

“Economic and Social Rights Violations in Peru”
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I. Introduction

A. This presentation focuses on the importance of the Commission’s role in promoting economic, social, and cultural rights in the context of its proposed country visit to Peru:

- Peru’s history of poverty, social exclusion, violence, democratic instability, and widespread civil rights violations underscore the importance of treating human rights holistically;
- Exceptional economic growth (the highest in Latin America over the early nineties and highest in the world in 1995) and political stabilization have failed to alleviate the most pressing social and economic problems;
- Authoritarian decision-making and extreme measures have in many cases exacerbated an already dire situation.

B. Commission’s visit to Peru must go beyond past focus on civil and political rights:

- Commission’s past reports on Peru have focused almost exclusively on civil and political rights, most recently manifest in 1993 Report which made no allusion to economic, social, and cultural rights;
- Peru’s economic, social and cultural rights obligations are bolstered by a number of international treaties going beyond the Charter, Convention, Declaration and the National Constitution;
- In this regard, the Commission’s work is supported by recent observations regarding Peru’s compliance with ESCR by the UN Committee on Economic, Social, and Cultural Rights and the International Labor Organization;
- Peru has also recently ratified the Additional Protocol relating to Economic, Social and Cultural Rights (San Salvador Protocol), and while the Protocol still wants for sufficient ratification’s, ratifying governments are still bound to ensure that their actions do not frustrate the Protocol’s purposes.

II. ESCR are increasing import to Latin America

A. the Commission recently stated: “without progress in the area of economic and social rights, the pursuit of civil and political rights (which have been attained with great hardship and human sacrifice) will remain merely aspirations for particularly those sectors with the least resources and lowest levels of education.” (IACHR Annual report 1993):

B. while the Americas have witnessed expanding civil and political rights over the past decade, these gains have not been matched by improved conditions for the vast majority of populations (note that Latin America is the most inequitable region in the world and while per capita income has increased, the absolute number of people living in poverty has doubled over the last 40 years)

III. The Commission has a critical role to play in promoting more balanced attention to the full range of human rights and ensuring that development does not undermine ESCR

A. the relative lack of attention to ESCR among governments, NGOs, and the OAS institutions has contributed to a widespread ignorance about these rights and the mistaken impression that human rights are in fact limited to civil liberties:

B. the Commission has explicitly affirmed its mandate and obligation to promote ESCR:

- “The Organization of American States and, in particular, the Inter-American Commission on Human Rights as the organ specifically charged with promoting and defending human rights, is duty-bound to take a more active role in protecting economic, social and cultural rights, just as it is with respect to civil and political rights” (1979-80 Annual Report);
- “The Commission has the obligation to play as active a role in the protection of economic, social and cultural rights as it is playing with regard to civil and political rights.” (1985-1986 Annual Report);

C. The Commission has demonstrated its competence to elaborate and monitor ESCR, e.g. in:

- country reports underscoring such obligations as:
 - equal access to basic services, including education, health, and social security
 - fair distribution of resources, wages, and land-holdings
 - full employment and labor protections (see e.g.: Haiti, 1979, Brazil, 1997)
- decisions such as that concerning the Yanomami in Brazil in which the Commission held the government in violation of the American Declaration for “having failed to take timely and effective measures to protect the human rights of the Yanomamis” and reaffirmed the rights of this population to life, security, health, and cultural integrity. (Resolution No. 12/85, case no. 7615, March 5, 1985)
- commentary in annual reports covering ESCR¹ and general calls to OAS institutions and members to:
 - “guarantee conditions that enable people to gain access to food, health services and education, and should fully enforce minimum wage laws. To this end, member states should reform basic economic and political structures that inhibit the development of such conditions.”
 - “When formulating domestic economic policies, member states should guarantee an economic environment that will enable the poor to participate in the political and economic decision making processes. As an example, member states should promote respect for labor unions, including their rights to organize, bargain collectively and conduct strikes with the state playing a neutral role.”
 - “Member states should ensure that socially disadvantaged groups, particularly minorities, do not suffer disproportionately from economic adjustment measures.”
 - “When formulating the initial study for economic adjustment programs and the development and financial institutions with which they work, member states should avoid programs that exacerbate the conditions of the poor.” (1993 Annual Report)

¹ Lamentably, the Commission has neglected to include a specific section on ESCR in its last two annual reports.

IV. General comments on Monitoring ESCR in Peru

A. Peru provides particularly fertile ground for considering ESCR:

- The Fujimori Administration takes pride in his economic accomplishments and in his large-scale social programs and indeed the economy has undergone tremendous growth through the early nineties and social spending has even increased in recent years. Nonetheless, the incidence of poverty remains largely unaffected, while salaries are still close to half of what they were in 1980;
- Perhaps more important is the manner in which reforms and social spending have been carried out. Fujimori's increasingly centralized and autocratic decision-making stands as a grave threat not only to civil and political rights, but to ESCR as well. ESCR encompasses far more than a state of health: it means providing opportunities and capacity of citizens to claim their rights and to participate in their own development. In reference to Peru, a recent UNDP report on Peru states: "participatory development is at the opposite end of the spectrum from paternalistic assistance."

B. Three critical areas of ESCR

Given the complexity of ESCR and the relative lack of standards or guidelines, obligations may be easiest to monitor where they overlap with more traditional civil and political. These obligations essentially comprise the procedural elements essential for guaranteeing ESCR.

1. Legal and Political Guarantees

As a first step towards meeting their treaty obligations, governments must ensure that the full range of human rights are explicitly guaranteed in their domestic legal systems and are recognized at the highest political levels. (American Convention, art. 2, Vienna Convention on Treaties). As the Commission states: "[economic, social and cultural rights are] the regulating axis of the economic, social and political systems." (Annual Report 1985-1986) This obligation requires that governments ensure that their constitutions embody the applicable rights and that laws and policies are developed with reference to and consistent with the relevant rights and obligations.

2. Participation

It is widely recognized that sustainable development - development with human rights - is as much a question of participation as economic growth or distribution. Accordingly, participation is a critical component of ESCR. As the UN Commission on Human Rights has stated, "full respect for ESR is intrinsically linked with the process of development, the central purpose of which is the realization of the potentialities of the human person in harmony with the effective participation of all members of society in relevant decision-making processes as agents and beneficiaries of development, as well as fair distribution of the benefits of development." (Res. 1993/14)

The OAS Charter stresses the importance of participation and elaborates a series of essential principles, including: "fair and efficient systems and procedures for consultation and collaboration among the sectors of production" and "the incorporation and increasing participation of the marginal sectors of the population, in the economic, social, civic, cultural and political life of the nation." (Art. 45)

The Inter-American Commission has also frequently underscored the importance of participation, linking it with the Convention articles 23 (“concerning the right to participate in the conduct of public affairs and to have access to the public service of ones country”) and 24 (“equality before the law”) (see Ecuador Report, 1997) and to Article 20 of the Declaration. The Commission has defined participation in the following terms: “Popular participation, which is the aim of a representative democracy, guarantees that all sectors of society have an input during the formulation, application and review of national policies.” (Annual Report 1993)

3. Legal Recourse

The importance of legal recourse for all human rights is straightforward. It is guaranteed in articles 2 and 24 of the American Convention and Article XIII of the Declaration. This obligation requires governments to ensure that in the case of a failure to protect or fulfil the guaranteed rights, victims will have timely and effective judicial remedies.

V. ESCR violations in Peru

These three components of ESCR have been and continue to be systematically violated by the Fujimori government. All three areas were subject to recommendations of the UN Committee on Economic, Social, and Cultural Rights. The following is only a representative list of violations in these three areas:

A. Legal and Political Recognition

1. The 1993 Constitution removed certain ESCR and diminished the overall status of human rights treaties *vis a vis* the Constitution:

- among the rights removed were:
 - the right to a decent standard of living (art. 2 of the 1979 Constitution)
 - the rights to food and adequate housing (art. 18)
 - the equality of opportunities and responsibilities between men and women (art. 2)
 - labor rights generally
- under the 1993 Constitution, international human rights instruments are on a par with domestic laws and do not have constitutional status

2. Political Recognition

The Fujimori Administration has made no public reference to ESCR in the development of laws and social policies and has done nothing to make these rights a part of the public discourse surrounding these decisions and deliberations.

B. Participation

The Fujimori government’s autocratic form of governance directly undermines the ability of citizen’s to ensure rights for themselves. President Fujimori has increasingly concentrated decision-making and spending into a centralized executive body (the Ministry of the Presidency) that transparently serves his own political aims. Spending priorities and programs are not the product of participatory and transparent processes, but are top-down and largely discretionary. The Economist calls his regime “the most

centralized and personalized regime in Latin America”(the Economist “Peru: the dark side of the boom”^{5th} Aug, 1995). President Fujimori’s reliance on presidential decrees further deprives representative participation in critical social and economic policies. Specific indicators of these trends include the following:

- between 1995 and 1996 the Ministry of the Presidency’s share of the national budget was more than doubled, from 10 to 23% of the budget while health and education ministries dropped to 6 and 8% respectively;
- in many cases, ministries have spent only a fraction of the outlays for social programs in the face of overwhelming need;
- the Ministry of Economy controls 25% of budget, meaning close to half the budget is held by two ministries closely linked to the president;
- after the 1993 constitutional referendum in which support for President Fujimori was weakest in the rural areas, municipal funding was shifted dramatically from urban to rural with Lima’s share falling from 53 to 17%;
- regional elected assemblies that once controlled municipal spendings were dissolved under the 1993 Constitution and these decisions now lie with President Fujimori and his hand-picked regional presidents;
- educational policies are made with no input from the national teacher’s union (SUTEP);
- four fifths of labor regulations have been issued by Presidential Decree allowing for no input from trade unions while significantly undermining the ability of unions to organize and bargain collectively (CEDAL Report). Many of these regulations have been criticized by the ILO and UN Committee on Economic, Social, and Cultural Rights.

C. Legal Recourse

The ability of citizen’s to vindicate their ESCR is undermined both by changes to former legal protections and by the lack of an independent and effective judiciary. Two recent Peruvian petitions² to the Commission highlight these problems:

1. In the case of *Carlos Torres Benvenuto y otros* a group of former employees of a public institution had their pensions cut by as much as 80% with no warning or administrative hearing. The pensioners subsequently brought their case to the Supreme Court and to the National Ombudsman and received favorable decisions in both cases, however the State has refused to comply with the decisions. The case was brought on behalf of five petitioners but is representative of arbitrary pension cuts without relief or administrative processes affecting thousands of public workers.
2. In the case of *Martha Alfaro Suarez y otros* a group of workers were arbitrarily dismissed by a private company. They brought an *amparo* action claiming violations to their constitutional rights to due process and protection against arbitrary dismissals. The court dismissed the case declaring that the required prior administrative action represented an alternative mechanism thereby precluding an *amparo* action. The decision was affirmed by the much debilitated Constitutional Court. Similar decisions negating the use of *amparo* actions in labor and social security cases have followed.

VI. Conclusion

² The cases were sent to the Commission on February 1, 1998 by the petitioners and two Peruvian NGOs, CEDAL and APRODEH.

The Commission's up-coming visit to Peru presents a real challenge in terms of ESCR. The country's exceptional economic growth and the corresponding growth in specific social programs may leave the superficial impression that the Peruvian government is actually meeting its obligations to "progressively" advance ESCR. However, below this surface the signs of economic and social crisis are overwhelming, and all the more egregious in the midst of the country's increasing wealth. The Commission would do well to consider the reports provided last year by Peruvian NGOs to the UN Committee on Economic, Social and Cultural Rights and the Committee's subsequent response. Among the more telling statistics in these and other reports are the following:

- poverty in 1997 stood at 43% overall and 60% in the rural areas
- 64% of children in rural areas are chronically malnourished
- illiteracy in the rural areas is 25%, 5 times higher than urban areas
- in one province (Ayacucho) 90% of the children are chronically malnourished and illiteracy stands at 65%
- 70% of the workforce labors in the informal economy with no social or labor protections
- the percentage of non-agriculture workers in Lima in the informal economy grew almost 20% from 1991-96
- the urban minimum wage has fallen 25% from 1990
- the national education budget devotes eight times as much to universities than primary or pre-school, thereby heavily favoring the wealthy who are disproportionately represented in higher education

Beyond these statistics and beyond the actual laws, policies and budgetary outlays, the Commission must look to the way that decisions are made and the way that policies are executed. ESCR are hollow if they depend purely on the whims of an authoritarian government. At their most fundamental level ESCR like human rights generally must be measured in terms of human dignity and the capacity of persons to claim them for themselves.