic childhood malnutrition with emphasis on improving access of pregnant women, nursing mothers and

186. The National Centre for Intercultural Health has conducted research studies on indigenous peoples with a view to developing a protocol on sociocultural determinants of certain respiratory sicknesses among children in the Aymara area and of hepatitis B among indigenous peoples, as well as a handbook on intercultural communication for prevention of STIs and HIV/AIDS, among others. The Centre is currently carrying out studies on the prevalence of hepatitis B and Delta and associated risk factors for those diseases among the Candoshi and Chapra peoples.[169]

### 3. The right to intercultural education

187. Concerning the right to intercultural education, the Ministry of Education set up the Beca 18 scholarship programme to guarantee access to education for vulnerable populations, including indigenous peoples and Afro-Peruvian populations. Under this programme, low-income youth, men and women who have completed their secondary education with high marks and who have recently enrolled in a higher institute of technology or a university are able to study without worrying about the cost of housing, food, transport, photocopies, degree fees and others.[170]

188. To implement the intercultural bilingual education programme, the authorities of the Ministry of Education are developing a national curriculum framework with an intercultural approach. A preliminary draft has been prepared which is being discussed at the national level by several stakeholders, including officials and specialists from the Ministry of Education, the Regional Directorate of Education and the local educational management units and bilingual teachers.[171]

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children under three to health services in the Cajamarca region was implemented in 15 indigenous communities, seven in the district of San José de Lourdes: Naranjo, Tuna, Chimichimi, Alto Naranjos, Santa Águeda, Nuevo Kucha, Chinin, and eight in the district of Huarango: Supayaku, Yamakey, Nuevo Cuchin, Suwa, Saawintsa, Valencia, Najen Chingozales. This project made it possible to strengthen local capacities, mobilize and engage social actors and generate strategic partnerships with different sectors with a view to promoting a culture aimed at improving the health of children and pregnant mothers and promoting active community participation.

The regional government of Amazonas reports that in the districts of Luya, Providencia, Ocalli, Ocumal in Luya province; San Miguel, Gollón and Leymebamba in Chachapoyas province; Jumbilla in Bongará province, and Huampami in Condorcanqui province, there are health centres that provide culturally appropriate services for vertical births. The regional government of Piura reports that such services are provided in the provinces of Ayabaca, Huancabamba and Morropón.

In order to prevent and control sexually transmitted infections (STIs) and HIV/AIDS in the Ucayali region, the regional government issued Regional Ordinance No. 018-2009-GRU-CR, approving the Multisectoral Regional Strategic Plan 2010-2015. Also, by means of Regional Ordinance No. 006-2010-GRU-CRU, the region declared the prevention, promotion and control of TB to be an issue of regional priority. It also prepared an informational bulletin on prevention of HIV/AIDS and sexually transmitted infections in adolescents and young people in the Ucayali region, written in both Spanish and Shipibo Conibo. These and other measures are aimed at dealing with the most frequently recurring diseases in the region.

[169] In 2012, seven research studies were carried out with indigenous populations in the Amazonas region (Awajun y Huampis) and with indigenous peoples in Huanta province, Ayacucho region. National Health Institute. National Centre for Intercultural Health.

[170] See http://www.pronabec.gob.pe/inicio/becas/beca_182013.html. This programme is being carried out by the regional governments. Thus, for example, in the Cajamarca region, the Beca 18 programme provides remedial education for young people in the indigenous communities of Naranjos in San Ignacio province, which will be the beneficiaries of the programme.

[171] The regional governments are working to mainstream the intercultural approach in their regional educational projects. Thus, for example, the regional government of Ancash has included in its Regional Education Project, as projected to 2021, a sixth line of action focusing on cultural identity

189. The authorities of the Ministry of Education have proposed special learning tracks *(rutas de aprendizaje)* for teaching interculturalism in the classroom. These tracks consist of a set of teaching materials designed to enable teachers to identify the skills they need to develop in their students.

190. The materials are designed for public and private schools in indigenous and non-indigenous urban areas. There is a special learning track for teaching about the contributions of Afro-Peruvian culture to the country. The Ministry of Education has developed intercultural primers for these learning tracks.

191. In response to the Committee's recommendation in paragraph 18 of its concluding observations, in 2012 the Ministry of Education developed an intercultural bilingual education plan that protects the rights of indigenous and Afro-Peruvian peoples, as it shows respect and consideration for their cultures by preserving their oral and written languages. The most important advances have been made in primary and preschool education. The intercultural bilingual education programme at the secondary level has not yet been fully developed.

192. In 2012, to implement the intercultural bilingual education programme, a work was begun on development of a strategic intercultural bilingual education plan that calls for the involvement of officials and specialists from the Ministry of Education, the Regional Directorate of Education, the local educational management units, international cooperation agencies, leaders of indigenous organizations in the Andean, Amazonian and Afro-Peruvian areas and bilingual teachers from different parts of the country. Representatives of Peruvian and foreign non-governmental organizations that are interested in intercultural bilingual education are also participating in this effort.

193. Educational materials and resources for intercultural bilingual education were produced between 2009 and 2012. In that regard, the General Directorate of Intercultural Bilingual and Rural Education prepared materials in several Andean and Amazonian languages; this work was done by decentralized teams of indigenous teachers and sages who speak their indigenous languages, with advisory services being provided by specialists from the Ministry of Education and experts in the development of such materials, including linguists hired by the Ministry of Education or by international cooperation agencies.

194. Twenty-one regional and local teams are involved in preparing the materials in indigenous languages.[172] In 2010, 100,157 copies of a total of 119 titles were distributed in the Awajun, Aymara, Quechua, Shipibo and Spanish languages. In addition, 22 titles were produced in the Amazonian languages; 86,805 copies were distributed during 2011 and 2012.

195. The Ministry of Education has standardized the educational use of languages, beginning in 1985 with Quechua and Aymara. To guarantee the right of the indigenous peoples to be taught in their own language and culture, the General Directorate for Intercultural Bilingual and Rural Education, is promoting the restoration, use and development of the languages that have not yet been standardized.

and bilingualism in diversity, which is included in local educational projects carried out by the local educational management units in the Ancash region. The regional government of Ucayali has decided that its regional educational project will focus on relevant, high-quality education and on equity and interculturalism.

[172] Materials must be consistent with the objectives and activities proposed, appropriate for the level of development and culture of the students, varied and appealing and free of bias based on gender, ethnicity, religion, language or culture, in order to ensure that the target group will be able to understand them.

196. Between 2006 and 2012, 17 Amazonian languages were standardized, as follows: Harakbut (Directorate Resolution No. 0680-2006-ED), Ese eja (Directorate Decision No. 0683-2006-ED), Shipibo (Directorate Decision No. 0337-2007-ED), Sháninka (Directorate Decision No. 0606-2008-ED), Yine (Directorate Decision No. 0220-2008-ED), Kakataibo (Directorate Decision No. 2551-2009-ED), Matsigenka (Directorate Decision No. 2552-2009-ED), Kandozi-Chapra (Directorate Decision No. 2553-2009-ED), Awajun (Directorate Decision No. 2554-2009-ED), Jaqaru (Directorate Decision No. 0628-2010-ED), Shawi (Directorate Decision No. 0820-2010-ED), Nomatsigenga (Directorate Decision No. 0926-2011-ED), Yanesha (Directorate Decision No. 1493-2011-ED), Cashinahua (Directorate Decision No. 0169-2012-ED) and Wampis.

197. The Ministry of Education's radio programme La Escuela del Aire (School of the Air) is designed to improve the childrearing skills of parents of children under 3 years old. The programme also contributes to children's overall development, focusing especially on the Andean, Amazonian and Afro-Peruvian populations.

198. The Ministry of Education also promotes community participation in the management of educational programmes. Between 2008 and 2011, meetings were held with *apus*, leaders and representatives of the Andean, Amazonian and Afro-Peruvian peoples.[173] In October 2011, technical committees on intercultural bilingual education were set up to make suggestions and build consensus for the design of policies on intercultural bilingual education. Civil society actors and different departments of the Ministry of Education took part in the meetings of the technical committees.[174]

199. To help reaffirm people's sense of identity, the Ministry of Education provides support and advice in connection with the design of local educational projects in border districts. Twelve such projects are currently being implemented.

200. In January 2012, the Ministry of Education adopted a directive establishing procedures for identifying, recognizing and registering intercultural bilingual education institutions.[175] In January 2012, work on targeting a comprehensive intervention in 73 rural educational networks in the 24 regions of the country was begun, applying the intercultural bilingual education model of schools. In July of this year, training of teachers for the educational institutions in the network was begun.

[173] One national meeting and nine decentralized macroregional meetings were held, and agreements and commitments were signed by education authorities and community representatives. The purpose of these meetings was to promote innovative projects and strengthen linkages between the schools and the community.

[174] Civil society participants included the Pontifical Catholic University of Peru, the National Association of Teachers of Intercultural Bilingual Education, the Andean Project on Campesino Technologies, Asociación Interétnica de Desarrollo de la Selva Peruana, the Institute of Applied Linguistic Research, Foro Educativo, UNICEF, SUMA and others.

[175] Directive adopted by Ministerial Decision No. 0008-2012-ED, which lays down criteria and procedures for identifying, recognizing and registering educational institutions at the preschool, primary and secondary levels nationwide that offer intercultural bilingual education. The Directive may be found at http://www.minedu.gob.pe/files/3042_201204250921.pdf. The regional government of Junín has implemented the directive by recognizing those centres that are required to provide this service through Local Directorate Decision No. 000972-2012-UGEL-J and Directorate Decisions Nos. 261.2012-DUGEL-RT, 0562-2012, 0956-2012, 0378-2012, 000808-2012-DUGEL-Tarma, 0839-2012, 000972-2012-UGEL-J, 1194-2012 and 000530-2012.

Also, as noted on the questionnaire developed by the regional government of Cajamarca, this region has also worked on identifying, registering and recognizing educational institutions that are required to offer intercultural bilingual education in the provinces of San Ignacio, Jaén, Chota, Cajamarca and Cajabamba.

201. Services for the networks will be provided by means of public investment projects. Forty-seven of the networks operate in bilingual indigenous contexts, covering 19 indigenous peoples and their indigenous languages, 16 of them in border areas.

202. To promote appreciation for the values of the Afro-Peruvian population, in November 2011, the Ministry of Education issued Directorate Decision No. 2556-2011-ED, announcing a contest on cultural heritage in the classroom which focuses on the history of the Afro-Peruvian people and their contributions to culture in Peru. The contest promoted the material and immaterial cultural heritage of the Afro-Peruvian population and called for an intercultural approach to education. Thus, it helped to recognize and raise the profile of the Afro-Peruvian people and contributed to the historical memory of the nation. The contest was announced in the 24 regions of the country. Fifty-eight entries were received, and awards were granted to 10 winners.

203. The Ministry of Education has taken steps to ensure that teachers receiving training for the intercultural bilingual education programme, and such training was offered in 2012. The General Directorate of Higher and Technical-Vocational Education, the Directorate of Advanced Teacher Training and the Directorate of University Coordination have been working on the development of a curriculum for schools of education that train bilingual teachers. The General Directorate of Regular Basic Education and the Directorate of Advanced Teacher Training are working on the proposed curriculum to upgrade the professional skills of preschool teachers for bilingual areas.[176]

204. Action is being taken to strengthen the capacities and professional competencies of teachers in educational institutions. Between 2009 and 2011, 23 teams of teachers were assigned to the 158 local educational management units of the 19 regions in the country. These teams worked at the preschool and primary levels in the context of the curriculum diversification process, following an intercultural bilingual approach and teaching in indigenous languages subjects such as communication, mathematics, personal and social studies, and science and environmental studies.

205. The National Commission on Intercultural Bilingual Education is helping with development of the Strategic Plan for Intercultural Bilingual Education. The Plan covers every aspect of intercultural bilingual education in educational institutions, including teacher training, development of relevant regional and local curricula and approaches to teaching, development of educational materials in both the indigenous language and Spanish, as well as from the perspective of intercultural development for all.

### 4. The right to a cultural identity

206. In response to the Committee's recommendation in paragraph 13 of its concluding observations, Act No. 29735, regulating the use, preservation, development, recovery, promotion and dissemination of the indigenous languages of Peru (hereinafter referred to

[176] At the regional level, a number of programmes have been carried out for indigenous-language teachers. The regional government of Cajamarca, for example, has taken the following actions:

R.D.R. No. 3874-2011/ED-CAJ provided for approval of the first training workshop on methodology for teaching the Cajamarca-Cañaris variety of Quechua.

R.D.R. No. 6158-2011/ED-CAJ, provided for signing of an agreement between the Regional Directorate of Education, the Hno. Victorino Elorz Goicoechea Public Institute of Higher Education and the Regional Academy of the Cajamarca Quechua Language. Since the signing of this agreement, all specialized subjects and sections of higher education have been taught in Quechua. Teachers are funded with the budget of the Regional Directorate of Education of Cajamarca.

R.D.R. No. 0451-2012/ED-CAJ provided for planning and implementation of the first training workshop on methodology for teaching the Awajun language in San Ignacio.

the Languages Act) was promulgated on 2 July 2011. The purpose of this Act is to define the extent of individual and collective rights and guarantees relating to languages.

207. The Ministry of Education and the Ministry of Culture have drawn up draft regulations to the Languages Act. This was done with the participation of indigenous organizations, working through the National Commission on Intercultural Bilingual Education. Once the draft has been reviewed and discussed at a technical roundtable on the development of languages that will be organized specifically for this purpose, it will be submitted for prior consultation, after which it will be implemented.

208. Between 2010 and 2012, the Ministry of Culture promoted the official use of indigenous languages, as provided for in article 15 of the Languages Act. Bearing in mind the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation recognized in ILO Convention No. 169,[177] and the Regulations thereto,[178] the Ministry of Culture set up the Register of Interpreters of Indigenous or Aboriginal Languages and the Register of Facilitators.[179] As stipulated in Act No. 29785 and the Regulations thereto, the Ministry of Culture is responsible for creating and updating this Register. The regulations for the Register of Interpreters of Indigenous or Aboriginal Languages are laid down in Directive No. 006-2012, adopted pursuant to Ministerial Decision No. 375-2012-MC.

209. During 2012, three training courses were held for interpreters of indigenous languages who would be involved in the prior consultation processes of May, October and November 2013. In the first course, training was provided to 30 interpreters and translators of six indigenous languages, namely Quechua, Awajun, Shipibo-Konibo, Ashaninka, Matsigenka and Aymara; in the second course, training was received by 26 interpreters and translators of Kukama Kukamiria, Kichua, Shawi, Yanesha, Tikuna, Yine, Cashinahua, Quechua and Awajuny; and in the third course, training was given to 26 interpreters and translators of Achuar, Ashaninka, Kandozi, Kichua, Matsigenka, Wampis, Nomatsigenga and Quechua Cañaris. It should be noted that before the training was held, an open invitation was made to the general public to participate in the interpreter selection process.

210. It will thus be possible to achieve the goal set for 2012 of having interpreters of 17 indigenous languages. The interpreters will be essential collaborators in the prior consultation processes, and they will be able to participate in the translation of official documents, among other duties. This will contribute to the protection, use and dissemination of indigenous languages both in the public and in the private spheres.

### 5. Respect for and promotion of cultural diversity

211. Between 2009 and 2012, respect for cultural diversity has been promoted through the state communications media. At the national level, the National Radio and Television Institute[180] disseminates and fosters appreciation for the customs, traditions, artistic expressions, folklore, legends, food and natural resources that exist in Peru. Through its

[177] Congress of the Republic, Act No. 29785. Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation recognized in ILO Convention No. 169, *El Peruano*, 7 September 2011.

[178] Ministry of Culture. Supreme Decree No. 001-2012-MC, Regulations to Act No. 29785, on the Right of Indigenous or Aboriginal Peoples to Prior Consultation recognized in ILO Convention No. 169, *El Peruano*, 3 April 2012. The Regulations to the Act on Consultation were published on 3 April 2012.

[179] The Registers were created by Directive No. 001-2012-VMI-MC.

[180] The National Radio and Television Institute is the state institution in charge of producing, issuing and broadcasting programmes with journalistic, educational, cultural and entertainment content.

programming, it publicizes the country's diversity and shows how it enriches the country, thus helping to fight against racial discrimination and addressing other social problems.[181]

212. On the question of legislation on indigenous languages and the use of such languages in the media, between 2009 and 2012, the Government adopted a number of regulations and took administrative measures to protect and promote the use of indigenous languages.[182]

### 6. The right to access to public places

213. As mentioned above, 18 anti-discrimination ordinances have been issued to date. Some of the ordinances are designed to protect consumers by imposing fines on and revoking licenses of commercial establishments that restrict entry or refuse services for customers because of their physical appearance, language or for other unjustified reasons. Many other ordinances include provisions such as the requirement to promote equality among persons and comply with regulations regarding preferential services and regulations prohibiting discriminatory practices by municipal officials.[183]

[181] One of the objectives of the National Radio and Television Institute's Strategic Plan for 2010–2014, which was adopted by Directing Council Decision No. 003-2010-SCD/IRTP of 10 February 2010, is to broadcast quality programmes that will be accepted by different segments of the population throughout the country, with a view to strengthening the national identity, providing support for governance and promoting democracy and social inclusion.

[182] In this regard, article 11 (h) of the Languages Act expressly stipulates that the State, through its communications media, shall promote and disseminate programmes in indigenous languages, as well as campaigns designed to restore and promote appreciation for the traditions, spoken expressions and oral heritage of the country. Accordingly, the National Institute for the Defence of Competition and Protection of Intellectual Property, with the support of the Office of the Deputy Minister for Intercultural Affairs of the Ministry of Culture, arranged for the translation of the Consumer's Decalogue into the Ashaninka, Awajún, Aymara, Ancash Quechua, Ayacucho Quechua, Southern Quechua and Shipibo languages. The Institute also created spot ads on the Decalogue in Ayacucho Quechua, Southern Quechua and colloquial Spanish, all of which are being prepared for publication. In 2013, the Institute plans to create spot ads in all the other languages in which the Consumer's Decalogue has been translated and to disseminate them through the communications media. The Institute also issued spot ads to disseminate information on the fourth National Agricultural Census in Aymara, Southern Quechua, Chanka Quechua, Spanish (Sierra and Selva), Shipibo, Awajun, and Ashaninka. The Office of the Deputy Minister for Intercultural Affairs had the Act on Prior Consultation and the Regulations thereto translated into Ancash Quechua, Ayacucho Quechua, Southern Quechua, Shipibo and Awajún; these translations will be printed and distributed in 2013.

Pursuant to article 15 of the aforementioned Act, the public and private entities that provide public services must plan and gradually implement training and hiring programmes for public officials who are able to provide services to the indigenous peoples in their own languages. To that end, the Office of the Deputy Minister of Intercultural Affairs plans to work in 2013 with the different sectors to provide support in this implementation process.

The Directing Council of the Energy and Mining Investment Oversight Agency adopted Decision No. 237-2010-OS-CD, el OSINERGMIN, providing that complaints may be submitted in Spanish, Quechua, Aymara and other indigenous languages.

[183] Regional Ordinance No. 017-2008, issued by the regional government of Apurímac, is the first regulation with the status of a law that deals comprehensively with discrimination in different aspects of life, not only in regard to consumers. See http://www.aprodeh.org.pe/racismo/documentos/ordenanzaregionapurimac.pdf.

## Article 6 of the Convention

214. The Peruvian State has taken steps to guarantee access to the tribunals. Among other measures, it created within the Ministry of Justice and Human Rights the Directorate-General of the Public Defender Service and Access to Justice,[184] formerly called the Directorate of the Public Defender Service.[185] One of the greatest advantages of this new Directorate is that it attaches special importance to defending victims whose rights have been violated in any way. This service is offered in addition to the criminal defence service that Peru has provided for many decades.

215. The Directorate-General of the Public Defender Service and Access to Justice has three divisions: the Directorate of Legal Aid and Defence of Victims, the Directorate of Criminal Defence and the Directorate of Extrajudicial Conciliation and Alternative Conflict-resolution Mechanisms.

216. The new structure has allowed for a better distribution of cases and specialization of services, where public policy is centred on guaranteeing access to justice for those who are most vulnerable and who live in poverty and extreme poverty. The reorganization has made it possible to more effectively disseminate at the national level information about the services offered by the Ministry of Justice and Human Rights.

217. The Directorate-General of the Public Defender Service and Access to Justice has assigned a public defender to every provincial capital. The defenders in the provincial capitals also serve the areas where there is extreme poverty in which it has not yet been possible to set up separate offices. One of the challenges is to bring judicial services to rural and remote areas throughout the country.

218. In June 2012, there were 908 public defenders; at present, there are 1,101 throughout the country; this represents a 57 per cent increase with respect to 2008, when there were 697 attorneys. Between January 2008 and June 2012, 1,436,910 cases were considered, and public defenders for criminal matters dealt with 513,897 cases. Under the new Code of Criminal Procedure, 53,793 cases were considered, and legal assistance was provided in 28,095 cases, at the national level. The Public Defender Service is available in 104 offices throughout the country.

219. The Directorate of Legal Aid and Defence of Victims provides free legal aid in family, civil and labour matters; the public defender replies to queries on legal matters, provides legal counsel in the aforementioned areas and initiates lawsuits when necessary. As of September 2012, 158 public defenders provided legal assistance, and 25 public defenders defended victims. These numbers rose, such that by March 2013, 179 public defenders were available for legal aid and there were 28 public defenders to represent victims.

220. The Directorate of Extrajudicial Conciliation and Alternative Conflict-resolution Mechanisms provides conciliation and arbitration services. It works to achieve peaceful

[184] Executive Branch. Supreme Decree No. 011-2012-JUS, Reglamento de Organización y Funciones del Ministerio de Justicia (*El Peruano*, 20 April 2012). Pursuant to this Decree, the Directorate-General for Human Rights is a unit of the Office of the Deputy Minister for Human Rights and Access to Justice of the Ministry of Justice.

[185] Executive Branch. Supreme Decree No. 013-2009-JUS. Adoption of the Regulations to Act No. 29360, on the Public Defender Service (*El Peruano*, 23 September 2009).

conflict resolution on family and/or civil matters, so as to avoid going to court, giving the more vulnerable population access to justice more expeditiously and at lower cost.[186]

221. The Directorate-General for Human Rights also provides public defence services in criminal matters, with the aim of guaranteeing respect for the right to defence of low-income defendants who are indicted for offences or misdemeanours. It also defends juvenile offenders in criminal cases.[187]

222. Under the ALEGRA programme, free legal aid centres were set up to consolidate public services that provide comprehensive assistance, including public defenders for family, civil and labour matters, victim defence services and extrajudicial conciliation, with priority being given to persons who are especially vulnerable. Each ALEGRA centre has a team of professionals made up of a mediator, a public defender for family matters and a public defender specializing in victim defence. In 2008, there were 23 centres, and at present there are 29; approximately two centres have been added each year.

223. With implementation of the New Code of Criminal Procedure and the New Labour Procedures Act, the Peruvian justice system is experiencing a period of reform in criminal and labour matters. As a result of the enactment and entry into force of the New Code of Criminal Procedure, criminal procedures are focused on guaranteeing rights, in accordance with the Political Constitution of Peru and the relevant international human rights treaties. This has been done to correct the deficiencies of the previous Code of Criminal Procedure, which had tended to be inquisitorial in nature.[188]

224. Act No. 29824, on the Justice of the Peace System *(Justicia de Paz)*, was enacted in January 2012 with a view to reducing cultural, economic and geographic barriers that hinder access to justice. The justice of the peace system is part of the judiciary and operates mainly in remote areas that are far from the capital cities. Justices of the peace settle conflicts and controversies, mainly through conciliation but also through judicial decisions.

225. The justices of the peace[189] must state the reasons for their decisions, although they are not required to establish legal grounds. In all cases, however, human dignity and the fundamental rights of individuals must be respected. Justices of the peace apply not only the law but also local uses and customs, that is, the criteria of justice followed by the community.

226. As established in the Political Constitution of Peru, justices of the peace are appointed through mechanisms that allow for popular participation. Act No. 29824 stipulates that the judiciary is responsible for promoting greater participation of women in the election and selection of the justice of the peace.

227. A working group was set up by Ministerial Decision No. 0085-2012-JUS to draw up preliminary draft regulations to Act No. 29824.[190] In order to obtained views and

[186] Between January 2008 and May 2012, 40,124 conciliation proceedings were held; among these, full agreement was achieved in 30,730 cases (76.6 per cent); partial agreement was reached in 916 cases (2.3 per cent), and there was no agreement in 8,478 cases (21.1 per cent).

[187] Article 7, Supreme Decree No. 013-2009-JUS.

[188] In June 2012, the New Code of Criminal Procedure was in force in 21 of the 31 judicial districts in the country. In July 2012, the New Labour Procedures Act was being implemented in 12 judicial districts. This reform process introduced several new procedural principles, such as immediacy, orality, celerity and procedural economy.

[189] Pursuant to article II of the preliminary title of the Act on the Justice of the Peace System, justices of the peace are chosen through mechanisms that provide for participation by the people.

[190] The proposal was drafted by a working group established by Ministerial Decision No. 0085-2012-JUS, of 21 March 2012. The working group is comprised by representatives of the

suggestions from citizens, the Ministry of Justice and Human Rights called for a discussion of the preliminary draft regulations to Act No. 29824, on the Justice of the Peace System, which governs the activities of over 5,400 justices of peace throughout the country.

228. To coordinate the work of the actors involved in community justice, article 60 of Act No. 29824 stipulates that population centres where justices of the peace coexist with community organizations such as the peasant patrols *(rondas campesinas)*,[191] campesino communities[192] or indigenous communities,[193] they must coordinate their work in order to ensure proper administration of justice, as called for by article 149 of the Political Constitution of Peru.[194]

229. The judiciary, working through the Supreme Court of Justice of the Republic and the Executive Council, applies four key strategies to promote interculturalism in the administration of justice:

- International and national congresses are organized and carried out to discuss the role of interculturalism in the pursuit of justice;
- A plenary decision has been drafted as guidance for improving the treatment and management of criminal proceedings relating to offences that are attributed to authorities or members of the peasant patrols;
- A working group on indigenous justice and justices of the peace has drawn up a number of important bills, as well as an institutional roadmap, with a view to contributing to the development of intercultural justice in the country;

Ministry of Justice and Human Rights, the Judiciary, the Office of the Public Prosecutor, the National Election Procedures Office and specialists in this area.

[191] In 2002, Act No. 27908, on Peasant Patrols *(Rondas Campesinas)*, was enacted to implement the provisions of article 149 of the Political Constitution of Peru. This Act recognizes the juridical personality of the peasant patrols as an autonomous and democratic form of community organization which can support the work of the courts in campesino and indigenous communities. Article 9 of the Act provides a strong basis for developing regulations to article 149 of the Constitution, as regards implementation of a system for coordinating ordinary justice and special justice. The article reads as follows: "Article 9. Coordination and support with judicial authorities: The authorities of the ordinary justice system shall establish relations and coordination with the leaders of the peasant patrols, with due regard for the autonomy of each institution. The leaders of peasant patrols may request the support of the police and other State authorities."

[192] Article 2 of Act No. 24656 stipulates that "Campesino communities are organizations affected with a public interest that have legal existence and legal standing; they are made up of families who live in and control specific territories to which they are bound by ancestral, social, economic and cultural ties, which are reflected in communal ownership of the land, communal work, mutual aid, democratic government and activities the purpose of which is to allow for the full development of their members and of the country (...)".

[193] Article 8 of Decree Law No. 22175 provides that "Indigenous Communities have their origin in the tribal groups of the *Selva* and *Ceja de Selva*. They are made up of groups of families who are bound together by the following key elements: language or dialect, cultural and social character, shared and permanent ownership and use of the same territory, in nuclear or scattered settlements". Article 9 of the Decree Law stipulates that "Members of an indigenous community are those who are born within the community and those who are incorporated by the community, provided that they meet the requirements laid down in the Statute on Indigenous Communities".

[194] Political Constitution of Peru. "Article 149. Authorities of peasant and indigenous communities, in conjunction with the peasant patrols, shall exercise jurisdictional functions at territorial level in accordance with customary law, provided they do not violate the fundamental rights of the individual. The law provides for the way of coordination of such jurisdiction with justice-of-the-peace court and other instances of the Judiciary."

- A draft bill on harmonization and intercultural coordination of justice has been submitted to the Congress of the Republic.

230. Plenary Decision No. 1-2009-CJ-116, on Peasant Patrols and Criminal Law, was adopted on 13 November 2009. This Decision addresses two essential issues: on the one hand, it takes an innovative approach, from the judicial standpoint, to the role and importance of the social controls that are exercised by the peasant patrols. On the other hand, it lays down criteria for ensuring that the national judiciary deals appropriately with criminal cases in which members of those community organizations are involved.

231. It should be noted that the Plenary Decision is a tentative, not a definitive, measure. It merely represents a preliminary effort to deal with an issue which has been raised repeatedly over the last few decades in the work of the criminal courts. For a variety of reasons, it has not always been possible to find satisfactory solutions or alternatives in the jurisprudence; this became clear in the case of the members of the peasant patrol of Pueblo Libre in the Department of San Martín. Therefore, the Plenary Decision and its theoretical basis need to be evaluated and reviewed from time to time, as well as the specific impact of its application by the bodies and courts of the criminal justice system.

232. The Plenary Decision is directed mainly at the judges, not the peasant patrols. Its usefulness lies in the fact that it advocates prudence on the part of the courts, with a view to ensuring that they take an appropriate approach in future intercultural conflicts arising from punitive judicial intervention of the peasant patrols. To that end, the Plenary Decision establishes policies for properly handling such proceedings, including the following:

- Identify budgets that legitimize punitive judicial intervention of peasant patrols;
- Identify budgets that allow for the intervention of ordinary justice in criminal matters;
- Develop a basic typology of any excesses committed by authorities of peasant patrols that would give rise to the application of ordinary criminal law;
- Establish criteria based on the doctrine of criminal law that should be evaluated when applying ordinary criminal law in cases of offences attributed to members of peasant patrols.

233. Applying all these criteria has made it possible to achieve the following positive results in the work of the national judiciary:

- Judges have been encouraged to follow an innovative intercultural approach in reflecting on how the criminal justice system deals with offences attributed to members of peasant patrols;
- Since the adoption of the Plenary Decision, coordination between the peasant patrols and the ordinary criminal justice system has improved, and relations are smoother, more equitable and less strained;
- The interest that the Plenary Decision has awakened in the legal community has been expressed in different venues and media, such as forums and publications, thus increasing dissemination and feedback.

234. The Commission on Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology of the Congress of the Republic is currently considering Bill No. 313/2011-PJ,

on the Coordination and Intercultural Harmonization of Justice Act. This proposal was drawn up by the judiciary.[195]

235. Concerning labour, the Directorate of Operations of the Labour Inspectorate, an organic unit of the Ministry of Labour and Employment, is responsible for receiving and acting on complaints of discrimination. Act. No. 28806, the General Act on Labour Inspection, assigns to the Directorate of Operations responsibility for administrative oversight of compliance with regulations designed to suppress discrimination in the workplace. It also provides that the Ministry of Labour and Employment and the regional governments are jointly responsible for establishing rules, guidelines, mechanisms and procedures for monitoring compliance with workplace regulations, including anti-discrimination rules.

236. The Ombudsman's Office focuses, among other things, on protecting the right to equality and non-discrimination. Citizens' complaints, requests or queries are dealt with by the different ombudsman's offices and units throughout the country. There are currently 38 such offices and units, one each in the departmental capitals,[196] in the constitutional province of Callao and in some cities with a large population.[197]

237. Between 2009 and 2012, the Ombudsman's Office received 182 complaints of alleged discrimination, 12 of them based on physical appearance or ethnic identity.[198] The behaviours that led to the complaints included insults and maltreatment in educational institutions, in the workplace, and in public offices or private establishments, on the basis *inter alia* of skin colour, language or customs. To address the complaints, the Ombudsman's Office recommended that the competent authorities should take steps to ensure that discriminatory acts are stopped and to conduct investigations to clarify the complaints and impose appropriate penalties.[199]

238. On the issue of penalties, compensation or reparations imposed in cases of racial discrimination, during the period 2009–2012, an emblematic case was that of UVK Multicines Larco S.A.[200] In September 2011, Ricardo Apaza, a craftsman from Cusco, who lived in the community of Queros, lodged a complaint alleging that employees of UVK Multicines in the Larcomar shopping centre had not let him re-enter the screening room after going to the bathroom.

239. The municipality of Miraflores district in Lima conducted an investigation and found that the company had committed discriminatory practices. Moreover, it found that the company had violated the law by not posting a notice on the prohibition of all forms of

[195] Congress of the Republic. Bill No. 00313/2011-PJ. Available at: http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2011.nsf.

[196] In the case of Lima, there are four ombudsman's offices: Lima, North Lima, South Lima and East Lima.

[197] For example: Andahuaylas, Chimbote, Huanta, Jaén, Juliaca, La Merced, Puquio, Satipo, Tarapoto and Tingo María.

[198] Based on information obtained from Deputy Ombudsman's Report No. 009-2012-DP/ADHPD, of 20 September 2012. The 12 complaints were received by the ombudsman's offices in Cajamarca, Callao, Cusco, Huancavelica, Junín, Lima, Piura, Puno, Tacna and Ucayali.

[199] Information taken from Deputy Ombudsman's Report No. 008-2012-DP/ADHPD, issued in August 2012.

[200] News report on the punishment ordered against UVK (Larcomar) Cinema for racial discrimination. Taken from: http://www.miraflores.gob.pe/_contenTempl3.asp?idcontenido=5627.

discrimination in the district, as required by article 5 of Ordinance No. 294-2008/MM.[201] The municipality of Miraflores decided to punish the company by provisionally closing down the cinema for seven work days and imposed a fine of 50 per cent of one tax unit, i.e., 1,800 nuevos soles.

240. In addition to its national office in Lima, the Police Officers' Advocate Service has four decentralized offices in Arequipa, Trujillo, Iquitos and Huancayo. Through these offices it has resolved specific cases, issued decisions and reports and promoted the adoption of several rules for guaranteeing the rights of police personnel.[202]

## Article 7 of the Convention

241. Steps have been taken in the areas of education and culture to eliminate the prejudices associated with racial discrimination and develop a prejudice-free culture.

242. Ministerial Decision No. 0035-2013-ED, adopted on 28 January 2013, created the Sectoral Commission for the mainstreaming of human rights, interculturalism and gender equality. This Commission, which provides internal coordination within the Ministry of Education, is responsible for monitoring and evaluating the indicators and goals contained in the multisectoral plans in which the education sector participates.

243. In the education sector, Act No. 29719, of 25 June 2011, and the relevant directive promote the ideal of living together without violence. A campaign entitled "I deserve to be treated well" *("Tengo Derecho al Buen Trato")* was begun in 2007 and ratified in 2012 by means of Directive No. 0343-2010-ED-DITOE on rules for providing tutoring and educational guidance in the regional directorates of education, local educational management units and educational institutions. These measures are aimed at preventing all forms of humiliating treatment of students on the part of their peers and their teachers.

244. Since 2008, the educational materials used by the Ministry of Education have been produced through a competitive bidding process in which technical specifications are spelled out. One of them is that the materials must not reinforce any kind of stereotype or prejudice relating to gender, ethnicity, race, persons with disabilities or other features. Moreover, gender, equity, rights, human development and appreciation for diversity must be incorporated into the texts, designs and graphics to be produced.

245. In 2012, the Ministry of Culture, in coordination with the Ministry of Education, designed and carried out a contest entitled *Ruta Qhapac Ñan*. In this contest, 25 young people in the fourth and fifth years of secondary education from the regions of Ayacucho, Lima, Loreto and Puno and the Constitutional Province of Callao had the opportunity to travel through different places along the Inca Road or *Qhapaq Ñan*, as well as to see and interact with the local population, sharing part of their culture and customs.

[201] Ordinance No. 294-2008/MM

Article 5 – Posting of Notice

All commercial establishments that are open to the public must post in a readily visible place, a notice stating the following: "Discrimination is prohibited in this facility and throughout the district of Miraflores", and the notice must include the number of this ordinance. This notice must measure approximately 25 x 40 cm. It must have a black border and black lettering over a white background.

[202] In addition, the Ministry of the Interior set up a free telephone line covering the entire country (0-800-1-1616) on which the Police Officers' Advocate Service can receive complaints from police personnel concerning violations of their rights, including the right to not be discriminated against by police or civilian personnel in any unit of the Ministry.

246. The purpose of the contest is to build intercultural citizens who are able to include in their perspective on life and the country's development the plurality of visions that are present in the Peruvian State. Thus, the contest will help lay the groundwork for a national identity that is multicultural and multilingual. This will enable young people, who are the decision makers of the future, to acknowledge each other, to become familiar with the cultural diversity of their country. Existing prejudices and stereotypes will be eliminated by encouraging them to come closer and understand each other's lifestyles. The *Ruta Qhapac Ñan* contest will be held every year and will cover all regions in Peru.