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PERU

REPORT NO. 1

INSTITUTION OF SOCIAL OWNERSHIP IN PERU^{1/}

The purpose of the Peruvian revolution is to build a social democracy of full participation. In essence this political aim is the revolutionary transformation of economic and social structures taking place in Peru, and implies a new order of society marked by a pluralist economy which is headed by a social ownership sector and comprises a joint-management private enterprise sector in which the workers share in management and ownership, and a minority private sector for services, small-scale business and handicrafts.

BASIC PRINCIPLES

In keeping with that policy, the Government issued Legislative Decree 20598 creating social ownership in Peru. This ownership sector, which will predominate in Peru, is based on the humanistic doctrine of our revolution which recognizes man's creative work in society as the primary source of wealth.

The following principles are the main pillars on which social ownership rests:

- (a) Worker solidarity in economic activities;
- (b) Full participation in enterprise management;
- (c) State ownership of enterprises;
- (d) Social accumulation and life-long training.

ORGANS OF THE SOCIAL OWNERSHIP ENTERPRISE (SOE)

The organs of the SOE are: the general assembly, the highest-ranking organ of the enterprise; the governing committee, the main executive organ; and the management, consisting of the general manager, the managers and the assistant managers as laid down in the statutes of the enterprise.

I. The general assembly is the duly convened and constituted meeting of all the workers. Its function is to -

Approve the policies, plans and programmes of the enterprise and modifications of its organic and hierarchical structure;

Approve the social management and the annual accounts and balance sheet;

Allocate the distributable surplus in accordance with the provisions of article 106 hereof;

Deal with matters placed within its competence by the statute of the enterprise.

^{1/} Supporting printed matter also submitted by the Government of Peru is available with the Secretariat for Commission members who wish to consult it.

II. The governing committee is composed of not less than three and not more than six workers who are eligible for re-election and are elected by the General Assembly. Its function is to -

Direct the enterprise and approve all acts necessary for its administration, particularly the negotiation of loans and the charging of enterprise property, which in the case of fixed assets may be done only in favour of State financial institutions;

Approve the admission of new workers;

Submit to the Assembly for consideration, within the time limits laid down, policies, plans and programmes; organic and hierarchical structure; production, purchase, sales and financial budgets; and balance sheets, reports and accounts;

Periodically supervise and evaluate the enterprise's plans and budgets;

Draft the regulations of the enterprise;

Make appointments to managerial posts. The appointment of the general manager will require ratification by the Assembly;

Grant powers;

Convene the Assembly.

III. The general manager is the highest ranking executive worker of the enterprise, the manager of its operations and its legal representative. His appointment is not limited in time.

His duty is to -

Fulfil and cause to be fulfilled orders made by the general assembly and the governing committee;

Negotiate short-term loans and make acquisitions subject to the amounts fixed from time to time by the statute or the regulations of the enterprise;

Appoint the governing committee in accordance with the provisions of article 47 and keep its minute-book;

Perform the other functions assigned to him by this Legislative Decree and the statute of the enterprise, and exercise the powers granted to him.

WORKERS' RIGHTS

The principal rights of workers are to speak and vote in assemblies; to elect and be elected to governing posts in the enterprise and the sector; to receive educational, health, crèche and kindergarten facilities, recreation and culture, receive periodic reports on the progress of the enterprise, and have access to its books and documents.

OWN DWELLING

Workers are also entitled to dwellings of their own. For this purpose a special fund, to be administered by the Housing Bank of Peru, will be established to finance the construction or improvement of dwellings as soon as certain minimum conditions laid down in the Decree have been met.

It is also provided that the personal dwellings of workers with good service records will be financed in priority.

WORKERS' DUTIES

The chief duties of workers are to contribute to the best possible progress of the enterprise and the sector and to the productive process; to participate personally and actively in the organs of the enterprise and the sector; to undergo training, pass on knowledge gained, and perform functions within the organic and hierarchical structure of the enterprise.

COMMON LABOUR REGIME

The new revolutionary law stipulates that unless otherwise expressly established by the Act, SOE workers are subject to the common labour law. They may in exceptional cases agree to work voluntarily without extra remuneration, outside working hours and/or for no more than one half of their vacation period, this will be counted as credit for promotions and fellowships and as double time for determining length of service for the calculation of benefits granted under this Decree.

OTHER SOE ORGANS

The following are also SOE organs: the committee of honour, which hears and settles workers' complaints internally; the special committees which supervise work fitness tests, recommend promotions and appropriate disciplinary measures for workers in their units, and advise the management; training committees for vocational and cultural improvement; and the electoral committee, the members of which are drawn by lot to elect to managerial posts.

SOE ECONOMIC REGIME

The formation of SOEs will be financed by temporary contributions from the national social ownership fund and/or the development financing corporation (COFIDE). These temporary contributions must be refunded by the enterprise in accordance with the agreement concluded in each case with the body making the contribution. Such agreements will also set the financial limits within which the enterprise will operate.

CAPITAL OF THE SOCIAL OWNERSHIP ENTERPRISE

The capital of the social ownership enterprise is made up of the working capital fund and the consolidated fund. The first is made up chiefly of temporary contributions, and the second of income from the issue of securities known as "Accio-Bonos".

Other aspects of the SOE Decree include references to asset depreciation and revaluation in accordance with the new provisions. There are chapters on surpluses and on merger, dissolution and liquidation.

OTHER SOURCES OF FINANCE

Other sources of finance are the credit-type indebtedness of any conventional enterprise and the issue of securities known as "Accio-Bonos". These securities have the characteristics of shares and bonds: of shares in that the yield on them varies in direct proportion to earnings on capital: of bonds in that they do not confer on "Accio-Bono" holders any right to enterprise ownership or management.

SHARE CERTIFICATES

Authorized financial institutions may form themselves into financial intermediaries and build up investment portfolios in order to provide the SOE with financial support and enable small and medium savers to invest in productive activities in the social ownership sector.

Investment portfolios will be made up of "Accio-Bonos" acquired by the financial intermediaries, and by State securities. The latter will preferably be fixed-return securities, thus guaranteeing a minimum total portfolio yield and ensuring the stability of the portfolios' representative shares, which will be bought by savers and known as share certificates.

ORGANIZATION OF THE SO SECTOR

Under the Decree the various social ownership enterprises are obliged to join together to form regional units; a minimum of three enterprises is necessary to form a regional unit. At least five regional units are necessary to initiate social ownership assembly activities.

Accordingly the components of the social ownership sector are SOEs, the basic units; regional units, resulting from the organization of basic units in a specific region; and the social ownership sector assembly, the body which co-ordinates the work of all regional units and their enterprises at the national level.

NATIONAL SOCIAL OWNERSHIP FUND (NSOF)

The resources of this fund are derived from the transfer of 10 per cent of the economic surpluses of all enterprises; compensation of the income derived from temporary contributions and State transfers.

The fund's administrative board administering these resources is composed of six members, including three workers' representatives, one of whom will act as chairman; two national social ownership commission representatives, and the general manager of COFIDE.

SOCIAL OWNERSHIP COUNCIL

The social ownership council, which will report directly to the President of the Republic, has been established to promote, strengthen, consolidate and supervise the sector.

The national social ownership commission will be headed by a representative of the office of the President of the Republic and consist of one representative each from the Ministries of Economy and Finance, Industry and Tourism, Trade, Labour, Fisheries, Agriculture, Transport and Communications, Energy and Mines, SINAMOS, INP and COFIDE; Three representatives of the social ownership sector assembly will also be members.

The social ownership council will consist of the Ministers of Economy and Finance, Labour, Industry and Tourism and Trade, and the chief of the national planning institute. The chairman of the national social ownership commission will attend the Council's sessions and may speak but not vote.

Legislative Decree 20589 establishing social ownership enterprises consists of 196 articles and three temporary provisions. Its preamble declares that the developmental process through which our country is passing calls for accelerated capital formation accompanied by the social practice of participation. It also specifies that this sector's nature and purpose distinguish it from the public and private sectors and call for legislation which will constitute social law.

The above report is a brief outline of the main provisions of the Decree establishing social ownership in Peru.

REPORT No. 2

DECREE RELATING TO INDIGENOUS COMMUNITIES AND AGRICULTURAL DEVELOPMENT
IN THE JUNGLE AND JUNGLE-BORDER AREAS

The Revolutionary Government, as part of the structural changes it is making in Peru in order to create a new social order for the benefit of the Peruvian people, has promulgated Legislative Decree 20653, which establishes and enacts specific rules to ensure that the indigenous communities inhabiting the jungle and jungle-border areas shall become integrated and play a leading part in the evolution of the new Peruvian citizen.

The main object of Legislative Decree 20653 is therefore to institute a system of rights of ownership, use, exploitation and conservation of the land in the jungle and jungle-border areas, a policy of rural settlement, and a development of human resources adapted to the features of those areas.

The Decree also contains rules governing the future rights of indigenous communities in the jungle and jungle-border areas with respect to their organization, and establish local, regional and national associations which, by virtue of their human and cultural values, their geographical situation and their demographic importance, are to constitute the spearhead of development in Eastern Peru (Oriente Peruano).

BASIC PRINCIPLES

The Government has accordingly promulgated Legislative Decree 20653 to establish an agrarian structure conducing to the integrated development of the jungle and jungle-border areas and hence enabling their inhabitants to achieve levels of living compatible with human dignity.

The State will promote the agricultural development of the jungle and jungle-border areas through rural settlement projects. The term "rural settlement" means the organized settlement of trained farmers for the comprehensive use of renewable natural resources, the supply to them of technical and financial assistance until they can support themselves.

Rural settlement projects will be executed in accordance with regional development plans.

INDIGENOUS COMMUNITIES

The State recognizes the legal existence and personality of the indigenous communities.

These communities are descended from the tribes of the jungle and jungle-border areas and consist of groups of families linked together chiefly by language or dialect, cultural and social customs, joint permanent occupation and cultivation of the same territory; and settlement of small groups or scattered families.

Members of the indigenous communities are persons born in them or joining them later. Any person living outside the communal territory longer than twelve consecutive months ceases to be a community member, unless he is absent for approved reasons of study or health, or moves to the territory of another indigenous community in accordance with usage and custom, or is conscripted.

The State protects the indigenous communities' title to land, conducts the appropriate surveys, and issues title deeds to the communities. In marking the boundaries of their territories it considers -

- (a) when a community is settled, the area that it occupies;
- (b) when a community makes seasonal migrations, the total area over which it usually moves; and
- (c) where a community does not possess sufficient land, the State allocates to it the area it requires to satisfy its members' needs.

The title to an indigenous community's land may not be alienated, prescribed or attached.

The indigenous communities are given priority by public authorities in the marketing of their products.

LAND IN THE JUNGLE AND JUNGLE-BORDER AREAS

Jungle and jungle-border land is to be used in the interests of the community, and all antisocial forms of work and land exploitation are abolished. Existing obligations whatever their origin, nature or characteristics, are annulled on the date on which this Legislative Decree enters into force.

For the purposes of this Legislative Decree the land is divided into the following categories depending on its suitability for the major types of use: (a) cultivation, (b) stockraising and (c) forestry.

The Ministry of Agriculture is to classify the land according to its suitability.

Agriculture and stockraising are restricted to the land referred to in subparagraphs (a) and (b) above.

The State owns land -

- (a) Not granted by law to an individual;
- (b) Deriving from concessions, the payment of indemnities, debts owed to the State or sales made by it to natural or legal persons for partition or colonization, in the following cases:

Where some of the conditions laid down when the land was allocated have not been fulfilled, even if it has been transferred to third parties, unless these are complying with the conditions;

Where the titular owner has ceded the land for rent, use, gain or development.

Land is privately owned where a person who owned land in the jungle area when this Legislative Decree entered into force uses part of it in his immediate possession for crop farming or stockraising, irrespective of his title thereto.

Business firms may not own rural property in the jungle and jungle-border areas.

Owners of land in the jungle area must pay their workers one-third of the net income therefrom.

PROCEDURES FOR THE ANNULMENT OF PRIVATE OWNERSHIP; VALUATION OF IMPROVEMENTS AND OTHER ASSETS AND MODES OF PAYMENT THEREFOR

Procedures for the annulment or discontinuance of concessions or title to land in respect of which the requirements laid down in this Legislative Decree have not been fulfilled are to be undertaken by the appropriate district office of the Ministry of Agriculture and to consist of a visual inspection and any other enquiries deemed necessary. The parties may comment or object before or during the visual inspection, the date of which is to be announced by notices displayed for eight days on the property itself, on the premises of the municipal councils of the province and district, and on the premises of the cultivated area.

ADJUDICATIONS IN GENERAL

In the adjudication of land for agricultural purposes, consideration is to be given to -

- (a) Rural settlement projects; and
- (b) Freely disposable areas.

Land is adjudicated free of charge by the Department of Agrarian Reform and Rural Settlement through contracts that may be recorded in private documents establishing sufficient proof of ownership for entry in the public registers. A certified copy of such a contract issued by the department is for all purposes equally valid with a deed.

The value of buildings, installations, improvements, machinery, equipment, plantations and livestock is payable by the recipients in twenty equal interest-free annual instalments.

To qualify for adjudication of land the applicant must -

- (a) be a Peruvian national;
- (b) be eighteen years of age and liable at law; and
- (c) not own rural land within the national territory.

Article 46 also provides that an agricultural unit adjudicated to an agrarian co-operative, a non-profit agricultural corporation or a social ownership undertaking established in a jungle or jungle-border area shall be indivisible and that its area shall be commensurate with the number of members intending to settle in it.

A farmer who on the entry of this Legislative Decree into effect has been working for a year or more on an agricultural unit has, irrespective of title, absolute priority on its allocation. The area of an agricultural unit is to be determined in accordance with the work potential of a standard family expressed in labour units and on its potential yield. Its area may never be less than five hectares.

ADJUDICATION IN FREELY DISPOSABLE AREAS

Land in freely disposable areas may be adjudicated to indigenous communities, rural communities, agrarian co-operatives, non-profit agricultural corporations, enterprises of social ownership and individuals. Adjudications are made for agricultural purposes only.

Adjudication of land in freely disposable areas to individuals is limited -

- (a) To 50 hectares when suitable for crops; and
- (b) to 1,000 hectares when suitable for stockraising.

ADJUDICATIONS IN RELATION TO RURAL SETTLEMENT PROJECTS

Land may be adjudicated for farming in rural settlement projects to persons to whom the previous section applies and to non-corporate bodies and partnerships.

Adjudication of land to individuals for rural settlement projects is limited to -

- (a) 30 hectares when suitable for crops; and
- (b) 600 hectares when suitable for stockraising.

The adjudication is made by the Department of Agrarian Reform and Rural Settlement by a lottery held among persons meeting the requirements laid down in the section of this Decree entitled Adjudications in General.

AGRARIAN DEVELOPMENT

The Ministry of Agriculture is to establish and develop the following services in the jungle areas -

- (a) Integrated technical assistance;
- (b) Agricultural machinery;
- (c) Processing and conservation of agricultural products;
- (d) Selling and marketing of inputs and products, and encouragement of primary processing industries for agricultural products in co-ordination with the Ministry of Industry and Tourism;
- (e) Agricultural research and experiment.

These services will for preference be rendered by associations.

The Legislative Decree enacting the Law on Indigenous Communities and Agricultural Development in the Jungle and Jungle-Border Areas consist of 74 articles and 6 temporary provisions, and provides in its preamble that the Law shall comply with the principles of agrarian reform laid down in Legislative Decree 17716.

The foregoing report gives a short account of the main provisions of the Law, which establishes an order of priority for the integrated development of indigenous communities in the jungle and jungle-border areas of Peru.

REPORT NUMBER 3

NEW PRESS STATUTE, AND TRANSFER OF DAILY NEWSPAPERS
TO THE MOST IMPORTANT SECTORS OF THE PEOPLE

DEMOCRATIZATION OF THE PRESS AND ACCESS BY THE ORGANIZED POPULATION TO THE
COMMUNICATION MEDIA.

In accordance with the aim of the Peruvian Revolution to create a fully-participating social democracy which will enable the people to take part in making national decisions, and compatible with the establishment in Peru of a sector of social ownership (Report No. 1) recognizing the creative work of man in society as the source of all wealth, the Government of Peru has issued on 23 July 1974 a new Press Statute (D.L. No. 20680), and has ordered that those newspapers having the largest circulations be transferred to the major sections of the organized Peruvian people, namely the farmers' organizations, the workers' communities, and the professional and cultural, service and educational organizations (D.L. No. 20681).

In a developing country aiming at a fully-participating - that is an effectively democratic - society, it cannot be accepted that the portion of the Press having the greatest influence on the formation of national public opinion should be either a mouthpiece and champion of minority interests or an integral part of a State monopoly. It must be a genuine source of information that represents the majority elements of society organized in significant sectors, and enables them to express their aspirations, needs, views and criticisms in complete freedom and independence and to exercise continuous and responsible supervision of the public authorities.

Décrece Law No. 20680 states that the purpose of the Revolutionary Government in starting the new media is to ensure that those organs of the Press which have the greatest influence on the formation of national public opinion should cease to be the spokesmen and champions of minority interests but should not be converted into integral parts of a State monopoly. On the contrary, the new provisions are designed to ensure that the bodies, societies and major organized sectors of the people may express their aspirations, needs, views and criticisms, in complete freedom and independence and exercise continuous and responsible supervision of the public authorities.

The new Press Statute affirms that the State recognizes, respects and guarantees the right of the organs of the Press freely to supply information, express ideas and opinions, and formulate judgements or critical appreciations, without either prior consultation or censorship, provided that in general they do not go beyond the bounds of law and morality, and that in particular they do not misrepresent the facts or violate personal or family honour and privacy. Any such offences will be punishable by the ordinary courts.

According to article 4 of the Statute, the written Press is not to be nationalized. Nothing in that article may, however, prevent the State from possessing one or more Press organs for the purpose of explaining, broadcasting and upholding the policy of the public authorities.

On the appointed day the organs of the Press are to be divided into national daily newspapers; regional or local newspapers; non-daily periodicals and occasional publications.

National newspapers, meaning those whose circulation exceeds 20,000 copies or which circulate in not less than half the total number of departmental capitals in the Republic, will be owned by and express the views of bodies representing the organized sectors of the people of the new society.

Regional or local daily newspapers, non-daily periodicals and occasional publications will remain or become the property of the body or person who has established or may wish to establish them.

Under article 21 the national newspapers are to devote themselves to the comprehensive education of the people aimed at building and upholding a free and united society in which every person can realize his full potential. These newspapers are to be organized and to operate as self-financing social-service organs.

To give effect to the provision that the national newspapers are to be owned by major sectors of the organized population, the representatives or chief members of the bodies or organizations comprising each sector are to set up an incorporated company whose assets will include the equipment needed for the printing and circulation of the sector's Press organ. The assets of a company if liquidated will be used to reconstruct its Press organ.

The national newspapers are also to serve as channels for the aspirations, needs and views of each sector and of the bodies or organizations that compose it. They must discuss all the various ideological approaches compatible with the principles of the Peruvian Revolution.

The newspaper's general policy shall be laid down by a board of directors representative of its particular sector, its editor, and two representatives of the workers' community.

The workers' community is to share in the management and the profits, and to receive, instead of its share as an owner, shares in COFIDE (Development Finance Corporation) to the corresponding amount,

Persons working for national newspapers will be subject to the current labour law.

Regional or local newspapers, non-daily periodicals and occasional publications may be organized in any of the managerial forms recognized by the national law.

On the other hand, it is laid down that only Peruvian citizens by birth resident in Peru and in full exercise of their civil rights may found or share in companies whose object is to publish Press organs. Corporations formed and domiciled in Peru will have the same rights, provided that their shareholders and the members of their boards are Peruvian citizens by birth resident in Peru. A company's rights and shares may not be transferred to foreigners. Its sole purpose is publication by Press organs, and it may not engage in other activities not directly connected with information and publishing. Exception will be made for corporations which, in furtherance of their own objects, issue exclusively scientific, professional, technical or cultural publications.

A company publishing several press organs will, even if these are expressed to be distinct corporations, be regarded as a single economic unit if 40 per cent of their members are identical, and will be solely liable to the full extent of its capital, assets and patrimony.

In March and September of each year the company must publish on a prominent page in each of its own publications a list of its members and directors, the amount of its capital, the number of shares held by each member and the office he holds in the company, also a list of its mortgagees, debenture holders, banks and other creditors, with details of the amount owed to each.

The Press Statute also points out that news, notices and editorials broadcast by radio and television stations are also covered by the provisions of Decree Law 20680.

It further states that the replacement of the traditional society, in which the masses of the nation were kept on the sidelines, by a new system based on the genuine exercise of social power by the organized population, is not only the basic object of the Peruvian revolution but indeed the very reason for its existence. All the reforms undertaken in the economic and social structure of the country are exclusively directed towards this end.

The Statute further maintains that in the present stage of the process the mass communication media, without prejudice to their own general functions, make active use of the immense power that they inherently possess in helping to build a free and united society of which every member can realize his full potential.

Decree Law 20681, in accordance with the Press Statute, declares the publishing, printing and circulation of national daily newspapers to be of national importance and social interest, and consequently expropriates in favour of the sectors of the organized people the share issued by the companies that publish and print the daily newspapers "El Comercio", "La Prensa", "Correo", "Ojo", "Ultima Hora" and "Expreso", together with their supplements, evening newspapers and all other additional publications. Likewise expropriated are the companies distributing those organs of opinion to the extent considered necessary.

According to article 2, the expropriation will be carried out in favour of the following organized sectors of the people: the publishing company El Comercio to the farmers' organizations such as co-operatives, SAIS, leagues, federations, confederations and other similar organizations; La Prensa to the workers' communities (industrial organizations, fishery organizations, mining organizations, etc., including executives who belong to such organizations); Empresa Periodística Nacional to the professional and cultural organizations (in this case "Correo" will be assigned to the professional associations of lawyers, engineers, doctors, economists, etc., and "Ojo" to the associations of writers and artists and of intellectuals in general); Empresa Editora Lima to the service organizations, including service co-operatives, friendly societies, the building industry, banks, trade, transport and the like; and Editora Nacional to educational organizations such as universities and educational communities (teaching and non-teaching workers, students and household heads in the educational centres).

Of the value of the companies expropriated, which will be determined by the National Commission for the Supervision of Corporations and Securities, 10 per cent will be paid in cash and the remainder in ten equal instalments with interest at 6 per cent per annum on the outstanding balance.

Pending the establishment for each daily newspaper of a board of directors representing the corresponding sector of the people, the expropriated companies and associated organs of opinion will be managed for one year by committees nominated by a supreme resolution approved by the Ministry of Labour. At the end of that period the board of directors of each daily newspaper will be established in the form laid down by the applicable regulations.