

ECONOMIC AND SOCIAL COUNCIL
Substantive session of 1996

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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

Addendum
PERU*

[22 August 1995]

* The initial report submitted by the Government of Peru concerning rights covered by articles 6 to 9 (E/1984/6/Add.5) was considered by the Sessional Working Group of Governmental Experts at its 1984 session (E/1984/WG.1/SR.11 and 18).

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National environmental legislation and policy

489. The need to adopt an integrated approach to resolving environmental conflicts and disturbances has led to the adoption of the Bill establishing the National Environment Council (CONAM), an institution with ministerial rank whose function is to direct and supervise national environment policy and which will coordinate the functions performed by the various sectoral environmental authorities.

490. After many years during which Peru's environmental legislation and policy were in a state of near-neglect or disregarded on the grounds of their incompatibility with an economy in crisis, the establishment of an entity to act as an environmental authority has marked one of the most significant steps in the reform of environmental management. It will contribute to strengthening the State's institutions and will form an important part of a policy oriented towards sustainable development. Its positive repercussions will also provide a favourable framework for harnessing advanced technology at a time of commercial expansion.

Foundations for reform

491. The foundations for the long-awaited reform of environmental policy were first laid in 1990, with the promulgation of the Environment and Natural Resources Code; since then environmental protection regulations have been issued for mining, hydrocarbons, industrial, forestry and fishing activities. The Environmental Impact and Management Programme (PAMA) has also recently come into operation. All sectors of production are required to comply with the Programme in order to ensure that within a specific time-limit they introduce comprehensive technological innovations which will considerably reduce the harmful environmental impact of their operations.

Functions and conservation

492. CONAM will supervise the implementation of all these provisions and the activities of the institutions to ensure that, without overlapping, they contribute to achieving the primary objectives of equilibrium

between economic development and environmental use, guaranteeing a decent quality of life and the institutionalization of environmental management. From this standpoint, one of CONAM's first measures will be to draw up a single set of national regulations on parameters of environmental pollution, to serve as a reference for all industrial activities.

493. CONAM will be responsible for directing and assessing national environmental policy, coordinating actions in this sphere by ministries and regional and local governments, promoting international cooperation, establishing guidelines for environmental impact studies, recommending suitable development of the nation's natural heritage and, in the last resort, solving problems deriving from the use of the environment and resources.

494. Because of their global nature, environmental problems require that an institution such as CONAM should possess broad political and administrative authority, in conjunction with a multisectoral and multidisciplinary structure, and permit broad participation, including that of the public, who are the most seriously affected by pollution. CONAM is structured with this aim in mind.

495. Its Board of Directors will comprise members appointed by the Executive (including representatives of sectors linked to industry and the community) and by municipalities, the universities and the business sector. The Executive Secretariat, the technical organ, will comprise environmental specialists (who may include representatives of environmental NGOs). The Consultative Commission, the advisory organ, will be composed of specialists appointed by the public and private sectors.

Potential

496. CONAM is not merely intended to act as a first line of defence against the disease of environmentally destructive economic growth. Those countries which possess national ministries or secretariats for the environment are demonstrating that it is possible to plan economic progress while preserving the environment, and that without such institutions it is impossible to resolve the conflicts created by environmental decay.

497. The dramatic characteristics of environmental deterioration are not the only reason for establishing such an institution. Its establishment is compatible with the commitments made by Peru at the 1992 Earth Summit in Brazil, and with the efforts required if Peru is to comply with the global agreements into which it has entered, such as the Montreal Protocol on Substances that Deplete the Ozone Layer, the United Nations Framework Convention on Climate Change and the Framework Convention on the Conservation of Biological Diversity.

498. However, one of the most important reasons for the founding of CONAM is Peru's vast natural wealth, which ranks Peru among the five countries with the greatest biological diversity in the world. Peru's status obliges it to play a leading role in protecting ecosystems and offers it an opportunity to take advantage of its position in order to attract international resources for the environment and development.

General policy provisions for conservation in the fisheries sector

499. Through the Ministry of Fisheries, the Government has reasserted its determination to promote and guarantee the activities of this sector, in harmony with the preservation of the environment. To this end, it has incorporated the general policy provisions for environmental protection.

500. Companies currently operating in the fisheries sector are accordingly required to submit an environmental impact and management programme, in conformity with the guidelines set out in Ministerial Decision No. 177-94-PE.

501. The Ministry of Fisheries, which is the relevant sectoral authority, has opened a register of institutions specializing in environmental impact studies and established an ad hoc committee to evaluate and approve these studies. Consequently, fishing companies which fail to comply with the established provisions will incur heavy penalties, in conformity with the regulations of the current General Fisheries Act and other legal provisions in force relating to the environment.

502. The Peruvian fishmeal industry has been in operation for over 40 years, and even at its peak, when Peru was the world's leading producer with an output of 12 million tonnes of processed raw material, it was not responsible for the pollution levels of which it is accused by those who have an interest in vilifying Peru's fishing industry.

Ecology and environment (summary of legislation)

503. It follows from the above that we consider ecology to be the custodian of nature and of the environment, in keeping with the principles of biological sustainability.

504. The role of the law is to protect life, in conformity with the obligation laid down by article 2, paragraph 22, of the Constitution, which recognizes the right to enjoy a balanced environment appropriate for the development of life.

505. This provision, like the former provision of article 123 of the 1979 Constitution, stipulates that the following assets are protected:

- (i) A healthy environment;
- (ii) The development of life;
- (iii) Nature.

506. Accordingly, the State is required to prevent environmental pollution and to require, in conformity with article 8 of the Environment Code, the mandatory environmental impact studies for any economic activity, as specified below.

507. In short, life, the conservation of natural resources and efforts to combat environmental pollution are the basic foundations of ecological legislation.

508. Article 1 of the Environment and Natural Resources Code, which, it should be explained, was adopted within the framework of the 1979 Constitution, regulates article 123 of the Constitution and classifies environmental rights as inalienable. In addition, the Code extends to all the duty to contribute to preserving an environment that is beneficial for the development of life.

509. The relevant articles of the 1993 Constitution are articles 66 to 69. In conformity with these articles, the environment and natural resources are jointly recognized as being the common heritage of the nation and contributing to the public interest. They may accordingly be invoked on grounds of public need and utility.

510. In procedural terms, the right of all persons to institute legal proceedings to ensure the preservation of protected assets is recognized, regardless of whether the applicant or complainant has an economic interest. It is sufficient for him to have a moral interest, even if he or his family is not directly affected since the right to a healthy environment affects the life of society as a whole and its protection is thus the responsibility of all society's members. The public right of action may also be exercised.

511. The primordial importance of these principles is enshrined in the Universal Declaration of Human Rights, article 3 of which guarantees the right to life.

Agro-ecology

512. The notion of agriculture linked to ecology is termed agro-ecology, or organic agriculture, biodynamic agriculture or crop ecology; it can be summarized as agriculture with an ecological focus. It calls on the biological sciences, with the assistance of the agrosystem and the ecosystem.

513. The ecosystem signifies the unified study of the physical elements of the environment: climate, soil, geology, etc. The ecosystem also encompasses all the species occupying a given area and the interactions between its living and non-living components.

514. The agrosystem is the result of human modification of the natural ecosystems, which man basically alters to provide fields for crops and grazing. The agrosystem is of enormous importance, as virtually one third of the Earth's land area is currently under cultivation or used for grazing. The agrosystem is thus an ecosystem that has been altered by man through the input of certain human effort (known as benefit).

515. Decree-Law No. 21,147 creates important conservation areas which are inviolable; in other words, their ecosystem may not be altered. They are the national parks, the national reserves, the national sanctuaries and the historic sanctuaries.

National parks

516. Their purpose is to protect wild flora and fauna, to offer the beauty of their landscape and to preserve species from extinction.

National reserves

517. The national reserves are intended to protect wild fauna, whose biodiversity is of national interest; they include the Paracas and Pampa Galeras reserves in the Libertadores Wari region.

National sanctuaries

518. The national sanctuaries offer protection for varieties of plants or a community of a particular animal species. Examples are the Tumbes sanctuary for mangroves, shellfish and the black crocodile. They also include natural formations of scientific and aesthetic interest.
Historic sanctuaries

519. The historic sanctuaries protect the natural settings in which illustrious events of Peruvian history took place. They include the Pampas de Junín and La Quinoa in Ayacucho. The former Punchauca estate in Carabayllo (Lima) also falls into this category. Under Decree-Law No. 21,147, all these inviolable areas must be used without causing degradation and not for mere economic advantage.

520. When any of the rights vested in the nation in respect of natural resources is violated, judicial protection and consideration are the responsibility of the specialized agrarian courts, in conformity with Decree-Law No. 21,147. In conformity with article 130 of the Environment Code, administrative responsibility has been delegated to the Office of the Comptroller-General. This article stipulates that responsibility for the protection of the environment and natural resources shall be assigned so as to ensure strict compliance with the Code throughout the territory of the Republic.

521. It would have been more consistent with the 1979 Constitution to establish a ministry of the environment, as in Brazil and Colombia, with which Peru shares the Amazon region. The current Constitution (1993) has established the National Commission for Environmental Management (an interministerial body). It should be borne in mind that article 159, paragraph 4, of the former Constitution expressly stipulated that the ecological equilibrium of the Amazon region should be preserved in the interest of developing its agricultural potential.