



This study was compiled as a working document in 2000 as part of International IDEA's work on State of Democracy and Democracy Assessments.

© International Institute for Democracy and Electoral Assistance 2000

International IDEA publications are independent of specific national or political interests. Views expressed in this publication do not necessarily represent the views of International IDEA, its Board or its Council members.

Applications for permission to reproduce or translate all or any part of this publication should be made to:

International IDEA
SE -103 34 Stockholm
Sweden
www.idea.int

International IDEA encourages dissemination of its work and will promptly respond to requests for permission to reproduce or translate its publications.

September 4, 2000

Country report

Republica de El Salvador

Dr. Felix Ulloa

Dr. Alberto Arene

Ms. Beatriz Barraz Diaz

Dr. Alvaro Artiga Gonzalez

0.0 Main staging post to democratisation

0.1

Political summary

1) Political context

Present-day El Salvador was founded on land appropriated by Spanish settlers from indigenous Indians in the sixteenth century; since this time, force was consistently applied by the State to protect and increase the property of the expropriators. In the 1980s, the most severe war in El Salvador's history was fought between popular Marxist guerrillas and the State armed forces (supported heavily by the US government). This war ended in 1992 when the Government and the Frente Farabundo Martí para la Liberación Nacional (FMLN) signed Peace Agreements. The total of deaths from violent conflict in the twentieth century is calculated to over 100,000 – four-fifths or more of these deaths were peasants and workers.

That violence could be committed on this scale is partly a product of centuries of repression and the absence of channels for popular discontent. El Salvador was long ruled by a tight land-owner oligarchy with the unconditional support from the arm forces. It was said that fourteen families ruled El Salvador indirectly while many of El Salvador's presidents were military officers who assumed office through coups or electoral fraud. These interconnected forces dominate political discourse and continue to prevent issues of social injustice and poverty from being resolved.

Poverty is a serious issue in El Salvador. The government has in the last few decades made some gestures towards relieving the problems of poverty and social isolation. New jobs have been created in factories and processing plants, but the money two workers earning more than the statutory minimum wage can expect to bring home is generally insufficient to cover a family's basic needs. Almost a fifth of the population (35% in some rural areas) live in absolute poverty, and cannot afford sufficient food. The government has seldom been willing or able to broker a compromise between elite groups and the popular classes to relieve the latter's deprivation. Although some changes have occurred since 1992, political life remains largely in the thrall of the economic.

2) *Political and historical timeline*

- 1525** Spanish invasion. The invaders conquer the Pipil peoples over a period of 15 years, overcoming fierce resistance. The captured land is redistributed to soldiers/mercenaries and the Catholic Church in the form of private property and to the municipal governments and local indigenous communities in the form of public property; the original inhabitants are forced to work the land through a system of bondage known as *encomiendas*. The land is used to grow indigo (a purple dye) for export. Production is highly toxic, and approximately half the indigenous population die through a combination of poisoning and European diseases in the thirty years after conquest.
- 1787** El Salvador becomes an intendancy – an administrative category allowing for a degree of home rule under Spanish supervision. This puts El Salvador on a par with its neighbours, Honduras and Guatemala. Inside the framework of the United Provinces of Central America.
- 1821** A regional (Central American) declaration of independence is issued in September, formalising the power of the conquerors' descendants, known as *Criollos*. The criollos are represented in a Legislative Assembly, in a inter-regional framework called the United Provinces of Central America.
The ascendant political class have little regard for the indigenous population, appropriating more and more land for export-crop farming (predominantly of indigo), forcing large numbers into destitution.
- 1833** Anastasio Aquino leads indigenous people protesting about poverty and unemployment/landlessness in the northern and central zones (present-day Zactaeocoluca and San Vicente). The government/ military bloodily suppresses protestors.

	1838	El Salvador's independent life begins when the Central America Federal Republic is broken.
	1830-1860	Coffee is introduced in the 1830; in the mid-century, landowners turn increasingly to this new crop as synthetic dyes reduce the demand for indigo in Europe.
	1881 & 1882	Legislative Assembly passes a series of laws redistributing the remaining communal land to private farmers. Owners are allocated land if they commit to producing coffee for export. New European immigrants (the forebears of the present-day economic and political elite) accumulate large tracts of land.
	Late 1880s	Government introduces laws to regulate the casualised peasant labour force; in 1889 a police force is established in coffee growing areas. With internal descent crushed a period of relative political stability ensues based on previously forged alliances between oligarchic land owners and the military.
	1932	Army suppresses peasant uprising. 30,000 mainly indigenous people are killed; the main revolt is foiled when Agustin Farabundo Martí is among those captured by the army.
January		Following a coup d'état, Gen. Maximillio Hernandez Martinez (former Minister of War) leads the government until 1944.
	1944	Workers and students topple Martinez government with a strike and civil disobedience campaign. The military does not intervene.
	1945	Gen. Salvador Casteneda Castro elected president.
	1950	New constitution promulgated Lt. Col. Oscar Osorio (of government PRUD party) wins elections; reforms initiated.
	1956	Lt. Col. Jose Maria Lemus becomes president. Elections widely perceived as rigged.
	1960 & 1961	Reformist coup swiftly followed by reactionary counter-coup. Lt. Col. Julio Rivera becomes president.
	1962	Lt. Col. Rivera wins elections (boycotted by leftwing opposition) and introduces a constitution drawn up by an elected Constituent Assembly, which is entirely made up of government party representatives.
	mid-1960s	Catholic priests and lay-workers and the Christian Democratic Party (and foreign NGOs) begin civic education campaigns in rural areas. Peasants organise into co-operatives.
	1967	Col. Fidel Sanchez Hernandez of government party (renamed PCN) elected president.
	1969	Four day long war with Honduras caused by tensions created by the presence of tens of thousands Salvadorans in Honduran territory. Left begins to reorganise into political parties supported by military units; the number of more or less covert leftist parties increases steadily into the mid-1970s.
	1972	Jose Napoleon Duarte believed to have won the presidential election, but the electoral commission appears to alter the results. Col. Arturo Molina becomes president. A reformist revolt by military officers is put down with 200 deaths; Duarte goes into exile following arrest and torture. US Government does not intervene.
Early to mid-1970s		Right-wing death squads become active; by the 1980s they routinely target priests and community workers, trade unionists and anyone associated with the left. One quarter of a million people (approximately 5% of the population) flee the country during the 1970s.
	1974	Fraudulent Legislative Assembly elections in which government party (PCN) wins all seats.
	1976	Land owners resist a limited package of land reform proposed by the government, which later abandons the programme.
	1977	Gen. Carlos Humberto Romero wins fraudulent elections
	1979	Romero overthrown by reformist military officers.
	1980	Civilian-military government dissolved when civilians object to constraints imposed by military hierarchy.
January		
March		A civilian-military junta formed with Napoleon Duarte takes over (US policy centres on Duarte for much of the 1980s). Paramilitary (right-wing) death squads become more active (death toll estimated at 15,000 in

	1980-81).
	Government nationalises the banks and begins a limited land reform programme.
May	Maj. Roberto D'Aubuisson fails in his coup attempt. D'Aubuisson organises an underground anti-insurgent army to co-ordinate death squads.
December	US aid temporarily cut off following the murder of four US church workers by government troops. The government denies responsibility throughout the 1980s.
1981	FMLN begins its 'final offensive' in January.
	D'Aubuisson establishes ARENA (the National Republican Alliance party).
1982	Elections held for a constituent assembly; leftist parties do not participate; Christian Democratic Party wins largest plurality.
March	D'Aubuisson becomes president of Legislative Assembly after the US blocks his attempt to become president. A 'Government of National Unity' is formed under President Alvaro Magaña.
1983	New (current) constitution promulgated.
1984	Army and US Government reject the results of secret talks between Duarte and the FMLN which would allow power-sharing.
mid-1980s	Government wages 'total war' against rebel-held areas (predominantly north and east). Civilian population suffers greatly.
	Emigration doubles over the 1970s: over half a million people flee the country during the decade, with many going to US (illegally) and Honduras.
1989	Alfredo Cristiani (ARENA) elected president (to June 1994) Cristiani adopts neo-liberal economic policies opening markets and privatising state assets.
March	
November	Army's reports that it is nearing victory are overturned by major FMLN offensive. The offensive fails to trigger the popular revolt that party had hoped for.
1991	US President Bush and Congress conflict over reduction in aid. Bush forces through emergency aid following two mini FMLN offensives.
January	
March	Negotiators agree on the creation of a Truth Commission and certain constitutional reforms.
September - January	Interim and Final agreements signed in New York and, Chapultepec, Mexico.
1992	Peace Agreements take effect.
February	
December	FMLN formally becomes a political party.
March	Truth Commission presents its report. Legislative Assembly passes a general amnesty law within three days which exonerates all perpetrators of war crimes, including those already convicted.
September	United Nations verifies that all FMLN weapons have been decommissioned.
November- December	FMLN officials again targeted by paramilitaries; 3 senior members are murdered in 6 weeks.
1994	First multiparty elections involving the FMLN.
March	Calderón Sol (ARENA) elected president.
July	New Supreme Court elected after years of delay. 'Cleansing' of those members of the judiciary associated with the militant past resisted by the Attorney-General and proceeds very slowly.
August	Special Group convened to investigate continuing right-wing paramilitary activity.
November	Army called in to suppress striking transport workers engaged in an 'illegal' strike. Soon after the military resumes a role supporting the civilian police on routine patrols.
	Demobilised government forces protest against exclusion from benefits of peace deal (protests continue to date).
1998	Hurricane Mitch devastates the region.
November	
1999	Francisco Flores (ARENA) elected president

March
2000 Legislature elections. The FMLN overcomes ARENA by two seats in the Legislative
 March Assembly.

3) *Governing arrangements*

Official Name	Republica de El Salvador
Government Type	Presidential Democracy
Executive	President Francisco Flores (Executive President). The president is elected for five year terms, and may not be subsequently re-elected. The president must be a member of a recognised political party, and is commander in chief of the armed forces. The president may introduce legislation to the Legislative Assembly through his ministers; he may veto Bills passed by the Assembly – the Assembly may override this veto by a vote of two-thirds majority in support of the Bill.
Legislature	The unicameral, 84-member Legislative Assembly is elected by universal suffrage for 3 year terms under a form of proportional representation. The Assembly has constitutional powers of oversight over the executive, and may request the President to report on any matter except ‘secret’ military strategy. The Legislative Assembly must approve presidential nominations to a number of important positions, including the chief justice, magistrates of the Supreme Court, the head of the Supreme Electoral Tribunal, the president and magistrates of the government auditors, the attorney general, and the procurator general. The Assembly must also approve the national budget
The Judiciary and the Law	Justices of the Supreme Court are elected by the Legislative Assembly; each judge must secure a vote of two-thirds support. The Supreme Court oversees the judiciary, including the accounts of the court and personnel. The Supreme Court may introduce legislation to the Legislative Assembly on matters regarding the judiciary; it decides the constitutionality of laws passed by the Assembly at the request of the President. The State accepts the jurisdiction of the International criminal court with reservations.
The Military	The military has no formal role in the governance of the country but has exerted considerable political influence throughout the twentieth century.
Administrative Divisions	The country is divided into 14 administrative departments (Ahuachapan, Cabañas, Chalatenango, Cuscatlán, La Libertad, La Paz, La Unión, Morazán, San Miguel, San Salvador, Santa Ana, San Vicente, Sonsonate, Usulután) and 262 municipalities. Municipalities elected executive mayors. The government is currently committed to decentralising responsibility for service delivery to municipalities; in spite of this power is overwhelming located in centralised ministries and government bureaucracies. Municipalities may introduce Bills to the Legislative Assembly on matters regarding municipal taxation; they have no independent tax raising powers.

1.0 Nationhood and citizenship

Executive Summary

*Nationality and citizenship are two different concepts for Salvadoran law. Nationals **by birth**, according art.90 of the Constitution, are: a) those who were born in El Salvador's territory b) those children of either Salvadoran mother or father who were born abroad, and c) those originates from any of the former provinces of the Central America Federal Republic, who living in El Salvador express to the authorities their will to be Salvadorian, needless to resign to their original nationality. **Nationals by naturalization**, according to art. 92 of the Constitution, are those: a) Spanish people or Latin-Americans who have lived for more than one year in El Salvador, b) Foreigners of any country with more than five years living in El Salvador, c) those who have serve in remarkable way to the State of El Salvador and receive that honor from the Congress.*

and d) Foreigners married with Salvadorian and living more than two years in El Salvador either before or after marriage.

Only Salvadorians by birth could held double nationality Art.91 Constitution, this article add moreover: "The quality of Salvadorian by birth can only be lost by rejection in face to the proper authority and shall be recovered by petition to the same authority." Art. 94 of the Constitution says: "The quality of Salvadoran by naturalisation can be lost for living in the original country more than two years one after another or for living abroad more than five years consecutive, and by judicial resolution, in this case could not be recovered".

All the nationals become citizens according art. 71 of the Constitution, when they reach the age of eighteen years old.

The rights of the citizens are: to vote, to be elected for public offices and crate or joint to political parties. The duties: to vote, serve to the government and surveillance the fulfill of the Constitution. Arts. 72, 73 Constitution. There are many public high level positions elected and appointed, which could be held only by Salvadoreans by birth.

There is a third category of Salvadoran, the legal persons such societies, corporations, associations and so on, created under the Salvadoran law and who have the legal domicile in El Salvador. Art. 95 Constitution.

1.1

How inclusive is the political nation and state citizenship of all who live within the territory?

The People of El Salvador are formally equal in all aspects; the Constitution recognizes the human person as the origin and the end of every activity of the State (art.1) and continues that all persons are equal under the law (art.3). ethnics minorities including indigenous people no longer have cultural presence in dividing society. Despite of this El Salvador is a highly polarized society. A deep economic cleavage divides Salvadoran society. Centuries of economic inequality maintained through a military repression created a powerful economic elite and on the other side a vast poor majority. Twelve years of civil war explained the deep mark of social relations and the only way of trying to resolve the contradictions. After the Peace Accords were signed in 1992 democratic mechanisms for political participation have been partially established. The elite still has the social and economic rights of property. Moreover, the levels of economic concentration in a few families are a new phenomenon observed since the constitutional amendments from 1994, which allow privatization and concessions of public enterprise.

Salvadorans have a special feeling of proud belonging to their country because there has been an strategic policy of the ruling class and mass media (whose monopoly belong to members of the ruling class and strong support the right win ruling party) to make them believe they are the Israel or the Japan of Central America. The aim was and still is, to create an attitude of recognition and respect and gratitude to the elite and government. However the role of civil society organization telling the truth on real incomes, the

degradation of natural resources, the corruption of elites and government is moving this feeling to a more conscious degree of their reality.

1.2

How far are cultural differences acknowledged, and how well are minorities protected?

Gays Community's rights.

There is not regulation in the legal frame to protect or at least recognize the rights of the homosexual and lesbian communities.

Special Deceases

There is the case submitted to the Inter American Commission on Human Rights for a group of Salvadorans, is the case of Jorge Odir Miranda Cortez and others which has been taken under the number 12,249. These persons are suing the Salvadoran State for not providing the proper cautionary measures to protect his life and health as well as others infected with the HIV virus. The last resolution of IACHR from February 20, 2000 strongly recommend the Salvadoran Government to take measures in order to give those persons the proper medical treatment and nurture.

He went to IACHR after the rejection of Dr. Carlos Cornejo Ortiz Deputy Chief of Health Department of the Social Security Institute in 1998, and the delay of Supreme Court solving his claim submitted by him in April 29, 1999 and admitted until June 15, 1999.. The case in the Supreme Court has the number: "Amparo 348/99".

To push for the resolution the Atlacatl Association which gather HIV infected persons organized a demonstration at the front door of the Supreme Court after the death of 7 members (La Prensa Grafica June 7, 1999. El Diario de Hoy June 11, 1999).

Disabled persons' rights

There are about 800.000 disabled persons in El Salvador, and despite that there is not a census of them, the Legislative Assembly approved a new law named Equal Opportunities for Handicapped Persons Act, which contain in its article 25 the duty of the private enterprises to include at least 4 disable persons for every 100 employees. This law was discussed for more than one year. It also regulates the transportation for those who have problems and the regulation for future buildings, parking lots, special toilettes, housing and so on. Either in public or private sectors. This law gives one year to the government, municipalities and private sector to make the necessary changes.

The current situation by the Labor Code forces the employers to hire at least 2 of every 100 workers, but this statutory does not fulfill. The National Council for Integral Attention of Disabled Persons, an institution created five years ago under the Ministry of Labor jurisdictions does not work. However the new law gives it the mandate to take care of the supervision of these new duties. With this sense in one year ahead it will be the first supervision into the factories, offices and other labor places. With this law Salvadoran government could inform to the International Community of fulfilling the ILO regulations, although in practice reality will be something else.

Indigenous Community

90 % of indigenous people live in abject poverty. There is no any state policy for that community which is totally ignored and sometimes recalled for folkloric purposes.

Some indigenous organizations are demanding to the government ratify the Agreement #160 on Indigenous Nations and Tribal in Independent Countries, 1989 of the ILO

1.3

How much consensus is there on state boundaries and constitutional arrangements?

There were 311.66 Km² given to Honduras from Salvadoran land. Almost 15.000 inhabitants, who claim their Salvadoran citizenship, live in these areas. Their use of the forest as wood industry and trade it with

traditional Salvadoran partners created a source of conflicts with Honduran authorities. In the recent past the two armies mobilized troops to the border. No armed conflict between the two countries seems to appear however this “military movement” profited both armies in political terms.

Nowadays, in the territorial limit's subject there are problems with Honduras on the areas delimited by the International Court of Justice of The Hague, consistently enough that at its root, both Salvadoran and Hondurans physically remained in a territory distinct from its nationality. For the Republic of Honduras, in virtue of article 170 of the Constitution, only those born Hondurans can own land within a 40 Km. Belt and they are distinguishable in that the Central Americans can only become Hondurans by naturalization. Thus, El Salvador, because its legislation does not have prohibitions of this nature is engaged in diplomatic negotiation to ensure that the rights to property, possession and tenancy of its nationals are respected.

On the other hand, Honduras has maintained an aggressive attitude all the long history against the neighbors countries such Guatemala, Nicaragua and El Salvador which has been increased during 1999 and 2000 because the mega project of a dry inter oceanic channel.

The attitudes of people who are living in areas governed by guerrillas during civil war are like elsewhere in the country. There is not difference because this background, it could be say that difference is made by who control those areas now at the municipal level, and as a result of the elections. For instance an old front war controlled by FMLN during the war like Perquin in Morazan was won by ARENA in 1997 elections, (and recovered by FMLN in coalition with another party in 2000's elections for a difference of 63 votes) same happened with the village of Aguilares, in San Salvador, a strong FMLN supporter community during the war, which was won by PCN (gained again in elections held in March 12, 2000).

The turnout in these areas during elections has had the same patterns than in the rest of the country. Nothing special could be reported as a variable, which could give another sense to the outcomes.¹

1.4

How far do constitutional and political arrangements enable major societal divisions to be moderated or reconciled?

Sometimes the political arrangements work sometimes they do not. It depends of the issues they are talking about. For example, it has worked for appointed high level official distributing institutions according to the interests of the parties, in the case of rejecting abortion regulation, approving loans from abroad, regulating through laws and by laws the combat against money laundry

But it has not worked in cases like giving some social advantages to the working class, basically to the public employees, setting up the national budget, regulating privatization, and so on.

It has been cases that once elected some representatives (deputies) resign form their parties. All the parties have had that experience. From the left to the right none has escape of this practice. The aims are different but the fact is the same. Some of those representatives move to another party others maintain their selves as independents. No penalty is regulated by the law because that. In fact there is not any regulation at all.

There is no relationship between the parliament term or short life and the staff changes or political negotiation among parties for seats in the institutions.

First, the real problem is the lack of culture for a real civil service. In spite of the Constitution in article 219 establishes the civil service, the majority of the public administration at high and staff levels follow the official party interests. One example could be the Controller's Office where PCN has taken "the right" to appoint all the main positions once the other party give them "the right" to propone to the National Assembly the President of that office. The Francisco Merino's case showed clearly how this office was claimed by and given to the PCN as private property. One sector of ARENA party refuse to endorse his candidature to be reelected, after he finished the legal term of Mr. Hernan Contreras who had to resign because run for office as candidate of PCN in 1999's presidential elections. Regarding the crisis between the two political allies party, all the political parties agree to elect Mr. Rutilio Aguilera a top leader of PCN, as new head of that office.

Second, there are legal terms for other high level functionaries, those who are elected by de Legislative Assembly like Magistrates of the Supreme Court, Attorney General, Ombudsperson, Supreme Electoral

¹ See El Sistema Electoral y los Partidos Politicos en El Salvador. Ulloa, Felix. Editorial Guayampopo San Salvador, 1999.

Tribunal and others. Actually the parties use to deal with those positions and have made a rule to appoint in the Attorney General a lawyer proposed by the ruling party ARENA, the Corte de Cuentas (Controller's Office) a member of PCN an allied party of the ruling party and Procurador General (Legal Assistance Office) for Christian Democratic Party PDC, generally in the opposition. Recently and after the Constitutional amendments of 1992, the FMLN, the leftist party, is allowed to propose officials to The Supreme Electoral Tribunal (art.208 Constitution) and the Ombudsperson Office (political agreement).

The system of electing local governments does not encourage compromises among political parties, because it is a Simple Majority System in which winner takes all. That means even with a small difference one party win the whole Municipal Council seats and has the absolute control of the administration of the local government, having to deal more with the cooperation of the other parties than with their opposition.

There is not any political opposition in the Boards of the Local governments. The winner party control the whole body. However the Municipal Law (Codigo Municipal) allows to citizenship to have public meetings called *Cabildos Abiertos* in order that local authorities could listen from the citizen their claims or proposals. This old fashion way came from the colony and after the independence of Spain. Sometimes work in small towns but it does not in big cities.

San Salvador's current Municipal Council won for second time by FMLN, has began to open to the public their weekly meetings and others are following this practice.

Legislative and Municipal elections do not run one year before and one year after presidential elections. Although the idea is to have midterm elections in between presidential terms, but the legal electoral schedule does not permit it. Because of that there is a proposal to change the presidential term from 5 to 6 years and keep the legislative and municipal 3 years term. If so, there will be a real midterm elections process.

1.5

How impartial and inclusive are the procedures for amending the constitution?

The way to amend the constitution assures that no political force can do that without having two thirds of the seats in the Legislative Assembly or making alliances with other forces.

In fact, article 248 of the Constitution says that the reform need two steps. First to approve the proposal for a simple majority of the Legislative Assembly, this proposal has to be made by at least ten representatives (Members of Parliament), and second the ratification for the next Legislative Assembly with the vote from at least two thirds of its members.

There is no relationship between the amendment of the Constitution and electoral campaigns. No reform needs to be submitted to the electorate at any time, neither before nor after having been approved.

The Parliament is truly sovereign so far.

Not all the reforms made after the 1991/1992 Peace Accord process deal with the implementation of the Peace Agreement. Most of the amendments coming after 1994 were done to redraw the profile of the economic model and some changes in due judicial process. For instance, reforms to the articles 110 and 120 allow private enterprises to participate in areas traditionally reserved for the public sector. Reforms to the articles 14 and 17 are related with human rights guarantees in the prosecution and punishment as well as the compensation in cases of failure of justice administration. Finally there are other reforms addressed to the Corte de Cuentas (Controller's Office) which is the controller office of the state.

There is not autonomous Constitutional Court in El Salvador, there is a Chamber of the Supreme Court in charge to apply the constitutional justice such Habeas Corpus, Unconstitutionality and Amparos (appeals for violation of individual constitutional guarantees). There were not any appeal of unconstitutionality on the economic reforms despite many civil society organizations were critics against them, the political opposition was represented in the National Assembly when they were approved.

The explanation is that those reforms were agree in the Negotiation table during the peace talks, and once achieved an accord on the table by the two parts (FMLN and GOES) the Congress doesn't need to discussed it, just approve it covering the legal formality.

1.6

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

Unfortunately there has not been any serious measure to remedy these identified problems. Something worst occurred because the implementation of the new economic model and the so called modernization of the state has brought more unemployment and minorities do not have any chance to claim for their rights unless they joined their demands to the other social groups.

The political arrangement in parliament achieved among political opposition parties failed passing the laws because the ruling party defeated in voting has successfully claimed for presidential veto. In less than one year in office President Flores has vetoed eleven laws or reforms of laws, related with the remission of agrarian reform debt, which will benefit poor peasants; social advantages for labor unions of social security and teacher's union.

Double standards applying the law to foreigners. While Posada Carriles a Cuban mercenary was in El Salvador training and recruiting Salvadorans to operate inside Cuba (two of them were captured and judged and condemned into Cuba) many volunteers working in NGOs have been noticed to flee the country by suspect they are involved in domestic politics.

2.0 The rule of law

Are state and society consistently subject to the law?

Executive summary

Formally, all the institutions of the state, the officials, the individuals of the Salvadoran Society are subjected to the law. What is more, in all the public events, the governments, as well as the speakers from the economic, political and media sectors claim that in a Rule of Law governments as well as governed are subject to the law. This is established in the Constitution, Art. 3.

However, the judicial statistics present another reality. There are no, in practice, processes against high level government officials, against bankers, big entrepreneurs, or their families and close friends, despite, the permanent news on corruption, influence's traffic, internal battles inside the economic elites for profitable businesses. example: cases like APROAS and the 10 million colones (local currency) that were given to them before the 1999 presidential elections, whose only doubt was, whether they were obtained from the international cooperation or from the national budget. The one from the Ahuachapan highway who's increase by 94 million colones was not fully explained by the Minister of Public Works from the previous government, nor for the contract of illumination of the highway to the airport, which is not working. Nor any explanations have been given, much less placed responsibilities in the case of the electric energy distributor Nejapa Power. To mention just a few cases.

Impunity is the rule and as such it has its exception. The only case where the legal system has been put to work has been the capture and trial of Roberto Mathies Regalado, member of one of the oligarchy families and also in charge of the finances of the ruling party ARENA. Maybe because within the victims of this scandalous financial fraud, we could find, notable politicians from ARENA, state institutions, of the private sector, the Catholic Church, etc. Had it not been for them, the users of FINSEPRO/INSEPRO would have been deceived.

2.1

How far is the rule of law operative throughout the territory?

Historically, the Judiciary suffered from two big problems: its inefficacy and its politization which always brought it to the same phenomenon: corruption. In the past, there was no law for the legal career that guaranteed labor stability, the preparation and permanent training, the just remuneration, etc. For this, the security to maintain the position depended of the party in power's political favor. On the other hand, the majority of the judges lacked formation and professional capacity. Thus, a position as a judge was an opportunity to make easy and quick money.

During the war, the corruption got all mixed with impunity. Despite the evidence presented by the relatives, by the human rights defense organisms, on the capture of people at their workplaces, at home, public places, the judges never prosecuted the individuals of the responsible bodies. Even in the case of those that made out alive from the security bodies and had the courage to report these violations (AGEMHA vs. The Treasury Police case) the judges did not motion the reports. However, hundreds of citizens were tried for crimes they did no commit, with only the "extra judicial confession" obtained in jail through torture.

Previous to the peace accords, the independence of the Judiciary did not exist, the Executive controlled it, not just from the nomination and appointment of the magistrates of the Supreme Court of Justice and the rest of the judges that came with the recommendations of politicians, army officers, deputies, or ruling party officials, but also of its budget. The Treasury Ministry was in charge of cutting out those budget proposals that were not of the liking of the Executive and with that, it would limit its action.

Parting from the constitutional reforms of 1991, important new changes were introduced: A) the Judiciary would have an annual budget no less of 6% of the ordinary income of the budget of the state, art. 172 (4) of the Constitution. The reports of the Judiciary reflects that until 1999, this 6% was not able to be spent. What was more, they would always end up with a surplus. B) the number of magistrates in the constitutional chamber of the SCJ was increased to five, now the Supreme Court has 15 members. The president of this chamber is also the president of the Supreme Court. Art. 174 (2) of the Constitution. C) the legal career was

established “...it must assure the judges their protection so that they execute their functions with liberty, and in an impartial form without any influence in the issues known by them, and the means that guarantee them a fair remuneration and an a lifestyle adequate to the responsibility of their positions.” Art. 186 (5) of the Constitution and D) Concejo Nacional de la Judicatura (CNJ) would go from the jurisdiction of the Supreme Court to that of the National Assembly, Art. 187 of the Constitution.

It also influenced a lot, the Truth Commission Report, integrated in 1991 (under the Peace Talks and dialogue table), which recommended that no judge that was part of that Supreme Court of Justice was to be re-elected. This was read as a strong and direct signal of its complicity in the impunity and corruption.

During the whole conflict the military maintained a profound influence over the judiciary, from the judges of the SCJ all the way down to the last lower court judge. This allowed for no judge to be tried despite their personal or institutional responsibility in human rights violations. The then president of the Supreme Court of Justice was always opposed to El Salvador being under the jurisdiction of the Interamerican Human Rights Court, for fear that the Salvadoran state would be condemned – like Honduras – and would have to pay not only the economic compensations to the victims or their relatives, but the moral responsibility before the international community and above all before the United State’s congress which received a quarterly certification from the Administration on the improvement in the respect for Human Rights by the government and the armed forces of El Salvador. Before the signing of the Peace Accords, there was a significative purge in the interior of the armed forces. As an outcome of the report of the Ad-Hoc Commission, more than a hundred officers were dismissed for responsibilities with human right violations. After all this and through a change of its doctrine, the redefinition of its role en society, Art. 211,212 and 213 of the Constitution, the military is a playing a more institutional role. They don’t have, nor do that seem to have any influence in justice administration.

Currently the judicial training school is training judges basically in the new penal law (Penal and Process Penal code) as well as in the family and in the youth laws. There also are courses on judicial ethics that deal with issues like corruption, intimidation and political influences. The role of the Attorney General was modified with the constitutional reforms of 1991 and 1996, through these last ones it transferred the responsibility of prosecuting by its own initiative (does not need a formal claim from the victim) the crimes, jointly with the PNC Art. 193 (3) of the Constitution. This function was previously exclusive to the judges. Now the Attorney General has that great power since it disposes of its own personnel as well as that of the PNC. However, the Attorney General same as the executive through the Public Security Ministry, following the official party line, do not share the reforms and have made little or nothing to promote them.

The inquisitive system based responsibility of the accused in “the confession”. Thus, the police and other security bodies from the past, sought to obtain “the extra judicial confessions” that is, those obtained in the torture rooms, to which the penal law would give them proof value if “obtained in the presence of two witnesses” which were generally of the same torturer’s team.

The new system seeks to implement other methods more technical to obtain the proofs and evidence that involve the accused, like DNA, ballistics, finger prints, electrical means, etc.

Implementing the penal reforms and having confession stop being the best proof against the accused, torture ceased to have any judicial sense, thus the Salvadoran state has subscribed these international treaties. In terms of the death squads, these were disbanded once the peace was signed. Neither any of their members nor their intellectual and active directors were tried for the crimes committed during their functioning.

The only role of Parliament in terms of the judiciary, besides of approving their budget, without modifications, and creating jurisdictions on proposal from the SCJ, is to elect the 15 Judges that make up the SCJ. This election must be done from the two lists of candidates that are submitted to its knowledge, one is made by the Concejo Nacional de la Judicatura and the other by the Federation of Lawyer Associations. The first list is made by the CNJ from petitions submitted by interested lawyers or institutions, the second is made from direct voting from lawyers of all the country, that vote for candidates of their preference in elections organized by the Federation. This process is repeated every three years, being that the SCJ is renewed by thirds every three years.

The FMLN participation as a parliamentary force is the same as the rest of the parties and being the first force, it distributes it with the other positions to which it can aspire to, in the last election it was two for the FMLN, two for ARENA and one for PCN. This does not mean a loss of independence for the SCJ but a search for a political equilibrium in the maximum justice tribunal.

In terms of the high crime rates, these are explained by the high levels of poverty, unemployment and frustration that live the marginalized sectors of the economic project, just like the activities of organized crime that enjoys of impunity and coverage from some governmental spheres. The type of crimes and violent acts have to do with thefts, hold-ups to individuals or institutions and other domestic problems. There are no reports of crimes committed with political aims, up to date.

The same PNC is infiltrated with criminals, various attacks, kidnappings and extortions have been committed by members of the PNC, including officers. A quick purge process has fired more than 300 agents and officers from this institution. The very President of El Salvador, has taken this issue in his hands and not only named the Public Security National Council, more oriented to deal with delinquency causes in the long term, but he has requested reforms to the Disciplinary Code of the PNC. In a recent purge, one sub-commissioner (Arriaza Chicas), two sub-inspectors (Gil Pineda and Huezo Grande), one sergeant (Albert Moz), and one corporal (Vazquez Segura) were purged, after the Tribunal of Appeals of the institution gave its resolution. They were fired following the criteria of the Purge Committee appointed by the President of El Salvador and the Inspectorships of the PNC. (Diario de Hoy, July 29, 2000).

Since the creation of the National Civil Police after the 1992 Peace Accords, 338 policepersons had been fired or prosecuted and at this very moment 77 has been fired after the legal hearings from a list of 219 under investigation (El Diario de Hoy August 26, 2000)

However, there still is no exemplary case, where of getting a fat cat. No drug-trafficking case has been linked to the support to that the criminals have within the government. In a recent and scandalous case, when a small plane, full of cocaine was captured, the criminals made a call to a official, it became known in certain circles that the official top level, just days after, resigned from his position due to "health reasons". Shortly after, a successor was appointed.

A statistical projection of the crime rates can be seen in the following report of the PNC: "during the period of June 1999 to May 2000, 2278 crimes were committed, out of which 60% (1366) are linked to social violence factors". The PNC understands as social violence that conduct or behaviour characterized for intolerance and aggressive irrationality. This type of violence is linked – according to the PNC – to personal quarrels, drunkenness, drug addiction and interfamily violence. That is to say it is not due to delictive acts such as kidnappings or thefts. (La Prensa Grafica, August 2, 2000).

The main problems in the past when the lower court judges applied penal justice was besides their ignorance in the field, which made them commit many injustices or for their linking with the official party, use this power as a political tool to pressure the opposition as well as to influence voters. After the reforms, the Constitution in its article 180 establishes that it is required to be a lawyer in order to be a lower court judge and proposed by the CNJ, this, although not a solution to the problem or a guarantee to a just administration, constitutes advancement.

Given that the corruption problem and the traffic of influences constitute a problem of a cultural character, will take a long time to eradicate once and for all. It is not something that goes against the poor exclusively. Although the real problem is that the poor, almost in their entirety, face penal justice. However, the reports in these fields are less, not only by the qualification of the judges but for the vigilance of the CNJ and the Judicial Investigation Department of the SCJ. In a recent report, on the work of 300 judges, it was decided to investigate 100 of them, for rendering an "unsatisfactory performance", as reflects the CNJ's report". The Supreme Court of Justice will immediately initiate the investigation, said its new president Agustin Garcia Calderon. (La Prensa Grafica, August 2, 2000).

The 69,000 cases that are pending to be resolved, are an accumulated quantity. Those that await trial (prisoners without sentence) are much less. This amount was reduced with the signing between the SCJ and the Law Schools of various universities, so that students could make their practices and social hours defending prisoners that had no defense.

According to Art. 180 of the Constitution, to be a judge, besides being a lawyer, you need to be older than 21 years of age, of notable morality and competence, have been enjoying of its citizen rights for the last three years prior to the appointment and to be proposed by the CNJ. To be a district judge, it is required to have been a lower court judge for at least a year or be authorized as a lawyer for two years. To be a judge to a Chamber of Appeal, it is required to be older than 35 years of age, to have been district judge for 10 years or be an authorized lawyer for 8 years before appointment and to be a judge of the Supreme Court, to be older than 40 years of age and to have been a judge of a Chamber of Appeal for 6 years or have been an authorized lawyer for 10 years. These requisites are not only formally sufficient, since the performance of a

good judge depends on its vocation for its position and the efforts made to update the new laws, besides its own personal and ethical framework. But these are the minimum requirements.

The SCJ will present a reform package to the Organic Law of the Judicial Career, announced one of its magistrates (Solano, La Prensa Grafica, August 2, 2000). The reform pretends to harden the requisites to enter “so that the legal system is not a refuge to people incapable, inept and corrupt” said Solano and he added “the Judicial Training School must become a real university, with a pedagogic structure that is well above the educational levels that a regular person receives at bad universities that prepare lawyers.” They will also seek to improve the remuneration and social security system to permit a decent lifestyle for the judges.

My opinion is that a great effort is being made to improve the administration of justice in the country. That this effort is not only the responsibility of the Judiciary, but of all. The universities must make the effort to form good lawyers, the legislators must give appropriate laws to the historic moment that the country lives, the litigants (barristers and solicitors) must exercise their profession with ethics and professionalism, without trying to corrupt the system to win cases, the Attorney General’s Office and the PNC contribute doing an efficient job and society to remain cautious and report any act of corruption and inefficiency.

2.2

To what extent are all public officials subject to the rule of law and to transparent rules in the performance of their functions?

In the first place as it was mentioned previously, every civil servant must encircle his actions around the Constitution. As well, we have disintegrated dispositions throughout the current legislation, that govern the acting of public employees, as an example we find:

Articles 218 and 235 Constitution

- Law of Illicit Enriching
- Law of the Civil Service
- Organic Law of the Consular Service
- Organic Law of the Diplomatic Body
- Law of Audience Guarantee
- Internal Rules in the different government institutions.

Additionally, one has the legal resources as a way to question the acts of those public employees, as are **Amparo**, Habeas Corpus and those interposed in the court of the Administrative Contentious.

Moreover the Probity Office of the State which depends of the Supreme Court has submitted in June 17, 1999 a draft of the new Probity Law to update the old law which came from mid S.XX, given the scandals of corruption in many areas of the Administration and lack of legal resources to combat it.

This situation allows the impunity because there is no way to sue those suspects. The old Penal System required solid proofs and judges were bribed or intimidated when military or high-level official were blamed for abusing their functions.

Now with the Penal reforms we have the Attorney General office in charge to prosecute those misbehaviours. No one has been condemned so far under the new legislation, however some cases have been solved in the legislative arena such the Ombudsperson Eduardo Peñate Polanco who was forced to resign after a long public accusations from civil society and human rights organizations, another case was Francisco Merino appointed as President of the Controller Office of de State (Corte de Cuentas) he was strongly rejected by the public opinion because of his unfair businesses with municipal land in San Luis Talpa, at the end, the Legislative Assembly did not renew his mandate.

There is also the Jesuits’ case raised after the Inter American Commission on Human Rights by Inform NE 136/99 Case 10.488 from December 22, 1999 recommended to the Salvadoran government: a) a complete and effective investigation according to international standards for identifying, judging and punishing the intellectual and directs authors of the crime; b) fair compensation to the relatives of the victims, and c) abolition of the amnesty law from 1993. The Attorney General has responded to the Jesuit Claim to reopen

the case. He will act only if the Supreme Court declares the unconstitutionality of the Amnesty Law otherwise he does not have a legal way to do it because this as other similar cases were forgiven through this law.

Same situation will face the Archbishop Oscar Arnulfo Romero, which is in the same condition. Salvadoran people are watching the resolution of the Jesuit case for begin to claim thousand cases, basically those which are well documented but because Amnesty Law the Penal Courts refuse to accept it. One of them is the case of the French nurse Madelaine Lagadec, her family came in March 2000 and met Gral. Juan Rafael Bustillo former Chief of the Air Force and one of the four military prosecuted in a French Court and facing a capture order. The Lagadec family like the Jesuit Order is expecting the Salvadoran Justice to work well this time and could open the way for those poor Salvadorans who could not go to Spain or France for justice.

Bustillo is mentioned in both cases but he said he is innocent and had the courage to face mass media while other military keep silence o hide themselves.

2.3

How independent are the courts and the judiciary from the executive, and how free are they from all kinds of interference?

The first step to assure independency for the judiciary was the financial autonomy of the branch, not by the 1983 Constitution but by the 1991 Amendment, which gave to the judiciary no less than the 6% of the state budget. It was a triumph for the negotiation process in the April's 1991 Mexico meeting.

Second step was the way the judges were appointed, without the influence of the ruling party, military or economic elites. In practice those sectors still have many ways to propose candidates and at the end, it is in the Legislative Assembly were the final candidates obtain the consensus. It is known that major parties use their influences in the legislature to share the positions available. The lawyers organizations have demanded that the parties and the politicians respect the outcomes from the last elections held in March 2000 for five positions which will be filled in June, because it is known the sharing conversation among the three major parties FMLN, ARENA and PCN to get 2, 2 and 1 Supreme Court Judges. They can do that choosing from the candidates nominated in the list closer to their political or ideological positions, rather than the order in which the candidates were elected and submitted to the legislature.

The military has no longer influence neither in judiciary nor in the courts since they lost their power after the peace accords.

There were a proposal for amendment the Constitution creating the National Council of Lawyers and Notaries but it failed and did not passed.

There was an amendment to the Organic Law of the National Council of the Judicature reducing the number of its members. Representatives of Judges and Judiciary were cancelled but it does not means undermine the justice system. The NCJ has won more respect inside the lawyers bar and the population because of the way they are conducting the assessment of judges, creating a list for judges of lower courts and the coordination with the Judicial Training School

(context for the last two paragraphs)

As a result of the report of the Truth Commission (created in April 1991 in the Peace talks framework) various judicial reforms occurred. One of them was that the SCJ was not the organism that authorized Lawyers to practice law, or the one to authorize the notaries, since besides authorizing them it had the faculty of sanctioning them and suspend their licenses. This generated a fear in lawyers whether they worked privately or worked in institutions, of suffering consequences if they criticized the inefficient and corrupt work or tried to cover up the impunity with which the SCJ of that time performed.

In this framework, the Lawyer Association Federation proposed a constitutional reform through which the Lawyer and Notary National Council was created. This reform was approved by the first legislature but could not be ratified by the second one, since it was argued that there had been a technical error. Up to date it is still filed away in the National Assembly.

In similar fashion Organic Law of the CNJ was modified reducing the number of its members. The representation of judges and magistrates was suppressed, as well as that of the representatives of the SCJ. Now it is integrated by members coming from different sectors: from the Lawyer's Association, the Public Ministry (Attorney General, General Procurator and the Ombudsperson Office), the Law Faculty of the University of El Salvador and the Law Faculties of the Private Law Schools of the Country.

The work of the courts is little by little winning social recognition. In the proportion that power factors as government, military, and the big entrepreneurs do not interfere. But there are cases where the supreme tribunal where the people's perception is to solve those cases with criteria more political than judicial. Thus the importance of a political balance in this institution. In the case of the lower courts, it is less evident the influence of these power factors as it occurred in the past where it was common for a military officer or a politician to call on a judge because a relative or a friend had a case pending and "needed a favour".

These cases do not happen today and the judges know they are watched by the CNJ, the SCJ and society itself which no longer fears to denounce acts of corruption.

The problem still is those who face justice and those that are never tried. This has to do, not only with the new legislation, responsible for the Attorney General's Office, the PNC and the government, but the covering up that these very entities do of the big delinquents, white collar delinquents protected by these residues of impunity that still persist.

2.4

How equal and secure is the access of citizens to justice, to due process and to redress in the event of maladministration?

Article 11 of the Constitution establishes as a basic principle that no person can be deprived from the right to life, liberty, property and possession, nor from any of its other rights, without being previously heard and defeated in a trial with legal arrangement, nor can it be tried twice for the same offense. On the basis of this principle and over what is established in article 3 of the same, relative to that all the people are equal before the law, is how justice administration functions.

With the objective of guaranteeing this end, the Constitution establishes that the administration of justice be free, and it is the Public Ministry's responsibility to help the population to have access to justice, as so: the Attorney General has the responsibility to defend the interests of the state and of society, to promote ex officio or by petition the action of justice in defense of legality and to promote penal action ex officio or by petition, amongst others, the Ombudsperson Office (PPDH Spanish) has the responsibility of guarding the respect and guarantee of Human Rights, to investigate ex officio or by claim received, cases of Human Right violations, to promote judicial or administrative resources for the protection of Human Rights, to supervise the acting of Public Administration before the people amongst others. Finally, it is the (Legal Assistance Office) **Procurador General de la Republica's** responsibility to look after the defense of the family and of minors and their interests and the rest of incapable persons, and to give legal assistance to people of scarce economic means and to represent them judicially in the defense of their individual liberty and of their labour rights, amongst others.

Mr. Belisario Artiga was appointed as new Attorney General in late 1999, his promise of not attending to pressure from any sector and to properly investigate the crimes regardless of who could be the victim or the accused brought some hopes. His first step was to take the case of Kathy Miranda a 9 years old girl who was raped violated and killed in a familiar trip to the beach. The main suspect was his grand father Carlos Miranda an old lawyer covered by his son and father of the girl a member of the President personal escort Cap. Edwin Miranda. After some legal procedures both were prosecuted and captured.

However his credibility of political independence is now in doubt because during election campaign in March 2000, two days before the election day he order a checking in San Salvador City Hall's office looking for books and other evidences of financial corruption. The Mayor Mr. Hector Silva who was running for reelection is a member of FMLN. However the Attorney General never opened the investigation requested for Mr. Rafael Colindres Selva a citizen who denounced the candidate of ARENA party Mr. Luis Cardenal for using fake documents because he is not legally Salvadoran, despite all the documental proofs presented along the petition.

Articles 17 and 245 of the Constitution guarantees the rights for compensation in cases of judicial errors properly proved. So far there is not a known case which applies to this provision.

No case is known in which military courts have tried civil crimes. There are other cases in the military instances and civil courts related with military issues like promotion o dismissals which show us how they are trying this new practice under the law.

2.5

How far do the criminal justice and penal systems observe due rules of impartial and equitable treatment in their operations?

The ordinary jurisdiction (which means the Penal Courts) will be competent to know the crimes that are committed against members of the PNC, as well as those committed by them in and out of service. The fulfilling of freedom depriving penalties will be spent in ordinary penitentiary establishments with the separation from the rest of the detained, except during the term to enquiry or during the provisional detention, for the imputation of crimes committed within the fulfilling of its duty, that will be spent in specially guarded places, under the responsibility of the Ministry of Interior.

Additionally, new figures have been created in virtue of the Penitentiary Law, Legislative Decree # 1027 , such as Penitentiary Vigilance Judges and the execution of the Penalty whom are called to control the legality of the execution of the penalty and of the security measures and the adequate functioning of the penitentiary centers Art.68, in the sense of providing the inmates with protection of their rights, similarly the Penitentiary Vigilance and Penalty Execution Court is created as well as the Department of Proof and Assisted Liberty, as an auxiliary of the first one. Those reforms came with the set of Penal Reforms of 1998. Now we could say there is a juridicialization of the Administrative Process of Execution of the Penalties rather than the discretionary system of the past. The inmates can appeal of the penalties, punishments and violations of their rights. There is a Penitentiary Regimen art.95, which regulate step by step the different phases of the interns life, such adaptation, work, education, health and so on.

On the other hand, it must be mentioned that the Penal Code has an array of crime types, within which we have among others the Life Related Crimes, Homicide and its ways, Human Life in Formation Related Crimes, Crimes against Personal Integrity that include: wounds, Crimes against Sexual Liberty, that include Rape and other Sexual Aggressions, Rape, Sexual Harassment, Diverse Sexual Acts, Minor and Incapable person Corruption, Serious Corruption, Induction, Promotion and Favouring of Prostitution, Use of Minors with Pornographic Ends, Family Relations Related Crimes, as Interfamily Violence, Crimes Against Humanity such as Genocide, War Crimes or Law Violations, Humanity Rights Violations, Forced Disappearing, Forced Disappearing committed by Particular, Person Disappearing Guiltily Permitted, People Trade, Life Related Faults, to Integrity and to Personal Liberty, as Illegal Sale of Abortives, Display of Abortive Means, Wounds and Injuries, Serious Threats.

2.6

How much confidence do people have in the legal system to deliver fair and effective justice?

Despite the Judicial reform which moved to the Attorney General jurisdiction the duty of prosecuting those public offenses, according to District Judge Mr. Francisco Eliseo Ortiz Ruiz the lack of confidence is still over spread on the population because once the legal process start in the courts the Attorney General's representatives display their weakness in the knowledge of scientific investigation and proving, along with the new techniques of the oral process many defendants succeed in liberating the suspects.

That has created a feeling of incompetence of the judges and the failure of legal system given more advantages to the criminals instead protecting the citizenship.

“There is also a perception of lack of efficiency of justice and the inequality access to it because who have money could make a parallel process through the media creating an environment and favorable public opinion distorting the judicial process . Money could pay private accusers or private defendants something that poor people could not afford, and because of that they can only go to the Legal Assistance Office

(Procuraduria General) looking for public defendants. This office is in worse condition than Attorney General's office, because they have not been sufficient trained and there is a lack of logistical resources and quite a few lawyers taking care of thousand cases. That means that technical defense which is a guarantee of the due process of law, in the case of poor people does not work" say Mr. Ortiz Ruiz.

2.7

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

There is not any structural measure taken in that way. Some short term measures could be implemented. For instance the Legal Assistance Office has set up a new office for Conflict Management and Alternative Resolutions in the hope to do not send all the cases to the Courts.

USAID is looking for the implementation of a project which promote this new Penal legislation in an educative program and training practicing lawyers for a better using of the legal tools, the new doctrine and the new oral process. The project could also imply the Justice Houses in a sort of Alternative Conflict Resolutions through joint civil society and judicial program.

The Supreme Court, the Judicial Training School and the National Council of the Judicature have some educative and promotional programs, but they are still so limited for the needs of the population.

The Ministry of Public Security and Justice has announced many administrative measures but their effects did not show up yet.

3.0 Civil and political rights

Are civil and political rights equally guaranteed for all?

Executive Summary

After the amendment of the Constitution article 191, creating the Ombudsperson Office named Procuraduria para la Defensa de los Derechos Humanos (PDDH in Spanish) in 1991 and after the Peace Accords agreement from 1992, it is possible to say that civil and political rights are equally guaranteed for all. With the dissolution of the old National Police, National Guard, Treasury Police and other repressive paramilitary bodies, the repression was stopped.

The role for PDDH, then came, for protection of so called the second and third generation of human rights. Unemployment, strikes, environment, sexual harassment, among others are the new violation it has to deal with.

No one has been imprisoned or prosecuted because his political opinion or public statements even if criticized any area or official of government including the President or the military. Nobody is intimidated for his political participation although there have been some attacks against office of civic organization like CE-MUJER a woman organization which has suffered several “robbery” attacks looking for documents.

The position of the Presidential Commissioner of Human Rights no longer exist. It was cancelled since PDDH was created and in practice disappeared with the first ARENA government (Alfredo Cristiani). While it existed it was an effort of the Christian Democratic government (Napoleon Duarte) trying to present to the international community a different lecture of the reality of human rights in the country than the one showed by the Non Governmental Human Rights Commission and other similar bodies. Moreover, tried to minimized the yearly report of the special reporter appointed by United Nations during the decade of the 80’s.

Never was it involved in critical cases of violation of human rights neither condemned the of military acts during the civil war.

3.1

How free are all people from physical violation of their person, and from fear of it?

The increase of violence because of juvenile delinquency, gang struggles on the street and kidnappings have also increased the fear of everybody of being attacked and physically injured or killed. But the complains against the misbehaviour of PNC in cases such the young man, medicine student, Adriano Vilanova killed by a PNC patrol team convicted among others where the PNC have been blamed cause fear that those acts from the past could return as new practices.

This fear was confirmed after watching TV news in early March 2000 the Unity for Public Order of the PNC attacked with gas, rubber bullets and night sticks, doctors, patients and workers of the Social Security Institute many ill people interned in the hospital suffered shock, heart attacks, respiratory problems an so on. Those images brought from the recent conflict a new fear basically because the attacking order was given personally by the General Director of the PNC Mr. Mauricio Sandoval former chief of the State’s Intelligence Office and despite that one PNC Commissioner in charge of the talks with the demonstrator had reached the agreement they would go back to their places half an hour later; the agreement was known by Mr. Sandoval before he ordered the attack.

That violation of human rights is enough for his dismissal according to article 130 (37) of the Constitution.

3.2

How effective and equal is the protection of the freedoms of movement, expression, association and assembly?

The freedoms of movement, expression and association, although are formally established in the Constitutions of 1950, 1962 and 1983 have not still been fully met. Of course there has been a substantial improvement if we compare the current situation to previous decades.

In terms of freedom of movement, there are not any restrictions. During the 80s decade there were areas where the army had to issue safe-conducts (*laissez passer*) to mobilize. The repatriates also had trouble to repopulate their old residence places in rural areas after the conflict, as well as to create new settlements. However, in this moment there are no restrictions not even for the political activities that used to be sabotaged before, or simply would detain the collective transportation that brought people to the demonstrations in the capital.

Freedom of expression is also guaranteed and nobody has been detained for expressing his ideas, even if they are critical of the government or its officials. The single most important limit is the diffusion of ideas through the media, which belongs to an oligopoly of three families that control the two most important newspapers, TV channels and 70 % of the radio stations. This group has become an invisible super power which, given its ideologization, does not allow for a pluralistic diffusion of ideas.

Its editorials reflect its militant conservativeness and due to all kinds of pressure, it has allowed for the diffusion of more objective news. However, during the electoral campaigns its influence against the left is very notable. Given its relation with the economic elites and the official party, these mediums administer the information according to the interests of both.

The alternative and independent media are very few and with little influence capacity, however, given its coverage in the capital and urban areas, its information has served for big monopolies to evolve a bit more towards more openings and more professional journalism.

TV Channel 12 was the first independent channel, during the war it had to shut down its network, its director/owner Jorge Zedan was kidnapped in the month of July 2000, after having reported and proved phone tapping by the Presidential house / Organism for State Intelligence (OSI) and the French/Salvadorean company CTE. It was said that it was a common kidnapping product of the violence that is rampant in the country. However, the family said that they did not report the crime to the PNC or the Attorney's office because they did not trust those institutions. There is another independent channel, channel 33 of the Technological University. Both, receive publicity from big companies and the government, in a minimal percentage in relation to what is placed in the monopoly media.

The evening newspaper, the *Colatino*, burned by the death squads during the war, receives absolutely no publicity from the big company and the government, only a few ads very rarely.

In terms of the radios of some news networks, it is the community radio stations the ones that play the true informant roles and channels of expression of the popular sectors. These radios are subject to a special regime and their multiplication has been prohibited.

In terms of the right of association, since the 1950 constitution it is recognized the right of all workers of forming unions, the right to strike and collective hiring. However, peasant unionizing was never permitted. And the workers and of the state secretaries and certain institutions of the central government are forbidden from forming unions or striking. In the private sector, the few existent unions can not hold legal strikes, they are all of fact, due to how complicated the process for a legal strike results.

3.3

How secure is the freedom for all to practise their own religion, language or culture?

As we said (see 1,1) El Salvador does not have cultural, religious or races cleavages, the homogeneous component of *mestizaje* (mixed people) and the only one language and predominant Christian religion give a picture of a compact society. The social economic differences are the main source of conflicts.

Despite the majority catholic practices no one of the other churches have complained in doing their work, getting legal authorization for functioning and moving around the country totally free.

The article 62 of the Constitution said Spanish is the official language but the ancient languages from prehispanic people will be maintained and respected

3.4

How free from harassment and intimidation are individuals and groups working to improve human rights?

There is not any governmental policy against human rights working groups or individuals. All of them feel free acting in this area. The explanations should be the freedom for public liberties in the political sceneries. At least and formally nobody has any complain about.

However the current Ministry of the Interior Mr. Mario Acosta Oertel identified as one of the most radical and extreme right wingers of ARENA has been threatening in public and private to cancel the legal personality of the Colegio Medico (the well respected and ancient National Association of Physicians) because they were supporting the strike of the workers of the Health Sector (Ministry of Health and Social Security Institute). He also gave a press conference “explaining” with the cold war style and through military schemes and diagrams how the Colegio Medico leaders attending a subversive and communist plan to overthrow the government. He mentioned the name of the President of Colegio Medico Dr. Guillermo Mata Bennett among others and in the night many phone calls were received at his home by his young daughter, calling him bastard, traitor and so on. One NGO named CEMUJER (see 3.0) has been “robbed” in their offices.

As Salvadorans are used to talk on Human Rights thinking of those of the first generation and they are respected so far after Peace Accord, they are not fully aware of other human rights that are usually harassed, violated and the workers intimidated like gay rights, environment and social and economic rights. The unions leaders although they are not intimidated like in the past, there are 231 unionists dismissed from the Social Security Institute for supporting the strike and despite this there was a legal resolution from the Court of Labour Appeals the General Director of ISSS Mrs. Ana Vilma de Escobar refused to reincorporate them and go forward to another appeal to the Supreme Court and the case is still in process. The unionists have tried to persuade her and the President through a hungry strike but failed, many mobilizations and demands of the Lutheran Church have not been attended.

3.5

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

There are many complains and a general disappointed with the private service on telephones, electricity, land and air transport, financial and bank's credits the public services like water, health, etc. And there is not any government or judiciary office to take care of the violations. The Ministry of Economy has an office which should be in charge but did not works and some Superintendencias (supervisors offices) for communications, electricity, banks, transport, neither works for citizenship complains.

Since 1998 the Center for the Defense of the Consumers an NGO, has presented a law draft to protect the rights of the consumer. This draft still sits in the National Assembly waiting for approval.

There is not any political priority for remedy these problems. The public support and the FMLN legislative struggle is not enough to move on the will of those small sector and economic elites who are profiting of this current situation. The legislative arithmetic does not allow to the popular interest to change the legislation or take measures to remedy this clearly identified problems.

4.0 Economic and social rights

Are economic and social rights equally guaranteed for all?

Context:

The 1999 Human Development Report places El Salvador in the category of countries with a Medium Human Development Index (0.674), 107th located in the lower bracket of nations in the hemisphere. While the period 1990-1996 showed favourable economic growth compared to the period during the conflict, achieving an annual average GNP growth of 5.5 per cent and average inflation of 12.7 per cent, El Salvador continues to be one of the countries with the most inequitable social orders in Latin America.

According to 1998 official data, 45.10 percent of the Salvadoran population lives below the poverty line, mainly affecting the rural population (58.7 percent), and specifically women heads of households, who comprise 27 percent of all households, with over one third of all households in extreme poverty depending exclusively on income generated by women. In 1997, national unemployment reached 8 percent (El Salvador: State of the Nation in Human Development, 1999 Report), higher in the rural sector with 8.7 percent than in the urban sector, 7.5 percent.

The poor population, located largely in the rural sector, and principally engaged in agricultural activities (72 percent) continue to face historical problems of lack of access land, credit, and technical assistance. Despite the weight and importance of agriculture in the nation's economy, historically this sector has been characterized by the marginalization of the great majority of the rural population in the development process, highly concentrated land tenancy patterns, inadequate land-use, underutilization of the labor force and increasing productive inefficiency and stagnation.

Despite a Land Transfer Programme after the Peace Accords of 1992 and the Agrarian Reform of 1980 that distributed more than 415,000 manzanas to 82,000 families, thus reducing the degree of land concentration and generating some improvement in income distribution, the land tenancy profile is still characterized by farms smaller than 3.5 hectares comprising almost 78 percent of the production units and representing only 15 percent of land. The number of landless peasants has increased since 1950 and by 1987 represented 51.3 percent of the total population. The limited access to credit, technical assistance and channels for commercialization have diminished productivity, contributed to the further parcelization of land and exacerbated soil depletion. The rural sector faces serious access problems with respect to basic services, including education, health and housing.

The fall in the rate of growth that began in mid-1995, reflects the serious limitations in the structure of the Salvadoran economy with its bias against the rural sector, whose share in total GDP fell from 16.5 percent in 1992 to 12.4 percent in 1998. The share of credit from commercial banks to agriculture fell from 21 percent in 1992 to 10.5 percent in 1997. The total poverty rate fell from 58.6 percent in 1992 to 45.10 percent in 1998, however in the rural sector the poverty rate fell only from 65.04 to 58.7.

4.1

How far is access to work or social security available to all, without discrimination?

Articles 37 to 52 of the Constitution govern Work in El Salvador, and the Legislative Assembly has approved 14 of the 20 ILO Conventions ratified by El Salvador. Article 38 of the Constitution provides for

- A minimum wage "sufficient to satisfy the normal home needs of a worker in their material, moral and cultural aspects" and which is applicable also to piece work.
- Equal pay for equal work
- A maximum working week of forty-eight hours, and provisions for shorter working days when the work is at night and in dangerous conditions.
- Persons under 14 years of age, and all those subject to compulsory education "may not be employed in any kind of work." Unless their work is considered to be "indispensable for the

maintenance of the worker or his family” and that it doesn’t interfere with education. There are other restrictions for persons under sixteen and eighteen.

The General Labour Inspectorship remains seriously under-financed, consequently, there are not sufficient resources available to “enable factory inspectors to enforce legislation on the minimum wage, equal remuneration for women and men, industrial safety and hygiene, and wrongful dismissal“. Technically, export-processing zones are subject to the same labour regulations, but these are not adequately enforced. The onus lies on the employee to report contravention and the result is often 12-hour working days. The UN Committee on Economic and Social Rights noted that conditions in such zones were “arduous” and that payment was calculated on the basis of productivity.” Even if the public position of the main organisations of the private sectors relates increases of salaries to increases of productivity, the latter have increase indeed, but salaries have remaine stagnant during the last decade.

In March 1999, the rate of unemployment was 7.6 percent, 8.8 percent for men, and for women 5.8 percent. The rate of underemployment reveals serious difficulties in the labor market, reaching 32.1 percent overall, 27.2 for men and 37.8 for women. Even though the inflation rate fell from an average rate of 13.1 percent during the 1992-1995 period to 4.5 percent during de 1996-1998 period, the real minimum wage for industry and commerce did not increase from 1990 to 1999. The real minimum wage index moved from 81 in 1989 to 78.3 in August 1999, a decade-long stagnation in the purchasing power of a great majority of employees in these sectors. An expert noted in his report that the minimum wage “was not sufficient to meet the basic needs of the population”, and failed to meet the standard set out in Article 38 of the Constitution.

The limitations of Governmental policy to attack poverty issues will be discussed in section 4.7, but it is broadly agreed that specific strategies for job creation to generate broader employment have been inadequate. The micro-enterprise sector has played an increasingly important role in contributing to mitigate the unemployment problem through creating job opportunities. In 1996, this sector generated employment for 31.1 percent of the labor force, and between 24 and 30 percent of GDP.

Despite the importance of the micro-enterprise sector in generating employment, access to credit in the sector is very limited, due to several factors, on the supply side and on the demand side. On the supply side, there are several factors that impede credit supply: i) the legal framework of the financial system has been considered an obstacle to the development of specialized institutions to provide financial services; ii) an underdeveloped institutional infrastructure; iii) the lack of interest by formal financial institutions in serving small-scale clients because the higher cost of transactions; and iv) the lack of regulatory and supervisory framework for most microfinance lending institutions.

4.2

How effectively are the basic necessities of life guaranteed, including adequate food, shelter and clean water?

The Constitution of El Salvador proclaims the right of every citizen, without distinction of race or creed, to have access to health services, particularly marginalized and neglected populations. In response to a growing crisis in the health sector, health system is undergoing a process of reform which most agree is an urgent priority, the objectives being changes in the: 1) model of health servicing of the public; and 2) the manner of administrating and financing health services. There is considerable and heated public controversy on the appropriate model to pursue.

The public expenditure on health as a percentage of GNP in as reported in the 1997 UNDP Human Development Report was 2.6 percent. The Specialized Roundtable on the Health Sector in the Plan for the Nation (1999) noted that the system revealed “serious deficiencies with respect to coverage, access, quality, and timeliness of health services, poor management and administrative efficiency, and underfinancing combined with a poor capacity for execution with the existing resources.”

The low levels of health enjoyed by the most vulnerable sectors of the population with greater risks for illness and death, are revealed in the following data 1) life expectancy: 69.4;ii) infant mortality 41 per 1000 live births; iii) maternal mortality: 68-147 per 100,000 live births; iv) access to health services: according to the 1997 Human Development Report : 40 percent of the population ; v) average of 1.3 medical consultations per year; vi) health coverage by the Salvadoran Institute for Social Security is between 14 and

20 percent of the national population;vii) 31 percent of the population is without access to safe drinking water; viii) childhood malnutrition has been estimated from 11 to 35 percent, with 11 percent low-birth weight babies. A 1998 World Food Programme found that 12 percent of children under five suffered from grave malnutrition, with an additional 38 percent suffering from some form of malnutrition.

The reasons for limitations on access to services are various, including economic (for the poor, the costs of health are largely unaffordable), geographic (in many cases not distance, but rather poor roads, absence of bridges, etc.), cultural (impersonal, authoritarian and intimidating treatment by health care personnel) and related to the lack of confidence the population has regarding the services offered. Furthermore, there is a geographic inequity with respect to the distribution of health personnel, medicines, and equipment, which undermine the possibilities for the Primary Level Health Centers to carry out their assigned functions.

The Salvadoran Constitution states that all Salvadorans have a right to housing and that it is an obligation of the State to promote access to it. At present, the housing deficit affects almost 2 million Salvadorans. The Specialized Roundtable on Housing for the Plan for the Nation (1999) noted that “more than half of the Salvadoran population lives in habitat conditions that are below the minimum human standards and consequently affect both their health and family stability.” The housing deficit at a national level is estimated at between 400,000 and 600,000 units, depending on the subjective interpretation of the survey with respect to the degree of degradation of the housing being investigated. According to official figures, 39 percent of urban demand corresponds to families with a minimum wage, and 78 percent with two minimum wages. 51.9 percent of the housing deficit is in the rural sector, where the situation is more severe, and where the majority of the population does not have access to formal credit (1999, *Temas claves para el Plan de Nacion. Consulta Especializada*). In addition to the absence of a dignified habitat, are the absence of key services, above all water. At a national level, 2/5 of the services needed by the poor is access to water, meaning that there are 267,211 families living on no more than two minimum wages who are without water.

The principal factors at the root of this situation have to do with unemployment, rural-urban migration, demographic growth, public investment which subsidizes the middle and upper classes, the lack of investment in basic services, minimal investment in low-income housing, laws and norms which raise housing costs, lack of access to credit by the informal sector, access to credit by the formal sector, lack of quality control, lack of use of cheaper traditional housing materials, poor soil use, lack of access to land for low-income housing, poor natural resource management, laws and norms that promote illegal housing lots and construction, and the lack of an integrated and genuine housing policy, among others.

4.3

To what extent is the health of the population protected, in all spheres and stages of life?

The Salvadoran Constitution dedicates a complete section to health (articles 65 to 70), recognizing it as a public good and obliges the State to see for its conservation and re-establishment (Art. 65). We are vis-a-vis a social right whose effective enforcement is not, as it happens with this type of rights, completely guaranteed, different from the civil and political rights in liberal democracies. This becomes even worse in countries with scarce development, where the weakness of the State and its economy does not allow the satisfaction of said rights.

Since the first half of 1998, the Social Security medical doctors organized themselves in a professional union and went to strike, in virtue of a reivindicative platform which went further from an improvement in their salary benefits and required a structural reform of the national health system, whose need has been put on the discussion table of the country's political scene. The last strike was developed between November 1999 and March 2000, and was organized by the workers and doctors of Social Security. The latter ones supported the strike when seeing the non-compliance by the Government authorities and this institution on commitments accepted in May, 1998, which ended the prior conflict.

This conflict has urged all sectors concerned and interested parties in the health environment (some of them are the National Health Commission, the Medical College, the Salvadoran Institute for Social Health Workers Union, and the Salvadoran Foundation for the Economic and Social Development), to contribute with their proposals of reform to, as we all recognize, finally start a national health policy so far non-

existent. Within this framework of events, the council for the Health Sector Reform is working since July 19, 1999, in order to set up a new health model for the country. In December 2000 will publicly deliver the project resulting from their consultation and deliberations.

The current National Health System is based on three pillars: *1st* A Network of national hospitals, depending on the Public Health and Social Assistance Ministry (MSPAS in Spanish), whose intent is to provide free health services to low income, indigent and general population who is sick; *2nd* The Salvadoran Institute for Social Security (ISSS in Spanish), covering 23.5% of the population affiliated, their spouses and children under four years of age; *3rd* The private health service. This service tends to approximately 9% of the hospitalizations and 45% of outpatient visits. The last data is explained by the little trust the population has on the other two institutions. Even so, we wanted to note it suffers great scarcities: does not have the efficiency supposedly attributed to it; does not offer a service according to the cost it implies for users, and does not have the most advance technical resources necessary for medical therapy.

Related to the public service of health offered by the Ministry of Public Health and Social Assistance, we can say that its coverage reaches 40% of outpatient care, and 76% of hospitalization. 40% of the population which would have been cared by them, do not have access to these services. Most of them are persons living in rural areas where the public network of health does not have facilities nor medical equipment to offer the necessary health services required. Fortunately, the contribution of NGO's providing primary health services to these rural nuclei, partly cover the existing needs. The approximate coverage of the same is calculated between 25% and 40% of the rural population. Infantile mortality reaches 42 per thousand at the national level but in those settlements cared for by NGO's is 23 per thousand. Another aspect of the same is the terrible situation in the facilities, so badly managed, that its deterioration, crowding, lack of sanitation and hygiene, do not fulfill the minimum conditions necessary to render the service and represents – *per se* – dangerous infection foci.

Due to the special poverty conditions met by the majority of users of this system, without the minimum necessary to have a dignified life, and because the obligation the State has of insuring health (Art. 66 of the Constitution), health and hygiene services they receive should be completely free, but it is not.

Referring to ISSS, an institution which has a greater relevance in the health environment than the corresponding Ministry – what represents a contradiction -, although its service of specialties has an acceptable level, because it is the best developed in the country, suffers great limitations. These are, among other: the long waiting time patients spent during diagnostics and surgical intervention, with the corresponding risk; the scarce curative capacity of drugs provided²; the very high number, approximately six beds per room, limits medical attention to the children of affiliated up to the fourth year of life. On general mortality rate in the country, it is decreasing slightly, reaching approximately 6 per 1,000.

4.4

How extensive and inclusive is the right to education, including education in the rights and responsibilities of citizenship?

Although the education sector in El Salvador has been comparatively dynamic in the last years, it still faces considerable challenges in the areas of *coverage, quality and sustainability*.

Coverage: Although literacy rate has improved considerably over the last half decade and is now estimated by the UNDP Human Development Report (HDR) to be 77 percent of the population, statistics also show that educational levels are low and that educational opportunities, particularly in the early grades, is inadequate (Temas claves para el Plan de Nacion 1999). Of the relevant age cohort, 89% percent of children attend primary school, 36.4 percent secondary school, and 25 percent tertiary school (sciences). Twenty-three percent of children do not reach the fifth grade (HDR 1999). The average years of schooling for the

² This is suffered by the public system as a whole. Regardless of Article 69 in the Constitution establishing that “the State will provide the necessary and indispensable resources for the permanent control of chemical, pharmaceutical and veterinary products through surveillance organizations”, the reality is different, since only 12% of the investment in this item reaches the user as a good quality medical product.

urban areas is 9 years, in the rural sector, 6 (PAHO, 1998). Although education is mandatory through the ninth grade, a UNICEF/ISPM survey found that in 1997 that of the “1.8 million children between the ages of 5 and 17 years of age, roughly 6.6 percent or 118,800 worked without attending school, and 36,000 of those were under the age of 14. An additional 5.8 percent, or 104,400 worked but also attended school. Of these, 55,300 were under the age of 14.” The World Bank noted in 1995 that has stated that El Salvador has one of the lowest levels of coverage in Latin America, surpassed only by Guatemala and Haiti. Pre-school coverage is very limited, largely limited to the urban area, tends to be private as well as expensive. According to the World Bank, only 14.7 percent of children receive any pre-school education, generally understood by educators to be of critical importance for the next level.

At the primary school level, the deficit in coverage is seen to be linked directly to the vicious cycle of structural poverty. Children don't attend because they're obtaining their basic subsistence by working or begging, and direct costs has been cited as the reason for non-attendance by 45 percent of poor rural families and 39 percent of non-poor (uniform costs alone are seven times the cost of fees). Distance to school and inappropriate matching of grade and child are also cited as reasons. In addition to total non-attendance, desertion is also a significant problem, where failure or desertion after the first three years is common, due to the lack of incentives and often lack of minimal support within the family unit. The common problems associated with poverty, including unemployment, housing, nutrition, and health all have a highly negative effect on the possibilities to take advantage of those schooling opportunities that do exist. Coverage is also negatively affected by the lack of coordination of non-formal education initiatives with the formal programme of the Ministry of Education.

The challenge in the area of the *quality* of education is also closely linked to the phenomenon of poverty and social exclusion, in that the low educational level and the state of poverty of the families does not provide the environment most conducive to learning. The pyramidal structure of school attendance underscores the importance of alternative forms of education and non-formal education as a complement to formal education for children and youth affected living in poverty. The lack of incorporation of new information and communications technologies in schools is also critically important in the face of globalization. Further, there is a serious gap between the productive sector and the system training of training human resources in rural and agricultural needs. With respect to the issue of sustainability, there is no question but that the level of public investment in education is insufficient, even if the Ministry has recovered pre-conflict levels, now at 6 percent of the national budget. The central government, the municipal government and the private sector need to make significantly greater investments in education, in school infrastructure, school libraries, laboratories, technical resources and sports equipment (National Reconstruction and Transformation Plan 1999).

4.5

How free are trade unions and other work-related associations to organise and represent their members' interests?

One of the greatest lacks in the Salvadoran socio-political system is the scarce awareness of the benefits offered by unions, as representatives of workers interests, for the socio-economic development of the country. Completely the opposite, in El Salvador, domineering political and entrepreneurial interests have completely marginalized unions as social agents who, together with the Government and employees, should have an uncontested protagonist role when referring to those public policies which affect employment and social protection.

In the country, according to the Labor Ministry, there are 151 unions, which are integrated in 11 federations. There are six existing centrals, of which only two have legal personality, recognized by the Ministry of the Interior. The greater problem for these centrals is that they are not recognized by labor laws, do not have legal representativity before the Labor Ministry, having thus a limited field for action.

Salvadoran unionism aches a low affiliation – if the economically active population (EAP) reaches 2,056,450 persons, only 5.34% is registered³-, organizational weakness, division and dispersion, lack of

³ When comparing the level of unionized personnel with EAP busy in each economic activity branch, we observe this low union density. It is 0.5% in Agriculture, Hunting and fishing; Mines and Quarries; Trade, restaurants and hotels; Financial and Insurance

internal democracy, deficient formation of leading groups and questionable integrity and representativity of many of its directors. If to all this you add public and semipublic enterprises privatization done during the 90's, it all has had a very negative influence on union organization, since it is more solidly based on enterprises depending from the State, you will understand the difficulties faced by Salvadoran union organizations. Nevertheless, many of its limitations are derived from the resolute anti union attitude that for decades has been adopted by the many institutions of the State and employers, which tends to destroy existing unions in enterprises or launches frontal opposition to the organization of the same. The attribution given to the Labor Ministry to decide on the granting of legal personality is a legal requirement contrary to union freedom whose exercise, as any other basic right, must only be submitted to *a posteriori* controls, as applied in the courts of justice.

For many years there has been a proliferation of *solidarian* organizations which, supposedly generating harmony in the labor-management relationships, carry out an overtly open policy against freedom to unionize. The same negotiate directly with employers, giving a preferred status to individual hiring over that of collective character, and undersign production covenants or commitments individually with workers.

Related to collective contracts, of the 151 existing unions, only 31 of them negotiate collective contracts, implying that only 35 of AEP is covered under this type of hiring. This is an eloquent indicator of the scarce protection, labor improvements and guarantees suffered by Salvadoran workers.

On Labor Courts it can be said that their judges almost never recognize the legality of any call to strike, denying any substance to this right. It is basically suspected that said judges have been influenced by entrepreneurial interests and their strong pressures; needless to say, in this area is where the Judicial sector has progressed the least.

4.6

How rigorous and transparent are the rules on corporate governance, and how effectively are corporations regulated in the public interest?

The rules on corporate governance and regulation of corporations are limited and inadequate. With respect to the financial sector, the two very serious cases of fraud in 1997, one involving US\$ 1.3 billion, revealed the weakness of supervision and monitoring in the financial sector, and how the system can facilitate such illegal activities. The Superintendency of the Financial System (SSF) had not developed the necessary auditing systems that would have permitted them to detect the fraud and the existing legal framework does not provide the instruments or mandate to adequately monitor all financial associations. However, the dimensions of the fraud and the ensuing lack of confidence in the financial system, precipitated an important series of reforms to the Law of Banking and Financial Institutions, the Organic Law of the Central Reserve Bank, the Organic Law of the Superintendency of the Financial System, and the Law of the Stock Market, which aim to strengthen the institutional and juridical framework and improve financial practices.

The disorganization, inconsistencies, contradictions and obsolete character of the existing laws regulating the environment as well as the large number of institutions with a mandate in the sector has meant that the regulation of industry and companies to insure respect for the environment has been difficult. In 1997, ANDA, the water company reported that of 488 registered industries, only 13 percent treated their effluents in any way before being discharged into the water system. The degree of damage that the environment has sustained in El Salvador is such that energetic enforcement as well as an improved regulatory system is absolutely critical.

Establishments. Between 2.11% to 3.43% in Services, Transportation, Storage and Communications; Manufacture. 62.48% in Construction. 45.04% in Electricity, Gas & Water.

With respect to consumers' rights, there are essentially two institutions that focus on this theme, the official General Directorship for Consumer Protection (DGPC), founded in 1993 and stemming from the Peace Accords, and the non-governmental Center for the Defense of the Consumer (CDC). The public institution's mandate and legal framework is contained in the March 1996 Law for the Protection of the Consumer. Technically, the objective of the law is to protect the consumer from "fraud or abuse in the market".

The DGPC noted a significant rise in complaints during 1997 and of the 1,670 complaints received 481 (29 percent) correspond to basic services. Of all the complaints received, 711 cases were resolved via mediation. The clear rise in complaints has been attributed to increasing awareness of consumer rights and the existence of the DGPC. The permanent activities of the DGPC is to inspect the sale of propane gas (plants, distributors), service stations, supermarkets, pharmacies, outside market stalls, to verify prices, expiration dates, and weights and measures. As a result of these inspections, the DGPC has imposed fines, although the State of the Nation in Human Development report noted that it was "strange" that no fines had been imposed during 1997. The CDC has focused more on seeking to modify the law to better protect consumers, such as for medical patients, regarding credit cards, and telephone services in the context of privatization. These modifications are in the regular channels for consideration by the Legislative Assembly.

Despite progress in this area, both institutions public and private share some of the same weaknesses, such as limited geographical coverage, limited human resources, and a traditional "inspector" approach. Both institutions require strengthening in order to carry out their mandate more effectively.

4.7

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

Regarding economic and social policy, notwithstanding all the achievements in terms of growth rates and inflation stabilization, El Salvador has not yet consolidated its macroeconomic stability and still faces a huge challenge in human development aspects, especially in the rural areas. These challenges include high poverty rates, poor access to basic services, and failure to generate enough employment opportunities in the formal sector. The 1999 State of the Nation in Human Development Report asserted that huge obstacles persist that make market access highly inequitable for large sectors of the population, the lack of equity due to the differences in education, in health conditions, in access to social and other infrastructure, to credit and to information.

Education is an area in which there has been progress. Illiteracy was reduced by 11 percentage points between 1979 and 1997, the gross schooling rate for the primary grades went from 82 percent to 98 percent, and there has been a reduction in school-leaving and repetition. A recent World Bank study has concluded that the Community-managed Schools Programme, EDUCO, which was designed to expand rural education after the war, has improved students language skills and diminished student absences, which may have long-term effects on achievement (The World Bank Economic Review, September 1999). While there has been an increase in the education budget, it is still lower than that of the average developing country.

There is a generalized recognition of the urgent need to improve the performance of the health sector. The Health Ministry has begun to undertake a modernization process, wherein it seeks to broaden its role to regulate, orient and facilitate the health system, rather than simply being a provider of services. The reform is comprised of three phases, which include administrative reorganization, the strengthening of the regulatory and coordination function of the system, and the development of participatory and interactive processes with communities. However, the character of the health reform has been the subject of very bitter dispute, particularly around the issue of privatization, and an almost four-month long strike by health workers although ended is not resolved.

Progress in the area of improving the housing problem is quite limited. Between 1992 and 1997, the housing deficit was reduced only by 4 percent, suggesting that if this rate continues, it will take 56 years to reduce even one tenth of the official housing deficit. At present there are a variety of institutions whose purpose is to provide low-income housing, the Vice Ministry of Housing and Urban Development (VMVDU), the national Fund for Popular Housing (FONAVIPO), the Institute for Liberty and Progress (ILP), and The Social Fund for Housing (FSV). There are additionally 58 NGS, which also work on this issue in coordination with municipalities and communities. However, there is clearly insufficient public investment in low-income housing, particularly given the urgency and dimensions of the problem.

5.0 Free and Fair Elections

Do elections give the people control governments and their policies?

Although electoral advances registered in El Salvador, since the arm conflict came to its conclusion. Specially related to the participation of all important political actors who influence the decision making process. There are two type of phenomenons that makes the answering of this question in a possitive way a dificult task.

In the first place, the growing distance between the politicians and citizens, the political parties and other institutions of the salvadoran political system. In electoral terms there is a constant electoral participation decrease motivated by technical aspects (Anomalies and iregularities in the organization and conduction of the electoral event) as welll as the perception of having an inefficient political procedures and institutions in order to solve the main problems that burddens the majority of the population (such as low acquisition power and public insecurity).

In the second place, under a globalize economy and intervention of financial organs such as International Monetary Fund, Interamerican Bank and World Bank; in the designing of national economic policies, context. Citizens capacity of controlling the internal policies has diminish, the structural adjustment policies and the privatization wave has been implemented without a previous citizens consultation and no negotiation on cost and benefits distributing. The principal beneficiary groups the old coffee oligarchy and now in the financial sector and some international investors. As a global result, social inequality has increase, and politcis, in the eyes of the majority, does not seem to be the mechanism of solving problems

This way, in El Salvador election has been consolidated as a procedures for government selection. But these, might refuse themselves or might have less capacity to govern, in order to solve the problems that burddens the majorities. Is this reality perception and not the technical problems which increases the majorities distrust and lack of interest in politics and politicians. This distance between them diminishes the capacity of control over the government decisions.

5.1

How far is appointment to governmental and legislative office determined by popular competitive election, and how frequently do elections lead to change in the governing parties or personnel?

Between the decades of the 50's and 80's, elections in El Salvador were semi-competitive or non-competitive. Fraud or *Coup d'etat* were the rule for changes in office. In fact, this was one of the reasons claimed by revolutionary forces in the 70's when they called people to fight againts the military regime which had prevailed since 1932.

The recent electoral history of El Salvador begins on 1982, when in the middle of an internal military conflict (civil war) was elected a Constituent Assembly which wrote up the Republic's Constitution, that has been effective since 1983. It was establish on this, that the Presidential elections were to be held every five years under a two ballot Majoritarian rule and the Parliamentary elections were to be held every three years under a Proportional system.

In El Salvador, between 1982 and the year 2000, there have been four Presidential elections and seven Parliamentary elections. But before the year 1994 not only were excluded the left wing Party, because of their strategic alliance with the FMLN and the exile of their main leaders, but the electoral event were held in the middle of the cruel gunshots of civil war. Therefore, free and fair elections have been held only since 1994 when there were no party excluded from competition and the war had finished two years before. That is to say, governmental and legislative office appointment has been determined by popular competitive elections only since that year.

Change in the governing political party through elections has not been possible yet. Alianza Republicana Nacionalista (ARENA) got the control over the government in the elections held on 1989, and it was needed only the first round of election. ARENA kept the control over the government for the second time in 1994

by winning on the second round of elections of the same year. On 1999 obtained for the third time the control over the government, but this time ARENA again won in the first round of elections. Results of 1994 and 1999 were accepted by all parties including its main adversary, the Frente Farabundo Martí para la Liberación Nacional (FMLN). Although percentual distance, of the valid votes between both parties, were very wide in those two years: 24.1% on 1994, and 22.9% on 1999 (These results were obtained in the first round of election). This ample margin of victory can be explained by the extended fear about what could happen if the FMLN won the Presidency. It can be said, people votes in such a way electing *the lesser of two evils*.

The Parliamentary elections on 1994, 1997 and 2000, although, registered a slow electoral increase in favour of the FMLN (see chart on Data Base) To the point of becoming the first legislative force in the assembly (see chart on Data Base). But, this does not mean that an alternate control of the legislature has occurred, because the right wing parties (ARENA-PCN) still have the majority of deputies in the Assembly. This result is partly due to the electoral system (see 5.4).

5.2

How inclusive and accessible for all citizens are the registration and voting procedures, how independent are they of government and party control, and how free from intimidation and abuse?

There is a series of technical problems which makes the citizens registration and voting procedure inclusiveness and accessiveness very doubtful. On first place in order to vote the citizen needs not only to register in the TSE but also have an electoral identification card. The respective procedure becomes very difficult for the citizen, lots of citizens, do not register or not pick up their I.D. card. In the absence of this the citizen is not able to vote. The TSE has been consistently criticised for its lack of organisational expertise:

- Voters at many polling stations have experienced “delays in the accreditation process”
- Delays have occurred in opening voting centres on time. The TSE has also changed the location of the polling stations without prior warning.
- The TSE has also sometimes failed to send “ballot boxes, voting papers or electoral lists to the respective departments and municipalities” on time, and has occasionally failed completely to delivery of electoral packets.

Secondly, the registration system provides an in built impediment to ease of access by assigning voters to polling stations on the basis of their last names rather than where they live. Under this system, the members of a the same family can vote in a different voting place. The farther it is the bigger the city is. Given the dispersion of the voting center, some families rather not go voting, instead of going to vote individually.

Thirdly, although being registered and having the electoral I.D. card, are not few the electors that can not find themselves in the list provided by the vote receptor board in order to control the suffrage exercise, others are incorrectly registered. All of these problems affect voting and may depress turnout.

Elections are under the supervision of the Supreme Electoral Tribunal (Tribunal Supremo Electoral, or TSE), which was created under the peace accords as a non-political agency responsible for all aspects of running elections. The 1993 Electoral Law defines the TSE as the highest authority in electoral matters possessing “full jurisdictional, administrative and financial autonomy” and thus being independent from the state. By this point of view, The TSE has an administrative function which consist of organizing and administering the elections of the republic’s President and Vice president, Legislative Assembly deputies, Deputies from the Central American parliament and Municipal councils. Also has a jurisdictional function which consist in “delivering electoral justice. But, TSE partisan composition allows the systematic violation of electoral norms on behalf of the parties represented in the TSE. In March of 1999, about one out of 10 Salvadorans reported the unlawful presence of party activists within voting centres, passing propaganda around and seeking to influence voters’ choice of party in the presidential elections. This does not mean that people would begin a legal process against the parties for such an intimidation. This may indicate that the parties were more prepared to bend and break electoral law in the high-stake presidential contest than they were in the 1997 local elections, in which such offences were described by observers as “generally minor” (Envio May 1997). For the 2000 elections were not only violate the norms that establish the limited date of

the beginning of the electoral campaign, but in some places, in the very same day of the elections some parties made different type of electoral propaganda: waving of flags inside the voting centers, giving out of cards that had on party's flag, ballot box number and voting place (la prensa grafica 13/3/2000). Further more we need to add, parties' militant presence in the voting centers, intimidated voters at the time of exercising the suffrage.

5.3

How fair are the procedures for the registration of candidates and parties, and how far is there fair access for them to the media and other means of communication with the voters?

The inscription norms of the political parties, is such, that does not contemplate the existence of regional-based parties. The salvadorean electoral system is design for national parties and indicates wider trends to centralization and concentration of power. This design facilitates that some parties which reaches parliamentary representation could be, however, canceled for not overcoming the electoral barriers stipulated in the Electoral Code: parties which participates in an electoral event must obtain more then 3% of the valid votes at a national level or 6% if they are in an electoral coalition. Under this rule, the parties that created the Democratic United Centre (CDU) have been canceled by the TSE even though having three deputies in the 2000-2003 legislature. CDU only obtained 5.38% of valid votes, for being an electoral coalition must reach 6% of valid votes.

The cancelation of political parties for not reaching the amount of votes established by the Electoral Code, is very frequent in El Salvador, which mainly affects small parties with little resources. After the march of 2000 elections there have been canceled five parties, two of them in a coalition. On the other hand, Article 85 of the Political Constitution establishes a political representation monopoly. This disposition unables the inscription of independent candidates, that is to say, candidates with no political affiliation.

In any sense that TSE is controlled by three political parties, the rest of political parties will compete with great disadvantages. Any of the three parties in the TSE could try to block the inscription of any candidate that comes from other parties. In the march of 2000 elections, the CDU leaders argued that members of departamental electoral board refused to receive the respective document of the inscription of some of their municipal candidates (El Diario de Hoy, 10/2/2000).

By diverse reasons, the access to the press is not equal for all parties and candidates. Those with more economic resources have greater probabilities of communicating with the citizens through the radio, newspaper and television. Even so, the incumbent party (ARENA) appears to have considerable influence over national media, influence that would appear to be generated by the ideological and social proximity of media owners and the establishment political elite. Prior to the 1997 municipal and the 1999 presidential elections, sections of the right-wing media appeared to seek to stir up public emotion by laying the 'blame' for the civil war on the FMLN. During these election campaigns, the FMLN's own history and practice put it a further disadvantage to the ruling party. Originally a party of radical action, the FMLN's occasionally aggressive line presumably owed much to its agitation history. The FMLN is still learning how to use media (Envio October 1998), while ARENA has long mastered this art.

The television media appear to have devoted relatively fair and equal coverage to the major parties in 1999, and featured interviews and debates among candidates "from across the political spectrum" (Freedom House 1999). However, while these fora would seem to testify to a wide degree of official tolerance, the state has cracked down on other, important information sources. Dozens of community radio stations in rural areas have been shut down under telecommunications law, equipment has been confiscated by the authorities. The FMLN groups established many such stations during the war; in some areas they remain the most accessible and in some cases the only source of information for the population. Moves began to legalise pirate stations in 1992, but several dozen broadcasters were refused licenses by the state telecommunications regulator (ANTEL). The Supreme Court concurred with the government, and rejected an appeal by the broadcasters in March 1996 (CPJ 1996). On the surface, this is purely a technical matter, it has, however, adversely affected opportunities for free speech and information exchange.

5.4

How effective a range of choice does the electoral and party system allow the voters, how equally do their votes count, and how closely does the composition of the legislature and the selection of the executive reflect the choices they make?

Since 1994, as product of the Peace Agreements, does not exist any proscribed political party. In terms of right and left parties, the electorate has a wide political spectrum where to choose the party of their preference. Nevertheless, the electoral system and the party system limit, in practice, the alternatives which voters may choose. As a result, they favour parliamentary and presidential predominance of two parties (ARENA and FMLN). This situation specially appears in presidential elections where the vote for any other political party is useless. The dynamics of a polarized party system (as the one in El Salvador) leaves without any real option to any other political party different from the two ones in the extremes of the spectrum.

However, in the parliamentary elections it seems to be more options for the voters. This can be seen in the actual legislature where there is a presence of four other political parties (three political parties and one coalition) but only one of them (PCN) has blackmail capacity for negotiating with the main parties (ARENA and FMLN). In practice, this political party uses to act subordinated to ARENA.

At a municipal level, the competition is still more limited due to the dispute is under a plurality system with blocked and closed lists within plurinominal districts. It is not unusual that the party that won the municipality election has less votes than the sum of the votes obtained by the rest of the parties.

On the other hand, the equal vote are affected by the Malapportionment phenomenon and by the use of the electoral formula (Hare-restos mayores). By the first aspect it produces the territorial under or over representation phenomenon in the legislative assembly. San Salvador, La Libertad and Ahuachapán deputies represent to the double or more inhabitants than those deputies from Morazan, San Vicente and Cabañas. The first group of departments are over represented. The second group are under represented. Given the distribution of seats between the different electoral districts, one can find departments where the deputies are much cheaper (the political party in this departments needs less votes to get a bench) with respect to other departments where the deputy is more expensive (see chart on Data Base). The TSE has the responsibility of this situation which violates the principle "one man one vote". In the Electoral Code is established the distribution and magnitude of the districts but there is no specific relation between seats and population.

Finally, for the Legislative Assembly election, a proportional system is used. Even though, disproportional effects are produced under this rule. According to the Rose's Index, the average proportionality for the period 1982-2000 has been 92.8 (see chart on Data Base). Even though this value might appear to be higher, it hides situations that are clearly disproportional, where the difference between seats and votes proportions are significant. As it occurred in March of 2000, where PCN obtained 16.7% of the seats with only 8.8% of the votes. In fact, PCN usually gets a larger share of seats than share of votes.

5.5

How far does the legislature reflect the social composition of the electorate?

That legislature does not reflect the social composition of the Salvadoran electorate may be seen since two perspectives. First, although there are differences between parties, the composition of the parliamentary groups which represent them is pluriclassist. Nevertheless, deputies from middle classes prevail. And, middle classes are not predominant in the electorate. Second, there have been little women participation in the successive Legislative Assemblies since 1982, in spite of representing more than 52% of Salvadoran population (see chart on Data Base and 11.3).

Besides, a special dimension has to be mentioned. 59.2 per cent of the people interviewed by the University Institute of Public Opinion (IUDOP) in its last pre-electoral survey for the year 2000 parliamentary election, considered that political parties do not represent the salvadoran interests (PROCESO # 891). That is to say, that subjectively, the majority of salvadoran people does not feel represented by the political parties in the Parliament.

5.6

What proportion of the electorate votes, and how far are the election results accepted by all political forces in the country and outside?

One of the main problems faced by the salvadorean political system, is that there is less electoral participation (See annexed chart on Data Base). In the deputies and municipal councils election on march 2000 was registered a 38.5% of voters, which indicates that two out of three salvadoreans that could vote did not participate. Political analysts, Party leaders and the TSE have public recognize the graveness of this fact which puts legitimacy of the electoral process in doubt.

According to IUDOP public opinion survey, carried out between february 12 and 20, 2000. 57.2% of the salvadoran population manifests to have less or no interest in the election of march 12 (PROCESO # 891). The same survey showed that behind the salvadoran lack of interest in the elections is the belief that “ the elections are a waste of time, because things never change in the country” (PROCESO # 891). This way, it was expected this high levels of absenteeism. It did not work the intense and constant calling to attend the elections.

According to “democratic audit” carried out in El Salvador on 1999 by IUDOP, Pittsburgh University and FUNDAUNGO, financed by USAID “Abstinance is clearly link to a lack trust and interest in the general politics, further more, particularly, with the political parties discredit, and the opinion of not feeling represented by the political parties” (Seligson, 2000:141).

Since 1994 the electoral general results have been accepted by all contender forces. However, in the elections of march 2000, there were impugnation attempts of some electoral results. The PDC tried to impugnate some local results, showing their inconformity with the results (La Prensa Gráfica, 14/3/2000). According to PDC spokesman this party would obtained five more deputies than those given to them by TSE preliminary counts, They even demanded a vote to vote count in order to confirm results. At the end, TSE declared PDC’s demand out of place.

Well then, even with the real advances in a clear election, good part of the population still thinks in the possibility of fraud. According to a pre electoral survey from IUDOP, 41.4% of the population thought that there would be fraud in march, 2000 elections. (IUDOP, 2000).

5.7

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

Practically, anomalies and irregularities denounced by diverse group and institutions constitutes now a type of “tradition” on the way the elections are carried out in El Salvador (see 5.1). This “tradition” continued appearing in the year 2000. Even though there were 500 electoral attorney all around the country, watching the event (La Prensa Gráfica, 27/1/2000). After every electoral event there abundant public declarations and “political parties commitments” to overcome such problems- However, till this date is been done little and if they did are not the most important aspects.

According to international observers that supervised the deputies and municipal councils election in march 2000; “the salvadorean electoral system is deficient” “does not guarantee the universal suffrage” “ does not comply with the function that just for been a salvadoran with the age of voting, does not mean that you have the right of free vote” and “the procedure is fragile and risky because at the end depends in the honesty and the conciliator and cooperative talents of the people” (La Prensa Gráfica, 15/3/2000).

With the objective of facilitating citizens electoral participation in the election of the year 2000, TSE tried to implement a “getting ballots close to the people” or “semi residential vote” project. After three months this project started, TSE executives announced that the plan was not appropriated due to the lack of time and resources. This frustrated project cost 20.3 millions of colones (aproximatly 2.3 millions of dollars) (La Prensa Gráfica, 30/11/1999).

The electoral census problem has not been solve still, even though of the constant depurations that the census is been subjected to for the next electoral event. However, actually the implementation of the unique identity card is on its way, this is based upon a new citizens national registration. It is hope that this could solve the depuration and up date of the electoral registration problem.

Two other measures taken to favour electoral participation were: First, the TSE contracting of free transportation for the election day with a cost of 1.5 milions of colones (172 millions of dollars); Second the preparation of voting ballet paper for the blind people. With this last measure, the TSE was trying get back the secrecy of the blind people’s vote (El Diario de Hoy, 24/2/2000).

Although this initiatives, the main measures that effects the electoral code and the Political Constitution of the republic is till pending: independent deputies, female representation quota, democratization in the interior of the political parties, municipal proportional representation, TSE departization and the separation of administrative and jurisdictional functions. None of this measurements have political priority even though the public support that this might have.

6.0 Democratic role of political parties

Does the party system assist the working of democracy?

In El Salvador, the parties do not have been on a par with the exigencies of the democratization process; that is to say, they have been incapable to make of intermediaries between the demands of the Society and the State answer to the same ones. There are several reasons for the failure of the parties in that function of "intermediation". First it points to parties structures, whose organizational format allows to certain members -the leaders- to concentrate level excessive of power which, generally, is used in their benefit. Second it has to do with the capacities and abilities of the members of the parties: most of them accuses well-known weaknesses in their academic and professional formation. Third it aims in the style of making policy that has been incubated in the national political system: that style characterizes by the pacts and the adjustments under the table, the purchase of favors, the blackmail and the corruption. So, it is not a surprise that the parties have become space for the proliferation of personal interests. Their social disrepute is not surprising either: far from generating confidence in the population, the parties are suspicious and little affection is felt by the citizens. By the previous thing, the parties have been incapable to canalize and to express the more urgent social demands, which have been canalized and expressed, in countless occasions, through illegal and violent mechanisms. One has settled down, then, a divorce between society and policy; between parties and citizens.

6.1

How freely are parties able to form, recruit members and campaign for office?

Practically, from the signature of the Peace Agreements (1992), there are not legal limitations so that any party can, on the one hand, recruit members and educate them in their programmatic and ideological principles, whatever is the sense and the nature of these ones; and, on the other hand, the parties can design and implement the political pertinent campaign for office. From this point of view, there is not any legal discrimination for parties and, consequently, all legally registered ones have a large margin of freedom to run for the control of the government. Evidently, in El Salvador all the parties do not have equality over conditions in the matter of recruitment and formation of their members, as well as capacity to design and implement their campaign for office. Both situations are due to two factors: the history and level of institutionalization of each party, and the economic resources they are capable to mobilize.

a) History and level of institutionalization.

In the postwar period, the parties with longer political history and greater level of institutionalization (ARENA and the FMLN) have had particularly facilities to recruit and to form panels that are nourishing their rows and renewing it, although, not with the agility and rapidity that many wanted. Certainly, there are parties with greater political history than the FMLN and ARENA: the PCN and the PDC. Nevertheless, due mainly to the dynamics of the salvadoran party system and internal disputes between leaders of both parties, along the 80's, these political parties become feeble. In fact, by this time, only the PCN has an important political presence. The electoral system used for the Legislative Assembly election has consistently benefited the PCN as the third electoral force (see 5.4) The distribution of the seats and the magnitud of the electoral districts are the main factors causing this result. On the other hand, the PDC has not managed well in order to overcome the institutional crisis that followed the death of its historical leader Jose Napoleón Duarte. A serie of personalistic disputes has succeeded since then for the control of the party looking for their own political and economic interests.

b) Resources that the parties are able to mobilize.

Here, although it is possible to abound more, it is enough with saying that the electoral campaigns demand of the parties an amount of resources and technical capacities (consultant's officers, advertising design, marketing) that all of them cannot face in equality of conditions. It is not totally proven that it is enough with a well designed campaign, but it is clear that parties which design and implement ample campaigns, creative and try to maintain the most influence in the opinion and expectations of the electorate, which opens more possibilities to them of canalizing the citizen affections to its favor. And that demands economic resources that all the parties are not able to obtain and to mobilize equally. Some of these economic resources come from public financment. But, this financment depends on the total of valid votes which each party get. So, main parties get more financment (See Data Base).

6.2

How effective is the party system in forming and sustaining governments in office?

El Salvador has a presidential system. This way, office has usually been controlled just for one party. In fact, since 1982 no coalition has been necessary in forming and sustaining government. First, the PDC (from 1984 to 1989) and later, ARENA (from 1989 to update) have been in office by their own.

Nevertheless, the salvadoran party system is a polarized party system with ARENA and the FMLN as the main parties (which polarize the system) and a third one, the PCN between them. According to Laakso and Taagepera's index, N has rounded 3 from 1982 to 2000 (See Data Base). In the two last legislative elections, a bias arena to the permanent negotiation has been configured, because no one of the two main parties had obtained enough seats to impose its initiatives of law. During the legislative 1997-2000, that negotiation was, as a whole, favorable to the party ARENA. It was relatively easy to add to its favor the votes of the PCN and those of the PDC. By controlling this way the Legislative Assembly and Office, political stability was assured. That is to say, the salient Legislative Assembly favored an exercise of the executive power without particularly conflicts or obstacles. It means, the Legislative Assembly favored the stability of the ARENA government in period 1994-1999. One was not about a submissive parliament totally to the Executive, but a parliament with which the executive could be understood with enough facility. It was favored, at the personal level, by the good relations that president Calderón Sol settled down not only with the ARENA's direction, but also with the deputies of its party, which, in their majority, made decisions coherent with the initiatives from the executive.

Dynamics of Assembly Legislative incoming, if the block of right gets to consolidate itself, will be favorable again to the stability of ARENA's government, headed by Francisco Flores. It would be the confirmation of a tendency towards the political balance - to the interior of the Legislative Assembly -- and towards the fortification of the presidentialism - relations Executive-Legislative - initiated before the signature of the Peace Accords, that became clearer after those agreements -- once the FMLN laid down the arms and integrated itself to the legal political life.

6.3

How free are opposition or non-governing parties to organise within the legislature, and how effectively do they contribute to government accountability?

First, it must say that at the present time there are no legal restrictions so that the parties form temporal coalitions in the Legislative Assembly according to the conveniences or the commitments of each one. That is to say, they enjoy the legal freedom to negotiate, to agree, to meet, to reach agreements, etc. But not only that, they also enjoy the security to do so. The threats or the fear are no part of the task of the parties in the Legislative Assembly. Nevertheless, the previous thing does not mean that the opposition parties do not have to draw for important obstacles to articulate their political positions. One of the most important obstacles is the blackmail that the government party exerts on some members - often leaders -- of the opposition parties. The mechanism is quite simple: the government party offers positions and prebends to those who becomes their allies, demands loyalty and support in exchange for it, and threatens retiring

positions and special favours to those who signals to want to retire their support to it. Obviously, the proofs -- in these as in other cases -- are difficult to obtain, since much of the information filters sometimes within the Legislative enclosure. The consequence of this official practice is not only the difficulty of the opposition parties to forge initiatives of legislative work - because members of them exist who veto those initiatives --, but also facilitates parties' conflicts: between those who feel defrauded by companions who have received favours of the government party; between those who aspire to receive equal treatment and they feel marginalized of the benefits; and between those who are against to work jointly with parties that either have benefitted from the government or would prevent that the own party benefitted. ARENA has made of that practice one of its favorite instruments to gain the support of parties like the PCN and the PDC.

Second, it is possible to say that the opposition parties show a remarkable incapacity to control the activities of the government. In the first place, by its weakness to offer common positions and to endorse them. From the signature of the Peace Agreements, which has characterized more the opposition parties, aside from the insurmountable difficulty to articulate common positions, has been the dispersion of initiatives. The two more important initiatives of governmental control have been, on the one hand, to regulate and to watch the use that the president of the Republic makes of the "gasto secreto" -a fund that the president can use-; discretionarily and, on the other hand, to turn to the Court of Accounts of the Republic into a Organo Contralor. Both initiatives have failed; in that failure they have conjugated so much the own weakness of the opposition, as the persistence of the government party so that the same ones do not take shape in effective laws.

The correlation of political forces in the plenary session - favorable to the party ARENA -- also has undermined the directed efforts to control the government. In effect, ARENA has prevented, with the support of the PCN and the PDC, that the opposition parties can advance in their supervise initiatives. Thirdly, another insurmountable obstacle to advance in the due control of the government is in the ineffectiveness of the Court of Accounts of the Republic, controlled by the PCN. The Court of Accounts, far from being a responsible institution of the handling of the resources public, one has become accomplice of the corruption and governmental wastefulness. It explains the resistance of ARENA to the modernization of the institution and its transformation in an office controlling public spending. It also explains the capacity of pressure of the PCN on ARENA and the disposition of this party to make concessions to the first. Therefore, the three indicated aspects have prevented to the opposition parties to contribute effectively to the control of the government.

6.4

How fair and effective are the rules governing party discipline in the legislature, and to what extent is 'floor crossing' discouraged?

In El Salvador it is difficult to do a general valuation on justice and effectiveness of the rules that govern the internal discipline of the parties in the Legislative Assembly. It depends on the parties, its doctrinal consistency, its institutional strength and its political success. On the one hand, there are parties with a doctrinal body defined, institutionally consolidated and successful, like ARENA and the FMLN. These parties accuse a strong internal discipline, which is shown in the positions in block they take in the legislative debates. On the other hand, there are parties with a doctrinal body not so defined and a noticeable institutional weakness (PDC, PCN, PAN, CDU). These ones accuse a laxer discipline between their members, arriving to be frequent not only their incapacity to take positions in block, but the contradictions opened in their positions and, in not few cases, the resignation to their parties and the incorporation to others, which is allowed by the electoral legislation. Therefore, when it is spoken of the discipline to the interior of the political parties in the Assembly, it is inescapable to talk about, first of all, to the discipline or little discipline that emanates from the parties' structures. Evidently, all the parties have obligatory disciplinary norms for their members - norms that demand a certain type of position in parliamentary debates --, but not all have the same capacity to cause that their members obey them and respect them. For major parties those norms are more effective.

Another type of discipline exists: the one that regulates the internal operation of the Legislative Assembly and demands of each deputy (more than of each party) a certain behavior. Here one is due to know clearly that the internal discipline of the parties is not governed by emanated norms of the Legislative Assembly; each party has its own ones and has its own mechanisms to make fulfill them. What regulate the norms of

operation in the Legislative Assembly is the behavior not as much of the parties, but rather of the deputies, whose defined as representatives of the citizens and not of parties. And the deputies have an ample manoeuvre margin in the parliamentary debate; a manoeuvre margin that often forces them to turn aside itself of the discipline of the party, when its contradictory with the mandate that the deputy receives from the citizens. It's when this contradiction occurs that the deputies are themselves restricted in their autonomy and their capacity of decision. But, except for this situation that depends on the relation delegate-party, the disciplinary norms of the Legislative Assembly do not restrict the behavior of the parties nor the behavior of the deputies, whose have an ample space to negotiate, to approach, to move away of others and to debate. Still more, the norm that governs the internal discipline of the Legislative Assembly is barely constraining; for that reason, one of the characteristics of the Salvadorean parliament is the indiscipline of the deputies as far as the attendance to the plenary, its participation in the legislative commissions and the use of the time of exhibition in the debates. In this sense, the disciplinary norms in the Assembly are little effective; in themselves they are valid for all the parties and its deputies - this makes jousts --, but most of them do not fulfill them.

6.5

How far are parties effective membership organisations, and how far are members able to influence party policy and candidate selection?

In El Salvador, there is no a general law governing the organisation of political parties. They are only under what is established in their estatutos. Parties have a structure characterized by centralization of decisions in the general secretariat (or the presidency of the party), on which the sections of finances, avertising, ideology, organization and political education depend. People in charge of these sections (or committees) constitute, along with the Secretary General, the elite of the party, on which a network of average controls depends. Parties are organizations that do not tolerate the proliferation of smaller organizations in its interior. Even though, tendencies can be recognized. In ARENA, a party with a good defined institutional format, two partner-political visions can be distinguished with enough clearness -one interested in maintaining an overlapping between the party and the State and other inclined to a separation between both; one, more satisfied with the style followed until now and other, prone to renew that style to make policy -- endorsed by certain members, agglutinated by common affinities. Also in parties like the PDC, it has been clear the proliferation of different groups of interest, which has been meaned, after intense struggles, in the expulsion of the members from a group and the ascent to the headquarters of the winners. The PCN suffered a similar situation after the expulsion of one of the factions that formed in their interior. In general, when dissident groups of the official line have formed in the interior of political parties and the differences have become unsalvable, they became dissident groups that left their respective political institutions. Even though, it is pertinent to indicate that not always the internal differences in the parties have ended in expulsions. Certain consensus has been obtained by means of distributing some benefits for the main leaders with capacity to brake the party.

On the other hand, it's possible to indicate that the members of the political parties --near 3% of the electorate-- have a participation limited (and sometimes null) in the fundamental decisions taken in its interior. Generally, members of base are summoned to participate in the selection of candidates and leaders, but that selection is after the leaders parties's decision, before the Congresses or Conventions. This remarkably reduces the capacity of influence of the bases as much in the internal life of the parties like in its political attachment lines. The only party that it has tried, with little success, the participation of the bases in the selection of its candidates (for the presidential selection of 1999) was the FMLN; but, the experiment caused an internal crisis on the party, which prevented that it gave positive fruits.

6.6

How far does the system of party financing prevent the subordination of parties to special interests?

In El Salvador, parties obtain financing from public and private sources. A large amount of financial resources comes from contributions of its members, bank loans and possible donations. By this means, interests groups may influence party decisions. The greater the financing aid, the greater the subordination

of parties to special interests. The greater the party, the greater the need of financing. Nevertheless, a differentiation has to be made. When parties, like ARENA, have a wide high class militance, personal interests could influence the party as interests groups might do. For instance, it is said that ex president Alfredo Cristiani and the economic group that he leads have found in ARENA a space of defense and protection of their economic interests. In this sense, ARENA could have been oriented according to this situation but an internal conflict could have been generated. The internal struggles for the control of the party at present time could have an explanation here. The predominance of the financial sector --sector in which Cristiani has strong interests-- has been favored by the ARENA governments: high interest rates (that favor the concentration of the circulating in the banks); little controls in the proliferation of companies that finance credit cards; promotion of the tertiary activities (commercial centers, fast food) and privatization of the system of pensions. His position in the party allowed him to influence in the decisions of the government. Until recent days, Cristiani was the president of the party and became a man with sufficient resources to impose his vision within the party and to influence in the decisions of the government of Armando Calderón Sol. The electoral failure of year 2000 forced an overhaul his role in ARENA; his exit of the COENA was not *made hope*. Nevertheless, his economic and political power (although its prestige as leader has decayed) still affect ARENA and the government of Francisco Flores. What as much? It is not known yet.

In other parties less strong financially, the subordination of the institution to certain individuals and groups are more well-known and scandalous. So, parties as the PCN and the PDC are seen by its leaderships as their property, as it belongs to them and from which they must obtain the biggest benefits. Protection, opportunity to obtain favors --economic and jobs--, handle to mobilize influences, space to gain notoriety.

6.7

To what extent do parties cross ethnic, religious and linguistic divisions?

Salvadoran society characterizes itself by the ethnic homogeneity -a racially mixed population-- and linguistic- all Salvadorans speak and write in Spanish. In this sense, from an ethnic point of view, there are no significant minorities socially that the population rest of nor that distinguish themselves of vindicate pacific or violently the recognition of its racial difference. The same thing can be said about the linguistics divisions: they are nonexistent, because all the Salvadorans recognize themselves in the Spanish language and who still preHispanic languages speak -nahuatl, for example-- constitute a not much significant minority of the population, without some pressure capacity and moreover normally speaks and writes in Spanish. In the religious plane, the population is mainly catholic, but important protestant groups exist, assigned to different sects and churches: Assemblies of God, Elim, Adventists of the Seventh Day, Baptists, Shalom and Maranatha. Nevertheless, that diversity has not provoked religious conflicts of any type, but rather a competition between the different churches to attract believers its respective spaces of oration and cult. It is not had, then, a clear religious division, but a conglomerate of supplies of salvation, between which the believers move with enough flexibility. In the decades of years 70 and 80, the supply of originating salvation of the catholic Church demanded of the believers a social commitment that, many of them, perceived like an unacceptable risk. They rather emigrated towards the protestant sects, whose supply of salvation did not suppose social some commitment, but a return towards the inner life. In years 90, the catholic Church has a supply of similar salvation in many aspects to the one offered by the protestant sects, with which the differences in the cult and the rites have even been stumped, leaving the Salvadorans an ample sapce to practice their faith

Thus, the political parties in El Salvador do not express the interests of ethnic, religious or linguistic groups. For not to have marked ethnic, linguistics or religious differences, the parties are responsible to interests and necessities shared by the different social groups. Not even the own segmentation of classes of the Salvadorean society even corresponds with the own social endorsement of each party. So, ARENA, a party with an explicit enterprise vocation, counts between its bases of support with sectors farmers and middle-class. The FMLN, on the other hand, mobilizes to social sectors of the middle-class and medium industrialists, although its explicit commitment is with the majority sectors of the country. Other parties, like the PCN and the PDC, either do not find an exclusive support in a certain social group, but in social sectors with diverse and often contradictory interests, from a social and economic point of view. A party that has become an exception to the rule, is the National Authentic Party (PAN), that has tried to respond to a determined social group almost exclusively (the demobilized of the army), which, as well, has pronounced

its endorsement opened to that party. But, in spite of this tried exclusive social allegiance, the PAN has looked for the electoral support of sectors social groups with interests different from those from the demobilized ones. In this sense, in El Salvador there are no parties overturned exclusively to a determined social sector, either it is for ethnic, religious or linguistics reasons or is for trade names economic-. From a point of view of classes, the parties - even those that as the FMLN and ARENA had in its origins an allegiance of defined affluent class -- are open to the different social segments, whose interests say to defend: farmers, workers, professionals and industrialists, women, young people and adults. Finally, a party exists on which agrees to say a word: Partido Demócrata Cristiano (PDC), who has been confused with a party catholic, integrated by catholics and overturned to the defense of the exclusive interests of the catholics. Then, the PDC never has been a catholic party neither by their composition nor by its social commitment: from his origins and during their stage of main party of opposition to the military dictatorship (1960-1980) it was open to ample social sectors of which it did not demand nor that professed the catholic faith nor that embarked in a fight in defense of the interests of the catholics. In sum, political parties in El Salvador resembles the Kirchheimer's "catch-all party".

6.8

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

They are not being taken measures yet. In the last trimester of 2000 year two party conventions (for ARENA and the FMLN) will join. Things might start to change since then.

7.0 Government effectiveness and accountability

Is government accountable to the people and their representatives?

To this date, there are not available mechanisms by which civil society can request information from elected officers. Elected officials are delegated on people's behalf; the public opinion is only relevant at an electoral period in order to appraise what office holders have done along the way. This is explained by:

The absence of a truly independent comptroller institution. The Court of Accounts is governed by a 40 years old law, reformed insufficiently in 1995. The current court of accounts responds to present political interests because their administrations has been assign to PCN (National Conciliation Party) as a quota of power.

There exists a weakness of the public institution's image. Acting by inertia, without precise goals, these institutions are far from accountable.

A none professional public administration which therefore responds more to political lineaments. This limits their efficiency and effectiveness and leads to corruption.

Political parties are weak and consequently unable to work with transparency and a clear national perspective. Their actions are opportunistic and based on inter parties alliances which excludes civil society's proposals.

An authoritarian culture still persists. The elected officers do not inform and resist to inform. Voters do not request enough information. Free expression exists, but not the right to free information.

7.1

How far is the elected government able to influence or control those matters that are important to the lives of its people, and how well is it informed, organised and resourced to do so?

The government has a very limited capacity, in order to respond to the necessities and expectations that generated his election, this can be explained by the following factors:

- Since 1999, the economy has entered into a crisis and it has only grown 2.1%, the fiscal deficit increased 3% of the GNP, the public investment that already was insufficient diminished 12% and the external debt increased 3 thousand million dollars, near 24% of the GNP.
- Five out of ten Salvadorans live in the extreme poverty and the country occupies the 107th place out off 174 evaluated countries by the PNUD's Human Development Index.
- Corruption in public administration institutions is out of control and citizens insecurity continue to grow. Transactions cost represent a heavy burden for salvadorans.
- Little solutions have been given to overcome the effects of hurricane Mitch and little measurements have been carried out in order to prevent another climate catastrophe.
- To this date, no governmental plan has been presented, not even a national development strategy, so that the different sectors could have an idea of which direction is the country taking.
- The cabinet, that was so eulogized neither has given any signs in order to known the direction that is taking the country, or shown any capacity to control 29 administrative strikes occurred in 9 months of their mandate.
- The National Modernization Commission disappeared and instead a direction which depends and belongs to the Presidency's Technical Secretary was created.

7.2

How much public confidence is there in the effectiveness of government and its political leadership?

Population in general and the private business sectors have lost trust in the current government and in their effectiveness. This is explained because they do not see effective policies and programs to tackle problems as economical reactivation, civil security, corruption, delinquency and most of all, a plan to diminish the growing social conflict. It is clearer the absence of effective policies than its presence. It seems that the government is devoted to administer an economical disequilibrium, ignoring a very conflicting social situation.

7.3

How effective and open to scrutiny is the control exercised by elected leaders and their ministers over their administrative staff and other executive agencies?

The scrutiny up to now is very limited. Public servants are guaranteed by their political affiliation to the ruling party.. To be taken into account we have that:

- ✧ The Civil Service law is 38 years old and the new modernization trends are seen as an attempt to downsize the bureaucracy creating resistance in the staff.
- ✧ The previous governments emitted ordinances for public employees early volunteer retirement to reduce the total number of public servants but instead new employees were hired with higher salaries leaving a generalized feeling of frustration and increased resistance among the employees.
- ✧ The Court of Accounts, principal state comptroller entity is ruled by a 40 years old law, reformed on 1995. The administration of the general comptroller has remained in hands of the national reconciliation party – PCN – for the last decade as a result of a political pact with ARENA.
- ✧ Even though arbitrariness and corruption acts are publicly denounced, there are not sanctions for the guilty officials.
- ✧ The Presidency's Technical Secretary acts like a super ministry in charge of all the modernization process (understood as a privatization process). Directly associated to the president this ministry is above all the procedures and out of any possibility of control by other than the president.

7.4

How extensive and effective are the powers of the legislature to initiate, scrutinise and amend legislation?

Formally speaking, the Assembly has wide powers in order to scrutinize and amend the legislation, but they are not very effective facing present demands:

- ✧ Deputies are not elected by districts and per persons but rather are voted by political parties.
- ✧ Deputies do not feel obligated with their voters, they are distributed to the political parties, in quotients and for residuals system.
- ✧ 20 deputies out of the 84 belong to the national list and they represent the country as a whole.
- ✧ A great part of the laws enacted in the last 8 years have had to be changed or corrected.
- ✧ The ARENA fraction in the national assembly behaves as a part of the executive.
- ✧ The Supreme Court of Justice also participates in the law elaboration, when unconstitutional matters arise..
- ✧ The public opinion has given a poor evaluation to the parliament.

7.5

How extensive and effective are the powers of the legislature to scrutinise the executive and hold it to account?

Formally the powers are wide according to the Article 131, 132 of the Constitution. The Legislative Assembly has a right to form commissions in order to investigate and also can interpolate ministers and officials of autonomous institutions, as well as to approve the work of the executive, but in the practice there are no mechanisms for this to operate. Example, only once in 8 years has the assembly exercised the attribution of interpellation to make the executive accountable. This is due to several reasons:

- ↳ The deputies don't have independence from their political parties in order to vote and express opinion. This implicates that the fractions that make simple majority (and for last three consecutive periods are in hands of the right wing party) don't permit scrutiny, they consider themselves as part of the central government.
- ↳ Corruption exists in the interior of the political parties (small parties are subject to this more frequently). Some deputies are known for selling their votes to particular interests. The work of special commissions appointed to investigate on national affairs is jeopardized by this situation.
- ↳ There are no mechanisms in order to exercise a true control in the Assembly

There is no culture of control the political parties at the Legislative Assembly.

7.6

How rigorous are the procedures for approval and supervision of taxation and public expenditure?

the procedure is not rigorous. The Constitution states that the Council of Ministers is the one to elaborate the work plan, the fiscal year budget of income and expenses and to present it to the Legislative Assembly (Article 167 numeral 2 3). In turn the Legislative Assembly approves it or disapproves it. Taxation and salaries to the officials and public employees are among its attributes as well (Article 131, numeral 6, 8 9). To the Court of Accounts corresponds to watch over the receipts, the custody, the general allocation of public funds; as well as the liquidation of taxation, appraisals, and other taxation, when the law determines it (Article 195 of the Constitution, numeral of the 1 at 9).

These processes are done in a very mechanic way and don't affect the core of the proposals done by the executive.

Although fiscal policies have been reformed according to the framework of the structural adjustment program, little has been done to continue with these reforms in order to achieve the fiscal justness and a better distribution of the available resources above all in order to increase the investment in social programs (education, health, housing, work, etc.).

7.7

How comprehensive and effective is legislation giving citizens the right of access to government information?

Neither the Constitution of the Republic or the secondary laws state the access to the information or rule the right to information. The authorities of the several organs enjoy of immunity and discretionally and once elected don't feel obliged to be accountable. Furthermore, is case of being demanded to inform it will be on his/her discretionarily to do it.

7.8

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

To the moment a series of measures taken are related with the modernization process. Several laws are to be considered by the next assembly:

- ↵ Public probity
- ↵ General Comptroller of the Republic
- ↵ Commission of Ethics for the Legislative Assembly
- ↵ Anti Corruption Commission
- ↵ Biding Law for the Public Sector
- ↵ Law of the public function
- ↵ Reforms to the electoral code and to constitutional level about the elections
- ↵ Fiscal reforms and monetary policies.
- ↵ Entre las más urgentes están la Reforma Fiscal pero dentro de un pacto fiscal entre fuerzas políticas para que sea sostenido a largo plazo y se puedan recaudar más fondos para inversión social y además para que se tenga un sistema que no sea regresivo. La ley de probidad pública y una nueva ley de Contraloría General de la República son urgentes porque no se puede continuar despilfarrando los dineros públicos que tanto se necesitan para disminuir la pobreza.

8.0 Civilian control of the military and police

Are the military and police forces under civilian control

Executive Summary

Since the Peace Accords of 1992, civilian control over the Armed Forces and the Police have increased and consolidated. The most important achievements that have produced this result are: The separation of the Armed Forces from the duty of public security and its disentanglement from the political life of the country. The creation of the PNC as the only institution in charge of the task of public security. The establishment of a series of institutions (PDDH, IGPNC) whose task is to monitor the observance of the respect of human rights and police fiscalization. Internal units of the police (UC, UID, UIA) were deployed for the control of the different police activities, disciplinary and criminal investigation. The most serious menace to this positive progress is organized crime which has permeated all level of society, and, with its activities, has generated a wave of crime and violence provoking incertitude in the general public.

8.1

How effective is civilian control over the armed forces and how free is political life from military involvement?

From the initiation of the armed conflict in 1980 until the signing of the Peace Agreements in 1992, the Armed Forces were totally reorganized in order to be able to face the exigencies of the conflict, (as it was denominated), of low intensity. This reorganization implied a drastic increase of the number of military personnel, and in the context of the confrontation of the Cold War the process U.S. military aid also began at all levels. In what refers to military training, this aid materialized in the training of especial military forces of the type necessary for the neutralization of the threat. This training took place both in the United States and in the military bases in Panama. A group of U.S. advisors was also assigned to help in the direction of the war and a qualitative and quantitative increase of arms and resources took place.

All this process culminated in generating an excess of power of the Armed Forces during the years of the duration of the armed conflict.

The Peace Agreements subscribed by the contending parties (January '92) not only ended the hostilities, it also created the basis for the democratic development of the Salvadoran State. This step naturally had to include the correction of the imbalance of existing power based on the new relations of the protagonists actors. In what refers to the Armed Forces this implied that it had to reattribute its own natural role in a society in the process of democratic evolution. As a result a profound purge of the commands was instituted by civilians accompanied by a marked reduction of the effectives, the extinction of all paramilitary structures and most importantly of all, the Armed Forces were separated from the role of public security. A new doctrine was also established to orientate its institutional regimen, educational system and its actions circumscribed by the observance of three principles that it contained. These very principles are the spirit that gives life to the constitutional reforms that establish the new normative framework of the military institution and its new role and mission in a democratic society. It due to the observance of its doctrinal principles that the Armed Forces has implemented that one can observe the level of acceptance that it has had in relation to its new professional role. In this sense, it can be affirmed that the actions of the Armed Forces during the decade of the 90's have been subject to its doctrine; it has its mission of defending the national sovereignty of the State seriously and professionally, as was demonstrated by the measure and prudence with which it faced the increase in tensions due to border problems with Honduras in the sector of Nahuatique at the beginning of last year.

The Armed Forces have also assumed their humanitarian role of service to the nation as was demonstrated during the national emergency caused by hurricane Mitch in November '98, and also during the period of major tension during the month of March 2000 caused by the medical and Union strike put into effect by the workers of the Salvadoran Institute of Social Security (ISSS) and which caused the suspension of hospital services. During this period the Armed Forces put their medical personnel and military installations at the

service of the authorities of Public Health in order to attend the public. Of course following instructions of the President and its General Commander Priority has also been given to the strengthening of military-civilian relations in order to contribute to the economic and social development of the country. One example of these programs is the participation of various garrisons in the National Hydroponics Project under the coordination of the Ministry of Agriculture and Stock (MAG) and the United Nations Development Project (PNUD).

The level of subordination and obedience that has been reached by the Armed Forces regarding political power was broadly put into evidence when in December '98 President Armando Calderón Sol, in an unprecedented action, refused to accept the order of promotions to the rank of General which was proposed by the Promotions Tribunal and he pressured the fore mentioned entity to promote two officials of his preference to the rank of General. Even though this caused an intense national debate and generated uncertainty and inconformity in the military establishment, motivating the renunciation of both the Minister and Vice Minister of Defense, the Presidential decision was accepted and obeyed.

The respect of the sovereign will of the people and of all political and social change that this will generates, in conformity to the constitutionally established procedures, has also been put in evidence with the four electoral processes ('94, '97, '99, 2000) that have taken place during this stage of changes in the Armed Forces, which has not intervened in any way in order to try to influence the results. Also, there has been no return to the old formula of the coup d'état since 1979.

The Armed Forces have also provided ample proof of their apolitical role by respecting what is stipulated in Art.82 of the Political Constitution which forbids any member in service from belonging to political parties, obtaining any posts by popular election or disseminating political propaganda, or voting inside military installations. Nonetheless the phenomenon that many retired military high ranking officers have demonstrated a desire to participate in politics has been observed. This is how some of them occupy posts as a result of popular election, as members of Congress or as Mayors. Many candidates of the military caste participated in this years electoral process. The good results obtained by the National Conciliation Party (PCN) is also worthy of mention: this party has been considered as the "biggest winner" in the elections. The recovery of this political party, which has a good number of retired military in its ranks and which is identified by citizens with previous military regimes, can be interpreted as a reflection of a desire of some civilian sectors to return to past regimes, as they identify the conduction of the State by the military with order, efficiency and a low crime rate.

Regarding the professional degree that has been reached by the Armed Forces, the following can be affirmed:

Since 1994 the Arce 2000 Plan was implemented. This plan seeks to modernize and to achieve greater degrees of professionalism in the Armed Forces in virtue of its constitutional responsibility. The Plan has the following objectives:

- 1- To update, elaborate and execute the judicial institutional framework for the maintenance of a harmonious legal order with the Constitution.
Observe the doctrinal principles, values, obligations that can ensure the permanence and functionality of the Armed Forces, as an essential institution for national security.
- 2- Modernize the Armed Forces by means of a system that permits its members to act in a coordinated manner in order to optimize its functions and achieve maximum efficiency.
- 3- Modernize the Educational System of the Armed Forces and to integrate it to the National Educational System.
- 4- Implement Obligatory Reserve and Military Service in compliance with the law.
- 5- Strengthen military-civilian relations.
- 6- Develop strategies orientated at achieving a degree of economic self sufficiency in the units where this is possible in order to facilitate their sustainability and development. (1)

This Plan was executed according to the following chronogram: In 1995 the phase of study and design, in 1996 and 1997 the phase of experimentation and since 1998 it was been implemented, having been concluded at the end of the millennium. At present an evaluation of the objectives which were and were not reached is being executed. The Arce 2005 Plan is also being studied. This Plan seeks to implement a much more ambitious process of modernization.

- Two more courses for the preparation of high ranking officials have been integrated: The Course of National Defense and the High Strategic Studies. In the latter course superior

officials, accompanied by respected professionals of all political orientations analyze the national problem and its context while discussing the problems that under specific circumstances can affect national stability and development. Eight promotions of specialists in Strategic Planning and National Security have graduated up to now.

- Last year, for the first time, the incorporation of Women Cadets in the Military Academy was permitted. These women have to complete the same levels that are contained in the traditional curriculum in order to opt for a position as professionals in the arms career. Out of 754 prospect applications received by the Military Academy, 168 were aspirant female Cadets.(2)
- In order to avoid any type of confusion all new military professionals are well formed in establishing the difference between the concepts of security and defense, the latter being the mission of the Armed Forces which has the objective of guaranteeing territorial integrity and sovereignty in the face of an external military threat. Security is a broader concept, founded on the unrestricted respect for individual and social rights. National defense, economic, political and social aspects that exceed the Constitutional mandate of the Armed Forces, which are the responsibility of other sectors of society and the State are also made clear.
- A complete respect of the principle that the maintenance of internal peace, tranquility, order, and public security is alien to the Armed Forces' ordinary mission exists. It only intervenes under extraordinary circumstances in conformity with the constitutionally established procedures, when an organism of public security has exceeded its function of the maintenance of internal order and peace. Under this consideration a Conjoint Task Group (GTC) has been implemented. This Group patrols the rural areas of the country. The creation of this Group obeyed the demands of the citizens of a guarantee of greater levels of public security in those areas, due to the fact that a large crime wave had developed. The GTC is formed by 6 or 7 members of the Armed Forces and one or two members of the Police. The latter are the only ones authorized to effect any type of procedure and the military personnel is only for support. Even though the use of these units has had a positive aspect regarding the combat of rural crime, some problems exist because of the inequality of wages and benefits that exist between the police and the soldiers.
- Lately, as a result of the announcement made by the Director of the National Civilian Police (PNC) of the "Plan for the Combat of Organized Crime in El Salvador", an Agreement of Conjoint Patrols with the logistical support and equipment of the Armed Forces for the U.S is being considered. The incorporation of the resources and personnel of the Air Force of El Salvador (FAS) is also being considered. Opportunely, three days after the announcement of the plan (19-03-2000), an A-37 fighter jet of the FAS intercepted a non-authorized aircraft flying over Salvadoran skies. The craft was escorted until it left the national territory and was obliged to land in Guatemala where it was discovered that it was transporting 214 kg. of cocaine.(4). The announcement of this last plan and the incident with the aircraft incited a broad debate evaluating whether these actions contemplated under the Plan do not violate the constitutional Arts. 168 and 12, specially regarding permitting foreign military personnel to operate inside the national borders.
- Last of all, and as a result of the Armed Forces facing up to its new role in Salvadoran society, the necessity of justifying its existence in circumstances that do not present any marked external threats, in which the majority of citizens considers it to be an obsolete institution, whose economic resources could be put to better use in education, health or housing, comes to light. In view of this situation the Armed Forces justify themselves as the ultimate safeguard of the State, from the perspective that it does not adhere to any pretense of political power, and assumes its instrumental character naturally and in a disciplined manner.(5)
- In what refers to the impunity of the members of the Armed Forces, the most relevant present fact is the political debate about the constitutionality of the Amnesty law decreed in 1993. This is the result of a condemnation received by the government of El Salvador from the Inter American Commission of Human Rights for not collaborating in the investigation of the assassination of six Jesuit priests and two of their collaborators in November 1989. The high ranking authorities of the University of Central America José Simeón Cañas have requested the elaboration of a law to process the alleged intellectual criminals of this atrocity, who include a previous President of the Republic and the Military Chiefs who were in the High Command at the time.

(answering observations)

- a. Murcia-Pinto, José Orlando: “El Rol de la Fuerza Armada en la Elaboración de la Política de Seguridad y Desarrollo Nacional”, Revista Semestral del Colegio de Altos Estudios Estratégicos de El Salvador, Año Tres, No.6, Diciembre 1997, San Salvador, El Salvador.
 - Ramírez, William Edgardo: “Fuerzas Armadas Humanitarias y la Fuerza de Tarea Aguila”, Revista Militar, Enero-Marzo 1999, San Salvador El Salvador.
 - Giralt-Barraza, Salvador A.: “La Subordinación del Poder Militar al Poder Político”, Revista Militar, Octubre-Diciembre, San Salvador, El Salvador.
 - Garay-Saravia, Roberto Antonio: “75 Años de Institucionalidad”, Revista Militar, Enero-Marzo, 1999, San Salvador, El Salvador.
 - “Nombran Nuevos Titulares de Defensa”, La Prensa Gráfica, 30 de Diciembre 1998, Pag. 26.
 - “Nada de Golpes Militares”, La Prensa Gráfica, 10 Enero 1999, Pag. 4.
 - “Calderón Presionó por Ascensos”, La Prensa Gráfica, 12 Enero 1999, Pag.4.
 - Calderón Sol Presionó por Ascensos Militares”, La Prensa Gráfica, 11 de Noviembre 1999, Pag. 14.
 - “Flores Molesto por Caso Jesuitas”: Más, 31 de Marzo del 2000.
- b. Are Government and Military interests sufficiently separate?

The Government and Military interests are sufficiently separated and the government is no longer wary of the Army and it is prepared to act politically in a way that could upset individual senior officers.
- c. How will the military react if a future FMLN government was to repeal the Amnesty Law ?

It is very improbable that an FLMN government would repeal the Amnesty Law, because some of their current leaders could be prosecuted if the said law is implemented. But if that was the case, I consider that the military reaction would be a very passive one, maybe one of moral support for the prosecuted, because most of the army officers that will be affected by the law are already retired and the senior officers that constitute the present top echelons of the Armed Forces would not be affected at all.
- d. What degree of support is there for police/army (GTC) patrols in the areas where they are active?

The degree of support is high because for the population living in rural areas the GTC's are the only units that provide certain coverage against crime. Most of the residents in those areas collaborate with the units providing them with shelter and food.

8.2

How publicly accountable are the police and security services for their activities?

When the National Civilian Police (PNC) was distributed in all of the national territory in 1994, all the old security forces (National Police, Treasury Police, National Guard) were demobilized. Since that time, in accord with the constitutional mandate which dictates that “the National Civilian Police will be in charge of the functions of the urban and rural Police and will guarantee order, security and public tranquility in compliance to the law and strictly respecting Human Rights.(6) According to what was established in Art.1 of its organic law, the PNC is the only police force with national hegemony. Since its conception in the Peace Agreements of 1992, the Police force was envisioned as a professional and civilian institution (totally independent of the Armed Forces) which is alien to all party politics. In order to impede the degeneration of the aforementioned civilian force with time, a series of controller institutions and control mechanisms were founded. The following are the most important:

The ordinary Command of the Police is exercised by the General Director as the maximum administrative authority of the PNC, nonetheless, he exercises this authority under the Ministry of Public Security (Art. 4 of the Organic Law of the PNC). On this issue it can be said that after the broad scope of authority and influence or even direction exercised by the ex-Minister of Security over the Police, the present Minister

has assumed a more passive role, which has permitted a large concentration of power by the present Director of the PNC. A large debate has also arisen as to the necessity of the existence of this Ministry. Nevertheless, the obstacle for its elimination is considerable as the existence of the Ministry is contemplated in the Political Constitution (Art. 159)

According to Salvadoran legislation (Art. 159) the Procurator of the Defense of Human Rights is the maximum authority in aspects concerning the guarantee of Human Rights. Since the institution that this official presides (PDDH) was constituted, citizens saw in it support and the guarantee that Human Rights would be respected. The confidence in this institution was reflected in the large flow of people who presented denunciations. However, as a result of a conflictive election of Eduardo Peñate Polanco as Procurator of this institution, it suffered a great loss of credibility and confidence, both locally and internationally. He was practically obliged to renounce in February 2000 because of demonstrable ineptitude and anomalies that occurred during his office. Nonetheless the PDDH accepted 929 denunciations of violations of the right of personal integrity and 225 denunciations for violations of personal freedom. 1,437 files of Human Rights violations by the PNC were also opened.(7) During the period of between January and June 1999 the PDDH sent 24 resolutions in which it established Human Rights violations committed by policemen to the Inspectorate of the PNC. These resolutions affect the General Director, the Sub-General Director, 3 Sub-Commissioners, 4 Sub-Inspectors, 3 Sergeants, 1 Commander and 30 Agents. (8)

After having been conceived in the Peace Accords, the General Inspectorate of the PNC (IG –PNC) came into legal existence with the Legislative Decree 269 , of the 25th of June 1992, in which the Organic Law of the PNC was approved. Art 8 of this law establishes that the Inspectorate shall operate under the authority of Minister of Public Security and will be in charge of controlling and overseeing the actions, operational services and Human Rights aspects of the PNC. However it took more than two years to appoint the first Inspector General, who began his functions in October 1994, and who was removed in March 1995. During his short office the institution only proceeded to contract professional and support personnel (12 people). Between March and October 1995 the General Inspectorate had no Head and the institution entered a period of distortion of its functions of vigilance and control of the Police. It was not until August 1995 that a new Inspector General was proposed, who after being sworn in began his office in October 1995. At the beginning of his period of office the General inspector had 9 professionals. In April 96 the professional personnel ascended to 44. Nonetheless , even though the human resources were available, the development and work of the IG-PNC was affected by the lack of the assignation of the necessary material resources for its operation. This was due to the lack of a national cultural tradition in controlment. The IG-PNC was identified as a "finger pointing" destructive entity. The Minister of Public Security at the time was not interested in the establishment of a strong IG-PNC and the police Command accepted with distrust the controlment to which the institution was subject by an institution that was foreign to the PNC. With time, and with the assignation of the necessary resources at the beginning of 1997, and the professional and objective work of the representatives of the IG-PNC, the work of the IG-PNC became more efficient in its fulfillment of its legally assigned function. The IG-PNC executes its functions by the development of the following activities:

- Initial receipt and processing of complaints and denunciations
- In 1997 586 denunciations were received. In 1998, 1,014 and in the period between January and July 1999 619 cases were attended. (9) -During the period of time between June 1998 and May 1999 843 citizen denunciations were received. 30% of these concerned alleged nepotism and abuses of authority effected by policemen , 34% were due to bad police or administrative procedures, 14% were denunciations of bad conduct, 16% of conduct constituting criminal action and 6% police negligence.(10)
- Inspections of Police Units
Between June 1998 and May 1999 1,500 inspection visits to Delegations, Sub Delegations, Police Posts and Operational Divisions of the PNC took place. (11)
- Evaluations of Police Personnel
- According to the Regulations, the Inspector General effected an annual evaluation of the degree of knowledge that the police personnel had on Human Rights. (When this report was written the data of the results had not been published yet). The results obtained in this same evaluation in December 1998 provided the following results.
- 92% of those examined achieved an evaluation of good and excellent. Only 8% failed.
- The higher the rank the better the knowledge there was on Human Rights.

- When analyzing specific knowledge that was examined it can be observed that, in the common questions, the least knowledgeable area refers to the discrimination of women and the higher degree of knowledge is related to the Right of Property.
- In Executive and superior levels the least knowledgeable are related to illegal entry and the greatest degree of proficiency is achieved in the area of the Rights of Victims. (12)
- Public Opinion Polls
Every year the IG-PNC effects a Public Opinion Poll on a national level in order to discover in a systematic and objective way the perception that is held by the citizens regarding the quality of Police action. The last poll was implemented in 1999. The most relevant results were:
 - According to the poll 6 out of every 10 Salvadorans consider that the members of the PNC respect Human Rights. However, 1 of every 3 inhabitants have the opinion that the Police does not respect Human Rights.
 - 50% of those polled consider that the most deficient aspect of the police work is related to the strategies for combating crime.
 - 61% of those polled manifested that they have confidence in the Police. The remaining 39% thought the Police inspires distrust.(13)
 - For the first time ever and with the aid of the European Union, the IG-PNC implemented an opinion poll among the members of the PNC on their opinion on the Institution. This poll was effected in October 1999, polling 100% of the Sub-Commissioners and Sub-Inspectors, 50% of the Sergeants and commanders and 30% of the Agents. 6000 people were polled. The issues on which the police were polled were, work atmosphere, perception of acceptance by citizens, efficacy of action, discipline. The most relevant results were the following:
 - 67.70% of those polled considered that the formation they received in the ANSP was insufficient.
 - On working conditions 20% regard that these have deteriorated.
 - The lack of resources (69%) was signaled out as the main reason for not patrolling. The second reason (16%) is a cause for concern as it is fear to act because of judicial support.
 - 86% of the policemen considered the fight against organized crime to be insufficient, and 75% considered the fight against common crime as insufficient. 54% considered that the PNC is not effective.
 - Police discipline was classified as insufficient by 44%. (14)
- Meetings with Personalities
The IG-PNC has continually effected meetings with personalities in all the Departments of the Republic with the objective of getting to know the opinions and suggestions on improvements in Police action. At these meetings representatives of various Political Governorships, Municipalities, churches, Universities, educational centers, associations and other "live forces" of the community. During the period between June '98 and May '99 360 meetings of this type took place. (15)

The PNC also has two formal units for internal controlment. According to what has been established in the last incision of Art. 10 the Organic Law of the PNC., The Unit of Controlment (UC) has the function of controlling any service lent by the police and the Unit of Disciplinary Investigation (UID) which has the function of investigating the faults committed by members of the Police. Both Units operate under the authority of the General Director of the PNC. Regarding the disciplinary regime, according to what is established in Art.39 of the Disciplinary Regulations of the PNC, the Disciplinary Tribunal of the PNC is the competent organ to be instructed at first instance of the procedures that are being followed against police personnel for alleged serious faults and very serious faults and can impose the corresponding sanctions. During 1999 the UID investigated 992 cases against police agents and based on the investigated denunciations 363 agents were removed and 1,124 were sanctioned. At the end of the year 131 policemen were sent to jail in the Penal Center of Apanteos (the only penitentiary that has been designated for holding members of the Police) under criminal charges or those who have been convicted and are serving their respective sentences.(16) In the police opinion poll effected by the IG-PNC 50% of those polled considered that the disciplinary processes were moderately just and 30% considered them unjust. 48% of those polled also considered that the Disciplinary Tribunal is not impartial. 67% of the policemen thought that light sanctions are not equally applied. (17)

In November 1999 the Unit of Internal Affairs began to operate. Its function is to investigate those police elements involved in criminal acts. However the Unit does not have the material or financial resources to be efficient in its task. Since the present General Inspector of the PNC assumed office in the middle of last year and according to the government policy of strengthening the IG-PNC, both the Unit of Controlment and the Unit of Disciplinary Investigation and the Internal Affairs Unit factually depend on his functional direction even though not formally. This situation has generated a public debate that has intensified as a result of the pretension of the Director General of the PNC that the IG-PNC remain under his authority and not under the Minister of Public Security. This position faces strong opposition.

Thee maximum controllership is conformed by the social communication media and public opinion. Various cases stand out which both have had a protagonist role:

- In the middle of last year in the town of Aguilares, the inhabitants who were confronting a wave of kidnappings, and who suspected that local police elements were involve in these criminal activities initiated mass protests that resulted in an investigation of five policemen made by the General Attorneys Office and the PNC. Finally, in the face of total public repudiation, 80% of the assigned police personnel in the town was removed.
- Thee coverage of the disturbances that took place, effected by the social communication media, (7-03-2000) between Union members of the Salvadoran Institute of Social Security and the Unit of Maintenance of Order (UMO) generated an intense criticism of thee police actions. Specially as tear gas was launched inside the Hospitals, an action that violated norms of international humanitarian law. The national debate that resulted was of such magnitude that some Members of Congress demanded the removal of the Director General of the PNC invoking Art. 131 No.37 of the Political Constitution.

It is important to mention that the High Authorities of Public Security are regularly invited and participate in radio and television opinion programs in which they are frequently questioned and respond to public concerns.

The PNC is also observed by a broad system of non-governmental organizations (NGO's), which monitor police work in matters which concern them. An example of the impact that these NGO's have is the organization Entre Amigos which oversees homosexual rights. This organization denounced the lack of interest demonstrated by the PNC in the investigation of 28 murders of homosexuals. As a result of the public pressure that this generated measures are being taken to correct this situation.

It is important to point out situations that have generated controversies regarding the PNC:

- Thee appointment of the present Director of the PNC generated a series of criticisms because he used to be the Director of the Intelligence Organism of thee State (OIE).
- In the middle of last March the General Director presented publicly a plan against organized crime in which he asked for a series of polemic constitutional reforms that sought to improve police efficiency. One of these was the reform of Art.24 so that the police would be able to intercept telephone communications. The other was the reform of Art. 13 that pretended to increased the period of detention and isolation of suspect.

(answering the observations)

- a. Have the Police and Security Services effectively been transformed into law-abiding institutions or do problems with Human Rights violations persist?

Ans.- The Police has made an immense progress in trying to become a law abiding institution, nonetheless, some problems with human rights violations persist, but most of them are caused by individual actions or errors of judgment made by Police personnel and not due to institutional policy.

- b. Why did the Assembly elect Polanco?

Polanco was elect as a part of a political compromise within the Assembly. Some public offices are bastions of certain political parties and are given to them as "power quotas". The PDDH was negotiated in favor of the Christian Democratic Party (PDC) and it was this Party promoted Polanco to the post.

- c. Are PDDH/IG-PNC/UC/UID/UIA adequately funded?

No. They are completely under-funded. Only the PDDH has a budget of certain respectability, but not enough for its immense task.

- d. Are they effective and are their decisions respected?

Since the first draft for this report was written, a series of events have taken place that have increased the efficacy and protagonism of these units, mainly in the case of IG-PNC. This series of events that occurred between February and June of this year were highly publicized in the social communication media. They consisted in the discovery that police personnel were involved in kidnappings, bank and hotel robberies and there was one case in particular (June, 2000) in which a police agent who was in service in a GTC shot his unit companions and the civilians that gave them shelter in cold blood. As a result of his atrocious action, five members of the military and a civilian woman were dead and his police companion and two minors were injured. All these events caused a total indignation in the country, and this sentiment was seized by the social communication media that put in motion the mechanisms of pressure to initiate a process of depuration of the police. This situation motivated the President of the Republic to form a Special Commission conformed by the Inspector General of the Police, high level Police Chiefs with reputable careers, and civilian notables. This commission presented to the President a list of 216 police personnel of all ranks that they considered “depurables”, after checking their records and individual cases. The President initiated the necessary procedures to change the existing law in order to make the destitution process swifter. As a result, Article 34 of the Organic Law of the PNC, which deals with the disciplinary regime, was modified. The most important aspect of this modification was the institution of a briefer disciplinary process which takes place by means of oral hearings. This change exponentially increased the protagonism of the IG-PNC in disciplinary matters, as in fact, it assumed the role of prosecutor in the above mentioned hearings. As a result of the abbreviation of the procedure, since July this year, when these procedures were implemented, until August 77 members of all ranks have been removed from the PNC.

- e. What are their individual areas of interest?

PDDH:	Human Rights in General.
IG-PNC:	- Observance of Human Rights by the Police - Direction of investigations of disciplinary infringements - Supervision of operation and management of PNC
UC:	- Detect misfunctions in the police services.
UID:	- Investigate disciplinary infringements
UIA:	- Investigation of crimes committed by the police

- f. What right of appeal is there against decisions by internal investigative bodies for police personnel and the public?

Only the Disciplinary Tribunal of the PNC can implement disciplinary sanctions. Police personnel has the right to appeal those decision to the Appellations Tribunal. The general public is represented by the IG-PNG which has the right to appeal the decisions that are considered contrary to the public interest.

- g. How can incidents of threats of violent reprisals to journalists and judges investigating police personnel be reconciled with the assertion that police are accountable and respect human rights?

These incidents can be reconciled in the sense that the threats made against journalists and judges are not made or tolerated by the institution. These are perpetrated by the individual police elements directly affected by the investigations.

- h. How supportive is the public prosecutor of attempts to prosecute police/army for violent conduct?

The public prosecutor is supporting those causes in which soldiers or policemen are accused of violent actions.

8.3

How far does the composition of the army, police and security services reflect the social composition of society at large?

As the Salvadoran population is ethnically homogenous, the composition of the Armed Forces and the PNC reflect the social composition of society. When the PNC was founded equal enrolment quotas were established for both ex-combatant groups, due to the desire of having personnel that had experience with arms and also the necessity of creating employment for ex-combatants. Even though the ideologically differentiated composition generated initial problems, at the moment these have been overcome and it can be considered that the PNC is a completely integrated institution.

According to a study made by the European Union and the Operational Sub-Direction of the PNC, there are discriminatory practices against women in the institution. (18)

8.4

How free is the country from the operation of paramilitary units, private armies, warlordism and criminal mafias?

It can be affirmed that at the present moment there are no paramilitary units that are politically motivated. During the mid 90's certain paramilitary units appeared against crime but their actions have considerably diminished. Nonetheless the crime wave is so high in some areas of the country, especially in rural areas, that citizens are demanding the necessary resources in order to defend themselves. One of the proposals that is constantly made by them is that they be permitted to form civilian patrol or civil guard units. One phenomena that has to be pointed out regarding paramilitary units is that the ex-members of civilian patrols that existed during three years of the war have organized to collectively demand the payment of a financial compensation by the government for their collaboration with army during the past military conflict. During the whole of last year they generated a series of disturbances in order to pressure the government. The most serious one took place in August when they clashed with the Police when they blocked the main highways in the country. The result of this confrontation was the death of two ex-patrolmen and 15 people injured (amongst them 7 policemen) and 51 people were detained.

Many of these ex-patrolmen were politically organized and conformed the base of the National Action Party (PAN), which managed to obtain two deputies in one municipality.

Even though private armies do not exist in the country, the phenomenon of the proliferation of Private Security Agencies. At the moment there are more than 200 agencies with an approximate total of 18,000 security guards which is a number equivalent in man power to the PNC (18,800). The majority of these agencies are the property and are directed by ex-military members. In the country there are a large number of organized crime mafias. The most powerful of these dedicate themselves to stealing commercial trailer trucks, traffic of illegal aliens, drug traffic and kidnapping. During the period between June '99 and March 2000, 76 kidnappings and 1870 homicides.(19) The increase in crime is of such magnitude that the Association of Private Enterprise (ANEP), made an urgent plea to the three organs of the State asking to jointly seek strategies and mechanism that can permit the reduction of crime. Another situation that generated a polemic last year was the issue of the Casinos, when it was divulged that some of these belonged to shadowy characters with international mafia relationships.(20)

(answering the observations)

- a. Do you have any information that could put these activities of paramilitary groups in the 1990's in perspective?
- b. How much of a problem was paramilitary activity/murder?
There is a report on this subject titled "Seguridad Pública y Derechos Humanos" published by the Fundación de Estudios para la Aplicación del Derecho (FESPAD) in 1997.
- c. Were they directed mainly at criminals/social cleansing or opposition politicians?
Ans.- The majority of incidents of paramilitary actions were directed at social cleansing. However there were also some cases directed against opposition politicians.
- d. Did they aim to terrorize the population, or were they out for personal gain?
Ans.- These actions were not directed at terrorizing the population.
- e. Is there anybody mandated to monitor private security firms? Have there been incidents of abuse of power by guards?

Ans.- There is a unit inside the police for controlling and monitoring private security firms, but up to now its operation has been rather ineffective. Nonetheless, certain measures have been taken to correct this deficiency. Yes there have been incidents of abuse of power by guards.

- f. Are the mafia linked with the police/army/political parties in any way? What effect does organized crime have on ordinary people?

It is considered that organized crime has permeated all the levels of society and has links with the police/army and political parties. Some of the latter, especially the major parties, have been accused of receiving donations from organized crime for financing political campaigns. However, until now none of these cases have been legally founded.

Organized crime is presently a cause for uncertainty and fear in the general public.

8.5

What measures, if any, are being taken to remedy public identified problems in this field, and what degree of political priority and public support do they have?

The measures that the present government has chosen to implement in order to remedy the identified problems are contained in the document Strategic Plan: Alliance for Security 1999-2004. The objectives that are proposed in this plan are the following:

In what refers to security and national defense:

- Guaranteeing the integrity of the national territory and the defense of the sovereignty of the State.
- Promote the constant modernization of the Armed Forces.

In what refers to Public Security

- Strengthen social prevention of crime in order to promote amongst the population the sharing and practice of values and norms of conduct orientated at eliminating the causes that are the source of crime.
- Foment citizen participation in order to have a minimum control and a maximum auto-control of the population in the stimulation of social censure of conduct patterns related with order a democratic security.
- Strengthen the mechanisms of support to improve the efficacy and effectiveness of the General Attorneys Office in the defense of the interests of the State and society and the conduction on investigation of crime.
- Support the Supreme Court in the achievement of judicial efficiency, efficacy and effectiveness that can permit an adequate function of the participating entities.
- Develop schemes that can conduce toward the effective rehabilitation and social reinsertion of the delinquent.
- Ensure adequate levels of International Cooperation for the strengthening of a new model of public Security.
- Ensure police efficacy. (21)

9.0 Minimizing corruption

Are public officials free from corruption?

The formation of the government in El Salvador is by law exclusively related to the party system. The political parties in turn represent the interest of specific sectors and public officers correspond to the interest of the parties and sectors. The rest of society don't have access to participate and channel the national interest towards the government. Concerning legislation is under developed and ineffective; there are not sufficient technical or administrative mechanisms to apply or enforce it, nor the political will to do it. Moreover, impunity of corrupted officers is undermining public confidence in governmental institutions

9.1

How effective is the separation of public office from the personal business and family interests of office holders?

Separation between private interest and public offices is clearly stated in the national Act, articles 127, 128. A fundamental impediment to become a candidate to a public office is to have a private interest; however secondary laws and rules of procedures do not detail which are the requirements for the candidates. Actions or omissions related with the officer performance indicating a personal benefit are considered a crime.

Although there is available legislation to combat this problem there has never been significant sanctions against accusables. The legislation has been ineffective due to problems such as difficulties to probe the crime, whistle blowers' denunciations are underestimated and accused of having a political bias, and the generalization of the phenomenon. However this problem is not mainly a legal one, comptrollership mechanisms in the government are ineffective and little developed.

At present there is an office in charge of evaluating the probity of elected officers, functioning inside the Supreme Court of Justice, named "Section of Probity". This office, with a less than 20 staff members has limited capacity to evaluate the patrimonial declarations of more than 10000 public officers. On the other hand, it has been until recently that the General Registration Center has been created and this is one of the main supports for the probity section mentioned before along with other governmental offices such as the court of accounts, the general attorney and the public ministry-

In fact, many of the public positions important in the comptrollership system of the State are subject to second grade elections under responsibility of the national assembly. Political parties represented at the assembly negotiate quotas of power to access these positions. At least for the last decade there has been a political agreement between ARENA, PCN and PDC by which the first conceded the direction of the court of accounts to the PCN; and the direction of the human rights attorney to the PDC. The political dispart of the public offices directly related to the comptrollership function has weakened the enforcement of legislation. The Supreme Court magistrates are elected by the national assembly as well and in this context the section of probity of the same court has very little space to act against corruption. Public officers in general pay very little attention to their patrimonial declarations and the probity sections has denounced that former officers of the ARENA government presented declarations that are either inconsistent, uncomplete or contradictory. (DdH 1.1.99). "In some cases it has been discovered absolutely identical figures in balance sheets by the time officers took office and by the time they cease their functions".

A lot of information about conflicts of interests has been issued but the cases are rapidly covered up and get stacked at the judiciary level.

Systematic connections between public holders and private interests, favoritism and revolving door appointments for certain public persons are constant. One classic example could be the case of Antonio Merino, vicepresident of the republic with Cristiani (ARENA 1990-94), afterwards he changed his affiliation to the PCN; as a member of this party he was elected to the presidency of the court of accounts and resigned under pressure when he was involved in an illegal purchase of municipal land in a small municipality close to the airport and the free industrial zone, administered by an ARENA major, (San Luis

Talpa, La Paz); he also ran for deputy during the last campaigns with the same party, PCN and won. Another corruption scandal was the fraud to the national federation of soccer teams (public organism) where investigations signaled Juan Torres, son of the candidate of the PCN running for a majority (Juan Torres) during the past march election. Both relatives therefore are members of the same political party which at the same time controls the court of accounts in charge to audit the federation. The court was suspected of modifying the audit reports to protect the president of the soccer federation (FEDEFUT).

9.2

How effective are the arrangements for protecting office holders and the public from involvement in bribery?

The lack of responsibility of the government during the identification and investigation of corruption has been pointed out by the media (LPG 3.8.99). The Supreme Court (Sección de Probidad), The Court of Accounts and the General Attorney, are considered to be obstaculized by the political interests to be more aggressive and active against corruption.

The investigations of misusage of public funds have been constantly issued in the media during 1999: diversion of funds to the former paramilitary association (APROAS) in exchange of votes, roads and bridges built with oversized budgets, millionaires deficit in the national federation of soccer teams, and the old cases of the former director of the social security institute who was suited by fraude to the ISSS(1995) and the case of the social investment funds (FIS) (millionaire compensations to executive employees) (1996). They have not been taken to trial or to stay the proceedings and the guilty discharged of responsibility, attracting critics and doubts about the capacity of the in charge organism.

There is not only evidence of the wrong handling funds in the specific cases; the same organism in charge of the surveillance, as the Court of Accounts, has been denounced of changing audit reports to protect officials. For example: A former adviser of the Court of Accounts said in a TVinterview (10.99) that an audit report was modified to protect the current president of the Court of Accounts while he was still a member of the electoral tribunal.

Other cases are also known by accusations to the media: a) Smaller range officials in the transport Ministry authorized ghosts consumptions of fuel subsidized to a buses managers, according to the accusation before the public works commission at the congress. b) Employees of the National Funds for Households (FONAVIPO- Fondo Nacional para la vivienda) were implied in the approval of nonexistent housing projects of a C 40 millions value to a non-government organism.

9.3

How far do the rules and procedures for financing elections, candidates and elected representatives prevent their subordination to sectional interests, or the misuse of public funds?

The constitution and the electoral code establish that the State distributes funds proportionally to the votes won by the different parties in the previous election (denominated political debt). The public financing seeks to avoid the subordination of political parties to private interests, although the expenses of some political parties exceed by large the political debt. Usually during the campaign periods there are accusations about the utilisation of state resources for political purposes. In the past it was evident that the ruling party on shift used openly: establishments, transport, materials and other goods for propaganda during the campaign. At the moment the existence of several parties makes constant the mutual surveillance, however still is notorious the use of institutional funds (of the government) during the periods of the political campaign, for example in institutional publicity of government organisms, whose directors are candidates to reelection.

On the other hand, it correspond to the electoral supreme tribunal (TSE), to watch over, to settle and to fine the parties for nonfulfilment the rules and procedures, even those referred to the campaign expenses. The parties in attention to the law should report their expenses, but in the practice neither they report them nor the tribunal demands the reports.

In this way, the incomes of private donations and bonus emissions are not declared although they are deducible of taxes for those who donate or buy the bonus.

Another example of how the parties financing escapes to the government control and opens space to private interests, is the new parties case: The parties register in the TSE by a number of affiliation signatures, once inscribed they are entitled to receive funds in fixed quantities (half a million calculated at the moment). There is public knowledge of parties that are only registered to have the funds. For example, the party "Punto" that ran for the presidency in 1999 enlisted the necessary signatures for its inscription, but it didn't get the votes to remain registered (3% of the voting). It will never be known its campaign expenditures, but if the leaders didn't spend what they received, they made a good business keeping a good part of the half a million that it was given to them from the treasury.

9.4

How far is the influence of powerful corporations and business interests over public policy kept in check, and how free are they from involvement in corruption, including overseas?

The Salvadoran economy has traditionally been linked to private enterprises, at a national level and in a centralised way. The good figures achieved at the macro level do not compensate the big imbalances at structural level. In this general context, attracts the attention of economic analysts the separation of the financial system of the rest of economic productive activities, the oligopolic concentration of the financing market in four banks, and the conflicts of interests in the advisory boards of the regulatory entities (Central bank and Financial System Superintendence).

According to a columnist in El Diario de Hoy (DH 15.02.00) there exists a "privilege outline that is very convenient to some few but influential benefactors of the party, at the pockets of the whole rest of Salvadorans expenses". The columnist Herman Brunch criticised the transitory decrees that allow the State to help the mills owners and he emphasised in the need "to meditate deeply about the viability and legitimacy of a system that structurally is at the service of the powerful and influential minorities, such as producers associations, guild cupules or unions.

If the comptrollership over the governmental institutions is weak, this function is practically unexistent in the case of private bussiness, besides is culturally unacceptable since it would be an attack against the free enterprise. Historical links among the enterprises, the parties and the government, are known but appear as natural facts. Big business sectors leans on a party to accede to the government; once in the government, the economic policies and the legislation are adapted to favor these groups. Such is the case of the coffee oligarchy in the past and in the present time, of the financial oligarchy that during the civil war took advantage of the bank privatisation and bought a clean portfolio after the government forgave the debtors which were the same corporations or family groups which later on bought the banks.

9.5

How much confidence do people have that public officials and public services are free from corruption?

The media are giving more space to accusations of corruption at every level in the government apparatus (practically in every investigated case relates public officials, the Judicial, the congress and the executive branches with private enterprises sectors). The surveys reveal the public's widespread distrust toward the officials.

9.6

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

The measures taken to face the corruption problem have been mainly legal (investigate, legislate, prosecute); however the criminal's impunity is not counteracted with the application of the same available laws, which reduces the credibility of the new regulations.

In the last years important donations have been received (mainly from USAID) destined to the modernization of the state (justice system, of the congress and other dependences). Transparency and accountability are becoming relevant indicators. (results have been limited, because the proposed reforms always affect personal, institutional and political interests) and international standards are to be considered.

Congress persons have proposed a new committee to control the ethical behavior of the deputies, as well as an anti corruption commission, on the basis of the congress responsibility for the control of the executive and judiciary powers.

There is a growing interest of the public opinion and an incipient social mobilization against corruption. Denounces are originated by common citizens; there is also a web site which presents a follow up of the public cases (Revista Probidad) and the media coverage is constant while at the same time they approach these denounces with a more investigative purpose.

Private sector is also complaining of widespread corruption which threatens foreign investment

10.0 The media and open government

Do the media operate in a way that sustains democratic values?

Context:

In El Salvador, historically the nature of the media clearly reflected the authoritarian character of the Salvadoran state, and operated largely at the service of powerful economic interests and the military governments. Before 1979, the few newspaper and radio media that sought to operate more independently were subject to censorship, economic boycott, accusations of subversive activity and death threats. Several journalists and editors were assassinated and bombs were placed in newspaper premises. The only School of Journalism of the University of San Salvador was closed during the military occupation of the university campus in 1972-1975. During the 1980's, there was increased space for a broader spectrum of public opinion than in the previous decades, although clearly the armed conflict was not an atmosphere conducive to progress in the professional and democratic development of the media.

The signing of the 1992 Peace Accords, the termination of the armed conflict, and the shifting of ideological confrontation from the battlefield to the civil-political realm, ushered in a new period which permitted a considerably broader discussion of previously taboo themes and positions. Increasingly less cautious criticism of the government began to appear routinely in major media, coverage of opposition positions broadened, and the media regularly carry out interviews in print media, television and radio of a spectrum of figures from the opposition. Radio Venceremos and Radio Farabundo Martí, the FMLN's previously clandestine radio stations, were legalized after the Peace Accords.

10.1

How independent are the media from government, how pluralistic is their ownership, and how free are they from subordination to foreign governments or multinational companies?

Most analysts would agree that Government of El Salvador does not directly or indirectly “control” the media, but would emphasize the strong fundamental political and economic affinities and shared interests between the owners of the majority of the media and the party in power, but particularly with big business. Of the four daily newspapers, three range from very conservative to center-right, are owned by families with economic interests in other sectors, are highly dependent on commercial advertising from the main economic groups, and are hostile in varying degrees to the main opposition party. The fourth daily is closely linked to the principal opposition party and operates on a much more modest resource base than the other three. There are 10 television stations, 150 licensed radio stations, and 3 cable systems. Efforts beginning in 1992 to legalise the network of community radio stations which were established during the war have been frustrated, with the Supreme Court declaring them illegal in a March 1996 decision.

The Salvadoran media is not “subordinate to foreign governments”. The Salvadoran Constitution directly provides for freedom of the press, and while there are no instances of Government censorship of books, publications, film, etc., there are constraints that derive from the entrenched political and economic system which serve as obstacles to the truly democratic, effective and professional functioning of the media, as will be noted below.

10.2

How representative are the media of different opinions and how accessible are they to different sections of society?

There are a wide number of interview programmes which cover current events and interview a broad range of national actors, including members of the National Assembly from all parties, labor leaders, government officials, intellectuals, professionals and representatives from the private sector. Several programmes are

structured specifically to inspire debate between actors with sharply different perspectives on the issues. The print media has, progressively, broaden the space it provides to different opinions, even if they do not coincide with the main editorial line, a considerable change from the last decade and even century. The two largest newspapers have several columnists whose positions diverge from that of the paper's principal position and openly criticize the government and the government party. Much less independence and pluralism exist regarding coverage and opinions of wrong-doing and controversial issues from big business.

10.3

How effective are the media and other independent bodies in investigating government and powerful corporations?

Serious investigative journalism is quite circumscribed in the media in El Salvador due to a variety of factors, including 1) lack of training and resources; 2) lack of a institutionalized culture with clear norms for "freedom of information" with respect to public ministries and the private sector; 3) self-censorship due to fear of reprisal or violence; and 4) lack of political will on the part of editors and newspaper owners to pursue investigations whose findings may be politically inconvenient, inimical to their own positions, or may touch powerful interests. The latter issue, that of political will, is probably the predominant factor for the weak investigative journalism

There are also a number of topics which generate self-censorship for fear of violent reprisal, among them organized crime, narcotics trafficking, police corruption, and large-scale financial fraud. The *Diario de Hoy* reported receiving death threats after they sought to investigate figures involved in a major financial scandal, and police beat journalists who were seeking to interview a businessman from one of El Salvador's most prominent families who was involved in the country's largest financial scandal. (In January 1998, the Commission on Internal Affairs and Public Security shelved the request for an investigation of the events.)

In recent years, there have been efforts by several newspapers to upgrade investigative efforts, improve professionalism, and provide more technical training in this area. In some cases, this has generated contradictions between a newer generation of more professional journalists and the more traditional, ideological-driven owners and editors. One has seen laudable advances in the quality of reporting in some papers, but the constraints imposed by powerful political and economic interests could undermine the perspectives for improved investigative efforts.

10.4

How free are journalists from restrictive laws, harassment and intimidation?

Article 72 of the 1977 Penal Code restricts journalists freedom to cover legal cases, granting judges the authority to "bar coverage of trials where the moral order, the public interest, or national security could be affected." This article was invoked in three instances in 1998 (CPJ). In the high profile proceedings around the detention of persons connected to the murder of journalist Lorena Saravia, press coverage of the proceedings were by banned by judge using Article 72. A highly controversial case, thought by many to involve an elaborate police cover-up, involved death threats to the two judges in the case, one of whom left the country, and accusations of police officers pressuring witnesses regarding testimony. Laws regarding defamation are strict, making it a criminal offense punishable by four years incarceration.

A right-wing paramilitary organization called FURODA (Fuerza Nacionalista Mayor Roberto D'Aubuisson) has threatened journalists at different moments, although largely prior to 1996. As noted above in the high-profile financial fraud case involving prominent families, there have been physical confrontations where the police roughed up journalists seeking interviews and damaged equipment.

10.5

How free are private citizens from intrusion and harassment by the media?

The degree to which intrusion and information harassment in El Salvador manifests itself has no comparison with the level of scandal that sometimes happens in other countries, where this has generated a profound

public debate and has forced the highest courts to resolve the conflicts of interest faced in this matter by way of jurisprudence.

There are reasons which explain hypothetically why the Salvadoran media do not go too far, and it is curious that it is not so much they are scrupulous vis a vis this redoubt of individual privacy, or observers of legality who in Article 2 of the Constitution proclaim “the right to honor, personal and family intimacy, and to image”. Better said, we are facing a symptom of the still insufficient development of information freedom and subordination of the line inspiring the media in favor of the powerful political economic groups, connivent with the media enterprises themselves.

It is praiseworthy the avoidance of scrutinizing exacerbations leading to harassment, but it can not be praised when the press, in its numerous expressions, resigns from the undelegable function which is their competence: the formation of democrat conscience and structure. And resigns to it when unjustly preserves the “private” sphere of certain people who, in virtue of their positions and public responsibilities – be political, economic or of any other nature – do not have the same openness as other citizens and even, in their case may stump the limit normally separating public from private.

Although in El Salvador rein vindication of freedom of expression and information have been collected in Article 6 of the constitution, it would be preferable to have in the text the Magna Law, a statement of the right to information with a conceptual development of greater certainty and diaphanousness, to be guaranteed by public powers. This does not stop the recognition of the right to honor, personal and family intimacy, and self image, since they are part of the rights of the person, and as such guarantee the environment of freedom of a person related to their most characteristic attributes, defining qualities of the being, and attributed as inherent and irreducible possession of every person. Thus, liberty of expression and information *is not* one *more* liberty that can be put in the balance next to other possible liberties to weight and counterweight with them, with prevalence in some cases, and limited in others. This liberty is the structural condition of the democratic political system itself.

10.6

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

The importance of modernizing, democratizing, and improving the quality of media performance is of increasing concern to sectors of the public and professionals concerned with issues of governance and democratic transition. Of particular concern is the manner in which rising levels of violence are covered in the major media which tends to be sensationalistic, with little effort to explore the complex roots, and in line with editorial positions which often seek to assign responsibility for violence to the new penal code or the absence of draconian enough punitive measures. There is concern that the media contributes actively through the character of their coverage to generating heated public pressure for immediate and drastic solutions, which creates an adverse atmosphere for respect for human rights and due judicial process for the presumed perpetrator. According to a variety of public opinion studies, the phenomenon is so grave that a high percentage of the population have manifested that they are in favor of “taking justice into their own hands”.

The two largest newspapers have undertaken efforts to modernize and update their newspapers and qualitative improvements can be noted. However, until the political will exists both within the papers to move beyond ideological agendas and economic interests, technical solutions to what are essentially political problems will not suffice to create a professional media. While there is much obligatory discourse by politicians and government spokespeople regarding the critical necessity “transparency” in public administration, a phenomenon which would improve the circulation of information for the media and hence the public, strong, concrete measures and enforcement mechanisms are not yet a reality.

11.0 Political participation

Is there full citizen participation in public life?

In El Salvador, there is no full citizen participation in public life. In fact, it is extremely low. On the one hand, the civil society shows a remarkable shortage of intermediate organizations that express diverse interests and necessities that are generated in their interior. Perhaps the fear by the happened thing in the past weighs in the personal decision to belong some type of organization. Perhaps also they are weighing the conformity with already obtained in the country with the Peace Agreements and the distrust in the institutions and the capacity of these to respond to the problems of the citizens. On the other hand, diverse social groups --mainly the majority ones, made up of farmers, workers, unemployed and women-- do not believe or trust in social movements or political parties (see Data Base). On the part of the civil society they are not being implemented either measures to favor the social representation in public offices, or if there have been taken some, they have not been effective enough. As a result, low levels of social support arise to initiatives with the objective to change predominant the partner-political dynamisms. The counterpart of the previous thing is the citizen apathy, its retirement of the public space.

11.1

How extensive is the range of voluntary associations, citizen groups, social movements etc. and how independent are they from government?

Since the middle of the 80's a serie of nonGovernmental Organizations (ONGs), began to proliferate in El Salvador. A considerable large number of these ONGs was aligned with the project of the FMLN; that took them to canalize funds in direct form as much --to maintain the military effort of the left-- as in indirect form --to take care of those populations considered social base of the FMLN. Other ONGs was aligned with the government; these supported the civic actions --sanitary attention, nourishing aid, construction of infrastructure-- that were part of the contrainsurgence strategy that was impelled from the regime. In the postwar period, good part of the ONGs of the decade of years 80 closed their offices; and those that continued operating changed its administrative schemes --in search of a greater efficiency. Also, from the government the creation of ONGs has been fomented that assumes functions --in the line already initiated during the civil war-- that traditionally have been responsibility of the State.

The situation of the social groups, voluntary associations and the social movements at the present moment cannot be understood without the undertone of the happened thing in the two preceding decades. In the decade of years 90, the voluntary associations and the groups of citizens are few. Majority of existing ONGs --of drug addiction, rescue, of fight against drugs, sport --keep a relation of subordination to the government. Majority of the one formed --communal directors or directive students-- have an ephemeral life or they are purely decoratives. Meanwhile, in the present decade the social movements that have been developed have managed to consolidate, to maintain themselves in the time or to extend to socially ampler intentions of fight. A good example of it is strike the movement or protests demobilized of the Armed Forces or the protests impelled by the doctors of the public health's system. It was an isolated movement, without support of other social organizations.

In summary, the Salvadoran society sample in the decade of 90 years a remarkable shortage of intermediate organizations that express diverse interests and necessities that are generated in their interior. People seem to be arranged neither to organize themselves nor to commit themselves in activities as public strikes or protests; nor to even show its rejection to corrupt politicians. Perhaps the fear by the happened thing in the past weighs in the personal decision to belong some type of organization. Perhaps also they are weighing the conformity with already obtained in the country with the Peace accords and the distrust in the institutions and the capacity of these to respond to the problems of the citizens. Nevertheless, new experencies of mobilization are emerging in zones of the country that historically have been bastion of the popular organization, as it is the case of the departments of Chalatenango and Morazán. The communities of both zones have formed comunal governing boards; using the space of the open town halls; integrating

diverse local committees. At the moment, they are inserted in the process of gestation of new forms of organization in a context of poverty and abandonment in which they are since the end of the war.

11.2

How extensive is citizen participation in voluntary associations and self-management organisations, and in other voluntary public activity?

First of all, the level of citizen participation in voluntary associations and independent organizations is extremely reduced. On the one hand, the voluntary associations and the independent organizations are few. On the other hand, the citizen motivation to integrate itself to the same ones is almost nonexistent. In fact, this factor explains largely not only the little number of organizations and associations, but the low levels of affiliation that characterize them. And that is thus even in associations and organizations of employees and professionals. In order to mention only a pair of them, associations like the one of employees of the Court of Counts (ADEC) and the School of Professionals in Economics Science (COLPROCE), neither agglutinate all those ones that say to serve nor have a decisive presence in their respective scopes of influence. The same thing can be said of associations of employees and banking cooperatives that arise in universities, institutions and factories. Other associations like those of Boy Scout, of Rescue (the Red Cross and the Green Cross), of prevention in the use of drugs (FUNDASALVA), rotarios clubs (Club of Lions) and sport (the different Clubs from Soccer) count on a reduced number of members and its social influence enough is limited.

However, the little motivation to integrate itself to voluntary associations -- concretely to the associations of professionals -- has a triple explanation: in the first place, by the few immediate benefits that throw for their members. In general, the professionals prefer to insist personally on profits that are translated in private benefits, for which the associations offer a limited space. Secondly, because the social-political impact of the associations is reduced -- by its structure, its statutes, its doctrine --, which does not allow to see them like an important channel of professional demands. One becomes to the same: a great majority of professionals looks for in the personal success the answer to their necessities and aspirations. And, thirdly, by the monopoly that reduced groups of professionals -- a species of elite -- exerts on the different trades; it, on the one hand, is translated in the persistence of habits and styles of traditional behaviors in the association; and, on the other hand, it prevents the change in the trade unionist, same direction that would be possible with the incorporation of new members.

Perhaps the religious activities are those that have greater capacity to convene citizens (it does not matter wether they come from rural or urban zones. In the 90's, two religious celebrations have been developed which involve a significant number of Salvadorans in an public activity: the celebrations of the anniversary of the murder of Mons. Oscar Romero (March 24) and the celebrations of the anniversary of the murder of the jesuitas of the UCA (November 16). These activities although have a political sense, their deeper meaning is religious. And that explains why so many people --and of so diverse social sectors: farmers, middle-class, professional-- is ready to participate. Its religious dimension explains, on the one hand, its power of social convene; on the other hand, it makes its transformation in social political protest difficult, since in El Salvador of the postwar period the religious convictions become independent more and more from the political convictions.

Another center of voluntary public participation, always with religious motivation, constitutes the celebrations dedicated to the patrons saints of districts, colonies and municipalities. And, thirdly, communitarian matches, of district or intercolonial --, are the sport activities - which more and more count on less participation of the urban inhabitants of the country. Other forms of participation in voluntary public activities that are not religious or sport are something sporadic and almost of exceptional character. A good example of it is constituted by the meetings of neighbors in the urban zones: generally, those meetings are made to respond to specific problems of the neighbors - monitoring, garbage collection, public lighting system--, after its solution they do not return to repeat itself.

What has been said can be explained by the tendency towards the privatization of the familiar and personal activities. This situation has as counterpart not only one "retired" of the public space - collective commitments, communitarian tasks, communitarian challenges--, but privatization of familiar and personal activities that used to have a social sense: celebrations of birthday, celebrations of Christmas, barbecues with the neighbors, etc. The delincuenal violence -that forces to mantain indoors--, technology -that do of

that being indoors something pleasant --and the dissatisfaction with the policy and the politicians- that discourages the citizen commitment --they reinforce the tendency towards the privatization of the social practices, that is to say, the citizen resignation to participate in public activities.

11.3

How far do women participate in political life and public office at all levels?

Women, in spite of being a demographic majority, have a reduced participation in the national political life (see Data Base). To a large extent, the parties --organizations that are by definition channels of citizen participation-- are not only dominated in their internal composition by men, but concentrate in their hands the more important in party's decisions, which is possible by their role like political leaders. Some parties foment more than others the participation of the women. Thus, ARENA and the FMLN count between their rows with an important femal sector, through as its participation in its interior as in the national political life is canalized as much. Nevertheless, of both parties only the FMLN gives their women members a quota of legislative and municipal representation (see Data Base).

However, as much in ARENA as in the FMLN most of members are men; also, the main positions of the Party's direction are into the hands of these. About the other parties --PCN, PDC, CDU, PAN the--, situation is more critical for the women: these parties, although count between their rows with militant women, they not have incorporated them in a sufficient number so they can have participation in the decisions or can accede to positions of institutional direction. In El Salvador, the political parties are dominated in their composition by the men and are manage by these. It sensibly decreases the possibilities of political participation of the women, who do not find in the parties neither an own space to defend their interests nor a favorable climate --given the male chauvinist prejudices prevalent between the members of the parties-- to discuss in equality of conditions with the men the national problems from their own perspective.

On the other hand, the access of the women to positions of direction into the parties is extremely difficult, even in those with a strong femal sector and a policy of selection of feminine leaderships. By the way, the sexuals prejudices do not occur only within the parties, but also outside them. In fact, the citizens prefer to incline their selection by candidates men and not by women. Nevertheless, the postulation of candidacies (or the election leading within the parties) is an internal subject of these ones, because the members of the parties have little influence in these decisions. Thus, women have not only few possibilities of appearing in the list of first candidates of the parties for positions of popular election, but potential voters (in its majority men, because the women, in their majority, abstain to vote) incline by male candidates. And it diminishes the real possibilities for a woman to be elected.

Women must compete not only against the abilities and capacities of the men but with cultural schemes that give by discounted the superiority of these on those. Once determined women have obtained the access to a direction position, partners subordinated to them have been object of permanent evaluations of men --often-, as well as of commentaries and critics in low voice about their limitations and deficiencies, attributed to their feminine nature. Besides, women have had to support constantly and to accept the sexist commentaries and the expressions with double sense --in which women usually appears like sexual object-- hurled by their companions of party or their political rivals. This same pattern has characterized the access of women to public positions at all levels. Once reached a public position, they have had to face the resistance as much of its subordinates to be directed by a woman like of those colleagues who reject it as interlocutor, with equal rights and duties than them. The situation of the feminine leaderships has been more difficult in those positions more opened to the public scrutiny (and excellent in the state hierarchy), as it is the case of the ministries. Here its performance to state submissive the critics and the permanent monitoring of the men. At level of local governments, the situation seems to be less difficult, because the power of the mayor is regulated by the Municipal Council (formed in addition, by the same mayor) who enjoys a quota of important power in the mayor's office. This allowed that the mayoresses are not seen like rivals (within the municipal advice), but like colleagues or fellow workers.

11.4

How equal is access for all social groups to public office, and how fairly are they represented within it?

In El Salvador, the access to positions public is not equal for all the social groups. Exists a sort of discrimination that prevents the women to have a greater protagonism in the decisions of the country. This is, a great fissure in the social structure: the men control not only most of public positions, but most important: those from where the destinies of El Salvador in social matter are decided, economic and political. However, all the men do not have equal possibilities of acceding to positions public: the privileged scope of selection constitutes the political class, between whose members selected to those who are going to occupy those positions of greater public relevance. From this point of view, those are the members of the parties that biggest opportunities must to accede to positions public: mayors, councilmen, deputies, president of the republic, ministers, president of the Supreme Court of Justice, etc. But all the members of the parties cannot the same accede to all the public offices: their leaders are those that more possibilities must to accede to those more excellent for the conduction of the country.

Another scope of selection constitutes the schools of professionals (of lawyers, economists, architects) where usually selects not to few officials government. In its majority, as much who integrate political class like the schools of professionals, they come from the informed middle-class, who become, thus, in the source that nourishes of panels of direction of the public administration. Then, a candidate to occupy positions of public direction must count, like departure point, with the double requirement of being of the middle-class illustrated and to be tie either to the political class (like member of the leadership of a party) or to a professional school that offers endorsement and relations with the circles of economic and political power. Also public offices can be occupied by independent people, that is to say, untie to some party or some professional association. Nevertheless, those independent people, generally, are assigned, by their education and style of life, to the middle-class.

So, in order to independent people can occupy public offices (of high level: ministries, headquarters of public offices, advisory governmental) are important the political bonds and the ideological affinities, which, as well, is endorsed by familiar relations or friendship. Thus, it is normal that who, being independent, occupy excellent public offices, they have been study companions (still more, of promotion) of those who, from the political apparatus, they favor his appointment --pressing the people in charge to make those appointments; suggesting its selection; violating the procedures and norms of hiring-- or they directly choose them for such or as positions --attribution that have civil employees of high rank, as the president of the republic in the case of the ministers or these in relation to its near collaborators.

11.5

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

As far as the problem of the participation of the women in the political life and positions of direction, the most excellent measures have to do with changes in the statutes of the parties that allow the women, for example, to acquire a fixed level in the positions of popular election.

Specific State measures have not been taken to stimulate and to motivate the citizen participation, beyond the calls to go to vote during the electoral periods. There are not systematic and no permanent campaigns of political education, nor either foment the use of the legally established channels of participation, like the open town halls or the scholastic advice.

The party that ampler and publicly has debated this point is the FMLN, whose militants demand that, by internal regulation, a percentage in the candidacies for deputy is reserved to them. Also the subject has struggled to permanently grant the candidacy of the vice-presidency from the republic to a woman, whereas a man would be the candidate to the presidency. Until now, the debate has not been closed.

Parties like ARENA, the PDC and the PCN, at least publicly, do not seem to be taking measures neither to favor the participation of the women nor to obtain a greater social representativeness in public offices. Firstly, rather the opposite happens: in the case of ARENA, little by little the women of the party have gone being relegated to background in the most important decisions. They have also been relegated of the positions of direction, which go being occupied by men. The PDC and the PCN, on the other hand, are not only parties dominated by men, but who are not being done anything to change. Secondly --the social representativeness of the positions public-- no one of the three parties is taking measured to favour the expression of the diverse social groups in the positions public. From these parties a "elitism" of the policy is promoted.

12.0 Government responsiveness

Is government responsive to the concerns of its citizens?

The current government has an own and whimsical interpretation of the citizens concerns. It doesn't assist to the concerns expressed by the population, it doesn't open participation channels, it doesn't consult with relevant actors of the society and it is not even coherent with its own official speech appealing for the creation of alliances among sectors to overcome the poverty, to impel the development and to improve the public security. In the decision making process and formulation of the public policies, actions oriented to public consultation or public participation are ignored. Beyond this, in some cases the government acts against the public opinion imposing decisions or omitting actions. The public perception is that the government is authoritarian and that the whole state apparatus (executive, legislative and judicial), at the superior levels, constitutes a single body that favors economic interests of particular groups. The government's social policies are reactivate to the problems, with limited outreach, focalized in the groups below the line of poverty, leaving outside of attention big population contingents that are heading quickly toward impoverishment.

12.1

How open and systematic are the procedures for public consultation on government policy and legislation, and how equal is the access for relevant interests to government?

The social dynamics in 1999 were characterised by the intransigent position assumed by the government towards the dialogue with organised social groups; the general feeling is that the so called participation of civil society has been a bluff and the president has shown little disposition to the “concertación” in the policy making process. Reasons to explain the failure of social participation are related with the vertical and uneven relationship between politicians and population and the attempts to instrument these approaches. Beside social participation is conceived as a consultation action instead of a joint work to formulate projects. A good example of this is the process to formulate the nation plan. At the beginning it was presented as an opportunity to launch a project for the nation, participative and pluralistic. In October 99 after 29 months of work and after publishing the results of the consultation process, the national commission appointed to impulse the process, handed its report to the president who recognised the importance of the effort but evaded institutional responsibility to commit the government to the suggested actions. This experience was presented as a partnership approach to development assistance for the World Bank (Partnership for development: proposed actions for the World Bank. –discussion paper, may 29, 1998).

Audiences are still a norm for public functionaries; the appointment to create special ad-hoc commissions (Educational reform, health reform, Nation Plan) was usual for the former president Calderon, but as has been pointed out, the selection of “notables” to participate in those commissions has been a faculty of the president, procedures are not established, except in the municipal code which rules the “cabildos abiertos” (open meeting with the constituency). There are not formal ways to access the ministers. Even though special groups of interest have always had broad access to the government, the same groups have publicly complained for not being listened for the government. Ex. When the technical commission appointed to select the members of the cabinet refused to accept the calls from the private enterprise association, in spite of the president declared intentions to be open to suggestions from all sectors.

Another example of how these consultation organisms created by the executive are not only elitistic but also useless, is the Council of Public Security which was not consulted neither listened over the anti-delinquency plan made public in March 2000.

12.2

How accessible are elected representatives to their constituents?

The Congress attributions and limitations are described in the articles 121, 128 and 129 of the Constitution. The deputies don't have legal obligation of being accessible to the voters.

In the practice if a group of citizens wants to access the Congress, they should present a written application called "piece of correspondence"; this application must be channelled through a representative. Deputies in the National Assembly can initiate legislation; they can sponsor one application from a citizen or a group of citizens to be assumed by the Congress. The Directive Board of the Congress classifies these applications and they can be either discuss by the plenary, sent to the commissions for study and discussion or dismissed and send to other government's instances. .

The presidents of the commissions decide who is invited and is listened in the hearings. In consequence, it depends on the deputy to open access for the citizens to the commission discussions. The public only has access to the plenary as listener.

From 1994 and on there has been growing pressure from abroad to modernise the congress. USAID donated funds to improve infrastructure in the Congress and a modernisation commission has been created. In the past there were not facilities for the deputies to assist the citizens. To this date the congress has opened at least one office in the second largest city, where deputies are accessible to the constituency.

Some social groups have opted in the past to demonstrate in front of the Congress, and the usual outcome might be that a special commission appointed at the moment negotiates with the demonstrators and commit themselves to do something. Other groups send letters to the parties and deputies, they exercise pressure with their presence but lobbying in the Congress it is not developed as a regular practice

12.3

How accessible and reliable are public services for those who need them, and how systematic is consultation with users over service delivery?

Privatisation of public services is still in process. Banks, electricity, telephones, retirement funds, are already in private hands and the services of health and water continue in the list. After two years of implementation, major characteristics of this privatisation process are already defined: how the companies operate, the relationship supplier / user and the government's role as regulator. In September 99 a survey (LPG-UNIMER) revealed strong critics to the privatisation. For 94.9% of those interviewed, the privatisation of the telephone service did not reduce the cost of service; for 77.3% quality had not improved and 80.4% complained for the coverage . As for the electricity service the answers were more critical.

The dissatisfaction is explained by the irregularities in the rates and abuses of the companies delivering the services. Privatisation means higher prices and the same bad service as before. Users or consumers complaints have led the regulatory institution (SIGET) to make shy calls of attention to the companies and to advise dissatisfied users to address the consumers service offices provided by the same companies for allegations.

Another revealing case in this matter has been the doctors and workers unions strike. Although the problem has roots in a labour reclamation (violation of a collective contract by the direction of the social security institute), the unions had manifested their concern for the stagnation of the reform process and have requested audit reports as a base for the institutional restructuring. The proposal of the Medical Association is to be part of the decisions and the reform. Failed intents to negotiate showed the little disposition of both parts, but mainly from the government side. After more than a year of conflict between workers and the Salvadoran Institute of Social Security (ISSS) the service was almost paralysed, standards of service were unexistent so as targets for service delivery.

The state modernisation has been concurrent with the sale of the public assets. The state responsibility for basic services has become subsidiary and the decreasing trend in the health budget (during the last 20 years: 1.92% of the GNP in 1979 to 1.24% of the GNP in 1997) shows how the State is abandoning its

responsibility for the service (which is also a constitutional right) and transferring it to the private homes, the private enterprise, humanitarian institutions and ngo's.

Access to the judiciary services, its quality and the probity of the officials are constantly denounced and though important reforms of legislation are under way, the administration of justice is one of the biggest problems in the country

12.4

How much confidence do people have in the ability of government to solve the main problems confronting society, and in their own ability to influence it?

In 7.2 we find data of the surveys about the population's trust in the government. Later on to the critics that president Flores received in the evaluation to the first hundred days of government (lack of communication with the population and unpopular economic policies), little has been done to correct the course (at the moment the presidency offers a weekly press conference) and in consequence the population resentment continues to grow; other recent critics refer to the public security plan that seemed to be more directed to common criminals and not to the organised crime. At the end of 1999, the labour conflicts increased and although the public opinion didn't see with good eyes the strikes of the public workers still supported a negotiated outcome, however the government refused to negotiate. A growing pessimism was generalised on the country's future. The Salvadorans didn't have a glimpse of effective solutions for the violence and economic problems which the government was expected to deal with.

12.5

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

The Nation plan formulation process, has been the most coherent effort carried out in the last years to foment the civic participation, to consider integrated solutions and to commit different sectors (public and private) in the life of the country. However the government's answer weakened the effort and destroyed confidence. The population and their different organizations reacted by substituting the state and creating nets for survival.

Other initiatives to increase responsiveness of the state have had a lukewarm answer in the government (Stockholm Conference after Mitch; Commission for Rural Development, and others), however still continues to grow the public demand for the state to be responsive.

Very different organizations of the civil society are questioning government decisions and try to influence the public policies. Victims of the hurricane Mitch, the peasants and the cooperatives of the reformed sector; the associations for local development (ADESCOS), the non governmental organizations and even the gays and VIH + groups, are constantly looking after the target groups and advocating to change public policies.

13.0 Decentralisation

Are decisions taken at the level of government which is most appropriate for the people affected?

Decisions on policy framework are taken at the executive level, indorsed by the legislative and guarded by the judiciary. Whether these policies affect the population in a positive or negative manner, they are taken by the central government in San Salvador. The local governments develop a slow process, must of the times induced by the central government, to assume increased responsibilities mainly of an executive character, but the main decisions such as taxes, public investment, territorial regulation, environmental defense, natural resources conservation or exploitation, public security among others, still depend of the central government or are restrained by national legislation limiting the municipal autonomy.

13.1

How independent are the sub-central tiers of government from the centre, and how far do they have the powers and resources to carry out their responsibilities?

Although the theme of municipal autonomy has varied accordingly to the central government policies (more or less authoritarian) during the last decade, local government and autonomy have gained growing interest . Until 1962 the attributes of the municipalities were mainly administrative. It was until the enactment of the national constitution in 1983 that the municipal autonomy was broaden to include the economic and technical matters. This constitution refers to the majoralties and develops the ruling principles to appoint the municipal councils, the municipal funds and the faculties that these councils have to undertake the local development planning. The municipal code enacted in 1983, rules the organization and functioning of the municipalities also gave way to the municipal development in the country.

To guaratee the economic autonomy the constitucion created the Fund for the economic and social development (FODE) in 1983. To strengthen the local governments and ensure the delivery of public services, furtherly the government created an institute for the municipal development (ISDEM), in 1987. (This one provides technical assistance).

Limits to the attributions of the municipalities were established as well, mainly refered to the taxing system and local fundraising. Albeit the evolution of the legal framework, local governments have evolved slowly during the last decades. Subjects to the national political logics they were in fact simple pieces of political power during the war. Changes in the characteristics of the national state have caused reforms at the local level. At first the local power was strictly an administrative unit de concentrated. In a second moment and as a result of the development of the communitary associations, changement in the institutional paradigms of the state and the consolidation of the political parties which configured a new power balance at the national level, some local governments have started to fill up the spaces opened in the legal framework. However there is not a macro political plan to integrate the municipal work to a national development plan and moreover the municipal governments are restrained in their faculties by the same national legislation and by the sectorial policies defined by the central government.

13.2

How far are these levels of government subject to free and fair electoral authorisation, and to the criteria of openness, accountability and responsiveness in their operation?

Municipal governments are subject to electoral authorisation and electoral procedures are ruled. Majoralties are won with simple majority and candidates can only be appointed by political parties legally registered.

This means that majors and council members are appointed by the parties and when a party wins the election wins all the positions. An immediate consequence of this electoral procedure is that local governments respond to the centralized national parties logics and that in the national balance of power between parties what counts more is the total amount of local governments won when trying to define any municipal policy.

It would be better to say that local governments are subject to elections but the system is neither free or fair for the localities. On the other hand, once these municipal authorities are in place, in practice they are still affiliated to the party policy and the local effort is greatly influenced by this determinant relationship. Improvements in the strengthening process of these governments, in the practices to decentralize the administration and in the design of development plans is a result of the stronger competition between parties, but mainly derives from the particular interest of some parties (like the FMLN) to display new ways to do politics and assist the population in its needs.

Criteria like openness, accountability and responsiveness were ignored until the electoral campaign of 1997. The FMLN candidate for major of the municipality of San Salvador was the first to make a public presentation of the members of the municipal council which would work with the major. This council included several members from parties with an electoral agreement and also independent candidates from a civilian organisation named Iniciativa Ciudadana por San Salvador. It also was the first administration to organise popular consultation in different sectors of the city in order to get inputs to define the sectorial policies (citizens participation, gender, youth and culture). Independent candidates were afterwards proposed to some other municipal councils (like in Santa Tecla), and although citizens participations is far from generalized, the capital city experience gave birth to a renewed interest of other majors in this strategy.

To conclude, even though legislation does not promote democratic electoral processes, democratic attempts are a product of the political will of parties and officers in specific and particular situations.

13.3

How extensive is the co-operation of government at the most local level with relevant partners, associations and communities in the formation and implementation of policy, and in service provision?

The cooperation between communities and municipal governments has been opportunistic. At present the local governments have extended their links with local partners responding to demands from communities and local organisations. Communities and other local actors did not participate on a permanent basis in the municipal works in the past.

La aparición de fondos de inversión social (FIS), y la experiencia de organización de los grupos comunales en los territorios conflictivos durante la Guerra, explica el apareamiento de nuevas relaciones entre algunos gobiernos municipales y las comunidades del municipio. Estas relaciones no son sin embargo generalizadas.

There is a broad experience at the community level in developing self help initiatives. Legislation on community organization has not been free of political bias. On 1977 a law of community development gave the Minister of Internal Affairs the responsibility for developing the communities and registering (control) of these organisations known since then as ADESCOS (community development associations).

The 1983 constitution stated the principle of free association and its article 207, states that the municipalities can associate and coordinate among them to develop common interest projects. The municipal code (1983) developed this principle defining the municipality as the political, administrative and legal unit which guarantees the local participation in the ruling and conducting of the local society. It also stated forms of participation for the communities in the government by attending the meetings of the council; by participating in special advising commissions (on a permanent or temporary basis), open meetings (cabildo abierto), popular consultation, community associations and any other organised form.

However the only of these forms which has a compulsory effect on the municipal government is the popular consultation, the others have an informative purpose.

The recent political history reveals a growing tendency to use these mechanisms to promote participation mainly in the municipalities controlled by the FMLN, but there are a few number of experiences of

collaboration between different local actors and ARENA majors. NGOs have also contributed to open and channel local demands to the majors and have given great support to the local development networks.

Winds of change have reached the local authorities and there is a spirit de corps which overstep the limits of the political affiliations and has helped them to demand the transference of the 6% of the national budget to the majoralties; lamentably, co operation is not a generalized attitude among the majors due to the lack of political will but it is still missing further development in the communities organisations and local actors as well.

13.4

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of priority and public support do they have?

Measures taken are related to financial problems and technical capacities of the municipal governments. The transference of a percentage of the national budget which could reach in the future 10%, is a very important way to solve identified problems.

Enhanced coordination between municipalities and the development of municipal corporations, as well as increased collaboration between local actors and local governments has had a profound impact in the country. The population somehow accompany these efforts but still remains a suspicious attitude in many social groups given the backgrounds of political exclusion typical from the past. The process still depends of the political will of elected governments and parties.

There is still a lot of road to walk before the public can relate the electoral authorisation with the government performance. Public complains over the quality of municipal administration are widespread and despite the critics every campaign period the parties revisit the same burned tactics: to search a popular person for candidate.

To promote the legal reforms needed to give autonomy to the local governments and to change legislation concerning independent candidates have been subjects of some fora but there is still the lack of political will to do so.

14.0 International dimensions of democracy

Are the country's external relations conducted in accordance with democratic norms?

International relations are not ruled mainly by democratic standards, considered constitutionally and regulatory. The domineering discourse has a democratic impression from which the actions of punishment and sanctions against determined countries and governments are legitimized, being the latter reasons of political nature more than democratic principles and values protection. This implies the dual yardstick with which similar situations are measured, although of different political sign for foreign policy of El Salvador, since the existence, in America and Asia of authoritarian political regimes or Governments which attempt against internal constitutional ordainment, have not been an obstacle for their recognition nor maintaining diplomatic relations; on the other hand, democratic reasons are adduced to deny the latter to countries such as Cuba or the Peoples Republic of China, when what really matters are ideological preferences, economic commercial interests and political subordination to "the preferences" of the United States foreign policy.

14.1

How free is the governance of the country from subordination to external agencies, economic, cultural or political?

During the years after the Peace Accords were signed, the UN system, as part of its explicit mandate, as well as a significant group of donors, kept close watch over the implementation of the Accords, and sought to mediate and apply pressure when progress was stalled. They played a key role in insuring that steady progress was made and sent very clear messages linking compliance with continued good relations with the international community. The governance of the country was indeed affected, constructively, in this case, by intervention and pressure from outside agencies. In many cases, El Salvador in the post-conflict period is an example of the positive role that outside agencies can play with a strong commitment to press a democracy-building agenda.

Obviously, like many poor nations for whom external aid and loans are extremely important, the economic policy choices made by the Salvadoran Government are highly influenced by the position and policies taken by the IFIs. In order to opt for IFI funding, the Government has given priority to macroeconomic stability, including in fiscal and monetary policy, promoted privatization, and sought to establish a more attractive environment for foreign investment. However, there has not been a trend as in some other countries, of major discrepancies between the government and the international lending banks, such that El Salvador has been compelled to adopt measures that would never have been implemented without heavy pressure from the Banks. The neo-liberal reforms in El Salvador were implemented at the government's initiative rather than as a result of external pressure.

During the eighties, when the Central American countries were considered by the US to be key chess pieces in the Cold War framework, the economic and military aid channelled to El Salvador was of such magnitude that it indeed subordinated governance to broader US policy goals. With the end of the Cold War and the peace agreements in the region, Central America has dramatically diminished in importance for the US as well as many other donors. With a different policy approach and considerably reduced levels of aid, US interest in exercising strong influence over governance issues has also diminished.

14.2

How far are government relations with external donors based on principles of partnership and transparency?

The Stockholm Declaration, agreed to by the Central American countries last year in Sweden at the Post-Mitch Consultative Group Meeting, sought to establish new principles for donor/recipient relations,

stressing the importance of transparency and participation. The joint preparation by the government and civil society of a National Reconstruction Plan as well as for a monitoring mechanism, contributed to greater transparency and more open communication between government, donors and civil society regarding the cooperation debate. However, the disillusionment and frustration on the part of the government and civil society regarding the limited resources obtained for post-Mitch reconstruction and transformation has undermined the previously improved relations with donors.

Degrees of partnership and transparency with donors also depends on each donors' specific character, as each have their own criteria for monitoring, evaluation, and publication of evaluations.

14.3

How far does the government support UN human rights treaties and respect international law?

El Salvador has ratified the following UN conventions and protocols: International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention against Torture, Convention Relating to the Status of Refugees, Protocol Relating to the Status of Refugees, CEDAW, Optional Protocol to ICCPR, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women. And has not ratified: the 2nd Optional Protocol to ICCPR on abolition of the death penalty, the Convention of the Political Rights of Women, and the Convention on the Nationality of Married Woman.

After concluding the armed conflict and the signing of the Peace Accords, there have been considerable advances on matters of democratic transition and consolidation, favoring a more scrupulous respect for human rights, mainly civilian and political. Nevertheless, the Salvadoran State continues not complying with some of the commitments subscribed in certain international treaties and does not satisfy basic economic and social rights (I.E. health, education, work, housing, etc.).

The promulgation of the General Amnesty Law for the Consolidation of Peace of march 20, 1993, leaving exempt of criminal responsibility the authors of political crimes or common crimes connected to those political that happened during the war and repression years, caused vulnerability in Articles 2, 4, 8 & 25 of the American Convention on Human Rights ratified by El Salvador on June 23, 1978, and therefore, according to Article 144 of the Salvadoran constitution, that Law of the Republic prevails over secondary laws, as is the case of the quoted amnesty law. In this manner, the Salvadoran State has contravened the doctrine of the Interamerican Court of Human Rights, with the sentence in the "Velásquez Rodríguez" case, where it ruled that "the State has the legal duty to prevent, reasonably, any violations to human rights [...], to seriously investigate with the means available any violation committed within the environment of its jurisdiction, in order to identify those responsible, impose the corresponding sanctions and assure the victim an adequate repair."

Related to the right and freedom to become unionized (Art. 23.4 of the Universal declaration of Human Rights), the Salvadoran State has not ratified important Covenants of the ILO which give material content and legal guarantees to the exercise of this fundamental right. Although the Salvadoran Constitution (Art. 39) and the Labor Code (Art. 228), do recognize collective contracting agreements, and in particular, the role of unions as a contracting party (Arts. 268 & 270 of the Labor Code), the Salvadoran State, by means of a frontal opposition of the ARENA Government and entrepreneurial organizations, has not ratified these Covenants: convenat 87 (on freedom to unionize and the protection of this rights, 1948); Covenant 98 (related to the right to unionize and collective bargaining, 1949); Covenant 151 8on the right to organize, collectively bargaining and collective conflicts in public Administration); Covenant 154 (on collective bargaining, 1981).

14.4

How far does the government respect its international obligations in its treatment of refugees and asylum seekers, and how free from arbitrary discrimination is its immigration policy?

After concluding the armed conflict and the signing of the Peace Accords, there have been considerable advances on matters of democratic transition and consolidation, favoring a more scrupulous respect for human rights, mainly civilian and political. Nevertheless, the Salvadoran State continues not complying with some of the commitments subscribed in certain international treaties and does not satisfy basic economic and social rights (I.E. health, education, work, housing, etc.).

The promulgation of the General Amnesty Law for the Consolidation of Peace of March 20, 1993, leaving exempt of criminal responsibility the authors of political crimes or common crimes connected to those political that happened during the war and repression years, caused vulnerability in Articles 2, 4, 8 & 25 of the American Convention on Human Rights ratified by El Salvador on June 23, 1978, and therefore, according to Article 144 of the Salvadoran constitution, that Law of the Republic prevails over secondary laws, as is the case of the quoted amnesty law. In this manner, the Salvadoran State has contravened the doctrine of the Interamerican Court of Human Rights, with the sentence in the “Velásquez Rodríguez” case, where it ruled that “the State has the legal duty to prevent, reasonably, any violations to human rights [...], to seriously investigate with the means available any violation committed within the environment of its jurisdiction, in order to identify those responsible, impose the corresponding sanctions and assure the victim an adequate repair.”

Related to the right and freedom to become unionized (Art. 23.4 of the Universal Declaration of Human Rights), the Salvadoran State has not ratified important Covenants of the ILO which give material content and legal guarantees to the exercise of this fundamental right. Although the Salvadoran Constitution (Art. 39) and the Labor Code (Art. 228), do recognize collective contracting agreements, and in particular, the role of unions as a contracting party (Arts. 268 & 270 of the Labor Code), the Salvadoran State, by means of a frontal opposition of the ARENA Government and entrepreneurial organizations, has not ratified these Covenants: Covenant 87 (on freedom to unionize and the protection of this rights, 1948); Covenant 98 (related to the right to unionize and collective bargaining, 1949); Covenant 151 (on the right to organize, collectively bargaining and collective conflicts in public Administration); Covenant 154 (on collective bargaining, 1981).

14.5

How consistent is the government in its support for human rights and democracy abroad?

Since the signing of the Peace Accords, El Salvador has made strides in the area of human rights and democracy which gives the country greater credibility in international fora. This does not translate in the government support for human rights and democracy abroad.

Authoritarian political tradition with the vulnerability of human rights as a historic constant, has not been the propitious framework for the carrying out of a foreign policy which proclaims and favors the democratic principles and values which recognized the inviolable dignity of the human being.

With democratic transition, a period of absorption in thought started when, logically, the attention and care were directed towards reforming the institutions of the State to make a reality the respect for the fundamental freedoms and rights of citizens and guarantee political pluralism. Nevertheless, foreign policy has been characteristic for its weakness related to other Ministries, lacking clear directions, with the absence of professionalism in the high positions of diplomacy, and the indifference on what refers to the state of democracy and human rights in its international environment.

Differently, curiously and paradoxically, the Salvadoran State should carry out an action “towards the outside” which would constitute an undoubted internal democratic development. This would constitute in the full recognition of the political citizenry for Salvadorans residing abroad, who at present are denied to

participate, from their residence, to their right to vote, so far, the successive Governments of the ARENA party and the parliamentary majority of the political right have been opposed to solve this harming democratic deficit in the political structure of El Salvador, expressing reasons such as technical and logistic impossibility, when the real reason is political, because of their fear as governing persons, that the vote of emigrants, open to another political-social horizon, may be adverse and contribute to their electoral loss. Nevertheless, in recent expressions, the leaders of the ARENA party have expressed their readiness to carry out the necessary reforms for the population abroad to be able to participate with their vote in the coming elections.

14.6

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

On what has been expressed, the attitude of considerable indifference and lack of initiative is manifest by the Salvadoran public powers in this environment of action. At present there is no sight that this will be modified, since they, instead of adopting a public opposition and debate generating attitude, seem to be subordinate to the course dictated by immediacy and situational. This may be considered a reflection of an insufficient development, from public institutions, of a vision consistent with the democratic problematic in the international scene.