

The Children's Right in Peru and the UN Convention on the Right of the Child - the Right to Education -

**Author: Camilla Monsine Ottosson
Tutor in Sweden: Eva-Maria Svensson
Tutor in Peru: César Landa
Department of Law
School of Economics and Commercial Law
Gothenburg University, Sweden**

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Summery

All children have the right to a safe childhood and should be able to develop freely as individuals. This is a statement that I presume everyone can agree with me on whether you are black, white, women, man, young, old, rich or poor. It is the basic and fundamental attitude shared by people around the world. Although we all agree on this in International Conventions and documents it is so much harder to make the words and principles reality for the children. There are so many areas that are concerned and causes for why the agreements are not being obeyed (poverty, cultural and religion's conflicts, discrimination, political situations etc).

This essay discusses the children's right to education, which gives them a possibility to develop in life. One of the reasons for my interest in this subject is the fact that still today almost 50 years after the first Declaration on the Right of the Child was initiated we struggle with the same issues. Children around the world are still being mistreated or exploited and their fundamental needs and rights are being violated. The essay describes and examines the **children's legislative situation** with emphasis on the educational system and the factors that has impact on the system and is considered main causes of the complications. I also conclude the essay by giving the reader an example of improvements that I think could meliorate the situation.

The ambition of the essay is to study **the child's right to education in Peru** and compare the national (Peruvian) legislation with the incorporated International Convention on the Right of the Child. The essay is a part of a minor field study and is based on a stay in Lima, Peru between January and March 2000. The purpose was not to study the educational system in detail but its legislation and the causes to why the system isn't working in accordance with the legislation and what the solutions would be. **The UN Convention of the Rights of the Child** have a central role in this essay and the work and organisation of the **UN Committee on the Rights of the Child** is described and discussed in the essay.

1. Introduction	6
1.1 Purpose, Questions at Issue and Method	6
1.1.1 The Purpose and the Questions at Issue	6
1.1.2 Method, model of explanation and delimitation	11
2. An introduction to The Right of the Child	14
2.1 Children's rights and the perspective of the child	14
2.1.1 What are rights?	15
2.1.2 The development of the children's right during the 20th century	16
2.2 The Convention on the Rights of the Child	17
2.2.1 How the Convention becomes National Legislation	19
2.3 The Committee	19
2.3.1 The Purpose and Procedures of the Committee on the Rights of the Child	20
2.3.2 The Second Periodic Report on Peru	21
3. Peru- Geographical structure and Society	23
3.1 Introducing facts of Peru	23
3.1.1 Illiteracy	24
3.1.2 Democracy and the Peruvian Society	25
3.1.3 Employment and the Informal Sector	26
3.1.4 The Social Differences in Peru	27
3.1.5 Terrorism	28
4. The History of Peru	29
4.1 The most influential settlement	30
4.1.1 The Spanish Colonisation	30
4.2 The School system through history	31
4.2.1 The education in the Inca Empire	31
4.2.2 The education in the Spanish Colony	32
4.2.3 "A change of Attitude"	32
4.2.4 Equal Education	33
5. The Peruvian Legal System	34
5.1 Executive, Legislative and Judicial System	34
5.1.1 The Constitution	35
5.2 El Código de Niño y Adolescente / The Child and Juvenile Code	37
5.2.1 Historical background	37
5.2.2 The Child and Juvenile Code of today	38
6. Education	40
6.1 Legislation	40
6.2 The Peruvian School System today	42
6.2.1 Dilemmas with the school system	43
6.2.2 The Injustice in the Education system	45
6.2.4 The Teachers and Professors	46
7. The Working Children	48

7.1 The working child's situation	48
7.1.1 The unsafe situation for the working children	49
7.2 Work Legislation	50
7.2.1 The Complexity of the "Working Children"-situation	51
7.3 Different Programmes to improve the Children's situation	53
7.3.1 Save the Children of Sweden and other NGOs	53
7.3.2 DEMUNA	53
7.3.3 COMUDENA	55
7.3.4 New Programs and Programs under Development	56
8. Analysis	57
8.1 Personal Observations	57
8.2 A State governed by Law	59
8.2.1 Legitimacy	59
8.2.2 Stability	61
8.2.3 Norm rationality	61
8.2.4 Openness	62
8.2.5 Legal responsibility	62
8.2.6 Balance of power	62
8.3 Summery and General Conclusions	63
References	66

1. Introduction

The purpose of this essay was to study the Peruvian educational system from a legal perspective. The ambition of the essay is to study the child's right to education in Peru and compare the national (Peruvian) legislation with the incorporated International Convention on the Right of the Child. The purpose is not to study the educational system in detail but its legislation and the causes to why the system isn't working in accordance with the legislation. I will describe and examine the children's legislative situation with emphasis on the educational system and the factors that has impact on the system and are considered main causes of the complications.

1.1 Purpose, Questions at Issue and Method

The following chapter will more thoroughly present the purpose of this essay and fix the questions at issue for each chapter. The different concepts that are used through the essay will be explained in their context thru the essay.

1.1.1 The Purpose and the Questions at Issue

The purpose of this essay is to study the child's right to education in Peru and compare the national (Peruvian) legislation with the International Convention on the Right of the Child (CRC) that was ratified by the Peruvian Government on the 4th of October 1990. The study will discuss the different problems and complications that the children are facing when taking part in the school system, such as having to combine their studies with work and at all receiving the education they are entitled to according to national law and international conventions. The essay therefore includes the children's situation in both a legislative and educational perspective. The essay will also describe and discuss the work of the Peruvian Government to implement the Convention and also their and other national or international organisation's efforts to improve the situation for the children within the areas of legislation, education and labour. To enable the reader to more easily understand the Peruvian society I have also chosen to briefly describe the most important historical, political and cultural incidents of Peru.

The main purpose of the essay is not to describe the educational system in theory but to approach it from a legislative and legal perspective and work out how the system is linked, influenced and changed by the Convention on the Right of the Child. In some issues discussed in the essay it has been difficult to link them to the CRC because many times there is a gap between the ideal in the convention and the reality Peruvians, for example, are living. Below follows a description for the purpose and the questions at issue of each chapter of the essay.

The purpose of the second chapter is to:

- present the children's right and the history behind the Rights of the Child and how the perspective of the child has changed especially during the twentieth century.
- discuss why there is a need for special rights for children and discuss the concept and meaning of "freedom" and "rights".

- describe the purpose and the substance of the United Nations (UN) Convention on the Right of the Child and to describe the different ways of how the Convention becomes national legislation.
- describe the Committee that controls the obedience of the Convention States, the purpose of control and how the committee works. This chapter is to help understand the whole structure and purpose of an international Convention.
- look at how Peru has implemented the Convention, the responses of the UN Committee has been to the national reports and which issues that the Committee were most concerned about regarding Peru

The questions at issue for the second chapter are:

- Why does children need specific rights?
- What is freedom and rights?
- How has the need for children's right developed?
- How did the Convention of the Right of the Child develop?
- What is the purpose/principles of the Convention?
- How is the Convention controlled and organised?
- Has the Convention any authority?
- How has Peru implemented the Convention?
- How has the Committee responded to the reports of Peru?
- Which are the most important issues and areas for concern on the Peruvian implementation of the Convention according to the Committee?

The purpose of chapter three is to emphasis on the Peruvian society of today. It is a follow up on the governing idea of the essay and discusses whether there is a connection between the infrastructure and cultural differences and the problems of discrimination, illiteracy and unifying of different people and classes in Peru. The issues discussed are issues that came to my attention during my time in Peru. Terrorism, for example, has had an impact on almost every one I came in contact with and therefore it seemed inevitable to not include it in this essay. All issues discussed in the chapter has some connection to children and have an impact on their lives and situation

In the third chapter the purpose is to:

- describe Peru from a geographical perspective and how the geographical structure can have an influence on the society
- present the most serious dilemmas in the Peruvian society that is relevant for this essay, dilemmas like illiteracy, social differences etc.
- discuss different incidents in the Peruvian society that has had and have an impact on children and their rights
- explain and discuss some of the factors and problems in the Peruvian society that differentiate Peru from my own frame of reference (although the purpose is **not** to compare the Peruvian situation with Sweden)

The questions at issue for the third chapter are:

- What is the geographical situation of Peru?
- Does the geographical structure have an influence on the different dilemmas that the Peruvian society is facing?
- What percentage of the population does the children represent?
- Why has there been such a dramatic urbanisation?

- Is there a difference between life in the city and the countryside?
- What is the illiteracy situation in Peru?
- What is the current political situation like?
- What is the economical and social status of the Peruvians?
- What impact on society has terrorism had?

The intention of the third and fourth chapter is to describe the background of the Peruvian society and the actual situation today, to help the reader to understand the discussion and the different aspects that are being argued through the essay. The history part, concentrated to chapter four, is briefly covering the history in general and emphasising on the history of the educational system, which is of main interest for the governing idea of the essay.

The purpose of the fourth chapter is to:

- describe briefly some important epochs and cultures of the Peruvian history, which has had an important impact on the Peruvian society of today.
- describe the history of education and how it has developed over the centuries.
- discuss some of the problems in the Peruvian society, and how it had/has impact on the educational system, from a historical perspective
- describe any common dilemmas in the educational system "then and now".

The questions at issue for the fourth chapter is:

- What have been the most important epochs in the Peruvian history?
- What is the history of the Peruvian educational system?
- How has the educational system developed through history?
- Has there been any discrimination in the access to education between boys/girls, races and rich/poor?
- Are there any problems in the Peruvian Educational history that still is an issue today?

The purpose of the fifth chapter is to give the reader an insight in the Peruvian legal system in general but with the right of the child as the centre of gravity. The Peruvian legislation will also in this chapter be put in relation to the Convention on the Right of the Child.

In the fifth chapter the purpose is to:

- describe the Peruvian legal system with starting point in the Legislative, Executive and Judicial powers. The Peruvian Constitution is described with emphasis on the main issues for this essay; children's rights. The purpose is to help the reader to understand a system that differentiates itself quite from the Swedish legal system.
- describe the Codes and laws that are relevant for the children's right to education and in general, also to describe the history of the Child and Juvenile Code and how it has changed since the ratification of the Convention of the Right of the Child.

The questions at issue in the fifth chapter are:

- How is the Legal system of Peru constructed?
- What is the history of the children's right in Peru?
- Which are the specific laws for children in Peru?
- Which are the most relevant laws and articles concerning education?
- Are the laws corresponding with the Convention?

- What are the “most obscure” or important areas where the Code and laws are not corresponding with the Convention?

In chapter six the purpose is to focus on the education and the legislation that is directly connected to the educational system. The purpose of the chapter is to try to explain for the reader the different problems and dilemmas of the Peruvian school systems and the gap that exist between the legislation and the reality. In this chapter there are a mixture of different sources such as legislation (Constitution and Code), interviews and my own impressions. These sources are of different levels but should all be considered as equally important and reliable sources. The chapter have a more sociological perspective than some other more law governed chapters. By mixing these different sources the purpose is to try and describe the society as *it should be* according to the legislation and compare it with *how it really is* according to the different people I interviewed in Peru.

The purpose of chapter six is to:

- describe the legislation related to the educational system and the different principles set by the Peruvian State
- describe briefly the school system of today in practice/theory
- illuminate the most important dilemmas for the school system reach out to all students
- describe the teachers situation
- try to understand the gap between the legislation and the reality for the students and the teachers
- discuss some of the different complications that the students and teachers are experiencing

The questions at issue in the sixth chapter are:

- What does the Peruvian legislation legislate concerning education?
- What is the purpose of education?
- Who is responsible for making sure a child is attending school?
- Does the legislation have any explicit expressed principles for education?
- How does the Peruvian Educational system work?
- How are the children's school situation and conditions affected by the changes and polemic in the Peruvian society?
- What are the most evident dilemmas in the school system?
- What are the main causes for why children aren't attending school?
- Is there any discrimination? (meaning racial, rich/poor)
- What is the situation like for the teachers?
- What is the main problem for the teachers?

The seventh chapter is a follow up of the complications that are discussed in chapter six. In this chapter I focus on one of the most important problems of the school system namely the situation of the working children. The purpose is to describe the situation of the working children and the national legislation on the area. I also try to describe the different works of the government and national and international organisations that concern the right of the child and the right to education.

The purpose of chapter seven is to:

- give the reader an picture of the situation for the working children
- describe the national legislation and international conventions
- describe the dangers of child labour as well as the contradicting necessity
- describe the working children's situation and explain the difficulties in combining education with work.
- present different programs and efforts that are made by the government, Non-governmental organisations (NGO) and others to meliorate the situation for children

The questions at issue for the seventh chapter

- What is the situation like for working children?
- Can child labour have an effect on society?
- Are there any obvious dangers with child labour?
- Is child labour legislated?
- Why do children have to work?
- Why not just ban child labour?
- Why do children choose to work over attending school and complete their education?
- What is the attitude of society and especially parents to child labour?
- Is anything being done to improve the situation for the children?
- What are the government and/or NGOs doing to improve the situation for the children?

In chapter eight the purpose is to put the situation of the legislation and the children in relation with explanation theories and try to understand why the laws and regulations (the right to education, age limit for working children etc.) aren't being obeyed or respected in Peru, in the extent they should be. The purpose of chapter eight is to further analyse the different arguments and discussions that have been expressed in the chapters above. I will try once again to pinpoint the most elementary and important problems with the Peruvian educational system, the legislation and the implementation of the Convention. In this chapter I will present some theories and the main issue is to try to *use* these theories on the issues of questions by analysing, comparing and drawing conclusions.

The purpose of chapter eight is to:

- describe the different concepts and theories that can be applied to the Peruvian legal system and relate some specific examples to why the situation has developed as it has and what improvements that can be made.
- use the theories and apply them to the children's rights and the Peruvian educational system.
- try and concrete the problems for the children and their schooling and create a programme for solution

The questions at issue for chapter eight are:

- Can the situation of Peru be described or put in relation with any theories on society and the application of a legal system?
- What are the main problems with the Legal system and the Educational system?
- Why doesn't the laws apply?

- Which is/are the main connection/s between the laws and the society?
- Are there effective ways of solving the situation for working children who don't attend school?
- Does it exist two versions of the Peruvian society – one in the legislation and one in reality?
- How can these two different versions connect?
- What would be the ideal and viable solution?

It is hard to draw conclusions or find solutions for serious problems as the ones of the Peruvian society. My experience in Peru and all the things that I have learnt by writing this essay has given me many strong opinions of my own that might be unessential to mention in this essay but in the summery I try to conclude the essay by discussing the different laws and the actual situation from my point of view and the questions at issue. I will also try to draw connections between the Peru I understood through the legislation and the Peru I got to know through the people I interviewed, the media and my own experiences. The purpose is to find “a golden road” or solution to the different problems that I have pinpointed out in the different chapters of the essay. The aim is to see the relevant connection to why the society isn't responding to the legislation. Why are children not attending school? Why are children being forced to work? Or are they really forced to work? What can the Government do to improve the situation? What are they doing today and is it efficient? All of these questions are making out the main issue and purpose of the essay and the answers will help me analyse the Peruvian educational system and the rights of the children.

1.1.2 Method, model of explanation and delimitation

The essay is to a great extent of a describing character although the different issues at question are being discussed and situations described critical and with inputs of my own and others opinions. The essay differentiate itself from other essays of the same style and character because of the fact that the essay has to be seen as part of a Minor Field Study-project that was financed by the Swedish International Development Cooperation Agency (SIDA). The project has involved everything from application for the scholarship, locating tutors in the host country to organising and planning the trip and stay in Peru and finally to return home and “express the impressions and new experiences” in a scientific essay. The condition for SIDA to finance this project was that I had to present this essay/report within one and a half year after my return from “the country of investigation”. The writing of this essay has literally involved an application of different methods and knowledge. Since the area for the essay (children's rights and sociology of law) isn't one that have been emphasised during my education, the “encounter” with this new culture and traditions were quite overwhelming for me. It gave me an understanding for the impact law has or at least should have on a society. This is an aspect or issue of discussion that I cannot recall having discussed or studied during my education of law in Sweden.

In Sweden I feel that we have the impression of the law as an objective and neutral compilation of rules and regulations that the citizens approve of and follow without any major discussions. We trust in our leaders or elected representatives to make decisions with our best interest in mind. What separate the Swedish society from the society I got to know in Peru is the mutual trust and confidence that invisibly exists between the citizens and the power in Sweden. This trust makes the society and its institutions work because we like to think that both parts, the citizens and the authorities, are acknowledging their responsibilities in society.

Responsibilities such as paying governmental taxes, making sure health care is provided, see to that the rules are being obeyed and respected, supporting the weaker groups of society etc.

My ambitions with the essay has been to combine different methods instead of just searching for materials and answers among the legal sources (such as the Constitutions and other legal material). In Peru my main ambition was to interview as many as possible that were working with legal matters concerning children but also people who could help me understand the Peruvian society in general, since it is quite different from the Swedish. Although friends and colleges from the university in Lima offered to accompany me to the interviews I was limited to perform as many interviews as I wanted, because of my limited possibility to move around on my own as a white, foreign-looking girl. The criminality is high in Peru and especially in Lima and for natural causes I (white, therefore presumably rich or at least so rich that I could afford a trip to South America) were seen as an attractive target for thieves.

The process to understand the Peruvian Legal system for example has been quite complicated. The concepts and structure of this Spanish influenced legal system wasn't always easy to understand neither was it easy to find the corresponding concepts in the Swedish law system. The essay brings up many issues that are more of a sociological character than legal. This is a natural consequence regarding the subject of the essay. The delicate situation for children in a poor country must be, as I see it, approached from a sociological perspective since the causes for why their situation is so vulnerable almost exclusively can be explained by reasons in society. Sociology of law therefore becomes one of the main subjects for this essay. It enables us to understand and see the connection of law being so much more than just creating laws but also to make sure that the laws are executed and implemented in society. The laws have to have an aim and purpose in the legal system and not just become nicely and correctly written documents with more or less no function. By using the perspective of sociology of law it enables us to approach the legal system and see its effects on society more widely and to focus more on the purpose of the laws and their efficiency, rather than just the laws in their wording.

The misfortune of my trip to Peru was that it took place between January and March, which are the summer months in Peru. I realised this too late when the trip already was booked and decided. Therefore I wasn't able neither to visit a real school nor talk directly to teachers and school children. Although it might have been interesting to visit a school I don't think it would have had an influence on the writing of an essay of this character. The purpose of the essay weren't to describe the educational system in detail but to look at the legislation on the area and compare the obedience and the actual situation, as I have described by presenting the questions at issue above, chapter 1.1.1.

During my stay in Peru I was fortunate to get access to the university of my tutor Dr Cesar Landa, Pontificia Universidad Católica del Perú. At the University I was able to use the library and came in contact with several professors and students that helped me to understand Peru and gather information for this essay. It wasn't only the searching for theoretical material that constitutes the foundation for the essay. All the impressions and experiences I made in Peru have somehow been included in this essay. The daily activities like buying grocery, walking or taking the minibus to the university influenced me and helped me understand and see Peru from almost a Peruvians point of view. This essay would never have been able to implement without the help of the friends I made and the people who took time and answered my question. My gratitude to these people is immense and I hope they will approve of this essay as a compilation of the children's right to education in Peru.

In the writing process there has been three different languages involved; Swedish, English and Spanish. To make it easier for the reader to follow I would like to clarify some of the terminology. By laws, rules and norms in this essay I mean the principles and regulations that are constituted in Peruvian national legal system. I have tried to be consequent in the usage and interpreted the termination of each language into a satisfying translation to English. On some occasions in the essay I have chosen to explain different concepts by comparing situations or examples rather than to just write the term or concept of what I want to express.

When describing and discussing working children I like the reader to be aware of my personal standing point in this issue. I am against all exploitation of children within child labour, but I cannot support an international ban of child labour. This is based on the fact that in many cultures children make out an important part of the family and their domestic or working efforts are seen as being part of the family and helping out. Not all cultures and nations can because of economical limitations guarantee their children a childhood free of responsibilities and just play. It would maybe be ideal to have a world free of working children but at the same time these children are performing an important contribution to their families economy and this gives them a pride and an identity. I think therefore we should work towards banning all exploitation of children and regulate the area so the children can be protected.

The essay is first and foremost focusing on the Peruvian legislation and educational system. Describing this it is inevitable not to also investigate and explain the most important historical events and changes that has had an impact and led to the system of today. I also think that the social structure and political climate is of importance in an essay that discusses the vulnerable situation of some citizens of the society in question. The working children aspect that is discussed in chapter seven is included since it is very relevant and closely connected to the dilemmas in the educational system. By dilemma I here mean for example the difficulty for the children to combine their studies with working and helping out their families economically. I'm also referring to the complications or conflict caused by the infrastructure and cultural differences that separates Peru as a country and nation. Another dilemma is the rights of the minorities to their own language and respect of their culture, which somehow doesn't seem to be subject of interest for the Peruvian government.¹ The different institutions and organisations that are briefly described in the same chapter is also a natural prolongation of how the situation in Peru can be improved and the incredible efforts that are being made by the Peruvians themselves.

In the analyse in chapter eight my intention is to describe what might be the causes and factors that has led to the actual development and the distrust in the Peruvian system, as I saw it. It is complicated to be an outside observer of a society and it is very easy to compare the situation to ones own references of experience. The ambition has been not to compare Peru to Sweden or the situation of the European countries since it wouldn't be fair when the initial position of the comparison are economically and cultural uneven. My starting point thru the essay is to study the child's right to education in Peru and compare the national (Peruvian) legislation with the International Convention on the Right of the Child. The purpose is not to study the educational system in detail but its legislation and the causes to why the system isn't working accordingly. This statement is supported by the obvious amount of working children and street children that are a fact in the Peruvian reality and society.

¹ Author's own reflections and perceptions of the dilemmas of the educational system

2. An introduction to The Right of the Child

The following chapter will handle the upcoming of the international rights of the child and how the perspective of the child has changed during the twentieth century. I will also discuss the different aspects of right and the perceptions of the freedom concept. The chapter aims to give the reader an insight to the UN Convention of the Right of the Child and how it is controlled and implemented in the ratifying countries. The chapter will also try to describe what the responses of the UN Committee in the Rights of the Child has been to the second periodic report of Peru and which issues they are mostly concerned about with the Peruvian implementation of the Convention. This part will consist of both the concerns and recommendations of the Committee and these can be seen as links to the governing ideas of the essay. In some parts of the chapter it might seem a little poor to refer to only one source. The reason for this is that I have had complications with finding sources that discuss the Child Convention in relation to other countries than Sweden or Western countries. The comprehensive purpose of this chapter is first to make the reader understand rights and why special or certain vulnerable groups in our society needs them. Secondly the purpose is to understand the work of the Convention on the Rights of the Child and see the connection between the Convention and the Peruvian legislation and the progress of bringing them together.

2.1 Children's rights and the perspective of the child

It's important to separate between two concepts when it comes to children's rights; *legal capacity* respective *legal action capacity*. Children have full *legal capacity*, which means the ability to have rights and obligations. This is something every individual is born with, as oppose to the *legal action capacity*. The latter refers to a person's ability to handle its own legal matters, such as meeting agreements, indebted etc but also voting in State elections. The conclusion of this is that children have limited civilian rights because they are under aged and therefore lack complete legal action capacity. Because of this vulnerability they constitute a special group of citizens in the society that are in need of a specification of their rights.²

There are two analytical perspectives in which one can approach the child and its rights; the objective perspective and the participant perspective. The objective perspective means that the child is seen as an object in need of care and protection. In this perspective the children are considered a weak and vulnerable group. The participant perspective involve that the child is an active subject, an actor/participant in its own formal activities. This perspective is confronting the issues such as liberation from parents and other adult's power and individualisation. The child have to liberate itself from its family at the same time as is has to confront the state as an adult or person with legal action capacity.³

The object and participation perspectives seem important to mention in an analyse of the children's rights since the liberation of the child at the same time means a balancing between the child's right to protection and the child's right to act independently. This balance is complex and can create conflicts. It's the excitement or the conflict in these two opposites that constitutes the driving force in the changing process.⁴

² Bartley p. 32

³ See further discussion in chapter 5.2.2

⁴ Bartley p. 38

2.1.1 What are rights?

Our times concept of rights is not as old a one might like to think. It does not go back to the old Greeks in the antique Athens. The origin of the classical liberal rights (see definition in sections bellow) goes back to the European Middle Ages. In this age it was the powerful and privileged people of the over-class who assured themselves with rights and liberties. The most famous of these declarations of rights is the English Magna Charta from 1215. By a free man (*liber homo*) the Charta meant not all men but the noblemen, but still it is seen as our history's important document of liberty.⁵ The necessity of rights can briefly be explained to have come up at the same times as the up coming of the class divided society and how some groups of people were considered more vulnerable and in a need of protection from other people and even society.

One perspective that can help us understand what rights are and what we need them for is by dividing the rights into three different categories. First of all there are the *negative rights*, which include the rights to do things without being prevented/limited from it by the state or authorities: to live safe, to not be imprisoned and punished without legal trial and sentence, to think and believe what one wants, to move where ever one wants and to acquire and possess property. These rights involve freedom from restriction and oppression from the State and are therefore classical liberal rights. Normally these are the rights we first of all think of when rights is the subject for a discussion. There are many perceptions of these rights both political and religious and for some people *any kind of forced on* involvement from the authorities is a violation of the negative rights. For example can some people think that to take forced custody of a child is a violation of the right of the parent, while others think it is a protection of the child's right to a safe environment. Conflicts between rights are common and the conflicts arise as well between individuals and authorities as between authorities and collective rights, like persecution because of ethnical or religious minorities.⁶

Secondly there are the so-called *positive rights* among them one find the rights that oblige the State to a certain performance. Like for example if citizens have a right to work and subsistence level (both rights included in the UN Declaration) then the State have an obligation to see to that the citizens receive these benefits. The positive rights sometimes are called *social rights* since the purpose of them are to help the weaker groups of society. They can also be seen as a re-interpretation of the right to life. The negative right of not being imprisoned and murdered by the State when re-defined to a positive right it becomes the rights to a living standard that involves a little more than just hanging on to life by a thread.⁷ I think the interesting aspect here is that children's rights for example can be seen both as negative and positive rights, depending on what perspective you choose as standing point. If human rights only include adults or are purposed for adults then the Convention on the Rights of the Child (CRC) are positive rights to protect a small vulnerable group of society. But if children are seen as individuals with the same equal position in society as adults,⁸ then the CRC is just an accentuation of the rights specifically for this group of citizens.

Finally there are the *active or political rights* and they signifies the right to be a citizen, which means to have the right to participate in the political decision-making, either through active

⁵ Lindberg, p. 12-17

⁶ Lindberg, p 9f

⁷ Lindberg, p 10f

⁸ see further discussion in chapter 5.2.2

political engagement or just through voting/the ballot. These rights were for example at issue in the apartheid in South Africa and during the French Revolution in the 18th century etc. The antagonism is here between the ones who have the rights (privileges) and those who do not have them.⁹ Once again a parallel to the perspective of the child can be done. Does children have active or political rights? I think our society would gain by listening to children and take advantage of their knowledge and ability to percept things in an almost objective way, which many times are called naïve. But of course by saying this I am not arguing that all children from the age of 1 should have a vote in official elections. The rights in the CRC that can be characterised as political rights are many but especially the ones concerning the children's right to opinions etc are here important to mention.

When discussing rights the discussion has to include duties. Duties and rights are impossible to disconnect. If I have rights to something there is always someone else who have to give or provide it or just respect my right to exercise my right. To focus on duties instead of rights is a way of looking at rights from a social perspective, where the consideration and dependency of other people and the fellowship of society becomes essential. Not only citizens have duties but also the State, duties such as providing society with schools and social institutions. These rights can be called citizens' rights but then we are leaning towards the kind of rights discussed in the section above - social rights.¹⁰ When it comes to discussing children and duties it does not seem as obvious as in the sections above. Parents, family and the State are the parts that have duties to children and see to that their rights are satisfied. It is more complicated though to pinpoint specific duties that children possess since they do not hold full *legal action capacity* and therefore in one way are not hundred per cent citizens of their society.¹¹

2.1.2 The development of the children's right during the 20th century

The Geneva declaration 1924 were initiated by the founder of the English Save The Children, Eglantyne Jebb and Carl Johan de Geer, who were the Swedish general consul in Geneva and later the chairman of the International Save the Children Union. A Polish doctor by name Januz Korczak were guiding and participating in the draw up of the declaration. The Declaration consisted of five head principles, which emphasized on the child's right to protection and welfare and the adults responsibility to see to that the children received it. The Declaration comprises the right to physical and mental development, satisfaction of primary needs such as food, healthcare and maintenance. The Declaration also regulated the right to protection from exploitation and the child's right to be the first one to get help in a situation of emergency. It also emphasizes the protection of especially exposed children.¹²

In either the Geneva Declaration, the Declaration of the Rights of the Child neither from 1948 nor in the Declaration from 1959 is there an age-definition of a child.¹³ The attitude of the earlier Declarations and Conventions had been that the only thing a child needed was protection and care, but this attitude changed during the 1960s and 1970s. In 1979, the International Child Year, new ideas were born. The ambition became to increase the awareness of the child's need and to work with the attitude that the welfare of the child were

⁹ Lindberg, p. 11

¹⁰ Lindberg, p. 27

¹¹ Author's own opinion and reflections

¹² Bartley p. 49

¹³ Bartley p. 51

to be taken in consideration at all social and economical decisions. The development of the children's rights had gone from looking at the child as an object in need to seeing it both as an object and an actor and this is the perspective of the UN Convention of the Rights of the Child of 1989.¹⁴

2.2 The Convention on the Rights of the Child

“Children provide the building blocks of human society. Bronfenbrenner (1970) reminds us that one important clue to understanding the values and robustness of society is to look at how it does by its children. When children are suffering we are seeing a society in trouble” (“The developing child in a changing environment” Benn, Garbarino- New York 1992)¹⁵

The development of the Convention on the Rights of the Children started on the initiative of a UN-commission group for Human Rights. They started working on the convention in 1979 and it was approved by the UN General Assembly ten years later.¹⁶ The international community had discussed children's rights during several decades. Declarations on the rights of the child had been adopted by both the League of Nations (1924) and the United Nations (1959). Nevertheless some States argued that there was a need for a complete statement on the children's rights, which would be binding by international law. These views were influenced by reports of grave injustices suffered by children: high infant mortality, lacking health care, limited opportunities for basic education. There were also alarming number of children being abused and exploited as prostitutes or in harmful jobs, of children in prison or in other difficult circumstances, and of children as refugees and victims of armed conflict. One important difference that separates the UN Convention of the Rights of the Child from the Geneva Declaration and the UN Declaration of the Rights of the Child is that the two latter are only morally binding while the UN Convention on Children's Right is legally binding for the joining states and it also has a control mechanism –the UN Committee for Child Rights in Geneva.¹⁷

In 1989 the UN Convention on the Rights of the Child was formed and it came in force in 1990. It can be described as a universal norm as it confirms the child's full dignity as a human being, meaning that the child has its own rights and needs that are fundamental and universal. It's concentrated on the individual, the particular child, and involves all kinds of human rights such as civil, political, economical, social and cultural. It is unique in the perspective that for the first time the child's different rights are compiled into one document. The Convention has had a fast and unique universal acknowledgement. In the spring of 1998 one hundred and ninety-one countries had signed the convention, only two countries have not ratified. The United States of America, which has now signalled its intentions to ratify by formally signing the Convention, now stands as the only industrialized country in the world and on of the two United Nation member States yet to make this legal commitment to children. The other country is Somalia, which is presently without a recognized government.¹⁸

There are four general principles enshrined in the Convention. These are meant to help with interpretation of the Convention as a whole and thereby guide the national implementation

¹⁴ Bartley p. 66

¹⁵ Bartley p. 15

¹⁶ Bartley p. 17

¹⁷ Bartley p. 66

¹⁸ www.rb.se, Convention of the Right of the Child, list over states that has ratified the Convention

programmes. The four principles are formulated, in particular, in articles 2, 3, 6 and 12 of the Convention.¹⁹

- *Non-discrimination (art. 2)*: States parties must ensure that all children within their Jurisdiction enjoy their right. No child should suffer discrimination. This applies to every child, “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, religion, political or other opinion, property, disability, birth or other status”

The essential message of this article is equality of opportunity. Girls should be given the same opportunity as boys. Refugee children, children of foreign origin, children of indigenous or minority groups should have the same rights as all others. It also includes children with disabilities who should be given the same opportunity to enjoy an adequate standard of living.

- *Best interest of the child (art. 3)*: when the authorities of a State take decisions, which affect children, the best interest of children must be a primary matter. This principle mainly relates to decisions by courts of law, administrative authorities, legislative bodies and both public and private social-welfare institutions. This is the fundamental message of the Convention, which is a major challenge to implement.
- *The right to life, survival and development (art. 6)*: the right-to-life article includes formulations about the right to survival and to development, which should be ensured “to the maximum extent possible”.

The term “development” in this context should be interpreted in a broad sense, adding a qualitative dimension: not only physical health intended, but also mental, emotional, cognitive, social and cultural development.

- *The view of the child (12)*: children should be free to have opinions in all matters affecting them, and those views should be given due weight “in accordance with the age and maturity of the child”. The underlying idea is that children have the right to be heard and to have their views taken seriously, including in any judicial or administrative proceedings affecting them.

The Convention in total consists of fifty-four articles and they are divided in three parts. In the first part the children’s rights are manifested, the second part describes the composition of the UN committee and the third part the ways for a country to ratify the Convention.

The first part consists of forty-one articles ranged from the child’s civil, political and economical rights to its social and cultural rights. These forty-one rights are divided into four categories, which in a way is ranged after the principles that are presented above. The first category is the right to survive and include the right to food, housing and access to medical treatment. The second is the right to develop, which include the right to **education**, the access to information, right to play and other leisure activities and cultural activities, and the right to liberty of opinion and religion. The third is the right to protection and include the right to protection from exploitation, torture and encroachment. It also includes the right not to be separated from its family. The fourth and last category consists of the right to participate, which means that the child has a right to be heard and able to express his or hers opinion in issues that concerns the child. The more mature the child become the bigger the possibilities should be for the child/adolescent to participate in the decision made by the family, school

¹⁹ fact sheet no 10 The Rights of the Child, www.un.org

and society.²⁰

This can also be expressed in another way as in the three p: s, **provision, protection and participation**. “Provision” stands for the right to food, healthcare and education. It also includes the right to certain resources and services. “Protection” means the right to care and attention by its parents and other adults that are caring for the child. It also stands for the right to be protected from sexual harassment and war. “Participation” finally means the right to be heard, or to be able to express its opinion in all matters that concern the child.²¹

2.2.1 How the Convention becomes National Legislation

There are different ways in which a country can bring together the international and national laws. The three most acknowledged ways are through incorporation, transformation and norm harmonising. By incorporation means that it is written in the national law that the authentically convention text is to be valid in the country. The convention in unmodified condition becomes in this way national law. The advantage with the incorporation, according to Strömberg and Melander, is that the legislation process becomes more efficient and less time and work demanding when the regulations are transmitted to a country's law unchanged. The disadvantage is that the Convention texts are often not so easily accessible and are worded on a different legislation technique.

Transformation is when the convention is translated into the language of the country and is applicable directly in the country. The international Convention is then making a part of the national legislation. Norm harmonising signifies that the national legislation is adjusted to agree with the Convention. The UN Convention on the Rights of the Child does not give any guidance on how the relation between the international and national law should be regulated. In article four the countries are obliged to take all suitable legislation, administration and other actions to implement the rights that has been acknowledged in the Convention. The UN is though showing signs of preferring incorporation, to in that way strengthen the legal status of the Convention itself.²²

2.3 The Committee

As mentioned earlier there was established a committee to control that the states are following the obligations of the Convention. The Committee consists of ten experts who according to article 43.2 shall have “high moral reputation and acknowledged knowledge in the area for the convention”. The Committee members are chosen by the convention states from their own citizens and the elected are supposed to serve as individuals and not as representatives for the states that has nominated them. For the composition of the committee a reasonable geographical division has been done and the committee members' experience from different legal systems has also been taken in consideration.²³

The members are elected through a secret voting from a list of persons who has been suggested by the states and each state are allowed to suggest one candidate from its own

²⁰ Bartley p. 18, also see discussion on participation and student's council in chapter 7.4.3

²¹ Bartley p. 18

²² Bartley p. 169ff

²³ Bartley p. 19, also Fact sheet no.10 United Nations p. 8

country. The election of Committee members is held at the meetings of the Committee and the elections are valid when two thirds of the Convention states are present. The members are elected for four years at a time and elections for half the Committee is every other year. The procedures are that a state have to deliver a rapport two years after a state has ratified the Convention. The rapport should include the measures that have been made to fulfil the Convention. The same kind of rapport should thereafter be handed in every fifth year. The rappers are reviewed by the UN-committee and the Secretary of Human Rights is responsible for the records, documentation and other services. When a rapport is handed in to the UN centre for Human Rights in Geneva it's immediately translated into the three working languages within the UN, English, French and Spanish. Thereafter the rapport is sent to the ten members of the committee, to the UNICEF and also to other relevant UN organisations. It is also made available to voluntary organisation know as Non-governmental organisations (NGO) and other "competent bodies".²⁴

When the rappers have been translated and sent to the ten members it's reviewed by a workgroup within the Committee who is commissioned to prepare the next plenary meeting. All the members are invited to the meeting but it is not an official meeting. The motive for the workgroup is to already in advance identify the most important questions in respective country rapport. During this review the committee has access to other UN information on children's rights and they also can study information from NGOs and similar organisations.²⁵ Representatives from different UN bodies (UNICEF, ILO, WHO, UNHCHR, UNESCO, UNDP) have the right to participate in the discussions and are encouraged to attend. When these discussions has taken place the workgroup prepares a list of questions at issues the so-called *List of Issues* that are supposed to be discussed by the government of the state whose rapport is to be discussed. This list and an invitation to the government are remitted to respective country. The *List of Issues* enables the government to prepare itself for the plenary meeting and the discussions will therefore be more constructive. When the meeting has taken place the Committee summarize its conclusions in a three to four pages long statement, *Concluding Observations*. The purpose of this statement is that it should be published in the media of the reporting country and result in a debate about the children's situation. The standpoints that the committee has presented in the *Concluding Observation* are to be considered in the coming rapport of the state in question. The Committee can also request further information from respective governments whenever it is essential for the implementation of the Convention.²⁶

2.3.1 The Purpose and Procedures of the Committee on the Rights of the Child

UN Committee cannot in detail control the conditions of the children in every country. The Committee has to define its role, which is something it has done gradually. The centre of gravity is the process around the Convention. One important aspect is the *public debate* in which the children themselves can participate.²⁷ The attitude of the Committee is constructive. The purpose is not to identify any government as guilty but to make sure that the children get their rights respected. The ambition is to jointly survey the problem and discuss what has to be done to attend the problem. The Committee should stimulate and make a foundation so that the child issues are given attention in the national politics of the different countries. Once

²⁴ Bartley p. 20f

²⁵ Bartley p. 23

²⁶ Bartley p. 23f

²⁷ Bartley p. 24

again one can emphasize the importance of collaboration with voluntary organisations and media. The UN Child Convention does not contain any possibility for the individual to present a complaint to the UN Committee. The basic idea is that a dialogue should come up between the states, the Committee for children's rights, different UN bodies and NGOs. An important part of the Committee's work is to react and criticize other states' insults of the children's rights. The Committee emphasizes the importance of international cooperation between the states that has signed/affiliated the convention. The only sanctions that can be used are adverse publicity and international pressure.²⁸

Since Peru ratified the Convention on the Right of the Child they have been obliged to make periodic reports to the Committee on Rights of the Child on the different measures that has been taken to implement the terms of the Convention. I have studied one of the reports from the second periodic and questions asked to the State by the Committee. The State seem to be able to avoid to answer concretely some of the proposed question by referring to National Plans, committees or other programmes and efforts that has been initiated and according to them (the Peruvian representatives) have resulted in progress or improvements. When reading this I realised the importance of alternative reports from NGOs and other organisations, which is encouraged by the Committee. These alternative or complementary reports enable the members to better analyse and understand the political, economical, cultural and social state the different countries are in. In situations where an outside institution is suppose to control a country, I assume, that the outside institution must be very careful and pending on the information given by the country on itself. The perplexity of this situation can be explained by asking a person analyse him- or herself, would that be a relevant or objective analyse? I would say that an analyse, of this kind, would be quite biased and not be complete without one or two non-partial additional reports.

2.3.2 The Second Periodic Report on Peru

The Committee acknowledges different measures that the Peruvian government has taken in the Concluding Observations (28/01/2000) of the second periodic report of Peru. The measures that are acknowledged are for example the translation of the Child Convention into Quechua, one of the official languages in Peru, which is a positive measure in line with the Committee's recommendations. Worth mentioning is also the initiatives taken by the State such as the National Strategy to Combat Poverty (1995-2000) and the National Programme of Action for Children (1996-2000), as well as the development of *regional* children's plans of action. The committee also mentions in this report the different factors and difficulties in Peru that complicates the progress of implementing the Convention. The widespread poverty and long-standing economical and social disparities are affecting the most vulnerable groups of the Peruvian society. The children are part of this vulnerable group and the situation affects their possibilities to fully enjoy the rights of the child. Although the political violence and terrorist activities are noted to decrease, the Committee still is concerned that the consequences of these activities are having a negative impact on the children's life, survival and development.²⁹

The Committee make recommendations and advise Peru on measures they should take. One example of this type of combining an acknowledgement with a recommendation is the

²⁸ Bartley p. 25, also Fact Sheet no 10, United Nations p.

²⁹ www.unhcr.ch/tbs/doc.nsf, CRC/C/15/Add.120, Peru 28/01/2000

following. The Committee welcomes, in the concluding observation, the establishment of Children and Adolescents Defence Centres but at the same time they are concerned about the limited capacity of the centres, the limited occurrence in the highland provinces, the poor qualifications of the staff and the inadequate level of their financial resources. The recommendation by the Committee is that Peru continues its efforts to strengthen the authorization of the Children and Adolescents Defence Centres. The Committee recommend providing the centres with adequate levels of finance and human resources so the mandate can be carried out in an effective manner.³⁰ In the report the Committee comments on some issues that are more specifically related to the subject of this essay. The Committee recommend Peru to increase measures to reduce economic and social disparities (including between rural and urban areas), to prevent discrimination against the most disadvantaged groups of children, such as girls, children with disabilities, children belonging to indigenous and ethnic groups, children living in and/or working in the streets and children living in rural areas. These groups should be guaranteed their full enjoyment of the rights recognized in the Convention. Peru is also being recommended to make further efforts to ensure the implementation of the principle of "best interest of the child". It should be reflected in all policies and programmes relating to children. Especially arising an awareness among the public in large and in the educational programmes by emphasising on this principle to change traditional perceptions of children who are too often regarded as objects rather than subjects of rights.³¹

The Committee are recommending that greater efforts are needed to ensure a very fundamental right of the child, namely the right to immediate registration of the birth of a child (art. 7, CRC). All children should be registered immediately after birth and measures should be taken that this right is being respected especially of those living in the rural and remote areas and belonging to indigenous groups. This right can be related to the issue discussed in chapter 6.3.1 (page 40) where one of the problems with enrolling children in school is that they lack a birth certificate or haven't been registered at birth. The Committee is also encouraging further efforts within the area for promoting the children's voices to be heard and participate in the family school and other social institutions (related to the initiated projects of student's councils chapter 7.5.3). The Committee also recommends Peru to explicitly by law prohibit the use of corporal punishment at home, in school and other institutions. Educational programmes should, according the Committee, be established to combat traditional attitudes within society regarding this issue. Peru is recommended to seek international cooperation from UNICEF and international NGOs to tackle the issue of corporal punishment.³²

The Committee is concerned about the high-drop out and repetition rates in primary and secondary school and also in the difference in the access to education between rural and urban areas. The Committee are especially concerned about the limited access to education for children belonging to indigenous groups and the poor range of bilingual educational programmes available for them. They recommend the Peruvian Government to strengthen its efforts on educational policies and systems to improve ongoing retention programmes and vocational training for drop-outs; to extend school coverage and improve school quality, making schools more responsive to geographical and cultural diversity; and to improve the relevance of bilingual education programmes for children belonging to indigenous groups. All of these recommendation or areas for recommendations are issues that are being discussed in

³⁰ see footnote 29 p. 4 of 13

³¹ see footnote 29 p. 6 of 13, also see chapter 2.1

³² see footnote 29 p 8 of 13

this essay. *I therefore feel that, since even the Committee on the Rights of the Child has acknowledged these issues, the issues at question in this essay are substantiated.*

3. Peru- Geographical structure and Society

This chapter will explain the political situation in Peru and some of the most important events and activities in the Peruvian society. This chapter will help the reader to understand more easily the different issues that the government of Peru and the Peruvians are facing and why it is difficult to change the problems in the society by just changing the laws. Sometimes there are issues so strongly rooted in the society that the country needs outside help and encouragement to be able to see its own faults and wrong-doings and change to be able to go forward.

3.1 Introducing facts of Peru

The population in Peru is estimated to 25.6 million of which 49 percent are male and 51 percent are female (in Sweden the rates are exactly the same). The population growth 1.7 percent is per year (approx. 430 thousand) compared to 0.25 percent in Sweden. One has estimated that between the years 1995 to 2000 there was born almost 500 thousand children every year in Peru.³³ If the population were to be divided in age groups it would result in three different groups. In the first group there are children from 0-14 years old and they represent 33.4 per cent of the population. In the second group there are the persons between 15-64 years old and they make out 61.8 per cent of the Peruvians.³⁴ The old from the age of 65 and older are representing only 4.8 per cent of the population. By comparing these figures to Sweden we can see that the children are making out a large group of the Peruvian society. In Sweden the young people within the same age range only represent approximately 18 percent of the population.³⁵

Peru it's the fourth largest state in Latin America. The mountains chain, the Andes, which runs from the north to the south of Peru, divides the country in three geographic parts with quite different climates. Along the coast of the Pacific Ocean lies "La Costa" which is a desert-like area with almost no rainfall and an even temperature all year around. The highland, "La Sierra", with mountain peaks over 6000 meter above sea level, has a very mild climate with abundant rainfall during the winter half (Oct-Apr). East of the Andes is the Amazons rainforest in Spanish called "La Selva", this area represents two thirds of the country but only eleven percent of the population.

The difference in the landscape and the climate could be one contributing factor to the government's difficulties in uniting and reaching out to the population. The geographic situation of Peru can therefore be a relevant issue to discuss in relation with the educational system. The variation of Peru's geographic and infrastructure reflects in many ways the diversity of the Peruvian society. There is an evident disparity in the Peruvian population and culture. Almost each region has its specific cultures and traditions. The Indians (who are in majority in the jungle and the highlands) have their thousands-year-old culture that is profound and passed on to younger generations and because of their own languages the

³³ Salgado p.29

³⁴ www.inei.gob.pe, Perú en cifras/ indicadores demograficos

³⁵ www.un.org/depts/unsd/social/population.htm

Spanish influences has had difficulties to take root. This has in its turn complicated the access to education for these Indian children since their first language is not Spanish. Without a proper education these children are most probably going to be separated and/or discriminated in society for their ignorance of, not their own history and traditions but of the knowledge and references shared by the rest of their fellow Peruvians.

The difference in the city-life and the life on the countryside is another aspect of the geographic structure in Peru. The life in the Peruvian cities are not very much unlike the life in any other bigger city in the world, industrialized or developing countries. The poverty is clearly visible and the causes of urbanisation are most likely the same as in any other country. The dream of a better life, job and opportunity in the city compared to the life dominated by misery on the countryside (see further discussion chapter 4.3 below). The urbanisation is also a way if integrating the Indians and minorities to the modern society of Peru, although the life in the suburbs of for example Lima is not the ideal exemplar of modern life but the rough reality.

On the countryside the old traditions and customs are still very much in use and of importance. It can therefore be difficult for both the National and regional governments to reach out with information on new ideas and ways of living. It is in some way the old world meeting the new world. The Indians in the Peruvian highland are living under very poor conditions and although tourism has given them a "new" source of income in some parts of the highlands, especially around Puno and Cusco, they live a very traditional life dramatically different from the modern lifestyle like in some parts of Lima. The authorities have to struggle to be able to implement new laws and regulations and influence old traditional opinions with new ideas and attitudes. The variety of the country's infrastructure and geographical conditions might be one reason for why it is difficult to fight child labour or encourage parents to send their children to school. The schools might be located far from the farm or the weather conditions (especially during the rain-season) might prevent the children from attending school. A national dividing of the academic year (the autumn-spring semesters) might not suite the climate and seasons in all the different parts of Peru. The dividing of the academic year might have to be adjusted to the different areas like the jungle, the highlands and the coast.

3.1.1 Illiteracy

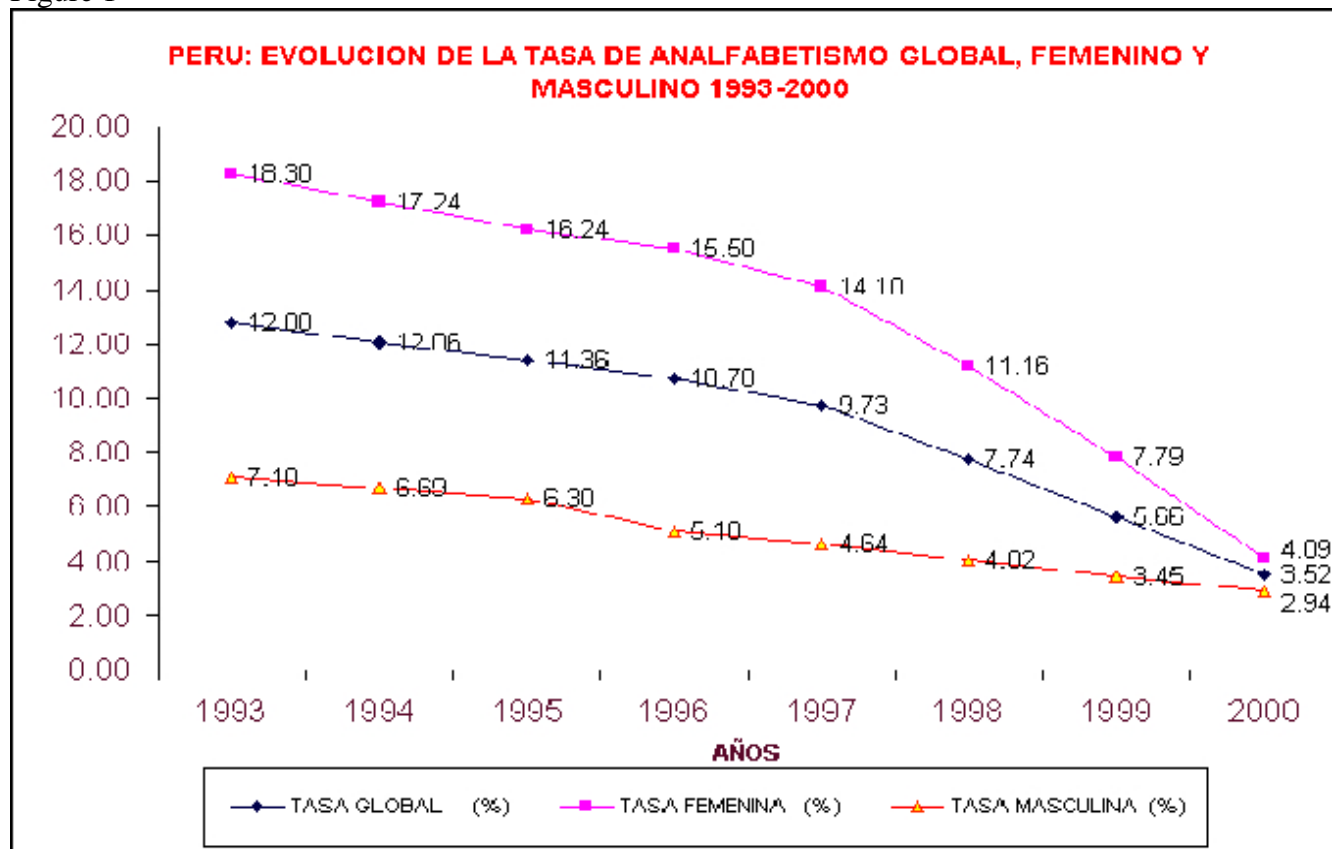
From 1940 to 1998 the illiteracy has decreased from fifty per cent to eight per cent (see figure 1 below). According to actual figures from the INEI (National Institute of Statistics and Information) fifteen of every hundred Peruvian women are illiterate. The national average of adolescents that don't know how to read or write is 4 per cent with a majority of cases among female adolescents (5%). These figures could indicate unequal conditions in educational opportunity between boys and girls. The situation is more extreme in the northern part such as Cajamarca where 10 per cent of the youths between the ages of 15-17 don't know how to read or write.³⁶ These figures can be related to the issue discussed in the piece above, that illiteracy is more frequent in the countryside where schools might not be as accessible. One other aspect that can be related to the issue of the geographic disparity of Peru is the difference between girls and boys concerning reading and writing skills. Can it be that traditions are still strong on the countryside when it comes to the male and female positions

³⁶ Utrikes Politiska Institutet, "Peru"

both in society and in the home? The “new attitudes” of equal opportunity to education between both sexes might not have been able to root on the countryside as well as in the bigger cities, since the difference in lifestyle and traditions are still very remarkable when comparing the country-life and city-life. One thing that can be said for sure is that some of the minorities in the Peruvian society might not take the education given to heart since it is taught in Spanish, which to most of them is their second language. This can be the explanation to many serious problems and factors that needs improvements in the Peruvian educational system (see further developed discussion chapter 6.2.1 and 7.3.4).

The illiteracy rate in Peru was for males 5.3 percent and for women 14.6 percent among the population fifteen years old and older in 2000.³⁷ The illiteracy rate in the world show figures for males of 14.7 percent and for females of 26.4 percent. If the Peruvian rates are put in relation to the average illiteracy rates in Latin America and the Caribbean the male rates are remarkable lower, 5.3 compared to 10.8 percent, and for women the Peruvian rate is slightly higher, 14.6 compared to 12.6 percent.³⁸

Figure 1



3.1.2 Democracy and the Peruvian Society

Total parliamentary democracy can be considered young in Peru since it was only in 1979 that all adult Peruvians were given the right to vote, when the literacy qualifications were removed. The latest experiences of terrorism and an uncertain future of the country have

³⁷ www.un.org/depts/unsd/social/literacy.htm

³⁸ www.unesco.org/statistics/yearbook/tables

encouraged a popular support for authoritarian rule. Yet if the electoral democracy is fragile, other forms of communal and democratic decision-making have stronger roots in Peru. The notion of community, in particular, is an ancient value among Peruvians, who in the Inca period were organized in communal units or *ayllus*, which still exists in some rural areas.³⁹ Many Andean communities continue to be structured along age-old lines of shared responsibility, and villages still get together to carry out communal tasks, such as repairing irrigations, house-building or harvesting, and they are always accompanied by fiesta.

The urbanization has brought out a strong individualistic characteristic in migrants, who perhaps have no option but to be self-starters among with thousands of informal sector traders working alone in a situation of a so-called cutthroat competition. Although the individuality has been strengthened mostly because of the urbanization, the traditions of the Andean communities have been revived in the shantytowns of Lima. One example is the construction of the railway line in the shantytown El Agustino where the residents gathered to work on it every Sunday.⁴⁰ Other common ways of collaborating is the so-called comedores populares or soup kitchens, where families pool their resources to cook more cheaply. Similar community initiatives include the “vaso de leche” (a glass of milk) programs, which distributed milk and breakfast food to local school children. Another example is the “wawa wasis”, which are a cheaper version of childcare centres where women take care for each other’s children. People go along to help their neighbours and expect help in their return. Along with these traditions it’s therefore common to see fund-raisings and parties where food and drink are sold during the weekends in the shantytowns.

Democracy has taken a new meaning under the presidency of Alberto Fujimori, who claims to have introduced a “direct democracy”, a dialogue between the leader and the people. Fujimori himself claimed that there were no intermediaries except for perhaps the television screens seen in four million Peruvian homes. Fujimori preferred to work characteristically in random and well publicised visits to shantytowns and rural areas. Fujimori considered himself as the technocratic manager of a company called Peru. His motto was said to be: “In politics you act first and then you inform”. A few national institutions like “Foro Democrático” tried to encourage new civic groups to appear as a counterbalance to the presidential power and to take up wider social concern, such as strengthening the weak judicial system. So far however, dynamic new representatives of Peruvian society have been very slow in emerging.⁴¹

3.1.3 Employment and the Informal Sector

Unemployment has been a serious problem for most Peruvians, especially since 1993. There is no social security net, except for perhaps a free meal at a soup kitchen, for those without an income. The majority of the poor have no choice but to work jobs, which pay little and offer no security. As one government adviser admits; “Our problem is not of jobs, but one of income”. Official figures show how far the standard of living has fallen. Wages in 1994 were worth 43.3 per cent of what they were worth in 1987, recovering from 1990 when they had fallen from 31.1 per cent of levels three years earlier.⁴²

Huge numbers of unemployed people are hidden among the crowds who get around making a

³⁹ Holligan p. 40

⁴⁰ Holligan p. 41

⁴¹ Holligan p. 41

⁴² Holligan p. 51

living from selling goods or services on the streets. The sheer variety of items on offer testifies both to the scale of the problem as to the ingenuity of a people who dreams up of a thousand ways to get by. The international labour organisation estimates that 54 per cent of Lima's workers have no contract or formal job. Half of these, around 800 thousand adults plus innumerable children, work on the streets. According to figures around 10 per cent of the labour force is openly unemployed, rising to twenty-five per cent among the youths. In 1995, 46.1 per cent were working in the so-called modern sector with a legal contract, and 53.9 per cent in the unsafe informal sector.⁴³ Another confusing factor when overlooking the un/employment situation is that most Peruvians, even those with high qualification have several jobs. Many professional workers spend their spare time using their personal cars as a taxi, (the major source of informal income) which merely requires more than a handwritten note in the window saying "Taxi".

It is very difficult to determine how much a person earns for a living, as the state "minimum wage", barely \$100-a-month, is hardly enough to support one person, much less a family. With the in numerous informal jobs it is difficult to calculate the average income for a Peruvian. Apart from poverty statistics there is no exact measure of what an average Peruvian actually can earn. The statistics does show that around 49 per cent of the Peruvians are living below the poverty line, which implies that they are unable to satisfy their basic needs. Peru is on this aspect lagging behind most of the countries in Latin America.⁴⁴

3.1.4 The Social Differences in Peru

The social gaps and income differences are extreme in Peru. The majority of farmers and the shantytown citizens live in extreme poverty. In 1993 approximately 57 percent of the population were living below subsistence level i.e. in poverty compared to 46 percent in a similar survey made in 1995.⁴⁵ The National Public social insurance system financed by the employers is only accessible to those who have a legal employment in the cities. Age and health insurance also deteriorated in 1993 because of the fact it was partly replaced by private insurances. There is a shortage of doctors and health services. Because of the restraints' policy during the nineties the hospitals and other health services are now concentrated to Lima and the bigger cities. Malnutrition is a serious problem and 77 per cent of the population in total have access to clean water (87% in the urban areas compared to 51% in the rural area). About 76 per cent in total have access to adequate sanitation, where the percentage is only 40 in the rural area compared to 90 per cent in the urban areas.⁴⁶

During the late part of the 20th century an impressive population growth took place and it resulted in a large urbanisation of Peru. Lima today is the fifth largest city in Latin America. The enormous population growth during the last decades (4-5 millions in a ten years period) has had the effect that almost 700 000 Peruvians have emigrated, approximately forty per cent have emigrated to the United States of America.⁴⁷

Peru has during a long period of time had immigration from all over the world. The largest group of the population is still the native Indians although the Spanish conquerors tried their

⁴³ Holligan p. 52, Utrikes Politiska Institutet, "Peru"

⁴⁴ Holligan p. 52

⁴⁵ www.promudeh.gob.pe, estadisticas, Oficina de Población y Familia

⁴⁶ www.unicef.org, statistics, Peru

⁴⁷ Utrikes Politiska Institutet, "Peru"

best to eliminate these aboriginals during the 16th century. The second largest group is the so-called "Mestizos" which are persons with European and Indian origin. The Peruvian population can be divided in the following groups; the Andean Quechua people, black Peruvians, criollos and mestizos, Europeans (gringos, blanquitos), Asian Peruvians, Indians of the Selva (jungle).⁴⁸ The three most common languages are Spanish, Quechua (spoken by more than three millions) and Aymará (close to half a million speakers).⁴⁹ Approximately thirty percent of the population don't speak nor understand Spanish. The Constitution is published in Quechua but most of the governmental documents and the communication with the citizens are in Spanish.

Discrimination is a big problem in Peru. By discrimination I hereby mean both a racial and an economical discrimination among the different groups described above. The racial discrimination becomes even more obvious or stronger when economical segregation is striking the same group of people. There is an enormous gap between the rich and the poor. It is clear to see without any deeper investigations of the Peruvian society that the native Indians are on the lowest rank and "the Spanish" and "the whites" are over-class.⁵⁰

3.1.5 Terrorism

The Peruvian society has had to face decades of terrorism. The political violence has since the late seventies been one of the most serious and urgent problems for the Peruvian government to struggle with. During the eighties about twenty thousand civilians were killed because of the political violence. In 1990 alone the amount of victims were almost 3 500.⁵¹

Terrorism is an activity that is not to be encouraged but somehow I think it is important to maybe analyse or look at some of the causes for its upcoming. The existence of terrorism is a sign for a nation with a long history of oppression or war. Of course terrorism is horrible and negative for a society, but it is many times seen by some people as the only a way to rebel, express their resistance and make their voices heard to a dictatorship and oppression. The situation in Peru developed most probably because the gap between the "modern" Peru and the poor regions in the highlands and the jungle was increasing. Two percent of the landowners controlled seventy percent of the arable land. It became a hard and difficult struggle to survive and support a family in the highlands or the jungle. The urbanization of poor people, leaving their farms and moving to the cities was just a sign of the country in crisis. Those of the highlanders who refused to leave their farms to a life in the city started to organize themselves and demand more land.⁵² Some of these organizations became political manifestations and the use of violence and threat was their weapon against the authorities.⁵³

On the other hand the terrorism itself had a strong impact on the Peruvian farmers and the countryside population. This impact of terrorism resulted in that many fled to the cities in hope of a better and more secure life. Because the constant conflicts from both the government, wondering if they were part of the guerrilla, and from the guerrilla, persuading

⁴⁸ Holligan, p. 57-63

⁴⁹ <http://www.minedu.gob.pe/> , "Educación Bilingüe Intercultural..."

⁵⁰ Utrikes Politiska Institutet, "Peru" p. 5, author's own reflections that could be further developed but it would be the issue of another essay.

⁵¹ Utrikes Politiska Institutet "Peru"

⁵² Holligan p 35f

⁵³ Author's own conclusions and observations

them with threats to join the guerrilla, made the life on the countryside not so peaceful. The vision of a better life in the city, a vision of better possibilities to jobs, opportunities and of making more money became the dream of the Peruvian farmer.

In the late seventy's early eighty's Peru suffered a serious economical crisis and it was during this period that two of the most famous Peruvians guerrillas were formed, "Sendero Luminoso" (Shining path) and "MRTA" (Túpac Amaru Revolutionary Movement). The difference between the Shining Path and the MRTA were that MRTA co-operated with other grassroots organisations while the Shining Path saw all of these, including MRTA, as revisionists and enemies.⁵⁴ The government were surprised by the tactic and terrorizing actions of the Shining Path and responded with a very tough antiterrorist combat. The military resistance often struck civilians and this resulted in that some people lost faith in the government and joined the guerrillas. The guerrillas soon found a way to finance their activities and gain power. They took control over the Huallaga Valley where the majority of the Peruvian coca is cultivated. In 1978 the government had forbidden all cultivation of coca that could be refined to cocaine. The Shining Path gave the farmers of the valley the guerrillas' protection from the Peruvian government and claimed "taxes" from the Columbian dealers who controlled the smuggling. Because of this business Shining Path became one of the wealthiest guerrilla groups in the world today.

Nothing this century has changed and had such a strong impact on the Peruvian society as the Shining Path movement. This guerrilla group was responsible for around thirty thousand deaths and damage to infrastructure estimated to \$25 billion since 1980. Today Peru is struggling with many consequences of the years of terrorism such as reinstalling the peace and security in a damaged society. An amnesty law passed in June 1995 protected any military or armed force operative involved in human rights abuse since 1980, from prosecution. The power of the security forces to intimidate, torture and even kill was excessive during these years.⁵⁵ Both of these issues and "dilemmas" that the Peruvians have live with and try move on and continue the progress of recuperating Peru. The imprisonment of hundreds of innocent people on terrorism charges in the contempt for human rights is only gradually being rectified. Under pressure from human rights organisations, Fujimori set up a special commission to review terrorism cases and by mid-1997 had pardoned more than one hundred prisoners.⁵⁶

The history cannot be changed but making sure justice is done can reduce the effects on the society. All of the issues discussed in this chapter have somehow been affected by the terrorism. There was not one person that I came in contact with in Peru that did not mention the terror and the impact that terrorism had had in his/hers life. Therefore I saw it as inevitable not to discuss it in this essay although the connection to the issue at question for this essay might not be so obvious.⁵⁷

4. The History of Peru

This chapter will try to explain the different aspects and important influences in the Peruvian society by looking at the history of Peru. The main purpose of chapter four is to describe the background of the Peruvian society so it will help the reader to understand the discussion and the different aspects that are being argued thru the essay. Although some of the history

⁵⁴ Holligan p. 38

⁵⁵ Holligan p. 36

⁵⁶ Holligan. p. 36

⁵⁷ Author's own opinion

described might seem irrelevant to the issues of the essay, it has been included because I find it important for the reader to have this knowledge when trying to understand the Peruvian society and following the discussions of the essay. The reader should see this chapter as a gathering of basic data to be able to better understand the situation of the Peruvian society and the history of the Peruvian education.

4.1 The most influential settlement

The archaeologists claim that there has been human settlement in Peru for at least 12 000 years. One of the most important and influential settlements and cultures were the Inca Indians. The Incas started growing around Cusco in the north of Peru around the 12th century. During the middle of the 15th century the Incas started their conquests and ended up ruling over almost a third of South America (Bolivia, Ecuador, Peru, the South of Columbia and the North of Chile). The Inca Empire was a very well organised and strictly divided society with the ruling Inca (the leader) in the centre. The Incas ruled with authoritarianism by a sense of fairness. Although they had neither writing nor the wheel the Incas managed to dominate other sophisticated cultures and weave them into their empire with a balance of brutality, threats, tolerance of local religious cults and offered a stability of well-run farming and storehouse system.⁵⁸ The land was owned and worked on jointly and the crops were divided among the citizens according to a special rationing system. The communication within the Empire was well developed and very efficient because of long stretched out paved roads. The Empire was united and held together because of a strict governing and the fact that they had managed to spread their language Quechua through out the entire empire.⁵⁹

4.1.1 The Spanish Colonisation

In 1532 the Spanish reached Peru under the conduct of Francisco Pizarro. During this time there was an internal conflict in the Inca Empire and the Spanish conquerors took advantage of the situation and in less than two years the whole country was conquered. In 1535 Lima was founded and became the main city of the Spanish vice kingdom, Peru. For the Indians the colonisation was a disaster but for the Europeans it was the start of a new era. The silver that the Spanish brought with them back to Spain contributed to the industrialisation of Europe. For the Indians the colonisation only led to new diseases, forced labour/slavery and most seriously to a total collapse of the Incas' providing system and their flourishing golden age. The Indian population decreased from maybe 12 millions to 2 millions in a period of fifty years. The colonizers drove the Indians away from the best farming areas and formed large estates where the Indians were forced to work. Rebellions among the Incas were made but none of them succeeded. Túpac Amaro II led the most famous insurrection in the 1780s. In 1821 the Argentinean general José de San Martín in Lima proclaimed Peru as an independent self-governing country. The complete liberation was not until 1824 when the entire Spanish Empire in South America officially fell at the battle of Ayacucho.⁶⁰

⁵⁸ Holligan p. 20

⁵⁹ Utrikes Politiska Institutet, "Peru"

⁶⁰ Utrikes Politiska Institutet, "Peru"

4.2 The School system through history

The history of the educational system is just briefly being described here since the main purpose of the essay is to concentrate on the Peruvian educational system of today. But as accentuated before many time we need to look back in history to be able to understand the “modern” system of today. For Peru the history has had a dramatic impact on certain parts of the population, being an ex-colony state. By studying the history of the educational system we can maybe trace the dilemmas discussed above and also later in the essay, concerning unequal opportunity for girls and boys to receive education. It also gives us an explanation for why for example Quechua has been ignored and not been the teaching language for the Indian children who have it as their mother tongue.

4.2.1 The education in the Inca Empire

The purpose of the Inca education was very practical and an integration of the generations. It was a social event where the older generations integrated the younger generation intentionally and systematically in the productive activities. The education's efficiency depended on its naturalness and identification with the town life. The educational contents that were passed on to the succeeding cultures were art, letters, astronomy, moral philosophy, history, civil education, poetry, theatre, medicine and manual art.⁶¹

Manco Cápac who were the Inca leader from 1150 to 1178 initiated that the education should be dedicated to teach the men how to cultivate the land, become skilful warriors and construct houses while the women were taught how to weave, make clothes and to manage all the chores of the household. These early Incas taught a civil education that signified a mutual understanding, love and peace and respecting the laws. There were made moral norms for the family life and capital punishment for adultery, murder and theft.⁶²

It was the Inca leader Inca Roca, which led the Empire between 1321 and 1348, who reorganized the life in the Empire and founded innumerable schools. In this epoch it was the tradition that the sons followed in their father's footsteps and were taught their father's trade and when turned 25 they had to lend their services to the State, when asked for.

Another famous Inca leader were Pachacútec, who ruled between 1430 and 1478. He also increased the amount of schools and teachers and gave orders that everyone had to learn the language of the capital Cusco (i.e. Quechua), which would give them “dignity” and “gentry”. Pachacútec also established a principle of not bringing up children with violence nor with extreme softness but in a balanced manner so “they would grow up to be strong and brave in wars and wise and reasonable in peace”. This is a very interesting principle, I think, that were established in the fifteenth century and today, almost 600 years later, the Government of Peru is recommended by the Committee on the Rights of the Child to review their laws (see chapter 3.2.3) and prohibit corporal punishment. Roughly there are three Inca leaders that has had the most important impact on the educational system in Peru namely Manco Cápac, the founder of the Inca Empire, Inca Roca, the organizer and Pachacútec, the renewer and perfectionist.⁶³

⁶¹ Calero Pérez, p. 17

⁶² Calero Pérez p. 18

⁶³ Calero Pérez, p. 19

4.2.2 The education in the Spanish Colony

During the three hundred years of colonisation, the Colony State were not interested in educating the aboriginals (Indians), nor educating the farmers that had been deported from their home town and had to live in the centre of Lima, Trujillo, Arequipa, Cusco and other colony cities. The typical of the colonial education were the special treatment of the sons of the aristocrats, landowners, craftsmen, miners and bureaucrats through their privileged access to the University, Higher Colleges and Seminars. The State made every community, where they had the economical capacity, responsible to create their own schools and hire teachers. There were only a few schools two or three in Cusco, Pisco, Huaraz etc. The children of the farmers and simple artisans were taught to read, write and count and by compulsory the Christian religion. The formal education in the Spanish Colony were fundamentally directed by religious and reserved for only a small group of people. For the Indians in general the only educational contact with the western world was through the indoctrination of the Christian belief (catechism, prayers and Christian ceremonies).⁶⁴

The old systems of the Incas were deleted and new schools, higher colleges, colleges for "Curacas/Caciques"(Chieftains of Indian origin) and Universities appeared. There were established special schools for the Curacas/Caciques in Cusco and Lima during the 17th century. These sons of the Chieftains had to stay in these schools for six to seven years where they learned to read, write and most importantly learned the Christian doctrine and some rudiment of legislation and administration. They later had to return to their hometowns and assimilate with their subordinates. The inquiring about this education is that approximately 98 per cent of the sons of the caciques did *not* attend these schools.⁶⁵

The teaching was characterized by memorising, a good student was the one who could repeat the homework without mistaking and it didn't matter if he understood what he had memorised or not. On the other hand what the maestro explained and taught were nothing the students could object to. The education was not promoting reflection not free and creative expression over the subjects. The students who hadn't done or couldn't remember their homework were physically punished with slaps on the body or the hands.⁶⁶ Spanish became the official language, which meant that Quechua was more or less ignored. Many Indian rituals and educational activities were condemned and the Spanish books and traditions were forced upon the aboriginals.

Interesting to see is that even during the colonial epoch the education of the female population was of a different purpose or cause than for the education of the boys/men. The education for girls/women had as main purpose to spread knowledge relating to religious, moral and domestic matters. The valuation of women was reduced in the society of this time.

4.2.3 "A change of Attitude"

The colonizers came to slowly change their attitude about not opening their schools to the Indians and expand their education to more than just learning the catechism. In the late 18th century people was recognizing that to continue maintaining the Indians "ignorant" was not

⁶⁴ Calero Pérez, p. 31

⁶⁵ Calero Pérez, p. 33

⁶⁶ Calero Pérez, p 30f

helping the country to achieve a rapidly growing production, that could flourish the industry like it had in Europe. Ideas about a technical education were discussed. The discussions were that the Indians had to be taught how to agriculture, read, write, do carpentry etc. But it was hard to arise sympathy for these new ideas that had started in 1790, the motto of the state were still "that it was better to have an ignorant Indian than an educated Indian".⁶⁷

The Spanish's purpose for educating the native inhabitants of Peru were **to incorporate** them in the Colonial regime and in that way maintain some kind of control over them, if not entirely but then only in the spiritual, economical and political area.⁶⁸ The education was very strongly characterized and often on the initiative of the Christian Church with the aim to exterminate all other religions and faiths and save the natives from the evil. I suppose that the colonizers were afraid that education would give the Indians a sense of power and independence and therefore by emphasizing on Christianity and suppressing the Indian cultures and traditions the Spanish could still be superior of the Indian.⁶⁹

My Peruvian friends told me stories about how the Indians deceived the Spanish and their priests by pretending worshipping the new god and praying but in reality they were secretly still worshipping their original gods only that they were appearing in other shapes. To be able to survive and be left in peace the Indians had to in words and actions worship the Christian God but in their mind they were still faithful to their own original belief. The Spanish could beat and mistreat them as much as they wanted but they could never get control of the Indians mind and inner thoughts.⁷⁰

4.2.4 Equal Education

In 1850 the government of Ramón Castilla introduce a regulation of public instruction for schools and colleges (Code of Education) to improve the educational system in Peru. This was the first one of its kind and some of its mandates were that the education had to be of moral, intellectual, esthetical and physical character. Students were not admitted to colleges without having passed exams in Christianity, reading, writing and knowledge in Spanish Grammar. The moral education was based on the religion and aimed to inspire "compassion, love for the homeland, fraternity for all razes, respect of the law and costumes, the veracity, the personal dignity, good employee and the pure sentiments".⁷¹

The opinions on whether the moral education of the nineteenth century was a success or not might be the subject of discussion in another essay, but it still is interesting that these mandates were promoted and accentuated in a country where the history consists of so much oppression and disrespect of other costumes and cultures. The conclusions that can be drawn from this account of the Peruvian history are that the government has to acknowledge the fact that the culture and identity of Indians and other minorities has been set aside for century and that it is important to restore these epochs of oppression. Although everyone is equal before the law, it is important to emphasize on the rights of minorities.⁷²

⁶⁷Calero Pérez p. 34

⁶⁸Calero Pérez, p. 35

⁶⁹ Author's own reflections and conclusion

⁷⁰ Talks with friends in Lima

⁷¹ Calero Pérez, p. 55-56

⁷² Author's own opinions and reflections

By not acknowledging minorities the use of their original language a country is violating for example the second article in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. This violation should be recognised as a serious problem and it can also be seen as a political statement from the government, as a prolonging of the oppression of the Indians and not giving them recognition for their inheritance and culture. By just providing education in Spanish is an insult to the Indian population and culture. The choice of some parents to not send their children to school might even be an act of political character to refuse to give in to the Peruvian government and approve of them ignoring the Quechua as an official language of the Peruvian aboriginals. There are many minorities around the world fighting for acknowledgement of their language and culture. This discrimination of minorities is a problem in my own country as well. When writing this essay I found out to my surprise that the language of the Swedish aboriginals, the Sames, *Sami/Lappish* became an official language no earlier than in 2000.⁷³ Clearly this is an issue that both developed and non-developed countries needs acknowledge and work on.⁷⁴

5. The Peruvian Legal System

This chapter will describe the Peruvian Executive, Legislative and Judicial System. The chapter also include a part that will enter a little bit more deeply in the national legislation of children's rights. The purpose is to point out the connection between the Peruvian legislation and the UN Convention on the Rights of the Child. This chapter can be seen in relation to the chapter 3.2.3 above that discusses the recommendations from the Committee on the Rights of the Child, where some specific laws and regulations in Peru are being "criticized". The chapter will also discuss some of the elements of the legislation that is especially important or just of a special and/or different character.

5.1 Executive, Legislative and Judicial System

It is stated in the Constitution of 1979 that all Peruvians over eighteen have a right to vote and since the elections of 1985 even the illiterate are allowed to participate in the elections (changes in the Constitution of 1979). As mentioned earlier the constitution of 1993 gave the president Fujimori a stronger and more powerful position. The president of the Republic is the head of state and has the executive power as well as he is the Supreme Commander of the military, the president is elected for five years at a time together with two vice presidents. The president selects the commanding officers of the National Defence and Constabulary and the nominations do not have to be approved by the parliament. The president has also according to the Constitution of 1993 extended power to dissolve the congress. The Minister Council, called Gabinete, and its President directs the politics of the government but it is the President of the Republic, who appoints the rest of the ministers in the Council.⁷⁵

The Legislative power resides in the Congress, which consists of one chamber and there are one hundred and twenty Congressmen/women. The Congress is elected for a five-year-period and to be elected to the Congress you have to be born Peruvian, twenty-five years old and have the right to vote. Peru is divided in twenty-four departments⁷⁶ with regional head-offices

⁷³ Nisse Matti, Information officer at the Sameting (email contact Wed, 14 Feb 2001)

⁷⁴ Author's own opinions and reflections

⁷⁵ General Information; www.congreso.gob.pe

⁷⁶ Twenty-five dep. including Callao which is a constitutional province connected to Lima and the most important harbour in Peru.

and administrations in each main town. Further there are also one hundred and fifty-five province councils and one thousand five hundred and eighty six district councils.

Judicial Power:

Supreme Court
Superior Court
Civil and Penal Judges
Justice Department
State Police Department
Regional institutions

The Judicial Power consists of the Supreme Court, Superior Court and Civil and Penal Judges, Justice Department, the State Police Department and similar regional institutions. The Supreme Court has eighteen members and has the right to present bills and is also the highest court of appeal. There also exist a special constitutional court whose duty is to supervise so that the government's decisions aren't in contrary to the constitution. In 1993 death penalty was introduced for terrorist crimes but this penalty were abolished in 1997⁷⁷.

The fundamental rights of the constitution are protected by a special procedure. These procedures may include the procedure for *habeas corpus* for protecting the liberty of the individual and the procedure of *recurso de amparo* for the protection of fundamental rights. These rights are called first- and second-generation rights and the similar procedures are found in the Spanish legal system.⁷⁸ The principle for *habeas corpus* is to obtain an immediate judicial hearing for anyone detained illegally. This meaning that no one can be deprived of their liberty except with the observance of certain procedures and principles. *Recurso de amparo* is a right of appeal to the court on the basis of lack of constitutional rights of some kind.⁷⁹

5.1.1 The Constitution

Fujimori and his government renewed the Peruvian Constitution in 1993 (Constitución Política de Perú de 1993). The new Constitution is said to be a mixture of the political programme of the actual government, a fundamental piece of the judicial establishment and finally of the "Fuji-shock" that Fujimori performed and introduced on the 5th of April in 1992.⁸⁰ The constitution consists of 206 paragraphs and their divided into six different chapters or classifications:

- The Person and Society
- The State and the Nation
- The Economic regime

⁷⁷ Dr César Landa

⁷⁸ Dr César Landa

⁷⁹ Villiers, p 60ff

⁸⁰ Landa p. 11-12

- The Structure of the State
- The Constitutional guaranties
- The Constitutional reform

The paragraphs that are relevant for my thesis have their origin in the first and the fourth chapters of the Constitution. In the initiating paragraphs the protection of the human being and the respect of her dignity is stated as a main ambition for the society and the state. There is also stated that everyone is equal before the law and that no one should be discriminated because of their origin, raze, sex, language, religion, opinion, economical conditions or other nature or quality. The Constitution also states that everyone is entitled to peace, tranquillity, to live life to the fullest and in that way enable the person to in a balanced and sufficient atmosphere enjoy and develop in life.

The Convention on the Rights of the Child has been incorporated by Peru, which signifies that the entire Convention is making part of the Peruvian normative. Because of an incorporation of the Convention it has not required any changes on the norms of the Convention through translation etc.⁸¹ The new constitution of 1993 and the modifications of the Child and Juvenile Code should therefore be influenced and seen as complements to the incorporation of the Convention on the Rights of the Child, which just as much is to see as national legislation. There is a genuine ambition in Peru to the incorporation of the Convention and to improve the situation for the children, but this will be deeper discussed later in the essay.

In the fourth paragraph there is a special definition of the protection of the child. The community and the state especially protect the child, youth, mother and old in the situation of abandonment. The family as an institution is also protected and marriage is promoted. They are both regarded as natural and fundamental institutions of the Peruvian society.⁸² Local politicians have according to the Constitution a main task to spread and promote people to be responsible mother and fathers, to recognize the rights of the families and persons to decide.

In the 6th paragraph the rights and obligation of the parents are stated. The parents have to feed, **educate** and give security to their children and the children in their turn have to respect their parents. This paragraph is very interesting when the children's obligation to respect and assist their parents is expressed so specifically. The Peruvian constitution here pinpoints the meaning and significance of being a family member. I would like emphasis on the importance of a mutual respect between the parent and the child. The parent is the adult in the relationship and should therefore set example for the child who most probably is looking up to the parent. A parent will by showing respect to a child teach the child how to treat other human beings including his/hers parents and family. There is a clear connection I think between parents demanding respect of their children and disrespectful children. A disrespectful child might not even **know** how to behave respectful when he or she never has been shown respect from his/hers parents. Parents and society are the role models of the children. The behaviour of parents and the rules set by society reflects on how a child behaves and act. By this argumentation I conclude that we cannot blame children for their behaviour unless we first have examined our own behaviour. Of course children too can do wrong I that is not what I am arguing, but I am arguing that the connecting link between child and parents must be recognized and the fact that the parents have the main responsibility for what kind of a person the child will become.⁸³ According to article 6 all children are equal before the law no matter

⁸¹ Emilia Bustamante, 070301

⁸² Landa p. 22

⁸³ Author's own opinions/argumentation

their background, their parents origin or civil status has no relevance and it's forbidden to reveal any kind of information in official registers or other personal documents.⁸⁴

In the continuing paragraphs it is stated everyone's right to protection of health. The article that has most relevance for this essay is number thirteen, which states the following: **“Education is the solution for a persons internal growth. The state recognizes and guaranties the freedom of education. The heads of the family have the obligation to educate its children and choose a school and participate in the educational process”**. The importance of education is clearly emphasized. Education promotes knowledge, learning, science, techniques, art, physical education and sports and it helps the person to prepare herself to life, work and solidarity. The article also illuminates the responsibility of the parents to make sure their children are educated. The wording in this article is the perfect example of how an ideal is presented but how difficult it is to make the ideal into reality. One of the issues for this essay is exactly the dilemma with children not attending school although it is compulsory. Street children selling candy and begging all hours of the day is the living proof of a serious gap between the ideal in the legislation and what the reality is like for some children. Article 13 of the Constitution is formulated in accordance with article 28 in the Convention on the Right of the Child, which states the children's right to education.

5.2 El Código de Niño y Adolescente / The Child and Juvenile Code

The Child and Juvenile Code is the legislation that is of most relevance for this essay, where the Peruvian rights of the child is especially accentuated and illuminated. The Peruvian legislation is, according to one of my Peruvian contacts, a legislation that is constantly under change or review. She expressed that the laws in Peru are changed in the same rate “as women are changing their dresses”. A quite exaggerated metaphor but still it gives us an impression of the situation in Peru. The latest version of the Child and Juvenile Code is dated to August 2000, which means that the legislation has changed since this essay was initiated. But the changes weren't made to paragraphs at issue in this essay. My conclusions are that the frequent changing of the legislation can be explained by Peru's constant work and adaptation of the international declarations and measures like the Convention on the Right of the Child. Therefore we can interpret these frequent changes of laws as a positive development but at the same time a turbulent political situation is another cause for a system under constant changes.⁸⁵ The chapter will also discuss the reason for why children need special rights and the complexity of which perspective a child should be observed.

5.2.1 Historical background

The edict of the 13th of November 1821 –“Los hijos de nadie”(Children of no-one), is the first milestone to mark the beginning of the rights of the minors in Peru. The Code of the Minors from Uruguay from 1934 became more or less the model for all of the Latin-American states when the legislation on the minor was preformed. It was not until 1962 that Peru created a Minor Code of their own and it copied all the principles and definitions of the Uruguayan

⁸⁴ Landa p. 24

⁸⁵ Author's own opinions

Code.⁸⁶

Epochs in the Peruvian history have had different train of thoughts about infancy as all over the world. In one epoch there existed infanticide, which signifies that it was legal to kill a child, it was legal, logical and natural to kill children. Another epoch was when children and adolescent were prosecuted with no special treatment and indifferent if the charge were against a person of 50 years old or 8 years old. The latter perspective is still the way of judging in some Latin-American states.⁸⁷

5.2.2 The Child and Juvenile Code of today

The latest revision of the Child and Juvenile Code of Peru were approved in August 2000 as mentioned in the introduction of this chapter.⁸⁸ The Convention of the Rights of the Child was ratified by the Peruvian State in August 1990. The International Convention became national legislation through incorporation in accordance with the directions set by the Peruvian Constitution. A revised Child and Juvenile Code influenced by the Convention on the Right of the Child was introduced in December 1992 and entered into force as of June 1993.⁸⁹ In a way there had been conceived a new juridical paradigm on children's rights. With the Convention Peru had to ratify the principle of considering the child's superior interest in the so-called specific rights and recognizing a child as an individual entitled to enjoy certain rights. The Code had to adapt the new visualisation of the child as a subject of law. It also introduced the following most characteristically principles:

- Not to differentiate between minors and children
- To use a different treatment system of the criminal adolescent
- Respect the fundamental and individual guaranties of the children and adolescents
- To incorporate the principle of "in the child's best interest" in all the decisions made in a state.

The difference between a minor and a child can seem very trivial since both terms can have the same significance, the most frequently used term is "minor". By explaining that the child is a subject of law while the minor is only an object of protection can help to emphasize the difference. The Child and Juvenile Code incorporated the vision of the child as a subject of law and this subject of law is a part of a society where he/she is an important actor, converting to a social subject.⁹⁰ The Convention on the Right of the Child not only developed the child's rights to a doctrine level but also had a promoting character. The Convention converted the needs of the children into rights and possibilities or at least developed **possibilities to promote** the defence of the children's rights.

The child has to be recognized as an individual with proper rights but at the same time, as I see it, society has to preserve the fact that children is a specially vulnerable group in need of protection. There are many different aspects to this issue that I think is important to illuminate at this point of the essay. Childhood is by some people considered a preparation of becoming an adult (i.e. adult being "real life") instead of just recognizing childhood as a part of living

⁸⁶ Lamonja p. 23ff

⁸⁷ Alvarado de la Fuente

⁸⁸ Landa p. 108 Cuarta

⁸⁹ Presentation CNA

⁹⁰ Alvarado de la Fuente

and not a part of a preparation for “real” life. The perspective of children and their rights is slightly changed when we look at childhood as just an important part of living as the years between 20-35. Suddenly childhood becomes a period of life that is equal to other periods and not just a 15-year period of preparation. Childhood then, I think, will be valued as more important and a time “worth” living. To acknowledge childhood will automatically request for children to have a larger influence and intervene more actively in society, which will have an influence on their rights and responsibilities in society.

The perspective argued for here can also be applied to the relationship between parents and children, discussed in chapter 2.1. I think everyone can agree with the fact that children are extremely perceptive and seem to learn more in a couple of years than they/we do during the rest of our life time. They learn through watching others behaviour and what they are taught. But it is a complicated time when children are in the “transforming” process of leaving childhood and entering adolescence or adult-life. It is both a liberation process from family and parents and a process of finding out oneself and the person and life one wants to achieve. At the same time the child is quite abruptly leaving a sphere of protection and security and suddenly facing responsibility and acknowledgment.

This argumentation can be put in relation with the purpose of this chapter by illuminating the importance of incorporating the child in society as an individual with needs, opinions, responsibilities and rights. The purpose of the argumentation is not to put children/adolescents on an “equal level with adults in the meaning that they should be for example sentenced to same length of punishment for equal committed crimes, i.e. children should not be treated as adults but respected as adults. There is an inch of difference in these different perspectives. To treat children as adults is an impossible and undesirable situation since the children are still learning how to behave and discern right from wrong. But it is the respect of the child as an individual that I think is a very desirable change that our society should encourage.

The difference between a child and a juvenile is defined in the first article of the Peruvian Child and Juvenile Code. A child is a child until it reaches the age of twelve; the age of an adolescent is from twelve to eighteen years old. If there is an existing doubt with respect to the age of a person it should be considered a child or a juvenile until the contrary is proven. According to article six in the introduction, the Code should be interpreted and applied in accordance with the directions of the Constitution of the Republic of Peru, the Convention on the Rights of the Child and any other international treaties ratified by the Republic of Peru. In all infancy matters the Child and Juvenile Code should govern family institutions and, if applicable, the Civil Code. The following codes are supplementary to the Child and Juvenile Code: the Civil Code, the Criminal Code, The civil Procedural Code and the criminal Procedural Code, due to defect or deficiency of the law, custom and practice shall prevail.⁹¹

In the seventh article it is defined that the State, family, public and private institutions and grass root organizations are obliged to ensure the correct application of the principle, rights and regulations stated in the Code and the Convention on the Rights of the Child. In the eight article, the interest of the child has been defined as one of superior interests. The interest of the child and the adolescent should be respected in any and all actions taken by the Executive and Legislative powers, the Government Attorney's Office, Local and Regional Governments and other Institutions of society.

⁹¹The Child and Juvenile Code of Peru (CNA)

The Code is divided in four books (chapters) and an introducing preliminary title. In the first article of the first book it's stated that every child and juvenile has the right to life from the moment of conception. The Code guarantees the life of unborn children, protecting them from experiments or genetic manipulations adverse to their integrity, physical or mental development.⁹² Expressed in the second article is also the concern for the mothers and the obligation of the State to guarantee and of society's to assist in the care of mothers during pregnancy, delivery and post-birth stage. Specialized care to juvenile mothers shall be given, ensuring that mothers breast-feed their babies and that daily care centres are established.

The child and adolescent have a right to live in a healthy and ecologically well-balanced environment. Concerning the personal integrity all children and adolescents are entitled to respect of his/hers integrity. They should not be exposed to torture, cruel or degrading treatment. Hard labour, economic exploitation, prostitution, and traffic of minors are deemed as enslaving activities. A child or an adolescent can only be detained because of a court order or by the perpetration of a crime.⁹³ The child and juvenile have the right to freedom of expression in its different forms. They should have the freedom of thought, belief and religion, even if different from their parents'.⁹⁴

6. Education

The Peruvian government acknowledges the existing of a direct connection between education and social-economic development. Therefore the government wants to secure and maintain the service of free education for the families with economic limitations. Although their intentions are good the Peruvian education of today cannot be said to be totally free of charge. There are matriculation fees, quotes to pay to the parents association, school uniforms, books and other necessities. All of these are charges the parents have to pay and it can sometimes become a big expense for large families.⁹⁵ This chapter will discuss the specific educational legislation in Peru and explain the school system in practise. The purpose of the chapter is to try to explain for the reader the different problems and dilemmas of the Peruvian school systems and the gap that exist between the legislation and the reality. The Convention on the Rights of the Child is not directly discussed in this chapter but the reader should keep the argumentation led in previous chapters. The issues in this chapter are more of a sociological perspective of the society and the Peruvian situation. Teachers and their situation is an important issue discussed in this chapter, the school consists namely of the students and the teachers and a well-organised collaboration them between.

6.1 Legislation

Children and adolescents have the right to education according to the 14th article in the Child and Juvenile Code (28th article in the UN Child Convention), and those who are economically limited are entitled to free education. The State shall guarantee that basic education of the child and juvenile shall:⁹⁶

- a. Develop to their maximum potential their personality aptitudes and mental and physical capacity.

⁹²Article 1, 1st Book, CNA

⁹³Articles 3-5, see footnote 92

⁹⁴Article 11, see footnote 92

⁹⁵Interview with Blanca Normura at Rädde Barnen

⁹⁶Article 15, see footnote 92

- b. Teach them respect for human rights and fundamental freedom
- c. Include the promotion and dissemination of their rights
- d. Teach them respect for their parents, their own cultural identity, language, national and local values and other cultures
- e. Prepare them to lead a responsible life in a free society, with solidarity, understanding, peace, tolerance, sexual equality and friendship between peoples and ethnic, national and religious groups.
- f. Provide sexual orientation and family planning
- g. Develop an autonomous, analysing and creative mind.
- h. Train them to carry out productive activities and prepare them to handle technical and scientific knowledge; and,
- i. Respect the natural environment.

It is an obligation of the parents or guardians to matriculate the child in the regular educational system. The children and the adolescents have a right to be respected by their teachers and to question their judgement and if necessary they have the right to apply to higher educational authorities.⁹⁷

The head principles of the schools or educational centres, which they are called in Peru, have the obligation to rapport to competent authorities the following:⁹⁸

1. Physical maltreatment or wrongs against the honour of their students
2. Repeated unjustified absence and evasion from school
3. Recurrence (the level of repetition)
4. Cases of dependency on toxic substance
5. And other cases that are called upon

The State guarantees flexibility in class schedules so as to facilitate attendance on the part of the working child and juvenile.⁹⁹ The School Principles should assure that the work of the pupils is not affecting the attendance to classes and school performance, regularly reporting to the authorities on the level of performance of the working student.¹⁰⁰

The Code also consists of a special article where the duties of the child and the juvenile are manifested. The duties are to:¹⁰¹

- a. Obey their parents and guardians, provided their orders do not interfere with their rights or violate the law.
- b. *Study with interest and determination*
- c. Within their possibilities, provide care to their ascendants during illnesses and elderly years.
- d. Help in household duties in accordance with their age.
- e. Preserve the environment
- f. Respect other people's ideas, rights and religious beliefs, whenever different from theirs.
- g. Respect the laws, symbols and heroes of the country.

⁹⁷ Article 16-17, 1st Book, CNA

⁹⁸ Article 18, see footnote 97

⁹⁹ Articles 18-19, see footnote 97, also see chapter 7

¹⁰⁰ Article 19, see footnote 97

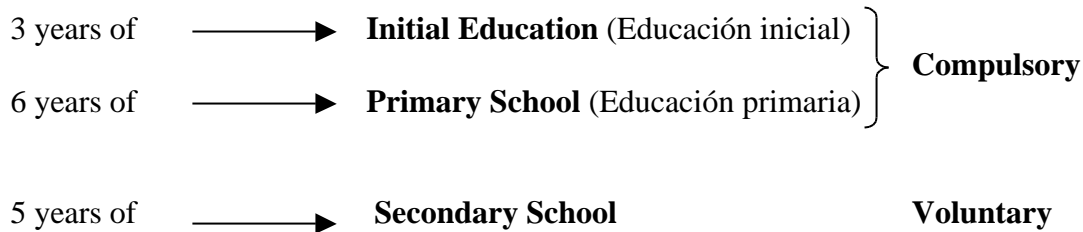
¹⁰¹ Article 24, see footnote 97

6.2 The Peruvian School System today

The intention in the following chapter is to describe the educational system of today. To understand the situation for the Peruvian children and teachers we have to see the structure of the school system. The figure below will help the reader to understand the definitions of the school system that are used later in the essay.

The Peruvian School System of today can be presented like the following:

Education



Suggestion of change of the Secondary School to four years of normal secondary education and the two last years as a bachelor exam.¹⁰²

During earlier decades companies and other businesses frequently made investments in public projects and this was because it legally gave them a lower tax percentage. For example the university that I attended received \$500.000 from a corporation to finance their expansion and build up. This gave the corporation a right to increase their tax percentage from thirty per cent to only ten percent, which for all parts became a profitable collaboration. But this system does not work today since companies' already pays low taxes. Some people expressed that the education was better during the eighties. During the last decade Peru has endured many economical crises, the worst was in 1995, and the situation today is quite serious and it is pretty unusually that a country that were quite advanced can revert so much in just a decade.¹⁰³

One part of the INFES program, one of the governmental programs to improve the school system, were to construct school building all over Peru, fewer in the jungle area. This is why Peru today has numerous school-buildings and this is something positive but the quality of the education has not improved or been supported in the same rate. The government forgot to raise the teachers' wages as well as they forgot to stake higher education. Nor did they invest in the situation of the children such as giving them food during school-time to help their concentration. Today children get one glass of milk in the beginning of the day, if their school have the economical resources.¹⁰⁴

Public education is according to the Constitution free but its standard is very low or bad, this is a truth with modification. If you put your child in a Peruvian Public school you will first have to pay a fee of matriculation, you will also have to pay a quote to the parents association of the school. Examples of these contributions are that if a child breaks or destroys something during a school activity the parents will have to pay or if the school needs a new roof it's the

¹⁰² Interview with Solaris, RB

¹⁰³ Dr Landa, tutor

¹⁰⁴ Interview with Sra Solaris, RB

parents that have to pay for a new one and also constructing it. Different school activities also have to be financed by the parents. Therefore it's not entirely true to say that the public school is totally free of charge. The parents also have to pay for school uniforms and other materials such as books, papers and pencils that are necessary for the children to successfully complete their education.¹⁰⁵

During my time in Peru it was election year and therefore many of the people that I interviewed referred the election and campaigns to the issues I was interviewing them about. Señora Blanca Normura at Rádda Barnen in Lima for example wanted to draw my attention to the fact that it was election year and therefore the Government had put extra resources into popular actions to win the confidence of the voters. Among these actions they had for example given school material to children, like books and set of pencils and other essential things. They had also handed out free school uniforms and shoes to children in the poorer districts. These were campaigns that had been done during the election year and the years before the election but they will most likely not be done when the elections are over; the conclusion is that then it's simply not a priority anymore.¹⁰⁶

The public education is as we can see of the discussion above not totally free of charge. It is also of poor quality in comparison to the private education. They have few economical resources and poorly paid and educated teachers. Families from the higher classes of society choose put their children in private schools. There are private schools of varies price ranges, those who are very expensive and other that even a family from the lower middle class can afford. The private schools that are run by the Catholic Church are sometimes cheaper because of an agreement with the Government. They are financed and organized so that the Catholic Church pay for the school building, the administration and some of the teachers and the remaining expenses are subsidized by the Peruvian Government. There are also some other economical reasonable private schools that only charge a little bit more than the public schools but where the quality of education is slightly better than in the public schools. This dichotomy of the Peruvian Educational System results in that half of the children and juveniles goes to private schools and the other half have to settle with public school education because of their parents economical situation.¹⁰⁷

6.2.1 Dilemmas with the school system

The statistic shows that 53 per cent of the children don't start school in their own age group. This means that they start later than the age of 6, which is the confirmed age, for entering the school system. This tendency is slightly more common among the boys than among the girls where the figures are 54 per cent verses 52 per cent. In these surveys we can once again observe a difference between the rural and the urban areas (see above 3.2). In the rural areas the figures are 70 per cent for late enrolment while in the urban areas it's approximately 41 per cent.¹⁰⁸ The national average of disapprobation in primary school is approximately 12 per cent also here a higher figure in the rural areas, 17 per cent. In the rural area there is also high level of repetition, it's about 86 per cent higher than in the urban zone. This is mainly caused by difficulties adapting to the use of Spanish instead of the native language. The late enrolment in school for the children whose native language is Quechua is about 63 per cent, while in the

¹⁰⁵ Interview with Sra Blanca Normura, RB, 310100

¹⁰⁶ Auther's own comment

¹⁰⁷ Interview with Sra Blanca Normura, RB, 310100

¹⁰⁸ Salgado p. 31

Amazons where the native language is other than Spanish; the figure is 62 per cent. This is an interesting figure to compare with the late enrolment for them whose native language is the Spanish where the percentage is 35 per cent. The desertion among children from the age of 6 to 14 is estimated to approximately 46 per cent.¹⁰⁹

According to Sra Blanca Normura there has been changes during the last years because of a economical crisis on a national basis. These economical difficulties have caused a migration of pupils from private to public school. The consequences are even worse for those on the lower rank of society. Many of the children who used to go to public school are today not attending school at all. She says that more and more children are forced or choosing to work outside their home or in the street instead of attending school or just to afford to attend school. They therefore work half day and then attend school the other half of the day. This is a way for them to help their parents and contribute to the family economy. Lately the cases of children just working and not attending school have increased. The money they earn has gone to the surviving of the family instead of paying for their education. This development is very bad for the Peruvian society. The more children who give up school to work in the streets the more difficult it will be for them to find work or earn more money later in life as adults. There are more and more children competing over the work offered and therefore the pay decreases (cuanto más ofertas el ingreso es menos). The wages has because of the development described above decreased with fifty per cent and are not sufficient to neither pay for their studies nor to contribute a small amount to their parents. Therefore they have to spend more hours working and this results in less or no time to study. Sra Blanca Normura says that this is a serious problem that more and more children are forced to choose working than attending school.

Figure 2

PERU: INDICADORES DE EDUCACION 1993-1998 (%)		
INDICADORES	1993	1998
Tasa de Asistencia Escolar de 6 a 11 años	87,3	95,6
Población de 15 y más con algún año de Educación Superior	20,4	20,2
Tasa de Analfabetismo	12,8	7,7

FUENTE: INEI - Censo de 1993 y ENAHO 1998.

The statistics in the figure 2 above is showing the Educational indicators of Peru between the years of 1993 to 1998. The first are the percentage of children between the age of 6 and 11 school assistance. The second is the figures for the population of fifteen years old with some superior education. The last percentages are showing the figure for illiteracy and how it has decreased during the last decade.¹¹⁰ The percentages in the figure above shows an increase of school assistance, which indicates a more positive development than Sra Blanca Normura was experiencing.

¹⁰⁹ Salgado p. 32f

¹¹⁰ Figure taken from www.inei.gob.pe, "Peru en cifras", "indicadores sociales", "educación"

Rädda Barnen has in their programs included actions to improve and promote parents to put their children in school. They also try to make improvements to influence the government to adjust the education to the different areas of Peru, the highlands, jungle and the coast.¹¹¹ The problem isn't really geographical but more economical. Rädda Barnen has also through the Demunas (Programa Defensoria Municipal del Niño y del Adolescente)¹¹² tried to facilitate for the parents to matriculate their children. Schools might refuse to matriculate children who don't have their personal documentation. In Peru there is a problem with identity and especially concerning birth certificates. These certificates are needed when a child is to be registered at a school. According to the Peruvian regulations a child has to be registered 30 days after birth and if so isn't done the parents have to pay a fine to get their child registered. Because of the dramatically urbanization during the last decades it might be complicated and costly for the parents to produce this documentation, when they have moved to another province.¹¹³ It is important to remember that the problem with the Peruvian Educational system is not so much educational or cultural as it is a social and political-economical problem. It's important to acknowledge that the Peruvians know that education is very important and their ambition is to allow their children to go to school but when there is no money and many mouths to feed the situation becomes critical.

6.2.2 The Injustice in the Education system¹¹⁴

Peru is a country with school buildings and lecture halls almost all over the country but the conditions are very different and not always so impressive. Approximately half of the colleges have inadequate basic service. In the rural areas for example only three per cent of the premises have access to water, electricity and drain. In the cities about forty-four per cent of the colleges have access to these three services. On a national level about forty-five per cent of the students are attending schools who don't have water nor a drain-system.¹¹⁵ This is the reality for the children in the public schools, for those attending private schools 99 percent are attending schools with all of the three services installed.¹¹⁶

One of the most serious problems in the Peruvian educational system is the late enrolment. Late school ingress/inscription, repetition, temporary desertion results in a big proportion of the population that is behind or delayed in their schooling/education. The problem just accumulates and all the different factors results in classes with pupils of all ages and this makes the teaching and learning very difficult and less efficient. This problem has a stronger or more severe effect on the families with less resources many times the economical problems are the cause behind these different problems in the system.¹¹⁷ By problem I here mean that children are "needed" at home or sent out to work so the family will be able to survive, the education therefore have to wait.

¹¹¹ Interview with Sra Gina Solaris, RB

¹¹² See further explanation in chapter 7.3

¹¹³ Interview with Sra Gina Solaris, RB

¹¹⁴ See chapter 7.2.1, for a deeper discussion on the injustices in the educational system

¹¹⁵ Calero Pérez, p. 253

¹¹⁶ Calero Pérez, p. 253

¹¹⁷ Calero Pérez, p. 274

6.2.4 The Teachers and Professors

By law it is required a university degree to become a teacher. There are exceptions from this rule in some parts of Peru, as I will try to explain in this chapter. In Lima there are various universities and colleges both public and private that offers education to become a teacher. There are also one public university that exclusively offers teacher's education.

As mentioned above the formal qualifications to become a teacher is to have a university degree. Among the teachers in Peru there are people with all kinds of different academic and professional background. One of the following requirements are often enough to become a teacher if the person lacks an university teacher's degree:¹¹⁸

- To have some kind of superior education but still haven't finished it
- To have finished secondary school
- Even those who haven't finished secondary school can become teachers i.e. there are cases of teachers who just have or even haven't finished primary school out in the provinces.

Judging by this it seems like the informal requirements for becoming a teacher aren't difficult to obtain, but we have to keep in mind that in areas where there is a scarcity of persons with a university degree (most universities are situated in the bigger cities) and other alternatives have to be considered. The teachers without a university degree contribute and teach their pupils with the best intentions but their knowledge might be a bit limited though. The last option above is rare but it does exist schools where the teachers themselves haven't finished primary school (extreme cases). This is not a serious problem that Peru is facing alone. Even in western countries like Sweden schools have to engage substitute teachers with no higher education than high school. This doesn't in any way justify the situation in Peru, but it gives us an international perspective of the educational system. All the leaders of the world will most certainly agree on education being the most important element of childhood, but still schools and education institutions are not of high priority for their governments.

The problem with the teachers, according to Sr Juan Carlos Ruez at Acción por los Niños in Lima, is not that there aren't enough teachers but that the institutions where they are educated aren't good enough. He says that this isn't just a problem concentrated in the provinces but also in Lima. The teachers from the private schools are often sent on different trips abroad to gain more experience to contribute and share with their students. While public schools teachers don't get this opportunity, they are often lucky enough to go out of, alternatively go to, Lima or to the capital of the province to attend a seminar or course. This is one explanation for why the higher-educated teachers in addition to the higher wages, prioritises a position at a private school instead of at a public school.¹¹⁹

Most teachers want to work for private schools in the cities where they receive better pay. To move out to the countryside or the jungle where they will have to travel for a long time just to get to the school and receive almost nothing in compensation is not a very attractive alternative. Sra Blanca Normura gave examples of teachers who live two to three hours from where they work and teach. In the highlands and the jungle for example there are teachers that live in the cities but have to travel each day or every weekend back and forth by car, bus,

¹¹⁸ Interview with Sra Blanca Normura, Rádda Barnen

¹¹⁹ Interview with Sr Juan Carlos Ruez, "Acción....."

horse or even by foot to get to the school where he or she is teaching. This can often mean that the school only is three days a week (Tuesday, Wednesday and Thursday) since Monday and Friday is for the teacher to travel to school and home again. These conditions are not especially attractive for teachers who have worked hard to get their university degree. Therefore it's very difficult for the schools in the provinces to get hold of and even to hold on to "good" teachers. Most of the time they then have to settle for teachers or persons with "some kind" of higher education from the surrounding towns and districts. This means that the quality of the education can depend very much on the area where the school is located and the range of educators.

The normal working hours for a teacher is from 08.00 to 13.00 in a public school and 08.00 to 15.00 in a private school, five to six days a week. After this normal working schedule most teachers from the public schools continue their day working on a second job at another school or driving taxi (like the rest of the double-working population).¹²⁰

The main problems with the school system could be said to be a combination of not qualified enough teachers out in the provinces and public schools and the extremely low pay (the latter seems to be an universal problem not valuing the work of the teachers enough by giving them a higher compensation). The teachers employed at public schools get paid minimum wage, which approximately is 300 soles (\$80-85) a month. It can be quite difficult to support a family on this poor salary although Peru is a country with relatively low costs of living. Therefore it is understandable that good teachers rather want to work in private schools where they pay more than to work for almost nothing in public school and in addition has to get a second job to be able to survive on their wages.¹²¹ This turns into a very evil circle were the well-educated teachers refuse to work in the public schools because of the poor pay and left to teach, these public school students, are the educators and teachers that only have some teaching education or maybe just graduated secondary school (not such a serious problem in Lima as out in the provinces).

These teachers are probably doing the best they can under the circumstances to teach their pupils. We can only imagine what it's like and were they find the energy to teach and inspire these children day after day, when they themselves have their economical problems. Most of them have a second job, which they go to straight after classes and in addition to that they might even have a family to cook, clean and take care of. So there is no wonder, says Mrs Gina Solaris of RB in Lima, if they don't have too much inspiration and energy to pass on to their pupils. The lowest paid professions in Peru are teachers and policemen.

There have been suggestions from the government to decentralise the school system but there has still not been any change of power. All the schools are governed directly by the Ministerio de Educación (the Government Department of Education) in Lima. The advantage of decentralisation is that decisions are made closer to the areas concerned and the teaching methods could be adapted to the situations and conditions of the different geographical areas of Peru. When it is summer season in the area around Lima there is rain season in the mountains. Children in the provinces might need vacations during their area's harvest season instead of having to follow the schedules set up by the Ministry of Education in Lima.¹²² One of the disadvantages that are discussed is that the provinces have different economical assets and therefore it might result in big economical differences between schools depending in

¹²⁰ Interview with Sra Gina Solaris, RB in Lima

¹²¹ Interview with Sra Gina Solaris, RB in Lima

¹²² Author's own reflections and opinions of people interviewed in Peru.

which province they are situated.¹²³ The economical funding that each province would receive in a situation of decentralisation might not be enough to finance the education in the area. Poor provinces will not be able to compete with schools in richer provinces. The government then will not be able to give out more funding to one province since it might be considered unfair to other provinces. My point of view is that the funding issue (especially referring to the teachers salaries etc) this is an already existing problem that the Peruvian Government will have to solve despite of decentralisation or not.

7. The Working Children

This chapter is a natural prolongation and discussion of the Peruvian educational system, since one of the main dilemmas in the school is the low assistance because children are working instead of attending school. This chapter will give the reader an insight of the situation of for the working children and also the existing legislation and desirable legislation on the area. In this chapter I will as I did in the chapters concerning education both look at the national and the international legislation and conventions that Peru have or will ratify.

7.1 The working child's situation

Approximately two million of boys, girls and adolescents are contributing to the sustenance of their families. They are working in the countryside and the cities where everyone can see them. As a visitor you will meet them in the marketplaces, on the streets and sidewalks, in the parks and plazas of the centre of Lima and all over the country. Each and every one of the children has their own specific and moving reality and story.

The situation can be clarified by quoting a story from the homepage of the Peruvian NGO "Acción por los Niños".¹²⁴

"Javier Quispe is thirteen years old and to contribute to the sustenance of his family he work daily "pulling a trolley" from 6 am to 1 pm. He lives in "Villa El Salvador" a poor district in Lima, struggling with his workday every morning and studying in the afternoon at the Principe de Austria College in the same district. He tells us that between working and studying he prefers to do both. If he could do only one thing he would study to become something in life. After having said this he remains quiet and looks pondering. After a while he adds: I don't want to pull trolleys for the rest of my life".

This situation is one example of the reality for hundreds of thousand children in Peru who have to work to survive. Most of the children work with activities that are extremely insecure, harmful and dangerous for their health and security. The majority of them are not studying and their future is uncertain. Investigations reveal that more and more children are combining their education with work and about one million of these children do not attend school. In this way they are reducing their possibilities of achieving a dignifying employment and rise above the poverty.¹²⁵

¹²³ Interview with Sra Blanca Normura, RB, 310100

¹²⁴ www.accionporlosninos.org.pe - trabajo infantil "Más de dos millones niños trabajan en el país"

¹²⁵ the INEI, National Institute for statistics and information, www.inei.gob.pe

The child labour issue is not only an ethical, legal and Human Right problem but also a question of social-economical development. Child labour signifies less opportunity to develop as a person and it is a factor of perpetuating poverty because the children's possibilities of a future integration in the labour market are being deeply affected.¹²⁶ As the boy said in the quotation above that he **do not want** to pull trolleys for the rest of his life, but the fact remains that there is a risk for him doing just. As long as children are forced to work and the work make it impossible for the children to follow an education and move on in life, develop as a person and some day maybe move out of the slum.

The minimum age for children to work according to the Child and Juvenile Code is twelve years old. This is the lowest age in all of Latin America; it should be fourteen years old as the International Labour Organization's (ILO) C138 Minimum Age Convention from 1973 states.¹²⁷ Peru is not obliged to follow the regulations of the ILO since the Convention not yet has been ratified. The Committee on the Right of the Child have acknowledged in their preliminary observations and conclusions on the report of Peru from the 21st of January 2000, that the Peruvian authorities has submitted a proposal to the parliament on a law corresponding to the obligations of the International Labour Organisation Convention on Minimum Age to take Employment. But nevertheless the Committee is concerned that the economical exploitation of children remains one of the major social problems in Peru. The Committee encourages the Peruvian Government to complete the legislative reform as soon as possible and raise the minimum legal age for admission to employment to at least 14 years. The Committee also recommends Peru to take effective ways to address the situation of children involved in hazardous job, especially in the informal sector. The committee strongly recommends a continuing cooperation with ILO/IPEC and that Peru enforces child labour laws, strengthen the supervising and impose penalties in cases of violations. They also encourage Peru to ratify the ILO Convention 182 on extreme forms of child labour. Peru responded to these recommendations that the ratification were under process and discussions under the executive bodies and will most probably be included in the proposed law.¹²⁸

7.1.1 The unsafe situation for the working children

Regarding the working aspect of children's rights is always important to remember the protection of the child and the adolescent from economical exploitation, which more than too often is the reality for the children.¹²⁹ There are cases within the informal sector where children are involved in work that is unsafe for their own both physical as mental, spiritual, morally and social health. The following enumeration is three examples of situations like these:¹³⁰

- 1) The first refers to children who concede to a work voluntarily convinced that they will be treated legally correct but they anyhow end up unconsciously as victims because of their employers, when they are forced to work in inconvenient places or hours for reduced pay or not even existing on the forms.
- 2) The second case is the children that are put to work by their own parents but working under the charge of a third persons that promise to provide them with sustenance and

¹²⁶ www.accionporlosninos.org.pe, Trabajo Infantil

¹²⁷ www.ilo.org, Ratification Campaign, Text of Convention, C138, art 2

¹²⁸ www.unhcr.ch/hurricane.nsf United Nations Human rights Website – Press Release

¹²⁹ Salgado Rubianes, p. 15

¹³⁰ Salgado Rubianes p. 16

schooling in exchange for a small help with the chores in the home. As a response they receive abuse both physical and psychological from the family who have to take them in as an extra member of the family and in case they don't accomplish to send the children to school they deprive them of an essential right.

- 3) The third case is the most tragic one of all and refers to the children who are kidnapped and forced to work under inhuman conditions.

The ideal image is to let the child grow up and develop under protection and the responsibility of its parents. It is the responsibility of the parents to provide for their children the essential for their sustenance, procure that they live a life of adequate standard and grow up in an environment of affection and security not only morally but also materially. The ideal is that the child has access to all the essential resources that enables them to develop. In the cases opposite to the ideal situation where the child are without one or both parents, the child is forced to seek economical resources by him/herself and these are the situations, which increase the number of working children or in the worse cases the number of pre-delinquents. In this essay I try to describe for the reader both the reality and the ideal (according to myself and the persons I have interviewed). The purpose of the essay has never been to put the blame of the children's situation on the parents nor Peru but just to observe the situation and elaborate some alternative solutions and ideas.¹³¹

7.2 Work Legislation

The State acknowledges the right of the child and the juvenile to work, within the restrictions imposed, provided work activities do not become a risk or danger to their development, physical, mental and emotional health and do not interfere with their school attendance.¹³² Working children who work because of financial or material needs and street children have the right to participate in programs aimed to attain their education and physical and mental development. In coordination with local governments, the governing body should be responsible for the promotion and execution of these programs, according to the fortieth article of the Child and Juvenile Code.

In the Child and Juvenile Code there is a special chapter regulating the conditions of the working juveniles. The Code protects the juveniles who work on their own or for others and includes those who work in the premises of others. It also includes protection of domestic work and unpaid work at home. Work performed by the child and juvenile confined in institutions is governed by regulations of the corresponding institutions.¹³³ The governing body possess the main responsibility for the protection of the working juvenile as a complement to the Labour, Health and Educational sector, and the Regional and Local Governments. The governing body is also responsible for issuing policies concerning the care for children and juveniles. Juveniles formally require working permission for all work except domestic work. Persons who contract juveniles as domestic employees and household heads where juveniles perform unpaid work, shall register the juveniles in the corresponding municipal register.

The minimum age for a child to work in Peru is twelve years old but the Child and Juvenile Code also regulates and guarantees the right to special protection for children under the age of

¹³¹ Author's own opinions and reflections

¹³² Article 22, 1st Book, Child and Juvenile Code

¹³³ Article 51, see footnote 132

twelve who are working for economical reasons.¹³⁴ This makes the legislation a bit unclear. There are different minimum ages for juveniles to obtain authorization for different kinds of work. For non-industrial agricultural work the juvenile has to be fourteen years old, fifteen years old for industrial, commercial or mining activities and sixteen years old for industrial fishing. The general minimum age for the juvenile/child is twelve years old, as mentioned above. It is assumed that juveniles are authorized to work by their parents or guardians in cases where they live together, except for expressed indication of the contrary.¹³⁵

7.2.1 The Complexity of the "Working Children"-situation

There are about 400 thousand working children in Peru. In the world in total there is about 250 million children in the age between five and fourteen that are working. In Latin America approximately 17 million children are working, which makes out 17 per cent of the children on this continent. Africa, which is the poorest continent, has the largest amount of working children about 80 million (41%). In Peru about 80 thousand, of the 400 thousand, are working under high-risk and health threatening conditions (mineworker, gold washers, brick makers, carriers, ticket sellers at means of transports in the urban and rural areas, among others). Fifty per cent of the working children are working in Lima and 15 per cent are missing between one to four hours of school. Forty per cent are working as street vendors, nine per cent as car watchers and about three per cent as carriers. Almost seventy-two per cent don't have any kind of medical insurance. Of those who have been working children as a child only 0.1 per cent enrol at university.¹³⁶

Adolescent/juvenile has the right to work but adults still have to look after and respect their right to protection and health at the working area.¹³⁷ As well as they have a right to work they also have a right to go to school and receive an education. The ideal would be that working hours were adjusted so the juveniles could combine working with their studies and not having to choose one over the other. The minimum age to obtain a work is twelve but children under this age can be allowed to work for economical reasons. Child labour is therefore, as I interpret it, **not** legal and we should not be able to see children selling candy or shining shoes in the streets as we do today in many countries like Peru. In another way though child labour **is legal** if the children are working for economical reasons. This makes me automatically ask the question, for what other reason than economical would a five-year-old or even younger child be forced to work?¹³⁸

The reality is contradicting the Peruvian legislation, but the legislation is also contradicting itself. There are two different ways of approaching or viewing the issue of child labour according to Señora Maria Consuela Barletta who is a lawyer and teaching at the Universidad Católica in Lima. On one hand some people say that child labour ought to be legal so that we more easily can protect the children and improve their working conditions by National legislation. Others say that in no way can we legalise this activity because it is wrong from the start; children shall not work. They mean that if we legalise child labour we also somehow authorise it. The ideal situation, says Srta Barletta, would be if the government would be able to provide for the citizens a State with social and economical funds and

¹³⁴ Article 40, Child and Juvenile Code

¹³⁵ Article 53-54, see footnote 134

¹³⁶ www.accionporninos.org.pe, TES

¹³⁷ Article 22, Child and Juvenile Code

¹³⁸ Author's own reflections

enforcement so that there would be work for all the parents of the working children. The question according to Srta Barletta is what we can do meanwhile, while we are still struggling to reach this ideal society?

The majority of the children work with the support of their parents so not all the working children are abandoned and have run away from home to work in the streets.¹³⁹ The children are most of the time helping their parents economically by giving them their salary or working together with their parents at the markets or on the farm. The parents sometimes prefer their children working than going to school, claims Srta Barletta. This is because the parents not always believe in education. They don't see the reason for a child to go to school for 6-9 years and not really learn a profession therefore there is no purpose for their children to get a formal education. They think it is much more reasonable if the children become an apprentice and through that receive a technical career, which will pay off much quicker than a formal/theoretical education. It might not pay more but it will enable the child/adolescent to start working in an earlier age. The children as well will realize quite early that the sooner they start working the sooner they stop being a burden for their parents and they can start contributing to the family economy.

The children have to respond immediately to the necessities instead of waiting for more knowledge, better job and better wages. The immediately necessities are incomes for the family, income provide food for themselves and their brothers and sisters. This way of thinking and living creates a society where education is not a priority and this is a very serious situation. The people don't see education as an investment in themselves and the society, but as a waste of precious work time. In the short perspective, and this is the most common perspective for the poor, for them there is no connection between studying and becoming less poor. For them it is the opposite, by studying you loose working hours i.e. you don't make money.¹⁴⁰

Another way of looking at the situation is to really see the situation and society from the children's and adolescents' of the lower class point of view. They know that they will probably only be able to go to a public university (unless they receive a scholarship to enter the private universities) and when having finished their careers they will have to compete with students from private universities over the few jobs available. They know that the companies and employers will choose the students from private universities since these universities have the best equipment and the most competent teachers and professors. This is the reality for these children from lower middle class and low class.¹⁴¹ I have to say that I can understand and totally support the eager of these children/adolescents to start working and earning money, rather than just postponing reality and the disappointment of not being able to compete with the children from the private schools later in life when they have struggled hard to get an exam.

Other reasons for why these children are not able to compete with the other children from the higher classes of society is because during their entire schooling they have had to work before or/and after classes, their alimentation has been poor which has led to concentration difficulties etc. Also their teachers have not been competent or felt inspired to teach these children in the same way as the children of the private school has been taught. The teachers, as mentioned, often themselves work with something else after having taught classes to be

¹³⁹ Interview with Srta Barletta

¹⁴⁰ Interview with Srta Barletta

¹⁴¹ Interview with Srta Maria Consuela Barletta

able to support their own families. These children and teachers and their family, neighbours and friends don't have any confidence in the Peruvian system and it is understandable I think when you look at their situation from their point of view. I agreed with Srta Barletta when she said to me that the ones who suffer the most in a society like Peru's are the vulnerable and the vulnerable in Peru are the children and the women.

7.3 Different Programmes to improve the Children's situation

This chapter will describe and discuss the different programs and efforts that are taking place in Peru to improve and develop the situation for the children. In Peru there exists innumerable amount of NGOs and other organisations that are working to influence the government and improve the conditions for different groups of children who are suffering in the Peruvian society. I came in contact with just a couple during my stay in Peru and therefore this chapter is just a sample of the efforts made by the Peruvian citizens and government. Some programs explained in the chapter are not only aimed to improve the situation for the children but more for the family situation in general, which indirectly will affect the children positively. The part below about DEMUNA is emphasized since that was the institution I personally came in contact with in Peru. The work of the NGOs and the governmental programs should, I think, be seen as efforts to implement and realize the paragraphs in the Convention of the Rights of the Child.

7.3.1 Save the Children of Sweden and other NGOs

Rädda Barnen (Save the Children) of Sweden is well established in Peru and they have accomplished several important changes for the children of Peru. The office in Lima is the main Rädda Barnen (RB) Office for eight countries in South America, and the biggest support is directed to Peru, Paraguay and Ecuador. I had the opportunity to visit their office in Lima and interview some of the people that were working there. RB are not themselves working directly with projects. Their strategy is to help and support national and local organisations in a financial way; this is the distinguishing feature of the RB's working procedures. They also are trying to influence the government and introduce new programs and projects, all with the child's interest in mind. During 1998 some of the locally employed at Rädda Barnen formed a new children right-organization, called Acción por los Niños, and the purpose is that this organization gradually is going to take over the work of Rädda Barnen.¹⁴² This organisation has an impressive web site with well-documented and detailed information that has helped me a lot during the work of this essay.

7.3.2 DEMUNA

In Peru there as during the last decade it has continuously developed DEMUNA (Programa Defensoria Municipal del Niño y del Adolescente), which is an ombudsman's office that defends the rights of the most vulnerable children. The municipalities are more and more taking over the responsibility for them and there are today about 650 operative offices all over Peru. The DEMUNA constitutes an integrated part of the local government's structures. To operate as part of a legal structure facilitates there has been an institutionalisation of the

¹⁴² www.rb.se, årsrapport 1999

program/model. It is covering 80 per cent of the provinces and in one year they have attended about 80 thousand cases.¹⁴³ The program started in 1993 with the support of Rädde Barnen. The DEMUNAs are financed by governmental contributions but they are independent institutions.

The head of the DEMUNAs offices are most of the time a lawyer or a person with a law degree if it's more than one person working on the office they are probably students who want to become lawyers, social assistants or psychologists. There are also many volunteers that work on the offices mostly students who have the opportunity to practise on the DEMUNA on their last year of law studies.¹⁴⁴ They offer free service to resolve conflicts using the conciliation method. Of all the cases that are handled by the DEMUNA offices in a year approximately 80 percent are cases of conciliation for sustenance and approximately 20 per cent are cases of physical abuse, domestic violence and incest.

The DEMUNAs don't have any executive powers only advisable and they can't force anyone to come to conciliation nor follow the recommendations from the DEMUNA. If action is considered the only alternative they have to work or take action through the police. They are obliged to rapport all cases where a crime is suspected to the police. The general opinion seem to be that the DEMUNAs need more authorisation and enforced collaboration with other authorities such as the judicial system and the health and care system. There should also exist a closer follow-up of the cases handled by the DEMUNA. Today it doesn't exist any formal follow-up, it will only be done if there is a special relationship between a DEMUNA assistant and a case.¹⁴⁵ It is suggested though to the government that their position will strengthen and that the DEMUNAs will be of executive character.¹⁴⁶

I was fortunate to visit two different DEMUNAs thru the organisation Acción por los Niños and Sr Juan Carlos Ruez. The DEMUNAs I visited were located in two different parts of Lima, one in the wealthier part La Molina and the other in one of the biggest and most well organised shantytown San Salvador. It was very interesting to see the difference between the standards of the offices and the amount of "clients". In La Molina it was calm and the personal had time to sit down with me and explain to me their work. I got to see their year-reports and statistics and the most common causes for why people come to their office. The main reason was to make fathers pay child support and admit to paternity. The DEMUNAs will initiate talks between the mother and the father and explain the importance of the father taking responsibility for the child.

In San Salvador my impression was quite different, just entering this shantytown and the images that you see is a chapter for itself. The people of this community have built up a well-organised town with almost no resources or mean, it is really amazing and admirable. Entering the building where the DEMUNA office were situated we were met by a long line of people queuing to talk to someone in the office. Here I felt almost guilty to take up the time of the assistants in the office to ask my questions, but they were very friendly and took time to talk to me. The office was just one big room "divided" by portable walls to give the people some privacy during for example the conciliation. I was amazed to see how they were able to work and help the people under these circumstances. Their attitude seem to be; of course the office and system needs changes like separate rooms for talks and a separate waiting room,

¹⁴³ www.accionporlosninos.org.pe, DEMUNAS

¹⁴⁴ Interview with Sra Elsa Bárdalez at Rädde Barnen, Lima

¹⁴⁵ Interview with Elsa Bárdalez and general discussion during my visit in Peru

¹⁴⁶ www.congreso.gob.pe/gaceta/052/actas.htm

but when there are no economical means for this, they just have to do the best of the situation. These offices are one step in the right direction by public means to reach out and help the less fortunate and improve the situation for some children, women and entire families. I was proud to know that it had been initiated by Rádda Barnen, but also acknowledging the tremendous efforts by the government and Peruvians who have promoted these institutes. A similar activity to the DEMUNAs had existed in Cusco called CODENI therefore RB weren't the first organisation to establish a public institution like the DEMUNAs.

Through the DEMUNA institution children's rights have an opportunity to be acknowledged and discussed. Many of the cases that are handled by the offices are somehow related to children and their home environment. As mentioned above 20 percent of the cases are cases of physical and domestic violence and incest. These are situations where children very often are the victims. The rest of the cases (approx 80 per cent) are cases of sustenance, which directly are situations of violation of children's rights. When there is not enough money to feed the family, because the father is not taking economical nor emotional responsibility for his children, the children very often have to start working instead of attending school. If fathers were to take responsibility for their children and support them we might be able to prevent some children having to choose work over education. Therefore indirectly can the involvement of the assistants at the DEMUNA office have an impact on the children's possibility to attend school full-time, if the father of the family for example are facing up to their responsibility and supports them economically. DEMUNA is by this not an institution exclusively promoting the rights of the children but for families where children make out a very important actor.¹⁴⁷

7.3.3 COMUDENA

The COMUDENA system (Comité Municipal de Defensa de los Derechos del Niño y del Adolescente) is a system that is suggested to be the following step towards making a permanent and organized work concerning issues related to infancy. It is necessary to create conditions that permit a broad implementation of the COMUDENA model on a national level. The idea is to develop a decentralized national system to protect and promote the development of the child. The COMUDENA model will be organized thru the local government's offices, covering all the provinces on a national level. The characteristics of the COMUDENA are that it will be institutionalised and operate from a system of norms and regulations. It will work thru directly preventive and intervening actions with cases of abuse, health, desertion from school, basic qualifications, working children etc. It shall also continuously support any public and civil organisation such as colleges, hospital, parishes etc. The COMUDENA are to focus on the poverty so that people will take responsibility and elect a good government who take the infancy problem in consideration. The idea is to try and coordinate all the different institutions, NGOs and other grassroots organisations and make a RED (network) of local organisations so that the common goal and ambitions (the best for the child) can be achieved more easily. When all are working together it will be easier to achieve great results. The goals for the years between 2000 and 2002 are that it will exist a national system for COMUDENA that will permit an institutionalisation and that it will be found in 80 per cent of the Peruvian provinces.¹⁴⁸

¹⁴⁷ Author's own conclusions and opinions

¹⁴⁸ www.accionporlosninos.org.pe, DEMUNAS

7.3.4 New Programs and Programs under Development

Other programs that are worth mentioning and drawing our attention to is the so-called WEH (Work, Education and Health)¹⁴⁹ program and it is tailor-made for working children. The program was put into action in June 1999 and the ambition was to notice the necessities and improve the quality of life for the working children and adolescents in the Lima area. Accion por los Niños are thru this agreement co-working with the public schools with the reinforcement of the working children who aren't able to attend school. The purpose of the program is to bring back and try to make the working children and adolescents stay within the school system, incorporate them in the public and private health system and promote the protection of the children and adolescent from exploitation, by improving their incomes and working conditions thru their own organisation and participation. The program is introducing a system of credits to support the children's activities and improve their income. The credits are given to the working children and adolescents in groups and organised by the municipality. The motive of the loans/credits is to enable the children to make a better living so they can secure their future.¹⁵⁰ The WEH want to notice the experience of life that these working children have and apply it to the school system to introduce the issue of child labour in the schools. Many working children are harassed in school by other children and even in some cases by ignorant teachers because they are working.¹⁵¹

This program is the one I personally was mostly interested in, since I am of the opinion that child labour is impossible to prohibit totally and that not all working children are suffering by the work experience but also are learning something and developing as persons (by this I most explicitly do not mean child labour that is an exploitation of children i.e. dangerous, low pay and in general exploiting work). To make the school schedules more flexible and adjusted to the situation of the working children is a way of making their daily life easier and maybe less stressful. It can sometimes be centuries of work to change a country's economy and to fight poverty but meanwhile I think we have to try "to make the best of the situation". In poorer countries children are seen as contributors to the economy of the family therefore it is natural to put the children to work in an early age. If a program like the WEH can improve the situation for these children and families I see it as a necessary measure that the government has to initiate and support. By promoting programs like the WEH, I see it as, the State is not agreeing with child labour but fighting it by not fighting the children but supporting them and fighting the disadvantage of child labour.

Rádda Barnen have been working intensively lately to build up a nationwide student's council (Municipios Escolares) in Peru and today there exists a network of student's council where 7 806 elected student representatives and 2 384 support-teachers have been educated. The student's council are working in the interest of the students both inside and outside of the schools. Through the collaboration of the student's council they have managed to check some of the violent gang rows between different schools.¹⁵² Student's Councils gives the students an opportunity to influence the system and leaders in a mutual, united and stronger way than one by one. The Council also opens for a new way of communication between the teachers and students and schools and government that before might have been more complicated to establish since no elected representatives have existed. I think communication and giving

¹⁴⁹ In Spanish TES: Trabajo, Educación y Salud

¹⁵⁰ www.accionporlosninos.org.pe, TES

¹⁵¹ Interview with Sr Juan Ruez, Acción por los niños

¹⁵² Interview with Sra Gina Solares at RB

children the possibility to influence the decision-makers is a very important step in the direction of acknowledging the rights of the children.

In this essay I have illuminated a problem in the Peruvian Educational System discriminating the language minorities of Peru, languages like Quechua and Aymara. A new program has been introduced, since I started writing the essay, and is available for over 100 thousand children in 16 different provinces of Peru whose first language is not Spanish. The program gives the children the opportunity to follow a bilingual education. The education is yet only available for children on the initial and primary school level and not on a secondary or superior level. The Peruvian Government has firmly assumed an obligation to guarantee a quality **base learning** which therefore explain the program's concentration on initial and primary school. Today there are 15 thousand bilingual educated teachers and before the end of 2001 there will be five thousand more. The idea is that each of these teachers shall teach an average of 20 pupils in each class. There has been evolved texts and compendiums in five different versions of Quechua, of Aymara and in ten different native languages of the Amazonian area. These texts have been developed by indigenous teachers and specialists and are given out for free to the children. One copy is in their own maternal language covering the area for mathematics and communication while the other copy is in Spanish for the subject of natural science and social science.¹⁵³

I think this is an excellent example of how a country should tackle the bilingual dilemmas. To start implementing a bilingual education for children in an early age is something both the students and the society will benefit from. The more languages a person learns the easier it is to learn other languages. Language is part of a person's personality and culture and therefore by acknowledging language and cultural minorities in a country is one way of strengthening the confidence and self-esteem of the citizens.

8. Analysis

The purpose of this chapter is to put the situation of the Peruvian legislation and the children in relation with explanation theories. My ambition is to try to analyse the circumstances in Peru and stretch the different ways of solving the situation for the children who are not able to attend school because they have to work. I will also describe some of the different causes to why the Peruvian society has developed to this unfortunate situation of poverty and cases of work-exploited children. In this part of the essay all the different chapters will be "summed up" and brought together so the reader might experience a feeling of repetition when reading this final chapter.

8.1 Personal Observations

Peruvians in general seem to be lacking faith and confidence in the governmental institutions and the leaders. They do not lack faith or pride in their country but they seemed to possess a common dissatisfaction in the past and in the future to come. Almost all the young people I came in contact with had a dream of emigrating to United States or Europe, but they unfortunately knew that it is close to impossible for a Peruvian to get a visa to travel to both these continents (unless you have a *good* economy and will not be a burden to the country they are visiting). The reason for why they want to go abroad is in majority of the cases to

¹⁵³ <http://www.minedu.gob.pe/> "Educación Bilingüe Intercultural..." 5th of March 2001

earn money so they one day can return and live a better life in Peru, if the political situation has improved. This can also be related to the incidence of a lacking future hope in Peru since dramatic events of the eighties and the nineties (terrorism and political violence) are still fresh in the Peruvians' memory. This is just one of many observations that I made in Peru but the distrust in the State is the element that was remarkably evident. Maybe it became so evident for me since I come from a country where we trust in our government and leaders even in the most suspicious situations (which maybe would make our society an interesting subject for an essay).

When studying the Peruvian Constitution, the Child and Juvenile Code and other relevant laws and regulations I was impressed by the composition and detailed wording. The more I studied though, the more obvious it became that there seemed to be a gap between the Peru according the regulations and the Peru I experienced just by walking or taking the local bus to the university. It was an encounter between the Peru how it should and was supposed to be and the Peru in reality of year 2000. When realising this I started looking for reasons to why laws were not being obeyed and how a society could function when the laws did not apply and some even was more or less ignored.¹⁵⁴ I drew the conclusion once again of the distrust and the fact that there was not a mutual respect between the citizens and the State. After decades and even centuries of political and military oppression the citizens know that they have to depend on themselves to survive and make something out of their lives. National economical crisis that turned families' economy and savings to zero over one night during the eighties has affected people. Experiences like this has made them suspicious towards trusting leaders that only make campaign promises during election time and then later it is revealed huge corruption or drug dealing scandals.¹⁵⁵

This attitude of "having to depend on yourself" to survive is not always followed by negative consequences in society. I observed an impressive enthusiasm and inventiveness among the Peruvians that we do not have anything like in Sweden. Peruvians are engaged in their lives and their survival and they know they have to do things themselves if they want it done. If you do not have a job tomorrow then you will not receive any money from the government so it is up to you to solve the problem. In Sweden we pay high taxes and therefore the government contributes when we loose our job or have large families but this system feeds the "laziness" that can be seen among both young and old people in Sweden.

Another reason for why the situation for some Peruvian children has developed as it has, according to my observations, is the lack of direct and effective **sanctions** to follow up the paragraphs in the Child and Juvenile Code. The State seems to have lost the control and the economical situation of the State and the families is so finite that authorities' efforts to see to that parents put their children in school might be meaningless. Most of the parents do not

¹⁵⁴ Parents have a responsibility to put their children in school see chapter 6.1, children under the age of 12 shall not according to law work see chapter 7.2 although contradicting.

¹⁵⁵ Fujimori and his government has been criticized many times both national and international for violating the Human Rights and not following recommendations from the UN and international organisations. Several corruption cases have been revealed, which has led to distrust among the citizens toward the government and the legal system. As this essay is being written the political situation in Peru has taken a drastic change. President Alberto Fujimori resigned in November 2000. He resigned after several months of commotion and revealing of corruption cases among his fellow politicians. A temporary president has been designated until the new elections in April 2001. The people of Peru seems pleased with Fujimori's resignation and are very much looking forward to the new elections in which it has been predicted that several new candidates will appear and run for the presidency.

want to put or force their children to work and prevent them from finishing their compulsory education, but when the family has to be fed and there is no money it does not leave them with many alternatives. It all boils down to a question of a nation's economy and the political priorities made by the governments in power. Although Peru, as other countries, have assumed the UN principle of the child's best interest influencing all decisions it does not seem in reality to be as efficient as we would want it to be.

I will in the following sections try to describe an explanation model to give the reader a theoretical perspective of the Peruvian society. The purpose of this argumentation is to be able to draw parallels between the theoretical society of different philosophers or legal experts and the Peruvian system of today.

8.2 A State governed by Law

A State governed by law is a state where the citizens receive legal protection towards other individuals as well as the state.¹⁵⁶ In its ideal form the State governed by law is where the official power is practised within legal limits. The exercise of power is predictable with support of the law and therefore not arbitrary. All exercise of power has to in one way or another be surrendered by law. If all laws on exercise of power were to disappear the state would dissolve. This will also be the result if the authorities were to consequently break the laws.¹⁵⁷ What we are looking for here is a mutual understanding and respect between the authorities (government) and the citizens of the constituted laws.

- a) The State governed by law is recognized by the exercise of power, which is to a *high extent* following the law. Exercise of power is therefore in a State governed by law showing a *high extent* of predictability. In other words there exists a *formal legal security*. The predictability of the decisions is "protecting the individual from arbitrary exercise of power".
- b) The ideal State governed by law assumes that the minimum of protection that all law is creating for the individual is strengthened. The laws are created so that the individual is not only protected against illegal violence or abuse but also against the protection organisation itself – the State.

The state is, in this context, understood as an organisation of power and the law as a power-restricting factor.¹⁵⁸ What we here are discussing are essential factors of society (the mutual understanding/respect explained above) that, according to my opinion, was missing in Peru. It not so much the issue of the Peruvian government not obeying the laws as it is the laws not applying to the Peruvian society.¹⁵⁹

8.2.1 Legitimacy

The other issue that is relevant to discuss in this context is the legitimacy of the law. Emanuel Kant's definition of a legitimate legal system was: "*if citizens who recognise each other as*

¹⁵⁶ Peczenik, p. 46

¹⁵⁷ Peczenik, p. 50f

¹⁵⁸ Peczenik, p. 51

¹⁵⁹ Although this can be one of the causes for why distrust has developed in the Peruvian society among the population towards politicians and the nation's leaders.

*free and equal want to regulate their legal relations, they will have guaranteed each other equal and the biggest possible liberty of action".*¹⁶⁰ Kant emphasized the connection between two factors that without obedience to the law cannot be expected, the legal norms have to be constituted in the way that they can be regarded both as constraining rules and liberty laws.¹⁶¹ This double aspect belongs to our understanding of the modern law. We regard legitimacy as synonymous with the explanation that the State is at the same time guaranteeing a real legal practise **and** a legitimate legislating, by **on one hand** legal action in the sense of current obedience of the norms, which if necessary can be forced thru sanctions and **on the other** hand the legitimacy of the norms who shall make it possible to always obey the norms in respect of the law.¹⁶² My personal interpretation of this is that the laws are protecting and enabling the citizens to live and co-work in the society, which can be regarded as a freedom, at the same time by doing so the rules are compelling a certain behaviour by threatening with sanctions as consequences if the laws aren't obeyed.

In a well functioning society the legal order possesses a high legitimacy. The main meaning of legitimacy is that the citizens approve of the norms, institutions and the decisions that are taken. The legitimacy of the law can be questioned though. One theory is that the citizens are becoming more and more alienated to the administration. It can be said that in the modern society the gap between the bureaucracy and the common citizen is becoming wider than ever.¹⁶³ This statement can, as I see it, be directly applied to the situation in Peru. The system seems to have developed without have taken the citizens and the culture in consideration. The development has therefore resulted in an uneven society where some are included while others are excluded because of economical restrictions. The gap has widened between the State and the citizens with the result that sanctions will be inefficient or even impossible to issue.

The citizens are aware of the development (i.e. they have been overlooked) and this results in social-psychological consequences. Distrust to the authorities is one effect as the position of the bureaucracy is strengthened. Alexander Peczenik claims that this brings on the politicians need for experts or special advisers, along with their understandable resistance to becoming dependent on the expertise, so the so-called professional politicians become more common. As the "over-regulation and debilitation of the law's inner context" is growing the distrust among the civilians is becoming more and more profound.¹⁶⁴

The legitimacy is very often based on the legal security. Although a legal system is showing different defects, the citizens can accept the defects if the defects are mitigated by well-motivated practice of law. The motivation must convince the citizens that the power in spite of everything is exercised within a legal limit. If the legal argumentation in this way is contributing to the exercise of power being predictable and not arbitrary, it will also promote the legitimacy of the law.¹⁶⁵

One important aspect of the promotion of the legal security is equality before the law. Formal equality before the law is a consequence of general laws deciding all the activities of the authorities in a state governed by law. No one can therefore be allotted benefits that are not

¹⁶⁰ Habermas, p. 11

¹⁶¹ Habermas, p. 65

¹⁶² Habermas, p 65 and author's own interpretation

¹⁶³ Peczenik, p. 48

¹⁶⁴ Peczenik, p. 48f

¹⁶⁵ Peczenik, p. 49f

confirmed by the legal rules/regulations, or escape fines or punishment that are decreed by law. Material equality before the law assumes that there is no discrimination. Meaning that special treatment can be regulated by law but only if the purpose is to give protection not to express ethical unmotivated ideas, like for example, of a gender's general superiority.

Legitimacy is also threatened or can fail because of the difference in the access or asset to different materials things in a combination with distrust in the system that is described in the "Personal Thoughts" section above. Citizens are not connecting with their government and leaders because of the economical or material disparity, on the other side they relate to their own culture or traditions, which they can identify themselves with. There is an economical and material gap between the classes in the Peruvian society, which results in a situation where the limits set by the "over class" (i.e. the leaders of the nation) do not have any legitimacy in the society of the lower classes because the gap is too wide. This can be explained by a society of many minorities or an oppressed population. They therefore do not relate to the State since they do not feel like a part of it and maybe never been treated as it. For some minorities there is a **language barrier** (discussed in chapter 3.1 above) between them and the State they are supposed to "surrender" to.

8.2.2 Stability

The laws has to be stable, to be able to full-fill its function as conducting the actions. The laws must of course be changeable but changing them too fast will most likely result in chaos where neither the authorities nor the citizens are able to adapt in the same speed as the changes. No efficient State governed by law can therefore allow being below a certain minimum of stability. In a State governed by law the rules have to be so stable that the citizens can plan their actions within fixed limits. The frequent changing of laws is according to Srta Bustamente, who I interviewed, a problem in Peru and can be one of the causes for the wide gap between the laws and the society. On the other hand it should be seen as positive actions when a State is reforming the legislation to adapt to international Conventions etc. the fact though remains that people do not have time to adapt to the system if it is changing too fast or maybe the changes and the system is not being "advertised" enough.

8.2.3 Norm rationality

A State governed by law is not only distinguished by the laws' wording, substance and stability, but also foremost by the authorities' legal practise to promote security. All legal decisions in a State governed by law must be subordinated general laws, i.e. they have to be understood as application of the laws. Max Weber stated that the State governed by law shows a high grade of norm rationality, since it is rational to comply with laws. Court decisions are typical examples of norm rationality; the judge follows some general and relative accurate laws.¹⁶⁶ We can here draw parallels to acting with one specific goal in mind. To reach a goal in the most efficient way possible in a State governed by law is to act norm rationally. Most of the time it is most profitable to follow the legal rules " a person who intends to find the most efficient way of reaching a goal simply can not afford to break the law".¹⁶⁷ To apply this statement to the situation of Peru I would say that the distrust in the legal systems makes some

¹⁶⁶ Peczenik, p 53f

¹⁶⁷ Peczenik, p 54

people act in an illegal way since the legal way of reaching a goal might not be the most efficient. This because when there is distrust in the authorities the citizens don't see why they have to respect laws and regulation that according to them are being disrespected even by the leaders of the nation.

8.2.4 Openness

The predictability of the legal system are promoted by legal rules being applied in an open manner. By applying the rules in an open way Perczenik means that the most important legal rules are made official, the authority people are well known and the citizens have access to public documents. One important aspect is the court's obligation to make public all the relevant reasons for (and against) their decisions. The openness of the argumentations is one of the basic principles for the rational decision-making, "secrecy is an exception, openness a basic rule".¹⁶⁸

8.2.5 Legal responsibility

One other important factor in a State governed by law is that the exercise of power comes with a certain responsibility. The official salaries employees have a legal responsibility to authority abuse and there are also different disciplinary responsibilities. In Peru, I would say, that this is a very serious issue. Just by studying the actions of the ministers and especially the ex-president Fujimori it is quite clear that they "belong" to another class of citizens when it comes to acting openly and legally. Fujimori's party "Peru 2000" was disclosed, just before the elections in April, to have falsified signatures registering the party. The accusations were denied and/or explained and not followed by any consequences. They also many times have the economical conditions and contacts to seek help in crisis either outside or inside of the country. Fujimori's good and mutual dependent relations and support of the military force could explain his prolonged position in power. The last political developments and events have shown the importance of the military support and the President's manipulation of the citizens. Fujimori resigned and are now living in Japan at the same time as his governmental colleagues' rather shady businesses one by one were revealed. By his resignation, claiming he is respecting the will of the people and see it as his time to hand over the presidency, he tries to withdraw with dignity and in his "days of glory". I suppose only time will tell whether he will manage to maintain this image. Before his resignation the support of the military force were divided in two, one half standing behind Fujimori and the other supporting Montesino, the president's right arm and advisor, that fled the country after a corruption revelation in august, 2000.

8.2.6 Balance of power

Another factor that have some relevance viewing the Peruvian situation is the concentration of power. Power monopoly is serious threat of the individual liberty. In a State governed by law the courts and the legal applying authorities are given a reasonable independency from the legislators and the government. The independency of the courts can be related to the theories about separation and balance of powers within the government by Montesquieu. According

¹⁶⁸ Peczenik, p 54

his ideas legislative, judicial and executive powers must be separated to guarantee the function of the democratic institutions. The independency of the courts constitutes a minimum without the existence of a State governed by law would be unthinkable.¹⁶⁹ Peru is a country, which officially and formally, has a balance of power. I would claim though that the serious existence of corruption is indications of a misbalance of powers.¹⁷⁰ It will lead to a society where only those with money can buy themselves “justice” and those with the economical conditions are in a country like Peru often the same people that possess power. By illustrating this connection I would say that the balance of power is not a matter of course.

8.3 Summery and General Conclusions

The entrance of the Convention of the Rights of the Child in 1990 had an important impact on the position for children all over the world as well as in Peru. The UN Committee on the Right of the Child commended Peru by for being one of the first countries to ratify the Convention, and Peru has also specifically expressed the principle of the child's superior interest in the Child and Juvenile Code. The ambition to improve and get the better of the situation for the Peruvian children is obvious among the Peruvian population by judging all the different children organisations that exists. The problem as in so many other countries is the lack of economical resources, this in combination with a turbulent political history that has left the population in fear and distrust in political leaders and their promises of a better future, which results in them working out their own way of living almost “separated” from the wording in the national legislation.

So what would be the ideal solution to solve the situation for the children who are prevented from attending school and forced to work from a young age. I will her give you my final version of suggested changes and plans that might be one way to improve the situation.

Peru is still today a country with huge differences in economical and material assets among the population this do complicate the process of implementing the specific children's rights, like the right to education, in all parts and classes of Peru. There are some deeds that Peru “easily” could do to improve the situation of the children, and it is on the legal area. The UN Minimum Age Convention of 1974 could be ratified and thereby the age minimum for children to work would rise from twelve to fourteen/fifteen years old. Another Convention that should be ratified is the ILO C182 Worst Forms of Child Labour Convention of 1999 to protect working children from being exploited, like the children that are working under inhuman conditions in the mines of Peru. These ratifications would hopefully have a direct effect on the situation for the working children, this if these Conventions are followed up and complemented by sanctions when they are not being respected.

A consistent and thorough follow up of the obedience of legislation is one of the main actions that the Peruvian authorities should emphasise on, since the problem as I see it is not in the legislation (with exception from the example in the section above) but in the gap that exists between the legislation and reality. The authorities ought to make sure that the laws **can be** obeyed, i.e. give economical support to unemployed parents so their children do not have to work or raise the minimum wages so parents can afford to support their families without the help of their children. Sometimes the solution to a problem cannot be searched for in one

¹⁶⁹ Peczenik, p 55

¹⁷⁰ See footnote 155 above.

source but the problem consists of many different and relating factors. For example the problem with some of the Peruvian children not attending school is not just a school problem (the school system being centralised and geographic differences) but also a economical problem within the family which in its turn is caused by parents not being able to support the family, and this is caused by extremely low wages and/or high unemployment and so on, this description of a problem can go on for ever. It is though important to examine the problem in this way so one can come closer to the solution and also know which areas in which to take actions for improving the situation. To change a Nation's economy and political condition is nothing that is done over night so meanwhile all efforts and improvement by local authorities and organisation are welcomed. For working/studying children the WHE program (see chapter 7.3.4 above) of the Acción por los Niños is one program that should be encourage as well as the union organization for working children and adolescents, which helps them to stand up for their rights and to understand how to relate to their work etc. In this way the society try to protect the working children while there is an on-going work by the authorities to change the situation.¹⁷¹

People are influenced and formed by the society they live in and society is also one of the influences for national legislation, but not if society and legislation are proceeding and taking form without reciprocal dependency. If there are not any strong leaders who not only condemn but also act against exploitation of working children and the existence of abandoned street children, society develops and accepts this behaviour and situations like high absence in school and children working in dangerous mines. The authorities should not only inform the population of how to act but also support them economically and expressively so they actually feel that they **can** change their situation (referring to for example parents being able to sent their children to school instead of putting them to work). Awareness of the problems is one important factor but it is rather ineffective if there do not exist any solution or support to solve the problem.

Peruvian authorities need to commit themselves to improve the conditions of the public school and the teachers so the quality of the education can compete with the private school. By doing this minorities and people of the lower classes of society will see that their existence and effort are being acknowledged by the State and it is not only students with the economical conditions that matter. It might seem that money could solve the entire problem but unfortunately the problem goes a bit deeper than that. Minorities have to be acknowledged and respected as well as poor people should not be discriminated for their origin or living conditions. These are issues that money cannot solve it takes an attitude change within both the area for politics and social classes.

The Government has to acknowledge the responsibility and seek real and viable solutions to the problem. They have to see the pattern and seek the answer of the following questions; why does children enrol late in school? Why are the absence rates high? Are there any common factors? Is it related to the existing child labour? Why are infants/children working in the street corners, roads, plazas, fabrics and mines? Could it be because they don't have any parents or because their parents aren't able to support them? If so what can we do? Have we taken any actions against this problem earlier? If so then why haven't the situation improved? It is all about examine the measures taken and initiate new programs of changes. Persistence and reality connection are key words that will result in progress for the authorities to get control of the situation. The authorities has to recognise the importance of the well-being of

¹⁷¹ Interview with Sra Barletta

the children in a country, because the children are the future and the efforts and inputs made in them **will** without doubt be an investment in a strong and positive development of the nation.

The Convention is incorporated in the Peruvian national legislation and its paragraphs are basic and not provoking or difficult in any way but still after ten years since the ratification some of the paragraphs has not been complied. Once again I would like to emphasis and conclude this essay but stretching that the **cause** of the Peruvian school children who are not attending school is not found in the legislation mainly but in the economical and social conditions of the Peruvian population and State. Poverty is the villain and the cause to the amount of children having to work instead of going to school or enrol late or not at all.

References

Bartley, Kristina "Barn politik och barnets rättigheter"
Gothenburg, 1998

Calero Pérez, Mavilo "Historia de la Educación Peruana"
Lima, Peru 1999

Carrea, Rubio Marcial "Estudio de la Constitución política de 1993"
Lima, Feb. 1999 Pontificia Universidad Católica del Perú

Chunga Lamonja, Fermin "Derecho de Menores"
Lima, Peru 1999

De la Fuente, Alvarado "Experiencias y reflexiones en el derecho de la infancia y adolescencia"
Lima, 1997 Pontificia Universidad Católica del Peru (Pucp)

Habermas, Jürgen "Diskurs, rätt och demokrati"
Uddevalla 1997

Holligan de Diaz-Limaco, Jane "Peru (in focus)"
London, 1998

Landa, César "Constitución Política del Perú 1993"

Lindberg, Bo "Om rättigheterna i historien" ur Kompendium i Rättsvetenskap 2000,
Göteborgs Universitet

Nuevo Código de los Niños y el Adolescente /Child and Juvenile Code
(Decreto Ley N° 27337)

Peczenik, Alexander "Vad är rätt?"
Göteborg 1995

Salgado, Luz "En defensa de los niños y niñas; el nuevo rol de los gobiernos locales"
Lima, Peru 1999

Strömberg & Melander "Folkrätt" Studentlitteratur
1989

Strömholm, Stig "Rätt, rättskällor, rättstillämpning"
Stockholm 1996

United Nations "Fact sheet No 10, The Rights of the Child"

Utrikes Politiska Institutets "Handbok om Peru"
Stockholm

Villiers, Charlotte "The Spanish Legal Tradition" (Laws of the nations series)

Gateshead, Tyne & Wear 1999

Interviews:

Pontificia Universidad Católica del Peru:

- ❖ Dr. César Landa, Derecho Constitucional
- ❖ Dra. Emilia Bustamente, Lawyer specialised in Family Law, 24.01.2000
- ❖ Maria Consuela Barletta, 12.02.2000

Rädda Barnen 30.1.2000:

- ❖ Blanca Normura at Rädda Barnen
- ❖ Elsa Bárdalez (Demunas)
- ❖ Gina Solares (Municipios Escolares) anthropologist

Accion por los niños 29.02.2000:

- ❖ Juan Carlos Raez,(Demunas)
- ❖ Manuel Martinez, (TES- Coordinator)

Additional Interviews:

At the Centre for Teacher's Education at Pucp:

- ❖ Profesora Pilar Llamas (coordinator of Initial Level) 10.02.2000
- ❖ Profesora Regina Moromisato (Initial Education) 10.02.2000
- ❖ Profesor Alberto Patiño (Primary and Secondary Education) 10.02.2000

Statistics (on printed paper in book form):

INEI – “Atraso y deserción escolar en niños y adolescentes”
Lima, 1995

INEI – “Estadísticas de la niñez, la adolescencia y la mujer”
Lima, 1997

INEI – “Perú; Características educativas de los hogares”
Lima, 1999

PROMUDEH (Ministerio de Promoción de la Mujer y del Desarrollo Humano)–“Informe
annual 1999-Derechos Económicos, Sociales y Culturales en el Perú”
Lima, 1999

Information and statistics from the Internet:

www.accionporlosninos.org.pe
www.congreso.gob.pe
www.ilo.org
www.inei.gob.pe
www.minedu.gob.pe
www.promudeh.gob.pe
www.rb.se
www.un.org
www.unicef.org

Figures:

- Figure 1: www.promudeh.gob.pe/pna/estadistica.htm - Evolucion de la Tasa de Anafabetismo
- Figure 2: www.inei.gob.pe - "Peru en cifras", "indicadores sociales", "educación"