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# **DEMOCRACY REPORT**

## **FOR**

# **PERU**

Dr. Rolando Ames Cobian  
Dr. Enrique Bernales Ballesteros  
Dr. Silesio Lopez Jiménez  
Dr. Rafael Roncagliolo Orbegoso

# PROJECT: THE STATE OF DEMOCRACY IN PERU

## INTRODUCTION

### I

The speed and intensity of the changes characteristic of the Peruvian political crisis, still in full swing, obliges us to place a precise closing date to these answers to the opinion poll on "Democracy Research Project Design" elaborated by "IDEA International". We have set that date as September 30. At that time the President of the Republic, Alberto Fujimori, had already made his decision to shorten from five years to one his presidential period and that of Congress. The Congress of the Republic had ratified the political agreement among the government, the opposition and civil society to make the necessary constitutional changes viable and move up the date of general elections for the presidency and the congress. A qualitative step seems to have been made. But there is evidence that the nuclei of military and state power, on which the authoritarian and extra-legal nature of the regime depend, have enough authority to continue at their posts. This, in spite of the departure of the intelligence advisor, Vladimiro Montesinos, the great coordinator of this line of command, parallel to and perhaps central to the government.

This strong regime, that succeeded in forcing through its unconstitutional reelection for a second time in April and May (09/04/00 and 28/05/00) found serious social and political resistance since those elections. At the beginning of July the Organization of American States agreed to establish permanently in Lima a Special Mission to facilitate a dialog between the government, the opposition and civil society and to find solutions to an agenda of 29 points "to strengthen democratic institutions". It was installed in August. By coincidence and very suddenly the government found itself in the midst of a serious crisis which affected it from the moment of its installation on July 28. This came about because of the revelation of obscure events related to arms trafficking and political corruption and the internal divisions these events produced at top government levels (end of August - middle of September). On September 16 the President announced his decision to advance the presidential and congressional elections. The regime seemed to surrender. This has opened a period of transition toward new elections and the installation of a new government. However, the road is lined with incertitude and dangers.

The magnitude of this crisis obliges us to remember another, different, but equally serious, that took place between 1988 and 1992. At that time a different political regime, of liberal democratic traits, with political parties with from 3 to 6 decades of party life and apparently stable, also entered a state of collapse and was finally replaced by President Fujimori's regime. The same President Fujimori carried out his "self-coup of state" (05/04/99) and installed an "emergency government of national reconstruction". Congress was closed, the Judicial Branch and Public Ministry were intervened, etc. This new regime solved two grave problems that directly affected the population: a hyperinflation with an economic recession and international financial isolation, and a political war waged with terror started by the group, "Shining Path".

Gaining control of these two problems legitimized the government. It won the support of "pragmatic forces" within and without and it normalized its authoritarian measure by calling for a constitutional assembly and a referendum. In 1993 the referendum approved the new constitution. Fujimori sought reelection, which the new constitution made possible (1995) and won it in a process full of irregularities but with real popular support. A political regime with active support of the high commands of the armed forces, with parties replaced by independent electoral movements, with a strong economic recovery in the country, seemed, to many, ready to institutionalize itself democratically.

However, the first signs of a political will to seek reelection again, which was unconstitutional, showed up in 96 and 97. But, more at the root of the matter, at the same time it became evident that the government was gaining control of the whole state administrative apparatus. The authoritarianism, which in the overall context of 1992 could seem to be an emergency recourse faced with the internal war and an economic crisis, now showed signs of its importance and of its hidden organization. Besides, after 1998 the economic situation began to stagnate and worsen, not only because of the international crises. The internal evolution in the reduction of poverty stopped and even regressed. Precarious employment, which had affected half of the population, climbed toward two thirds.

In short, with only a few years interval Peru has lived through not only the collapse of a government but of a whole political regime and its institutions. That is the scope of the present situation. It is also necessary to remember that it is under this regime that the country adapted to profound changes in the state and politics. Under the new globalizing impulse these changes charged around the world at the beginning of the nineties. In fact we could say that such an adaptation, more cultural than political, didn't take place to the same degree in the opposition parties and the new independent movements.<sup>1</sup> Thus the character more or less democratic of the ties which are established with political and economic international actors abroad, as well as with the real extra-political powers within, form a substantive part of the public agenda that the country now confronts.

Finally, the active social discontent with the prepotency of the government and, above all, with the corruption clear today at the highest levels, make up a basic part of the actual situation. Without the protests against the distortion of the whole recent electoral process, the present crisis would never have been set off. The problem resides, given the fragility of the social and political actors and the weakness of most of the social and economic institutions, in that these democratic demands might influence with the required efficacy the final outcome of the crisis and a future process qualitatively more democratic.

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<sup>1</sup> TANAKA, Martin. "The mirages of democracy. The collapse of political parties in Peru. 1980 - 1995", is a representative sample of the analytical literature on the subject.

## II

It is in the midst of this situation, so changeable (June - September), that the present report has been prepared. It follows the guidelines established for the questionnaire "Democracy Research Project Design) and is based on the analysis of the "relevant data" that that document suggested for consultation<sup>2</sup>.

The combination of items of precise informative and an obligatory brief total (120 pages maximum) hasn't permitted us to include the overall data collected for the answers which are developed in the following pages<sup>3</sup>. However we hope we have selected well the most relevant elements for the international comparison, the subject of this project.

In the overall text the references to the political moment correspond to the period in which the government had succeeded in a second reelection, though its legitimacy was in crisis and its stability uncertain.

In answering the last question on each theme, we have included the allusion to the period originating immediately after the new president's announcement that the next general elections would be early and he would hand over the government at the end of the first year of his new term. That is on July 28, 2001.

This last question in each chapter reads: "What measures are being taken publicly to remedy the problems identified?". As what is being lived through now in the country is an uncertain period of forced transition to new elections, the references to what is being done by the present government in each subject are already included in the preceding answers. A government leaving office can decide only about very limited affairs related to the immediate transition. For that reason, we have opted in this question to point out to what extent the problems described in the chapter are recognized in the public agenda of this moment "...and what degree of political priority and public support they have."

This version is a complete text but the next to the last. According to the comments we receive from IDEA International" and from the consultants invited to read and give their opinion on the document in Peru, we will include the improvements needed. The publication of the final version will be included in the two volumes that will make up the final result of the international comparison that this project's central team is producing.

**Group IDEA/ Peru**  
**Rolando Ames, Enrique Bernales, Sinesio López, Rafael Roncagliolo**

**October, 2000**

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<sup>2</sup> For reasons of space we only reproduce in the text the general and specific questions of each of the 14 themes but not those asked concerning data to consult. For that reason we suggest having at hand the full questionnaire as a help to reading this report.

<sup>3</sup> This version yet exceed that border.

## I. CITIZENSHIP, LAW AND RIGHTS

### 1. NATIONALITY AND CITIZENSHIP

**Is there public agreement on a common citizenship for all without discriminations?**

There really isn't an effective agreement as to a shared citizenship without discriminations. However, if we listen to peoples declared opinions the sum of individual opinions could indicate generally the contrary, that there is such an agreement. This ambivalence reveals a problem at the root of the social basis of democracy in Peru. The generally expressed opinion denying such discriminations exists alongside the adaptation to such discriminations because of ancient and still strong historical habits. Our society had a hierarchical and class structure during the whole colonial period and this continued almost intact to the beginnings of the twentieth century. The crossbreeding that occurred from the beginning was denied at the same time it was legitimized within the existing cultural, hierarchical and discriminatory patterns. A strong democratizing process based on the migration to the cities and to the coast during the whole of the twentieth century and the penetrating processes of the present globalized communication have greatly eroded the vertical organization but haven't yet substituted for it a democratic citizenship structure. The discrimination is chiefly cultural and economic. Ethnicity, subtle but still important, doesn't function alone but associated with the other elements.

This context conditions "state citizenship". The poor sector of the population, 54% of the country, usually show that they don't experience the juridical structure as impersonal and egalitarian. The perception of law as a product of a contract among equals is just partial. The existence of second and third class citizens is empirically provable. The process of affirmation of ones own individuality is, however, more intense and widespread every day. The magnitude of the poverty and economic inequality is, for that reason, today, along with the cultural ambiguities that still exist, the most important active element in the lack of a full experience of citizenship.

#### ***1.1. How inclusive are the national political community and the state citizenship of all those who live within the national boundaries?***

The Peruvian constitution points out that citizenship is a political right or the condition for the exercise of political rights<sup>1</sup>. If citizenship is measured only in the light of existing laws, one could conclude that there exists a formally full citizenship for those born Peruvians but not for those who are Peruvians by naturalization or free choice.

The basic discriminations alluded to at the beginning don't have a legal expression, but a cultural one. They exist in the daily practice, and thus include the institutions and state

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<sup>1</sup> Its requirements are: Peruvian nationality (by birth, naturalization or choice) and older than 18. To be a citizen concedes rights: to participate in public affairs; to vote; to elect and be elected, except for active members of the armed forces and police (though they are citizens). The Organic Electoral Law (26859) indicates that to be elected president or congressperson one must be a Peruvian by birth.

public organisms that are in direct contact with citizens. Many studies testify to this phenomenon in spite of its complexity and inherent tendency to conceal itself. In a voluminous empirical and theoretical work on the subject, based on a national inquiry (1997), Sinesio López<sup>2</sup> reaches the following conclusions:

30.2 % of Peruvians have low and very low levels of citizenship 25.7 % of Peruvians have intermediate levels of citizenship 43.9 % of Peruvians have relatively high levels of citizenship
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We will describe here the problems of inclusion of second and third degree citizens. Then we will show an example in which the political conflict among power elites, on the "upper levels of citizenship", can reach the point of taking away the condition of citizenship from a political adversary.

One specific example of the inequalities in the quality of citizenship was during the whole republican historical period the so-called "Obligatory Military Service". This institution should have assured a temporary dedication of all citizens to military service, but in the practice applied only to the popular sectors of the population and those living in distant provinces, frequently through forced recruitment. Though it has recently been repealed<sup>3</sup>, the problems of young people 18 years of age who haven't done their military service have taken on renewed importance as a result of the still existing internal war between the state and the group called "Shining Path" (1980-1993). Even under normal conditions, because of the intense migration from the rural zones and the primitive character of the birth certificate archives in those zones, young people, who reach the city at an age when they must register in the National Record of Identification and Civil State, (RENIEC) frequently have difficulties regularizing the documents that prove their identity as citizens.

The steps to obtain both documents (Military Card and National Identity Card) are more difficult in poor rural zones where terrorist violence took place<sup>4</sup>. Those displaced by the violence began a process of returning to their homes since 1994. By 1998 some 250,000 people had returned home. (Program in support of repopulating). However, given the persistence of the terrorism and common delinquency (Huánuco, Alto Huallaga, Satipo, etc.) many opted for only a temporary return. That generates problems related to the recognition of their identity: unjustified interrogations concerning terrorist offences, avoiding obligatory military service or not recognizing the service spent in the so called Self Defense Committees - during the war against Shining Path - as military service. Even when a provisional identity card has been obtained, this isn't always recognized as valid. A

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<sup>2</sup> LOPEZ, Sinesio. "Real and Imaginary Citizens". The indicators of citizenship are constructed from: a) political citizenship, whose indicators have to do with participation in the 1993 electoral process b) social citizenship, according to the data of the National Census concerning the quality of life of the same year and c) civil citizenship or the autonomy of persons, measured according to the contractual character or lack thereof in labor relations.

<sup>3</sup> According to the Law N°27178 (September, 1999) military service is now voluntary.

<sup>4</sup> The information presented has been taken from the first and second report of the People's Defender to the congress of the republic 1996-1998 and 1998-1999, respectively.

concurrent problem has to do with conflicts over the land between members of farm communities who never left and the returning population<sup>5</sup>.

Finally, we should mention in this category a special case of citizenship discrimination because of its gravity and because it exemplifies possible behaviors under the present authoritarian regime and the manner of resolving conflicts within its central nucleus. In 1997 a dispute erupted between the government and the Jewish citizen, nationalized Peruvian, Baruch Ivcher, the majority share owner of the television station, Channel 2, which up till then had actively supported the government and was friendly with the heads of government. When, as the result of internal disputes still not fully understood, this medium denounced grave violations of human rights, Baruch Ivcher's citizenship was invalidated, with the allegations of irregularities in the original procedures. Upon losing his nationality, Ivcher lost the right to own his shares in Channel 2 and there began a conflict with the other shareholders, with obvious governmental pressure to change the political orientation of the channel. The case has reached the International Court for Human Rights, is in the agenda of the dialog promoted by the OAS, and proves the restrictions to the exercise of freedom of the press.

### ***1.2. How big are the recognized cultural differences and how well protected are minorities?***

As we have said, the cultural differences are recognized and theoretically minorities find themselves well protected at a legislative level. In Ecuador and Bolivia, neighboring countries with which Peru has similar ethnic identities, there exist strong indigenous movements. In Peru the intellectuals concerned with indigenous affairs evolved generally to maintain that the objective cause of the races' submission was in the conditions of land ownership by large landowners. That led to a situation where the organization of these layers remained constant till today, more because they are farmers than because they are indigenous people. On the other hand, the slow spread of the market to the Andean zones and, above all, the migration to the cities, has allowed a greater process of social integration in the practice. Given this situation, the Indian, to climb the social ladder, became accustomed to present himself as a "Cholo" (term used to describe the crossbreed with strong quechua or aymara ancestry). At the present time, ethnic discriminations overlap the economic and regional (poor quality of life, public educational and health services). For these reasons, it isn't possible to quantify precisely the volume of ethnic Andean "Indians" who have gone through a strong and long term crossbreeding process<sup>6</sup>. The discrimination for reasons of gender tend to coincide with and aggravate the discrimination patterns in the poorer regions and zones.

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<sup>5</sup> The requirements and procedures established by the Ministry of Defense to pay reimbursements to those who took part in the Committees of Self Defense and became invalids or the relatives of those who lost their life are very complicated. They must be simplified because the persons affected are in the majority quechua speaking farmers with a very precarious economic situation.

<sup>6</sup> The exception would be the Amazon ethnic groups who have kept themselves apart and the small black minority;.

The Peruvian political constitution<sup>7</sup> recognizes that ethnic and cultural identity is a fundamental right of the person and the state protects national ethnic and cultural plurality<sup>8</sup>. A multitude of norms have the purpose of protecting the citizens of ethnic groups discriminated against<sup>9</sup>. However, the purpose of these norms isn't accomplished satisfactorily in the practice. The Defender of the People points out that "in our country the special legislation related to the indigenous peoples and communities has a declarative and general character. For the most part, it hasn't been developed through public policies that commit the state and social sectors which are not indigenous to action showing the respect due the rights of those peoples and communities."<sup>10</sup>

In this field the native forest communities suffer the most serious situation. There is an uncontrolled extraction of primary resources from their natural habitat and there is the possibility that the communal lands be declared abandoned because of the lack of constitutional protection. They are considered just economic goods. Other dangers arise from mineral and oil exploitation. The 28 lots in the Amazon conceded to oil companies are located in areas inhabited by indigenous peoples and there is fear that the environmental and sociocultural impact may cause grave consequences.

As an example of the complexity of the subject of our ethnic cultural integration, a recent study shows that the majority agree that the most discriminated against are "the Indians"; but those who most discriminate are "the rich". So the crux of the problem isn't one dimensional. It is a mix of ethnic and economic. It is also relevant that if one asks people the great majority tend to place themselves in the middle. That is, neither as discriminator nor as discriminated against.

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<sup>7</sup> The 1993 constitution points out that the treaties celebrated by the state and in force make up a part of national law (article 55). However, when these have to do with human rights, sovereignty, dominion or the integrity of the state, national defense or the financial obligations of the state they should be approved by congress before their ratification by the president of the republic (article 56);. At the same time, the fourth final and transitory disposition points out that the norms related to the rights and liberties that the constitution recognizes are interpreted according to the Universal Declaration of Human Rights and to the international treaties and agreements ratified by Peru.

<sup>8</sup> The constitution itself also points out that every Peruvian has the right to use his/her own language before any authority through the use of an interpreter, that the state foments bilingual and intercultural education according to the characteristics of each zone, that the state preserves the diverse cultural and linguistic manifestations of the country and promotes national integration; that the official languages are Spanish and, in the zones where they predominate, quechua, aymara and the rest of the aboriginal tongues; that the farm and native communities have a legal existence and are legal persons, autonomous in their organization and in the use and free disposition of their lands as well as economically and administratively, within the existing legal framework; that the authorities of the farm and native communities can exercise jurisdictional functions within their own territory in accordance with their customs, as long as they don't violate the fundamental rights of persons.

<sup>9</sup> There also exist norms applicable to the farm and native communities in the political constitution, the civil code, the penal code, the environmental and natural resources code, the child and the adolescents' code, the organic law of judiciary power, the general law concerning education, the municipal law, the organic law of the ministry of agriculture, the organic law concerning oil exploration and activities, the law concerning municipal taxation, the law concerning income tax, etc., and different international treaties and agreements which make up part of Peruvian law have been ratified.

<sup>10</sup> Compendium of Legislation for the Indigenous Peoples and Native Communities. Lima. Peru, June, 2000, p. XIII.

**1.3. How much consensus is there concerning the territorial limits of the state and the constitutional arrangements?**

There don't exist in Peru any separatist groups that deny the state its sovereignty over any part of the national territory. Border problems have been important and the cause of serious military confrontations, but the population lives them rather as a source of national unity. Thus the agreement which put an end to the dispute caused because Peru and Ecuador had never finished marking their common border<sup>12</sup>, and the progress made to finish solving points pending in a longstanding frontier conflict with Chile<sup>13</sup>, have been very important. However the first agreement has generated strong opposition in some of the frontier populations affected by certain territorial and bilateral commercial concessions

As for the constitutional agreements, the present crisis of legitimacy the government is suffering has to do, in the final analysis, with the lack of consensus concerning the April 1992 self-coup which originated the change from the 1979 to the 1993<sup>14</sup> constitution. Even though the need for the self-coup in order to take emergency measures was and is very debatable, it produced the image of a gesture of authority indispensable to maintaining social order. Hyperinflation and political violence were really critical problems. Thus the self-coup enjoyed the massive approval we will show below, while the constitution was approved very narrowly in a referendum. The opposing opinions were based primarily on the disappearance of many social rights from the text of the new constitution. The following data show the people's attitude toward the authoritarian measure taken in April, 1992:

- 1) Are you totally, or partially in agreement or totally in disagreement with the last measures taken by Fujimori?

Totally in agreement	57%
Partially in agreement	34%
In disagreement	8%
Don't know/Don't comment	1%

- 2) Are you in agreement or in disagreement with the following measures taken by Fujimori's government<sup>15</sup>?

Measures	Agree	Disagree	NA/NO
Reorganization of the judicial branch	95%	2%	3%
Reorganization of the educational system	90%	7%	3%
Dissolving of congress	84%	12%	4%
Restructuring of regional governments	83%	7%	10%

<sup>12</sup> The Peace Agreement was signed the 26 of October, 1998 and was approved by congress the 14 of November (Law N° 26995).

<sup>13</sup> Act of November 13, 1999.

<sup>14</sup> The pressure for the government to convoke a constitutional assembly came more from abroad (The conference of chancellors of the OAS in the Bahamas in May, 1992) than from internal opposition.

<sup>15</sup> Source of the three results: Datum. In: "El Comercio"; April 10, 1992

Modifying of the constitution	78%	16%	6%
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3) Do you believe that the measures adopted by Fujimori will allow the improvement of the situation in the country?

Yes	82%
No	15%
Don't know/Don't comment	3%

And compare these data with the results in the October 31, 1993 referendum on the approval of the State's Political Constitution<sup>16</sup>.

Yes	53.1%
No	46.9%

The great number of constitutions the Republic has had shows the problems of real integration in institutionalizing state and society. Between the decades of the twenties and the eighties the debate concerning the existence or not of the democratic nature of the state was intense and permanent. The political recourse to armed struggle was fleeting in Peru (1965-1966) until the appearance of the Shining Path group, but not the argument over the legitimacy of that recourse. The frequency of military governments expresses even more visibly the weak legitimacy of the culture and the democratic constitutions. Shining Path, politically a small, marginal group, had surprising success in confronting the state and all the other political actors on the stage, through the use of military and terrorist actions at a time when the classic guerrilla groups were in decline in most of Latin America. It began its activities in the most backward and weak territories and populations; which it controlled by force. With the arrest of their leader, Abimael Guzmán, in 1992, they rapidly lost the influence they had won when they terrorist actions reached Lima, the Amazon, and other regions of the country. Though they have lost all significance today; the very fact that they appeared so violently shows the type of tensions and inequalities that are part of our history.

#### ***1.4 To what extent do the political and constitutional agreements allow for the major social divisions to be reconciled or controlled?***

The authoritarian traits of the present regime make it impossible for the major social divisions to be expressed, curbed or resolved. Especially as the main public division today is over the very legitimacy of the regime. This division began to surface when the will to a second reelection became evident in 1997. And it has become a critical unresolved subject since April of this year when it has become evident that more than half the country considers the second reelection of Dr. Alberto Fujimori<sup>17</sup> irregular. There is a need for synthesizing the background and stages of this process.

<sup>16</sup> Unofficial data on the referendum that took place in October, 1993. Source: Datum. In "El Comercio", November 1, 1993.

<sup>17</sup> Question: With which of the following attitudes do you identify?

Fujimori's self-coup in 1992 opened a new political period in which the divisions based on conflict among social classes and the distribution of income lost the central political focus that they had had for many decades. Such divisions were not necessarily reconciled, rather those topics lost influence because of the disappearance of the eastern block, other worldwide changes, and because of the national failure of the policy of intense economic intervention which the government of Alan Garcia put in operation and which failed.

During the period 1993-1996 the constitutional political renewal of governing institutions seemed to have the internal capability of moderating the social tensions. After years of economic and political crisis and national confusion there was a strong demand for order. Criticism of deregulation and the abrupt opening of the economy along with social readjustment showed up in the public opinion polls, but did not lead to questioning the new order. The expectation was that those measures, attributed in part, correctly, to correcting the consequences of the policy of the former government of Alan Garcia, would finally bear fruit.

In August, 1996, an objectionable "Law of authentic interpretation" was approved in congress and opened the way to a second reelection. It was alleged that this would be the first under the new constitution. (Cf. 5.1) The first signs of a new discontent appear. Thus it happened that the biggest political division and the biggest social conflict arose, not so much because of Fujimori's government's policies, but rather because of the doubt concerning the legitimacy of his mandate. The authoritarian and imposed nature of a political regime which exercises control without a balance of political and social powers was now directly questioned. Thus this political regime - more than the constitutional framework properly speaking, which has been violated by its very authors - does not have capability of managing a social division in the country which it itself originated. Thus like all authoritarian regimes in trouble, it tried to completely destroy the legitimacy of its opponents, fomenting calumnious campaigns to show them as permissive or even promoters of a so-called 'neo-terrorism'.

The uncertainty at the moment is about whether the internal pressures and those of the international community, concretized in the form of a High Level Mission of the Organization of American States in Lima, will succeed in creating a consensus that the reelected regime modify its authoritarian nature.

We should point out three central social and political traits in the fluid and indefinite situation today. One, the demand for political democracy is very strong among young people and the middle class is very strong and has a strong cultural and ethical component. Second, the socioeconomic topic of unemployment and poverty are beginning to reappear in the midst of signs that the fiscal and economic crisis of the regime, hidden by the electoral process, could be very very serious<sup>18</sup>. Third, the political opposition, which has

<sup>18</sup> Question: At the end of Fujimori's second government, do you consider that the following aspects have improved, continue the same or have worsened? (The list is bigger, but we have taken the aspects that have to do with the perception of the people concerning the progress of the economy)

Aspects	Better	Same	Worse	No opinion
Standard of living	14%	41%	40%	5%

become relatively stronger, does not succeed yet in creating an image of themselves as solid alternatives of government and capable of building institutional relationships with a civil society also weak and fragmented.

One should consider other aspects of the political and juridical norms as part of the constitutional, and political framework for the management of social divisions. One would have to enumerate critically, then, the restrictions imposed on the inscription of political parties, the lack of state support in financing electoral campaigns, and, above all, the lack of guarantees of freedom of expression and of the press. These are treated in chapters 6 and 5 and the last problem in chapters 3 and 10, respectively.

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- |   |     |
|---|-----|
| 1) We have a dictatorial government. We need new elections:   | 35% |
| 2) We have a government legally elected but great changes are needed to succeed in creating an authentic democracy. | 32% |
| 3) We have a democratic government. The poor international image is the opposition's fault.                         | 17% |
| 4) Politics does not interest me. It is all the same to me.   | 12% |
| 5) Does not give an opinion:  | 4%  |

Source: APOYO. Opinion and market. A Fax of opinion. July 2000

### ***1.5 Just how impartial and inclusive are the procedures for a constitutional amendment?***

The evaluation of the 1993 constitution is, from what we have seen, very tied to the way it was used by the regime that legitimized itself through it. During these years there have not been, strictly speaking, any constitutional amendments. However, there have been grave distortions of the constitutional norms which, "in the practice", have amended it.

One of its positive advances was to include mechanisms for direct citizen participation, absent before, such as the referendum, the abrogation of authorities or the requirement of render account (Art. 32). However, for political reasons, Law 26592 (17/04/96) restricted the right of a referendum, one of whose possible objectives is, precisely, constitutional reform (Art. 32). That law established that the law entered into effect only if approved by two fifths the legal number of congresspersons. In that way they placed a goal the opposition couldn't reach and frustrated any possibility of success for a referendum organized by the opposition to abrogate the so-called "law of authentic interpretation". Later the dismissal of 3 magistrates belonging to the Court of Constitutional Guarantees (Legislative resolutions of 29/05/97) made this organism an entity with no practical significance. It was at that time that the reaction of public opinion against the regime's authoritarianism began and that it became evident that this regime had no problem in violating the very constitution that it had promulgated.

From a theoretical point of view the procedures for a constitutional amendment are acceptable. Every total or partial reform should be approved by congress by an absolute

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Future expectations	26%	27%	28%	19%
Generation of jobs	7&	32%	60%	1%

Source: APOYO. Opinion and Market. Ibid.

majority and then be ratified by a referendum (Art. 206)<sup>19</sup>. The referendum can be omitted when the agreement in congress is obtained with a favorable vote superior to two thirds of the legal number of congresspersons, in two successive ordinary legislative sessions. The initiative for a constitutional reform, besides the initiative of citizen, belongs to the president, with the approval of the Council of Ministers, and also to the congresspersons. Other substantive constitutional violations which allowed political control of the Executive Power over the Judicial Power, the National Electoral Jury and other institutions are treated in the following chapters.

## 2. THE LAW

<b>Are the state and society consistently subject to the law</b>
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The answer is negative for two reasons: first of all, the material and cultural problems of our society have limited till now the effective scope and even the perception of the ultimate meaning of written law as an expression and guarantee of a democratic order. There are not enough empirical studies, but there are valuable analytical studies about cases, about how this sociocultural context affects the actors and the political process, the functioning of the state and the processes of reform<sup>20</sup>. The central problem lies in the fact that for vast social layers the law does not appear to be an expression of the social collectives of which they feel a part. Secondly, it is a trait of the present authoritarian regime to have tended to confuse state and government and to underestimate the law when in contraposition to government decisions. In a country that still has traditional patterns of authority, this decade has again strengthened old ideas about the relative value of the law.

The question also implies exploring the public relations among persons and groups as well as the degree of subjection of persons and social groups to the law and also distinguishing the degree of understanding of the efficacy of the laws themselves. A general answer is that natural and legal persons submit to the law unevenly, according to their situation and the circumstances proper to each occasion. In the decades of the seventies and eighties, the material and cultural traits of our society favored the fact that given the intensity of the migratory processes and social change people spoke of a "popular flooding" of the institutions as they had been. As a consequence the so-called "legal informality" is analyzed more and more.<sup>22</sup> It expresses the phenomenon of plurality of patterns of relationship possible with authority as well as among groups in any given circumstance. Obedience to the law is one of the possibilities open but isn't often seen as the most advisable or as what others expect. The perception that there was a tendency toward lack of respect for the law which was called at the beginning of the eighties as "achoramiento"<sup>23</sup>

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<sup>19</sup> A referendum requires a number of citizens not less than 10% of the national electorate. (Art. 38 Law N° 263000).

<sup>20</sup> NUGGENT, Guillermo. Delegated Authority and Composition without a Title, sociological essays published for the Ebert Foundation in Lima in 1996 and 1998, are two examples of a renewed interest in the subject. For a synthetic treatment of the subject restricted to Latin see: DA MATTA, Roberto: What pertains to society and what to the state.

<sup>22</sup> MATOS MAR, José. Desborde Popular

<sup>23</sup> "Achoramiento" is the habit of looking for the greatest self benefit in public relations, cheating and making fun of the law, but assuming such behavior as normal. It is a kind of permanent semi-felonious habit.

These phenomena have lead other authors to speak simply of legal lawlessness. This tendency grew it seems in the zones ruled by Shining Path terror and a military repression also often "lawless". The present government for its part has advertised the efficacy in results of its action as a "pragmatic" trait superior to the formal procedures that characterize what it called the "previous democracy", formal procedures which characterize what it called the "traditional parties".<sup>24</sup> In this context one ought to consider the impact on the prestige of the written law of a policy that, throughout the world, is defined mainly according to TV images and its commercial logic. In Peru they are, at the same time, conditioned by money, rating and political power itself<sup>25</sup>.

Probably by avoiding simplistic theses, one can say that the law in Peru went from being the legal norm, distant and bureaucratic, to being only one possible behavior to choose. That in this transition the majority of the people have learned to behave according to circumstances, negotiating their interests, obedience and loyalties. Their present precarious inclusion, economic or political, is thus more informal than legal and civil. That leaves a profound emptiness which corrodes institutions but which perhaps opens possibilities to create others, new "legal social contracts", real and inclusive.

### ***2.1 How efficacious and operative is the law throughout the national territory?***

The limits to the law's functioning are not primarily related to territorial differences. Only during the internal war with Shining Path and the Revolutionary Movement Tupac Amaru was there a difference, and that phenomenon has ended. In distant rural zones, in the Andean uplands or in the Amazon forests, the presence of the state is naturally weaker than in the cities and the force of traditional customs is stronger. However it is a question of degree. In the popular zones of Lima, a city of eight million inhabitants, this combination with the traditional customs of the migrants in the popular residential areas is also important. The "cultural hybridness" mentioned before runs throughout the whole of society and it is that which limits the efficacy and functioning of the law, by combining it with informal patterns.

The laws having to do with the conduct of public administration are obviously impersonal and universal. However, as a product of a long history, the capacity to influence and distort its application by persons with money, prestige and influence, continue to be considered something normal. (Cf. Chapter 1) The relationship of the military with the law is also sui generis. As we will see (Chapter 8), the armed forces consider themselves and have been considered "tutorial institutions" since the very beginnings of the republic, because the state

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<sup>24</sup> Hernando de Soto, the author of *The Other Path*, had already criticized our statist and bureaucratic tradition reinforced by "the interventionist state populism" which suffocated the market and individual initiative, even of the popular sectors it pretended to protect. His preaching a flexible mutual contract appeared at the beginning to be adopted by Fujimori's government. However, in the end it opted for identifying flexibility with its own convenience and arbitrariness.

<sup>25</sup> There are Peruvian investigations about this worldwide debatable subject which show that our oral culture is reinforced by electronic images, corroding more the reasoning proper to the written culture that still had not been assimilated. Cf. Article by Juan Biondi in *Question of State* N° 12. IDS. Lima, 1996

was organized and sustained around them, more than civil society. Even under normal democratic conditions, the force of civil political authority over the military has subtle distortions which society is accustomed to<sup>26</sup>.

The limited prestige of the public functionary and the habitual corruption in the Judiciary and the Police, two institutions basic to civilian safety, also qualify the limits placed on the law in our society which, as is well known, is vertical, poor and unequal. Let us close the answer with a reference to two problems especially critical: civilian safety and the drug traffic.

Civilian safety: we must point out that in urban areas, especially Lima and Callao, civilian safety keeps becoming a bigger problem. In certain marginal residential areas, the relation is clear between marginality, economic deprivation and the social violence of delinquency, as well as the weak presence of state activity of any kind. During recent years the government has given orders to police institutions to repress criminal gangs in order to slow down the waves of kidnappings and other criminal acts classified as acts of aggravated terrorism<sup>27</sup>. These norms, legally questionable, seem to have succeeded in stopping partially the progress of this phenomenon.

Drug traffic: According to some analysts, in spite of the noticeable progress of the government in repressing drug traffic, at the same time it has grown in the last decade. In 1999 38,700 hectares of cultivated coca leaves were reported, most of it in the Alto Huallaga Valley and the Central Forest. It is estimated that in that same year in Peru 175 metric tons of chloral-hydrate of cocaine was produced and between 500 and 600 million dollars coming from activities related to the drug trade<sup>28</sup> worked there way through the financial system. There exist in the central forest zones evidence of the cultivation, processing and commercialization of drugs. These activities are the object of government repression, as well as of programs for substituting drugs for other crops in charge of different governmental programs, especially Antidrugs.

## ***2.2 To what extent are public functionaries subject to the law and transparent rules in the exercise of their tasks?***

The considerations above give us a framework for this answer. Let us continue with the process of the reduction in size of the state and its reorganization in the framework of the world processes of globalization economic deregulation. In the case of Peru, the bad reputation of state interventionism opened up the possibilities of a change and a profound modernization of the state. The fiscal crisis was so obvious that the processes of reducing personnel and even the privatizing of public enterprises met no sustained resistance from 1990 to 1995, during Fujimori's first government. The reform measures of the so-called "first generation", (deregulations and economic liberalization) were approved very rapidly

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<sup>26</sup> An example is the military tendency to express itself as institutions in public life through the Ministry of Defense and its commanding generals, or to consider it normal that the officers have prerogatives very superior to those of the civilian.

<sup>27</sup> This legal classification has been questioned by specialists as it shows an authoritarian military style and prolongs the image of an internal war, thus politically favoring the government.

<sup>28</sup> Andean Commission of Lawyers. Policies on Drug Control in the Andean Region.

from 1991 to 1993. The new state functions of technical supervision of the services privatized, of the modernizing of the tax system, of the locating of the poorest of the poor in the struggle against poverty, etc., took shape rapidly. However this strong will to modernize stagnated and was never finished. The reform of the state apparatus never reached the so called "second stage", having to do with strengthening institutions. There have remained some "bubbles" of modernity and efficiency in some institutions such as Indecopi, Sunat, and the Public Records and other entities. However they do not represent the essence of the present Peruvian state<sup>29</sup>.

The system for controlling the public administration, on the other hand, lies with the General Controllers Office of the Republic, which receives from the constitution and its organic law the authority to commence administrative procedures against those public functionaries who transgress the law in the exercise of their functions. However, the political control waged by the government has affected the ability of the Controllers Office and, especially, diminished the image of the Controller. Besides the cases of corruption that haven't merited any action on the part of the government, a very controversial public functionary was recently named Controller.

As for the submission of public servants or state functionaries to the law, the basic idea is that this hasn't been politically an institutional priority of the government. There subsist in the country serious structural problems related to the corruption of public functionaries and there is a growing inability of the instances of control to exercise any effective supervision in some sectors, especially those relation to national security.

The government even approved a specific legal framework to control public functionaries. Within it we could emphasize the recent disposition which regulates the process of formulating the budget<sup>30</sup>. However we can say very briefly that measures proper to this tendency were either subordinated or displaced progressively by the political control and vigilance of the Public Administration and all the state authorities. The primary criterion for institutionalizing was no longer objective efficiency measured by results according to transparent rules, but rather the confidence of the political apparatus directed by the National Intelligence Service.

From today's perspective it is clear that the very meaning of public service has been weakened and that the most powerful state apparatus which has surfaced during this decade is the National Intelligence Service (SIN). It seems to have combined the tasks of formulating political strategy and the control of the means of communication, the control

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<sup>29</sup> The enumeration of well oriented technical dispositions would be long: organic laws and organizational rules as well as laws and directives for simplifying administrative tasks, specific laws and directives for managing the public budget such as the law of fiscal prudence and transparency, the law on the rights of citizen participation and control, the law against nepotism in the public administration, as well as bringing up to date regularly the so called Sole Text for Administrative Procedures (Tupa), the laws and rules regulating acquisitions and contracts in charge of the state, norms for closing management contracts with the those in charge of decentralized public entities, as well as dispositions and ethical codes for public functionaries. Theoretically there was a lot of progress in subjecting administrative actions to norms, mechanisms and organisms in charge of the control, auditing, prosecution and sanctioning of administrative acts.

<sup>30</sup> Law 27245: The Law of Fiscal Prudence and Transparency and its Regulation approved by Supreme Decree 39-2000-EF.

and supervision of the functioning of the central state apparatus, especially the armed forces, the political police and the means of spying, blackmailing and instilling fear to assure the functioning of the others. Public functionaries, above all, have been subject to this system of control. The moral scandal revealed recently where congresspersons were suborned to form a majority in Congress favorable to the executive is what brought on the present government crisis.

Last of all, to end this response, we should record a positive element. As we will see later there exist public entities autonomous in respect to the government with the capability of answering to the citizens. A very important one, introduced in the 1993 constitution, is the Defender of the People<sup>31</sup>. This institution has acquired great credibility on the part of the citizens because it has remained faithful to its independent mission. Even in especially difficult circumstances such as in overseeing whether or not human rights are being enforced, even in zones under a state of emergency, and, most recently, in giving attention to accusations and complaints concerning the regulation of public services as well as on the subject of electoral supervision<sup>32</sup>.

### ***2.3 How independent is the Judiciary Branch from the Executive Branch and how free is the Judiciary from any kind of interference?***

In accordance with the constitution and the organic law of the judicial branch<sup>33</sup>, the judicial branch is autonomous politically, administratively, economically and discipline wise in the exercise of its functions and independent in its jurisdiction. However, the reality is that it is hard to accept the thesis that the magistrates of the Judicial Branch are free of political and economic interference. The 1992 state coup led to the dismissal of those responsible for the organs of control in the Judicial Branch, the Public Ministry, the Court of Constitutional Guarantees, the General Controller of the Republic, and led to dissolving the Congress of the Republic, where the government's party did not have a majority.

The government created Executive Commissions<sup>34</sup> for the Judicial Branch and the Public Ministry which had the basic task of giving back to these important public instances the prestige lost through years of corruption and inefficiency. That hasn't been achieved because the commissions have named a great number of provisional magistrates whose activities escape legal supervision after being used by the government to get judgements against some of its political opponents. At the same time these were made to feel that the continuation of their function depended on their faithfulness to political dispositions that non-official representatives of the government or, more directly, of the National Intelligence Service, took within the Judicial Branch. This recourse was decisive in giving political control and undue influence to the government.

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<sup>31</sup> Articles 161 and 162 of the 1993 Constitution contemplate the creation of the Defender of the People, whose functions consist in "defend the interests of the citizens and investigate the fulfillment of the functions of public functionaries".

<sup>32</sup> Executive Resume of the Third Report of the Defender of the People to the Congress of the Republic. 1999-2000 (Special supplement of the official newspaper El Peruano (The Peruvian). September, 2000.

<sup>33</sup> The Sole Ordained Text approved by Supreme Decree N° 017-93-JUS.

<sup>34</sup> The Executive Commission of the Judicial Branch was established by Law 26546 and the Executive Commission of the Public Ministry by the sixth final disposition of Law 26623.

This dependence is hidden by the legality of established forms, especially by the congress of the republic, controlled by the government, therefore subject to the executive. From the time of the self-coup in 1992 the process of the concentration of public powers in the executive branch has grown, specifically around the president of the republic. A small upper layer of presidential advisers has benefited. The Defender of the People is referring to this when he mentions the weakening of constitutional design, a process which we will explain using as examples its principal landmarks.

- The government named executive commissions both for the judicial branch and the Public Ministry and granted them a wide mandate to reorganize these organisms. These reforms brought about the total subjection of these powers to the interests of the governing party. It is sufficient to note the absence of jurisdictional sanctions for upper level functionaries in spite of the variety of accusations presented<sup>35</sup>.

- Through this mechanism the government gained indirect control of the National Council of the Magistracy (CNM), the organism responsible for naming, giving credentials to, dismissing and ratifying judges and prosecutors and for naming and dismissing the Head of the National Office Electoral Processes.

- Congress suspended the faculties of the CNM to name magistrates and give them credentials and later restricted its faculties to dismiss them. That generated a situation where the seven titular members of the CNM resigned in April, 1998. The replacements who decided to stay on were declared official supporters<sup>36</sup>.

- Through the control of the CNM President Fujimori gained the control of provisional judges and prosecutors who made up the majority of the Judicial Branch. Besides, through the naming of provisional magistrates, the government gained the control of the Supreme Court and the Board of Head Prosecutors.

- The intervention of the public universities assured the control over the National Electoral Jury, the organism formed of 5 members elected by the Supreme Court, the Board of Head Prosecutors, as well as the law faculties of the public and private universities and the College of Lawyers of Lima.

- Through control of the Judicial Branch, the Public Ministry and the National Electoral Jury, the government controlled the 47 Special Electoral Juries (JEE). Each was presided over by a member of the Superior Court and two citizens elected by the JNE from a list elaborated by the three members of the Public Ministry. Only 10 of the 47 presidents of the JEE were titular members of the Superior Courts.

- By the creation of specialized or transitory tribunals, the political authority expressed by the Executive Commission of the Judicial Branch concentrated all the cases of political importance in the hands of magistrates addicted to the regime. The authorizing of equal rights and attributes to provisional and titular magistrates also served to convert these tribunals into entities of political control.

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<sup>35</sup> For example, the case of telephones interfered with carried out by the National Intelligence Service which was discovered in 1997 during a journalistic investigation which ended up costing the owner of the television station that discovered it his nationality and the property of his television station.

<sup>36</sup> After the first round in the 2000 elections, after being sure of very serious irregularities because of the incompetence of the ONPE, the CNM quickly rejaected the petitions to dismiss Mr. José Portillo, head of said organism.

#### ***2.4 How equitable and secure is the citizens' access to justice, to correctly carried out processes and to being compensated in the case of judicial errors?***

We will develop three central themes in the answer: the differentiated access of persons to the Judicial Branch, the existence of military courts and the Commission ad hoc for indults to innocent people accused of terrorism.

Differentiated access to justice: The studies on the Judicial Branch carried out during past decades have shown that there exist problems of access of citizens to justice<sup>37</sup>. During the last decade the government, as part of the judicial reform process, has applied the policy called "focalización" (focusing government spending among the poorest of the poor) of social spending. It tried to do the same in the justice system through the creation of decentralized basic modules in order to resolve the problem of access through the concentration of the local activities of the courts in a basic module. There, justice was to be of easy access to that part of the population with least resources. Studies on the efficacy of these modules, and whether they have solved the traditional problems of access of the poor to justice are still pending. Studies are also still pending on whether cases having to do with major crimes or the main conflicts of an entrepreneurial nature have been aired in judicial or extra-judicial courts. The statistical study on the subject of caseload should confirm whether or not the traditional tendency for cases to be aired within the judicial system continues. Above all at the level of the Peace Tribunals that try cases and resolve civil matters which have to do with conflicts in family law: acknowledgement of children; payment of child support and errors in penal matters<sup>38</sup>.

Military courts: the anti-subversive strategy implemented during the internal war and the anti-terrorist measures during the eighties turned out to be useless and often illegal. They also provoked multiple accusations of extra-judicial executions, tortures and the forced disappearances of persons. For that reason that President Fujimori's designed a different anti-subversive policy based on the use of intelligence and that sought a greater closeness between the security forces and the farm population. It promoted the creation of Committees for self-defense. It also gave greater importance to the labor of police investigation which brought about the arrest of Shining Path's and the Revolutionary Movement Tupac Amaru's top leaders. This disrupted the military structures of those organizations. This new strategy, in spite of its undoubted good results in favor of national pacification, was obscured by some criminal cases such as the executions of a professor and nine students of the University La Cantuta and the massacre of some twenty personas in Barrios Altos. There were also cases of tortures and assassinations of intelligence agents such as Leonor La Rosa and Mariela Barreto. There were other cases of violation of human rights such as the use of judicial actions to violate the minimum guarantees of a due process and these have generated grave accusations concerning the impunity of official agents as well as the judging and condemning of innocent persons<sup>39</sup>.

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<sup>37</sup> Luis Pásara and others. Reform of the Judicial Branch.

<sup>38</sup> See Statistics of the Executive Commission of the Judicial Branch as well as information about the Centers for Reconciliation in the Ministry of Justice and about the Defenders of PROMUDEH.

<sup>39</sup> VIDAL, Ana María (compiler); The War Decrees: Two years of anti-subversive policies and a peace proposal.

The anti-subversive strategy implemented included diverse norms that handed over the judicial processes against certain types of terrorist crimes to military courts. They judged hundreds of innocent persons, some of which, after being judged and jailed, were freed by presidential indult (see below the section dedicated to the Ad Hoc Commission). These courts still judge cases of those accused of "aggravated terrorism", a penal term which converts common delinquents into terrorists. These courts are not subject to civilian vigilance, so that the cases of indults do not involve sanctions for judges who might have imprisoned innocent persons.

The 15 of October of 1997 it was decided not to renew the temporary system of faceless judges, thus replacing a substantial element of due process. Both in the military as well as in the ordinary jurisdiction the regular judicial process has been established with magistrates identified both to those being processed and their lawyers. The public nature of trials has been reestablished. Certain matters have returned to the competence of civil judges, but military justice still thinks it has "natural" functions in judging civilians in determined circumstances.

The Ad Hoc Commission charged with giving a presidential indult to innocents found guilty as terrorists<sup>40</sup>. The need for facing up to the problem of innocent persons imprisoned as more evidence appeared led to the demand by human rights organizations and the active interest of the Defender of the People and a prison chaplain. Faced with these demands, as well as complaints of the international community, the government created an Ad Hoc Commission made up of those two persons and the Minister of Justice. They were charged with orienting the presidential decision to concede an indult and the right of remission to those condemned and processed for terrorism without sufficient proof<sup>41</sup>.

That commission received 3,225 requests for an indult and the right of remission and 1,162 persons were freed. Of those 502 were given indults and benefited with the right of remission, 606 were absolved by the Judicial Branch, 54 finished their sentences, 47 were recommended by the commission and still awaiting the presidential signature. 1,726 were not considered for any benefit. 94 were not presented because of insufficient information. There were 94 with order of arrest but not present, 42 cases of requests by common criminals and 37 other categories. If we sum up the numbers which correspond to indulted and absolved, we see that the persons who recovered their liberty during the period of the commissions labor represent 28% of those imprisoned for terrorism at the national level and that 34% of all those who asked for presidential pardon. The majority of the requests were presented between September of 1996 and December of 1997, so if we take into consideration that the penal population for terrorism was 3,878 persons, we can conclude that approximately 83% recurred to the Ad Hoc Commission. According to the Defender of the People's data, in three years the commission saved 4,949 years, 3 months and 25 days of

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<sup>40</sup> The labor of the Ad Hoc Commission in favor of innocent persons in prison. Successes and perspectives. August of 1996 - December 1999. Lima, August of 2000. An Executive Resume of the Third Report of the Defender of the People to the Congress of the Republic 1999-2000.

<sup>41</sup> Law N° 26655, 17/08/96. The Commission was installed on 20/08/96 and concluded its activities on 31/12/99, in spite of the existence of pending cases.

sentencing. Thanks to the presidential indult, that time was recuperated in favor of freedom<sup>42</sup>.

In spite of everything, the indult has a basic limitation. It only pardons the sentence, it doesn't eliminate the fault. That means that the certificates of penal, judicial and penitentiary background will register the crime committed which is very hurtful for an innocent person who can reinsert him/herself in society. He will normally be deprived of recognition and access to jobs. Besides, the Law N° 26994, which conceded different complimentary benefits to those indulted, did not include economic reimbursement nor a pardoning of the civil reparation. Among such benefits are the annulment of police, penal and judicial records, the definite closing of judicial processes, the pardoning of fines, the lifting of penalties of disqualification, of the attachment of properties or warning measures imposed during the police or judicial investigation and the immediate return of the person's identification documents. This shows how powerless common persons affected by an injustice are to defend their basic rights. Recently the transfer of the Ad Hoc Commissions functions to the Commission on Human Rights which depends on the Minister of Justice shows at least certain disinterest in resolving the last cases proposed by the Ad Hoc Commission (Law N° 27234 of December 19, 1999).

### ***2.5 To what extent does the penal system heed the proper rules on impartial and equitable treatment in its functions?***

The Peruvian Penal System lacks the necessary tools to fully heed the proper rules of impartial and equitable treatment. This is so in spite of norms which, in general terms, hold sacred the rights of persons who serve time in the penal system.

In Peru there are 85 penal institutions that have the capacity of lodging 19,491 prisoners. However the National Penitentiary Institute has 27,604 prisoners registered. Of those, only 13,200 have been sentenced. To this problem we must add the reduced penal system budget. From \$143 million it was cut 20% (\$37 million) in 1999, in spite of the fact that the prison population with sentences grew.

One negative indicator is the judicial situation of the prisoners. The majority has't been sentenced yet and this generates a situation of overpopulation in the prisons. According to official figures the judicial situation of the prisoners is the following<sup>43</sup>:

Sentenced	13,200	35,00%
Not sentenced	14,404	65,00%

In general, the purpose of the sentence as a means of rehabilitation has been neutralized and the most recent modifications of the Code of Penal Procedures haven't been implemented for reasons of security and budget<sup>44</sup>. Educational activities are scarce and the long sentences

<sup>42</sup> Vidal, Ana María (compiladora) Los Decretos de la Guerra: Dos años de políticas antisubversivas y una propuesta de Paz.

<sup>43</sup> The source: The National Penitentiary Institute (INPE) - Ministry of Justice. Official newspaper "The Peruvian", September 18, 2000

<sup>44</sup> The model of penal justice lawsuits practiced in Peru continues to have a strong inquisitional component in spite of recent modifications. The Legislative Decree 685, which introduced a Penal Code to norm lawsuits

affect the mental and physical health of the prisoners. The hardships of the first two stages, the police investigation and waiting for the trial, affect the prisoners' dignity and their health. The location of the prisons in inhospitable and distant zones of the Andean upper plains far from the prisoner's place of origin - Yanamayo, La Capilla, Challapalca - also affects their relationship with their families and lawyers.

The majority of the prisoners without sentences are in the Lima prisons: the men in Lurigancho and Miguel Castro Castro and the women in the Womens' Prison in Chorrillos. Some are in prisons in the interior provinces such as the prison establishments in Huánuco, Rio Seco, Piura Pisci, Chiclayo or the maximum-security prison in Ayacucho. Many penal institutions don't have one person cells and some have only one pavilion for prisoners charged with terrorism. The same conditions are applied to all. In general, the prisoners live in overpopulated conditions with little personal professional care of their needs.

Besides all this, those imprisoned for terrorism or being a traitor to their country don't receive any of the normal benefits such as the reduction of the sentence for work done or classes attended, semi-freedom and conditional freedom. There is no difference between those still being processed and those already sentenced. As a consequence, the system is oriented towards punishing and neutralizing persons, not rehabilitating them.

Besides these problems, we have the cases of torture and mistreatment. The Defender of the People points out that of the 502 indults granted, 189 (38%) alleged before judicial authorities that they had been tortured during the police investigation stage. 28 cases were verified where the medical check-ups gave positive results for lesions. On the other hand, out of a random sample of 250 petitions for indult that weren't considered for any benefit, it was found that 43% (107) alleged they had been subjected to torture. The reason was to get them to accuse themselves, place their signature on blank paper, or sign documents unilaterally written by the police or armed forces.

## ***2.6. How much confidence do people have in the transparency and efficiency of the legal system?***

As a result of what we have pointed out and a long tradition of corruption and inefficiency, the people's confidence in the legal system is rather low. Different studies and opinion polls confirm this.

What are the two institutions which function the worst?<sup>45</sup>

Department	Judicial Branch	National Police
Lima	33.5%	33.2%

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with guarantees for the defense and the prosecution wasn't implemented because the police and the prosecutors rejected it as a body.

<sup>45</sup> Both frames are our own work based on the National Coordinator for Human Rights study, "Out in the Bad Weather. Perceptions on Human Rights".

Junín	<b>31.7%</b>	25.9%
Iquitos	<b>39.5%</b>	26.3%

What would you say are the two most corrupt institutions?

Department	Judicial Branch	National Police
Lima	<b>43.3%</b>	48.1%
Junín	<b>33.2%</b>	40.0%
Iquitos	<b>50.7%</b>	33.7%

It is worth pointing out that the Judicial Branch won first place as the worst institution, out of a long list of institutions, in the three departments where the study was carried out. But it is seen not only as the most inefficient, but also as one of the most corrupt, only surpassed by the National Police in Lima and Huancayo. The problem isn't only citizen distrust but that that tends to become fear of the legal system in general, inhibiting the citizens from exercising their rights.<sup>46</sup>

In spite of the rupture between the people and the institutions in charge of imparting justice in the country, the distrust, and the peoples' fear of the system, they don't stop considering it necessary to have clear rules and procedures that can bring about just results. The study we have been citing, in its conclusions based on the focus group discussions, maintains that "Respect for legal procedures (...) responds to the experience people have that with corrupt authorities and suffering real ignorance of their rights, it is they themselves, the innocents, who can be the victims."<sup>47</sup>

### 3. CIVIL AND POLITICAL RIGHTS

*Are civil and political rights equally guaranteed for everybody?*

In spite of important achievements reached in terms of the country's peace process - with their positive impact in the prevalence of the populations' civil and political rights- and even though the juridical order recognises the general rights consecrated by the international instruments for the protection of human rights, respect for human rights and

<sup>46</sup> In the following dialogue that took place during a focus group, in the framework of an investigation on the perception people have of human rights:

"C: You believe that sometimes people don't complain out of fear? ...Yes, that's true.

C: And what are people afraid of? ...Of police reprisals, of the bad elements.

C: There are bad elements, but what can they do to you? ...They can threaten you with death, they can kill us... Or they can contract delinquents to do us harm, there are so many ways, it isn't necessary to kill.

<sup>47</sup> Coordinator. Ibid. P. 40

the mechanisms that guarantee their exercise still present serious deficiencies, preventing their compliance under conditions of equality for all.

In the context of an authoritarian regime, civil and political rights, especially those connected with freedom of speech and information, the rights to association, meeting and strike; equality before tribunals; personal freedom and security; as well as political participation; amongst others, had as obstacles the concentration of power by the Executive and the lack of institutionalisation in the country.

On the other hand, amongst the main problems limiting the effectiveness of guarantees for the protection of rights, it is necessary to highlight the crisis affecting the Judiciary Power and the Public Ministry. Both institutions suffer of a high degree of political and economic corruption. In the framework of a questioned judicial reform, the government used the fact that judges, magistrates and prosecutors were provisional, the executive commissions, and the curtailed faculties of the National Council of Magistrates, amongst others, to intervene in the judicial decisions that could implicate the political and military power. The Executive Commission of the Judiciary Power created two Tribunals and a Room of Public Law, integrated in their entirety by temporary judges, in order to monopolise within them the knowledge about the processes of habeas corpus and defence guarantees dedicated to the protection of freedom and other constitutional rights. Also, through the Transitory Room for Tributary and Customs Crimes, restrictions to the exercise of freedom of speech and information, have been found in several cases related to the press which is critical to the government.

With respect to bribery, it has not been eradicated from country's administration of justice. Consequently, in multiple opportunities causes are solved according to the economic benefit reported to the judge and not by a sense of justice and law abiding. This fact has severely curtailed the independence and autonomy of the prosecuting and judicial functions, affecting the equitable and equal access to justice for the protection of civil and political rights of male and female citizens.

Another of the guarantees established in the Constitution for the protection of fundamental rights is the process of unconstitutionality of the norms with law rank presented to the Constitutional Tribunal. Due to the arbitrary destitution of three magistrates of this Tribunal, its operation was limited for the knowledge of the unconstitutionality processes. Consequently citizens are prevented from having mechanism guaranteeing the constitutionality of the laws in safeguard of their fundamental rights.

It is also worth to mention the Peruvian Government's decision of July 1999, retiring the country of the contentious competition of the Interamerican Court of Human Rights. This was done applying an arbitrary figure neither foreseen nor allowed by the American Convention on Human Rights. With it was sought to ignore the right of male and female citizens to present to this Court the accusations for violations to human rights in which the Peruvian State was responsible.

### ***3.1. To what degree are all persons free from physical violence and from fear to it?***

Official uses of violence. - Starting in 1992, the initial steps towards the defeat of the subversion and the peace process that followed, ended in great measure with the terrorist violence and with the State repression used as part of the anti-subversion strategy. These facts contributed to a remarkable reduction of detentions, disappearances and extra judicial executions, as well as to the derogatory of states of emergency and their consequent regimes of restriction of rights. In this way, the peace process has favoured a larger validity of the rights to life and physical integrity, as well as more security and trust in the respect provided to them.

Nevertheless, in the Peruvian society situations threatening and harming female and male citizens' right to physical still exist, causing them constant feelings of insecurity and fear vis-a-vis violence. We refer, for example, to the areas of the Central Lowlands, where nuclei of activity by drug dealers-terrorists still persist, to the physical and sexual violence to which thousands of mature women, girls and adolescents are submitted within the family environment, to the civic insecurity originated by armed bands, to the cruel treatment and tortures denounced during the military service or during the police detentions, and to the selective violence exercised as part of repression and control strategies in charge of the Peruvian National Intelligence Service.

Given the problem of physical violence and to its free existence, as felt by the people, it is necessary to oppose the rights to freedom and physical integrity that the Peruvian Constitution recognises as fundamental. Article 2° parenthesis 1 of this legal body recognises that every person has the right to life, own identity, moral, psychological and physical integrity, free development and well being. Furthermore, the State has a series of consequences and limits to the exercise of its power, when developing its functions and relationships with the members of society, as established in article 2nd parenthesis 24 of the same normative body. Thus, all state action must necessarily consider not only the respect for these rights but also the establishment of conditions that guarantee their compliance.

In conformity with previous affirmations, the Political Constitution of 1993 in its article 2° parenthesis 24 and article 139° parenthesis 15, limits state intervention to extreme cases of necessity during the detention of a person. In this way, it requires that the privation of freedom be carried out only within the framework of assumptions provided by law, i.e.-, when the arrest follows a written mandate and is originated by a judge, or, when this is not the case, when police authority makes the arrest during flagrant crime. It has been interpreted that members of the armed forces can assume this police prerogative when, given the state of emergency; these are in charge of controlling internal order. Article 139, parenthesis 15, compels the State to inform all person, in writing and immediately, of the reasons for their detention. Therefore, a detention is reputed as arbitrary or illegal, when it does not respect the referred normative limits, or while respecting the legal assumptions, these do not correspond with the principles and international norms about the validity of the human rights.

Law N° 26926, of 21 February 1998, included in the Penal Code the Crimes against Humanity, amongst which crime of torture crime is found (Title XIV-A). The norm

prescribes that the person who tortures will be judged in the common (civil) jurisdiction and not in the military one. However, the law establishes that torture should inflict serious pain or sufferings, should annul the personality or should diminish physical or mental capacity.<sup>5</sup>

The way in which the program of voluntary surgical contraception was performed, showed forms of violence that subordinated peoples' interests to government's interests, insofar freedom of choice was violated, especially of rural women. Parenthesis 1 of article 2° and the article 6° of the 1993 Constitution allow to choice of family planning method that people considers more appropriate, including voluntary surgical contraception.

Law 25530, of 8 September 1995; modified the National Population Policy Law, excluding only abortion as method for family planning. Law 26842, the General Law of Health, of 15 July 1997, establishes in article 6, that every person has the right to freely choose the anti-conception method of her/his preference, including the natural ones. The Ministerial Resolution N° 0572-95-SA/DM, of 17 August 1995 intends to simplify access to information and to family planning services for the population. The Ministerial Resolution N° 001-DGSP, of 29 February 1996, establishes that “to have access to the surgical contraception methods, free exercise of personal will, of female and male adults, must be respected, not being necessary the spouse's, or partner's authorisation.”

However, a penal characterisation of the crime of forced sterilization does not exist. The Statute of Rome of the International Penal Court considers these as crimes to humanity.

The violence amongst civil people. - The Constitution establishes the human person's defence and the respect of its dignity as guiding principles of society and State. As expression of this principle, it consecrates the rights to life, identity and moral and psychical integrity, equality before the law, honour, home inviolability, property and inheritance, ethnic and cultural identity, peace and tranquillity, legitimate defence and freedom and personal security.

In this respect, the State doesn't only have the responsibility of abstaining from carrying out acts that harm those rights but rather it also corresponds the State due guarantee of them. In this way, the State has the obligation of promoting the conditions that assure the free and full exercise of rights in front of any threats to public power as well as to any private acts. This obligation involves the responsibility to prevent, investigate and sanction any violation of human rights and to intent, if possible, to re-establish the violated right and, given the case, to repair the damages that took place due to the infringement.

The Peruvian Constitution, through its article 44° welcomes this interpretative possibility, pointing out that “Primary duties of the State are: (...) to guarantee the full validity of the human rights....” With this article, the state recognises its obligation and competition for the respect of the human rights in the relations amongst individuals.

Supreme Decree N. 044-99-PCM, of 30 December 1999, declared the year 2000 as the “Year of the struggle against family violence” with the purpose of developing a series of measures

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<sup>5</sup> Coordinadora Nacional de Derechos Humanos, 1999. Análisis de la problemática de la tortura en el Perú. CNDH-USAID, Lima.

dedicated to the prevention and sanction of family violence. Supreme Decree N° 002-98-JUS approved the unique text of the Law of Family Violence and in article 9° of the Law of Reconciliation N° 26782 points out that the family violence is a reconcilable matter.

As for the crimes against the sexual freedom, the Penal Code of 1991 classifies them in three types: violation crimes, crimes against pudency and seduction crimes.<sup>6</sup> Article 170° of this Code represses with arrest not shorter than four nor larger than eight for those who, under violence or threat force to the practice of sexual or similar act. The penalty is larger if coercion is accompanied by arms and carried out by two or more individuals. Violation can also take place inside the marriage, according to the Code of 1991. The penalties vary equally if the violated person is in state of unconsciousness or in the impossibility of resisting (article 171°), suffers of mental dysfunction (article 172°) is in situation of dependence (article 174°), is younger than 14 years of age (article 173°). The violation to minors less than 7 years of age is punished with life imprisonment.

Article 176° of the Penal Code establishes sanctions with privation of freedom, not shorter smaller than three years for those who attempt against modesty of a person. If this person is younger than 14 years old, and the agent of rape has authority or family bond the sanction is increased. The Decree Law N° 897, of May 1998, modified the procedural steps in the case of violation of minors younger than 14 years old, reducing the procedural times. Article 175° of the Penal Code represses with privation of freedom not smaller than two years to people that, with deceit practices the sexual act with a person that is older than age 14 and younger than age 18. Law N° 27115 modified the article 178° of the Penal Code in order that the exercise of the penal action in the crimes against the sexual freedom be public, except in the case of seduction crimes. That same law establishes a series of measures to improve the quality of attention to the victims by the Institute of Legal Medicine.

Decree Law N° 25461, of 28 April 1992 determined the validity of article 2 of the Decree Law N° 638 - Penal Procedural -Code - which introduces the criteria of opportunity approaches in penal persecution.

In the following tables, data of accusations of crimes against women and minors is shown.

EXTRAJUDICIAL ACCUSSATIONS IN OFFENSE OF MINORS  
ENTERED TO THE PROCURER'S FFICE, ACCORDING TO MATTER. 1997

Matter	Total
TOTAL	700
Physical and/or psychological abuses	431
Moral and material abandonment	85
Rape/Seduction	30
Against freedom / substraction	5
Exploitation and others	149

<sup>6</sup> Villanueva Flores, Rocio.2000. La violencia sexual: un problema de seguridad ciudadana. Las voces de las víctimas. Informes Defensoriales N° 21. Defensoría del Pueblo. Lima.

Source: Public Ministry - Statistical Annual, 1997.

#### ATTACKS AGAINST WOMEN'S RIGHTS ACCORDING TO TYPE OF DEMANDS

11 April 1999 to 10 April 10 2000

Area	Total
Violence against women	21
Family planning and reproductive Rights	14
Other cases researched	18
Total	43

Source: Third Report of the Ombudsman to the Congress of the Republic, 1999-2000.

Illegal detentions. - Illegal or arbitrary detentions are not yet regulated as specific crimes in the Penal Code presently in effect. The emergency states created a favourable atmosphere for possible arbitrary detentions and other types of violations of human rights. At the end of 1999 this measure affected to 7.59% of the territory and the population's 4.09%, what constitutes a considerable decrease of the areas under emergency state: at the end of 1998 it was affected to 16.20% of the territory and the population's 20,80%.<sup>7</sup> Although due to the general elections of the year 2000, the states of emergency were eliminated in the country, the precariousness of democratic institutions in the areas subjected to this regime for more than 10 years, is still cause of arbitrary behaviour on the side of state power.

A problem linked to the individual freedom and the arbitrary detentions is the one referred to the observance on the part of the military justice, of the favourable sentences of habeas corpus emitted by the common jurisdiction. In several occasions the Supreme Council of Military Justice has denied the acceptance of these sentences asserting that habeas corpus does not proceed against decisions of the military tribunals<sup>8</sup>.

Another of the problems affecting freedom of numerous groups of people, especially of peasants, are the interrogations ordered based on anti-subversive fight. Rural communities even exist in which all members have an order to be captured based only by the accusation of a third party or of the so-called repented ones.

On the other hand, the Ombudsman has verified a high percentage of detentions for drug possession for personal consumption ("quetes"), in spite of the fact that this behaviour is not typified as a crime in the Penal Code. In these cases detainees remain in jail up to more than fifteen days. The Ombudsman has also verified that police dependencies present diverse conditions regarding the infrastructure and conservation. Not all environments comply with minimal requirements for the respect of the rights of the detained person.

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<sup>7</sup> The state of emergency is an exceptional regime, which has been transformed into permanent in the following provinces of Peru: La Mar and Huanta, in the department of Ayacucho, Quimbiri and Pichari districts, in La Convencion province. department of Cusco; provinces of Huanuco, Leoncio Prado and Marañon (with the exception of Huacrachuco district), Huanuco department, Chanchamayo and Satipo provinces, Junin department; Mariscal Caceres and Tocache provinces, Department of San Martin; province of Tahuamanu, Madre de Dios department, province Padre Abad, department of Ucayali. Supreme Decree N° 038-99-PCM, of 31 October 1999 imposes the state of emergency in the province of Tahuamanu, Madre de Dios department, arguing the existence of organised bands dedicated to the indiscriminated forest exploitation and to wood smuggling.

<sup>8</sup> Abad Yupanqui, Samuel, Libertad individual, seguridad personal y debido proceso: aproximaciones a la experiencia peruana.

By the end of year 1999, this kind of measures affected 7.59% of national territory and 4.09% of population, which constitutes a considerable reduction of areas in state of emergency: by the end of the year 1998, 16.20% of the national territory and 20.80% of the population was under these conditions.<sup>9</sup> Even though, given the general elections of year 2000, the states of emergency all over the country were ended, the precarious state of the institutional democracy in areas that were under this regime for more that 10 years is still cause of arbitrary behaviour by state power.

Abuses and tortures. - In the Peru, regrettably, torture continues being a practice in use by not few members of the forces of order in order to obtain information or to scare the detainee. One of the relatively recent cases is that of the former agent of the National Intelligence Service, Leonor La Rosa Bustamante. As a consequence of the tortures infringed against her, she has quadriplegia and cervical stroke. The Institute of Legal Defence applied a survey in different prisons of Peru to 1250 people accused of terrorism and treason to the homeland. The results showed that 77.2% of the detainees manifested to have suffered torture during the police investigation stage.<sup>10</sup>

It is important to consider that the Third Report of the Ombudsman to the Congress of the Republic<sup>11</sup>, points out that out of the complaints received by the team of justice administration and human rights of the Attaché for Human Rights, 13.8% corresponds to complaints for the violation to the right of freedom and personal security, linked to arbitrary recruitment for the military service, arbitrary detentions, intimidation or coercion acts and restrictions to circulate or to leave the country; the right to physical integrity, related with torture acts, cruel treatments or disproportionate use of the force constitute 8.3% of these complaints. Also, of the same universe of complaints received by the team of administration of justice and human rights 43% is directed against the Judicial Power and the second place is occupied by the complaints against the armed forces representing 19% of the total. These they are basically related to the topics of the military service and the performance of military troops in areas of emergency. The complaints against the National Police constitute 16% of the total, and they are related to cases of abuses and deaths inside police premises, presumed arbitrary detentions and denial to receive accusations. Sequels of the political violence

The missing persons. - The list established by the National Association of Family of Kidnapped, Detainees and Missing Persons of Peru, ANFASEP, with non-governmental organisations that have assisted the phenomenon under investigation, registers a total of 6,432 accusations for forced disappearances and 205 accusations for extra judiciary

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<sup>9</sup> The state of emergency is an exceptional regime, which has been transformed into permanent in the following provinces of Peru: La Mar and Huanta, in the department of Ayacucho, Quimbiri and Pichari districts, in La Convencion province. department of Cusco; provinces of Huanuco, Leoncio Prado and Marañón (with the exception of Huacrachuco district), Huanuco department, Chanchamayo and Satipo provinces, Junin department; Mariscal Caceres and Tocache provinces, Department of San Martin; province of Tahuamanu, Madre de Dios department, province Padre Abad, department of Ucayali. Supreme Decree N° 038-99-PCM, of 31 October 1999 imposes the state of emergency in the province of Tahuamanu, Madre de Dios department, arguing the existence of organised bands dedicated to the indiscriminated "tala" and to wood smuggling.

<sup>10</sup> Instituto de Defensa Legal. ¿Quiénes son los inocentes?

<sup>11</sup> The period reported ranges from 11 April 1999 to 10 April 2000.

executions. The United Nations Task Force on Forced and Involuntary Disappearances received between 1982 and 1994 a total of 4,356 accusations on this matter.

Innocent people accused or condemned for crimes of terrorism or betrayal to the homeland. - As pointed out in the previous paragraphs the Ad Hoc Commission received 3,225 reprieve and right of grace applications until the 30<sup>th</sup> of December of 1999, date in which its faculties culminated. Out of this total, the Commission evaluated 2,998 applications (93% of the total). Of these, 502 were benefited with the reprieve or right of grace granted by the President of the Republic. Amongst the reprieve and right of grace applicants, there were 602 people that were acquitted by the Judicial Power, which inhibited the Commission of continuing with the evaluation of their cases. This situation was product of the ceasing of the faceless tribunals in November 1997 and of the reestablishment of some guarantees of the due process in the cases of terrorism. During the period of work of the Commission, other 51 applicants obtained their freedom, when completing their imposed pain and 94 applications were qualified as cases with insufficient information, because in spite of the efforts carried out, it was not possible to compile information in order to carry out the respective evaluation.

Displaced. - 80% of the displaced has opted for the urban insertion due to its long permanence in the cities, the urban socialization of their children, the economic difficulties to reconstruct its communities and, in some areas Huanuco and the Alto Huallaga, fearing the terrorist violence.<sup>12</sup>

The Ombudsman develops since 1997 the “Program of Protection to Populations Affected by Political Violence” in which it carries out actions in favor of those people displaced by the violence, mainly in the departments of Apurimac, Ayacucho, Huancavelica, Junin, Pasco and Huanuco. In the framework of this program projects referred to the rights to freedom of the interrogated for terrorism crimes and betrayal to the country of peasant communities, property rights or possession of land of the displaced ones, regularisation of remiss to the military service for reasons of violence, right to identity and the rising regularisation of the respective documents of people affected by the violence, invigoration of the democratic institutionality in the areas affected by the violence, protection of the rights of the woman victims of political violence and promotion of human rights in the affected areas.<sup>13</sup>

Attention is also due to the dedication provided by the State to this problem through the work of the Program of Support to the Repopulation–PAR and of the Special Program for Land Titles –PETT, of the Ministry of Agriculture.

### ***3.2.How effective and equitable is the protection of the freedom of movement, expression, association and meeting?***

The Political Constitution of the Peru recognizes in its article 2° the rights of freedom to movement freedom residence, peaceful meeting and the freedom of association, right to the freedom of information, opinion, expression and diffusion thought. Also the Peruvian

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<sup>12</sup> Coordinadora Nacional de Derechos Humanos. Informe Anual 1999.

<sup>13</sup> Tercer Informe del Defensor del Pueblo al Congreso de la República.

judicial classification foresees the existence of constitutional defence process as a mechanism for the protection of these rights. The defence is regulated by article 200° parenthesis 2) of the Constitution and the Habeas Corpus and Defence Law, N° 23506.

Peruvian citizens can freely enter and leave the territory and can freely move inside it, with the exception of the emergency areas, where some restrictions exist. Opposition leaders and those persons that the government considers dangerous for its stability are subjected to a discreet surveillance on the part of the National Intelligence Service (SIN).

Freedom of Association. - Formally there exists no obstacle for citizens' associations and organisation.. However, the government discourages labour unions and any autonomous association because it perceives them as possible battering rams against its policies, especially against its economic policies. The government of Fujimori is product of the crisis and of the collapse of the parties: in that measure it is interested in impeding his resurgence. As all authoritarian regime, its plurality is limited.

Freedom of Reunion - In spite of the intents of some congress representatives and of prefects and under prefects to curtail and repress the freedom of reunions, no policy tending to curtail it exists. The Ombudsman has contributed in the last four years to maintain this right in effect.. Nevertheless, as any other authoritarian regime, Fujimori's government does not promote mobilisation.

Freedom of speech and limitations to freedom of the press. - In Peru, the freedom of speech seems to exist in the written press, radio and TV. Opposition written press and radios exist. To date, (16 September 2000) when Fujimori has decided to reduce his presidential period, there exists only one independent cable TV provider and one open signal channel timidly independent. The other open signal TV channels did exclusively transmit information favourable to the government and they were closed to the opposition. The mechanisms of control of the written press and mainly of the radio and open TV channels, to date, were advertisement, debt for taxes, the official exclusive news, the control of the judicial power willing to being used against the press (the case of Radio 1160, channel 13) and flat and simple spoliation (i.e., the case of Baruch Ivcher's channel 2).

All this is reflected in the progressive ousted of presentations of television programs of journalistic research and critic and in certain homogeneity of information regarding political topics, in titles of self nominated "popular newspapers", where injuring facts or personal qualities are imputed to certain personalities or journalists, even though inside the newspaper no major coverage is given to these topics.

In 1998, the National Association of Journalists reported that 123 journalists were affected in their freedom of speech: there were two murders, 43 threats or harassments, 31 juridical pressures, and 9 obstacles to the circulation of information.

Negative indicators in this respect are the murders of two radial journalists that on 6 April 1988 were murdered in the district of Union, Bajo Piura. The authors were common criminals, but given the fact that the intelligence services use to hire them in order to attack their opponents, the murder was attributed to the authorities.

The interventions in media have also existed. There are some cases denounced to the Ombudsman:

- In 1997 Baruch Ivcher was ousted of his nationality and the channel, after the transmission of accusations of tortures and corruption of the intelligence services' head.
- Case of BVHID S.A.: intention of guarantee execution would be executed on machinery used in the impression of the daily newspaper " Liberacion " (File N° 111-A-2000/DP-DC).
- Case of the civilian Genaro Parker: irregular execution of kidnapping precautionary measure ordered against radio station 1160 (File N° 040-2000/DP-DC).

Furthermore, there is lack of guarantees for the exercise of the following freedoms:

- Case of the association Prensa Libre: affectation of the freedom of speech due to the denounce made of presumed pursuit to candidates to the Presidency of the Republic (File N° 167-A-99/DP-DC).
- Case of the civic Angel Duran Leon and Juan Sanchez: negative to grant personal guarantees to journalists (File N° 180-99/DP-DC).
- Performance of good offices in favor of citizens Frank Zegarra, Owen Castillo, Mariano Aspilcueta, Luis Bayeto, Patricia Medina, Sofia Ruiz and Juan Mendez: presumed threats to freedom of speech on the part of candidate to the Presidency of the Republic (File N° 22-2000/DP-PSE).

Cases of censorship should also be highlighted:

- Case of the political group Avancemos: open negative of signal television to present contracted electoral advertisement (File N° 021-2000/DP-DC).
- Difficulties in the access to the information in power of public entities, the obscenity and pornography in massive information media, the libel campaigns against journalists, the affectations to the dignity in the reality shows, and the state advertisement as possible source of government pressures towards the companies of massive information, especially, those of audiovisual broadcasting.

Simultaneously, civil society initiatives were impelled in favour of citizens' control of the means of massive information, such as the Council of the Peruvian Press and the Civic Veeduría of Social Communication.

Restrictions to free traffic. - There are not deportations nor open persecutions, with the exception to the one of Alan Garcia at the beginning of the year 1990, but there are restrictions to move freely in the areas that are still in state of emergency. It also exists a discreet surveillance of the movements of the opponents and during the electoral periods, open aggression by government's officials and by the intelligence services.

Repression of the mobilizations. - Before the existence of the Ombudsman, the government reacted violently before any protest mobilization, especially when this was also accompanied by acts of violence. The weakness of the labour unions and organisations, as well as the collapse of the parties that can no longer channel their demands, the protest movements tend to dramatise with certain exaggeration in order to be listened by the political system.

Phone interception. - In spite of numerous proofs, the accusations about phone interceptions have been under estimated by the Congress Commission on National Defence, Internal Order and Intelligence. This Commission attempted to denounce the journalists that revealed them with the pretext of having revealed private conversations. The Minority Report sustained the opposite.

### ***3.3. How secure is everybody's freedom to practice its own religion, language or culture?***

The article 2, I parenthesis 3, of the Constitution recognises the right to freedom of conscience and religion. In parenthesis 19 of the same article people's right to its ethnic and cultural identity, as well as to the use of its own language is recognised.

Since 1993 the State recognises the Catholic Church as an important element in the historical, cultural and moral formation of Peru. Also, the State respects other confessions and it can establish forms of collaboration with them.<sup>14</sup> According to the 1993 census, the Protestant religions grew since 1980 reaching around 10% growth, while the Catholic religion diminished, nevertheless it continues being the majority credo in Peru. The diverse churches are tolerated in general, but when they mix with politics they tend to intolerance.<sup>15</sup>

Since 1976, year in which general Morales Bermudez annulled the Quechua as official language, as had been established during the government of Velasco 1972, Peru has not developed a policy to recognise the cultural minorities of the country. In turn, Quechuas and Aymaras, have not demanded in these last decades neither identity nor autonomy or particular forms of representation, contrary to the ethnic groups of the lowlands, which however, have only 4% of the population. The State recognises, however, the right to identity as well as to the education in the mother language.

The social and cultural changes since 1950 have determined that social discrimination is more important than the racial and cultural ones. The more discriminated against sectors in Peru are the poor, the blacks, the cholos and the most discriminating ones are the rich ones and the whites. There is an important sector of the population that feels it is discriminated against due to their race, culture and poverty. Given their small number, the Indian is no longer the most discriminated against group during the last decades.<sup>16</sup>

### ***3.4. To what level are people or groups working to ameliorate human rights free of harassment or intimidation?***

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<sup>14</sup> Article 50, 1993 Constitution.

<sup>15</sup> The Report of the Ombudsman 1999-2000 reproduces a complaint by a journalist on religious discrimination. The CTAR in Piura required that in order to occupy a job position, the person must be of Catholic faith. P. 359

<sup>16</sup> López, Sinesio. Los ciudadanos por dentro. Aspectos subjetivos de la ciudadanía en el Perú. IDS. Mimeo.

The article 2, parenthesis 13 of the Constitution recognises the right of people to associate and to constitute foundations and diverse forms of juridical non-lucrative organisations and without previous authorization.

In Peru, the NGOs dedicated to the defence of the human rights are a total of near 60 and they pertain to the National Coordinator of Human Rights. They are distributed in most of the departments of the country, especially in those areas that were scenarios of political violence during the 1980s. The Coordinator has a National Directive Council, integrated by 14 NGOs, and an Executive Secretary. The Coordinator was founded in 1985 and since 1991 it publishes an Annual Report on the situation of the human rights in the Peru. Their main form of work is the unfolding of national campaigns and some international ones. During this year it has two campaigns: on behalf of the innocent ones and against the torture and the bad treatments.

The Coordinator maintains cooperation links with the High Commissioner of the United Nations for the Human Rights, the International Federation of Human Rights Leagues, the Interamerican Commission of Human Rights, the Interamerican Court of Human rights, Human Rights, the World Organization against Torture and the Interamerican Institute of Human Rights. Their excellent reports are guided according to the Human Rights Conventions.

From the 1980s on, the human rights NGOs have always been a problem for governments and for the armed institutes. The control that could exercise the movement of human rights in the Peru on the anti-subversive policy produced ill will on these actors. The power of the NGOs resides in the political force of the publicity of the activities, many times hidden, of governments and armed institutes. That publicity controls and transforms governments, States and its institutions. During the most algid years of political violence, many members of these members of the forces of order and of terrorist groups threatened many members of these organisations to death. With the pacification process, these threats and aggressions decreased substantially.

#### **4. ECONOMIC AND SOCIAL RIGHTS**

*Are economic and social rights equally guaranteed for all?*

##### ***4.1. To what measure are access to work and social security extended to all, without discriminations?***

Real coverage of the right to work and to social security, from a legal perspective, show setbacks when addressing their recognition and normative hierarchy, even though lip service states universal access to employment and to social security. The labour norms and policies have been substantially transformed by different means: new recruiting forms, suppression of labour stability, weakening of the social security network and the opening to the market of the pension system. The high underemployment rate - affecting especially women and rural sectors- shows that that many of these subjects are of concern to a relatively small portion of the Economically Active Population.

Right to Work. - The main Peruvian institutions related to Labour legislation have undergone one of the most drastic reforms processes. The reform introduced in the labour market has gone from the regulation and overprotection of work to deregulation and the labour flexibilisation to its utmost. Those changes have been imposed with Law Decrees by the Executive; have not counted with the workers' participation and nor with parliamentary debate.

Work is a duty and a right, the base for material well being and a means of the person's realisation, as stated in Article 22 of Chapter II, Title I, Constitution of 1993. In the Constitution of 1979 it was considered a fundamental right; in 1993 it is considered a social and economic right. It pays high-priority attention to work, especially that of mothers, minors and disabled: Article 23 of Chapter II, Title I of the Constitution presently in effect.

Law Decree 728 introduces multiple alternatives for recruitment for an undetermined period. It is believed that flexibilisation in the recruiting legislation generates more employment.<sup>17</sup> In particular, Law 25327, 12 of November 1991, for the Development of Employment, prefers to contract for undetermined periods and accepts, exceptionally, contract for determined periods. Nevertheless, the 1997 Single Revised Text of the Law for the Development of Employment (SRTDE) - formed by Law of Productivity and Labour Competitiveness (S.D. 0003-97-TR) and by the Law for the Formation and Labour Promotion (S.D. 002-97-TR) - chooses for a contract of free work "for undetermined period or subject to modality" (Art. 4).

Article 53 of the SRTDE establishes the new recruiting forms "*when so required by needs of the market or by larger production by the company*", or when service is of temporary nature. These new recruiting manners have to do with contracts of temporary, accidental nature, for contract or outwork, for export regimes of non traditional products, for free trade zones, and for other contracts related to non specified modalities. Agreements and contracts for training and labour promotion in their diverse forms are also introduced in the SRTDE, such as trainees' contracts, pre-professional practices and the agreements for juvenile labour training.

New forms of labour intermediation<sup>18</sup> is another new aspect in the labour legislation. These new forms are proven by the existence and legal acknowledgement of enterprises for temporary services, complementary services and work cooperatives.

L.D. 728 (Law for Employment Promotion) promoting the use of the temporary recruiting (that is to say subject to modality and term) and contracts considered as "non-labour", has been observed by the ILO Committee for Union Freedom.

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<sup>17</sup> The constitution makes explicit reference to the following state obligations: attention to labour (Art. 23), to equitative and appropriate pay (Art. 24), to eight hours working days, weekly and annual rest periods (ART.25), to equal opportunities (Art. 27), to protection against wrongful dismissals, unionisation, negotiation and strike (Art. 28) and to the company's profit sharing plan (Art. 29).

<sup>18</sup> Title V of Productivity and Competitive Law is dedicated to "Special enterprises", with the objective of labour intermediation.

Labour stability: The adoption of article 27 of the 1993 Constitution meant to enter into a relative stability, after having had the principle of absolute stability consecrated by the Constitution of 1979.<sup>19</sup> The Law for Employment Promotion completes the overview of this issue.

Trial period: Law 26513 of 28 of July 1995 eliminates the three months trial period established by Law of Labour Stability 24514, eliminating it. This new law establishes that the trial period can be an accord between the parties and it protects the worker from wrongful dismissal.

The individual dismissal: The Single Revised Text of the Law for the Promotion of Employment (SRTLPE) maintains the thesis of the justified dismissal. The Single Revised Text of L. Decree 728, Law of Productivity and Labour Competitiveness, Title I, Chapter IV, Article 16, I section g, points out that one of the factors for employment termination is dismissal “in the causes and forms allowed by Law.” Article 22 of this law establishes that proof of justified cause is the employer’s responsibility.

Article 34 of law 26513 establishes the wrongful dismissal that, in spite of its illegitimacy, it is neither invalid nor illegal. Faced with a wrongful dismissal, the worker no longer decides between compensation and reinstatement; rather, it is the judge who chooses the compensation “should the reparation result unacceptable given the circumstances” (Art. 72 of Law 728). The SRTLPE establishes that the only compensation in case of wrongful dismissal is compensation. This means that the wrongful dismissal is in effect.<sup>20</sup>

Work day: In 1996, Law Decree 854 was promulgated, reiterating the maximum work day of 8 hours a day and 48 hours per week, authorising employers to unilaterally modify schedules, shifts and even the duration of the work day, extending or reducing it according to their criteria, with the only limitation of not surpassing the total of 48 hours per week.<sup>21</sup>

Wages: the law of supply and demand governs wages. The legal minimum wage in Peru is equal to US \$120 per month, whereas, the basic family needs surpasses US\$500<sup>22</sup>.

Land. - Since the 1980s, the collective forms of land property established by the Agrarian Reform of General Velasco (agrarian coops, agrarian societies of social interest, communities) have been either parcelled or privatised. The 1993 Constitution acknowledges the right to the recognition and autonomy of its Communities -including the property of its lands - (art. 89) and to the exercise of the common right (art. 149). Law 26505 (Land Law) has damaged

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<sup>19</sup> Vinatea Recoda, Luis. El derecho a la estabilidad laboral en la nueva Constitución. En: Asesoría Laboral, Enero de 1944, pp.18-20

<sup>20</sup> Law Decree 728, art. 76, reduces compensation to a monthly salary for each year of service, instead of 12 when having three or more years of service. Law Decree 855, of 4 October 1996, reduces compensation to half of a yearly salary for each year of service, with a maximum of 12 salaries.

<sup>21</sup> The same norm reduced the value of payments to workers for labour performed during extra working hours (i.e., in addition to regular hours), from 50% to 25% in addition to the value of person per hour worked.

<sup>22</sup> Law Decrees 677 (1991) and 892 (November 1996) have eliminated the right of workers to participate in part of their company’s ownership (through the so called “Labour Shares”), turning the management and profit sharing in an almost symbolic right.

several of these rights related to land property with possibilities for land exploitation and/or cattle raising as well as assigning those lands with forestry exploitation possibilities.

The Constitution of 1993 did not include a reference to the non- seizure and non- alienation of indigenous communal lands. The Land Law eliminated them (art. 11) and submitted the conflicts raised between the indigenous communities and private owners to the Code of Civil Procedures (art. 6). The current procedure to obtain land titles by indigenous communities is long and repetitious.<sup>23</sup>

Article 10° of Land Law establishes a distinction between community members that are possessors of land and community members that are not possessors of it, trying to locate indigenous lands in the market, thus affecting an essential element of indigenous and the people from the Amazon: their relation with their territory.

### **Equal opportunities**

Women. - The principle of equality regarding salaries (ILO Agreement 100) was eliminated in the 1993 Constitution. Agreement 111 on Discrimination in Employment and Occupation was taken up in the Constitution of 1993, but it has not been developed either by law or by administrative measures or procedures that would allow making them a reality. In regards to ILO's Agreement 156 on Equal Opportunities and Treatment among Female and Male Workers with Family Responsibilities, Peru established a reservation to paragraph 22, acknowledging parental leave of absence, alleging it did not agree with the country's socio-economic reality. The Constitution of 1993 eliminated the second paragraph of article 2.2. of Constitution of 1979 stating "Males and females have the same opportunities and responsibilities. The law does not acknowledge women less rights than those acknowledged to men." The Government has derogated diverse norms acknowledging women's rights: such as right to day care centres (Law 2851), to a special allowance after 25 years of service, to differential treatment as to retirement.

The small enterprises. - Small and micro business (very small businesses) (SAMB) with 4 to 20 workers, conform 45% of the urban EAP and 70% of the total, taking into account agricultural units. However only 2% of these is considered eligible for credit by the commercial banks, thus limiting their development capacity. This situation is increased with the disappearance of banks for development. In addition, the long lasting recession and excessive tax burden, encourages the proliferation of precarious and informal work in these productive units. The workers within them do not meet one of the requirements to constitute unions (minimum of twenty members).

The Youth. – The situation is serious among the youngest ones. According to official figures for 1996, five out of ten youths are under underemployed, one is unemployed and only four have a job considered appropriate. Every year approximately three hundred

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<sup>23</sup> Law Decree 838 (15 August 1996), gives free titles in the lowlands, to indigenous and non-indigenous people living in depressed economy areas or areas affected by violence. Between 1992 and 1997 more than 2000 individual titles were granted, vis-a-vis six titles granted among all native communities in all the lowlands area.

thousand youngsters graduate from Peruvian training centres. On the average, youths earn a wage close to the minimum monthly salary, with big differences according to socio-economic levels. One of the largest difficulties faced by poor family's young workers is their lower education level and the low quality of this education.

RATE OF URBAN UNEMPLOYMENT AND UNDEREMPLOYMENT, ACCORDING TO CATEGORY, GENDER, AGE, EDUCATION LEVEL AND GEOGRAPHICAL DOMAIN

Variables	Unemployment 1997 (III Quarter)	Unemployment 1998 (III Quarter)	Underemploy ent 1997 (III Quarter)	Underemploy ent 1998 (III Quarter)
<b>TOTAL</b>	<b>7.7</b>	<b>7.6</b>	<b>41.8</b>	<b>44.1</b>
<b>By gender</b>				
Male	6.8	6.4	35.5	37.9
Female	9.1	9.0	49.9	52.0
<b>By age</b>				
14-24	13.7	13.1	47.4	49.9
25-44	5.8	5.8	38.9	40.6
45-54	5.3	4.3	37.4	40.7
55-more	4.5	6.1	36.6	50.4

Source: Ministerio de Trabajo y Promoción Social. Informe Estadístico Mensual.

Social security. - The National Pension System: In regards to Social Security, the Peruvian Government modified the National Pension System (NPS) through Law Decree 25967. The minimum required years of contributions for a minimum pension was substantially increased and the formula to calculate the Reference Salary was modified as well. These new rules were applied retroactively.<sup>24</sup>

The Private Pension System: On 6 December 1992, the government created the Private Pension System (Law Decree 25897) as an alternative to the pension regimes administered by the State and concentrated in the National Pension System (NPS). Law Decree.054-97-EF establishes Single Revised Text of the law of the Private Pensions System and Law Decree 004-98-EF regulates it.

The Private Pension System is a regime of individual capitalisation, where workers' contributions are recorded in a personal account denominated Bill of Individual Capitalisation (BIC). This account is increased on a monthly basis with new contributions and the profits generated by investments of the accumulated fund. By July 2000 this system affiliates a little over two million three hundred twenty thousand people.<sup>25</sup>

The coverage for health in risk work involves benefits of attendance and preventive promotional counselling in occupational health; medical attention; rehabilitation and labour re adaptation at all levels of complexity. It does not include economic subsidies that are in charge of Social Security for Health, according to Articles 15, 16 and 17 of the current regulation.

<sup>24</sup> The services offered by the NPS are the following: retirement and unemployment pensions, disability, survival pensions and burial expenses.

<sup>25</sup> Pension funds are administered by AFPs, acknowledging four types of services: retirement, disability survival and burial expenses.

This coverage may be freely contracted with the Peruvian Institute for Social Security (IPSS) or with the chosen Health Organization (EPS), according to Article 15 of Law 26790 or, if the chosen EPS did not exist, with any other. Health benefits are entirely granted by the IPSS or the chosen EPS, and in order to provide the service these entities can celebrate contracts and demonstrate to the SEPS contracts for complementary services or necessary co-insurance or reinsurance (Arts. 83 and 84).

Unemployment insurance does not exist, once employment is lost temporarily. The individual that loses his/her job, inevitably enters into the world of underemployment. As underemployed or independent worker, the individual can self-finance the payment to the National Pension System or the Private System of Pensions and the social security in health in the form of optional insurance.

However, Law 26790, of 17 May 1997, for the Modernisation of the Social Security in Health, establishes the Special Right of Coverage under Unemployment (art.11). It states: "in the event of unemployment, the regular members and its claimants are entitled to the benefits of medical prevention, health promotion and medical services during a latent period not under six months neither over twelve months, as long as they have contributed thirty months during the three years prior to termination"

#### ***4.2. How effectively are the populations basic necessities guaranteed, (appropriate food, shelter and drinking water)?***

Food. - The new Constitution eliminated the articles that acknowledged: the right of an honourable living standard allowing the assurance of the personal and family well-being (Art. 2,15, 1979 Constitution), the obligation of the State to prioritise the assistance to an individual and his/her family's basic needs in regards to food, shelter and recreation (Art. 18, 1979 Constitution. The current Constitution has eliminated specifically the rights enunciated in this article of the Pact: quality of life, personal as well as the family's, appropriate food, protection against hunger, equitable distribution of food<sup>26</sup>, appropriate clothing and access to proper housing.

The donations of PRONAA constitute an average 13.5% of the cost of portions. However, the Federation of Soup Kitchens estimates that the quantity of food provided by PRONAA has been increased 43% during 1999, with improvements in the contribution of calories, total proteins and fats, but with a decrease in animal protein.

In the following chart the situation of the children's health is shown, according to economic levels. It is clear that there exists a positive relationship between poverty and malnutrition.

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<sup>26</sup> Law 25307 establishes the creation of a National Program in Support to Food Activity (PALA), jointly managed by Government and Grassroots Organisations in charge of food aid. The PALA was never started and the Government has not transferred - through the National Food Programme (PRONAA) - resources for an amount equivalent to 65% of the cost of food rations prepared by soup kitchens.

CHILDREN LESS THAN 5 YEARS OF AGE BY POVERTY LEVEL, ACCORDING TO NUTRITIONAL STATUS, 1997 (Percentages)

Nutritional state	Total Population	Poor			Non Poor
		Extreme	Non extreme	Total	
Normal	75.5	56.3	74.1	68.1	87.5
Acute	0.9	0.3	0.8	0.6	1.4
Chronic	23.6	43.5	25.1	31.3	11.1

Source: Instituto CUANTO. Encuesta Nacional sobre Medición de Niveles de Vida. 1997

Housing. - The Constitution of 1993 does not acknowledge the right to housing, as acknowledged the 1979 Constitution. Neither does a housing law exist. Law 26264 (29 December 1993) establishes that - for the case of expropriations - even lands that are state property should be awarded with a sale (at tariff price), as private properties are (at market price). Should the parties not come to an agreement, an eviction will proceed. Something similar occurs to tenants that have seen the increase of causes for eviction.

Law 26557 (28 December 1995) took the attributions of Municipalities away in regard to the legal planning of urban settlements, urban infrastructure, utility installation in low income residential areas and awarding of state-owned land.

During the 90s the Mortgage Bank, the Housing Bank, the and the National Construction Enterprise (ENACE) were disbanded in 1999, the National Fund of Housing (FONAVI) was turned into a solidarity tax dedicated exclusively to the construction of housing and of urban infrastructure in the most needed areas.

At the end of 1999, in the middle of the electoral campaign, PROFAM was created with the purpose of offering a family basic lot to poor families without housing. More than a million people have registered since the program, in charge of the Ministry of the Presidency, was reopened.

The predominant housing construction materials are precarious. With the exception of Metropolitan Lima where brick walls prevail (79%), even in the low income areas (72.6%), in the other areas precarious material prevails: 60.5% of the housing of the extreme poor in the urban areas and 71.3% of its housing in the rural areas are made of adobe. The floors are made mainly of cement and of dirt. The latter prevails in extreme poor housing in all geographical areas. Little more than half of the roofs of houses in Metropolitan Lima and in urban areas are concrete roofs, but precarious material (calamine, mats, wood) is significant in urban areas and rural areas. In Metropolitan Lima and in the urban areas indoor plumbing as well as sewage connected to public networks prevail, even in the extremely poor houses (73.8%, 66.2% respectively in the case of the water connections and 66.3%, 52.8% respectively in the case of sewage). But in the rural areas, the supply prevails by means of rivers, wells and canals. But around 40% of the extreme poor from Metropolitan Lima and of the urban areas lack indoor plumbing. The great majority of the population, included the extremely poor, of Metropolitan Lima and of the urban areas use electricity for lighting and gas and kerosene for fuel, but the population in rural areas use candles, petroleum and kerosene for lighting and firewood for fuel.

### ***4.3. What are the health coverage services available for people during their different life stages?***

The 1993 Constitution acknowledges the right to all to health, family environment and community protection. Article 9 adjudicates to the State the responsibility for national health policy, article 10 acknowledges the “universal and progressive” right to social security, article 11 guarantees free access to medical services and pensions and article 12 guarantees the intangibility of social security reserves.

In May 1997, Law 26790 of Modernisation of the Social Security (health services), and its regulation, Supreme Ordinance 009-97-SA. -partially modified Supreme Ordinance 003-98-SA, regulating coverage of prevention benefits, promotion, recovery and subsidies for the care of health and social well-being, work and professional illnesses- were promulgated. Part of this prevision work is constituted by the complementary insurance for work of risk, regulated in Supreme Ordinance 003-98-SA.

On 30 January of 1999, the Government turned the IPSS into ESSALUD with Law 27056, regulated by Supreme Ordinance 002-99-TR of 27 April 1999.

The organisation of the health sector

#### **The services of health are provided for by:**

- The public sector: The Health Ministry (MINSA) and the Social Security (ESSALUD) .
- The private sector: clinics, private doctors, NGOS, etc.

Co-ordination among them does not exist, the definition of its target population is not always effective, the financing schemes are not always consistent and a problem of crossed subsidies takes place.<sup>27</sup> Users of the private sector have a higher socio-economic level than those users of the public sector.

MINSA has over 5,933 health establishments at the national level (4,477 medical posts, 1009 health centres, 136 hospitals and 41 centres of other types); it takes care of 60% of the hospitalisation, reaching 81% of those in the rural areas and concentrating 60% of out patient services. ESSALUD has 282 health establishments (195 health centres, 71 hospitals, and some medical posts) and is the second supplier of hospitalisation services, mainly in urban areas.<sup>28</sup> From 1992 to 1996 the number of establishments dedicated to the primary care increased 61% and the number of hospitals to 4%.

Local Committees for the Administration of Health (CLAS) are organisations administered by members of the community. Their function is to elaborate a local health plan, to define a budget and to implement health services with the support of MINSA. They work with certain autonomy to hire personnel, to purchase medicines and to contract services. Their objective is to improve the quality and extend health coverage of out patient services with

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<sup>27</sup> Ortiz de Zevallos , Gabriel y Pollarollo, Pierina. Agenda para la primera década. Salud. P. 13.

<sup>28</sup> MINSA organises its services in four levels: first level, medical posts and health centres for basic, preventive, promotional and recovery services); second level (local hospitals); third level (general hospitals); fourth level (specialty hospitals)

the active participation of the community. In December of 1990, 530 CLAS existed, managing more than a thousand health establishments. The government has introduced competition in health services, creating the health service companies (EPS). In August of 1998, there were over 88 thousand persons enrolled in this system.

Between 1991 and 1994, MINSA's social expenses budget fell from 19% to 14%. Starting in 1995, this percentage increases again, reaching its highest point in 1996 with 25% of the social expenses, with the increase in primary care. Between 1994 and 1997 MINSA increased its expense level 35% while ESSALUD increased it 20%. In 1997 the expense per cápita was \$28.00 and that of ESSALUD of \$105.00 (World Bank 1999). However, Peruvian medical expenses are below the Latin American average, only above those of Bolivia, Ecuador and Nicaragua.<sup>29</sup>

The following table shows the main demographic indicators, in which certain achievements of public policies can be observed:

*PERU: ESTIMATED DEMOGRAPHIC INDICATORS FOR FIVE-YEAR PERIODS (1990-2000)*

	1990-1995	1995-200
<b>FERTILITY</b>		
Gross birth rate (per thousand)	27.57	24.90
Gross fertility rate	3.43	2.98
Gross reproduction rate	1.67	1.45
<b>MORTALITY</b>		
Gross mortality rate (per thousand)	6.85	6.43
<b>LIFE EXPECTANCY AT BIRTH (in years)</b>		
Both sexes	66.74	68.32
Men	64.40	65.91
Women	69.20	70.85
<b>INFANT MORTALITY RATE</b>		
(Per thousand live births)		
Both sexes	55.45	45.00
<b>NATURAL GROWTH</b>		
Rate of natural growth (per thousand)	20.72	18.47
<b>MIGRATION</b>		
Migration rate (per thousand)	3.28	1.14
<b>TOTAL GROWTH</b>		
Total growth rate (per thousand)	17.44	17.33

Source: INEI. Perú: Compendio estadístico sociodemográfico 1999

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

The Constitution of 1993 sustains that the purpose of education purpose is the integral development of the human being, that the State guarantees the freedom of teaching (Chapter II, article 13), promotes scientific and technological development (art. 14), acknowledges

<sup>29</sup> Public expense has been channelled mainly through the following programmes: Basic Health for All, Project 2000, Project Health and Basic Nutrition, Project Strengthening of Health Services, Project Vigilant.

teaching as a public career (Art. 15), compels education in pre-school, primary and high school levels, as well as free university education for students that sustain a satisfactory yield (Art. 17) and it guarantees the freedom of teaching and rejects intolerance (Art. 18).

The educational curricula have been modified. Starting from the 2000 on, there will be 11 years for basic education, considering 4 years for secondary education. It is projected that starting in 2004 and 2007, basic education will be increased from 12 to 13 years, respectively, provided the incorporation of the two years of initial education. Furthermore, a non-compulsory two-year period for post basic education, called High school is an experimental program started in 1999.

The labour régime of teachers is contained in the Teachers Law (Law 24029 modified by the Law 25212), in effect since 1984, and in the Law of Administrative Career (DL 276). These dispositions gave teachers: absolute labour stability for nominated professors, permanency in the position, place and work centre and promotion after integral and permanent evaluation, as well as monopoly in teaching.

The education sector presents the following organisational structure:

1. The Central Headquarters of the Ministry of Education designs programs and it defines lines and orientations for the whole educational system.
2. The Regional and Sub regional Directions, with headquarters in each department having an administrative work in the supervision of the operation of the Units of Educational Services (USE) and the Areas for Educational Development (ADE)
3. USE has educational and technical-pedagogic functions, while ADE is only devoted to the latter.
4. The educational centres are units imparting free public education. They are in charge of a director that depends of its respective USE. Parents participate in this instance through the Parent's Associations (APAFA).
5. The budget for education forms part of the Ministry of the Presidency budget and are not in that under the Education Sector's due to the fact that the USEs, ADEs, Regional and Sub regional Directions are, in terms of budget, in the Transitory Councils for Regional Administration (CTAR) that, under the authoritarian government of Fujimori, replaced the elected regional governments.

The organisation of the educational centre. - Quality of teaching depends upon the educational centres and of their intervening actors. In the educational centre, internal actors (the director, teachers and students) and external actors (parents, supervisors and officials of the Ministry of Education, the education authorities, teachers unions and politicians) have an influence. Their interactions have an incidence in the results obtained by the educational centre. In the Peru, the director has little margin in the management of the education centre, the latter depends rather on the USE. This refrains the application of a system of incentives to the teaching body and lessens authority to the director.

The teachers. - In 1997, 110,337 prepared in 318 Pedagogic Superior Institutes in order to be teachers. In 1988, 17,818 students finished their studies and 10,436 new teachers graduated.

In 1995, 374 institutions offering formation as teachers were active, of which 38 were universities. 52% of these institutions were private. Half of these institutions have not more than 4 years of life and less than 15% reaches the 30 years of experience. Between 1993 and 1995 the number of institutions providing magisterial formation increased in 83%. 41% of students studying to be teachers had parents with only secondary education and 29% had Spanish as mother tongue. The quality of the education of most of these educational centres leaves a lot that to want.

Since 1991, the teachers' purchase power slowly recovers due to special increments non-applicable to the rest of the public administration. In spite of it, teachers' purchase power in August of 1999 is equal to 51.27% of the purchasing power of 1942.<sup>30</sup> Due to the great number of teachers, any increment, as small as it be, implies a great pressure on fiscal budget a 10 Dollar increment for each professor would imply a disbursement of 45 million Dollars a year.<sup>31</sup>

### **Public expense in education**

Equity. - Access to quality public education serves an important role in the fight against poverty and income redistribution. At present, a considerable part of the expense filters toward the richest quintiles, consuming resources that could serve the poorest population.<sup>32</sup>

Expenditure efficiency. - In 1998, around 15% of total government expenditure was assigned to public education. 72.2% of this budget was dedicated to the initial, primary and secondary education and approximately 70% was employed in payment of salaries for teachers and administrative personnel.

In 1997, illiteracy rate reaches 8.9% of the population older than 15. The illiteracy rate is higher in rural areas, especially in the highlands (19.0%) and the lowlands (18.3%), amongst the population older than 30 years, especially 50 years old and more (23%), larger for women (13.2%) than for men (4.4%), especially amongst women older than 50 years of age in the rural areas of the highlands (66.7%) and of the lowlands (66.7%).

There exists a positive relationship between income level and education level: In general, those having higher income have also higher education levels, as shown in the following table:

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<sup>30</sup> Chiroque, Sigfredo. 1999. Políticas necesarias para el desarrollo magisterial en el Perú. Mimeo.

<sup>31</sup> A graduated teacher with 10 years in service and with 24-hour labour (level II) has a salary equivalent to \$ 213.00 in urban areas and \$ 228.00 in rural areas. Differences in scales are not significant. The difference in salary between a teacher in level I and another in level V is only US\$ 17.39

<sup>32</sup> According to the National Household Survey, while in urban areas 91.6% of children aged 12-16 and 39% of youngsters aged 17-24 go to school, in rural areas these numbers reach only 78% and 23% respectively.

PERU: SCHOOL LEVEL ACCORDING TO INCOME LEVEL, 1997

INCOME	SCHOOL LEVEL					
	Primary or less	Incomplete sec.	Complete Sec./Inc.Tec.	Comp. Tec./ Inc. University	Complete University	Total
Up to s /. 450.00	73.17	63.04	41.70	26.56	14.38	44.82
451 to 900	20.87	26.71	38.30	33.11	32.11	30.85
901 to 1,800	5.96	9.32	17.17	27.54	24.75	16.49
1,801 to3,600		0.62	2.45	8.52	20.74	5.64
More than 3,601		0.31	0.38	4.26	8.03	2.19
Total	100.00	100.00	100.00	100.00	100.00	100.00

Source: Imasen-IDS. Encuesta nacional sobre la ciudadanía en el Perú. 1997

**4.5. How free are unions and other associations related work to organise and to represent the interests of their members?**

The collective working rights are based on three pillars, namely unionisation, collective negotiation and its result, the collective agreement, and the strike. Together with the pertinent dispositions pointed out below, the norm in effect governing them is the Law Decree N° 25593 of 2 July 1992, Law of Collective Relationships of Work (LRCT) and its Regulation, the Supreme Ordinance N° 011-92-TR, key elements of the Labour Reform.

The union freedom. - Recognition of the unionisation rights: Article 28, I section 1 of the 1993 Constitution.. In relation to the Constitution of 1979, this right is restricted, diminished and limited in the 1993 Constitution. Art. 42 excepts from this right deciding, confidence officials, armed forces and police. Art. 153 except the judges and prosecutors.<sup>33</sup>

Individual unionisation Freedom: The law of Collective Relationships of Work (LRCT) establishes certain requirements in order to join a union:

- To pertain to the company, activity, profession or occupation corresponding to the type of union (Art. 12). This is opposed to ILO Agreement 87.
- To have spent for a probation period which is variable and which, in practice, depends on the employer.

Collective union freedom:

- Internal autonomy. - Article 4 of the LRCT recognises the right to workers' unionisation and protects it of external interferences, limits the right to free choice of its leaders freely when pointing out that in order to be a union leader, it is necessary to be an active member of the union and to have an antiquity of at least one year (Art. 24). Art. 11 of the LRCT prohibits unions to be institutionally devoted to political activities. The Art. 10f demands unions to provide reports that government might request them.
- Constitution of unions. - The LRCT confirms the previous requirement of 20 workers to constitute a union. Considering the tendency to count with less workers and to constitute small companies, this number is a rigid limit. It also requires 100 workers as

<sup>33</sup> Cancellation of union registry: Law Decree Nr. 25593 of Collective Work Relations for Collective Rights, Article 20. This function is executed by the authority of the Labour Ministry and not by civil law.

minimum in order to build an organisation different to that of the company (branch, occupations, etc.). This norm subtly induces to a union structure only in entrepreneurial environments.<sup>34</sup>

Protection of union freedom and the union action. The Union Jurisdiction. - The LRCT consecrates union freedom in its singular and collective dimensions. The State protects each workers unionisation right in order to defend his/her interests (Art. 2) and it doesn't condition it to their belonging or not to the union. (Art. 3). The State and the employers or their representatives should no "intervene in any way in the creation, administration or maintenance of the union organisations" that the workers constitute (Art. 4). Art. 30 of the LRCT recognises union jurisdiction that "it guarantees certain workers not to be fired nor transferred to other establishments of the same company, without properly demonstrated fair cause or without acceptance."<sup>35</sup>

The collective negotiation and the collective agreement. - Article 28, incise 2 of the Constitution it recognises the support of the collective negotiation and of the peaceful solution of labour conflicts. However, the Law Decree 25593 restricts collective negotiation to the environment of the company.

- The LRCT imposes a new negotiation model, respectful of the autonomy of the parts and free of state interventionism, responding only the decisions of the parts. Arbitration is optional and not compulsory.
- The LRCT establishes who are legitimated to carry out a negotiation and the diverse situations (a single organisations, several organisations and no organisation) within which negotiation can take place keeping union pluralism present (Art. 9).
- The LRCT avoids all state intervention determining the result of the negotiation. This "will be an agreement by the parts" (art. 44). In case no collective convention exists on the level in which the negotiation is settled down (company, active or union), the parts will agree the level and, if there is no agreement, the negotiation will be taken in the level of the enterprise (Art. 45). If the parts do not reach an agreement, they can undergo an arbitration (Art. 61). This ceases the workers decide to exercise the right to strike. Arbitration resolution " is not appealable and it has imperative character for both parts" (Art. 66).
- The LRCT determines the automatic expiration of collective agreements after one year, unless the agreed matters have been done with permanent character or its renovation or extension is agreed (Art. 43)

The right to strike. - Regulation of the right to strike in harmony with social interest. The State established the exceptions and limitations: Article 28, I incise 3. Article 42, incise 3, makes an exception form this right to deciding and confidence officials, armed forces, police, the judges and prosecutors.

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<sup>34</sup> Supreme Decree Nr. 076-90-TR annuls unique union and opens plural unions for enterprises. Formerly, this plural union existed only in federations and confederations. "As a result, unions activity is atomised and dispersed, existing many unions with few strength."

<sup>35</sup> Boza Pró, Guillermo. Los principios del derecho de trabajo en la nueva Constitución. P. 96

Art. 72 of the LRCT defines strike, Art. 73 points out its objectives and Art. 81 prohibits irregular paralisation modalities. In the right to strike, a clear state interventionism settles down. The materialisation of the strike requires:

1. To declare the strike (art. 73), previous decision adopted by a majority of workers, countersigned by a notary or peace judge.
2. The Authority of Work must qualifying the validity or not of the strike in a term of three days.
3. Art. 76 establishes the duration of the strike and the Art. 68 authorises the Executive's intervention if the strike jeopardises the enterprise and production.
4. The strike can only be carried out if collective negotiation fails.

Contrary to what happens in the economy, where it deregulation and non-intervention are privileged, L.D. 25593 (Law of Collective Relationships of Work) clearly leans towards regulation of union life. The employers are in the attitude of unilaterally determining the content and level of the collective negotiation as well as the duration of the process and the modality of the means for conflict solution. They can also review and cancel rights and benefits previously agreed with their workers. Exercise of the right to strike is openly restricted, settling down exaggerated requirements for the adoption of the corresponding agreements by the workers. Their modalities are regulated in a limitative way and excessive faculties are given to the administrative authorities in order to impose the termination of a strike. This openly violates ILO Agreements Nr. 87 and 98, both ratified by Peru.

The ILO Committee for Union Freedom and the Experts Commission in the Application of ILO Agreements and Recommendations have required in reiterated times the Peruvian Government to proceed in the rectification of this legislation, request that has been ignored. Particular observations refer to: the exaggerated requirements for affiliation to the union, the large number of members required to constitute union activity or union, impediments to be union leader, restrictions to the union jurisdiction, the obligation to inform union activities to government and military authorities, the administrative break-up of the unions, the imposition of obligatory arbitration in the event of conflict in an essential public service, the existence of restrictions to the exact exercise of the strike right, among others.

***4.6. How rigorous and transparent the rules are on the managerial administration and how are the corporations regulated indeed by the public interest?***

Note of the Editors: pending Answer.

## **II. ACCOUNTABILITY AND REPRESENTATIVITY**

### **5. FREE, JUST ELECTIONS**

***Do the elections give the people control over the government and its policies?***

It seems that within the new landscape of universal politics and democracy, the landscape of videocracy and *homo videns* (Sartori), a specific kind of state which, provisionally and because of the lack of a more precise name, we could call liberal-authoritarian, is appearing in Peru. This kind of state is liberal in the economic and formally democratic in the political. But this democratic formality hides an exercise of power profoundly authoritarian and sophisticatedly repressive in its effects. This kind of state that has appeared in Peru also seems to exist in other parts of the world<sup>1</sup>.

**5.1. *To what extent is the choosing of authorities and legislators determined by competitive popular elections and how frequently do the elections lead to changes (alternating) in the persons or parties that govern?***

The elections are regulated by a set of norms approved between 1995 and 1997 that completely reformed the electoral legislation. The Organic Laws of the National Electoral Jury (Law 26486-LOJNE), of the National Office of Electoral Processes (Law 26487-LOONPE) and of the National Record of Identification and Civil Status (Law 26497-LORENIEC), were promulgated in 1995 in accordance with the 1993 Constitution. That constitution created a tripartite electoral organization with two new organisms (ONPE and RENIEC) which assumed some functions formerly assigned to the JNE.

Law 26859 (Organic Electoral Law - LOE) regulates the following: the electoral campaign; the voting procedures; the inscription of organizations and candidates; a just election and the electoral system in the case of presidential and congressional elections (they are carried out at the same time every 5 years); referendums; and the abrogation of authorities. Law 26884 (Law of Municipal Elections - LEM) regulates municipal electoral processes. Both norms date from 1997.

The electoral norms have been shown to be insufficient to guarantee free competition and to neutralize governmental interference in the electoral processes. Thus, the 2000 elections were characterized by a great number of absolutely unacceptable characteristics from the point of view of international democratic standards. These characteristics can be summarized in four points<sup>2</sup>.

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<sup>1</sup>Similar cases most cited are those of Malaysia in Asia and Zimbabwe in Africa. In Latin America today's Peru has often been compared with the beginnings of Bordaberry's Uruguayan regime. However, the Fujimori' regime shares with Bordaberry's its civil origin along with its mainly military support but differs in its essence because of the mechanisms used to exercise control and repression. On the other hand, the title, liberal-authoritarian, was applied before to General Pinochet's Chilean regime which was, like that of Fujimori, obsessed with establishing a new kind of legality. However, the differences between them have to do with their origins (a military coup in Chile, elections in Peru); to their forms of imposition (more physical pressure in Chile, more psychosocial pressure in Peru); and to the very scope of their legalist obsession (creation of a new legality with Pinochet, a pseudo-legalism and control of legality through the control of the judicial branch in the case of Fujimori).

<sup>2</sup> More information and documentation on these four points can be found in the Web page and the publications of 'Transparency'. The four points we present here summarize a Decalogue Transparency circulated during the elections.

1.) The constitutional, legal and institutional framework were adapted by force to allow a third presidential period for President Fujimori and to neutralize every initiative to impugn it. The new constitution permitted reelection in 1995. In 1996 congress approved a law entitled "the law of authentic interpretation" of the constitution to allow a second reelection (Law 26657 23/08/96). The magistrates of the Constitutional Tribunal that declared the law inapplicable were dismissed and congress prevented the carrying out of a referendum to annul it. All of this to permit the unconstitutional inscription of Alberto Fujimori' candidacy to the presidential office.

2.) The putting in place of clearly prejudiced electoral authorities: National Electoral Jury (JNE) and National Office of Electoral Processes (ONPE). The independence of the electoral authority is crucial in determining the integrity of the electoral processes.<sup>1</sup>

3.) There was intense participation of all state instances (particularly the armed forces) in the candidate-president's electoral campaign and in the counter campaign of harassment and repression against all the opposition candidates.

4.) The lack of electoral confrontation, particularly on open television channels.- In the second round of the 2000 elections the government reached such an extreme that the rival candidate (Alejandro Toledo) withdrew from a clearly fraudulent contest, along with all the international (OEA, UE, Carter Center/NDI) and national (Transparency, Defender of the People, Council for Peace) observers.

This combination of characteristics hasn't been seen, at least not to the same degree, in any of the recent Latin American elections (in reverse order - Venezuela, Mexico, Dominican Republic, Guatemala, Chile, Uruguay, and Argentina). In general these aberrations have been absent from the electoral landscapes of this region and from other parts of the world for a long time. As the British electoral expert Rebecca Cox points out at the beginning of her report early on in her observance of the Peruvian electoral process, "Peru in the year 2000 possesses the institutions and appearance of a democracy, but neither the norms nor the essence".

In Peru there is an apparent alternation by parties, as those that win the elections are called by different names (Change 90, New Majority, Lets go neighbors, Peru 2000). However, the president (Alberto Fujimori) and those who govern are the same since 1990. Just the opposite of Mexico, here the name of the ruling party changes but the persons remain the same.

**5.2. *How inclusive and accessible to all the candidates are the registration and voting procedures, how independent are such procedures from government and party control and how free from intimidation and abuse?***

The procedure for citizen registration:- In Peru, the electoral registration is permanent, in charge of RENIEC and is regulated by the Electoral Law.

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<sup>1</sup> LOPEZ PINTOR, Rafael. Electoral bodies as institutions of governance. p.18

The most recent general renewal of voters' registrations dates from 1984. With the electoral reform the change from a manual to a digital registration was made in a general registration renewal process that should culminate, according to law, in July, 2001.

The renewal process has caused numerous problems in the identification of voters in the last three elections. In the 1998 municipal elections there was confusion because three different identification documents valid for voting existed at the same time. By the 2000 elections one was invalidated (the mechanized electoral card, a transition document), but not until December 10, 1999 (date the register was closed, four months before the elections). Transparency gave out the information that approximately 5.8% of the citizens still had that card, making it impossible for them to vote. Besides, the renewal of voters' registration clearly had little public approval, as on the same date approximately 61% of the voters had the old card, in spite of three years passing since the change was made.

As for citizens not in the register, the comparison of the general population statistics with those inscribed in the electoral register shows that approximately 10% of the Peruvian population in an age to vote can't because they are not registered. To those we must add all the Peruvians who live abroad and don't have voting facilities, estimated between 300,000 and 700,000 voters.

The voting procedure.- The LOE establishes guarantees oriented to preserving the freedom to vote as well as the free and secret ballot, the prohibition to make political propaganda the day of the elections, the one and irreversible tabulation of votes at the voting table, and electoral scrutiny by observers, among other things.

Transparency, an independent organization dedicated to electoral scrutiny received 82 accusations of interventions by the armed forces and national police in the electoral activity the day of the first electoral round (April 9). The Defender of the People also detected cases in which the armed forces created fear among members of the voting tables, voters and witnesses of the different participating parties by requesting information concerning the development of the process and personal identification data. Besides being unnecessary, this request is not foreseen in electoral law.

Transparency also registered 63 accusations against the intervention of political and local authorities (municipal functionaries, prefects, and governors), 204 against the behavior of electoral authorities and 72 against undue intervention of representatives of political organizations.

### ***5.3 How just are the procedures for registering candidates and parties and to what extent do they have fair access to the mass means of communication and other means of communication with the voters?***

The duration of the periods set for candidate and party registration.- the electoral reform introduced modifications to the duration of the periods for the convocation of elections. This caused the reduction of the duration of the periods set for the inscription of political

organizations, candidates to the presidency and congress, as we will see in the following frame:

The duration of the periods set for elections and the inscription of presidential and congressional candidates between 1990 and 2000 (according to LOE)

	1,990	1,995	2,000 (LOE)
Convocation	8 months before (240 days)	8 months before (240 days)	Between 120 y 150 days before.
Inscription of organizations	120 days before	180 days before	90 days before
Inscription of candidates to President	120 days before	180 days before	90 days before
Inscription of candidates to Congress	120 days before	90 days before	60 days before

These reductions (besides the closing of open television channels) affected the development of the electoral campaign to the prejudice of the electorate and the candidates. It affected their right to know and divulge in depth their programs and plans for government.

The requirements and procedures for the inscription of political organizations.- The new LOE established basically two barriers to the inscription of political organizations: 1) The adhesion of at least 4% of the electorate to the petition for inscription of a political organization (Art. 88b LOE). 2) The elimination of the political organization's inscription when it failed to obtain at least 5% of the votes in a general election (Art. 87 LOE).

Both requirements are far from reasonable. The percentage set for the inscription turns out to be excessive and requires a remarkable effort to reach it. In the most recent electoral process there were numerous political organizations that didn't participate in the political process because they didn't reach the minimum number of adhesions. There have been alternative proposals such as setting a smaller percentage or threshold of representation which also might serve to determine the party's existence. A modification of this point is urgent. This is especially important as the procedure established to verify the authenticity of the adherents signatures (in charge of ONPE) was denounced by various political organizations that didn't succeed in registering (MAPU, Christian Popular Party, Andean Rebirth, Peru Now, among others). The accusation was because there existed serious deficiencies in methodology, and the methodology was even the source of corruption of functionaries in charge of the verification. A clear example of all this is the presumed fraudulent inscription of the Independent Front Peru 2000, that had obtained its inscription with more than a million falsified signatures of adherents. Functionaries of ONPE and even a congressperson had been involved in the transgression.

Also, the minimum of votes set to avoid the elimination from the register, besides constituting a high barrier, is absurd. In every election there are organizations which gain congressional representation but lose judicial recognition as political organizations.

The requirements for the inscription of candidates.- Peru's Political Constitution (Art. 110 CP) require that a person, to be elected president or vice president of the republic, be more than 35 years old, be a Peruvian by birth and enjoy the right of suffrage. To that we must add the impediment of the second consecutive reelection (Art. 112 CP). To be a candidate to congress the requirements are the same except that the minimum age is 25 (Art. 90 CP)

Law 27163, dated September 9, 1999, added an impediment to being a candidate for the presidency, vice presidency and congress not foreseen in the constitution. This consisted in not letting anyone postulate who has exercised a post as a high level public functionary if there exists any penal accusation for offences committed against the state even though his/her responsibility hasn't been determined by judicial sentence. This law contradicts the universal principal of presumption of innocence and violates the Peruvian constitution, which sets out in article 2°, 24e: "any person is considered innocent as long as his/her responsibility hasn't been judicially determined". There is a suspicion that the law was adopted to keep opposition political candidates from being candidates. They could be kept from being candidates simply by placing a penal accusation against them just before the inscription date.

**5.4. *How effective is the variety of options that the electoral system and parties offer to the voters? How just is the scrutiny of the votes and to what extent do the composition of the legislative branch and the executive branch reflect the options offered?***

The 1993 constitutional reforms reduced the two house parliament to one and the 240 representatives (180 deputies and 60 senators) to 120. Fujimori justified the 1992 coup preceding the reform by blaming it on the inefficiency of parliament. The president, responsible for the coup, discredited congress, blaming the political class represented there for the economic failures and the failure of the struggle against terrorism in the eighties. He didn't have a majority in the parliament he dissolved by force. The coup, basically carried out with the citizens' support, aggravated the crisis of the political parties and favored the proliferation of independent candidates without any ideological or organic commitments .

As for the system of parties, it is useful to mention that none ever functioned well in Peru (See chapter 6). Besides, there doesn't exist and never has existed a Law on Political Parties that would assure their functioning minimally and permanently. History shows us only a few political parties with a structure, a platform and a program. And their alternating in the exercise of power was never consolidated because of the constant interruptions of the state of law.

Both the president and congress exercise their mandate for 5 years (Articles 112° and 90° CP). It is the LOE that determines that the parliamentary election coincides in time with that of the president (Art. 20° LOE). For the parliamentary election the method used is that of the distribution of seats according to the percentage of overall votes gained by each party and the double preferential vote (21° LOE). The 1993 Constitution orders proportionality and the multiple electoral district (7<sup>th</sup> Final and Transitory Disposition).

In spite of the constitutional rules on how to elect the parliament, the most recent election, in 2000, was carried out in a single electoral district. That causes serious problems of representation as well as no representation of some departments (administrative units) and the over representation of others. It also tends to a fragile relationship of the voter with his/her representatives as well as problems in the representation of local interests and the elimination of regional leaders and parties.

Last of all, we should say that the parliament doesn't reflect the will of the electorate. It gave the government alliance only 52 seats. However, Fujimori's group constructed a majority that up to now has reached 70 congresspersons (See chapter 6) using questionable means (suborning and blackmailing of opposition candidates have been denounced).

**5.5. To what extent does the legislature reflect the social composition of the electorate?**

In the year 2000 the electorate was made up of approximately 57% of the total Peruvian population. There has been a noticeable evolution in the participation of women in the parliament. Though we will develop this point specifically in 11.2, it is important to emphasize that women represent 21.6% of the present parliament, double the former one.

We can affirm that the size of parliament (120 seats) and the single electoral district (DEU) as a rule are insufficient to guarantee an adequate representation. The reduced size of parliament makes it inevitable that even a theoretically proportional distribution of the seats has distortions and under represents the departmental distribution of the electorate.

Please notice the following frame. If we had a perfect system, the brute coefficient of dispersion (column F) would be 0. However, in Peru it is noticeably greater<sup>1</sup> (29.5). The DEU aggravates these distortions, causing 10 departments to be under represented. In a system of multiple electoral districts this would mean that the votes in those departments have less value, affecting the principle of votes of equal value. Of those 10, 4 departments (Madre de Dios, Huancavelica, Moquegua and Pasco) that represent 3.2% of the Peruvian electoral population don't have any representatives. One can appreciate this in the following frame:

DISTRIBUTION OF THE ELECTORATE AND THE CONGRESSPERSONS ACCORDING TO THEIR DEPARTMENT OF ORIGIN

DEPARTAMENT	A	B	C	D	E	F  B-E
AMAZONAS	163,494	1.1	1	1	0.8	0.3
ANCASH	585,420	4.0	5	7	5.8	1.8
APURÍMAC	182,553	1.3	2	2	1.7	0.4
AREQUIPA	680,746	4.7	6	6	5.0	0.3
AYACUCHO	288,766	2.0	2	2	1.7	0.3
CAJAMARCA	625,443	4.3	5	7	5.8	1.5
CUSCO	593,941	4.1	5	5	4.2	0.1
HUANCAVELICA	206,741	1.4	2	0	0	1.4
HUANUCO	347,417	2.4	3	2	1.7	0.7
ICA	404,044	2.8	3	6	5.0	2.2
JUNÍN	659,314	4.5	5	4	3.3	1.2
LA LIBERTAD	845,005	5.8	7	4	3.3	2.5 <sup>36</sup>
LAMBAYEQUE	601,202	4.1	5	9	7.5	3.4

<sup>1</sup> The standardized net coefficient between 0 and 1 would give us 0.245, the result of dividing CBD among the maximum total that this can reach, in this case 120.

LIMA	4,937,572	33.9	41	37	30.8	3.1
LORETO	364,978	2.5	3	5	4.2	1.7
MADRE DE DIOS	37,548	0.3	0	0	0	0.3
MOQUEGUA	88,525	0.6	1	0	0	0.6
PASCO	131,210	0.9	1	0	0	0.9
PIURA	800,198	5.5	7	4	3.3	2.2
PUNO	614,254	4.2	5	6	5.0	0.8
SAN MARTÍN	302,533	2.1	2	1	0.8	1.3
TACNA	142,661	1.0	1	2	1.7	0.7
TUMBES	90,253	0.6	1	1	0.8	0.2
CALLAO	470,281	3.2	4	5	4.2	1.0
UCAYALI	177,613	1.2	1	2	1.7	0.5
TOTAL STRANGERS	227,350	1.6	2	2	1.7	0.1
TOTAL ELECTORS	14,569,062	100	120	120	100.0	CBD= 29.5

- Where A: Number of voters by department (2,000).  
 B: Percentage of voters by department.  
 C: Ideal proportional distribution of congresspersons according to B/  
 D: Real distribution of congresspersons according to the department where they were born.  
 E: Percentage of the real distribution of the 120 congresspersons.  
 F: Brute coefficient of dispersion (CBD).

On the other hand, there is no party in the parliament which claims to represent some labor (workers, professionals, farmers, etc.) or social (ecologists, gender, regionalists or anti-centralists, ethnic groups, etc.) sector of society. However, there are some who have personally assumed the representation of such interests.

**5.6. What proportion of the electorate votes and to what degree are the electoral results accepted by all the political forces and abroad?**

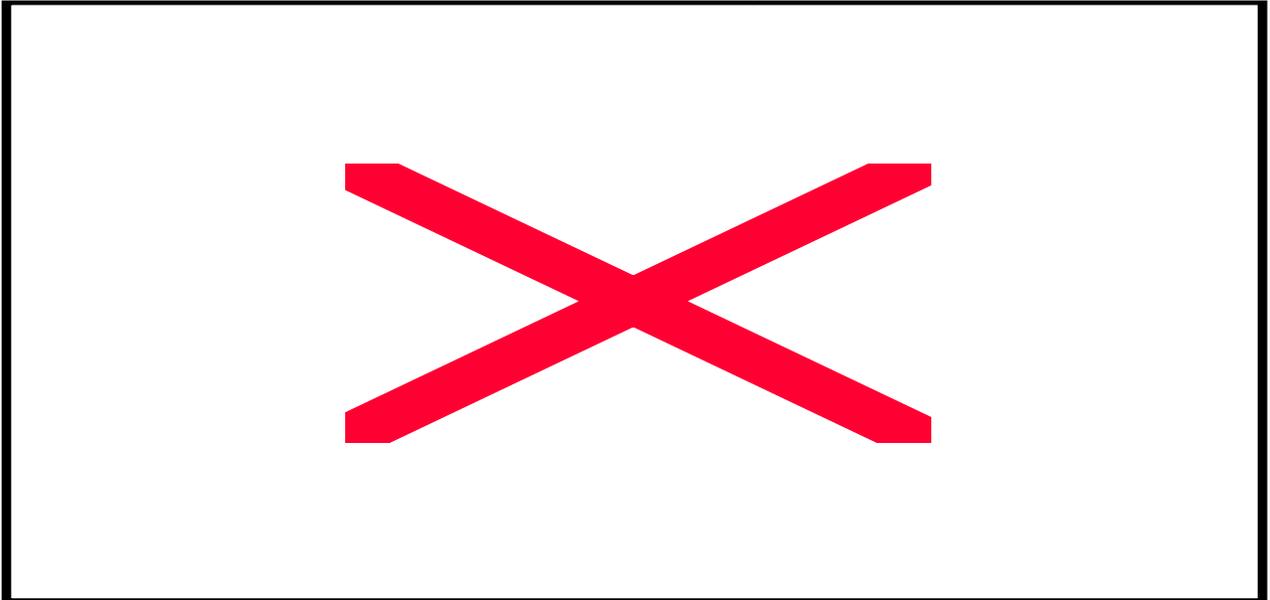
The historic abstention and the obligation to vote.- The constitution established the obligatory vote for all those in voting age under 70 years of age. The LOE sanctions not voting with a fine. The measuring of abstention, then, is conditioned by that element, besides two other different situations: voluntary and technical abstention. The first expresses the will not to vote. The second is involuntary and takes place, for example, when the voters move without reporting the change of domicile, when the dead aren't removed from the electoral rolls, or when the excessive cost of travel to the voting booth prevents it. It is also the result of having to deal with an old electoral roll, inadequate and out of date.

We have noted that in Peru after every renewal of the electoral card the abstention is considerably reduced as those that can't vote, for different reasons, are removed from the rolls. In spite of counting on such an out of date electoral roll, please note the diminishing of abstention (frame 1), in the two electoral rounds in 2000 (18 and 19% compared to 26% registered in the 1995 general elections and 20% in the 1998 municipal elections.

HISTORICAL ABSTENTION IN PERU (1956-2000). PERCENTAGES PER ELECTCION

Election/ year	% Abs.	Election/ year	% Abs.	Election/ year	% Abs.
General 1956	15,96	Municipal 1980	30,87	CCD 1992	28,71
General 1962	11,37	Municipal 1983	35,75	Municipal 1993	34,89
General 1963	5,62	General 1985	9,46	Referendum 1993	29,62
Municipal 1963	12,3	Municipal 1986	21,82	General 1995	26,15
Municipal 1966	15,86	Municipal 1989	30,5	Municipal 1995	26,13
Constituent 1978	15,72	Gen. 1st Round 1990	21,74	Municipal 1998	20,58
General 1980	18,17	Gen. 2nd Round 1990	20,47	Gen. 1st Round 2000	18,03
				Gen. 2nd Round 2000	19

HISTORICAL ABSTENTION IN PERU (1956-2000)



An important element for measuring abstention in Peru was what happened in the 2<sup>nd</sup> round on May 28, 2000. The Peru Possible Candidate, who withdrew because of the unequal conditions of the electoral process, early on called for his followers to abstain from voting. The advertising campaign of the electoral organisms consisted in threatening to implement questionable laws that suspended the exercise of some constitutional rights (right of free transit, closing contracts, etc.) and the imposition of a fine for all those who didn't vote. They even made threats that were completely beyond the law (Defender of the People, p. 129). Given this situation and the fine, the candidate, Toledo, called for those who voted to annul their vote. The result was a slight increase in the abstention (18% vs. 19%) but a noticeable increase in votes annulled (10.9% vs. 29.9%). One can see from this data that in the most recent May elections there was a kind of 'mental desire to abstain' in a percentage of those who annulled their votes (there are other causes such as not knowing how to vote, a problem in traveling to the voting booth, etc.). This was a result of the campaign to abstain from voting. All of this without considering the distortion that could have been fraudulently produced in counting the votes.

The acceptance of the electoral results.- The allegations of fraud have been characteristic of some Peruvian electoral processes. However, the idea of fraud doesn't just allude to the adulteration of the electoral results on election day. In the last elections it has been understood that the electoral process is a unit composed of a series of activities in which, though differentiated in time, all the conditions for carrying out the elections are important in determining their credibility and transparency. So not only the irregularities on election day serve to strengthen the suspicion of fraud, but also whether or not there were fair conditions throughout the campaign (See 5.1). In that sense, the election results were questioned both internally and abroad.

In regard to the internal legitimacy of the most recent elections, in the first round the political groups didn't accept the results basically for two reasons: the first, that all - except those reelected in the government - understood that the results were the expression of an unfair campaign. Because of the reelection the gigantic state apparatus wasn't neutral. On the contrary, it exercised a noticeable influence over the electorate. One could say that it was simply understood that the electoral will was 'vitiating'. This was true because of the manipulation of information on the part of the government and the medium addicted to it, as well as because of the threats and blackmail exercised over the poorest sector of the population (See 5.1).

The second reason for rejecting the results of the first round has to do with the counting of the votes by the ONPE. It was made with no supervision, thus merits no confidence. This was aggravated by two circumstances that occurred on election day, April 9: 1) The polls taken at the exit of the voting booth published by three private enterprises at the closing of the booths gave the victory to the opposition candidate, Alejandro Toledo. They gave second place to President Fujimori. But hours later the quick counts of the same enterprises gave opposite results. 2) That same evening ONPER divulged incoming results where Alberto Fujimori was ahead, just a fraction from the half plus one of the valid votes required by law to prescind from the second round.

Both facts brought about the rejection of the opposition and public protest. They alleged that if Fujimori surpassed half the votes in the official count there had been fraud. However, some hours later, Transparency's quick count, which enjoyed great public confidence because of its methodology and precision, warned that, based on its estimates, the carrying out of the second round was inevitable. The MOE-OEA and the Defender of the People supported those estimates. Finally, the official count confirmed what Transparency had already said.

In the second round, set for seven weeks later, the opposing candidate, Alejandro Toledo, withdrew from the election when faced with the official refusal to put off the elections. He wanted to have time for correcting the technical deficiencies of the counting of the votes and the unequal conditions still current at this stage of the process. Thus, the president-candidate ran alone in the second round.

The situation created brought about the withdrawal of Transparency (a national organization dedicated to electoral scrutiny), of the International Mission for Electoral Scrutiny of the Organization of American States (MOE OEA) and the other international

observer missions. (NDI-Carter Center, European Parliament). Also, those of the Defender of the People and the Council for Peace also withdrew.

As a result of the withdrawal of the MOE-OEA, there was a severe questioning of the Peruvian electoral process on the part of the Organization of American States (OEA). Though the Peruvian opposition asked for the annulment of the elections in that forum, the Organization of American States' General Assembly, in an unprecedented decision in the history of the republic, decided to send its highest level mission whose principal objective would be the strengthening of democratic conditions in Peru. Among them would be those referring to the electoral processes (See 5.7). However, on the arrival of the mission, it was explained that this mission would not revise the election results.

Last of all, it is worth noting that the international rejection of the Peruvian electoral process was general. This was made unmistakably clear in the swearing in ceremony of President Fujimori's third government (July 28, 2000), at which attended only 2 heads of state invited (Ecuador and Bolivia, members of the Andean Community). In comparison, for the identical ceremony in the Dominican Republic in August of this year eight heads of state attended.

## **6. THE ROLE OF POLITICAL PARTIES IN A DEMOCRACY**

<i><b>DOES THE PARTY SYSTEM HELP STRENGTHEN DEMOCRACY?</b></i>
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This chapter analyses the diverse aspects of the complex relationship between political parties and democracy. It is supposed that political parties, intrinsically, contribute to the strengthening of democratic institutionalism, by building communication channels between the state and the citizens. Nevertheless, in Peru, the systemic crisis of political representation has led to some preliminary thoughts in answer to this question.

Contemporary historical experience confirms this. Latin America is not an exception, even though democracy has been a scarce good, unreachable and bracketed between dictatorships and authoritarian regimes of different kinds. Democratic conscience has not been able to become general nor stabilized as something firmly acquired. Nonetheless, and even though inorganically and diffused, we can accept the thesis of a popular embedment, although it for quite explainable deficiencies and limitations to satisfy expectations had to live side to side with authoritarian waves.

It will be convenient to present this discussion before answering the questionnaire regarding the role of political parties, because the situation above described in reference to Peru generated various problems that cross transversally the situation of the political parties. The first of them has to do with the lack of democratic continuity, situation that did not allow the development of solid political partisan structures. The contribution of the political parties to the functioning of democracy was never the one it should have been and this affected basic principles of it: representation, credibility, and efficiency.

Another issue is that Peruvian political parties, small, installed in electoral periods and for the most part, only of a brief existence, have lacked the possibility of consolidating a system of parties (the research of Tuesta, Planas, Tanaka and others have given definite lines of thought about this issue). Electoral alliances did not manage to replace the coherence of a solid and stable system of political parties. Without questioning their need and legitimacy, what political parties must do for the strengthening of democracy is still a pending assignment.

### ***6.1 Do political parties have the freedom to have new members and do their campaigns?***

Peru does not have a Law of Political Parties, in spite of the effort coming from wide sectors for its approval. For this reason, the frame of reference can be directly located in the present Constitution, which mentions in its 35<sup>th</sup> article three types of political organizations: parties, movements and alliances<sup>37</sup>.

The legal framework that has always tried to regulate partisan organization has expressed itself in the electoral laws political occasion demanded. Presently, Law number 26859 is standing, Organic Law of Elections, passed in 1997. However, this law had several antecedents, the main was Law number 14250 that was standing from 1963, although with various modifications.

We must also point out as indicators that are present today, that before 1990, political parties in Peru, were groups with internal organization, with forms of participation and programs, ideological identity and contributions of experience in political representation. After the 1992 coup d'état, the movements understood as independent organizations were the ones that occupied the partisan space. As is known, they are groups of people that participate in politics without a great internal organization. Militancy does not exist and it is replaced by collective support to a leader for short periods. In Peru, these political movements appear in connection with an occasional participation in a political campaign and election. These political movements do not last as such for a long time. Ended the election for which they appeared, they dissolve or a less recurrently transform into a political party.

The Constitution recognizes equally the parties, movements or alliances the function of concurring to the formation and manifestation of popular will. This amounts to say that they all have diverse rights; the most important two: participation and representation.

In Peru the registration of new members to the parties is free; this by the Constitution. Nevertheless, this incorporation is atypical due to the absence of a Law of Parties and for the

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<sup>37</sup> Several law projects presented to the Congress pretended to regulate partisan activity. We have thus the project of Accion Popular (04/01/1983), the project of the Partido Aprista Peruano (04/15/983), the project of Partido Popular Cristiano (03/31/1986), project of the MP Victor Andrés García Belaúnde (05/14/1986), project of MP Enrique Bernales Ballesteros (07/12/1988), Suggestion from the Constitution Committee from the House of Deputies (11/28/1989), project of senator Javier Alva Orlandini (08/06/1990), project of senator Alberto Borea Odria (09/11/1990), project of congressman Oswaldo Sandoval (01/27/1996), project of congressman Henry Pease (presented 06/11/1996 and reactivated (08/27/1999).

almost generalized nonexistence of a set of regulations that norm the ordinary activities of political parties.<sup>38</sup>

Regarding the campaigns, in the past years they have been either municipal or general elections. The campaigns, although quite temperate in the last years, have allowed Peruvian political organizations keep a certain degree of standing (Apra, Acción Popular, although reduced in number have made it, leftist political organizations and the Partido Popular Cristiano have not). There have also appeared other organizations that could have a longer standing in the future: FIM, Somos Peru, Peru Posible. On the side of the government campaigns have not been centered on the organizations of governmental affiliation (Cambio 90, Nueva Mayoría, Vamos Vecino, etc.), but in the apparatus of government power<sup>39</sup>

There are not any political organizations properly said that have a solid national organization. We can thus state that political parties lack objective mediums to influence partisan politics and the selection of candidates. Both factors explain their credibility and representation crisis.

As of now, the only parties and movements registered and legally authorized to have representation, are the ones that passed the 5% threshold in the last elections. The others do not have a legal existence, and if this situation endures, they will not be able to participate in the coming electoral process.

The following chart summarizes “the state of the matter” regarding the standing of parties and movements:

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<sup>38</sup> Regarding the periodization of the partisan issue from the grounds of legislation, we can point out three historical “moments”. Firstly, the parties under the Constitution from 1933 to 1980, period in which there are two differentiated stages: the exclusion until 1963, except for the government of Bustamante y Rivero (1945-1948), and the one that begins with Law number 14250. The second moment of the parties begins with the Constitution of 1979 until the year 1987, period in which the major partisan crisis of modern republican Peruvian history starts. The third moment starts with the Constitution of 1993 and with the antecedent of the 1992 coup d’état. In this span of time, the legislative treatment of political parties is modified with very difficult demands to satisfy. See Bernales, Enrique, *Parties democracy and authoritarianism in Peru*. Also, Rubio, Marcial: *The Law of Political Parties: the rules no one wanted to support*.

<sup>39</sup> To date and due to the fact of the coming elections of 2001, these three political groups have announced their intention of merging into one party, to run for a favorable result in the elections in which Fujimori will not participate as a candidate.

ORGANIZATION LEVEL OF PARTIES AND POLITICAL MOVEMENTS IN PERU

PARTIES	MOVEMENTS	LEVELS OF ORGANIZATION	REGISTERED
APRA		National Structure	YES
	Perú Posible	Small central political committee	YES
Acción Popular		Low national structure	NO
	Somos Perú	High National Structure	YES
PPC		Low National Structure	NO
	Nueva Mayoría	High Centralized Structure	YES
PUM		No Notional Structure	NO
	Vamos Vecino	High national Structure	YES
Democracia Cristiana		No National Structure	NO
	Cambio 90	High National Structure	YES
Patria Roja		Low national Structure	NO
	Solid. Nacional	Medium national Structure	NO
	Avancemos	No National Structure	NO
PCP		No National Structure	NO
	FIM	Medium National Structure	YES
	UPP	Low National Structure	NO
	FREPAP	High National Structure	NO

On the other hand, parties and regional and provincial movements have gotten organized for basically municipal elections and depend in their great majority on local leaders. Following is a list not necessarily a closed one of these movements and the name of their leaders:

Arequipa Tradición y Futuro (Juan Manuel Guillén, mayor), Chim Pum Callao (Alexander Kouri, mayor), Adelante Chiclayo (Ángel Bartra, mayor), Reconstrucción y Desarrollo de Piura (Francisco Hilbk, mayor), Frente Vecinal Independiente de Huancayo (Dimas Aliaga, mayor), Fuerza Loretana de Iquitos (Iván Vásquez, mayor) Movimiento FIJO de Puno (Gregorio Ticona, mayor and present congressman), Salvemos Huaraz (Waldo Ríos, mayor and present congressman), Movimiento Peru Ahora (formed by three previous mayors: Federico Salas, present Prime Minister of Fujimori , Luis Guerrero y Jorge Chávez Sibina (present congressmen));

## ***6.2 How effective is the party system in the formation and maintenance of the Government?***

Much is discussed about the real existence of a “party system” in Peru<sup>40</sup>. Beyond their organizational deficiencies, the programmatic backwardness or the lack of internal democratization, in Peru the attention and assessment of political parties centered on their capacity to govern and satisfy elementary social demands. They failed on this respect. We then find that a second level of their crisis is this loss of trust in their capacity to govern, but also their incapacity to become an opposition, Ideological fragmentation and the objective absence of a viable government alternative had much to do in this as well<sup>41</sup>.

In Peru, the partisan-administrative issue has usually depended on the leader’s philanthropy, and very little from levels of auto sustenance and never from state assigned resources, as is the case in other countries. The partisan premises-excluding the emblematic premises of the Partido Aprista, the Partido Popular Cristiano and Acción Popular-sprout and disappear like ghostly images as a political campaign comes near or comes to an end. It must be noted that these three organizations together do not have 8% of the effective voters. The other political parties have but one premise that closes when the results are not successful.

On the other hand, the levels of internal organization have weakened. Until before the beginning of the crisis (1989) a typical party in Peru had the following structure: territorial committees (provincial and departmental organization) and special committees (the young, women, unions); National Executive Committee (formed by the general departmental secretaries); Political Commission; Parliamentary Group; and Secretary General or party president<sup>42</sup>. At present, some scarcely representative parties maintain that basic structure. The “independent” movements try to nominally maintain some of these forms, but generally, usually, it is the leader’s will and that of his small court of advisers that ends up imposing itself. This is the case of Vamos Vecino, Peru 2000, Solidaridad Nacional, Somos Peru and Peru Posible.

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<sup>40</sup> The debate over the existence or nonexistence of a party system has been extensive and fruitful. For example, Enrique Bernales holds that what really exists is, using a term of Duverger, a party “anti-system” (Crisis and political parties). Pedro Planas states that what is being configured can be described as a political informality associated to an institutional involution. (The Volatile Democracy). Other authors (specially Soldevilla and Martín Tanaka) are not as categorical in pointing out the nonexistence of a party system.

<sup>41</sup> About this particular issue, a non partisan vision is given by Juan Rial (Political Parties in South America. p. 57): “... in Peru there is a major predominance of a new form of doing politics: trying to do without parties. The new 1993 Constitution does not favor their consolidation”. In the same compilation, Julio Cotler assesses the phenomenon of “fujimorismo” sprouted in 1990 as one of the outsiders of the region (Political Crisis, outsiders and “democradura”: “Fujimorism”. P.117.

<sup>42</sup> In the United States, for example the internal structure of the two big parties covers all the areas of political organization of the country: national level and state level. The organ of both parties (Republican and Democrat) is the National Committee. Formally, the members of the National Committee are elected in the National Convention of the party, that is due every four years, but in practice, the members of the National Committee are elected by the State Conventions of the party.

### ***6.3. Do the opposition parties have the freedom to organize their actions in Congress and thus contribute efficiently to effective governmental responsibility?***

The answer seems to be simple: no. Presently, opposition parties can theoretically organize their actions in Parliament in practice they lack that possibility. This is due to two factors: their incapacity to have direct control over their representatives, except the organizations of the majority, where the rule of submission is accepted without any discussion. Besides, because of the regulatory problems they must face. The loyal majority of the government has a strong control of parliamentary mechanisms and they use it to diminish the importance and the political weight that it could have in its relations with the executive branch.

The Congress regulations approved after 1993, reformed in 1995 and reformed once more in 1999, neutralize legislative and censorship action diminishing at the same time the presence and contribution of the opposition. In this sense, the possibility of making governmental responsibility effective is practically none. In eight years, only two times has the opposition been able to question the cabinet; no minister has been censured nor judged and through the system of invitations the majority has avoided the resignation of ministers asked for by initiative of the opposition.

Congress has, by regulatory disposition, a Commission of Constitutional Accusations, whose job at the 31 of August of 2000 is explained in the following chart:

#### CONSTITUTIONAL ACCUSATIONS FROM JULY 27 TO JULY 26 2000

DETAIL OF THE INFORMATION	NUMBER OF CASES
Constitutional accusations presented	287
Resolved by the Qualifying Commission	210
Pending on a Report by the Qualifying Commission	02
A sub-commission formed pending a Report	04
Resolved by a Sub-commission	58
Others	13
<b>Summary</b>	
Total number of Accusations presented	287
Did not proceed or derived to other Commissions	283
Favorable Report for a Constitutional Accusation	04

Source: Congress Documentary Procedures Office

As can be seen in five years the ruling majority in Congress has only favorably qualified four constitutional accusations<sup>43</sup>, which are the following:

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<sup>43</sup> The procedure for a Constitutional Accusation is usually tedious. Once presented the accusation, a sub-commission is formed in the stage of Order of the Day, which lasts 30 days that may be prolonged 15 more days in order to give a report. Once the report is given, that can be in minority or in majority, the case goes to the Permanent Commission, that gives a go or no go to the Report and then names another Commission which will be in charge of sustaining the report before Congress. Then comes the debate in Congress where the accused part has a right of defense and this is the organ that decides over the accusation. If accepted, this acceptance is communicated to the Attorney General so his office can proceed with the corresponding legal accusation. All this procedure can last a year or two.

- 1) File 051: Denunciation presented on July 26, 1996 by the Congress Fiscalization Commission against Hugo García Salvatecci, former Superintendent of Banking and Insurance, for the supposed felony of government officials and unlawful enrichment.
- 2) File 116: Denunciation presented on March 9, 1998 by the Congress Fiscalization Commission against former member of a governing body, César Tineo Cabrera for supposed crime against administration and against public faith.
- 3) File 135: Denunciation presented on November 3, 1998 by citizen Juan Ccasani Coronado against the congressman Alejandro Abanto Pongo, against the presumed crime against justice administration.
- 4) File 158: Denunciation presented by the citizen Sofia Canales Panta and others against congressman Manuel Lajo Lazo, for supposed abuse of authority. The congressman was suspended from his parliamentary duties.

In spite of the above-mentioned limitations of a political regulatory character, parties have privileged parliamentary representation. One of the explanations of the partisan crisis resides in this “parliamentarization”, through which political organizations have centered their political action exclusively, minimizing the mediating contact with civil society and depriving political leaders without a seat in congress of any political specific weight.

From 1980 onwards, Parliament has become the privileged center for the activity of the parties or for what is left of them. Some more others less, all of them have played their cards to having the greatest number of congressmen; some even seek not for the greatest number but for the minimum required to guarantee the presence of their principal leaders.

At the same time, this has unbalanced the internal work of the parties; it has affected their organization and their mechanisms of internal democracy. This unbalance of the relations inside the parties has been perceived by public opinion as an element of progressive discredit of the parties.

#### ***6.4. Are the rules that discipline party activity in the Legislative branch clear and effective?***

There does not exist any direct regulation regarding the answer to the question. The rules that apply to this matter are to be found in the Constitution, and in light of the lack of a Law of Political Parties in the regulations of the Congress. It must be noted, though, that the normative framework available does not concede any disciplinary attribution to the parties over the elected representatives in Congress. The disciplinary sanctions that the parties could eventually impose upon their representatives can in no way enervate the mandate of neither the political parties nor their parliamentary functions.

In effect, article 92 of the Constitution says that the function of a Congressman is full time and that he is prohibited of assuming any other positions during the hours that Congress is working. Additionally, it disposes that the mandate is incompatible with any other public service, except that of state minister and that of extraordinary missions of international character. It also states the incompatibility of having a seat in congress with being manager, representative, attorney, main shareholder or member of an enterprise that has signed with the state, building contracts, provisioning contracts, or with having any important position in enterprises that manage public revenues or give public services.

Lastly, the regulation indicates the incompatibility of the mandate with similar positions in enterprises that during his period as a congressman, obtain concessions from the state, as well as money loaning enterprises, financial enterprises supervised by Banking and Insurance. These are dispositions do not have a development law and that nor are reflected in the Congress Regulations. Nevertheless, in the matter of prohibitions and incompatibilities, not complying to the rules more than a disciplinary sanction, it would merit a treatment as a constitutional infringement, in which case, the infringing congressman could be dismissed from office according to what is stated in article 100 of the Constitution.

Article 93 states that Congressmen are not subject to an imperative mandate and that they are not responsible upon any authority or jurisdictional organ whatsoever for the opinions or votes that they may give in the exercise of their functions. They can not be arrested, except for the case of a flagrant crime. The arrest only proceeds after the elimination of their parliamentary immunity by congress. These are guarantees to the seat that generate spaces where no disciplinary measure can be applied. The later will refer to behavior at variance with the congressional condition or that interfere with the functioning of Congress.

Anyhow, the Constitution does authorize the application of disciplinary measures. Article 95 points out that Congress imposes them, but with one limitation: it cannot exceed the 120 days of a congressional period. This is picked up in article 24 of the Congress Regulations, which establishes the sanctions to the Congressmen for indiscipline: written and reserved admonition, public admonition and suspension from their seat and discount in their salaries from three up to one hundred and twenty days of legislative period.

Article 61 of the Regulations contain the measures pertaining to the parliamentary discipline, that refer mainly to order, respect and good manners during the sessions. It is about the attributions of the Directing Board. As much in this disposition as in others that refer to the composition of the Congress, the Regulations ignore political parties. It only recognizes parliamentary groups (article 37) and these are formed with six or more congressmen; without mentioning parties. Besides, if the groups have indeed presence in the Directing Board, whose main function is to participate in the elaboration of the agenda (article 30), the regulations do not recognize them any attribution or control upon its members. In this sense, partisan discipline does not exist and the internal measures that parties or groups may adopt over its members does not inhibit them regarding the exercise of their function.

In this context described and aggravated by Fujimori's regime, the liberty of action of opposition parties in Parliament has two objective difficulties. The first of them, their own organizational limitations, that survive precisely due to the very scarce coherence of the movements that obtain a seat in congress. The second, the strong governmental control of Parliament, that on one side ignores the organic presence of the parties in Congress, to the point that they cannot regulate the participation of their members, on the other the use of dirty methods to assure the composition of a addict and complacent majority.

The recent elections give credit to this: "Fujimorismo" only obtained 52 seats of the 120; this it was a minority by decision of the people. However, it managed to obtain the support of representatives that migrated from other groups that went to the elections as opposition lists.

To elect the first presiding board they obtained 70 signatures, 18 more than what popular vote had given them.

A new political figure has appeared in Peru that has been qualified as “desertism” (transfugismo), by which a congressman elected by the votes of the opposition becomes a member of the official sector. With this low ethical attitude very little has changed in the present Congress in relation with the former ones, because precisely the liberty of action of the opposition is limited, even for the formation of the so called Parliamentary Groups, established requisite in the Regulations that permits a party to have a possible seat in the presiding board. The oldest party in Peru, Apra, has not obtained the minimum number required, six, to form their own Parliamentary Group.

On the other hand and as otherwise functioned the Legislative branch in the 80s, the present parliamentary majority does not employ the usual mechanisms of dialogue and political negotiation with the opposition. It is a majority that neither proposes nor dialogues, it simply imposes and the directing board can use to its discretion its disciplinary attributions to silence the congressmen that bother.

I bit in this manner, guillotining debates, suspending opposition congressmen, was how the governmental majority imposed the laws for the second reelection of Fujimori. For the congressman Henry Pease there exists what he calls the “visible beams of the fujimorist fraud”<sup>44</sup> stemming from the system of rules of the Legislative branch. We following present a relation of laws that have allowed to soften the way for the re-reelection of Fujimori and that have cornered and nullified democratic institutions:

NORM	MATTER	POLITICAL OBJECTIVE
Law No. 25546 16/11/95	Intervening commission of the Judicial Branch	Capture of the Judicial Branch by a commission named by the Executive
Law No. 25592 17/04/96	Modifies the Law of Participation restraining the right for a referendum	Crippled the way for the referendum about the presidential reelection
Law No. 26623 15/06/96	Modification of the Organic Law of the Public Ministry	Intervention of the Public Ministry by a commission close to the government
Law No. 26657 23/08/96	“Authentically” interprets article number 112 of the Constitution	Allows the re-reelection of Fujimori in the year 2000
Law No. 26859 01/10/97	Organic Law of Elections	Control from power of the 2000 elections
Law No. 26880 27/11/97	Permits the intervention of the public universities	The election of a member of the National Election Board close to government
Law No. 26898 12/12/97	States the provisional voting members can elect the President of the National Election Board	To conform an obsequious National Election Board
Law No. 26933 11/03/98	Scissors faculties to the National Council of Magistrates	To stop any punishment of substitute judges close to government
Law No. 27163 06/09/99	Judgment of officials with a right to a preceding trial	To stop the participation of these officials in the elections
Law No. 26954 21/05/99	States the impugnation in the National Election Board of 4 out of 5 members	To stop the impugnation of Fujimori’s presidential candidacy

<sup>44</sup> PEASE, Henry, This is how the State of Law was destroyed. Congress of the Republic P. 375.

**6.5. Is the organization of political parties effective? Do the members of them have the capacity to influence in the party politics and in the selection of candidates?**

One topic that has been constantly been called for is the legal regulation of the primary elections inside the parties. Except for the Partido Aprista, none of the political movements had internal elections for the selection of their candidates. As has been seen, the organization of the parties is directly proportional to their registration and participation in the electoral processes. We have previously mentioned that legal regulations have made their permanence in the Electoral Registers more difficult for those organizations that did not reach at least 5% of the votes. This demand of having a 4% support of the registered voters in the Electoral Register has become a barrier that has reduced to minimal expressions the number of political organizations with a legal life. In the last elections of the year 2000 several parties and groups have lost their legal registration among which are Unión por el Peru, Avancemos, Frepap, Solidaridad Nacional, and Acción Popular.

The designation of candidates at all levels (Congress, municipalities) depends on the most prominent leaders of the party and not on a democratic decision of the majority. Thus, for example, in the last general elections there were plenty of accusations the alleged that a certain amount of money had been be given in order to obtain an expectant position in the parliamentary list. In the government party, the places in the list were assigned by Fujimori himself that was based on a list of people provided to him by his closest collaborators. This is explained in the following chart based on the work of Pedro Planas<sup>45</sup>

Composition of the Parliamentary list of Peru 2000

Origin/Merit	Members	Sub Total
“Repeating” Government congressmen	49	
Pro-government congressmen	06	
Former public officials	24	
Direct links with government	10	89
Members of Cambio 90	03	
Members of Vamos Vecino	08	
Members of Peru 2000	01	12
Guests	19	19

As can be seen, of 101 candidates directly linked to the governmental entourage, only 12 candidates were active members of any of the political movements that supported president Fujimori. The rest, the great majority, have not originated from any mechanism of partisan selection.

In the opposition, the landscape was not too different. In the Apra, for example, primary elections took place to designate the candidates to Congress, but the results were not respected and the lists were managed by the party leaders. A very illustrative case occurred in Solidaridad Nacional. The list was formed under public accusations of corruption and bribery. The result could not have been more disastrous. In the 2000 elections this group obtained five representatives, three of which immediately went off to the government side saying that they

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<sup>45</sup> Planas, Pedro, Op. Cit. P. 360.

owed nothing to the party that took them to congress. In Peru Possible the picture was quite similar, as was the case in other minor groups.

**6.6. Does the party funding system subordinate them to private interests?**

There does not exist any public party funding system. It is quite precarious. The state does not assist them nor has any interest to do so. Resources generally are provided by private funds that can have occult interests when helping to finance political organizations.

At election time, funding comes out suddenly and is suspiciously abundant in favor of the government party or of the political force that has the most possibilities of winning the election. A recent report from the Ombudsman’s office about the 2000 election states, based on information coming from the company “Supervisora de Medios y Publicidad”, that considering the fee cost for enterprises the item “Political Parties” occupied second place in advertising investment during the month of March of 2000, tailing after the item “State”, with a amount of 3, 477, 794.83 US \$<sup>46</sup>. The ten political groups that participated in the electoral process had, according to the same report from the Ombudsman’s office, the following expenses:

PARTY EXPENSES AND ADVERTISING MOVEMENTS (MARCH, 2000)

POLITICAL GROUP	AMMOUNT IN AMERICAN DOLLARS	PERCENTAGE OF THE ADVERTISING INVESTMENT
PERU 2000	2'054,626.10	59,08 %
SOMOS PERU	371,866.82	10,69 %
SOLID. NACIONAL	310,762.51	8,94 %
PERU POSIBLE	236,854.51	6,81 %
FIM	145,631.16	4,19 %
AVANCEMOS	140,971.39	4,05 %
ACCION POPULAR	85,671.21	2,46 %
APRA	79,123.15	2,28 %
UNION POR EL PERU	49,814.88	1,43 %
FREPAP	1,491.00	0,04 %

As can be observed, the group that spent the most on political propaganda during the month of March of 2000 was the political alliance “Peru 2000”, movement that was leaded by the president. In this same way, it must be considered that from the total of the investment on propaganda of the government party, 80,47% was spent on TV ads (1, 653, 353.48 US \$).

Where do these expenses come from? According to a brief explanation by the candidate-president himself, “friend entrepreneurs” financed his campaign without specifying who they were and how much each one had contributed with. Observing this panorama, we can verify that the unknown origin of the party funds provides margins of doubt regarding the party subordination or of the leaders to private interests.

<sup>46</sup> Ombudsman’s Office: 2000 Elections. Supervision Report. P. 54.

As to the expenses of the presidential candidates, a Bulletin of the Civil Association “Transparencia”<sup>1</sup> gives us the following figures:

TOTAL AMOUNT OF EXPENSES OF PROPAGANDA FOR PRESIDENTIAL CANDIDATES

CANDIDATE	AMMOUNT IN US \$	PERCENTAGE
Alberto Fujimori	1'685,234.36	83%
Alberto Andrade	137,221.08	7%
Alejandro Toledo	124,610.02	6%
Máximo San Román	32,292.68	2%
Federico Salas	23,364.90	1%
Luis Castañeda	23,189.35	1%
Abel Salinas	3,180.00	0.3%
Víctor A. García Belaúnde	2,584.40	0.2%
TOTAL	2'031,676.79	

**6.7. ¿Up to what extent are ethnic, linguistic or religious differences represented in parties?**

Peruvian Constitution states the criteria of national representation without any reference to ethnic group, language, or religion, as criteria that may be present for the selection of representatives. In spite of the Constitutional recognition of the country as multicultural, the right to have a differentiated representation in Congress does not follow from this recognition.

In Peru, the ethnic problem is bigger and has immense social connotations. Nevertheless, the topic of representation is of a major importance if we consider that the country is multiethnic and multiracial but not multinational. At present, the representation of ethnic groups is very scarce and selective, with a preference to ethnic leaders. In spite of that, none of these leaders has been able to obtain seats in congress. This, because the same political groups put them very low on the list and because in Peru there exists the national constituency, by which a congressman is elected by all the country and not by their local constituencies.

A case of special relevance is the one the Frente Popular Agrícola del Perú, Frepap. It is a political-religious group that has presented almost unsuccessfully a presidential candidate and paliamentary lists from 1990. Their leaders belong to the Israelite Alliance of the New Universal Pact, religious group of a mesianic character based on the writings of the old Testament. The message that this group has built is based on the reivindicacion of agriculture and in the development of what they call “live frontiers”, locations where they have moved large contingents of followers to form human conglomerates of selfsubsistence. Well then, this group has had fewer problems that many other political groups for their registration; each time they lose an election they dedicate themselves to collect the more than one thousand five hundred signatures that are needed by law for their new registration.

<sup>1</sup> Asociación Civil Transparencia: Datos Electorales, Boletín No. 35

The Evangelist Movement of Peru has had political presence specially since 1990, in which one of its leaders, Carlos García y García became vicepresident to Fujimori. This movement groups various Evangelical Churches and since its falling out with Fujimori in 1992, have constantly maintained its presence in the peruvian political scenario, forming alliances with other political groups and presenting their own candidates to Congress.

Seen from the religious perspective, we believe that in this aspect and particularly in the last decade, there has been a political emergence that clearly includes this variable. Nevertheless, the participation of these groups is still scarce. They take a stance from the conviction that they are a minority. In change, the catholic majority in Peru has not felt as necessary to take a political stance stemming from their religious beliefs. We can consequently state that the religious organizations are politically represented basically by themselves, not being this the case with the other minorities, specially those of an ethnic character, whose problem results structurally more complex.

## 7. GOVERNMENT EFFICIENCY AND ACCOUNTABILITY

*Is the government responsible to its people and their representatives?*

In this chapter we will examine the way President Fujimori's government has followed a process through which it has ceased to be responsible to its citizens and to the formal control mechanisms, in a slow but continuous process.

***7.1. What capacity does the government have to influence or control matters important to the life of its population and how effective are the information, organization and the resources it counts on to do it?***

The government's efficiency in the solution of two fundamental problems, the struggle against terrorism and economic stability with the control of inflation, the change of the development model and the reinsertion of Peru in the International Economic System, kept Fujimori a high approval rating. That created a situation where the self-coup in 1992 had a majority approval.

During Fujimori's second period (1995-2000) the additional government successes as perceived by the population were<sup>47</sup>:

- Peace with border neighbors - The solution of the conflict between Peru and Ecuador and the conclusion of pending disputes with Chile.
- The struggle against poverty - The poverty indicators show that extreme poverty has improved from 19% to 14%, though poverty has remained around 50%. There is an increase in social spending from 2% of the Internal Brute Production in 1992 to 7.6% in 1999. In spite of that, it can be shown that this social spending is badly oriented and generates food dependency, especially in the case of PRONAA: "38% of Peruvians

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<sup>47</sup> APOYO. Opinion Fax, Julio, 2000 and Reports on opinions for January to June, 2000.

consume food donated by the government. This figure reaches 60% in some departments of the upper plains".<sup>48</sup>

President Fujimori changed his program for government when he took power. That happened because of the effects of globalization and the international system. These create a situation where there is a subordination of the governmental apparatus and its policies to external institutions such as the International Monetary Fund. The neo-liberal economic model was applied and Fujimori didn't have enough bargaining power to defend the country's priorities. On the other hand, there also exists a positive subordination to international democratic guidelines and to the influence of the OAS in the areas of institutional political reform and democratization.

Another influence foreign to legitimate authority resides in a coalition with real power that exercises great influence (or control) on the decisions the government takes. The governing coalition is formed of institutions not elected by universal suffrage: the armed forces, the national intelligence service, technocrats related to international organisms and some influential entrepreneurs. These groups' interests dominate legislation and governmental decisions.

The government has been inefficient in solving some problems that are basic for the majority of the population:

- Employment - In the decade of the nineties, in general, no new stable jobs have been created. The deficit of jobs by 2007 will be 2,500,000<sup>49</sup>. The economically active population unemployed in 1999 was 7.7% (in Lima it was 9.1%), under-employment was 43.4% and the adequately employed was 48.9<sup>3</sup>
- Decentralizing - The executive branch dissolved the regional governments on April 5, 1992, and the Ministry of the Presidency again centralized all public decisions.
- Democratization - "Peru represents a kind of "hybrid authoritarianism" that has succeeded in bringing about order in the short term but has undermined the very institutions which are necessary to assure order, stability and good government in the future."<sup>4</sup>

## ***7.2. How much public confidence is there in government effectiveness and political leadership?***

President Fujimori's approval rating in July, 2000, in the provinces, was 37%, while in Lima it was 48%. On the other hand, the government's approval rate in Lima has fallen to 42% in July (see frames), according to the most recent poll by Apoyo<sup>5</sup>. As you can appreciate in the frames on the following page, the most recent polls show a deepening of the decline to historic levels.

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<sup>48</sup> CAMPODÓNICO, Humberto. ¡Ampay! Dictatorial Governments to administer poverty.

<sup>49</sup> CAMPODÓNICO, Humberto. Op. Cit.

<sup>3</sup> Figures from INEI.

<sup>4</sup> COLETTA YOUNGERS. Deconstructing Democracy: Peru under the government of Albert Fujimori. p.87. In: Ideele; N°.125, February, 2000.

<sup>5</sup> National poll by Apoyo, commented on by Alfredo Torres in "The Commentary of the CPN News. Radio. Lima, August 16, 2000.

#### APPROVAL OF THE GOVERNMENT

	JANUARY	JULY	DECEMBER
2000	52	<b>42</b>	
1999	34	<b>48</b>	51
1998	36	<b>31</b>	28
1997	45	<b>29</b>	33
1996	69	<b>51</b>	48
1995	61	<b>61</b>	69
1994	62	<b>57</b>	62
1993	52	<b>55</b>	53
1992	61	<b>58</b>	59
1991	41	<b>29</b>	51
1990			57

Source: Apoyo - Comparison of polls in Lima.

#### APPROVAL OF FUJIMORI

	JANUARY	JULY	DECEMBER
2000	55	<b>48</b>	
1999	38	<b>50</b>	53
1998	38	<b>36</b>	33
1997	47	<b>23</b>	34
1996	75	<b>58</b>	45
1995	64	<b>68</b>	73
1994	66	<b>65</b>	67
1993	60	<b>61</b>	64
1992	65	<b>65</b>	64
1991	43	<b>31</b>	60
1990			61

Source: Apoyo - Comparison of polls in Lima.

Different indicators allow us to see the political system's loss of reputation and a certain pessimism of the population as far as expectations of change<sup>6</sup>:

- The approval of the economic policy fell from 39% last May to 25% in July.
- The fall in APOYO's confidence index from 1 in April to -1.5 in July, 2000. The most pessimistic are the socioeconomic levels A and B.
- Those who think their family's economic situation will worsen during the next year have increased from 6% in April to 32% in July. Those who expect to be better off have dropped from 41% in April to 26% today.

<sup>6</sup> See: APOYO. June Report of Opinion; also: Fax of Opinion, July, 2000. Augusto Alvarez Rodrich, in Economy under Political Pressure, brings us up to date with the most recent polls.

- Those who say they have seen their family's economic situation worsen during the last year have grown from 33% in March to 48% in July.

### **7.3. *How effective and open to scrutiny is the control exercised by elected leaders and their ministers over their administrative team and the executive agencies?***

The effectiveness of ministerial control over the offices that make up their sector depends on the importance this sector has for government strategy in general. The state budget is concentrated in three sectors. It is in those sectors where there exists The greatest capacity to control the execution of spending and the administrative team that makes up the budget and executes it. On the contrary, in those ministries where the budgets and programs have been transferred to the dominating sectors, the ability to control diminishes noticeably. The openness of this process is almost non-existent and the attempts to improve the transparency of the process have been blocked by the government itself.

Though constitutionally Peru tends to be semi-presidentialist, in the practice there is a hyper-presidentialism. Thus, ministerial restraint doesn't exist as such. There is no autonomous cabinet and the ministers are a kind of secretary, removed from their posts at the will of the president. In other words, the ministers are more figurative than executive and article 122 of the constitution is ignored.<sup>1</sup> In so far as the public administration is concerned, a recent investigation on state reform<sup>2</sup> shows us that the norms that regulate the administrative systems of public entities are complex, badly systematized, out of date and are concentrated in the control of procedures.

- One limiting factor of management in the public sector is the administrative systems. An example is health, where, to get equipment repaired, to buy supplies not programmed, or in situations where there are few providers in the market, the procedures are too complex and confusing. This affects the services offered and doesn't necessarily avoid corruption.<sup>3</sup> We should point out that the traditional "coimisión" (suborning or commission) and the practice of "tarjetazo"(on recommendation or influence of someone) continue.
- There are three ministries that monopolize the majority of the national budget and decide the overall policies. The first is the Ministry of Economy (MEF), that oversees the functioning of the economic model, makes tax policy and pays the debt. The second the Ministry of the Presidency, that implements the social policies. The third is the Ministry of Defense, that, besides national security, sees to the control of the internal opposition, the management and manipulation of the press, and the control of congress

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<sup>1</sup> Legislation that refers to the immunity and responsibility of elected leaders, ministers and the administration. Chapter IV of the constitution, which treats the structure of the state: Articles 96°, 99°, 100°, 117°, 120°, 122°, 126 and 128° and the Organic Law of the Executive Branch (Legislative Decree 560).

<sup>2</sup> ORTIZ DE ZEVALLOS, Gabriel. Agenda for the First Decade. P.15

<sup>3</sup> Ortiz de Zeballos. Op. Cit. P. 24,25.

- and other institutions<sup>1</sup>. The 1998 budget assigned more than 60% of the funds to those three ministries (31% for Economy, 22% for the Presidency and 9% for Defense).
- The country's budget for education (with the exception of Lima and Callao) is under the label of the Ministry of the Presidency (the USE, ADE and Regional and Sub-regional administrative offices are located, as to budget, within the scope of the CTAR), which causes administrative problems and affects the degree of authority the Minister of Education has over the organisms that execute the programs.<sup>2</sup> The same thing happens with the institutions related to the area of health and the administrative apparatus of the Ministry of Health in the interior of the country which, budget-wise, is under the Ministry of the Presidency.<sup>3</sup>
  - The control over the use of resources is very weak due to the improvisation of personnel in the public sector: "Only a group of entities permitted to contract personnel according to the private regime and offer a remuneration competitive with the market could make up an efficient and motivated bureaucracy. The personnel of the rest of the public sector continue to be regulated by a regime of "administrative career" that doesn't establish the incentives for the best young professionals to aspire to enter and remain in the public sector. For these reasons the personnel is, for the great part, of a very low professional level, unmotivated, inclined to corruption, foreign to a true vocation of public service and not committed to the modernization efforts<sup>4</sup>." There are examples in the different sectors such as the lack of studies evaluating the investments from the point of view of cost-benefits. And there are administrative steps that block and slow down the fulfillment of the ministry's objectives.
  - We become aware of the little accountability in the lack of response to the recommendations and exhortations of the Ombudsman. In his second report to congress he gives as the frequent answer of the state administration to his requests that there is no answer. "Functionaries, municipal governments, public services, offices of the budget (ONP), military, police, ministers and presidents of the council of ministers have resisted totally or partially in carrying out the recommended measures"<sup>5</sup>.
  - The executive's accountability to congress is also very limited when the majority of the congresspersons are members of the governing groups.
  - There is a lack of dispositions and mechanisms for control over government paid workers. An example is that laws enforcing article 40 of the constitution still haven't been legislated for the sector that states that public functionaries should publish their incomes. A project for a law of this type was presented by Henry Pease, went through a long process and two presidential observations, and was finally rejected and filed<sup>6</sup>.

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<sup>1</sup> An example of this is the case of the postponement of the second electoral round this year. The ministerial cabinet agreed to the postponement, but at the last moment the National Intelligence Service influenced the JNE and the date wasn't postponed.

<sup>2</sup> Ortiz de Zavallos. Op. Cit. P.15.

<sup>3</sup> Ortiz de Zavallos. Op.Cit. P. 19.

<sup>4</sup> Ortiz de Zavallos. Op.Cit. P. 14, 15.

<sup>5</sup> The new and difficult challenges for the Ombudsman. In: Idee N°.129; July, 2000.

<sup>6</sup> PEASE, Henry. That is how the state of law was destroyed. P. 286-309.

#### ***7.4. How extensive and effective are legislative powers to initiate, revise and amend legislation?***

In the practice the efficacy of scrutiny procedures (control) is very weak. "In Peru, just to admit to debate the motion of order of the day to request the formation of an investigating commission requires the favorable vote of one half plus one of the qualified congresspersons. In itself, that is a grave impediment."<sup>1</sup>

The history of the relation between the Executive and Legislative branches has been one of permanent tension, moving from a total subordination of the Legislative to the Executive to a position of confrontation between powers. There is no independence of powers since April 5, 1992. There is a total subordination of the Legislature to the Executive.

Constitutionally it is a prerogative of the congress to approve laws as well as interpret them, modify them or annul them. Congress can delegate to the executive the faculty of legislating, by means of legislative decrees, on a specific matter and within a determined time span. However, there is a custom of delegation for unlimited time spans and over matters whose treatment allows an ample margin of discretion to the executive branch.

Another mechanism through which the executive branch exercises a legislative function is the so-called emergency decrees that have been used extensively to introduce substantial changes in economic affairs.

#### ***7.5. How extensive and effective are the legislative powers to scrutinize the activities of the executive branch?***

- On the procedures of control and their efficacy we can state<sup>2</sup> that the subject of the investiture of the council of ministers isn't submitted to debate in congress at any time.
- On the process of seeking information from the council of ministers we should emphasize that that instance has been neutralized by means of the voluntary presence of the state ministers<sup>3</sup>.
- On the invitation to the council of ministers to report to congress we can state that that is done frequently in commissions.
- The open session for questions has been distorted until it has been converted into a monologue that reduces the possible activity of a congressperson to a single question.
- The motion of censure (presented by at least 25% of the legal number of congresspersons) and the vote of confidence (only presented by the council of ministers) have also been denaturalized in the practice. "We see, then, how an institution whose duty it is to find fault is denaturalized by the power of votes and respect for the very rule they approved<sup>4</sup> is lost."

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<sup>1</sup> GAMARRA, Ernesto. Investigative Commissions: The investigative power of congress. p.116

<sup>2</sup> We base ourselves for this on chapter 2 of the book of Gamarra, cited before. See P. 204-221.

<sup>3</sup> Gamarra. Op.Cit. p.206.

<sup>4</sup> Gamarra. Op.Cit. p.211

- In the practice the request for information made to ministers is unproductive. "Either they don't respond or the answer takes so long that it is no longer opportune"<sup>1</sup> A sample of the little independence of government information and statistical services is the recent attempt at an honest estimate of the Internal Brute Production by INEI (National Institute for Statistics and Informatics): "The new estimates of the brute product conveniently hidden by the "technicians" until after May 28 - indicate that last year we were in recession".<sup>2</sup>
- According to the congressional rule there is access by the commissions to experts. But it is the board of directors who approve contracting them. This becomes a limitation for the minority as the majority controls the congress.<sup>3</sup>
- There is very limited cover by the means of communication on subjects that might affect the image of the executive branch.
- The roll and the efficacy of the investigative commissions: A modification of the congressional rule, made on August 27, 1997, grants the ordinary commissions that receive the mandate from the plenary the same prerogatives that the investigative commissions have. This has generated more inconveniences since their reports handed in to the Attorney General carry weight for the simple fact that they are investigative groups made up within an ordinary commission<sup>4</sup>.
- Congress has no access to information from the National Intelligence Service and about some military spending. An example of that is the ministerial cabinet's proposal that a National Intelligence Center be created that would incorporate mechanisms for investigating abuses.<sup>5</sup>
- There is an indiscriminate use of reserved sessions, even though there is no question of national security or internal order.
- There is a tremendous slowness in the process when there is an attempt to investigate the government.
- There is difficulty in the legislature accepting motions that question the National Intelligence Service or the government. The motion presented to invite the President of the Council of Ministers and the Minister of Interior so as to investigate the arrest of General Robles wasn't admitted to debate (May 22, 1997); the motion to invite the Minister of Defense to explain the accusations of the former agent of the intelligence service, Luisa Zanata, was also not admitted to debate<sup>6</sup>.

The congressional majority skips procedures necessary for the control of the executive.

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<sup>1</sup> Gamarra. Op.Cit. p.216.

<sup>2</sup> See Till 2005? Ideele, N.129; July, 2000. P.4.

<sup>3</sup> In the 1993 constitution, mechanisms of parliamentarian regimes were included whose object was to reduce presidential authority and strengthen the control of the legislative branch. These mechanisms are developed in Chapter VI of the constitution in articles 97 and 130 to 136. The Congressional Ordinance, in its articles 82 to 87, develops the procedure for control of the executive. Articles 88 and 89 explain the procedure of investigation and the procedure of constitutional accusation.

<sup>4</sup> Gamarra. Op.Cit. p.218, 219

<sup>5</sup> Presentation of the Cabinet of Salas Guevara before Congress. August, 2000.

<sup>6</sup> Pease. Op.Cit. P.128-130, 137-140.

## **7.6. How rigorous are the procedures for approval and supervision of tax policies and public spending? <sup>1</sup>**

To have an efficient, permanent and simple tax system the government decreed the Law creating a Framework for a National Tax System (D.L. 771), in force since January 1, 1994. The law establishes the taxes whose administration corresponds to the central government (SUNAT and Customs, mainly), the local governments (municipalities) and some entities that administer taxes for specific aims (case of the IPSS).

The taxes that SUNAT administers are the following: 1) The general tax on sales. 2) Income tax. 3) The single simplified tax regime: tax that replaces the income tax and general sales tax. 4) The selective tax on consumption. <sup>2</sup>

The Peruvian Political Constitution in articles 81° and 82° defines the General Controller of the Republic as the ruling organ of the National System of Control, decentralized, and technically, functionally, administratively and financially autonomous. The Law for the National Control System, D.L. 26162, in Article 17 establishes that the General Controller determines the functions of the different organs of the system and its own administrative structure.

- We can say that the process of scrutiny of public finances is limited by the subordination of the Legislative Branch to the Executive Branch. In fact the Controller isn't independent because of how he/she is named. The executive branch proposes a person and congress names him/her." <sup>3</sup>
- As for the tax system and its efficacy: the reform of the tax administration "was unquestionably the most successful reform of Fujimori's government. It has even been acclaimed as an example in Latin America... Fujimori contributed at first to generating an institutional change in the tax administration, reinforcing the state's capacity, but later on blocked the process when political conditions changed<sup>4</sup>. In other words, when those least interested in the reform of the state acquired authority.
- The efficacy of SUNAT: the basis for the reforms was in the political support of the state and of the multilateral organisms that contributed experts in tax reform. The appropriate starting point was the improvement of human resources. We see this in its

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<sup>1</sup> Note of the Edition: The roll of the Ministry of Economy and Finances is still pending.

<sup>2</sup> In Title III, On the constitutional economic regime, Chapter IV treats the tax and budget regimes. Following there is a resume of some of the most important articles. They are: Article 74° Taxes are created, modified or annulled, or exoneration granted, exclusively by law. By legislative decree in the case of the delegation of faculties, except for customs taxes and rates, which are regulated by supreme decree.

Local governments can create, modify or suppress contributions and rates, or exonerate from these, within their jurisdiction and the limits the law establishes. No tax can be equivalent to confiscation. Emergency decrees can't bear on tax matters. Article 76°: The work projects and the acquisition of supplies with the use of public funds or public resources are obligatorily executed by contract and through public bidding, as well as the acquisition or disposing of properties.

The contracting of services and projects, whose importance and amount are indicated by the Law on the Budget, is done by public bidding.

<sup>3</sup> Pease García. Op.Cit.p.293

<sup>4</sup> DURAND, Francisco y Rosemary THORP. The Tax Reform: analysis of the experiment SUNAT. P. 380, 381.

first stages in the implementation of 3 basic systems. They were the single register for contributors; the system of differentiated audit which differentiated between the principal contributors (it emphasized the tax collecting from those) and normal units within each sub-treasury; and the reorganization of the system of sales receipts. The general sales tax became the most important tax. In 1994 it meant 44% of the tax collected. The tax structure was simplified to a few taxes: general sales tax; income tax; the selective tax on consumption; and FONAVI.

Signs of SUNAT's success.<sup>1</sup>:

- The collection of taxes as a percentage of the Internal Brute Production increased from 5% in 1991 to 14% in 1995.
- The number of contributors registered rose from 80,000 in 1991 to 300,000 active contributors in 1994(added to 200,000 irregular contributors).
- The number of principal contributors (they represented 90% of taxes collected in 1991) increased from 700 in 1991 to 2,916 in 1993 (they represented 85.5% of the total of taxes collected).
- The number of registered incomes declared rose from 200,000 in 1991 to 423,444 in 1994.
- The proportion of tax declarations per habitant rose from 0.72% 18.64% in 1994.
- The number of businesses close by SUNAT for not paying their general sales tax rose from 620 in 1991 to 7,268 in 1994.
- A poll published in Debate in 1997 qualified SUNAT as the most efficient of all public institutions.

On the other hand, the Controller's Program of Citizens' Accusations and Suggestions, begun on June 21, 1995, has statistics on the accusations made up to June, 1996: 'We received visits from 11,061 citizens. 2,562 of them made accusations (23.16%). Most of them (43.09%) were presented in the Central Office and the rest in the Regional Offices, especially Chiclayo, which received 470, followed by Huancayo with 386 and Arequipa with 263.

By the very nature of the offence committed, 27% corresponded to badly administered funds, 25% to abuse of authority and 14% to the corruption of functionaries. According to kind of entities, 57% of the accusations referred to municipalities, 41% of which were district municipalities. At the same time 18% correspond to entities of the central government and autonomous organisms.<sup>2</sup> Fujimori admitted that during the first semester of the year 2000 there was an additional spending of S/ 436 million. This figure is attributed for the most part to the electoral process.

As for negative indicators concerning the tax system, we can see that the limitations of the progress of the reform of SUNAT come from the political leadership. There was a constant change in the teams that directed SUNAT (in 6 years, there have been 4 superintendents). After 1992 they enjoyed great autonomy and authority. On the other hand, the presidential priorities changed and "they abandoned the emphasis on fiscal austerity and the increase in

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<sup>1</sup> Data found in: Durand and Thorp. Op. Cit. P. 399, 400

<sup>2</sup> Ver: <http://ekeko.rcp.net.pe/CONTRALORIA/>

taxes collected and found room for more concessions of a populist nature"<sup>1</sup>. Some indicators of the reform's limitations are: <sup>2</sup>

- At the end of 1996 a measure for splitting the payment of taxes over a period of time (DL 848) was approved without any technical criteria and against SUNAT's opposition. 75,421 businesses asked to lower or reprogram their debts.
- In July, 1997, Fujimori announced a reduction in the FONAVI tax from 7% to 5% and lowered the indirect taxes on fuel.
- The corruption in the Judicial System created a situation where all the cases of tax fraud presented to SUNAT (from 91 to 96) were lost.
- The collection of taxes began to drop in 1996. "Comparing the accumulated tax collection in 2000 (income tax) in relation to the year before, there was a real drop of 9.1%. The real (real means taking inflation, etc. into account) collection of the Special Tax on Consumption, without taking fuels into account, dropped 16.5% in June, 2000, in relation to the same month the year before. Also, the real tax collection to June, 2000, has been 4% less. As for the collection of the special tax on consumption of fuels in June, there has been a real drop of 6.4% in relation to June of the year before. In accumulative terms, the real tax collection dropped 4.9%"<sup>3</sup>
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- In June, 2000, 1,115,000 declarations and payments were presented in all the categories. That means a drop of 50,000 in relation to the same month of the year before."<sup>4</sup>

### ***7.7. How comprehensive and effective is the legislation that gives citizens the right of access to government information?***

Public access to government information is rendered difficult by the centralization. One important data is that the majority of the accusations made in the controller's program for citizen participation are against the municipalities<sup>5</sup>. This happens because of the closeness of the local governments to the population. That makes accusations easier. "The CTAR, some ministries and different central government organisms and programs directly carry out investments of a local character... the plan doesn't... take advantage of the potential advantages of a decentralization that... would facilitate the control of the population over its authorities."<sup>6</sup>

The first popular consultation on the annulment of mayors' and prefects' mandates took place on November 23, 1997 and was well received by the population. Law 26300 (on participation) has had a real purpose through the right of annulment. For example in 1997 64 municipalities carried out consultations.<sup>7</sup> Another right to participation, the referendum, was neutralized through laws which made it impossible to have one (first of all the initiative must pass congress) as long as Fujimori has a majority in congress.

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<sup>1</sup> In: Durand and Thorp. Op.Cit.. P.401, 402

<sup>2</sup> A great part of the data in: Durance and Thorp. Op.Cit. P. 401-404.

<sup>3</sup> En: Comentario de la SUNAT, junio 2000. [www.sunat.gob.pe](http://www.sunat.gob.pe)

<sup>4</sup> In: Commentary on SUNAT, June, 2000. [www.sunat.gob.pe](http://www.sunat.gob.pe)

<sup>5</sup> See point 3 of 7.6.

<sup>6</sup> Ortiz de Zevallos. Op.Cit. P.16

<sup>7</sup> CHIRINOS, Luis. Legal Framework for Citizen Participation in Local Government.

Comments on the scope of habeas data: It is important to mention the Constitutional Tribunal's decision pointing out that through this process one can "get access to archives of information stored in computer centers, no matter what their nature, so as to rectify, bring up to date, or exclude personal data or to prevent the propagation of information that might be injurious to the constitutional right to privacy" (Sentence stated in file 666-92-HD).<sup>1</sup>

On whether state employees fulfill their functions: This law proceeds against any authority or functionary who refuses to obey a legal or administrative norm in giving service. According to the constitution, to begin this process there is no need to show that the omission one seeks to correct injures any particular right, whether constitutional or legal.

In regard to a process for something being unconstitutional: From the beginning its effectiveness was limited principally by the mistaken legislative development given it. In fact, Article 4 of the Organic Law of the Constitutional Tribunal establishes that to declare a norm unconstitutional one requires the positive vote of at least 6 of the 7 magistrates on the tribunal.

The subject of the publication of the incomes of high state functionaries, contained in article 41 of the constitution, hasn't been regulated and for that reason isn't carried out.

The possibility of acceding to a referendum is limited because it must be approved first by congress.

The National Intelligence Service's budget isn't subject to any supervision<sup>2</sup>. One example of the impunity of the Service's members is the application of the Amnesty Law (Law 26479), promulgated in June, 1995, to those implicated in the disappearance and death of the University La Cantuta students. To apply it, congress passed an interpretive law (Law 26492) whose purpose was to correct the decision taken by the judge who tried the case<sup>3</sup>. On the other hand, national security is given as a pretext to maintain secrecy about many of the arms' acquisitions made by the armed forces<sup>4</sup>.

The concentrated control of the constitutionality of judicial norms is carried out through two processes: the process of popular action and the process of unconstitutionality.<sup>5</sup>

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<sup>1</sup> Information taken from Constitutional Jurisdiction. In: [www.cajpe.org.pe](http://www.cajpe.org.pe)

<sup>2</sup> ROSPIGLIOSI, Fernando. ¿A future with or without the SIN? The future is now.

<sup>3</sup> De Belaunde, Javier. Justice, legality and judicial reform in Peru. P. 335-339.

<sup>4</sup> ROSPIGLIOSI, Fernando. The Military and Power. P.48

<sup>5</sup> The constitution defines the process of popular action (clause 5) as the constitutional process through which one can protest "the rules, administrative norms and resolutions and decrees of a general character that contradict the constitution or the laws, no matter which authority they spring from" It points out that action against unconstitutionality (clause 4) proceed against norms that have the rank of law (laws, legislative decrees, emergency decrees, treaties, congressional rules, regional norms of a general character and municipal ordinances) and contradict the constitution in their form and in their essence.

Concerning immunity and official secrecy: Article 93° refers to parliamentary immunity. The congresspersons aren't subject to imperative mandate nor to interpellation.

Chapter IV, that treats of public service, points out - in articles 40 and 41 - that it is obligatory for upper level functionaries to present a statement of worldly goods under oath on assuming and on leaving office (Law

## 8. CIVIL CONTROL OF MILITARY AND POLICE FORCES

### **Are the military and Police forces under Civil Control?**

In this part we are going to establish why in Peru the armed forces are not under civil control, based on two factors of unquestionable presence: the improper political power that they have and the structurally permissive normative framework that underlines the substantial difference between civil and military jurisdictions when it comes to putting through trial various crimes so much civil ones as military ones.

Even if article 169 of the 1993 Constitution says that the Armed Forces and the National Police “are not deliberant”, for this legal prescription to become real, they would have to be strictly states apparatuses, subordinated in a hierarchal manner to civil authority but they recognize themselves as “tutelary forces of the State and the Nation” and thus claim to be recognized as such. This is an ideological tramp, which in fact makes the military “the power behind the throne”, with an immensely discretionary capacity to intervene, according to their own evaluation criteria.

About the weak civil control over the Armed Forces, we are going to analyze the legal framework in the following four “moments”.

1) Military justice and the states of emergency: The critical situation of violence that affected internal peace and order provoked the instauration of the so called emergency zones disposing military control of the internal order. The “Political-Military Commands” started functioning since December, 1982 and their official regulation was given with Law number 24150, June 6, 1985. This norm imposed arguable criteria about the application of the Military Jurisdiction for the members of the Armed and Police Forces that could be in service in emergency zones, where the Code of military Justice would be competent<sup>51</sup>

2) Antiterrorist Legislation: The first answer of the State to the subversive phenomenon was the Legislative Decree number 046, given on March 10, 1981, Law of penal repression for terrorist crimes, norm which replaces the old Penal Code of 1924 and establishes a special legislation about the topic. The standing of this norm was very important in time because it was only derogated six years later, on March 23, 1987 replaced by Law number 24651, which

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24801), and, besides, it disposes by law that the income he/she receives from the state must be published (there is no legislation concerning this topic)

In the law creating the framework of the budget process, Law 26199, article 55, indicates that the budget of the Ministries of Defense and Interior have the character of being reserved, but that the detailed information on the budget should be remitted to the legislative budget commission and the vice minister of the treasury.

The Decree Law N° 25635 in article 7 makes a reference to the fact that the National Intelligence Service depends directly on the President. That is to say, there is no legal or political control over this organism. Besides, the emergency decrees on national security given in 1998 have amplified its prerogatives to the investigation of common offenses.

<sup>51</sup> According to article 10 of the above mentioned law, all members of the Armed Forces, in the emergency zones were subject to the Code of Military Justice as long as the following conditions were complied: the personnel had to be a member of the Armed or Police Forces; they had to be in service in emergency zones; they had to commit any crime typified in the Code of Military justice; and the crime had to be linked with the military service.

introduces in the Penal Code the penalty for these crimes. Complementary legislation to this would be Law number 24700, given on June 24, 1987, which regulates the proceedings for police investigation, trial and judgment of terrorist crimes. On December 8, 1988, the norms of the Penal Code were modified until then standing, by Law number 25953. Later, through Legislative Decree number 635 from April 3, 1991 the new Penal Code is given, where the crime of terrorism is established. Later, the Legislative Decree number 748 given on November 8, 1991, modifies Law number 25103, introducing modifications to the legislation about terrorist repentance.

3) The coup'd'état of April 5, 1992: This unconstitutional act introduced a new stage in antiterrorist legislation, marking a strengthening of repression. In this way Law Decree number 25475, March 6, 1992 establishes new penalties for the crimes of terrorism, introducing life sentence and aggravating the others. At the same time Law Decree 25499, May 16, 1992 leaves without any effect Legislative Decree number 748. The minimal age to be held liable of terrorist crimes is reduced to 15 years of age through Law Decree number 25564, May 20, 1992. Finally, dated August 13, 1992, Law Decree number 25659 regulates the crime of treason to the nation and establishes as competent for trial and judgment of these crimes the Military Court, later on September 10, 1992 its procedural norms are given on Law Decree number 25708, as well as the norms for police investigation, trial and judgment and sentences for this crime, through Law Decree number 35744, September 27, 1992.

4) Present legislation: The criticized normative about terrorist crimes was broadened towards cases of common crimes. Through Legislatives Decrees numbers 895, 896, 897, 899 and 900, promulgated in 1988, common criminals of organized gangs received similar penal treatment as terrorist criminals<sup>52</sup>. On December 20, 1999 Law number 27235 is given which modifies the previous legislation and establishes that the crimes of special terrorism will be judged in the civil courts, while the trial in the military jurisdictions would remain there until their end.

### ***8.1. Is civil control of the Armed Forces effective and in what measure do they influence political life?***

As has been said in the previous lines in synthesis; we can state that no effective civil control over the Armed Forces exists and in view of that, it is visible that they have participation in the political life of the country.

The Constitution dedicates Chapter XII to the topic of the Armed Forces and the National Police. Through these norms the System of National Defense is created, destined to guarantee the security of the Nation, the management of which corresponds the president of the Republic, who is also Supreme Chief of the Armed Forces and the National Police. By Constitutional disposition the Armed Forces are made of the Navy and the Air Force, which assume the control of internal order in case there should be an emergency situation. To them must be added the National Police, in charge of guaranteeing, mantaining and reestablishing internal order.

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<sup>52</sup> National Coordinator of Human Rights. Annual Report. 1999. P. 91.

The Armed Forces are regulated organically by Legislative Decree number 743, Law of the System of National Defense. At the same time, the most questioned organ of them, the Intelligence System (Servicio de inteligencia Nacional, SIN), is normed by Legislative Decree number 746, Law of the National Intelligence System. In what regards the military jurisdiction for cases of crimes in that function there exists the Code of Military Justice.

About this last topic, it is worthwhile to go over a brief historical summary. Since the first days of the Republic and until January 20, 1899, in which the new Code of Military justice was introduced, in Peru the old Spanish ordinances from colonial times and that date from the XVIIIth century were valid. Then the Law that established the Code of Military justice was passed on December 20, 1898, which was in turn modified by Laws 272, 273, 2442 and the Law Decrees 6881, 6882, 6948 and 7985, motivating the total reform of 1939<sup>53</sup>. The following chart summarizes the later legislation:

THE CODE OF MILITARY JUSTICE THROUGH TIME

LAWS	GOVERNMENTS	POLITICAL SCENARIO
Decree Law No. 8991 10/16/1939	Oscar R. Benavides	Military Dictatorship
Decree Law No. 11380 05/25/1950	Manuel A. Odría	Military Dictatorship
Decree Law No. 14612 07/25/1963	Nicolás Lindley	Military Dictatorship
Decree Law No. 23201 07/24/1980	Francisco Morales Bermúdez	Military Dictatorship

Another aspect in reference to this point is the approval of the promotion of the high military ranks. The present Constitution, unlike the former, has eliminated the ratification of military and police promotion from Congress, transferring this power to the President of the Republic. This change has altered the relation between the Armed Forces and the civil society represented in Congress, being this one of the reasons that could explain the free will that they have, based precisely in the nurtured relations with the Chief of state. To this we must add that governments, in general, have not been able to manage with ability and firmly military themes such as recruitment, number of casualties, expenses, organization, discipline. All of which have always brought serious consequences for the stability of the regimes.

## ***8.2. Are the security and police services publicly liable for their activities?***

To answer this question we need to separate the legal aspect from those that derive from the weight and power that the police and security services have, when they are on duty. Regarding this legal framework, the corresponding detail will be found in points 8.0 and 8.1.

The constitution clearly establishes that no person can evade abiding to the law; the differences are only acceptable by the nature of things. Moreover, in relation to officials may these be, military or police, they are held liable for the acts that they do during the time in duty.

<sup>53</sup> The first Code of Military Justice of Peru was made within the framework of the reorganization of the Army under the government of President Nicolás de Piérola in 1897, with the important collaboration of the French mission, whose chief was colonel Pablo Clement.

Additionally, it must be stated that if the security personnel is police or military they are subject to the Code of Military justice and must be judged in the military courts. Nevertheless, and only according to the competence that they have been granted-unconstitutionally in our judgment- in crimes linked to terrorism and drug dealing, these courts can only know what concerns criminal types described in the Code of Military justice.

Considering this legal precision, it must be held that if the country would not been suffering on the one hand from the persistent deviation of over-representation and full autonomy that the Armed Forces claim for themselves, and in a much less degree the police Forces, and on the other the presence of an authoritarian government with a strong military component, the responsibility of the security services, the part which is under a military management (intelligence services of each one of the branches of the Armed Forces) and the police, would publicly respond for their activities. Besides, they are formally organized services organized under the management of the Executive branch.

But if this is the legal perspective, it in the real world is joined by a dialectic of power in which the security services appeal to the secrecy that accompany operations that are linked to national defense to avoid being held publicly liable of the acts that these services could do. This supported as well by the legislation given by Fujimori's regime, which we have described in detail in the previous points.

Regarding the available indicators there is not a lack of punishable acts that many accusations attribute to the members of the Armed Forces and to the Police. Most part of these accusations refers to situations produced in the context of antiterrorist strategies that governments between 1980 and 1995 developed. In a report from the High Commission of Human Rights from the United Nations the state of disappeared people in Peru is as follows:

**ACCUSATIONS ABOUT FORCED OR INVOLUNTARY DISSAPPEARANCES AGAINST THE PERUVIAN STATE (UNTIL 1999)**

DESCRIPTION	NUMBER OF CASES
Accusations presented	3,004
Cases solved by the Peruvian state	253
Cases solved by NGOs	383
Cases pending on a solution	2368

The Report for 1999 from National Coordinator of Human Rights about tortures is as follows:

**ACCUSATIONS ABOUT TORTURES AGAINST THE PERUVIAN STATE (UNTIL 1999)**

CONDITION OF THE VICTIMS	NUMBER OF ACCUSATIONS	PERCENTAGE
For Terrorism or political reasons	3,868	84%
Common crimes	576	13%
Undetermined	157	3%
<b>TOTAL</b>	<b>4,601</b>	<b>100%</b>

**TORTURERS**

TORTURERS	ACCUSATIONS	PERCENTAGES
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Police	2,823	61.4%
Army	1,364	29.6%
Navy	189	4.1%
National Penitentiary System	18	0.4%
Terrorist	85	1.9%
Other	102	2.2%
Undetermined	20	0.4%
TOTAL	4,601	100%

***8.3. Does the composition of the Armed Forces, the Police and the security services reflect the social composition of the society?***

If the answer refers to the levels of privileges of these forces, the answer must limit itself to the existence of what is called a “military elite”, understood as a de facto-political configuration, but not in relation to the strictly social composition which is an open one. Note that in Peru security is immersed in the military and police structures, situation which aggravated by the use and abuse, puts them in a vantage point with respect to the rest of the civil society. This trait of plural composition, expressive of the majority of society is a factor that is also present in the Armed Forces, the Police and the security services although in a degree in the Navy. The analysis that emphasizes the elitist behavior of these forces does not aim to the social composition but to the privileges gained and defended as banners. The high military commands in Peru for example reflect the complex social composition of Peru. General Ramón Castilla was a private soldier that by own merit reached the command of the Army to finally become the President of the Republic; General Luis Manuel Sanchez Cerro was another meztizo (mixed-blood) military that in 1939 ended the dictatorship of Augusto B. Leguía; and, in 1968 general Juan Velasco Alvarado, who overthrew constitutional President Fernando Belaúnde Terry and led for the first time a political project of a nationalist tint with the active participation of the Armed Forces was also a military of a humble social origin.

***8.4. Do paramilitary, private militia; guerilla warfare or criminal mafias exist in the country?***

The virtual alliance between the Armed Forces and the political power leads us to state firstly that no paramilitary operations exist, although intelligence operations directed at harassing the political opposition do exist. Nevertheless, in the beginnings of 1990s and in the context of antiterrorist plans which affected society as a whole, there existed the so called “Grupo Colina”, formed by agents of the Intelligence Service that led criminal paramilitary operations. Proof of this is the clearly identified actions that ended for example with the murders of Barrios Altos, a paramilitary operation in which a group of civilians suspect of belonging to the ranks of the Shinning Path, gathered in a neighborhood party were killed. There is also the murder of nine students and a professor from La Cantuta University of Lima, accused of the same political affiliation; the detention-disappearance of several citizens in special operations. Afterwards, the threatening and phone tapping of an indeterminate number of Peruvians; the murder and slaughtering of intelligence agent Mariela Barreto, accused of military treason; the tortures of Leonor La Rosa, another agent who was suspect of treason; the psycho-social operations destined to dumbfound public opinion.

In the following chart, one can observe that the operations done basically by the SIN have sought to threaten common citizens, politicians, journalists, retired military and businessmen who were critical of the authoritarian politics of the regime. Besides, the accusations, that are many, go to the courts of an intervened judicial branch, which makes it almost impossible to punish the people responsible of these acts.

CASES IMPUTED TO THE SECRET SERVICES OF THE STATE (1995-2000)

CASE	PRESUMED GUILTY	STATE OF THE INVESTIGATION
Attempt against the installations of channel 13 in Punto (1995)	National Intelligence Service	The authors of the crime have not been punished
Bones remains of Ulta and Punta de Chota (1997)	Paramilitary forces	Accusation by the Ombudsman's office, processing in the Judicial branch
Murder of Mariella Barreto Riofano, SIN agent (1997)	National Intelligence Service	Stalled by the military justice
Tortures infringed upon Leonor La Rosa, SIN agent (1997)	National Intelligence Service	Perpetrators found guilty but later acquitted
Accusations of Luisa Zanatta Muedas, SIN agent about phone tapping (1998)	National Intelligence Service	There is no one to be found liable
Kidnapping of general Rodolfo Robles Espinoza (1996)	National Intelligence Service	Set free after an amnesty
Abuses in military base of Monzón against civilians (1997)	Antisubversive Military Base of Monzón	Trial open against presumed responsible
Arbitrary detentions against natives of Oxapampa (1997)	Army	Penal accusation against officers. Process stalled.
Threat to the personal liberty of citizen Jaime Mur (1996)	National Intelligence Service and SUNAD	At first out of country as a political refugee then returned to country
The withdrawal the Peruvian nationality of Baruch Ivcher (1997)	Ministry of the Interior – Intervened Judicial branch	Has not been given back his nationality and continues to be threatened
Penal accusation against judge Greta Minaya (1998)	Ministry of the Interior – Intervened Judicial branch	The threat continues but has not been filed
Imprisonment of Gustavo Cesti in spite of having Habeas Corpus (1997)	Military justice	Continues in prison
Arbitrary detention of Rosario Lam Torres (1999)	Military justice -SUNAT	Effective arrest for being the secretary of Baruch Ivcher
Phone tapping of journalists and authorities (1998)	National Intelligence Service	The people responsible for this have not been punished
Aggression and torture of journalist Fabián Salazar (2000)	National Intelligence Service	The people responsible for this have not been punished
Spoilation of the rights of Genaro Delgado Parker of Global TV (2000)	National Intelligence Service – Intervened Judicial branch	The case is in the Interamerican Court
Threats against presidential candidates (2000)	National Intelligence Service	No investigation has officially taken place
Infiltration in political demonstrations (2000)	National Intelligence Service	No investigation has officially taken place

In reference to the private militia, these strictly speaking do not exist. They generally appear in situations of internal political conflict, when sometimes, mercenary groups are activated to defend certain causes or interests.

In reference to the guerrilla warfare, the process, which Peru went through, is well known, especially by effects of the activities the Shining Path and the Tupac Amaru guerrillas (MRTA). These organizations are at present unarticulated, even when especially in the jungle zone a reduced number of militant followers still do some surprise operations, generally in small towns.

Finally, in reference to criminal mafias, the presence of these can be subdivided into two groups: The first made up of drug dealing organizations, that at some point threatened even the security of the country due to their uncontrolled actions. They generally operate in the jungle and they are closely related with the Colombian mafias. During the early nineties, these mafias were composed by two big drug Cartels, which main leaders –like Demetrio Chávez Peñaherrera (a.k.a. “Vaticano”) or the gang of the Rodríguez-López brothers are now behind bars. What exists in consequence is a profuse drug-dealing activity but multiplied in small organizations.

The second group is the mafias of organized crime that reflect a worrying increase of urban violence in Peru. One of them, for example is that of the kidnapers, lucrative activity and that has the high-income population terrorized. Another are the bank thieves which are daily reported in the newspapers as well as the street mugging by pickpockets, specially in downtown Lima and because of its general increase they have become one more element with which people must live side to side daily.

## 9. ERRDICATION OF CORRUPTION

<i>How alien to corruption are public officials?</i>
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We argue that the problem of corruption in Peru has been markedly present due to the absence of control upon public officials, whom lacking an adequate background and impeded of following a career inside an inorganic State, were exposed to the temptations of submission and the acceptance of corrupting bribes, which they did not always refuse.

Corruption has found a fertile terrain in an inarticulate society and with marked historical stigmas reflected in the scarce or null participation in the decision taking processes, the élite groups of politics, the putting aside of broad sectors of the population, the fragility of the ruling class, the chieftainship (caudillismo) and military authoritarianism; in the end, the weakness of the parties and of the institutions of civil society. The mechanisms created to revert this situation have been innocuous.

The central hypothesis that we follow for this topic is the acknowledgment of corruption in Peru as a structural phenomenon. Alberto Otárola writes that this phenomenon was present

since the founding of the Nation, in what Basadre denominates, “the initiation of the Republic”, stage in Peruvian history where a complex interlocking was configured, context in which, corruption installed itself and the capture of power as a spoil of war<sup>54</sup>.

The coming of the XXth century did not substantially change the panorama. The growing popular demands originated by a constant pressure of the social actors did not find in an increasingly inarticulate State any answer. A great portion of the century was marked by dictatorships and personal despotisms. The thesis that underlies in the discussion is that corruption has been a lag that the country has been pulling since the founding of the Peruvian State itself and that political instability, notwithstanding the nature of the regimes in power, gradually became in adequate mold for its institutionalization.

Fragile Peruvian democracy has not been able to generate the transparency of public acts. Its inability to endure and the deficient implementation of its institutions has allowed corruption to set strong roots, nurtured by a very weak political class. It was not fully understood that a democratic State was not only a phenomenon of political order but that its building had to be promoted, fundamentally, as a way of life, as says César Landa rephrasing Carl Friedrich<sup>55</sup>.

***9.1. Do public authorities act respecting effectively the separation of public affairs and their personal businesses or family interests?***

The answer would be affirmative only if we consider the existence of diverse anti-corruption laws starting by the Interamerican Convention against Corruption ratified on April 6, 1997; The Penal Code, sanctions with prison any authority abuse, concussion, illegal enrichment, and corruption of public officials. There are also some complementary norms; among them are Law number 26771 from 1997 against nepotism that prohibits hiring personnel for the public sector that have any degree of blood relationship with the employer. To what must be added Supreme Decree number 023-99-PCM from 1999, that contains norms of prohibitions and incompatibilities of public and state official while in office; Legislative Decree number 276. This law states the bases of any administrative career and remunerations in the public sector, puts limits and prohibitions to avoid abuse and risk of corruption of public officials; and even the Code of Ethics of the ONPE for chiefs of decentralized offices for electoral processes, norm that was probably the most unobserved in the last elections. Nevertheless, in spite of the existence of this new normative framework, the chart that we show done by the Ombudsman’s office<sup>56</sup> summarizes the complaints received about cases of abuse and corruption of officials in public institutions.

OMBUDSMAN OFFICE: MOST COMPLAINED ABOUT INTITUTIONS

No.	INTITUTIONS	TOTAL	PERCENTAGE
01	Office of Previsional Normalization	3,243	30.61%
02	Judicial Branch	927	8.75%

<sup>54</sup> Otárola, Alberto: Democracy and Corruption in Peru. Notes for a definition of the problem. P. 3.

<sup>55</sup> Landa, César: The process of contemporary formation of the Peruvian State. P. 62.

<sup>56</sup> Ombudsman’s office: Voces, Information Bulletin. Lima, June, 2000, p. 16.

03	National Police of Peru	546	5.15%
04	Ministry of education	526	4.97%
05	Armed Forces	251	2.37%
06	Telefonica of Peru	213	2.01%
07	Water and sewage service	197	1.86%
08	Municipality of Lima	183	1.73%
09	Municipality of Callao	183	1.73%
10	National Penitentiary Institute	174	1.64%

By the corruption indicators of judges, the judicial branch breaks all records. Thus in a survey done by the Andean Commission of Jurists in 1997, 46% of litigants admitted that at one moment or another they were obliged to bribe judicial officials. Asked about the high rate of corruption, 30% of the surveyed people attributed this to the low salary of the judges, 20% to the lack of drastic measures against corrupt officials, 20% said that were not any adequate control mechanisms, 13% thought the personnel from the judicial branch has an unmeasured eagerness for profit, 11% said that the personnel is not sufficiently prepared for their position, and finally 6% said that lawyers and litigants are responsible for this level of corruption<sup>57</sup>.

The glossed information has an explanation. The last twenty years could be described, without any risk of exaggerating, as the negative paradigm of the limitations to the functioning of democracy to fight the corrupting infiltration in the management of public affairs. The archives in the judicial branch, the filed accusations in the parliamentary investigation commissions, as well as the journalistic sources prove that corruption existed and that in many cases the people responsible were never punished.

One of the points to help us understand this noxious permissiveness is that in the country there has not been in operation an independent system of political control like the one designed by the Constitution of 1979; that would have allowed to fight corruption from the very roots, which is no other thing than control over the acts of government. The control of legality is today no more than a dimension of the control of the state. In fact, twenty years after the reinstalling of Peruvian democracy the diverse forms of control have not produced any effect, in spite of its constitutional organic acknowledgement.

The example of what happened to President Garcia is an antecedent that reflects in a better manner the state of things above described. More than one piece of evidence shows that the government that he presided incurred in corruption. Officials in important State positions were involved; the former President himself awaits a process for illegal enrichment, even though a judicial branch controlled absolutely by the government of Fujimori is seeing the case. The García case, even if he has been deprived of his right to defend himself, reflects the failure of those mechanisms that should have supported political control and did not. Besides, if in the case of the government of García the corruption is visible, it would be incorrect to silence that corruption also affected other governments.

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<sup>57</sup> Andean Commission of Jurists: Judicial indicators of the judicial districts of Lima, Callao, Arequipa, Labayeque, and La Libertad. Final Report, Profile of the Litigant, Volume II. P. 483.

One of the banners used by the government of Alberto Fujimori was “honesty” and one of the justifications of the April 5, 1992 coup d’état was the fight against corruption in all its levels. The systematic attacks were directed towards the political class: *“The party groups that governed the country during decades were solely interested in keeping their political privileges and economical benefits.”*<sup>58</sup>

Nevertheless, the offering announced since 1990 did not adopt concrete forms or legislative measures. Let it be remembered in what seems to be a paradox, that one of the reasons to hasten the date of the coup d’état was the imminent summoning of an investigation commission from Congress to see the accusations of corruption made by Susana Higuchi, wife of the president, that involved relatives close to the president. Years after the coup d’état corruption is still present, all but for some exceptions that will be analyzed further on, there are for example the accusations of illegal enrichment of close presidential collaborators (Vitor, Camet, Miyagusuko, etc.). In addition, there is also the discovery of the millionaire bank accounts of the main presidential advisor Vladimiro Montesinos, of whom the president once said that he worked for National Intelligence Service without receiving any salary, *ad honorem*. The case of captain Montesinos is the one that can best illustrate us about the matter; it is the typical model of an Intelligence advisor, deeply involved in several cases of violation of human rights, that suddenly becomes the best paid public official. This is more compromising if you consider that the sources and concepts as to where the money comes from by which in the year 1998 he declared having received more than a million dollars by reason of professional services, according to data extracted from SUNAT are unknown.

## ***9.2. How effective are the measures adopted to eradicate corruption in public officials?***

The laws about corruption are quoted in the previous point. The responsibility that people in power are to be held liable for would seem to be diminished. In Peru, power is exercised in a vertical way; it is not adequately distributed, which gives place to a series of acts against the law. It is said that power corrupts but actually, it is the lack of independent controls and distribution that generates this behavior against all law and ethics. Recent experiences in Latin America tell us about grave problems of corruption of public officials of the highest level that affect political and economical stability in some countries: Noriega (Panama), Collor de Melo (Brazil), Pérez (Venezuela) García, (Peru).

Nevertheless, corruption is not caused solely by lack of control, scarce will to enforce anticorruption law concurs to this as well. Several of these norms have been given during these past few years. This is the case of the profuse modification of the Penal Code to fight especially illicit enrichment and corruption of public officials. The lack of effectiveness of these dispositions is not because the norms are bad or deficient. The problem resides in the lack of political will to enforce them, mainly in the highest levels of government.

## ***9.3. Do the norms and procedures established for the funding of the election candidates and elected representatives avoid subordination to private interests?***

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<sup>58</sup> Speech pronounced by Alberto Fujimori on December 1st, 1991 in the annual Executive Conference.

There are not any norms or procedures for the public funding of the parties or candidates in the elections they participate in. Part of the answer to this question is suggested in the previous points. (specially 6.6). We have held the idea that the frequent hidden funding of private parties for the candidates and even for the elected representatives in effect generates not a vertical subordination but a political compromise that affects the independence of the mandate.

In change the funding of political elections of all types and of the organs responsible for administering them is provided for in specific norms. For the last presidential and parliamentary elections, called for by Supreme Decree number 40-99-PCM of November 22, 1999 it was established that the expenses needed to cover the elections would be authorized in the Annual Budget Laws for the Public Sector corresponding to the Fiscal Years 1999 and 2000.

It must be pointed out that not being an independent financial package the funding of the electoral organs could generate dependency links with the person in charge of the financial office by whose intermediacy money transfers are done. On another aspect, the legislative void, about the funding of candidates and political organizations makes it easy for hidden financial relations to take place with private agents. Nothing guarantees, in this context, that subordinating situations, in which political freedom is mediated by private interests do not occur.

***9.4. What is the influence that the most powerful corporations and economic interests have on public policies and what is the degree of corruption in this type organization, even of multinational companies?***

The groups of economic power have indeed real power in Peru. It is said that a President of the Republic always needs, to govern, a “group of friends” coming from the entrepreneurial sector, that speak for him and his program before public opinion. In the government of Apra there was a group of businessmen called the “twelve apostles”, for their closeness to Alan García and for their personal favoritism that they obtained, specially in that much talked about case of the MUC dollars.

But it is with government of Fujimori that the grand business community felt more represented. Attracted by the ultraliberal measures directed by Carlos Boloña, a sector of businessmen was able to occupy important positions of a political nature in public dependencies considered strategical and also in the Congress. Besides, the aggressive privatization program of the state-owned enterprises was decisive for this sudden interest for the public sector, to which was added the program of economical reforms which in the peruvian case and according to the Interamerican Bank of Development started in 1990 with the economic stabilization, to later follow on that same same year with the commercial liberalization. Afterwards in 1991 the tributary financial and labor reform to prompt in 1994 the pensionary reform<sup>59</sup>

The following chart summarizes the topic of the privatizations<sup>60</sup>

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<sup>59</sup> Interamerican Bank of Development: Economic and Social progress in Latin America, 1996.

<sup>60</sup> Taken from Gonzáles de Olarte, Efraín: Neocentralism y neoliberalism in Perú. P. 102.

PRIVATIZED COMPANIES IN PERU (IN MILLIONS OF DOLLARS)

	Number of Companies	Amount of Transaction	Left to be paid	Total	Investment
Center	64	4,885,103,184	189,891,040	5,064,639,030	1,346,786,000
Periphery	83	1,976,701,443	511,994,818	2,488,696,261	5,276,183,336
Total	147	6,861,804,627	701,885,858	7,553,335,291	6,622,969,336
%	43.5	71.2	27.1	67.1	20.3
%	56.5	28.8	72.9	32.9	79.7

In the analyzed period businessmen belonging to the most important entrepreneurial organization of the country CONFIEP have held positions of responsibilities; this is the case for example of Jorge Camet, the Minister of Economy, whose building company: JJ Camet was repeatedly favored in the public licitations for the building of roads, schools and penitentiary buildings. The same happened with Raul Vittor Alfaro, minister whose enterprise built asphalt roads that later crumbled because the poor quality of the materials employed; another case is the absolute control and obscure management that Ernesto Miyagusuko did of the state insurance company (Popular y Porvenir).

The direct presence of company managers in government leads us to think that it is not gratuitous and that in fact the lobbies do exist. There is for example the tributary fractioning obtained for the second half of 1999 and announced no less than by the president himself during Independence Day holiday; the prolonged exonerations or tributary incentives for the mining sector; the five year monopoly in telecommunications for the transnational Telefonica of Peru; the dismemberment of PetroPeru to favour important providers of energetic products; the announced privatization of state-owned enterprises, tinted many times with accusations of favoritism.

On the international side, the problem of the foreign debt is a quite important factor of economic conditioning. According to a report of the World Bank, the debt of Peru until 1996 was 30 thousand 831 million dollars. The government of Fujimori assumed the challenge of reinserting Peru in the international economic community, something that has not necessarily given the country any relief regarding the payment of the debt. An interesting chart done by Efraín Gonzales de Olarte indicates that from 1997 until the year 2020 Peru has very high compromises of payment so much for the Brady Plan, as for the Club of Paris and the multilateral organisms, whose average in none of the cases goes under a thousand five hundred million dollars annually<sup>61</sup>

YEAR	Total Foreign Debt US Dollars in Millions	FOREIGN PUBLIC DEBT PAID In US\$ dollars
1990	22,856	259
1991	25,444	913
1992	26,612	699
1993	27,447	1,752
1994	30,191	947
1995	33,378	1,075
1996	33,805	1,214

<sup>61</sup> Gonzáles de Olarte, Efraín: Neoliberalism the Peruvian way. P. 79.

1997	28,635	2,703
1998	30,014	1,526
1999	29,500	373 *

Source: Central Bank of Peru. Superintendence of Banking and Insurance.

(\*) The information corresponds to the first trimester of 1999.

On the whole, the presence of enterprises and multinational corporations cannot be discarded in the determination of public policies. It is true that there may be and in fact are contradictions and confrontations, because the government does not submit itself exclusively on dependency terms with these enterprises, but it is a fact that the negotiation takes place and in that context corruption is always a temptation.

***9.5 Does the population trust that public officials and public services do not incur in cases of corruption?***

The levels of trust are very low. A survey of Datum International done in August of 2000 points out that 54% of surveyed peruvian citizens believe that there exists corruption in State Institutions. We have previously mentioned public distrust in the Judicial branch. In this way, institutions and officials are seen by the population as those factors that could originate the discredit of democracy. In this case the role of the Mass Media is of vital importance, because with a scarcely independent Judicial branch, the cases of corruption find a sole receptor in the media, some of which and in detriment of what may happen to the public services, have the highest trust from the citizens.

**10. GOVERNMENT AND MASS MEDIA**

***Does the Media promote democratic values?***

The milestone of authoritarian liberalism, in Peru resides in the simultaneous control of the state apparatus, in particular, the Army and the judicial system and on the other side the main network TV channels. In as much as the television set has replaced the public demonstrations as the main ground of political action, and it is not anymore convincing but seducing, the control of television lets build and maintain a kind of dictatorship that of course is much less like past military dictatorships than to the “1984” Orwell concept. The authoritarian state directly supported on the Armed Forces as its “party” can affirm itself and pretend to have legitimacy reverting precisely to the neoliberal ideas that are the flags and banners of globalization.

The quasi monopoly of television allows, before anything, according to the old concept of the agenda setting, to determine which political alternatives socially exist and do not exist. Like many others, Castells has stated: “Although its effects over the political options is very diverse, in developed societies, the politics and the politicians that do not appear on the TV screen have no option of gaining popular support, because the minds of the people

are informed above all by the Mass Media and the most important of them is television. Its social impact functions in the binary mode: to be or not to be” (p. 368).

In the Peruvian regime, when, in spite of the control of the television, a competitor makes it out of the swamp of collective ignorance (this is of not being), as has occurred in the last electoral process, then television is used to discredit and debase. This debasement, that has brought down one candidate after another, is the complement of not having information<sup>62</sup>.

What makes this regime different from the old military dictatorships is that all this can operate from and in name of the freedom of press (reduced to freedom of enterprise). In Peru, political censorship operates hidden under commercial censorship<sup>63</sup>. Legally and formally, the state does not intervene in anything. Even more, the state has come to recognize the unbalance of the situation, but claims to be unable to do anything, in name of freedom of speech.

Its mechanisms of sever control over television are all formally legal or very difficult to prove before the courts of justice, which are in turn controlled by the regime itself. These control mechanisms are mainly six:

Over-dependence on state advertising: in the three year period 1997-1999, period of economic recession, advertising went down in most categories in about 50%. In the same period state advertising increased in more than 100% making the Mass Media (especially television) over-dependent on the State (Transparencia, Electoral Data, # 16).

Pressures and tax concessions: Mass Media in Peru has had to go through a very heavy tax burden in comparison to the other Latin American countries. The 18% of the general sales tax is charged on all newspapers and magazines produced in Peru; imported paper pays 15% of taxes with a final impositive invoice of 35.7%. In other twelve countries of the region printed material pays 12%, while in other thirteen it is non-existent” (Bowen. P.343). This is how we can explain that in 1994, for the first re-election in 1995, the state offered a change of debt (of some 30 million dollars) for state advertisement, with the compromise that the Media would not attack the regime.

Judicial Actions: As has been already mentioned (supra), the regime uses its control over the Judicial Power to give sentences that favor minor groups of shareholders, by means of which; it gets hold of the control of the communication enterprises. The most known case is that of Channel 2, case in which the owner’s (Baruch Ivcher’s) nationality was taken away in order to give the control of the channel to his pro-government partners. This

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<sup>62</sup> In this genuine construction of scapegoats, the Peruvian regime resembles that of Fascism. Only that it is not capable of mobilizing any masses. In this way, the government demonstrations gather few people (generally paid to go) and stir little enthusiasm.

<sup>63</sup> As Debray reminds us, in history there have been three successive censorships: the ecclesiastical, the political, and the commercial. In Peru the last two are combined (with some gestures of the first kind from the Archbishopric of Lima)

judicial menace weighs heavily over much part of the Media, including the oldest newspaper of Peru, El Comercio.

Preferential access or restrictions to official information: In conditions of arbitrary administration of bureaucratic transparency the political behavior of the Media is prized or punished by the State, giving or denying access to the sources of public information. Television Channels 2 and 4, function as information appendixes of the SIN. Others are misinformed or are even induced to put on air false information that later is prone to be held liable of penal action. (Journalist Plan I and Journalist Plan II, In the Kingdom of Fright. Alvaro Vargas Llosa.1999).

Pressures upon third parties: State officials not only exercise pressure upon the owners of Media but also upon third parties, punishing a) announcers (The case of the newspaper Liberacion for example), b) newspaper printers and service providers (like for example the helicopter renting companies in the case of the Cable Channel, Channel N).

Blackmailing by the state intelligence service.

***10.1. How independent is the State media, how plural is their possession and how free are they from the subordination to foreign governments or to multinational corporations?***

It can be stated that as “never before in Peruvian history as in the years 1997 and 2000 was there so much contact - direct or indirect – simultaneous between the Government the SIN, the Judicial Branch and the Mass Media. The difference in the mentioned period can be “the degree of coordination of the pressure mechanisms and the utilization of technology to do these jobs.” (Fowks, p.47).

The Media is private with the exceptions of a television channel (Channel 7 of TNP, National Television of Peru), a radio station (National Radio) and an official newspaper (El Peruano). Each one of them represents less than 5% of the corresponding audience. The Constitution establishes that the means of social communication cannot be an object of exclusivity, or monopoly by part of the State or private parties (article 61°). A description of the capital and of the owners appears in the book of Fowks (pp.47 and following). It must be pointed out; nevertheless, “five out of the eight non-cable television channels that exist in Peru owe their administration to a judicial resolution” (Valenzuela, p.1). Another sixth one is the State Channel. From the more independent remaining two, one is administered by a company that belongs to Domingo Palermo, ex Education minister of the regime. Over them, there are other kinds of control, which will be pointed out later. Even more, the concession of licenses of operation (Telecommunications Law, article 22°) shows a growing concentration in hands of the regime and its allies, which includes the so-called “Chicha” newspapers (yellow press) whose funding is attributed to the National Service of Intelligence (Valenzuela, p.1 and following. Gargurevich, p289 and following).

It must be added that the television channels and some newspapers and radio stations would be financially bankrupt (the cases of channels 2,4, 9 and 13) if they had to pay the taxes to the state and if they did not receive a big sum for state advertisement. In the case of the pro-government newspaper Expreso, its publicity fees are higher for the State

advertisements than for the rest of advertisers. The state functions in this manner as a financial source for the newspaper.

The State, also funds the so-called “Chicha” press (sensationalist, pornographic, and very low-priced), through three mechanisms: (a) direct pay for headlines against the opposition, in charge of the SIN (estimated in 3000US\$ dollars for each headline), Valenzuela, p. 14); (b) the daily purchase of a numerous volume of issues to be given out for free in military establishments and human settlements; and (c) the purchase of publicity by several Ministries and the Armed Forces.

Since 1992, numerous journalists have been obligated to self-censorship or to exile because of threats, defamation campaigns or trials for “apology of terrorism”; and numerous means of communication have fallen under the control of the Government through commercial trials, in spite the fact that the Constitution recognizes the right of every person to “freedom of information, opinion, expression and diffusion of thought through oral or written or through images, through any means of social communication, without any previous authorization or censorship or impediment” (article 2 including 4 CP).

In the ranking of the free press that the Freedom House does corresponding to the year 1999, Peru appears as “non-free” and listed in number 74 among 100 countries, being Cuba the only country of the hemisphere that appears in a later number (number 88). The Interamerican Press Society has qualified the situation of the freedom of press in Peru as “somber” (Valenzuela, p. 2). For the Relator of the Freedom of Press of the OAS, “in Peru there are no necessary guarantees for the full exercise of the freedom of expression” (OAS, p.39). A similar opinion is shared by the International Press Institute, Human Rights Watch, the Committee for the Protection of Journalists, Journalists without frontiers, Freedom House and numerous other international organizations, besides the European Parliament, and the National Parliaments of Argentine, Spain, and the United States, among others.

### ***10.2. How representative is the Mass Media of the different opinions and how accessible is it to the different social sectors?***

There are no measures to promote values of interracial living together neither in the Media nor in the schools. Publicity and the messages tend to reproduce stereotypes and the social marginalization of ethnic minorities. At the same time, “the programs of greater audience are the ones with the greatest macho mentality” (Valenzuela, p. 1) In terms of access we can distinguish between access to transmission and access to the reception:

Access to transmission: written press, radio, and cable television maintain a certain plurality of opinions but not the major networks. There are numerous critical TV spaces that close down under the government pressure in several channels (Channel 13 -In Person- Channel 9 -Here and Now-, Channel 9 -Luis Iberico-). During the political campaign of the year 2000, according to the study done by Transparencia, Mass Media and particularly television practically only covered the news on one presidential candidate, Alberto Fujimori (Transparencia, Electoral Data). Regarding the paid television spaces, they “impeded

buying advertising spaces so that they could not present their plans of government. The problem was not only in terms of quantity, but also of quality: when the contenders of engineer Alberto Fujimori were allowed to appear it was not to allow them to present themselves or their plans but to show their contradictions, to register the opinions of their detractors, or to reveal some dispute inside their organization.” (Valenzuela, p.1)

Access to reception: the immense majority of Peruvians (more than 90%) watches the networks (Gargurevich, Bowen). In change, the subscription to cable TV and the reading of newspapers (which are the plural means of communication) only correspond to minor groups in society. The most read newspaper, El Comercio, declares only having 750,000 daily readers (Bowen, p. 350), opposed to the 4 million and a half of TV viewers in the city of Lima. In this way, there is pluralism in the Peruvian Media, yes, but only for a minority.

***10.3. How effective are the means of communication and independent organisms in the investigation of the actions of the government and of the most powerful corporations?***

The means of communication that practice investigation journalism are practically two: El Comercio and La Republica. Added to them is an agency of journalistic investigation of recent creation (Imedia) and diverse Non-governmental Organizations mainly of Human Rights (Andean Commission of Jurists, National Coordinator of Human Rights, Idl, Aprodeh). Television investigation journalism has only had two moments in the decade of the 90s: the first was during 1991 and 1992, at the beginning of the present regime; and the second towards 1996 and 1997, in the time of the hostage crisis in the Japanese embassy.

The effectiveness of investigation journalism seems to be restricted by three complementary mechanisms:

- Justice impedes effective investigation, not taking any course of action over the results of the investigation (the most recent case is the one that refers to the income of the intelligence advisor, Vladimiro Montesinos).
- Justice impedes the investigation itself (in the case of the forging of signatures of the political movement Peru 2000, the State-attorney physically took the evidence impeding any administrative or journalistic investigation).
- The harassment to: (a) journalists, (b) means of communication and (c) sources of information that are used systematically and violently to impede any filtering of information and assuring the opacity of the oppressive system. There are assassinated denouncers, or the paralyzed by torture; in the case of the forging of signatures justice put the denouncers on trial but exonerated the intellectual authors; General Walter Ledesma went to jail for criticizing.

#### ***10.4. How free are journalists from laws that restrict their job, persecution or intimidation?***

Law number 26937, given on March 1998; recognizes the free exercise of journalistic activity. Nevertheless, as has been said, journalism in Peru is the most dangerous profession and the one that has the highest rate of “job accidents”. The Institute of Press and Society (Ipys) has a database of threats and violations against the freedom of press in which appear the following trimester registers:

November to December 1998 (only 2 months)	36
January to March 1999	19
April to June 1999	16
July to September 1999	19
October to December 1999	10
January to March 2000	12
April to June 2000	24
<i>TOTAL</i>	<i>136</i>

The 136 cases have an average of seven per month, or one case each 4 days. These include aggressions and threats, police harassment, judicial harassment, breaking into installations, closing of programs and accusations for defamation. The investigations of penal lawyers tell us about the abuse of the judges that sentence for *animus difamandi* or *animus injuriandi* (Jose Ugaz Sanchez-Moreno, Lima. 1999).

#### ***10.5. How free are citizens from the intrusion of their private lives by part of the Media?***

Law number 26847, given on July 28, 1997 prohibits the rectification of opinions or judgments of value done through the media.

Uncorrespondingly, the Media (particularly, television and the yellow press) are regularly used as instruments of defamation and debasement against the opposition and against the diverse non-partisan social actors (The Ombudsman, the independent newspapers, or the Human Rights Defense organisms). To this must be added the World Wide Web pages created with identical purpose, the most known of which is Aprovev<sup>64</sup>

The Council of the Peruvian Press, created in August 1997, has established a Court of Ethics to cater for rectifications, complaints and denunciations. The Court equals an ombudsman for its members, but most of the denunciations do not refer to the Media but to the State and its organs. On another side, the Council gathers the most important newspapers and magazines, but not the TV or radio stations that have their own Association without any court. In 1999, a group of non-governmental organizations and of civil personalities has created an Observer of Social Communication with the participation of the Ombudsman’s office, to channel the demands of the viewers towards the Media.

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<sup>64</sup> The name APRODEV seems to implant confusion with APRODEH, one of the most active NGOs of Human Rights Defense.

In the past few years, there have been numerous street demonstrations against the pro-government Media, specially Channels 2 and 4, so much for their political behavior as for the quality of their TV programs, which in some cases openly violates human rights and results to be pornographic.

### **III. CITIZEN PARTICIPATION AND RECEPTIVITY ON THE PART OF THE GOVERNMENT**

#### **11. CITIZEN PARTICIPATION**

*Is there full citizen participation in public life?*

##### ***11.1. How extensive is the range of voluntary associations, citizens' groups, social movements, etc., and how independent are they from the government?***

Though we can't say there exists full citizen participation in public life, we can recognize that ample sectors of the population, of which the Non Governmental Organizations (NGO) are a part, participate in many spheres of public life. Even more, they have "begun a collaboration with the state in programs oriented to relieving poverty... through the National Fund for Compensation and Social Development (Foncodes) ..., the National Program for Alimentary Assistance (Pronaa) and the Program for Food and Nutrition for high risk ... (Panfar). Also, in the work coordinated with the municipalities..., the collaboration and counseling with the Ministries of Health, Education, Industries, Agriculture, ... the Ministry for Women"<sup>65</sup> However, in general, the social and public impact of the Non Governmental Organizations, though important for the sector of the population with least recourses, is of little importance on the national scene.

The existing legal framework recognizes the following rights of free association:

- The right to associate freely and to form foundations and different kinds of legal non-profit organizations without previous authorization (Art. 2, clause 13 of the Constitution. Civil Code (Book I, second section, titles II, III and IV - articles 76-123).

Since the sixties, the persons and groups interested in creating a non governmental organization have formed non-profit private legal entities and adopted different forms<sup>66</sup>:

<sup>65</sup> NORIEGA, Jorge. Peru: Non Governmental Organizations for Development. Desco; 1997, p.41

<sup>66</sup> NORIEGA, Jorge. Peru: Non Governmental Organizations for Development. (ONGD). Desco, 1997, p.25.

- Association: By means of public contract, a group organizes to carry out activities in common. They receive donations from international cooperation, the state and private enterprises. This is the most common.
  - Association: The entity is formed by affecting one or more properties to carry out religious or cultural objectives or objectives of social interest. They receive donations from international cooperation, the state and private enterprises. These include religious and business non-governmental organizations.
  - Committee: This form allows organizations to carry out campaigns to collect funds for altruistic purposes. They can carry out assistential and developmental activities.
- Concerning the regulation and financing of non governmental organizations, there exists a legal framework given by the Law of International Technical Cooperation of 1991 (D.L. N° 719.- Title I, article 5) which mentions NGOs that are officially registered and carry out projects in areas given priority in development plans, as executing entities responsible for the activities and projects with support of international technical cooperation, in coordination with the government.
  - The Ordinance of the Law on International Technical Cooperation (Article 73 D.S. N° 015-92-PCM.) points out the Register of Non Governmental Organizations for Development as receivers of International Technical Cooperation (Ongd-Peru), as essential for these organizations. Article 74 gives the requirements for petitioning registry. The registry would be valid for 2 years with the option of renewal, according to article 75, after the annual presentation of reports on the activities carried out. The causes of any cancellation of registry are in article 80, one of them being failure to present - in January - a report on the execution of projects and the annual plan of activities for the year just begun.
  - The secretariat of International Technical Cooperation (Secti) is the organism responsible for the International Technical Cooperation in Peru<sup>67</sup>, which, since January, 1999, belongs to the Presidency of the Council of Ministries, with a head on the level of a vice-minister

RANGE AND DISTRIBUTION OF NGOS

Department	# NGOs	Poor Population %	NGOs %
Lima	354	19,3	48
Cajamarca	19	8	2,6
Piura	14	7,8	1,9
Puno	53	6,4	7,2
Cusco	68	6,3	9,2
Junín	34	5,5	4,6
La Libertad	29	5,2	3,9
Ancash	17	4,9	2,3
Loreto	11	4,3	1,5
Huánuco	1	4,1	0,1

<sup>67</sup> Before it was the National Institute for Planning, still cited in D.S. N°015-92-PCM.

Lambayeque	12	3,6	1,6
Ayacucho	17	3,3	2,3
Arequipa	45	3,2	6,1
San Martín	24	3,2	3,3
Huancavelica	7	2,9	0,9
Apurimac	13	2,5	1,8
Amazonas	1	2,1	0,1
Ica	4	2	0,5
Ucayali	4	1,8	0,5
Pasco	1	1,5	0,1
Tumbes	0	0,7	0
Tacna	4	0,7	0,5
Moquegua	3	0,5	0,4
Madre de Dios	3	0,4	0,4
TOTAL	738	100%	100%

Source: NORIEGA, Jorge. Peru: Non-Governmental Organizations for Development.

- "...There hasn't been any state strategy to formulate legislation through any process of participation of and negotiation with the NGOs themselves."<sup>68</sup>
- In great part the NGOs have acted in subordination and co-opted by state guidelines, on the one hand in activities convoked and directed by the state and, on the other hand, elaborating innovative proposals taking into consideration the initiatives of the poor which are coordinated with more ample government policies.<sup>69</sup> This subordination to the state meant running risks. For example, in the program for family planning that included massive sterilizations, which supposed the violation of individual rights that were denounced in the application of the AQV. Faced with these accusations, the President let it be understood that the NGO denounced these cases because they had been "shut out of the government budget and from the international aid guaranteed by the state"<sup>70</sup>
- It is a fact that International Cooperation has become decisive in some cases for the NGOs income "since the reduction of the agencies funds could lead to the disappearance of the NGOs."<sup>71</sup> Even so, since the eighties the NGOs have been diversifying their resources "In recent times, they have increased their relationship with the market sphere ...private organizations with profit motives ...so that the beneficiaries carry out sustainable proposals beyond the support of the NGO. This has also allowed some instances or areas of the NGOs to cover their costs..."<sup>72</sup>
- "...In recent years new NGOs have been created that carry out only projects with very specific and assistencialist goals, returning to the ideas of the 60ies and 70ies ...some

<sup>68</sup> NORIEGA, Jorge. Op.Cit. p.26.

<sup>69</sup> Joint strategic state-NGOs would allow "...reaching an ample and democratic participation of the benefiting population, strengthening civil society..." In: NORIEGA, Jorge. Op.Cit. p.29

<sup>70</sup> Commentary by Maruja Barrig in the International Conference: Civil Society and Democratic Governability in the Andes and Southern Cone. Cultural Center PUCP: September 1, 2000.

<sup>71</sup> NORIEGA, Jorge. Op.Cit. p.22

<sup>72</sup> NORIEGA, Jorge. Op.Cit. p.23

propose among their main objectives to serve as support for state institutions and they work under the state's protection."<sup>73</sup>

**11.2. How extensive is citizen participation in voluntary associations and self-management organizations and in other voluntary public activities**

In the investigation on citizenship published for the Dialogues and Proposals Institute (IDS) in 1997, the author presents multiple forms of citizen participation found in the country. In the following frame we give an outline of the types of social organization, correlating with the indices of poverty and citizenship

**PERU: TYPES OF ORGANIZATION ACCORDING TO LEVELS OF POVERTY AND CITIZENSHIP**

		<b>LEVELS OF POVERTY AND CITIZENSHIP*</b>					
		<b>11/12</b>	<b>13</b>	<b>21</b>	<b>22/23</b>	<b>31/32</b>	<b>Total</b>
<b>Neighborhood associations</b>	Yes	17.5	19.4	14.1	14.3	16.2	15.9
	No	81.3	76.7	85.1	84.9	83.7	83.3
	Don't answer	1.2	3.9	0.7	0.7	0.1	0.8
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Provincial Club</b>	Yes	2.8	2.3	2.7	4.7	3.5	3.3
	No	96.3	93.0	96.6	94.6	96.2	95.8
	Don't answer	0.9	4.7	0.7	0.7	0.3	0.9
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Committee for Glass of Milk</b>	Yes	16.3	25.6	9.0	5.4	8.5	10.7
	No	83.4	72.1	90.2	93.9	91.3	88.7
	Don't answer	0.3	2.3	0.7	0.7	0.1	0.5
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Soup Kitchens</b>	Yes	3.4	9.3	5.1	1.1	1.6	3.2
	No	96.0	86.0	94.1	98.2	98.2	96.1
	Don't answer	0.6	4.7	0.7	0.7	0.1	0.8
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Union</b>	Yes	4.3	5.4	2.9	5.7	2.2	3.5
	No	95.1	89.1	96.3	93.2	97.8	95.7
	Don't answer	0.6	5.4	0.7	1.1		0.8
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Professional Trade</b>	Yes	3.4	8.5	4.1	8.2	5.9	5.6
	No	96.3	86.0	95.1	90.3	94.0	93.5
	Don't answer	0.3	5.4	0.7	1.4	0.1	0.9
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0

<sup>73</sup> NORIEGA, Jorge. Op.Cit. p.24

	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Entrepreneur</b>	Yes	0.9	2.3	0.7	3.2	0.9	1.3
	No	98.5	92.2	98.5	95.3	99.0	97.8
	Don't answer	0.6	5.4	0.7	1.4	0.1	0.9
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Political Party</b>	Yes	5.2	8.5	3.2	9.3	1.6	4.3
	No	94.2	86.8	96.1	90.0	98.2	95.0
	Don't answer	0.6	4.7	0.7	0.7	0.1	0.8
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Mothers' Clubs</b>	Yes	9.5	16.3	4.9	3.2	1.5	5.0
	No	89.9	81.4	94.4	95.7	98.4	94.4
	Don't answer	0.6	2.3	0.7	1.1	0.1	0.7
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Parish Groups</b>	Yes	8.6	14.7	6.6	9.3	11.9	9.9
	No	90.5	79.8	92.7	89.6	88.0	89.2
	Don't answer	0.9	5.4	0.7	1.1	0.1	0.9
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Parents' Associations</b>	Yes	22.7	30.2	12.2	24.0	16.6	18.8
	No	76.7	65.9	87.1	74.9	83.3	80.4
	Don't answer	0.6	3.9	0.7	1.1	0.1	0.8
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Committee for neighborhood safety</b>	Yes	4.0	6.2	2.7	4.7	2.9	3.6
	No	95.4	87.6	96.6	94.3	96.3	95.3
	Don't answer	0.6	6.2	0.7	1.1	0.7	1.2
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Committee for Self-Defense</b>	Yes	6.7	22.5	2.4	0.7	1.2	5.0
	No	89.0	71.3	77.6	76.0	82.6	80.6
	Don't answer	4.3	6.2	20.0	23.3	16.2	14.4
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Farming community</b>	Yes	16.9	34.9	2.4	3.2	1.6	9.6
	No	79.1	60.5	78.0	73.5	82.2	76.3
	Don't answer	4.0	4.7	19.6	23.3	16.2	14.1
	<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0

11= High level of poverty and citizenship; 12= High level of poverty and medium level citizenship; 13= High level of poverty and low level citizenship; 21= Medium level of poverty and high level of citizenship; 22= Medium poverty and medium citizenship; 23= Medium poverty and low citizenship; 31= Low poverty and high citizenship; 32= Low poverty and medium citizenship.

Source: IDS, National Questionnaire on Citizenship. 1997.

### ***11.3. To what extent do women participate in political life and in public activities at all levels?***

Placing the topic of women's place in the country as well as in legislation and in the naming of women to high public offices, such as ministries or congress, are directly related to the President of the Republic's interest rather than other forms of institutional mediation.<sup>74</sup> President Fujimori's decision "can be understood in many ways. First of all, it can be understood as a mechanism of political manipulation of the feminine electorate, through strategies of selective and segmented inclusion. Secondly, as an intelligent concession to international organisms that exercise pressure on the subject of gender. Thirdly, because the president identifies with the most discriminated against sectors of society; or, rather, because he trusts in the honesty and loyalty of women and in his policy, which is highly personalized."<sup>75</sup> In approving the Organic Electoral Law, that included quotas for women in congressional lists, almost all the congresspersons came to an agreement, though there remained a doubt if that 25% would be evenly distributed<sup>76</sup>. There exists a proposal by the Defender of the People for a future legal reform that better the system of quotas.<sup>77</sup>

The Convention concerned with the elimination of all forms of discrimination against women (CEDAW) was adopted and opened for signatures and ratification, or accession, by the General Assembly of the United Nations in its resolution 34/180, December 18, 1979. Peru subscribed it on July 23, 1981. Peru approved it by the Legislative Resolution N° 23432 on June 4, 1982. The instrument of ratification, dated August 20, 1982, was deposited on September 13, 1982. In the following we will see the main CEDAW articles that refer to the public participation of women:

In Part II, Article 7 of the CEDAW points out: "The states party to the convention will take all the appropriate measures to eliminate discrimination against women in the country's political and public life and, especially, will guarantee all women equal conditions with men, the right to:

- vote in all the elections and public referendums and be elected to all the organisms whose members are chosen by public elections;
- participate in the formulation of government policies and in their execution, as well as occupy public offices and exercise all the public functions at all government levels.
- participate in organizations and associations not governmental which are occupied with the country's public and political life."

In Part I, Article 4 it points out: "The adoption by states party to the convention of special measures of a temporary character meant to accelerate real equality between men and women will not be considered discrimination. These measures will cease when they have fulfilled their objectives of equality of opportunity and treatment."

Peruvian legislation has followed a process of adapting to the CEDAW. However, the 1993 Constitution doesn't contain specific dispositions on women's right to political

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<sup>74</sup> "...The personalist style centered on the figure of the boss that Peruvian Policy adopted from the first days of his government, has put aside other forms of institutional mediation..." In: BLONDET, Cecilia. The Emergence of Women in Positions of Power. Are there changes? P. 19

<sup>75</sup> BLONDET, Cecilia. *Ibid.* P.19

<sup>76</sup> Quotas for women on congressional lists.

<sup>77</sup> In: Women in Power and The Power of Women. Special supplement of El Comercio. March 8, 1999.

participation. Neither does it contain specific dispositions on women's right to equality and non discrimination.

- The 1984 Civil Code in articles 42 and 46 points out that the male and the woman legally of age have an equal right to the enjoyment and exercise of civil rights.
- Based on the 1V World Conference of the United Nations on Women in 1995<sup>78</sup>, Peru created the law on quotas with modifications to laws N° 26859 and 26864 (General Election Law and Municipal Elections Law). In Title V, Article 116, of the Organic Electoral Law, it states: the congressional candidate lists should include a number of women or of men no less than 25%. Article 121 conditions the definitive inscription and publication of the lists to fulfilling Article 116.<sup>79</sup> In the case of Municipal elections, the lists will also incorporate at least 25% women.
- The Defender of the People, by means of the Office Specialized in Women, carried out an important labor of diffusion of the law of quotas whose impact in the municipal elections of October, 1998, were the following:

"2,313 women have been elected. "...the increase of women in local government offices has been 16%... in Lima, in provinces it hasn't varied... at a district level it has increased 8%...<sup>80</sup> "...the norm seems to have had a positive impact for women in the municipal space more reduced, closer and, for that reason, better known to the women... the district municipality."<sup>81</sup>

The Promudeh - The legislative decree N° 866, in force since October 29, 1996, is the Law for the Organization and Functions of the Ministry for the Promotion of Women and Human Development. it is carrying out the following programs to increase the participation of women<sup>82</sup>.

- a) The Project, Women and Citizenship, in cooperation with the CEE - seeks to strengthen the social base organizations so that they might become agents for change in their communities
- b) The Program, let us build equality - the training of women leaders.

In 1995 the percentage of women filling public office was 2.8%, in executive and management positions 23.1%, in professional and technical positions 41.1. The percentage of women with participation in income coming from work was 27.7.<sup>83</sup> The participation of women on the local scene remained the same in number from 1981 to 1998 on the provincial scene (7 mayors), but not in percentage. It dropped from 4.8% to 3.6% of the

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<sup>78</sup> Where it formulated specific recommendations to stimulate the political participation of women. Among them it includes basically corrective measures in the electoral systems and the promotion of women to public offices in the same proportion and equality as men.

<sup>79</sup> En: <http://www.onpe.gob.pe/inf-general/index.html>

<sup>80</sup> In: Women in Positions of Power and The Power of Women. Special supplement El Comercio. March 8, 1999.

<sup>81</sup> YAÑEZ, Ana María. Municipal Elections 1998: The quarter of the women P. 83.

<sup>82</sup> Interview of Luisa María Cuculiza, Minister for Women. In: Women in Positions of Power and the Power of Women. Special supplement El Comercio. March, 1999.

<sup>83</sup> En: <http://promudeh.gob.pe>

mayorships.<sup>84</sup> This situation hasn't varied in the 98 municipal elections with the application of the law of quotas.<sup>85</sup> See frame.

The percentage of women prefects in the districts increased from 18.8% to 26.6% in the recent period.

- Political organizations have valued the participation of women more. In Lima there were 5 mayors. In 2000 they will be 8.

#### PERU: WOMEN IN GOVERNMENT POSTS

Posts	% Women	% Men
Ministerial level	5,6	94,4
Level of Inferior Hierarchy	15,6	84,4
Total	13,2	86,8

Source: PNUD. Report on Human Development 1999.

#### ***11.4. How equitable is the access of all social groups to public offices and how equitably are they represented in them?***

As said before, in Peru it is difficult to differ between the sectors discriminated against and their mode of insertion into public life. There exist a great majority over whom there is exercised a discrimination that combines racial with other aspects: education, social position, economic standing, place of residence. In Peru, the sectors discriminated against, which are the majority, don't make up, as in other countries, a very specific minority: "a sharp racial classification isn't possible... education, the social position, economic standing, the place of residence, all tend to dilute the color of the skin.

Even the famous 'good presentation' doesn't concentrate on physical traits, as it includes factors such as clothes and hair dressing... race is complemented by other factors."<sup>86</sup> The legal norm that exists on the matter concentrates on job offerings and the entrance to educational institutions, but doesn't mention other forms of discrimination which those same workers or students may suffer in their institution.

Faced with a case of discrimination published in the mass media, two public organisms had contradictory criteria. On the one hand Indecopi (National Institute for the Defense of Competition and the Protection of Intellectual Property), in an administrative resolution, recognized the discrimination exercised by private enterprises dedicated to recreation against young citizens who were prevented from entering some locals. Meanwhile, the Judicial Branch declared the behavior of the enterprises and their claim, that they were not violating any law, well founded, resolving that in this case "equality before the law doesn't oblige private persons". This judicial sentence left a negative precedent in matters related to discrimination.

<sup>84</sup> MILOSLAVICH TÚPAC, Diana. The Political Participation of Women on the Local Scene.

<sup>85</sup> YAÑEZ, Ana María. Op.Cit. p.83

<sup>86</sup> ARDITO, Wilfredo. Racism: Legal ways and something more. P. 69, 70.

The International Treaty on Civil and Political Rights adopted in the General Assembly of the United Nations subscribed by Peru in 1978 refers to discrimination in:

- Part II, Article 2, points out that each of the states commits itself to respect and guarantee all individuals the rights recognized in the treaty, without distinction of race, color, sex, tongue, religion, political opinion, national or social origin, economic class, birth or any other social condition.
- Part III, Article 25, established that all citizens would enjoy, without any distinction mentioned in article 2, the following rights:
  - to participate in directing public affairs directly or through freely elected representatives.
  - to vote and be elected in periodical elections, through universal suffrage and the secret ballot.
  - to have access in general conditions of equality to the public functions of their country.

We will now look at how Peruvian legislation has been accommodated to this treaty:

- The constitution, in article 2, clause 2, points out that every person has the right to equality before the law. No one ought to be discriminated against for reasons of their origin, race, sex, tongue, religion, opinion, economic class or for any other reason.
- The constitution, article 2, clause 17, points out the right to participate in the political, economical, social or cultural life of the nation, the rights of election, revocation of authorities, of legislative initiative and of referendum. Article 31 complements this clause, mentioning again the above as well as the right to freely elect and be elected. These articles don't mention again the fact that these rights will be given without distinctions.
- The constitution, article 2, clause 19 points out that: the state recognizes and protects the nation's ethnic and cultural plurality. Every Peruvian has the right to use his/her own language before any authority by means of an interpreter.
- Law 25772, dated April 14, 1997: The offers of jobs and access to the means of educational formation can't contain requirements that constitute discrimination, annulment or alteration of the equality of opportunities or treatment for reasons of race, color, sex, religion, opinion, national or social origin, economic class, politics, civil state, age or any other kind. This law is regulated by D.S. N° 002-98-TR dated 01/02/98.

As seen in former chapters, the elections based on one electoral district have strengthened centralism, affecting the representation of the provinces, as the system tends to favor the presence of people from Lima. Besides, the system centralizes in the national leader, or boss, the selection of candidates for the congressional list.<sup>87</sup> In the practice, the use of a

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<sup>87</sup> PEASE, Henry. Voters, parties and representatives: Electoral system, system of parties and of government in Peru. P.86

single electoral district in the electoral system discriminates against provincial representatives to congress.<sup>88</sup>:

#### ORIGEN OF CONGRESSPERSONS

	1980-1985	1985-1990	1990-1992	1993-1995	1995-2000
Lima	24%	27%	31%	38%	37%
Provinces	76%	73%	69%	62%	63%
Total	100%	100%	100%	100%	100%

Source: Pease. Op.Cit. P. 15.

- The discrimination against indigenous peoples is expressed in measures against them and in the suspension of the Commission on Indigenous Affairs. The Permanent Conference on Peruvian Indigenous Peoples (COPPIP) is seeking to articulate the proposals of the whole of the Peruvian indigenous and farm organizations.<sup>89</sup> but the government has approved legal dispositions that are contrary to the communal statutes and the constitution in force. It has declared that communal lands declared in a state of abandonment, or not worked, revert to the state. Such lands are being offered to private buyers through the Commission for Privatizing Public Property (Copri). The same thing happens with denunciations and concessions for the exploiting of wood in the Amazon and affect basically territory belonging to the native communities."<sup>90</sup> It is symptomatic that the initiative to create a Commission on Indigenous Affairs in the congress of the republic were suspended while at the same time the congress was approving dispositions such as the Ministerial Resolution 301-99-MTC. This resolution approves the directive by which it grants to the state institution, COFOPRI the "title to state, fiscal and municipal lands occupied by traditional peoples", thus affecting the property rights of the original peoples to their own territories, contrary to what article 70 on the State Political Constitution states.<sup>91</sup>

<sup>88</sup> Pease adds that: if one considers a Lima citizen one who has lived in Lima many years, the parliament elected in 95 was made up 63% of congresspeople from Lima. P.92.

<sup>89</sup> Participating Organizations: Inter-ethnic Association for Development of the Peruvian Tropical Forest . - AIDSESEP, The Confederation of Peruvian Amazon Nationalities - CONAP, Peruvian Farm Confederation - CCP, The National Agrarian Confederation -CNA, The National Union of Aymaran Communities - UNCA, The National Coordinator of Peruvian Farm and indigenous Communities - CONACCIP, The Association for the Defense and Development of the Peruvian Andean Communities - ADECAP, The Aguaruna Huambiza Council Emergency Asháninka Commission, The Permanent Workshop for Andean and Amazon Women - Chirapaq, The Puquina Federation, The Organization of Aymaran Communities, The Amazonians and Quechuas - OBAAQ, The Asháninka Indigenous Community in Marankiari Bajo, The Provincial Federation of Farm Communities in Huaral, The Departmental Federation of Farm Communities in Pasco - Upper Andes Ecological Front (Pasco - Junín), The National Coordinator for Communities Affected by Mining.

<sup>90</sup> En <http://www.cajpe.org.pe>

<sup>91</sup> En <http://www.cajpe.org.pe>

## 12. GOVERNMENT RESPONSES<sup>92</sup>

### *Do the government actions respond adequately to the interests of the citizens?*

Notwithstanding the existence of some positive indicators in the government responses pointed out in the introductory point in the preceding chapters, the balance of the Government actions in the decade, in relation to the interests of the citizens is negative.

This is the result on one side, of the greater degree of citizen conscience and of informed knowledge among mainly the young population about their rights and duties (in the present come). On another side, the accusations of corruption revealed since September of 2000 reveal that reality and the distorted messages that are broadcasted through the Media are contradictory and contrary to fundamental democratic values.

As has been said before the Mass media broadcasts models of behavior and authoritarian characters, corrupt, violent, and discriminators that express their despise for the democratic values as well as the extension of some violent mechanisms of conflict resolution between the authorities.

In real terms we consider that in the decade of the nineties the gap has broadened between the formal and declarative standing of democratic principles of the State of Law that have stayed as a utopian horizon each time further away, and in contradiction with the daily practice of the population in which the hopes for work and opportunities of progress frustrated in the sectors of the population every day more (un) informed by the Mass Media, that suffers recognizing that old problems and illegal unresolved practices subsists.

As has been observed in chapter two it is symptomatic that in diverse sectors of the population of the country popular anonymous traditional sayings subsist proper of the colonial era: “We can fix everything between ourselves”; ... “a bad negotiation is preferable to a bad trial”; “Done the Law done the cheat”... “The law is observed but not enforced”... “; “For my friends: everything. For my enemies: the law”<sup>93</sup>. This is explained by the traditional lack of governmental response to citizen demands and to the lack of effective protection mechanisms for the fundamental rights of people that have become more noticeable in this decade. This happens in great measure, as has been pointed out in part 2 (and previously) to the use of legality and to the lack of economic and political independence of the magistrates of the System of Administration of justice: judges of the Judicial branch and attorneys of the state<sup>94</sup>.

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<sup>92</sup> Note of the Edition.- We consider that this chapter is the without a doubt, the least specific of all because it includes some topics already mentioned in previous chapters, specially in chapter 2, dedicated to the Law and to the system of the Administration of justice. (it lacks empirical information and because of this a further development of its contents in accordance with rest of the report is pending)

<sup>93</sup> Vidal, Ana María and others. Official Law and peasant law in the Andean Rural World. Rodolfo Stavenhagen y Diego Iturralde, compilers. Between Law and Custom Interamerican institute of Human Rights-Interamerican indigenist institute. Costa Rica 1990.

<sup>94</sup> Vidal, Ana María and others.. Peru and Chile: Judicial Branch and Human Rights. Andean Commission of Jurists, Lima, 1988.

It is necessary to point out that the mechanism that has basically predominated in the Executive Commission of the Judicial Branch and the Public Ministry through which this situation was reached, is the same through which the government of President Fujimori (tried) proclaimed has was going to fight: the dependence due to the origin of naming, the political and economic dependence, the inefficiency, and the corruption. In these times, as has been pointed out in part 2, also the precarious acting of some magistrates is due to the provisional nature, this is revealed for example, when studying the resolutions of the judges and courts of Public Law dictated in cases like the trials of shareholders of television channels 2 and 13, that have responded to the interests of the Government.

***12.1. What is the scope of the procedures for citizen consulting with relation to public policies and the creation and application of norms and if the access to high priority government issues is equitable?***

As has been seen, the insertion of norms referring to citizen participation was one of the recognized points by all political sectors in the Peruvian Constitution of 1993. In effect, article 31 of the Constitution establishes that citizens have the right to participate in public matters through a referendum; legislative initiative; revoking of authorities and demand in rendering of accounts. Regarding the first one, the referendum, it must be pointed out that since the promulgation of the Constitution seven years ago, there has been no such kind of consultation. On the contrary, the government majority in Congress and in Government has taken care in dismantling those citizen initiatives that they considered threatened their stability. This is the case, for example, of the presidential reelection, for whose referendum more than a million signatures were gathered and that was submitted to a complex juridical scaffold to avoid it from prospering.

On its part, legislative initiative, is also an interesting mechanism, little recurred to through which citizens can present law projects to Congress, in a way that they are not mere suggestions based on the right of petition, but that constitute a formal start of the proceeding of a law.

As aforementioned, Law number 26300, *Law of Citizen participation and control* states that the legislative initiative must be translated into the proposition of law projects, accompanied by the verification of signatures of no less than 0.3% of the voting population. Besides, the right of initiative comprises all the matters with the same limitations that over tributary or budget issues congressmen of the Republic may have. The procedure starts with its presentation, and then with its publication, afterwards, the Congress must dictamine and vote the project in a maximum of 120 days.

There additionally exists the right of renewal or revocation of authorities. This consists in the possibility in which, following adequate reestablished procedures, people can vote to decide if the representation or the mandate of the elected authority is withdrawn. By constitutional mandate, the renewal or revocation can be done only against mayors and aldermen, according to what is established in article 191 of the Constitution.

For this mechanism to proceed, Law number 36300 establishes that it must be solicited by 25% of the voters of an authority, with a maximum of 400 thousand signatures, before the corresponding office of electoral processes. The revocation is produced by the voting approval of one half plus one of the voters. If this is not the case, the authority about which the revocation is being sought stays in office without the possibility of admitting any further petitions until two years after the first consultation. In November 1997 there was such a consultation, from 61 mayors submitted to the opinion of the neighbors, 35 were revoked.

The demand for the rendering of accounts consists on the right of the people to solicit the elected authorities, to give public reports referring to the form in which they have used the power invested on them. Law number 26300 establishes that through the demands of rendering of accounts, the citizen has the right to question the authorities regarding the budget execution and the use of their own resources. The authority is obligated to give an answer. Until this moment, no query has yet taken place over the demands of rendering of accounts.

On this point we start by distinguishing “citizen interests”, their relation to governmental responses and the impact positive or negative of these responses on the standing and respect of the fundamental rights and duties of the people as well as on the standing of democratic institutions and the State of Law in Peru.

On one side are some of the advances recognized to the Government in the last decade on some social indicators as the reduction of the child death rate, illiteracy, the broadening of the public services of water, sewage, energy as well as the improvements in road and communications infrastructure. These reveal certain favorable capacity of governmental response to overcome the existent deficit on matters of fundamental social and economic rights and duties. According to official numbers quoted in chapter 4 social expenditure has mitigated the impact of rural poverty in more that 42 per cent of the Peruvian homes that now receive some form of feeding help from the government, but there are still problems of low salaries, underemployment, unemployment and lack of new opportunities for the young.

Some of these achievements of the Government are explained because it primordially dedicated itself in the first years to work on those themes that, according to its own perspective, would precisely respond to the interests of the citizens, based on the back up of the surveys: a) the galloping crisis of the economy, reflected on the phenomenon of hyperinflation received from the government of Alan Garcia and b) the problem of terrorism that was at the beginning of the nineties in its stage of “strategic equilibrium”, this is in the possibility of positioning the armed groups in the most important cities, planting with this terror and insecurity among the population.

These two were the problems (citizen’s interests) boarded by the Government with some success recognized by national public opinion and international community. Nevertheless, as years went by and the internal pressure grew, the public agenda has been ostensibly varying. The lack of work has become the most recurring collective complaint and a new thematic axis is present with surprising forcefulness: the claim for democracy and citizen liberties and the fight against corruption, matters in which the capaccity of governmental response has been weak and unfavorable.

As has been seen before, the democratic questionings to the government can be traced back to the self-imposed coup d'état of April 5, 1992 that according to one the most complete and recent reports of the Human Rights defense organizations: "the Peru that President Fujimori received was far from being considered democratic... the self-imposed April, 1992 coup d'état led to the reestablishment of a sense of order and security and at the same time was the beginning of the firm dismantling of the basic democratic institutions of a democratic government".<sup>95</sup>

These criticisms became accented during the electoral process of 1995 and began to generate a general crisis stemming from the events occurred from 1997 after the destitution in Congress of the three magistrates of the Constitutional Court, as a sanction for the sentence which declared unconstitutional the law that permitted the presidential reelection. With the irregularities in the electoral process of 2000 the actions of protest citizens has grown, the highest point being the ones that occurred during the demonstrations of "the four suyos" done in diverse parts of the country on the 26, 27, and 28 of July of 2000 during the taking of oath of the third and much questioned third mandate of engineer Fujimori. Beyond the violent excesses that are always censurable and are being investigated, these demonstrations have shown that the fight for democracy and the standing of the institutions of the State of Law has suddenly become a citizen paradigm in which the star role of civil society, within its limitations, has been superior to that of political movements and parties.

This questioning of the government has led to the political crisis of the regime unchained since the month of September product of the broadcasting of the video of the act of corruption in charge of the presidential advisor and the call for new elections for April 8, 2001.

In accordance with explanations of prominent Peruvian lawyers: "When the access to political power is gradual and starts through laws that, gradually control the Judicial Branch, other countries do not react as if it were a case of coup d'état. No one notices, no one says anything. However, gradually a dictatorship is created.

"The most noticeable characteristic of the "Peruvian model" is that it is a political process in which the instrument to perpetuate itself in power has been the same law. The same formal apparatus - the Parliament and the Judicial Branch - has been the path through which the authoritarian process materializes."<sup>96</sup>

### ***12.2. Do voters have access to their representatives?***

In the nineties in Peru there has been a growing tendency, traditionally favorable to the executive in maintaining the scarce access to the voters and their representatives as well as scarce citizen participation in the approval of legal norms, in detriment of the Congress of the Republic, which has contributed to the devaluation of the role and political importance of the representatives.

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<sup>95</sup> "Deconstructing" democracy. Peru under president Fujimori. Coletta Youngers. June 2000 WOLA Washington Office on Latin America. Institute of Legal Defense (IDL).

<sup>96</sup> Quotes of Doctors in Law Delia Revoredo and Lourdes Flores Nano in the book *The Fujimori Files. Peru and his President 1990-2000* by Sally Bowen. Lima, January, 2000 pp. 312 and 309, respectively.

This situation has been justified by the government based on considerations of a “technical order”, that privilege the effectiveness and efficiency of the technical and professional members of the Executive branch and not the public and political debate among the representatives. Most part of the 20,000 passed legal dispositions in the last years, above all in economic and administrative matters are norms that emanate from the executive and do not contemplate mechanisms of citizen consultation, except for some which were published. When these norms required a legal level, they were passed in virtue of the delegation of extraordinary legislative faculties proper to a situation like the one produced after the 1992 coup’ d’état or in another context when it is given in favor of the Government by part of the Congress<sup>97</sup>.

On another side, there is a great quantity of Legislative Decrees and Urgency Decrees passed by the executive in these past years, without previous intervention or the necessary posterior control by part of the legislators. Even more, when the Congress Laws are regulated by Decrees or Resolutions passed by the Government that according to the Constitution when regulating the laws can not modify them nor denaturalize them, many times so it does and follows the traditional juridical practice in which the rules go beyond the law.<sup>98</sup>

On another side, formally there is no norm that would compromise representatives to implement adequate mechanisms for the attention and access to the voters. One of the already identified problems in chapter 5 of the report is the existence of a National Constituency, on which virtue congressmen are elected by all the electorate, generating a serious problem of representative connection. In this kind of election, member of parliament represent everyone and no one of the voters, which certainly exempts them indirectly of any responsibility.

In the debate of the constitutional assembly in 1993, the Institute Liberty and Democracy (ILD) presided by economist Hernando de Soto presented diverse projects of political participation that were not approved in spite of having the back up of thousands of citizens signatures. Some congressmen in the present decade have tried to make up for these deficiencies including in their work plan the organizations of what they have denominatad”descentralized offices” or communication networks with their voters, that function as a means of communication or “reception desk” to receive the initiatives of the citizen complaints. These modes have not had optimum results, in part due to the scarce support of the parliament itself. As to the members of parliament of the President of the Republic, they relate directly with the people. However, this direct attention is sporadic, although this presence increases ostensibly during the electoral processes.

### ***12.3. How effective and accessible are public services for those that need them and if the consultation of the users of these services is systematic and adequate?***

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<sup>97</sup> Compendiums of Legislative Decrees Lima, 1991 and the Laws of National Reconstruction. Volumes II Ministry of Justice and Lima, 1993, I.

<sup>98</sup> See: Compendiums of the editions of Legal norms of El Peruano, 1990-2000.

In Peru of the last decade, there has been an impulse as a State priority oriented to the improvement of public services and its broadening in scope and quality. For this has contributed the privatization of public companies dedicated to telecommunications public services.

Until the end of 1997, the commission in charge of the privatizations (COPRI) had supervised around 150 privatization operations, be it through public actions or liquidations of the State-owned companies, that have generated 7.2 billion for the State treasure besides the compromises of investment associated for 7.7 billion on part of the new owners and operators.<sup>99</sup>

The services of potable water and sewage are still in charge of public enterprises, in spite the fact that diverse sectors promoted their privatization, due to, according to some analysts, lack of presidential will, sustained in little advantageous international experiences or according to others, for political reasons and electoral calculations from the government (that has decided to keep under the mode) in order to not affect the economy of their social base and in change strengthen and improve the functioning of the public companies.

The most important company of potable water of the country: Sedapal, in charge of providing water to the provinces of Lima and Callao, has been benefited during the decade with important technical and financial resources from organisms of international cooperation, and fruit of that it can show results as an example of operative improvement of a company in public hands. (Delaying indefinitely its privatization)<sup>100</sup>

The most worrying facts for investors interested in the drawback of the government in matters of privatization was resumed in a casual commentary attributed to president Fujimori at the beginning of 1998: *"I am not very much a partisan of privatization."*<sup>101</sup>

**Government has created supervising programs to public services with the central objective of regulating fees, supervising and sanctioning certain excesses of the companies that are operating and guaranteeing the existence of effective mechanisms for the protection of the users: Osipitel for telecommunications, Osinerg for electricity, Ositran for transport and Sunass for drainage services: potable water and sewage. Constitutionally, those services are of a public interest, this is, the authority cannot exonerate itself of its regulating presence, especially in what refers to fees.**

After the privatization processes and the operative improvement of the public companies, it must be recognized that in spite of the subsisting deficits (in general) these public services have improved in relation to service, technology, and permanent assistance to the users, but at the same time the fees have gone up, problem that has determined the existence of complaints before the companies themselves, regulating organisms before INDECOPI and the Ombudsman's office, all of which has motivated that the supervising organisms approve procedures and effective instances for the attention of the complaints.

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<sup>99</sup> Pp. 331.

<sup>100</sup> Global evaluation of the services of potable water and cleansing 2000. Analytical report. Resumen Peru.

<sup>101</sup> Op.cit. Bowen. Pp. 334

In society it must be pointed out that in the past few years there have appeared some associations of defense of the users of public services that have asked for more information from these entities as well as participation in the instances of approval of fees and on another side, they have supervised and denounced cases in which there would have been a sort of empathy of interests between the supervising organs and some transnational enterprises owners of the main services, situation that has generated citizen distrust.

An example of this is the case of some of the State officials in charge of privatizations (many of which) that have become a part of the payroll of the privatized companies. This has even taken the Government to promote the approval of a legal norm that would impede the hiring of public officials by the regulated companies within 2 years of having left their position, because it would be against the minimum rules of morality and to prevent the misuse of public reserved information.

#### ***12.4 How much confidence do the people have in the government's ability to resolve the main problems the society confronts and if society can influence in governmental action?***

According to what has been stated in the previous parts the surveys regularly published by the companies of public opinion, demonstrate that presently there is great citizen distrust in the government and diverse public entities, which in the context of the political crisis lack legitimacy.

Nevertheless, during the first years the levels of approval and confidence in the President of Government were high (during these 10 years) on exceptionally high levels (above 30%), rising in moments of political turbulence, as was the case after the 1992 coup d'état or after the hostage crisis in the Japanese embassy, up to levels near the 80%.

This fact from reality is explained in part by the undeniable popularity of President Fujimori, that was not reflected in the low indexes of confidence in the Government nor in other public entities, which is due to the fact that an important sector of the population has identified him as the "only" person that could (can) monitor the way of the State with a certain degree of effectiveness.

As has been stated before, from the beginning of the present government in 1990, the public agenda has been divided in two differentiated fronts (of which the government has been in charge):

- a) On one side, is the economic topic and that of public security, in which the regime has been able to expose what it considers its main achievements.
- b) On another side is the front of democratic institutionalism and the State of Law, subjects that have been presented from the official perspective as of high priority only from the beginning of the questioned third regime of Fujimori.

In the first point, the regime had certain citizen credibility and international recognition because the economy has been stabilized, there was investment, and in spite of the high rates of unemployment, it has reinserted the country in the financial circuits of globalized economy. On another side, it has managed to give order and security pacifying the country and capturing the most important leaders of the subversive movements, in spite of the serious questioning

regarding the violation of human rights that this government action has generated by its own measures. On the second point the trust in the Government is below the wished for standards. Let us remember that since 1992, date in which Fujimori self-imposed on his government the coup d'état, it was offered so much for the international community as for the internal front a quick start of a democratizing chronogram, offer that was delayed and has remained unfulfilled by the regime.

Regarding the Peruvian congress according to human rights organizations, there are three motives of worry, first, that voters because of changes in the electoral rules may have less direct representation in Congress; second, that the government majority operates covered by the President and avoids any investigations of corruption and third, when passing unconstitutional laws it often violates the Constitution as well as its own procedures.<sup>102</sup>

After ten years and after one of the most questioned elections of Peruvian political history, a situation of public distrust and international censorship is under course and different with what occurred in 1992, this time accompanied by important citizen protest. Nevertheless, as to the capacity of influence of society over public policies with the exception of the last events the answer has been (is) negative because popular pressure has not been (is) sufficiently organized and was not (is) efficient before a government that had accumulated an enormous self-sufficiency for the taking of decisions.

As has been seen in part 2 the Judicial Branch has been put under the control of the Executive Branch and the effort of the judicial reform seems to not have had positive results in matters of efficiency and reduction of corruption.

In Peru notwithstanding the crisis there are some few autonomous public entities regarding the Government with capacity to respond to the citizens, like the ombudsman's office. This public institution different from the executive power has been gaining in these last four years great citizen credibility; due to the fact that it has become a democratic institution that has been efficient in the exercise of its functions, specially in difficult circumstances as in the cases of the control for the standing of Human Rights, in spite of the limitations to enter the military facilities (including) in emergency zones and more recently, in the attention to the denunciations and complaints over the regulations of public services as well as its role over the surveillance of the electoral processes<sup>103</sup>.

Other modern public entities recognized in national and international specialized forums, in spite the fact of being criticized by some sectors because of its "excessive powers", that have fully done their public functions are the aforementioned regulating organisms of the public companies; the National Institute of Defense of Competence and Intellectual Property (Indecopi), the Superintendencies of: Customs (Sunad), of Banking and Insurance (SBS) as well as the controversial tax administration (Sunat) in spite of some excesses in the persecution of the opponents of the regime.

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<sup>102</sup> Youngers, op. cit. p 2.

<sup>103</sup> Executive Summary of the Third Report of the Ombudsman's Office to the Congress of the Republic. 1999-2000 published as a special Supplement of the Diario oficial El Peruano, September 2000.

It must be recognized that these entities have financed to a great measure their activities with part of their own resources, constituted by a percentage of the collected money from the users (from the operating enterprises) and that (. These entities) in their short existence have been able to accomplish their legal functions as well as constitute themselves in orientation spaces and ready attention to the users and public in general as well as exercise their functions of surveillance and sanctions over the people and regulated entities, thanks to a modern action of their human and material resources according to the legal norms and the demands of the citizens.

In spite of these exceptions, the balance of the frustrated reforms and administrative modernization of the other entities of the Executive Branch is negative, because in this decade, with the human and material resources contracted with charge to the loaned funds by the international cooperation entities like the World Bank, the Interamerican Bank (Bid) and others in the new mentioned public entities as well as in some Ministries of the Executive like those of Agriculture, Health and others there have been developed only some islands of modernity, but (that have) that subsist side to side to the traditional administrative practices.

In the public sector, there has been little advance in these years in spite the approval of legal dispositions for the administrative action, as well as for planning, control of use and auditing of the public resources as well as in the procedures of selection, qualification and remuneration of public officials, according to international norms.

One of the key ideas developed in the previous parts is that this political process has developed within a profuse juridical framework, that even included diverse norms of control that in their subsequent application, has not been efficient in front of denounces that implied high public officials, as Ministers, Vice-Ministers, Congressmen, Company Board Presidents, Presidents of the superintendencies and other regulation entities, high level advisors, as well as the other companies and public entities.

In the light of public denounces that are analyzed in the part dedicated to corruption; these have not ended with exemplifying sanction that is required when the responsible people are public officials. For this (according to some surveys, like the ones of Apoyo S. A., quoted in the previous parts), public opinion has a growing distrust regarding the functioning of this institutional framework that would seem not to reach the public officials of the first levels of Government. There are still pending the (studies) results of the investigations under course that reveal who are responsible for acts of corruption.

It is a fact that the norms that have been applied in a differentiated manner in this decade. (because is it public knowledge that there has indeed been a differentiated application of them), above all in the less relevant spheres of power. In the following part about decentralization, we develop the idea that in the scope of local governments (in cases of) opposition mayors and aldermen have been followed as well as public officials of the first instances of public entities.

The denunciations under course as well as the analysis done in the last years about the application of the existent mechanisms of control in the public administration for example

in the General Comptrollership of the Republic could conclude on one side that these have been formally given according to the international technical norms and that if applied without interference would be effective mechanisms of control of the efficiency of public administration.

(Actions of control and sanctions) All along the national territory in spite of all the efforts and democratizing advances displayed from the society and the State, as has been pointed out in previous parts, there still subsist multiple forms of discrimination and corruption that make the access of the population difficult to the spheres of official law and impede the State from responding effectively to the citizen demands and interests.

In (the Executive Branch something similar happened) the decade there have been applied sanctions of separations of the positions and administrative processes and penal denunciations in the lowest levels of public administration. In the highest levels, positions considered being of trust, like (in the cases of the) ministers, only investigation processes of some characters have been done, that after leaving office lost the confidence of the President, (like the former ministers Guido Pennano of Industries, or Jorge Mufarech from Labor who were denounced for presumed felonies committed in their private life against the tax administrations).

Some cases presented by the Government to demonstrate the strong control over the morality of government officials have been the trials followed upon (Doctor Ana Kanashiro), the former chief of National Institute of Family Welfare and part of the staff of officials of that institution, because after the verification of the administrative and functional crimes by part of the Ministry of the Presidency (in charge then of Jaime Yoshiyama), there were some denunciations before the judicial authorities and after several years of prison were finally ended with a Decree of Grace, signed by president Fujimori. Paradoxically today, both officials denouncing minister and denounced chief have not anymore occupied prominent public offices.

Nevertheless there are still pending the governmental responses to other cases of corruption denounced before public opinion, like the weapon traffic in charge of SIN employees and the Peruvian Army in favor of the Colombian Guerillas (FARC); other secret acquisitions of military equipment in charge of people linked to entities of the Defense sector in processes of acquisition without a public bid in the entities of the electoral system; as well as the questioning of works done in public services in charge of connected entities by authorities dependent of the Ministry of the presidency, or questioned processes of privatization or liquidation of public entities like the aeronautical company Aereoperu or the insurance company Popular and Porvenir that have to date remained in the dark and without any sanction.

As has been seen in chapter 2 in the last years, in the times of post-terrorism, there may have been an extension of illegal pro-violent practices like lynching of criminals in marginal urban zones and the hiring of gangs and even hit men that for money are hired to “resolve conflicts” using physical violence. The violent practices are also revealed in the existence of some social and geographical “niches”, in which because of the traditional

void of the State, the weight of the Peruvian law is suspended by the presence of groups of illegal power like the drug dealers and other criminals in some provinces of the Amazon jungle or with existence of gangs or groups of common criminals –alone or organized- that act in some zones like the barracks of the cities like Lima and Callao.

### 13. DECENTRALIZATION<sup>104</sup>

*ARE PUBLIC AFFAIR DECISIONS TAKEN AT THE MOST APPROPRIATE LEVEL OF GOVERNMENT?*

#### *13.1. How independent are the inferior levels of government of the central government, and how much power and what resources do they have to do their job?*

The present territorial Peruvian order is inscribed in the political regime that started in the 1992 coup d'état and that has constituted itself on the basis of the following facts: the restructuring of the executive branch, the suppression of the regions, the creation of the Temporary Councils of Executive Administration (CTAR), the approval of the 1993 Constitution, the modification of the present Organic Law of Municipalities by a Law of Municipal Taxes and a Law of decentralization that does not start a process of regional division but reestablishes the territorial organization of the country.

All these characteristics configure an accented process of re-centralization in Peru.

The 1993 Constitution in its eighth final disposition, points out that “Have priority: 1. The decentralization norms and, among them, the ones that allow new authorities to be elected no later than 1995”. Nevertheless, The Law of Decentralization, Law number 26922, was given in 1998 and to date the elections to choose the regional authorities has not taken place.

The restructuring of the Executive branch meant an important change in the role assigned to the Ministry of the Presidency. An important number of enterprises, institutions and decentralized public organisms depend on this ministry. The objective of the referred ministry is to cater for the necessities of the population through the development of a basic infrastructure and social programs.

The enterprises, institutions and decentralized public organisms dependent on the Ministry of the Presidency are:

- a) The Bank of Materials (BM).
- b) The Development Corporation of Lima-Callao (CORDELICA).
- c) The National Institute of Education Infrastructure and Health (INFES).
- d) The National Institute of Development (INADE).

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<sup>104</sup> This part is based mostly on the book, “The Fictitious Decentralization. Peru 1821-1998” written by Johnny Zas Friz Burga and published by the Research Center of the Universidad del Pacifico, Lima, 1998.

- e) The National Program of Potable Water and Basic Cleansing (PRASBA).
- f) The National Program of Potable Water and Sewage (PRONAP).
- g) The Service of Potable Water and Sewage of Lima (SEDAPAL).
- h) The Superintendence of National Goods (SBN).

- i) Initially the National Compensation Fund and Social Development (FONCODES), today it depends directly on the Presidency of the Republic and
- j) The former Technical Unit of National Housing Fund (FONAVI) , presently under process of liquidation. .

Likewise, the Formalization Commission of Informal Property (Cofopri) is a public decentralized organism ascribed to the Transport, Communications, Housing and Construction sector, its members, “will report directly to the President of the Republic”.

With the creation of the Ministry of Women and Human Development (Promudeh), the National Institute of Family Welfare (Inabif), the National Program of Food Assistance (Pronaa) and the National Office of Popular Cooperation (Coopop) have passed to depend on this new Ministry and not anymore on the Ministry of the Presidency.

The new role of the Ministry of the presidency has produced two important effects:

- a) The separation between the normative functions and executive functions of investment in all the sectors of the Executive branch that have transferred public organisms and that were formerly under its dependency; and,
- b) A strong concentration in this ministry of the quasi totality of the public organisms of the national Government that finance or execute investments for the provision of public services.

In an intermediate level regional governments do not exist because the temporary councils of regional administration (CTARS) depend directly on the Executive branch.

The most important characteristics that establishes the so called Law of Decentralization with relation to the CTARS are the following:

- a) A clear dependence on the Ministry of the Presidency
- b) Minimal general functions as actions in the regional programming of the national programs of investment, the monitoring of studies relative to the physical planning, the activities in the local promotion and in the execution of private investments, the evaluation of territorial demarcation, the surveillance of the compliance to norms about the environment and natural resources, the supervision of public and administrative services, the support of local governments, and the direction of non-military defense activities.
- c) The executive president and the Technical Secretary of each CTAR are designated by the President of the Cabinet and by the Ministry of the Presidency; and
- d) Each CTAR constitutes a budget entry inside the Sector of the Ministry of the Presidency.

The CTARS only have the budget transferences of the national government and do not have their own income or any taxing authority.

The standing organic Law of Municipalities number 23853 of 1984, establishes that municipalities are the organs of local government, that have economic and administrative autonomy (the 1993 Constitution has added the explicit acknowledgement of political autonomy), that represent the local community and that are responsible of catering adequate public services. The cited municipal law was given during the rule of the former 1979 Constitution and because of this it has the fundamental characteristics that this Constitution gave to local governments:

- a) Municipalities are the organs of local government and have administrative and economic autonomy in the matters of their competence.
- b) Municipalities are competent for regimenting their internal organization; vote on their budget, manage their assets and rents; create, modify or suppress their contributions, and municipal rights; regulate public transport, and traffic; organize, set rules, and manage public local services; deal with other public or private entities, preferably local, the attention of services which they do not manage directly; plan the development of their circumscriptions and execute the corresponding plans; and execute the other attributions inherent to their function.
- c) The preeminent role of Peruvian municipal duality district municipality –provincial municipality corresponds to the latter because besides managing local public services, it is also competent in zoning and urbanism; cooperation with primary education and the surveillance of their normal functioning; culture, recreation and sports; tourism and conservation of archeological and historical sites; cemeteries, and in all those services whose execution is not reserved to other public organs and that satisfy collective needs of a local character.
- d) The Municipality of Lima as capital of the Republic has a special regime.
- e) The specific indication of goods and rents of the municipalities.
- f) The enumeration of all those taxes corresponding to local governments.

The Organic Law of Municipalities recognizes a minimal competence to district municipalities, additional competence for the provincial municipalities and a big set of general and specific competencies to both classes of municipalities without distinguishing between them.

The matters of competence established so much for district municipalities as for provincial ones are the following: territorial conditioning, housing, collective security, population, health, environmental maintenance, defense and promotion of the Child and Teenager Rights, education, culture, conservation of monuments, tourism, recreation, sports, provisioning, and commercialization of products, public transport, circulation and traffic.

Municipal law confers normative rights to the municipal councils; the municipal councils can give ordinances, edicts and agreements; and the mayors, decrees and resolutions.

In relation to the exercise of municipal competence through the emission of their own norms, we must indicate the existence of continuous competence conflicts between the local metropolitan government in the city of Lima and the national government. These conflicts

have appeared through the collision of laws (passed by Congress and those passed by the Executive branch) and municipal ordinances given by the Metropolitan Municipality of Lima. These laws have transferred the competence of the provincial municipalities towards the district municipalities and they have referred to the administration of the “glass of milk” program (law number 26637), to the administration of parks (law number 26664) and to the approval of the urban habilitations (law number 26878). Likewise, another law given by the national government, law number 27304, has regulated the adjudication process of building sites and buildings of public property used for the functioning of market places, including those building sites affected used in favor of municipalities.

Legislative Decree number 776 given December 30, 1993 regulated municipal taxing. This norm establishes the following taxes:

- a) Municipal taxes (predial; public presentations not sports), of sales tax, vehicle property, games, betting and Casinos).
- b) Valuations and contributions.
- c) Taxes and participations created by the national level in benefit of municipalities (by municipal promotion, to wheelworks, to entertainment vessels, and the participation in customs revenues.

Municipalities have a limited taxing right. They can only create, modify, suppress, or exonerate their contributions, valuations, excise taxes, licenses and/or municipal rights. In the case of municipal taxes, local governments do not determine these: the central level of government determines taxable bases and the valuation of these taxes. In consequence, the financial autonomy of municipalities in matter of taxes does not exist.

Likewise, juridical Peruvian order recognizes local governments taxing rights in relation to valuations and contributions, but given the established limitations by the law, these same local governments have a relative financial autonomy: law establishes which valuations can be imposed and how these are calculated. In the case of the taxes created by the central government in benefit of the municipalities, there is also a complete absence of local governments in their determination. All these taxes are established at the level of the central government.

On another aspect, municipalities have no faculty to determine, collect, or control the resources of the Municipal Compensation Fund. Municipalities do not participate in the assignment process of resources and law conditions the destiny of them. Municipal budgets are ruled by general laws of budget and by the directive of the Ministry of Economy and Finance, which in fact consider some specific dispositions for the municipalities, these are given in a uniform manner for all the public sector; the norms about budget execution, specially those referring to austerity in public expenditure, are very rigid and limit the discretion of municipalities; and the Law of the Budget establishes a set of significant prohibitions to municipalities in relation to the increment of remunerations, to the celebration of new contracts of non-personal services, to the creation off public squares, to naming or hiring new personnel, among others.

PERU: BUDGET, INCOME, AND EXECUTION OF NATIONAL GOVERNMENT EXPENDITURE AND OF LOCAL GOVERNMENTS: 1998 (in thousand of new soles)

LEVEL OF GOVERNMENT	Institutional Authorized Budget	Institutional Authorized Budget	Income	Execution of Expenditure
CENTRAL GOVERNMENT	27 186 802,5	28 778 127,5	25 394 833,7	20 004 220,1
LOCAL GOVERNMENTS	3 548 098,9	4 127 812,9	3 406 784,5	3 388 928,8

Source: National Accountant's Office General Account of the Republic

PERU: MUNICIPAL INCOME, ORDERED BY CONCEPT: 1996

CONCEPT	PERCENTAGE
Municipal Compensation Fund	35.53
Revenue of canon-property	17.10
Program of the "glass of milk" (current transference)	8.40
Other current income	6.92
Property tax	6.40
Other valuations	4.86
Sale of goods and services	4.71
Health valuations	2.79
Other current transfereces	2.24
Fines and other sanctions	2.21
Revenue of property-others	1.81
Valuations of housing and building	1.45
Transfereces of capital goods	1.19
Other taxes of general administration	0.82
Valuations of transportation and communications	0.68
Taxes to games and Casinos	0.66
Taxes on automobile property	0.65
Sales Tax	0.44
Capital goods sale	0.43
Tax on public shows	0.26
Contributions	0.26
Valuation of Education	0.19

SOURCE: INEI: National Survey of Municipalities and Social-Economical District infrastructure 1997.

PERU: MUNICIPAL EXPENDITURE, ACCORDING TO CONCEPT: 1996

CONCEPT	EXPENDITURE (PERCENTAGE)
Building projects	33.54
Remunerations	13.76
Goods	12.61
Services	11.52
Current Transfereces	8.40
Debt payments	6.53
Capital Goods	4.43
Pensions	2.56
Capital transfereces	1.56
Studies	1.48
Interests and commissions	1.46
Capital goods not linked to investment projects	0.93
Loans/acquisitions of stocks/others	0.90
Other income	0.30

SOURCE: Íbid.

***13.2. Up to what extent are these levels of government subject to free and fair elections of their authorities, and to the criteria of openness, control and social responsibility in their duties?***

The present Law of Municipal Elections, Law number 26864, given 1997, essentially keeps the contents of the law it derogates: Law number 14669 given 1963. It has among its main characteristics the following:

- a) Mayors and aldermen of all provincial and district municipal councils will be elected, except those of provincial capital districts and districts of "el Cercado";
- b) Foreigners can elect and be elected;
- c) The candidate list can correspond to a political party, party alliance or an independent list and must be conformed by no less than one fourth if men or women;
- d) The elected mayor is the candidate that occupies the first place of the list that obtains the highest number of votes and that represents more than 20% of the valid votes (a run-off will proceed only if no list obtains that percentage);
- e) The number of aldermen will be determined by the National Board of Election (no less than five or more than fifteen, except for the council of Lima that will have 39 aldermen);
- f) The percentage method will be used and it is applied starting from number two on the list;
- g) In case there is no absolute majority of valid votes, the "prize of the majority" will be applied, which assigns to that list that obtains the first relative majority one half plus one of the aldermen's seats;
- h) The percentage method is applied to assign the remaining aldermen's seats among the other lists that have obtained no less than 5% of the valid votes;
- i) The vote can be called invalid if there is an absentee rate of more than half of the voters or when the invalid or blank votes together or separately go over two thirds the number of votes.

The electoral ordering allows the stability of the local executive because the so-called "prize to the majority" guarantees the winning list to occupy the Council and because it disposes that number one of the winning list to become mayor. This has been the general rule during the local administration product of the seven consecutive municipal elections that have taken place every three years, since the beginning of the 70's. The 1993 Constitution has established a longer period -five years- for the mandate of mayors and aldermen. The present municipal mandate is of four years and will end December 31, 2002 and the following mandate will be five years starting January 1, 2003.

The standing municipal law acknowledges limited forms of participation. Besides municipal elections, it acknowledges neighbor boards, communal committees, the right of petitioning, inquiry and the information given by the municipalities. Likewise, the law has introduced the so-called "open council"; if well, its regulation only permits a limited exercise.

Nevertheless, the limitations of this law, the Municipality of Lima gave two important ordinances: The Municipal Ordinance about People Organizations in 1984 (Agreement number 192) and ordinance number 20 about Neighbor Boards in 1996. These norms were able to broaden neighbor participation in the city of Lima, in autonomous and acknowledged organizations so much by district municipalities as by the Metropolitan municipality of Lima.

The first ordinance regulates the relations between municipalities and the popular organizations present in human settlements in the periphery of the city; it acknowledges as associations those groups, formed by settlers, inhabitants of human settlements of the periphery; it establishes that these groups must have as objectives those that refer to a human settlement (mainly its process of physical and legal reparation) explicitly excluding social, cultural, sports, women or youth organizations; and it points out its autonomous character with relation to the local governments and the national government, its attributions and an interior regime also autonomous subjected to the law. Likewise, this ordinance, disposes the acknowledgment of these popular organizations, by the municipality, complying with certain requisites, unregarding its acknowledgment in the civil boundary, for which reason it instituted a municipal register for these organizations.

The second ordinance, about the neighbor boards, regulates the constitution and the register, differing from the former, those of the neighbor organizations to the interior of the city; this is of the urban consolidated part of the city of Lima. This ordinance states: that these neighbor boards are “social autonomous organizations” for “the supervision of the catering of local public services” and in “the planning, organization and execution of the plans of actions and works of the Municipality”; its attributions, its government organs; and as in the case of the human settlements, a register and the requisites that these boards must follow for the registration and subsequent acknowledgment by the municipality. Law number 25307 acknowledges social organizations that undertake feeding activities in the poor zones of Lima as mother’s clubs, the glass of milk committees, popular restaurants and family kitchens, family centers, child nursing homes, and in general base social organizations that do activities of feeding to support the poor social sectors.

PERU: SOCIAL ORGANIZATIONS SUPPORTED BY MUNICIPALITIES AND THE BENEFITED POPULATION: 1997

SOCIAL ORGANIZATIONS	NUMBER	PERCENTAGE	BENEFICIARIES
Mother’s Clubs	12703	17,8	945,912
Glass of Milk Committees	51405	71,8	4’378,376
Popular restaurants	4407	6,2	367,543
Wawa Wasi (child nursing homes)	1239	1,7	24,197
Other organizations	1810	2,5	263,338

SOURCE: INEI – National Survey of Municipalities and Social-Economical District infrastructure 1997.

The Metropolitan municipality of Lima gave one first ordinance about the matter, setting the rules for the law dispositions and establishing a municipal register similar to the existing one for popular organizations. This development of communal participation is limited by the institutional weakness of municipalities and because local legislation on this matter has corresponded for a long time only to the Metropolitan Municipality of Lima.

As has been pointed out in the previous points Peruvian legal ordering acknowledges institutions of direct democracy: the referendum (although its exercise has been significantly restricted), legislative initiative, the ousting of authorities, the renewal of authorities, and the demand for the rendering of accounts. Law number 26300 develops the institutions of direct democracy acknowledged in the present Constitution and includes the initiative in the

formation of municipal and regional dispositions as well as participation mechanisms and control of sub national instances of government.

The most used institute of direct democracy-almost exclusively- has been the revoking of authorities and has been mainly directed towards the mayors.

It has been the Metropolitan Municipality of Lima the one that has given the norms that regulated the referred institutions of direct democracy, such as ordinance number 084 that regulates the communal participation in council extraordinary sessions, and ordinance number 065 that establishes the creation of permanent commissions of communal participations, the participation in the Council sessions, the popular communal initiative to present ordinance projects, the right of referendum initiative about ordinances, the revoking of authorities, and the rendering of accounts and public audiences.

### ***13.3. How extended is the cooperation between local authorities and civil society in the planning and execution of policies?***

There is rupture between what is disposed in the legislation and the effective exercise of the competencies and the functions of local governments. Municipalities do not exercise many of their functions because of their institutional weakness, their scarce funds and by the intervention of the national government in matters that correspond to the local level of government. There are matters of competence like transportation in which there is juxtaposition between both levels of Government or others in which even though being matters that concern directly to local governments these have been centralized, such is the case of the physical and legal reparation of marginal human settlements.

The intervention of the national Government in the local level is intense in the actions of investment and that of services, actions in which the local governments participate in a very limited manner. In the areas of energy, health, and education, the exercise of all actions corresponds almost exclusively to the national government. Likewise, local governments maintain limitedly the provision of certain essentially local public services and that affect the nearest environment to their respective communities such as public cleaning, the disposal of solid debris, street vendors, entertainment and the market places.

In relation to the participation of the members of the community as users in the management of local public services, the experience has been very limited. To this respect, it must be pointed out that the Program of Shared Administration of Health Establishments from the Basic Level of Attention nevertheless depends on the Health Ministry; this is the national Government and not the local government. Another endeavor, although failed, because it never became a reality was the project of trying to obtain the participation of the community in the management of education in the local level. The laws of education funding, Law Decree number 26013, of quality improvement and broadening of the range of Peruvian education, Law Decree number 26013 on communal participation in the management of education administration, and Law Decree number 26011 were derogated and the project of the transference of state education management to the municipalities never came through.

PERU: NUMBER OF MUNICIPALITIES THAT GIVE AND DO NOT GIVE CLEANING SERVICE OF PARKS AND STREETS: 1997

SCOPE	TOTAL NUMBER OF MUNICIPALITIES	FREQUENCY: ALWAYS	FREQUENCY: SOMETIMES	SERVICE IS NOT PROVIDED	NO INFORMATION
NATIONAL	1812	859	548	383	22

SOURCE: INEI – National Survey of Municipalities and Social-Economical District infrastructure 1997.

PERU: GARBAGE COLLECTED DAY AND NUMBER OF MUNICIPAL GARBAGE TRUCKS: 1994 AND 1997

PUBLIC GARBAGE SERVICE	1994	1997	PERCENTAGE VARIATION
COLLECTED	7949	9354	17,6
GARBAGE (m. tons)	959	695	-27,5
GARBAGE TRUCKS			

SOURCE: Ibid.

PERU: OTHER MUNICIPAL SERVICES 1997

SCOPE	CEMENTERIES	PUBLIC TOILETS	PROVISION MARKETS	SLAUGHTER HOUSES	FISHING TERMINAL	SILOS
NATIONAL	2360	1774	1000	530	31	955

SOURCE: Ibid.

PERU: NUMBER OF MUNICIPALITIES WITH LIMITATIONS FOR MUNICIPAL DEVELOPMENT: 1997

SCOPE	Number of Municipalities	Human Resources	Machinery Equipment	Support to the Central Government	Financial Assistance	Financial Order	Normativity	Others
Nacional	1812	1334	1636	1491	1442	1596	902	124

SOURCE: Ibid.

## IV. DEMOCRACY BEYOND THE STATE

### 14. INTERNATIONAL DIMENSIONS OF DEMOCRACY

*Do the international relations of a country go along democratic norms?*

In the case of Peru we see that since the beginning of the nineties international relations do not necessarily go along more or less standardized norms and democratic customs but more by pragmatic criteria. The regime's discourse towards outsiders has been to put forth the necessity of fundamentally guaranteeing foreign investment and has had as privileged interlocutors not precisely the states but the multinational enterprises. The so called initial boom of foreign investment, attracted by a very accelerated and sometimes clumsy privatization process of state-owned companies determined some capitals to look up to Peru as an attractive country but with scarce legal security.

This situation is confirmed if you observe that, that column so important for international relations is precisely the respect of the institutions of a State of Law. As we have previously observed recent times have determined in the international scene an association, almost a fusion between economy and democracy. It is in this latter aspect that the Peruvian state has lacked initiative and therefore international support. In consequence, we can state that in Peru international relations are not directed according to democratic norms.

One of the main worries of the democracies of our continent since the decade of the eighties was to find mechanisms that could defend it and that could eliminate the ominous pendulum of the return of the authoritarian regimes. Take also into account that as never before the end of the decade of the eighties, the international community has opened to concepts that are being readjusted according to experience. Against the reserve and distrust that were elements in the international society of post World War II, countries promote today, democracy and human rights as two themes of a universal value. Both concepts have a tight linkage between them and form part of the world agenda.

Democracy carries out human rights and from there their interrelation. Democracy does not exist if it does without the effective guarantees for the standing of human rights and grasps unnaturalization if it tolerates its systematic violation. The fundamental principle of democracy is human rights and these in turn do not exist without democracy. A coup d'état is, thus, the gravest and most massive violation of all human rights. It is this philosophy that is finding a way in the world and that in Latin America is presiding the change of behavior of the OAS itself and that has given a transcendental importance to other organisms of the system as the Interamerican Commission of Human Rights and the Interamerican Court of Human Rights.

***14.1. Is the government of the country free of subordination against international agencies of an economic, cultural or political nature?***

We must be precise in pointing out that there does not exist any subordination of a political or cultural nature, nevertheless about the economic subordination we must first revise the case of the international agencies of economic support. It almost was a fad in Peruvian political circles to talk about the "reinsertion of the country in the international financial system". The matter of the fact was that it was an objective reality what took us to this necessity, the irresponsible economical policy of the last government originated the closure of credits from financial organisms or they simply denied renegotiating the foreign debt.

Once reinserted in the financial system, there was at sight a crude reality, reflected in the giving of international credit under very severe conditions at the same time public policies set forth the payment of the foreign debt and of its respective interests. This takes us to a practical verification: the present government is not free of subordination from international financial organisms, which more than mere "agencies" are real axis of international power.

CONCERTED CREDITS OF PUBLIC FOREIGN DEBT, ACCORDING TO DESTINY

YEAR	DESTINY			
	TOTAL	INVESTMENT PROJECTS	FOOD IMPORTS	DEFENSE
1990	258	163	65	30
1991	983	966	0	17
1992	1,862	1,857	0	5
1993	666	657	0	9
1994	1,278	1,247	0	31
1995	754	742	0	12
1996	1,816	1,816	0	0
1997	1,866	1,866	0	0
1998	556	532	10	14
1999 a/	270	270	0	0
TOTAL	10,309	10,116	75	118

Source: Central Bank of Peru. Superintendence of Banks and Insurances.

a/ The information corresponds to the first trimester of 1999.

Note: concerted credits by the Club of Paris, Latin America, International Banking, International Organisms, Countries of Eastern Europe, and Providers without Insurance.

***14.2. Are the relations between the Government and the international donors based on the principles of reciprocity and transparency?***

Peru receives important help from international donors in three aspects: food for the programs of social assistance, technical cooperation oriented to training and the improvement of technologies and support in the policies to eradicate drug traffic. We will briefly comment on each one of them.

Regarding the food assistance, this comes especially from European agencies and countries, which have supported the programs of humanitarian help. The donated food is administered by the denominated National Program of Food Help (Pronaa), institution that has grown in the past few years and that like many governments agencies has been seriously questioned by the electoral management of their resources. Concretely, little transparency can be identified in the management of funds, this because we repeat, the derivation of the help has responded to interests of the government.

In the last months especially after the past elections, a growing trend of donors pretends to condition the help on the objective conditions of the Peruvian democratic system. This is what the European Community, the FAO, among other institution have told the Peruvian administration.

The international technical cooperation is channeled through various public institutions, in which case the questioning has been less, but not exempt from founded suspicions about the management of the funds.

Finally, regarding the fight against drug dealing, economic assistance has always been important and has come from the United States. In this case, the northern State has demanded permanent conditions of reciprocity about the concrete results of state policies and

fundamentally in what regards to the solution of political problems derived from the State's little appeal for the respect of the State of Law and the political control of its acts.

The fight against the illicit traffic of drugs has been assumed; it must be recognized, as a State policy. As has been pointed out in previous points there exist important achievements in Peru like the deactivation of impotent cartels and networks functioning in the Peruvian jungle. However, in spite of this, there is a situation of uncertainty regarding the destiny of the funds and especially about the moral competence of those who are in charge of enforcing these policies.

#### ***14.3 Does the Government follow the United Nations treaties About Human Rights and does it respect International Law?***

Peru has subscribed the main international instruments of human rights in the scope of the United Nations, In the interamerican system there are also two pacts of which Peru forms part: the American Declaration about rights and duties of man and the American Convention of Human rights. In both cases, in the universal system and in the interamerican system, the Peruvian State has practically become in an international outcast in what concerns to treaties.

A fundamental topic is the one that refers to the qualification and category that for Peruvian constitutionalism the referred treaties have. These have been incorporated as norms of a constitutional rank; this is confirmed by articles 3 and 57 and the Fourth Final Disposition of the Constitution. If the 1993 Constitution has not repeated the right formula of its 1979 predecessor, in the sense of establishing in a taxative way that treaties about human rights have a constitutional rank, this does not affect the initial formula. This is why these types of treaties continue having constitutional rank.

We are going to center only on the example that explains by itself if the State respects or not its international compromises. We refer to the withdrawal of the contentious competence of the Interamerican Court of Human Rights to whose jurisdiction it was subject since 1979. This has an explanation. The jurisprudential line of the Interamerican Court is unfavorable to the Peruvian State, because it is the one that has the most number of accusations and condemning sentences. From this point of view, a fact that sticks out is that the Court has had special interest when judging the Peruvian State. The Court has established in all the processes in which it has sentenced unfavorably against the Peruvian State that the latter has violated article 1.1 of the Convention that states the obligation of the subscribing States to respect the rights established in it. This is an undeniable fact. This sole example depicts in no better way the degree in which the Peruvian State has not followed international treaties about human rights. With this attitude, it is dangerously backing away from international consensus, so important when defending human rights.

INTERAMERICAN COURT OF HUMAN RIGHTS CASES PRESENTED IN PERU

Nº	CASE	SITUATION	EXPLANATION/STATE
01	CAYARA	Resolved	Founded exceptions of the Peruvian State
02	"EL FRONTON"	Resolved	International Responsibility of the State was declared
03	LOAYZA TAMAYO	Resolved	International Responsibility of the State was declared
04	CASTILLO PAEZ	Resolved	International Responsibility of the State was declared
05	CANTORAL BENAVIDES	In process	Pending sentence about preliminary exceptions
06	DURAND Y UGARTE	In process	Pending sentence about preliminary exceptions
07	CASTILLO PETROZZI	Resolved	International Responsibility of the State was declared
08	CESTI HURTADO	Resolved	International Responsibility of the State was declared
09	CANTORAL BENAVIDES	Resolved	International Responsibility of the State was declared in violation of the judicial guarantees and judicial protection
10	DURAND Y UGARTE	Resolved	International Responsibility of the State was declared in forced disappearance

JURISPRUDENTIAL LINE OF THE INTERAMERICAN COURT

ARTICLES OF THE CONVENTION VULNERATED BY THE PERUVIAN STATE

VULNERATED ARTICLE/ PROTECTED RIGHT	NEIRA ALEGRIA CASE	CASTILLO PAEZ CASE	LOAYZA TAMAYO CASE	CASTILLO PETRUZZI CASE
1º Obligation of respecting rights and liberties	X			
2º Duty of adopting dispositions of Internal Law			X	X
4º The right to Life	X	X		
5º The right of personal integrity	X	X	X	X
7º The right of personal liberty	X	X	X	X
8º Judicial guarantees			X	X
9º Principle of legality and retroactivity				X
10º Right of indemnization	X	X	X	X
25º Judicial protection		X		X
27º Constitutional guarantees during states of exception				X

63° Possession of rights or violated liberty	X
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JURISPRUDENTIAL LINE OF THE INTERAMERICAN COURT  
SOCIAL POLITICAL CONTEXT OF THE DENOUNCED CASES IN THE COURT

CASE	NATURE	POLITICAL CONTEXT	YEAR
NEIRA ALEGRIA	Death of 101 accused convicts of terrorism in a mutiny in the Penal Establishment "El Fronton"	Political violence against life and the economy of the country	1986
CASTILLO PAEZ	Illegitimate disappearance of student by forces of order	Political violence against life and the economy of the country. Castillo was not compromised in these acts	1990
LOAYZA TAMAYO	College professor illegally condemned to 20 years of reclusion by the civil courts	Political violence against life and the economy of the country. Loayza was not compromised in these acts	1993
CASTILLO PETRUZZI	Chilean terrorists, high chiefs of the MRTA, are captured, judged and sentenced by the military courts	Political violence against life and the economy of the country. These people publicly admitted their militancy to the MRTA	1994

JURISPRUDENTIAL LINE OF THE INTERAMERICAN COURT  
TOTAL NUMBER OF VULNERATED ARTICLES BY THE STATE

CASES	TOTAL VULNERATED ARTICLES
NEIRA ALEGRIA AND OTHERS	05
CASTILLO PAEZ	05
LOAYZA TAMAYO	06
CASTILLO PETRUZZI	08

***14.4. Does the government respect its international obligations in relation to the political refugees and if there is a protection against arbitrary discrimination in its immigration policy?***

There are hardly any political refugees in Peru. The last problem on this matter occurred about a decade ago, when Cuban dissidents took the Peruvian embassy in La Havana and the country received them as refugees. On this opportunity, they were granted a treatment respectful of international obligations. There are no politically persecuted people who have

sought the right of political asylum in Peru. Moreover, regarding the immigration policies this has not been questioned. On the contrary, the main problem is those who abandon the country, that are approximately two million people that find in other countries very harsh immigration policies.

***14.5. Do the actions of government help in sustaining democracy protecting human rights in the international scope?***

The answer is negative. We consider that the example of the withdrawal from the contentious competence of the interamerican Court above detailed explains in itself the answer to this question.