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THE PDDH IN EL SALVADOR

- An important step towards reconciliation and
democracy?

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*Todavía cantamos, todavía pedimos
Todavía sonamos, todavía esperamos*

*We are still singing, we are still praying
We are still dreaming, we are still waiting*

*A pesar de los golpes
que asestó a nuestras vidas
el ingenio del odio
desterrando al olvido
a nuestros seres queridos*

*Despite the hard blows
that were given to our lives
the ingenuity of the hate
dispelling the oblivion
of our loved ones*

*Todavía cantamos, todavía pedimos
Todavía sonamos, todavía esperamos*

*We are still singing, we are still praying
We are still dreaming, we are still waiting*

*Que nos digan a dónde
han escondido las flores
que aromaron las calles
persiguiendo un destino
Dónde, dónde se han ido
...¹*

*They must tell us where
they have hidden the flowers
that scented the streets
following a destiny
Where, where have they gone
...*

¹ This song made a strong impression on me when sung during the celebration of a mass in remembrance of the FMLN offensive in '89 (when the war entered San Salvador). The mass was held in honour of the dead family members of the people resident in one of the poorer "colonias" in San Salvador that fought in the civil war. The way in which the mass was celebrated made me realise the strong feelings of injustice that remain in El Salvador among parts of the population. This song I believe illustrates the remaining need to know what really happened during the civil war since the uncertainty is a major cause of anxiety for many. A member of the Salvadorian Truth Commission, Thomas Buergenthal quoted by Elizabeth Jelin on p 121 expressed it like this: "It is important for the survivors of people who die to know that it was not because they were supposed to die but because criminals killed them. That's important to the children who are growing up, to the spouses and parents of people. It goes to the national health of the country."

INDEX

1	INTRODUCTION	4
2	AIMS AND METHOD.....	6
3	PROTECTION OF HUMAN RIGHTS AS A TOOL IN DEMOCRACY BUILDING	10
3.1	HUMAN RIGHTS	11
3.1.1	<i>Civil and political rights</i>	<i>13</i>
3.1.2	<i>Economic, social and cultural rights</i>	<i>13</i>
3.2	DEMOCRACY	14
3.3	HOW HUMAN RIGHTS AND DEMOCRACY INTERLOCK.....	15
3.3.1	<i>Civil and political rights and democracy.....</i>	<i>17</i>
3.3.2	<i>Democracy and economic and social rights</i>	<i>17</i>
3.3.3	<i>Human rights violations of the past inflicting on the democracy of today.....</i>	<i>19</i>
4	FACTUAL BACKGROUND, EL SALVADOR.....	22
4.1	COUNTRY FACTS.....	22
4.2	THE CIVIL WAR	24
5	THE PEACE ACCORDS OF CHAPULTEPEC.....	26
5.1	BACKGROUND OF THE PEACE TALKS	27
5.2	THE CONTENTS OF THE PEACE ACCORDS	28
5.2.1	<i>The Truth Commission</i>	<i>28</i>
5.2.2	<i>Ad Hoc Commission for the military.....</i>	<i>31</i>
5.2.3	<i>The PNC.....</i>	<i>32</i>
5.2.4	<i>Revision of the constitution</i>	<i>32</i>
6	HOW ARE HUMAN RIGHTS UPHELD IN EL SALVADOR TODAY?	33
6.1	THE HUMAN RIGHTS SITUATION IN EL SALVADOR	33
6.2	THE SYSTEM OF PROTECTION OF HUMAN RIGHTS IN EL SALVADOR	37
6.2.1	<i>How to address human right violations in El Salvador</i>	<i>37</i>
7	THE PDDH	38
7.1	THE ROOTS AND STRUCTURE OF THE INSTITUTION	39
7.1.1	<i>The ombudsmen of the PDDH.....</i>	<i>41</i>
7.2	THE LEGAL FOUNDATION OF THE PDDH.....	42
7.2.1	<i>The constitution of El Salvador.....</i>	<i>42</i>
7.2.2	<i>Decreto No 183</i>	<i>43</i>
7.2.3	<i>Reglamento de la ley de la Procuraduría para la Defensa de los Derechos Humanos.....</i>	<i>44</i>
7.3	THE CONSTITUTIONAL AND LEGAL MANDATE OF THE PDDH.....	44

8 OPINIONS ON THE PDDH, PRESENTATION AND ANALYSIS OF THE INTERVIEW RESULTS	49
.....	
8.1 NGOs.....	51
8.2 THE POLITICAL PARTIES	57
8.2.1 ARENA	57
8.2.2 FMLN.....	58
8.3 VOICES FROM WITHIN THE PDDH.....	59
8.4 POSSIBLE PROBLEMS ARISING OUT OF THE CONSTITUTIONAL AND LEGAL MANDATE OF THE PDDH	61
8.4.1 <i>The personal qualities of the ombudsman</i>	62
8.4.2 <i>The task of the PDDH</i>	63
8.4.3 <i>The budget</i>	64
9 CONCLUSIONS.....	66
REFERENCES.....	72
PRINTED MATERIAL	72
MAGAZINE AND NEWSPAPER ARTICLES	74
OFFICIAL DOCUMENTS.....	74
MATERIALS FROM THE PDDH.....	74
INTERVIEWS CONDUCTED	74
OTHER MATERIALS	75

Acronyms:

ARENA

Alianza Republicana Nacionalista, Nationalist Republican Alliance

CODEHUCA	Comisión para la Defensa de los Derechos Humanos en Centroamérica, Commission for the Defence of Human Rights in Central America,
COPAZ	Comisión Nacional para la Consolidación de la Paz, National Commission for Peace Consolidation
FESPAD	Fundación de Estudios para la Aplicación del Derecho
FMLN	Frente Farabundo Martí para la Liberación Nacional, Farabundo Martí National Liberation Front
ICESCR	The United Nations International Covenant on Economic, Social and Cultural Rights
ICCPR	The United Nations International Covenant on Civil and Political Rights
IDHUCA	Instituto de Derechos Humanos de la Universidad Centroamericana Simeon Cañas
NGO	Non-Governmental Organisation
PDC	Partido Demócrata Christiana, Christian-Democratic Party
PCN	Partido de Conciliación Nacional, Party of National Conciliation
PDDH	Procuraduría para la Defensa de los Derechos Humanos, The ombudsman for the protection of the human rights
PNC	Policía Nacional Civil, National Civil Police
UCA	Universidad Centroamericana Simeon Cañas
UDHR	The Universal Declaration on the Human Rights
UNDP	United Nations Development Program, Programa de las Naciones Unidas para el Desarrollo

1 Introduction

War does usually mean not only the momentous breakdown of a society, but warfare also creates problems that do not normally end with the ending of the armed conflict. The termination of a war usually signifies the beginning of a large process of reconstructing the society trying to reach consensus both on how to do it and who should do it. In the case of ending civil wars the problems are partly very much bigger and partly more problematic. There is always the question of how to unite a country torn apart by those conflicting interests that once lead to the reaching for arms. This particularly since war itself creates new wounds and antipathies. How will it be possible to construct the foundations of society in such a way that the path chosen will promote reconciliation and democracy instead of bringing further closure, exclusion and tension? In that context it is interesting to see if fulfilment of the human rights of the population is something that fosters democracy-building and if so, which is the role played by the institutions that protect the human rights of the population in such context?

El Salvador is a country with a history of formal democracy that goes only a few years back. It is a mere decade since the signing of the peace accords between the Salvadorian government and the guerrilla movement, the FMLN², took place and more than a decade of civil war came to an end. As so many Latin American countries El Salvador did not have any democratic history to return to, since the country until then had been run by different oligarchies supported by the military with no influence from the poorer population of the country. What had to be done was thus not a mere *re*construction of democracy but a construction of democracy. Aware of the lack of democratic history and in the light of the many severe crimes against the human rights of the Salvadorian population that took place both before and during the armed conflict, the intention of the Peace Accords of 1992 was to focus on these issues and to present a possible solution to them. One of the new institutions created with that aim in the Peace Accords was *la Procuraduría para la Defensa de los Derechos Humanos* – the Human Rights Ombudsman Institution, hereafter named as the PDDH according to the Spanish abbreviation. The PDDH was thus thought of to promote human rights issues as a guardian of the people against the State and by doing that contribute to the democratization and reconciliation much needed by the Salvadorian society.

The PDDH is an interesting creation since it is a national institution (with support from the United Nations and other external actors) and its due functioning could thus be seen as a demonstration of a well-functioning public administration and a commitment towards the human rights of the population. If the institution however faces severe problems caused by its organisation, possibilities to perform its task and so forth, then that as well is a demonstration of the condition and will of the Salvadorian government and public administration. However the Salvadorian government and public administration of the country are not the only actors of importance in influencing the “life” of an institution such as the PDDH. Its activities cross the boundaries of the numerous non-governmental organizations in El Salvador working with human rights issues. Their approach towards the PDDH may have a substantial influence on the possibili-

² Frente Farabundo Martí para la Liberación Nacional. In English Farabundo Martí National liberation Front

ties of the institution to perform its task well. And then there is also the political opposition that may have conflicting ideas on how the institution ought to be run. This issue will be highlighted by the presentation of a number of interviews with interested parties in the field of human rights in El Salvador.

2 Aims and Method

The aim of this dissertation is to study the PDDH and try to see whether this institution can be said to have fulfilled the expectations of democratization and reconciliation laid upon it when it was created, or not. I will do this from the theoretical starting-point that a process of legal enforcement of human rights parallels the process of democratization. The connections and the mutual dependency between the concepts of human rights and of democracy will be presented and discussed in chapter three. In this context, studying the PDDH is important since it is the State body in El Salvador that is supposed to work with issues concerning the vigilance of the human rights of the population. As such it also has a crucial importance for the process of democratization of the Salvadorian society.

The study of the PDDH will be done by means of discussing the institution, treating its legal preconditions laid down in the peace accords signed in Chapultepec, the constitution, the law and the regulation governing its work, and possible problems based on those. This dissertation will shed light on the ways of work of the PDDH and the different practical problems it has faced and is facing while performing its task. In order to get knowledge about possible problems I have conducted several interviews with persons involved in human right issues in El Salvador. The dissertation will thus also mirror how the PDDH is evaluated by other actors on the Salvadorian human rights arena, such as non-governmental organisations, hereafter named NGOs, focused on human rights, politicians and others. Taken together these different foci will provide a basis for an evaluation concerning whether the institution can be said to have fulfilled the original expectations laid upon it. If not, was it ever able to fulfil these expectations considering the legal structure of the institution, the political will attached to it and the social environment it was to function within?

In this dissertation I will try to answer the following questions:

- What kind of problems, legal and/or political, does the PDDH face?
- How do other human rights actors in El Salvador see the PDDH?
- Has the PDDH contributed to the development of reconciliation and democratization in El Salvador?

This thesis is based on material gathered and interviews conducted during a two month long visit to El Salvador during the period October - December 2001. This study trip was financed with help from the Swedish International Development Agency, Sida, in form of a granted Minor Field Study scholarship.

The method used is a combination of literature studies and a more social science method based on so called deep interviews with relevant persons in order to get missing information and also to get their perspectives that way. The reasons for conducting interviews as a complement to a traditional legal method will be further discussed below. I would however say the major reason for the interviews is that it was clear from the very beginning that only studying the PDDH by means of a legal method would not be enough to gain a complete view. On the contrary, that would be misleading. As Giddings, Sladeczek and

Diez Bueso write:

*[I]n the world of the ombudsman it is hardly necessary to point out that laying down laws, rules, regulations and procedures is not the same as observing them...the acid test is whether **in practice** individual citizens are able to obtain justice and fair treatment in their dealings with the state and its organs.³*

To get information about how the institution has functioned and functions it was necessary to interview those who have experience of the work of the PDDH.

To analyse the legal foundations of the PDDH by means of a more traditional legal method has also proved impossible due to the lack of necessary material. The creation of the PDDH took place in the course of negotiating the terms of peace for ending a twelve year long civil war. Due to this there are no preparatory works to be found for neither the constitutional amendments nor for the actual law creating the PDDH. By interviewing signatories of the Peace Accords and reading different reports and literature treating the Peace Accords I have tried to reach an understanding for the ideological base of the PDDH. As will be seen further on the ideas around what is the ideological foundation of the PDDH differ however. I have not found any legal studies around the proper law of the PDDH, instead I have relied on different reports treating the PDDH. These reports however mostly treat the PDDH from an organisational theory angle, that is evaluating its internal structure and functioning, not discussing the legal frame. But also here the interviews have been important sources since many of the interviewed have been lawyers and have thus been able to give me a good understanding of what they see as problematic (or not) with the legal system. The last impediment to using a proper legal method lies in the lack of clearly documented practice. The “Informes de labores” issued by the different title holders of the PDDH are very disparate in their design and it is very difficult to get a clear view about how the work of the PDDH has changed over the years by looking at these reports. As will be seen later on in the dissertation the work of the institution has also in periods been conducted in a way that has hindered real documentation. Talking with representatives from human rights organisations that have co-operated with the PDDH as well as people having worked in it has been a great help to reach an understanding about how the institution has evolved. This is thus the reason for which I have chosen to tackle my task somewhat differently. This also mirrors the importance of the material gathered in the interviews. The people I have interviewed have all experienced the war, some by participating in the guerrillas some by working in the human rights field and others “only” by living in El Salvador during the civil war. They are now, most of them, in different leading positions. By asking them questions concerning the PDDH I think I dare to say that I have encountered the main spots of interest. Then of course there is always the possibility that other people would have argued differently and I would have reached other results if I had done more interviewing. Reading the presentation one has to remember, as always when deep interviews are used that the results are never generally

³ Giddings Philip, Sladeczek Vladimir and Diez Bueso Laura (2000) p 457

applicable to others and never should be treated as such.

The time I had in El Salvador as well as the aim and scope created the limits for the number of interviews carried out for this dissertation.

When interviewing representatives from NGOs I asked questions addressing certain themes to be able to notice any possible differences in their answers and compare them. These questions have been kept as open as possible in order not to conduct the answers given in an inappropriate way. I have asked questions similar to the following:

- Has the PDDH lived up to the expectations laid down in the Peace Accords e.g. to contribute to reconciliation and democratization in El Salvador?
- Is the PDDH an indispensable institution today?
- Are there any problems connected to the institution?
- Are there any inherited problems in the Salvadorian constitution or in the law governing the functioning of the PDDH?
- What is the great challenge for the PDDH from now on?

These questions have shown to be open enough to give the interviewed people room for expressing their own thoughts around the institution and have at the same time allowed me to get the answers focused on what interested me most.

In the interviews with people representing different parts of the PDDH itself I focused on getting factual answers which otherwise had been very difficult to get. I will present the results from the interviews in two ways; if I have derived factual information from an interview I will present it where suitable in the dissertation and the personal statements given through the interviews will be presented in chapter eight.

In choosing the people to interview I have used the snowball method, starting with the proposals of people who work in the human rights field. Then I followed up the suggestions of those interviewed on other possible people to interview. I have aimed at an even representation of different opinions, this however has been difficult to achieve. I acknowledge though that I may have a certain “left-wing” tendency among the interviews, or at least it would be considered so from the opposite Salvadorian side, something that I have taken into consideration both when presenting the factual background and later in my analysis. This has had to do with the possibility and impossibility I had to interview certain persons due to contacts made once in El Salvador. One also has to take into consideration that El Salvador is a country with a relatively small population and, as is the case in Sweden or any other country, those who are prominent in one area have a tendency to know other prominent people active in the same field.

During my stay in El Salvador I discussed the PDDH with several people other than those formally interviewed. This helped me to formulate the questions asked and to get an adequate understanding of the problems involved before conducting the formal interviews.

During my investigation I met with certain difficulties. First of all when it came to collection of materials other than interviews. The way the material, such as documents concerning preparatory work, law amendments etc., was stored in different archives in San Salvador made it very difficult for me to be sure whether I had managed to obtain all the existing material or not. The filing system of certain libraries left a great deal to be desired in that aspect as well. It must not be forgotten either that preparatory works are not as important for law interpretation in El Salvador as they are in Sweden nor does there exist a principle of public access to official records, which of course contributes to the unavailability of certain material. Nevertheless I do think that with the material I managed to assemble I have been able to support my conclusions sufficiently.

3 Protection of human rights as a tool in democracy building

The transition from authoritarian rule to formally democratic regimes poses a major challenge: the establishment of a legitimate democratic order grounded in justice and respect for human rights.⁴

As was pointed out in the previous chapter, one of the aims of this dissertation is to find an answer to the question if the PDDH by its existence and work has contributed to the development of democratization in El Salvador. In order to be able to discuss this it is necessary to know what is meant by the terms democracy and democratization. Considering that the PDDH is an institution that was created to protect the human rights of the Salvadorian population it is also necessary to explain the concept of human rights. The concepts of human rights and democracy are both subject to different interpretations. As will be shown the spheres of the two overlap to a great extent. In order to further on in this chapter be able to discuss the relationship between democracy and human rights, the concepts of *human rights* and *democracy* will first be discussed.

3.1 Human rights

What is basically a human right? It is an expression that is widely used, but often without too much carefulness and precision. Sometimes the term seem to be used to include all things a certain person thinks that he or she is entitled to for various reasons. Other times a narrow definition is used.

One can start from the acknowledgement that the concept of human rights is a construct born out of certain occurrences and cultures. Manuel Antonio Garretón defines human rights as a “historical-cultural construct centring on the ‘right to life’”. Naming certain values human rights is a struggle born out of a will to make values and privileges general that originally belonged only to certain groups.⁵ This reasoning can be exemplified by looking at the right to vote, viewed today as one of the fundamental civil and political rights but not long ago a privilege of only the wealthy, and even closer in time - only of men.

An internationally recognized view is that the notion of human rights encompasses the rights included in the so-called International Bill of Human Rights. The International Bill of Human Rights is the collective name for the Universal Declaration of Human Rights, UDHR, and the covenants making legal its content. These are the International Covenant on Civil and Political Rights, CCPR, and the International Covenant on Economic, Social and Cultural Rights, CESCR. Also included in the International Bill of Human rights are the rights expressed in subsequent instruments adopted by the UN General Assembly.⁶

The different rights that first were expressed in the UDHR were later divided into groups: civil and political rights on one hand and economic, social and cultural rights on the other. In the covenants from 1966 these different groups were separated and there is an ongoing discussion on whether they should be

⁴ Jelin Elizabeth (2000) p 117

⁵ Garretón Manuel Antonio (1996) p 39

treated differently or not, and if they are differed from each other, to what extent this can be done.

There do exist several documents that strengthen the theory of the integration of all human rights. During the drafting process of what turned out to be two different covenants, the CCPR and the CESCR, the United Nations Commission on Human Rights was split between the opinion of creating one integral covenant or two separate. When the question was turned over to the General Assembly for its opinion, the Commission was advised to adopt but one covenant in a resolution where the General Assembly stressed the interdependence of all human rights. Before this was finally decided however, the Commission decided for two covenants under the influence of the Western member States.⁷ In 1968, in the Declaration of Teheran, the view of interdependence of all rights was again expressed. This document served as a stepping stone for the UN in developing this theory further. In the declaration it was stated that without the enjoyment of the economic, social and cultural rights it would be impossible to realize the civil and political rights.⁸ This idea was also clearly stated in the final document from the Vienna conference on Human Rights “The Vienna Declaration” which said that all Human Rights are universal, an undivided whole, connected and mutually dependent.⁹ Viewing how the different categories of rights have been integrated into later human rights instruments such as the Convention on the Rights of the Child further strengthen the view of human rights as equals.¹⁰

Not all people do however share the view that the social rights ought to be included in the notion of human rights. David Miller, professor in political theory at Nuffield College in Oxford argues about a thin list of rights being human rights rather than a thick list including the economic, social and cultural rights. His reason for dividing the rights this way is that he argues that it is of greater value to find a common basis of rights. This way all peoples and cultures in the world could embrace a thin list of rights and other rights could be viewed as citizen rights that can vary from country to country. As he argues, nothing hinders the countries to try to persuade the others about the importance of assuring their inhabitants these benefits, but imposing them as rights will only hinder co-operation.¹¹

As will be seen further on, in the case of the PDDH in El Salvador, the scope given to the concept human rights is wider than a strict treaty based view. I am convinced that the reason for this is to be found in the history and actual situation in the country. This wide notion may, as will be explained later on, be a source of problems for the PDDH, but is somehow logical given the context the institution is placed to work within.

⁶ Eide Asbjörn (1995) p 21

⁷ Eide Asbjörn and Rosas Allen (1995) p 15

⁸ Rodríguez Rescia Victor (2001)

⁹ Kirilova Eriksson Maja (2002) p 15 f

¹⁰ Eide Asbjörn and Rosas Allen (1995) p 24

¹¹ David Miller, Human Rights in a Multicultural World, Head speaker during the Human Rights days held in Stockholm November 18th -19th 2002.

3.1.1 Civil and political rights

The civil and political rights laid down in the ICCPR can be classified in various ways. Henry J Steiner and Philip Alston have made a classification dividing the civil and political rights into five categories:¹²

1. Rights concerning protection of a person's physical integrity such as those laid down in provisions against torture, arbitrary arrest and arbitrary deprivation of life.
2. Rights concerning procedural fairness when an individual is deprived of liberty by the State such as provisions on arrest, trial procedure and on conditions that shall be met when a person is imprisoned.
3. Norms concerning equal protection notwithstanding racial, religious, gender and other factors.
4. Rights on freedoms of belief, speech and association such as provisions on political advocacy, the practice of religion, press freedom and the rights to hold an assembly and to form associations.
5. The right to political participation.

This categorisation can be said to show the whole spectra of the civil and political rights. This by going from the most widely embraced under the first point and then descending step by step until reaching the fifth point, the right to political participation, which is far from being as well defined, recognized and protected as for an example the prohibition of torture. That arbitrary killings and torture is something that no democracy should be involved in is almost seen as a truth but moving towards the issue of equal treating there are voices heard among the international community that these provisions may be altered due to religious considerations etc.¹³

3.1.2 Economic, social and cultural rights

The economic, social and cultural rights are somewhat more difficult to classify in the way that was done above with the civil and political rights. They very much have to do with what can be described as assuring a “liveable” life, that later will be more discussed, translated into rights that allow a certain living standard and social security when it comes about health, housing, work, education etc. Asbjørn Eide discusses the role of the State in the fulfilment of economic, social and cultural rights arguing that it is not necessarily so that the State has to be the sole provider of these rights. Instead he puts forward the importance of viewing the individual as *“the active subject of all economic and social development”*. As such the individual is *“expected, whenever possible through his or her own efforts and by use of own resources, to find ways to ensure the satisfaction of his or her own needs”*.¹⁴ The obligations of the State can be divided into three key areas, respect, protection and

¹² Steiner Henry J. and Alston Philip (2000) p 145 Their categories have here been slightly reworded although they closely follow the original formulations.

¹³ Steiner Henry J. and Alston Philip (2000) p 145

¹⁴ Eide Asbjørn (1995) p 36

assistance/fulfilment. These are more practically translated into the obligation for the State to respect an individual's resources as well as his or her various freedoms, such as the freedom to take necessary actions to assure that his or her needs are satisfied. The State then as a second step has to protect the freedoms mentioned above when their due exercise is threatened by for example powerful economic interests. This part of State obligation and the mechanisms for its exercise is usually regulated in national law. Thirdly the role of the State, regarding assistance and fulfilment, translates into different measures undertaken by the State. Eide exemplifies this by talking about taking steps to improve measures of production of food, having social security programs and in its extreme providing direct food aid to people risking starvation.¹⁵

3.2 Democracy

Defining democracy is not easily done and there exist multitudinous definitions more or less wide in their scopes. This is not the place to discuss the term democracy in all its theoretical facets, why I will deal with the subject perhaps a bit superficially.

In the definition of democracy opted for in this dissertation there is a focus towards participation, not only in elections for governments but also in the societal life. A definition that points out the importance of feeling part of, taking part in and collaborating with others while making the decisions inflicting on the individuals lives. Beetham stresses the understanding of mutual interdependence and the need for different groups and points of interests to negotiate in order to reach solutions on problems common for both parties as something entailed in democratic politics.¹⁶

In order to make the effort and wasting time on participating one has to feel the usefulness of the act and some feeling of belonging to a certain community, citizenship, or sphere of interest, otherwise why bother? Robert D. Putnam writes in his book *Making Democracy Work. Civic Traditions in Modern Italy* about the importance of what he calls social capital in order to make democracy work. Social capital signifies the existence of civic spirit among the citizens. This civic spirit results in several positive side effects. People take an interest in the institutions of the State since they find them important, trusting them to be able to deliver them a certain good. Not as a result of a specific action committed by the individual but because of the citizens' need for that good. In societies where there is little social capital the result is distrust regarding the possibility that the institutions of the State will do anything good for the individual and therefore there is also no incentive to take an interest in the institution. The existence of social capital is very important in order to create a strong democracy with strong well functioning institutions. Social capital in a society in the form of trust, norms and networks between the citizens is in itself self-reinforcing while the opposite is the situation in societies lacking this civic spirit. In the latter situation the individual lacks the incentive to

¹⁵ Eide Asbjørn (1995) p 37

¹⁶ Beetham David (1999) p 17

work for a change since he/she cannot possibly do this alone. In this situation the mere strategy of not cooperating with anyone beside those from the person's inner circle of family members or allies is in itself a rational strategy in a situation where there seems to be nothing else that is feasible. This can be compared with the so called "prisoner's dilemma".¹⁷ This is thus the reason why I find the term "inclusion" a necessary part of the explanatory terminology for democracy.

I would thus opt for, for the purposes of this dissertation, defining democracy as a system:

- where the inhabitants of a certain country are free to elect their representatives in order to influence on the decision making process of the State,
- where they also, between elections, can exercise control over these elected by an institutionalized system of control mechanisms, and
- where the inhabitants have the incentive to do so by being assured crucial rights and by feeling as parts of that society.

Democratizing a society would thus mean several things. One of these would be to assure that free and fair elections can be held so that the inhabitants are able to influence on the decision making process. It also signifies assuring that certain rights of the population are upheld and protected by increasing and improving the control mechanisms at the inhabitants' service. And finally, to make sure the inhabitants are not alienated, but rather feel part of and feel an urge to take part in society. This latter would be achieved by making the inhabitants take part in the organisations, spheres of interests etc. to a greater extent in order to influence on societal life, but also to allow their opinions to be heard and responding to them. By viewing the term democratization this way it stands clear that it comes about a process which is never totally finished. There does not exist a fully democratized society but rather a society that in its process of democratization has reached more or less far.¹⁸

In order to make such a construct it is of great importance to also discuss in which form human rights are to be included in the notion of democracy. This since it is not too controversial to claim that the question of feeling included or excluded from influence many times is a question of having the possibility of choices. These choices may be manifested in political elections as well as in the choices related to every day life. This translates into how a person effectively can lead his or her life: working options, what possibilities there are of organizing oneself, medical and educational possibilities available etc. The question on how human rights and democracy interlock will be discussed in the following section.

3.3 How human rights and democracy interlock

¹⁷ Putnam Robert D. (1997) p 213 f

¹⁸ Beetham David (1999) p 69

Democracy and human rights have traditionally been seen as academically belonging to two different spheres, the study of democracy to political science and the study of human rights to the field of law. This distinction however is increasingly losing validity. Today one is more and more forced to see democracy and human rights as two intrinsically connected concepts and there is thus a need to study these together and see them as mutually reinforcing. The concept of human rights is an evolving one and it is of great importance to view and discuss all kinds of human rights as part of the democracy term. The traditional "democratic" human rights, those expressed in the international covenant on civil and political rights can not remain theoretically distanced from the cultural, economical and social human rights when they are not in practice. There does exist a very important practical connection between these, which as many would argue, makes it unreasonable to name a State democratic where a great part of its population does not participate in general elections. This if the reason for that is that they are hindered from doing so by the non-fulfilment of their economic, social or cultural rights. That is, they simply cannot afford to travel to the election hall or they cannot read and therefor have not been able to profit by the information from the competing candidates. Beetham argues that:

One of the criteria of a democratic society is that its associations should be internally democratic, as well as that it should provide the socio-economic conditions for political equality to be realized in practice.¹⁹

This argumentation is based on the vision of democracy and human rights as overlapping spheres that partly but not entirely cover the same subject.

In the relationship between democracy and human rights there does exist a slight difference between the different groups of rights; the political and civil on one hand, and the economic, social and the cultural on the other. This difference makes it reasonable to discuss them separately before reaching for the common features. The civil and political rights are integrally a part of any democracy, without these rights one could hardly claim the existence of democracy, the economic and social rights and democracy have a relation more of interdependency while the cultural rights somewhat challenges the traditional concept of democracy.²⁰ The cultural rights will not be discussed in the following although much of that which is valid for the economic and social rights is equally valid for the cultural rights.

In the following the respective connection of the different groups of human rights with democracy will be

¹⁹ Beetham David (1999) p 5

²⁰ Beetham David (1999) p 114 When it comes to the last group of the human rights, the cultural rights, these are neither considered as given nor easy to fit into the notion of democracy. In countries with big minorities formed by indigenous communities there can exist a certain conflict between on one hand the traditional democratic demand on individual rights and majority rule and on the other individuals' rights to influence their own situation as part of a collective. In several of the Latin American countries this complex of problems is actualised, not least in Mexico and Guatemala, due to the increasing awareness of the rights of the indigenous groups and the fact that these groups are assuming more public space. In El Salvador though there is hardly any remaining "pure" indigenous population today which lessens the real daily importance of the cultural rights.

discussed.

3.3.1 Civil and political rights and democracy

Looking at the notion of democracy discussed above in section 3.2, in sum the view of democracy as *a participatory decision-making system with certain control mechanisms at the citizens' service*, I would argue that the civil and political rights as presented by Steiner and Alston in section 3.1.1 all ought to be included in this definition. Even a very narrow view on what constitutes democracy includes some of the core civil and political rights, the right to expression and the right to vote on the party or person one prefers. That one has to be able to do this without fearing for one's life is not a matter of controversy either. This group of human rights tends to be officially recognized as such by most people, and even the roughest regime tends to pay at least lip service to these rights. Practice however shows that they are still subject to violations in many parts of the world, which is a proof that the UNHR still has not gained worldwide acceptance.

There is however taking place a transformation of the human right concept. If the very right to life anterior was viewed as an expression of a right of survival today the perception has shifted towards viewing it as a right to a "good" or "liveable" life.²¹ This leads towards the possible inclusion of also the economic and social rights both as true human rights and also as natural parts of a democratic society. Why that is so will be discussed in section 3.3.2.

3.3.2 Democracy and economic and social rights

Talking about a necessity of fulfilment of economical and social rights for the existence of a democracy does not merely have to do with a somewhat humanistic idea that the inhabitants of a particular State should be guaranteed sufficient means in order for that State to enjoy the privilege to be called a democracy by the international community. It also has to do with the very foundations of democracy and what constitutes it. If social and economic rights are not fulfilled in a sufficient way this can, according to Beetham, cause damage to democracy itself in different ways:²²

- It can undermine the citizenship status of the unprotected, diminishing their capacity of exercising their civil and political rights together with others
- It can cause a diminished public life quality for all because of the loss of security to property and person which per se increases repression
- It erodes the legitimacy of democratic institutions in the eyes of the citizens. Taking a long view this erosion can cause an increased vulnerability to subversion.

²¹ Garretón Manuel Antonio (1996) p 53

In the case of El Salvador one can see that the above-mentioned points are highly actual. As will be shown further on, a great number of people live in poverty. That fact serves as a practical hindrance for them to take part in the political life as well as in other areas important in a society such as education for their children, health care etc. Such a society creates great gaps between different social levels, gaps extremely difficult to transgress for the individuals. It also creates an ambience of mutual distrust.

In countries with less resources there exists one factor that further complicates the reasoning of fulfilment of human rights, that of the factual possibility in financial terms. Complying with the fulfilment of the human rights creates costs for the government in question. This is particularly easy to see when it comes to fulfilment of the economic and social rights, but naturally exist for all categories of rights. Assuring the legal rights of the individuals naturally create costs for well-educated judges, for attorneys etc. These costs are substantial for all countries, schools cost, costs for providing health care etc. This leads to prioritizing, a task especially tough in developing countries where the unfulfilled rights of the population tend to be enormous and the budget limited. As Roberto d'Auibuisson, ARENA, argues talking about the budget of the PDDH:

When there exists a sufficient number of courts in the country and there is no need for constructing more, when there as a result is a surplus of money then we can give less to the Supreme Court and more to the 'Ministerio Público', ... when there are less cases of respiratory illnesses among the population and the hospitals do not have a cost of 350 million colones for attending to these illnesses ... if they went down we could reallocate between the institutions...²³

That is the never ending necessity to give priorities since there rarely exist sufficient funds for covering the costs for the human rights obligations assumed by the State. Then article 2(1) of the CESCRR is important to remember²⁴ - the fulfilment of the economic, social and cultural rights is not anything that should be done from one day to another but something that the States progressively shall achieve. It is though, of great importance never to forget that the State cannot always justify its failures on this field with lacking resources. It also has to prove that it not simply gives priority to other areas such as the military, thus disregarding the cost of the economic or social rights of the population. The expenditures in other areas must have certain reasonability if the State is to be released from responsibility of violating its citizens' economic and social rights. According to article 2(1) the States have to *take steps, individually and through international*

²² Beetham David (1999) p 102

²³ Interview with Roberto d'Auibuisson. My translation, in original "Cuando ya haya suficientes juzgados en todo el país y no se tengan que hacer más juzgados que va a sobrar dinero y la podemos dar menos a la Corte Suprema de Justicia, y darle más al Ministerio Público, cuando haya menos incidencia de enfermedades respiratorias en la población que el salud pública ya nbo anda con 350 millones de colones en atender consultas por enfermedades resiratorias... entonces al reducirse estas se puede trasladar entre las instituciones."

²⁴ Article 2(1) of the CESCRR reads: Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present

assistance and co-operation, especially economic and technical, to the maximum of their available resources. Only looking at the GNP of a country is rarely enough to see whether it may or may not have means sufficient to provide its population with certain things. Here the linkage between democracy and human rights is clear. Eide stresses that what really matters are the resources available to the State. A State may in theory be wealthy, but if resources are not fairly equally distributed the State may experience problems assuring the basic needs of great masses while a few are sitting on great wealth.²⁵ This demonstrates once again the intrinsic connection between economic, social and cultural human rights and democracy.

A base for the notion of democracy is political equality, transformed into the practical outcome that each person has equal weight in a political society notwithstanding economic wealth. This notion is seriously challenged if this theoretical equality is restrained by an unequal distribution of actual possibilities to make effective personal choices. The possibility to vote is but one of the possibilities to make a personal choice. If only a small number of inhabitants have a wide range of resources and the rest do not, that challenges the political equality since it effectively hinders any true exercise of that equality.²⁶

In El Salvador the crime rates are alarmingly high, among the highest in the world when it comes to homicides. It is not farfetched to see these numbers as an outflow of the desperate situation where many young poor people see few other feasible options of making their living than by way of crime. A high rate of crime per se creates an ambience of insecurity for all. In El Salvador today there exist a great number of weapons out in the streets, which of course does not diminish the risk of people getting seriously hurt or killed at e.g. a robbery. Of course in this case there is also the legacy of the not long ago-ended war and its psychological impact on human behaviour. If the citizens feel that they are not given even the smallest possibilities of improving their lives, what impetus do they have to believe in the authorities and the institutions?

3.3.3 Human rights violations of the past inflicting on the democracy of today

Human rights play a very important role in transitions to democracy, not only as an impetus to struggle for, but also as a sphere of influence, which is normally altered in some way. There are thus several human rights problems to be confronted and solved in a transition to democracy. One central problem is how to respond to the human right violations of the past regime. The future is often looked upon as unproblematic in a human rights perspective since once the former regime is removed the respect for the human rights are erratically seen as a natural result. A more realistic reasoning acknowledges the existence of problems connected with the past, what one could call the inheritance or legacy of the previous regime. Antonio Manuel Garretón talks about four legacies where one can see human rights problems as one of

Covenant by all appropriate means, including particularly the adoption of legislative measures.

²⁵ Eide Asbjörn (1995) p 39-40

those together with the institutional legacy, the political actors and a generalised presence of authoritarian values in the society.²⁷ If this legacy is not completely dealt with and transformed it will serve as an obstruction for democracy threatening the democratic constructions of the new order.²⁸ As will be seen further on all of these four legacies can be found in post war El Salvador and are still visible although to a varying extent. It will be shown further on how the legacy from the past clearly has impeded and continues to impede the well functioning of the PDDH.

The human rights issue in transitions to democracy is not simply a problem of the past, it transforms into a problem of “right now” when one has to deal with the human rights problems of the past. Garretón explains this referring to the existence in society of differing rationalities or logics that create differing views on the present situation. The views on how to confront the human rights problems divide, according to him, into belonging to either of these two ‘logics’: the *ethical-symbolic* logic or the *politico-statist* logic. The ethical-symbolic rationality focuses on the ethical and moral issues, reparation for the victims including convictions for the people guilty of human rights abuses, diffusion of information about what really happened during the conflict. This rationality is often strongly embraced by the people who worked for human rights during a war or an internal armed conflict. Garretón explains this by noting that this logic reflects the principle of the struggle against authoritarianism and military regimes. This struggle was usually conducted or encouraged by the human rights movement and these are thus favoured by this rationality. Due to this the struggle for human rights and that for democracy are intertwined and blurred resulting in human rights being identified with democracy and the latter even subordinated to human rights. While the ethical-symbolic logic focuses on the truth and diffusion of information, the so-called politico-statist logic concentrates on the building of a democratic regime. The establishment of democracy is seen as a necessity for solving the human rights problems of the past regime as well as the guarantee for avoiding violations of human rights in the future. The focus of this rational lies in construction and consolidation of democracy and those representing this rational are thus less prone to actions that might endanger the stability of the democratization process. The people in favour of this rational are usually to be found among the political actors and thus within the State apparatus. The difference between the two rationales may seem a very theoretical one but, as Garretón writes, this contradiction will turn into an open conflict between on one hand the State actor representing the democratic government and on the other hand the social actor constituted of the human rights movement.²⁹ As will be seen by the interviews later on I have found this conflict to be everything but a theoretical one in the Salvadorian case where one can see that the NGOs and the PDDH differ widely in their conceptions about the way the PDDH should perform its task. I also saw a tendency among several of the representatives of the NGOs I interviewed to plead for the NGOs to gain more influence over for example the election of the ombudsman, whereas the current

²⁶ Dahl Robert A. (1990) p 89-90

²⁷ Garretón Manuel Antonio (1996) p 40

²⁸ Garretón Manuel Antonio (1996) p 41

²⁹ Garretón Manuel Antonio (1996) p 41

ombudsman strongly contradicted this reasoning.

Over the last two centuries several of the countries on the American continent have got rid of authoritarian non-democratic leaderships, being dictatorships or not. As was pointed out earlier in this section societal life tends to remain influenced by these former regimes due to the legacy they left behind. The question on how to respond to the human rights violations of the former regime is something that has an influence on the democratic consolidation in several countries, among those El Salvador.

A new democracy often has to handle a population torn between radically different views of the past and how to treat what happened in the country. Is the solution to punish, forgive, forget or even to remember with regret what was? Elizabeth Jelin asks the question whether “¡Nunca más!” (Never again!) is a condemning of the past or a program for the future. She poses two ways of confronting this question against each other; the one where human rights violations are seen as something connected with the former regime, the result of which is to ask why they are to be given much attention during the new ruling. What needs to be done is simply to reform those institutions, often the military and the judicial system, that failed in respecting and protecting the human rights of the population. If the violations of the human rights on the other hand are viewed as part of the historical evolution, an evolution that continues with the new regime, it is of great importance to deal even with the individuals that committed the violations and to try them in courts.³⁰ Looking back at the two rationales discussed by Garretón one can view choosing for the first option as an expression of the politico-statist logic aiming at democracy construction as the primary goal. Choosing to view the reality from the point of departure of the second alternative would mean aiming at the ethical-symbolic rational. Looking at the way El Salvador has handled its past it is clear that in the years after the Peace Accords in practical actions the politico-statist logic predominated while voices, often represented by NGOs, continue to claim actions according to the ethical-symbolic rational. This will be discussed more in section 5.2.

Several Latin American countries chose solving these problems due to the transition from military (alt. authoritarian) rule by creating amnesty laws, something that in principle meant the hushing up of further discussions concerning guilt and responsibility for human rights violations. These momentary solutions have proved to be just that, effective in the short run but in a more long term perspective they can be strongly questioned as the basis for a democratic government. Diamond, Hartlyn, Linz and Lipset are of the opinion that amnesty laws can only be accepted, as a pragmatic solution, as long as the military constitutes a true threat that has to be disarmed. These laws however lose their *raison d'être* as soon as the power of the military is lessened and new officers replace the old ones.³¹

³⁰ Jelin Elizabeth (2000) p 120

³¹ Diamond Larry, Hartlyn Jonathan, Linz Juan J. and Lipset Seymour Martin (1999) p 23

4 Factual background, El Salvador

4.1 Country facts

El Salvador, neighbouring Guatemala, Honduras and Nicaragua, is the smallest country in Central America, as well as the country of the region with the highest density of people. The majority of the population of 6 million lives in the countryside. A striking demographic feature is that an estimated 50 percent of the population is under the age of 15. On the Human Development Index based on the figures of 174 coun-

tries El Salvador is in 107th place.³²

El Salvador was granted independence in 1841, but it took almost one hundred years before the first free elections were held in the country in 1931. This did not mean the beginning of democracy but was rather a short period of sham democracy that only lasted for a short period until the military took over and ruled the country in a partial alliance with the Salvadorian oligarchy until the civil war started.³³

Latin America in general is a continent where violence and crimes involving violence are not rare. El Salvador is a country where this situation is taken to its extreme, the country is by some sources named the number one country when counting homicides per capita and has been characterized as the most violent country in the world.³⁴ This situation has several explanations, one of them is the gang-situation that has evolved after the ending of the civil war with gangs, “maras”, fighting each other and causing many casualties. The situation has worsened by young second generation Salvadorians returning, often expelled, from the USA carrying with them gang customs and facing no feasible future in El Salvador. Another factor is the great quantity of arms floating around in the society after the war. Not all arms were returned and destroyed and now many of the Salvadorians walk the streets armed.³⁵ The problematic situation with the police force has done nothing to improve the situation, rather there have been estimations made that as much as a 16 per cent of the now rather common kidnapping cases have involved participating policemen.

The structure of the Salvadorian economy in the year 2000 was to a great extent dependent on the service sector, which occupied almost 60 % of the total GNP of the country. The service sector had a big share of the total GNP already in 1980, but as can be read from the table below today’s increased share it is very much at the expense of the agricultural production.³⁶

Table 1 Structure of the economy³⁷

(% of GNP)	1980	2000
Agriculture	38.0	10.1
Industry	21.9	30.2
Manufacturing	16.5	23.4
Services	40.1	59.6
Private consumption	71.8	88.0
General Government consumption	14.0	10.2

³² Sida, landfakta El Salvador (2000)

³³ Sida, landfakta El Salvador (2000)

³⁴ Domingo Pilar and Sieder Rachel (ed.) (2001) p 42

³⁵ Rodríguez Rescia Victor (2001)

³⁶ El Salvador at a glance http://www.worldbank.org/data/countrydata/aag/slv_aag.pdf

³⁷ El Salvador at a glance http://www.worldbank.org/data/countrydata/aag/slv_aag.pdf

Imports of goods and services	33.2	42.7
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The level of poverty among the Salvadorians is a matter of concern. In 1999 the total amount of households in poverty³⁸, either relative or extreme, mounted a 41.3 % and the share of the population living in poverty was a striking 47.5 %. The situation is most alarming in the countryside where in 1999 61.2 % of the population lived in poverty compared with 37.6 % in the cities.³⁹

The political party in power in El Salvador is the right-wing National Republican Alliance, ARENA, which controls both the presidential post, now held by Francisco Flores, as well as it is forming the government. The party that occupies the highest number of seats in the parliament is however the FMLN, the former guerrillas, that after the peace accords transformed itself into a political party. ARENA, though, can rely on the support for their politics from representatives of several other conservative parties with a small parliamentary representation such as for example the Party of National Conciliation, PCN and the Christian-Democratic Party, PDC. In total the Parliament consists of 84 members elected for a three-year term. The president is elected for a five-year term.⁴⁰

4.2 The civil war

Why did the civil war in El Salvador start? Of course there existed many factors, which together formed the chain that led to the outburst of violence, but a pattern is quite easy to distinguish. What stands out, as a mayor explanatory factor is the economic and hence social structure of the Salvadorian society.

the origins of the political crisis grew out of an incomplete and exogenous modernization process in a society which systematically generated exclusion at all levels.⁴¹

The exclusion mentioned above was manifested both in economic marginality, social segregation and political repression. The exclusion of the great majority of the population alongside an increased economic growth during the 20th century increased the discrepancy between the dominant sector, the owners of the coffee plants, and the rest of the Salvadorians.

In order to curb peasant uprisings the coffee growers joined ambitions with the military of El Salvador already in the thirties. This was especially a result of the uprising in 1932 when the peasants were subdued

³⁸ Poverty was then measured according to the method used by the World Bank where a person lives in poverty when he/she can get the strictly necessary alimentation but cannot pay for other basic needs such as housing, education and health

³⁹ Informe sobre desarrollo humano 2001 p 115-116

⁴⁰ URL. www.asamblea.gob.sv

⁴¹ Torres-Rivas Edelberto (1997) p 209

with such brutality that the occurrence was named *la Matanza*, in English translated with the Slaughter.⁴²

A civil war is of course usually neither the result of one or two factors, nor of one important historic event. It may even be difficult to explain the two questions *why?* and *why then?* adding more explanatory factors. In the case of El Salvador though certain social, economical and political patterns create the basis for a reliable explanation. Certain factors coincided and these were:⁴³

- an economic elite in control of the expanding export-crop (coffee) economy
- a political structure which excluded the great majority of the population
- a growing consciousness among the peasants starting in the early 70s
- the creation of different revolutionary groups launching attacks against the regime in power
- failure of the political and economical elite to change the system
- the inspiration from the revolution in Nicaragua

In El Salvador the economic power has traditionally been in the hands of a few people. Torres-Rivas writes about 30 family groups occupying the capital sector.⁴⁴ This oligarchy together with the military formed a strong union, which controlled the society both economically and politically. The army did not only control the political power, it occupied it, by way of creating in 1961 a political party, the National Conciliation Party, PCN. There was still some space of manoeuvre left for the Christian Democratic Party, which could be shown off as a sign of democracy. This lasted until the elections in 1972 when the military installed its own candidate as president instead of José Napoleon Duarte, the candidate of the electoral pact led by the Christian Democrats in an evident electoral fraud. By acting as it did the military had simply gone too far, and the balance of the oligarchic structure was shaken. This paved the way for violence. The government repression in order to sustain the previous order of things was hard and the political disillusion was the breeding ground for the construction of different insurrection groups.⁴⁵

The insurgent groups in the war formed the Farabundo Martí National Liberation Front named after the famous communist leader who died in the uprisings that ended with *la Matanza* in the 30s. The FMLN was thus a sort of umbrella organisation for five guerrilla groups. These were the Popular Forces of Liberation (FPL), the People's Revolutionary Army (ERP), the Armed Forces of National Resistance (FARN), the Armed Forces of Liberation (FAL) and the Revolutionary Party of Central American Workers (PRTC). The different organisations differed in methods and ideologies, which naturally influenced the forming of the political party, the FMLN, after the Peace Accords, and thus still constitutes a hindrance of influence

⁴² Torres-Rivas Edelberto (1997) p 209-211

⁴³ Byrne Hugh (1996) p 17

⁴⁴ Torres-Rivas Edelberto (1997) p 212

⁴⁵ Torres-Rivas Edelberto (1997) p 213-214

in the political sphere of today.

5 The peace accords of Chapultepec

Between 1980 and 1991, the Republic of El Salvador in Central America was sunk into a war that drowned the Salvadorian society into violence, killed thousands and thousands of its people, and marked it with horrifying crimes, until 16 January 1992 when the voluntary reconciled signed the peace treaty in the castle of Chapultepec in Mexico, and turned on the light to enlighten the path from insanity to hope. ⁴⁶

⁴⁶ Informe de la Comisión de la Verdad para El Salvador (1992-1993) p 3 My translation, in original “*Entre los años de 1980 y 1991, la República de El Salvador en América Central estuvo sumida en una guerra que hundió a la sociedad Salvadoreña en la violencia, le dejó millares y millares de muertos, y la marco con formas delincuenciales de espanto, hasta el 16 de enero de 1992, en que las voluntades reconciliados firmaron la paz en el Castillo de Chapultepec, en México, e hicieron brillar de nuevo la luz, para pasar de la locura a la esperanza*”

In the Peace Accords culminating in the signing of the final Accords in Chapultepec a series of institutions were reconstructed or created to form the basis on which democracy and reconciliation between the Salvadorian people were to be built. In the preamble of the Accords the government of El Salvador and the FMLN stressed their intention to end the conflict, to promote democratization of the country, to guarantee the strict compliance of the human rights and to reunify the Salvadorian people.

5.1 Background of the peace talks

In 1992 in Chapultepec, Mexico, representatives of the Salvadorian government, formed by representatives of the right wing party ARENA⁴⁷ and the military and the FMLN, finally signed the peace accords that ended the civil war, which had lasted for a decade. The accords of Chapultepec though were the final outcome of a series of accords that regulated the conditions for ending the war.

The formal beginning of the peace process is the *Accord of Esquipulas II* signed 7 August 1987. This consisted of a global plan for peace for the entire “istmo”, i.e. the countries of Central America⁴⁸, designed by the president of Costa Rica, Oscar Arias. This plan consisted of promotion of a national dialogue, a general amnesty, cease-fire, celebration of free and lawful elections, the non-acceptance of insurgent groups and irregular armed forces and a compromise to hinder the use of the territory of the different States in order to destabilize the other countries.⁴⁹

The different accords that concerned only El Salvador preceding the accords of Chapultepec were: the *Accords of Geneva* 4 April 1990, the *Accords of Caracas* 21 May 1990, the *Accords of San José about Human Rights* 26 July 1990, the *Accords of Mexico* 27 April 1991, the *Accords of New York* 25 September 1991, The *Act of New York I* 31 December 1991 and the *Act of New York II* 13 January 1992. In these accords the preconditions for the final peace were slowly prepared in order to create the possibility for the final peace accord, which was signed in the Mexican town Chapultepec 16 January 1992. With this the civil war finally came to an end after twelve years of armed combat.⁵⁰

What happened in the Peace Accords was actually something rather unique. Ending a civil war without one of the combating parts being defeated is rare, but this was exactly what happened in El Salvador. There are several explanations why a negotiated solution was possible. One of them that seems convincing enough is put forward by Vickers quoted by Hugh Byrne. Vickers claims that certain conditions combined

⁴⁷ Alianza Republicana Nacionalista

⁴⁸ The Spanish word istmo signifies a strip of land uniting two continents, or a peninsula with a continent. In this case the term refers to Central America that joins North and South America.

⁴⁹ Los Acuerdos de Paz p i

⁵⁰ Los Acuerdos de Paz

are prone to result in a negotiated peace. These are:⁵¹

- none of the combatants perceive the possibility of a near-term victory
- there are high immediate costs to continued fighting perceived by all combatants
- all parts feel an uncertainty concerning the possibility to maintain resources enough to avoid being defeated in the medium and long run

In the case of El Salvador two events are often considered as having been decisive for the final initiation of the negotiations. Firstly, the, for the military, unexpected strength showed by the FMLN in the offensive in 1989 when the guerrillas entered San Salvador. Secondly, the extremely brutal murder of six Jesuits, their housekeeper and her daughter, performed by the military on the UCA campus the same year, was simply going too far.

5.2 The contents of the Peace Accords⁵²

The Peace Accord can be viewed as a packet of institutions and measures assembled to prevent a new war. El Salvador was in great need to be democratized something that the country had no previous experience of. This also means that taken separately the measures may not be considered sufficient but as a whole, as a packet, they were expected to fulfil the task of facilitating a transition from war to peace, from autocracy to democracy and so on. The institutions created in the Peace Accord were a Truth Commission, an Ad-hoc Commission for investigating the actions of, and those responsible among, the military from within, a new police force - the PNC and the PDDH. Another very important thing was a thorough revision of the constitution. Going back to the two rationales put forward by Garretón that was discussed earlier in section 3.3.3, the ethical-symbolic logic and the politico-statist logic, one can see the creation of the Truth Commission, the Ad-hoc commission and the PDDH as the practical outflow of the principles of the ethical-symbolic logic. They embodied the principles of revealing the truth and offering moral compensation for the victims. The practical importance and influence of these institutions have also been hindered which partly can be explained by looking at the conflict of interest between the two rationales, which will be explained and elucidated further on. In the following of this chapter these different institutions and measures with the exception of the PDDH will all get a short presentation. The PDDH will be presented in chapter seven.

5.2.1 The Truth Commission

The Salvadorian Truth Commission can be said to be special in several ways compared to the equivalent

⁵¹ Byrne Hugh (1996) p 191

organs created in Central America. This is due to certain features:⁵³

- The United Nations assigned the commissioners who were all non-Salvadorian nationals.
- The creation of the Truth Commission was the fruit of a negotiation where the negotiating parties both had been forced to make concessions.
- In its report it named the people responsible for the atrocities investigated.
- It made specific recommendations to the Salvadorian government on how to act.

The report issued in 1993 by the Truth Commission was named “De la Locura a la Esperanza la guerra de 12 años en El Salvador” and was of course looked upon with great expectancy by many Salvadorians. But already in 1992 the law “ley de reconciliación nacional”, which translates into law for national reconciliation, was emitted. This law said that once the report by the Truth Commission was emitted the Parliament would have six months to decide whether to investigate and try in court any of the cases pointed out by the report or not. Five days after the report being official in 1993 a second law with the same name was emitted. This law closed the small possibility left by the first law to render justice by judging the people pointed out as war criminals. This since the law introduced a general amnesty for all the crimes committed by all the combating parties during the war.⁵⁴

The existence of the amnesty law continues to raise protests and demands of its removal. The people that are in favour of the law defend it by saying that it was a necessary law in order to get on with life in post war El Salvador. Its removal would mean opening the wounds caused by the war again and create new social problems. These are the same arguments as those used in other countries with amnesty laws like Chile as an example. Against those are the equally known claims that only by knowing about what really happened to loved ones, their families and the survivors can forgive and the society can heal and develop in a sustainable way. Interesting to consider in the case of El Salvador is that among those occupying high political posts for the FMLN as deputies for example are people who formerly functioned as guerrilla leaders and being so they were of course the ultimate people responsible for eventual atrocities performed by their groups during the civil war with or without their knowledge and blessings. A true revelation of the truth about what was done and who did what would strike very hard against the Salvadorian government and the military but would also affect the former guerrillas to a certain extent.⁵⁵ Important to note however is that the governmental side was pointed out as guilty of the atrocities committed in the great major-

⁵² If not otherwise mentioned I refer only to the final Peace Accords of Chapultepec.

⁵³ La Rue Frank (1995) p 78-79

⁵⁴ Interview with David Morales

⁵⁵ During a conversation with the owner of the Museum of the Revolution, ‘Museo de la Revolución’, in Mozote he, a former high-ranking member of the guerrillas, told me about the human rights violations performed also by the guerrillas and gave a few examples. He also said that there had existed reluctance among the FMLN to deal with these issues after the end of the war. He frankly said that what all those who fought in the war would need was psychological help in order to get over the traumas still present in their every day life.

ity of the cases investigated by the Truth Commission, a striking 85 per cent. It is thus not difficult to reach the conclusion that the government and the military are the ones that most strongly object to an opening of investigations. The remaining fifteen per cent however that were contributed mainly to the actions of the guerrillas may prove sufficient to sustain reluctance from several of the today well-reputed "ex guerrillas".

Worth noticing in this context is that there exists an abundance of literature written by both ex guerrilla members and others treating the acts of the military, including the infamous death squads, the widely performed cruel torture, the massacres around the river Lempa and the one in Mozote killing an estimated one thousand people. There does however hardly exist any literature treating the actions of the guerrillas in a correspondingly critical way. A former guerrilla member now the owner of the Museo de la Revolución, Museum of the Revolution, in Mozote, said that the guerrillas committed acts against human rights just as the military due to the fact that a war is a war. This however is a standpoint that I did not find to be openly and widely embraced.⁵⁶

In short it can be said about the Truth Commission that it contributed to a certain clarification of what really happened in a few significant cases. First and foremost one cannot help but seeing the result of the work of the Commission as a failure not reaching as far as it was thought. As Elizabeth Jelin expresses it: "[T]he way a new democracy handles the past becomes the ethical and normative foundation for the future."⁵⁷ In this case it gives room for serious concern.

According to this point of view one can hardly see that amnesty laws contribute to the consolidation of democracy in a country. They are rather to be seen as pragmatic ways of achieving a solution to an imminent problem without taking eventual future problems connected to it too much into consideration. A country where something new is built up without earlier conflicts and antagonism being resolved will face problems. These problems can be manifested as a polarisation of the citizens, those content with the situation gaining from the amnesty laws and those who missed out on answers to their questions and on obtaining redress for wrongs suffered by them and their relatives. In the long run this can of course create huge antagonism between the two groups. This antagonism can make co-operation difficult within other spheres of society. In the case of Chile Arturo Valenzuela writes that

*The lack of full acknowledgement of responsibility for the past is a far more serious obstacle to Chile's democratic consolidation than some of the institutional features of the military regime that have defied reform.*⁵⁸

⁵⁶ At least not as far as I understood it from my experiences while in El Salvador.

⁵⁷ Jelin Elizabeth (2000) p 117

The effects of the Truth Commission that existed in Chile were not conciliating even though a certain picture of the human rights violations committed during the reign of Pinochet was given, since the military did not (until now recently) assume any guilt. It became a one-sided and thus contradictory measure to give amnesty to a party that did not assume any responsibility.⁵⁹ Elizabeth Jelin writes that the trials against the Argentine junta per se were a proof of the existence of an institutional and bureaucratic capacity to handle crimes against human rights.⁶⁰ According to Jelin it is of great importance to be able to try violators of human rights in courts. Her reasoning can be summed up in her quotation of Hannah Arendt's "*men are incapable of pardoning that which they cannot punish*"⁶¹.

In an article⁶² Sonia Cardenas refers to Alexandra Barahona de Broto's conclusions not to underestimate the need for trials for human rights crimes committed by former regimes in order to reach truth and create justice and not only focus on the need for trials for democracy. "*Demands for truth and justice are about reclaiming history in the face of denial and the restoration of accountability and equality before the law in the face of impunity*"⁶³. This since another risk, in not once and for all putting the accords straight with the past, lies within the culture of impunity that can develop as a consequence of the feeling by certain groups to be unreachable by the law. It must hardly be explained what huge problems this can create for democracy consolidation in a country.

5.2.2 Ad Hoc Commission for the military

Due to the atrocities committed by the military during the civil war and the need for reconciliation some measures were taken in order to purge the armed forces. A compromise between different views resulted in the creation of a special ad hoc-committee proposed by the United Nations. This ad hoc-committee was first agreed on in the New York Agreement in 1991⁶⁴ and later regulated in chapter I part 3 of the final Peace Accords. The ad hoc-commission was formed by three Salvadorian nationals and was initially seen with sceptical eyes as people questioned whether they were really going to be able to work independently. The task of the ad hoc-commission was to evaluate the highest officers in the military taking into account their records of observance of human rights, professional competence and whether they could function professionally in the new democratic context. The receivers, UN Secretary-General Boutros-Ghali and President Cristiani kept the report of the commission confidential. This was of course a measure taken to keep the military calm, which also had great disadvantages such as sending ambiguous signals to the popu-

⁵⁸ Valenzuela Arturo (1999) p 239

⁵⁹ Valenzuela Arturo (1999) p 238

⁶⁰ Jelin Elizabeth (2000) p 122

⁶¹ Ibid. The quotation originally from Arendt, H.(1958) *The Human Condition*

⁶² Combining legal and political approaches: recent scholarship on human rights in Latin America in *Latin American Research Review*, vol. 35, Issue 2 p 252-268 (2000)

⁶³ Cardenas Sonia (2000) Quotation originally from Barahona de Brito *Human rights and democratization in Latin America: Uruguay and Chile*

⁶⁴ The New York Agreement of September 25 1991, Acuerdo de Nueva York, 25 de septiembre 1991

lation allowing several of the appointed officers to retire with full military honours. Even though there was an initial delay in removing the named officers the report was gradually implemented in its totality.⁶⁵ In the end no military official was publicly accused of having committed human rights violations. Instead those removed were said to have been "unprofessional" or showing "a lack of adaptability to the new situation of peace".⁶⁶

5.2.3 The PNC

The new national civil police force was regulated in chapter II of the Peace Accords. The reason for creating a new police force replacing the National Police was of course the lack of trust felt towards the latter, which had a history of severe abuses during the civil war. The PNC was thought to gather among its personnel both former guerrilla members and people who had fought on the governmental side so that no side would have to suspect police partiality. No military officers were to be allowed among its ranks neither were people with bad records from the old police force. Evaluated from today's perspective it is clear that the new police force has had huge problems in combating its internal problems. It has proved difficult to keep the institution clean from bad professionals and the PNC has gained a record of not too seldom being involved in very serious crimes such as kidnappings etc. There have also been frequent complaints about human right violations committed by the police in its professional capacity. Mirna de Cornejo from the regional PDDH in Santa Tecla explains that cases including the police force is a daily thing to deal with for her staff and according to her a huge part of the reason for this is that the police is badly trained. There was a need for a huge number of new police men, which traduced itself in "production" of a low quality. *"If they are sent to do their work without proper training, it is almost logical that they are not going to do it well, right, if they are not trained for it."*⁶⁷ More than a problem concerning individuals, de Cornejo sees the problems of the police as an institutional problem. As such it ought to be addressed by the PDDH in a more integrated way than today when more or less the cases are treated and resolved individually focusing on results only instead of working preventively.⁶⁸

5.2.4 Revision of the constitution

When asked what was the hardest part in the course of the peace negotiations, Dagoberto Gutierrez answered that it was the constitutional revision. More specifically the revision of the former article 211, which concerned the power of the military. This power was so dramatically lessened that after the reform only two attributions remained of the former fifteen. The two remaining tasks assigned to the military are

⁶⁵ Johnstone Ian (1995) p 31-33

⁶⁶ Johnstone Ian (1995) p 46 footnote 12

⁶⁷ Interview with Mirna de Cornejo My translation, in original "Si sin preparación les mandan a hacer su trabajo es casi lógico que no lo van a hacer bien pues, si no están preparados para ello."

⁶⁸ Interview with Mirna de Cornejo

to defend the territory of El Salvador and to defend the sovereignty of the country. The beginning of article 212 today reads:

*The military has as its mission the defence of the sovereignty of the State and the integrity of its territory...*⁶⁹

Before the revision the armed forces were named the guarantees of the constitutional order and had a widespread constitutional mandate to lean back upon.⁷⁰ Now they are not any longer the guarantees of the internal peace, tranquillity, order and public security since these functions are held by the PNC. According to article 212 these functions can only be pursued by the military in exceptional situations decided by the president.⁷¹

6 How are Human Rights upheld in El Salvador today?

6.1 The human rights situation in El Salvador

Es mala, malísima

“It is bad, very bad”, one peace judge said spontaneously about the human rights situation in El Salvador.⁷² About the year 2000, the Commission for the Defence of Human Rights in Central America, CODEHUCA⁷³, wrote that,

⁶⁹ Constitución explicada (2001) p 146 My translation, in original “La Fuerza Armada tiene por misión la defensa e la soberanía del Estado y de la integridad del territorio”.

⁷⁰ Interview with Dagoberto Gutierrez

⁷¹ Constitución explicada (2001) p 146

⁷² In October 2001

This period has been very critical, to the extent that it has stripped our fragile intent of participation and democratization. It has shown that the State is not prepared to guarantee this, not under normal conditions, and much less in times of catastrophes, produced by epidemics or earthquakes; we do not have instances attending to the necessities of the people.⁷⁴

A more recent report from CODEHUCA says that nine years after the Peace Accords the peace and social security was still not there, rather the opposite.⁷⁵

And then on 13 January 2001, and on 13 February the same year, earthquakes shuttered the country. The earthquakes left a big part of the population without homes. 163,866 houses were so destroyed that they could not be used to live in, and many more found themselves without sufficient means to support themselves.⁷⁶ This of course did not make the situation in the Human Rights field any better. The negative view must however be balanced with a comparison with the situation in the past. Then some positive signs are visible. What do not exist now according to Benjamin Cuéllar, director of the human rights institute of Universidad Centroamericana José Simeon Cañas, IDHUCA, are the violations of the political human rights. This he attributes to the fact that the political opposition in El Salvador today does not pose a real threat to the government and the ruling oligarchy. But at the same time he talks about a de facto censoring of the IDHUCA by the media.⁷⁷ This situation is confirmed by David Rivas, director of *Asociación de Periodistas de El Salvador*, APES, an association for journalists in El Salvador. According to him the Salvadorian government does not need to create a law that censures the press since the press censors itself. This censure is nuanced and one can speak of political and economic as well as social censure.⁷⁸ According to Rivas the space in the television or in the newspapers given to the PDDH and the ombudsman will depend on how firm the institution stands in difficult issues. If the PDDH is firm its medial space will shrink.⁷⁹ Beatrice de Carrillo confirmed that this had already occurred for her in 2001.⁸⁰

As Benjamin Cuéllar stated, the situation concerning the political human rights today is better than the

⁷³ Comisión para la Defensa de los Derechos Humanos en Centroamérica

⁷⁴ Situación de los Derechos Humanos en Centroamérica Enero-Diciembre 2000 My translation. In original the text reads: Este período ha sido sumamente crítico, a tal grado que se ha desnudado nuestro débil esfuerzo de participación y democratización, se ha evidenciado que el Estado no está preparado para garantizar ni en condiciones normales ni mucho menos en tiempos de calamidades producidas por epidemias o terremotos; no tenemos instancias que atiendan las necesidades de los sectores populares

⁷⁵ El Desafío de la Independencia (2001) p 27

⁷⁶ Informe sobre Desarrollo Humano El Salvador 2001 p 47

⁷⁷ Interview with Benjamín Cuéllar

⁷⁸ Interview with David Rivas, APES. Rivas argues that the reason for talking about political censure is that the great majority of the media is affiliated to ARENA, the governing party. One can talk about an economic censure since the greatest businessmen own the media and the media will not write about something that may harm those. The media is also in need of advertisement incomes, which will further lessen their will to criticism against the providers of those incomes. Social censoring is the consequence of a large amount of journalists and few job opportunities. The situation of media monopoly in El Salvador gives the journalist who has made himself unwanted as employee at one place few other places to go to.

⁷⁹ Interview with David Rivas

situation before, during and in the direct aftermath of the internal armed conflict. In considering the human rights situation one should however also take into consideration how past violations are handled as was discussed in chapter three. Looking at the forced disappearances of people during the conflict, several families are still living in uncertainty regarding what happened to their family members. A general amnesty law⁸¹ has effectively hindered any further investigation. During the years there have been and still today there are taking place exhumations in the search for victims of massacres to be identified.⁸² One example of this is the exhumations taking place in the small village of Mozote and in its surroundings, the scene of a brutal massacre where about one thousand civilians were killed.⁸³ Every year at the anniversary of the massacre the remains found during the year are buried during a remembrance ceremony.⁸⁴

The right to free expression has been considerably more respected. There does however exist a worrying factor consisting of the possibilities that the major economical interests are governing the information since the media companies are highly dependant on their advertisement incomes. Rodríguez Rescia also points at a worrying attitude among the population imposed by the media to view human rights as something favouring criminals.⁸⁵ This could of course be especially detrimental to the understanding of human rights in a country like El Salvador where crime rates have risen dramatically in the course of a few years and voices are rising on imposing longer prison sentences as well as reintroducing the death penalty.

Reports about torture and bad treatment of inmates conducted by the police continue. There are also reports on arbitrary detentions. The right to access to justice is threatened since the legal system is slow and does not fulfil its obligation to try the suspects in due time. This has led to the situations where a great number of people are imprisoned for years without even having been tried in court.⁸⁶

The search for a culture of peace, not only in the sense of peace between the political opponents but also in the sense of peace in society, demands a clear set of legal rules concerning the due process. This is important for the victims as well as for the criminals themselves. In El Salvador today even very severe crimes such as homicide are often not properly investigated due to both lack of resources and lack of will. Such ambience does per se create insecurity and may foster a culture where violence triggers more violence.

If the political and civil rights of the Salvadorian people today are upheld to a higher extent than histori-

⁸⁰ Interview with Beatrice de Carrillo

⁸¹ This law has been presented and discussed in section 5.2.1

⁸² Rodríguez Rescia Víctor (2001)

⁸³ For further reading about the Massacre of Mozote I strongly recommend the book *Luciernagas en El Mozote* one of the authors of which is Rufina Amaya, the only survivor of the massacre. Museo de la Palabra, Museum of the Word in El Salvador, edits the book.

⁸⁴ I was present during the 20th anniversary of the Mozote massacre in December 2001 and during that ceremony several small coffins with the human remainings found during 2001 were buried.

⁸⁵ Rodríguez Rescia Víctor (2001)

cally, their economic and social rights continue to suffer from negligence. Discrimination of various groups among those women and children is a fact in El Salvador. Women tend to work in the informal sector to a greater extent than men. Domestic violence is a widespread problem difficult to resolve partly since a great part of the Salvadorians consider it to be a private matter. Around 40 per cent of the Salvadorian children live in extreme poverty which translates into children living on the streets, working in prostitution, being introduced to drug use and participating in gangs, “maras”, committing crimes.⁸⁷

The United Nations Committee on Economic, Social and Cultural Rights, in the following the UN Committee, considered the report submitted by El Salvador at its 26th meeting held on 17 May 1996. Too much time has passed to make any conclusions from the UN Committee’s recommendations concerning today’s situation of the economic, social and cultural rights in El Salvador. Worth noticing, however, is that the UN Committee, in its suggestions and recommendations, asks for specific information on the activities of the PDDH, especially on how much weight is carried by the recommendations made by the PDDH. It also asks about the actions that are taken on the complaints that the PDDH files concerning violations of economic, social and cultural rights. The first recommendation the UN Committee gives to the Salvadorian Government is to address the problem of the inequitable distribution of wealth among the population in order to combat the poverty characterizing the country. The second recommendation treats the Peace Accords, the prompt and full implementation of which should be ensured and in the UN Committee’s opinion constitutes a guarantee of social peace in El Salvador. Among the other themes in the evaluation of the report, too extensive legal restrictions on trade-union freedom and the right to strike, discrimination against women and unemployment stand out among the things the UN Committee sees as most problematic.⁸⁸

A highly current theme which was also elucidated as such by the interviews is the plans on privatizations concerning different areas of State-owned practices, health care, water supply, electricity etc. At the end of 2002 a huge strike was held in San Salvador where Salvadorians were protesting against the privatization of health services proposed by the President of the Republic. While privatization of State-owned companies in for example Sweden would not necessarily make people argue that the population’s human rights would be in danger, this seems to be the case to a high extent in El Salvador. The reason for this is explained by Jorge Murcia who says that while in Sweden also private companies can be monitored by the State, in El Salvador the State loses all influence over the policies of the companies after a privatization. They may very well raise their prices to a level where a large part of the population no longer can afford their services.⁸⁹ In the case of water supply or health care one can see the very severe implications for the poorest. In this area one can see the mine field that human rights protection signifies in El Salvador. While privati-

⁸⁶ Rodríguez Rescia Víctor (2001)

⁸⁷ Rodríguez Rescia Víctor (2001)

⁸⁸ the UN Committee on Economic, Social and Cultural Rights (1996)

⁸⁹ Interview with Jorge Murcia

zations on one hand can be seen as a policy threatening human rights it is also the outflow of the political ideology of the right. Any critical position of the PDDH on those issues is thus likely to be considered a political statement of the PDDH and as such it will threaten the necessary view of the PDDH and the ombudsman as politically impartial.

6.2 The system of protection of Human Rights in El Salvador

Work in the area of human rights in El Salvador has traditionally been conducted by a great number of NGOs. Several of these NGOs point at the fact that they are considered as part of the left by the government and thus seen as “enemies”.⁹⁰ This situation does not facilitate their work. With a government exclusively run by the political right, the right has traditionally been the human right offender and the groups of the left represent the offended. This explains the will of the left to draw attention to these offences. This has created an environment where human rights are perceived as something of an issue of the left and thus is looked upon with suspicion by the right.

Concerning human rights El Salvador has signed and ratified most of the UN conventions. The conventions El Salvador has accessed to, ratified or signed are: the International Covenant on Civil and Political Rights, CCPR (ratified) The Optional Protocol to the CCPR concerning the right to individual claims, CCPR-OP1 (ratified), the International Covenant on Economic, Social and Cultural Rights, CESCR (ratified), the International Convention on the elimination of all forms of racial discrimination, CERD (accessed), the Convention against torture and other cruel, inhuman or degrading treatment or punishment, CAT (accessed) the Convention on the elimination of all forms of discrimination against women, CEDAW (ratified), Optional Protocol to the CEDAW, CEDAW-OP (signed), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, MWC (signed), Convention on the Rights of the Child, CRC (ratified), Optional Protocol to the CRC on the involvement of Children in Armed conflict, CRC-OP-AC (ratified) and the Convention on the legal standing of refugees, Refugee.⁹¹ El Salvador has also signed and ratified the American Convention on Human Rights, “Pact of San José, Costa Rica”.⁹² Worth noticing is that El Salvador is not a party of the Vienna Convention on the law of treaties from 1969 even though this can be considered unimportant since this treaty is thought of as having a standing as customary law.

6.2.1 How to address human right violations in El Salvador

The general principle in El Salvador is the right of petition before all the administrative bodies. As a first

⁹⁰ See for example interview with Benjamin Cuéllar

⁹¹ Röda Korset, Ratificeringslista Mänskliga Rättigheter 2001-11-26, see also United Nations URL: <http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet>

step the petitioner shall direct him or her towards the offending body until all the hierarchical levels are exhausted. In the case of a violation of a human right however there is the possibility to “amparo constitucional”⁹³ by the judiciary. There is also a possibility for the plaintive to resort to the PDDH. This alternative however should only be used after first having resorted to the administrative organs and exhausted them. There should in principle not exist parallel investigation unless there is no possibility to administrative appeal or these measures are insufficient. Of absolute importance is also the general right of petition concerning human right violations in front of the judicial administration which can be done in either of the three forms: amparo, habeas corpus⁹⁴ or claims of unconstitutionality in front of the specialized courtroom ‘Sala’.⁹⁵

The way the PDDH treats the cases presented to it will be explained and discussed further on under chapter seven.

7 The PDDH

In the introductory part of the law of the PDDH it is said that: *“in an effort to contribute to the reestablishment, peace consolidation and reconciliation of the Salvadorian society, it is necessary to dictate the legislative measures that guarantee the respect for the Human Rights.”*⁹⁶ That means that the expectations on the PDDH were set at a very high level: to restore and consolidate peace and reconcile the Salvadorian society. The question is whether it is possible for a single institution to contribute in such an extensive way to the democratization of an entire society. But then after all the PDDH was not the only new institution created by the accords of Chapultepec and was naturally not thought to do all this by itself. No doubt however, the institution

⁹² Homepage of the Inter-American Court of Human Rights, URL: <http://www.corteidh.or.cr>

⁹³ ‘amparo constitucional ante el Poder Judicial’ Amparo is a legal remedy that freeze the legal procedure/trial while investigating if constitutional rights are violated.

⁹⁴ Habeas corpus is the right to obtain an immediate judicial hearing if a person is detained illegally.

⁹⁵ Rodríguez Rescia Víctor (2001)

⁹⁶ My translation, in original “en un afán de coadyuvar al restablecimiento, consolidación de la paz y reconciliación de la sociedad Salvadoreña, se hace necesario dictar las medidas legislativas que garanticen al respeto de los Dere-

was looked upon with high expectations.

7.1 The roots and structure of the institution

The evolution of the ombudsman institution can be said to have passed through three phases, the first of which was that the institution of the ombudsman was born in Sweden in 1809. Later on, after W.W.II the institution of the ombudsman built around the concept of maladministration gained influence among European and Oceanic States. By then the institution served as a tool for protection of the citizens against administrative dysfunction. Using the institution of the ombudsman for protection, defence and promotion of human rights is of a later date. That can be said to constitute the third phase in the evolution of the ombudsman and as the point of departure of this phase stands the Spanish constitution of 1978 where the functions of the ombudsman, the so called “Defensor del Pueblo” was closely bound to the protection of fundamental rights. This has also been the path chosen for the Latin-American ombudsmen all of whom are relatively new constructions in the institutional structure of their respective country, as is the Salvadorian PDDH.⁹⁷

It is known that the constant violations of the Human Rights were the cause of the initiation of the armed conflict at the end of the '70s and their distinguishing is today seen as fundamental in order to stop the hostilities⁹⁸

On 27 April 1991 during the negotiations between the government of El Salvador and the FMLN the Accords of Mexico were signed. In its second part the agreement to appoint a human rights ombudsman was pointed out and the text says that this ombudsman would have as a special mission the task to promote human rights and the respect for those rights.⁹⁹ The following peace accords of Chapultepec laid out the basis for the creation of the PDDH in its third chapter that concerned the judicial system. In a short chapter it simply said that a national ombudsman for the protection of the human rights was to be appointed within ninety days following the coming into force of the constitutional reform emanating from the Mexico agreements. This chapter also pointed out the National Commission for Peace Consolidation, COPAZ¹⁰⁰, as the organisation in charge of conducting the preparatory work for the new law of the

chos Humanos.”

⁹⁷ Maiorano Jorge Luis (2000) p 269-270

⁹⁸ Exposición de motivos del anteproyecto de la ley orgánica de la PDDH My translation, in original “Es sabido que las constantes violaciones de los Derechos Humanos fueron causa de la iniciación del conflicto armado a finales de la década del 70’ y su erradicación, se presenta ahora, como fundamental para lograr el cese de los hostilidades.”

⁹⁹ Acuerdos de México, México D.F., 27 de Abril de 1991. (II. Sistema judicial y derechos humanos)

¹⁰⁰ La Comisión Nacional Para la Consolidación de la Paz, COPAZ, was created in the Accords of New York 25 September 1991. This commission consisted of two representatives of the government, two from the FMLN and one representative from all the parties and coalitions represented in the parliament. COPAZ was created to be the organ supervising the fulfilment of the Peace Accords.

PDDH.¹⁰¹

The PDDH is said to be, together with the PNC, the favourite child of the Peace Accords. Maybe especially the international community has seen it as such. The structure of the institution seems to be borrowed from Scandinavia with the Scandinavian ombudsman as a model of reference enriched with certain regional characteristics such as, for example, the possibility for individual claims against violations of human rights. This has its roots in the traditional inefficiency of the national agencies to provide proper protection, but does not aim at substituting the existing structures, rather to complement them.¹⁰² The function of the ombudsman in El Salvador has thus been widened to encompass the human rights as well as the traditional task of protecting the population against administrative arbitrariness. This of course is due to the different realities of these countries compared to for example those of the Scandinavian countries.

If in Europe it is of great importance when a patient dies due to a badly functioning public hospital, in America it will be of greater importance to evade massacres of peasants or torture in the prisons¹⁰³

Dagoberto Gutierrez contradicts the idea of the Scandinavian ombudsman as the primary source for the structure of the PDDH as he says that the experiences from neighbouring countries such as Costa Rica were greater sources of inspiration than the European “ombudsman” was. He says that

[T]he figure of the ombudsman presupposes a man with great power, with great dignity and with great courage in order to be able to stand up against the State. At that moment it had nothing to do with our reality and it still has not got anything to do with our reality. Because of that we thought more of an institution.¹⁰⁴

The PDDH has a certain hierarchy. On top of that structure is the ombudsman, at this moment Beatrice de Carrillo. There is one Associate ombudsman next to the ombudsman. Then there are five Associate Procuradurías: the P. of civil and individual rights, *de derechos civiles y individuales*, the P. of the children and the youth, *de la niñez y la juventud*, The P. of women and the family, *de la mujer y familia*, the P. of the third age, *de la tercera edad* and the P. of the environment, *del medio ambiente*. These Associate Procuradurías, as their names reveal, are specialised in certain human rights areas and all directed by their own Associate

¹⁰¹ Acuerdos de paz Chapultepec, México Capítulo III (2A and B)

¹⁰² Rodríguez Rescia Víctor (2001)

¹⁰³ Exposición de motivos del anteproyecto de la ley orgánica de la PDDH, my translation in original “Si en Europa cobra gran relevancia la muerte de un paciente por la inoperancia de un hospital estatal; en América tendrá mayor prioridad evitar las masacres de campesinos o las torturas en las cárceles.”

¹⁰⁴ Interview with Gutierrez Dagoberto, My translation, in original “La figura del ombudsman supone un hombre con bastante poder, con bastante dignidad y con bastante valentía, para levantarse frente al Estado. Eso no tenía en ese momento nada que ver con nuestra realidad no tiene todavía nada que ver con nuestra realidad. Por eso más pensamos en una institución.”

ombudsman.¹⁰⁵ There also exist regional offices in every one of the departments of El Salvador that receive and solve cases with their own staff. These departmental representatives are not allowed to sign resolutions, why these always have to be sent to San Salvador to be signed by the present ombudsman. The extensive structure of the PDDH has been pointed out as one of the problems of the institution, causing delays in the administration of the individual cases.¹⁰⁶

7.1.1 The ombudsmen of the PDDH

The ombudsman will be in charge of the institution and will perform his (her) role in the entire national territory, either in person or in the way of his (her) regional offices...

Chapter I art. 3 the law of the PDDH

The ombudsman who is elected by a qualified majority consisting of two thirds of the elected members of the Salvadorian parliament runs the PDDH.¹⁰⁷ The ombudsman has a prominent role in forming the institution after his or her preferences, electing his or her Associate ombudsmen and deciding about the structure of the work to be performed by the institution. Being a very prominent figure it has shown, during the ten years of the existence of the institution, the enormous importance of electing the ombudsman wisely.

Until today there have been elected four ombudsmen, and the post has also been occupied during one period by one associate ombudsman. Their terms of office have been: Carlos Mauricio Molina Fonseca 92-95, Victoria Marina de Avilés 95-98, Eduardo Antonio Peñate Polanco 98-99 Marcos Alfredo Valladares Melgar 99 -01 and Beatrice Alamanni de Carrillo 01-. They have all influenced the work of the institution in a considerable way, positively or negatively. Which opinion one has about the qualities of the different ombudsmen showed with a few exceptions to be intrinsically connected with the person's political standings. The representatives of the NGOs all agreed on the positive qualities of de Avilés as ombudsman. Her big problem consisted of being seen as political by the right, something that was denied by her, insisting on her neutrality in her decisions while ombudsman. Directly after having ended her term of office as ombudsman, however, she was the main candidate of the FMLN for the presidency of El Salvador which seen afterwards was a hard blow towards her credibility at least from the point of view of the political right. Everyone I spoke to agreed in criticizing the badly performed work of Peñate Polanco which is not surprising since he was forced to resign from office affirmed by a decision taken by the Parliament where all its constituting political parties finally agreed on his removal from office. This third om-

¹⁰⁵ These associate ombudsmen all have their own specialized area of responsibility and are named after them, as is for example the associate ombudsman of civil and individual rights. This compared to the associate ombudsman directly under the ombudsman who more could be viewed as a vice-ombudsman.

¹⁰⁶ Rodríguez Rescia Victor (2001)

budsman ended up making himself totally impossible officially criticizing, among others, the Swedish ambassador for the involvement in the internal affairs of the PDDH by Sida and thus Sweden. During Peñate Polancos period in office many NGOs froze their economical contributions to the activities of the PDDH and the co-operation was non-existent until 2001 when the latest ombudsman, de Carrillo, assumed office.

7.2 The legal foundation of the PDDH

The first step towards the establishment of the PDDH was taken in the course of the Peace Accords. The idea of the PDDH was negotiated in the Accords of Mexico on 27 April 1991. In part II 1 c of the Accords the negotiating parties presented their agreement on the creation of a *Procurador Nacional para la Defensa de los Derechos Humanos*¹⁰⁸, that would have as its principal task to promote human rights and to make sure that they were respected. This demanded a constitutional reform that gave the PDDH the status of forming part of the ‘Ministerio Público’ and defined the task of the PDDH. Articles 191 and 192 in the constitution were amended while a new article 194, where the mandate of the ombudsman was laid down, had to be created. The transitional dispositions stated that the first ombudsman was to be elected within ninety days after the ratification of the constitutional reform by the Parliament that assumed office 1 May 1991. In the Peace Accords signed in Chapultepec, the ombudsman was dealt with under Chapter III, treating the judicial system, part 2. The Accords assigned the task of elaborating the preparatory works for the law of the PDDH to COPAZ.

7.2.1 The constitution of El Salvador

Chapter four of the constitution concerns the ‘Ministerio Público’, which according to article 191 is formed by the ombudsman together with the ‘Fiscal General de la República’ and the ‘Procurador General de la República’.¹⁰⁹ Article 192 treats the way the ombudsmen of the institutions forming the ‘Ministerio Público’ shall be elected. Here the ombudsman is treated in a different way than the other two officials. While a candidate for ‘Fiscal General de la República’ or ‘Procurador General de la República’, according to the constitution, has to fulfil the same criteria as a candidate for a judge’s position at a court of appeal, put down in art 177 of the constitution¹¹⁰, the criteria necessary for being ombudsman are to be regu-

¹⁰⁷ Art. 4 Ley de la Procuraduría para la Defensa de los Derechos Humanos

¹⁰⁸ The name of the new ombudsman was later changed, emitting the word national, “nacional”, from the name.

¹⁰⁹ The ‘Fiscal General de la República’ is the titleholder of the ‘Fiscalía General de la República’ which is the institution in charge of control of the respect of the rights of individuals and of state interests. The ‘Procurador General de la República’ is in charge of the ‘Procuraduría General de la República’ that has as its responsibility to secure the legal interests of individuals, especially those of the poorest. The titles both translate into Attorney General, but as has been explained the institutions have different spheres of responsibility why I have chosen to use their Spanish names.

¹¹⁰ The criteria are as follows: to be a Salvadorian national, to be a layman (or a laywoman), over 35 years of age, lawyer of the republic, of well known morality and competence, having served six years as a judge in a court of first instance or having obtained the authorization to practice as a lawyer at least eight years before his or her election and to enjoy citizen rights and having enjoyed them during the six years before the performance of office.

lated in a law. This way these are more easily subjected to changes something that already happened.¹¹¹ Article 194 treats the constitutional mandate of the ombudsman. The mandate is put down in the constitution in a very detailed way. The reason for that, as well as the possible advantages and disadvantages of such constitutional writing will be discussed under section 7.3.

7.2.2 Decreto No 183

The law by which the PDDH was formally created is Decreto No 183, *ley de la Procuraduría Para la Defensa de los Derechos Humanos*, hereafter called Decree 183, which was published in *el Diario Oficial*, number 45 on 6 March 1992. In this law the institutional structure and the task of the PDDH is established. In the preamble of this law it says that:¹¹²

- I -According to articles 191, 192 and 194 of the Constitution, the institutional figure of the PDDH has been created and have been assigned with the following powers;*
- II - In an effort to contribute in the restoration, peace consolidation and reconciliation of the Salvadorian society it is necessary to announce the legislative measures that will guarantee the respect for the human rights;*
- III - For the performance of the quoted constitutional regulations, it is indispensable to emit the Law that will regulate the organisation and functioning of the PDDH.*

The PDDH was thus thought to be an instrument to facilitate the democratization assured in the Peace Accords by assuring the respect for the human rights of the population. As article 2 of the law states, the PDDH is an integral part of the ‘Ministerio Público’, of permanent and independent character and with administrative autonomy. The task of the PDDH is said to be to safeguard the protection, promotion, education and unrestricted validity of the human rights.¹¹³

The law is divided into nine chapters. In the first chapter the objectives and the nature of the PDDH are established. Chapter two deals with the election and the position of the ombudsman. The mandate and the powers of the ombudsman are explained in chapter three. In the fourth chapter it is explained how the institution is organized and the fifth chapter discusses its financial regime and the patrimony of the organization. Chapter six is about procedures for how formal complaints are to be handled and investigated by the PDDH. Chapter seven contains instructions on how inspections of detention centres shall be realized

¹¹¹ The law originally demanded the ombudsman to be a Salvadorian national by birth, but this was modified so that Beatrice de Carrillo, originating from Italy, who gained her Salvadorian citizenship by neutralization could assume office in 2001.

¹¹² My translation, in original I. - Que de conformidad con los Arts.191, 192 y 194 de la Constitución, ha sido creada la figura institucional del Procurador para la Defensa de los Derechos Humanos y se le asignaron sus atribuciones; II. - Que en un afán de coadyuvar al restablecimiento, consolidación de la paz y reconciliación de la sociedad Salvadoreña, se hace necesario dictar las medidas legislativas que garanticen el respeto de los Derechos Humanos; III. - Que para el cumplimiento de las disposiciones constitucionales citadas, se hace indispensable emitir la Ley que regule la organización y funcionamiento de la Procuraduría para la Defensa de los Derechos Humanos;

¹¹³ Art. 2, Ley de la Procuraduría para la Defensa de los Derechos Humanos

and instructions on how the PDDH shall respond to special situations. The eighth chapter discusses the general regulation of the work of the PDDH and finally the ninth chapter sets the requirements that have to be met for the law to enter into force.

7.2.3 Reglamento de la ley de la Procuraduría para la Defensa de los Derechos Humanos

While Decree 183 is the law creating the institution the actual work of the institution is governed by the *Reglamento de la ley de la Procuraduría para la Defensa de los Derechos Humanos*, hereafter called the regulation of the PDDH. The regulation of the PDDH was created by the PDDH according to the powers attributed to the institution in article 12 p.9 of Decree 183, the power to emit the regulations necessary for the application of that law. The regulation of the PDDH consists of six chapters. The first chapter treats the preconditions of the regulation, its objectives, definitions of terms used etc. Chapter two consists of the rules concerning the ombudsman and the PDDH, the external and internal mandate of the ombudsman. The title of chapter three is Formation of the PDDH and here the different work units of the PDDH, the associate ombudsmen are introduced, as are their different areas of responsibility. Chapter four treats the regulations concerning the financial regime of the PDDH. Chapter five concerns the procedures of the PDDH concerning violations of the human rights. The last chapter consists of general dispositions concerning different regulations facilitating the work of the PDDH.

7.3 The constitutional and legal mandate of the PDDH

The full mandate of the PDDH is set out in the Constitution of the Republic of El Salvador, articles 191, 192 and 163, in Decree 183, articles 11 and 12 and in the regulation of the PDDH articles 10 and 11.

The constitutional mandate of the PDDH is to:

- Ensure that human rights are respected and guaranteed,
- Investigate de oficio or on request, cases of violations of the human rights,
- Assist presumed victims of violations of their human rights,
- Promote judicial or administrative resources for the protection of human rights,
- Watch over the situation of the people in custody. It will be notified about every arrest and will ensure that the legal limits of administrative detention are followed,
- Practice inspections, where it finds it necessary, in order to assure the respect for human rights,
- Supervise how the public administration acts towards the citizens,
- Promote reforms to the State agencies for the progress of human rights,
- Emit opinions about law projects that will affect the practice of human rights,

- Promote and propose the means that are estimated necessary in order to prevent violations of human rights,
- Formulate conclusions and recommendations, officially or privately,
- Prepare and publish reports,
- Develop a permanent program of promotional activities about the knowledge of and respect for human rights,
- Fulfil other attributions that the constitution, or the law, ascribes to it.

Further, the law of the PDDH confers the following powers to the PDDH. The power to:

- Ensure the strict compliance of the procedures and legal time limits for the different recourses that it may have promoted or in the legal actions where it may have an interest,
- Ensure the respect for the guarantees of the due administration of justice and seek to avoid the solitary confinement of the detained,
- Conduct a centralized register of people deprived of their freedom and the authorised detention centres,
- Present proposals on bills for the advance of human rights in the country,
- Promote the signing and ratification of, as well as adhesion to international human rights treaties,
- Emit resolutions of public censure against those materially or intellectually responsible for violations of human rights,
- Procure conciliation between people whose rights have been violated and the authorities or public officers identified as presumed responsible, when the nature of the case permits it,
- Create, foment and develop connections for communication and co-operation with bodies promoting and defending human rights, governmental organisations, national as well as international and with the different sectors of the national life,
- Emit the regulations for the application of Decree 183 and the internal regulations that are necessary,
- Appoint, withdraw and concede licenses and accept renounces from the employees at the institution,
- Elaborate the proposal for the annual budget and send it to the corresponding instance, and
- Fulfil other attributions emanating from the constitution or the law.

The above-mentioned mandate can be summarised into three areas of activities: activities of protection, activities of monitoring the national reality and activities of diffusion.¹¹⁴

¹¹⁴ Informe de labores Julio-Septiembre de 2001 p 7-8

Activities of protection are principally conducted by treating cases of violations of human rights. This is done either *de oficio* or by responding to formal complaints. The work of the PDDH in this area usually results in the adoption of resolutions and recommendations on how the victim can be protected and have his or her rights restored. Important here is the fact that the resolutions and recommendations emitted by the PDDH do not have any binding legal force. They have a pure moral status. However, David Rivas argues that the moral strength of the resolutions of the PDDH is important since no one wants to be pointed out as a violator of human rights.¹¹⁵ The PDDH is thus designed as the ‘comptroller’ and ‘conscience’ of the activity of the State institutions in front of the human rights of the inhabitants of El Salvador. Important to remember is what was explained earlier, that the PDDH is not thought of being the first instance but is a remedy after having exhausted other alternatives.¹¹⁶ The practical experience is rather that people to a great extent turn directly to the PDDH. The recommendations of the PDDH in the case of a violation of a person’s human rights are given to the State organ involved. If the recommendations are not followed the possibility exists for the PDDH to emit a ‘*censura pública*’, a public condemnation, aimed at a certain person. This however is also an instrument of pure moral status.

Activities centred around monitoring the national reality translate into the PDDH having to monitor the situation in the country and according to its findings take preventive measures and exercise surveillance in certain situations in order to evict violations of human rights. Activities in this area are for example visits to prisons in order to survey the situation of the interns. The monitoring work of the PDDH results in either general or specific propositions and recommendations on specific situations. Sometimes the work of the PDDH in this field can be conducted by means of mediating in conflicts encompassing human rights. Such mediation can aim at solving conflicts or to prevent them from aggravating. An example of work of the PDDH in this field from the year 2001 is the emission of an opinion concerning a reform of the penal code that increased the maximum years of imprisonment to 75 years. This increase was considered by the PDDH as violating the article 27 of the constitution prohibiting perpetual penalties.¹¹⁷

Activities of diffusion translate into emitting reports, conducting public campaigns and developing ways of teaching human rights. The focus on the latter activities lies with the socially vulnerable groups of the country and with key actors within the public administration.¹¹⁸ In this area the PDDH has conducted for example projects aiming at increasing the knowledge of, and respect for, human rights among the members of the PNC.

As it can easily be seen by the above-mentioned attributions is that they are abundant. The question is of

¹¹⁵ Interview with David Rivas. He gave as an example of that the relation between the PDDH under Victoria de Avilés and the Director of the PNC where a resolution from the PDDH usually signified that steps were taken due to the negative publicity the non-fulfilment would have caused.

¹¹⁶ See section 4.4.1

¹¹⁷ Informe de labores Julio-Septiembre de 2001 p 62-63

¹¹⁸ Informe de labores Julio-Septiembre de 2001 p 7-8

course whether it is realistic to think that one organisation can handle such a heavy workload by itself. Some say the mandate is too wide, including too many tasks. The PDDH itself acknowledges the impossibility to comply with the entire mandate since the institution is lacking the necessary human and economic resources.¹¹⁹ One can argue that the mandate in itself shows the lack of previous use of this kind of institution and the lack of confidence towards the political context in which it has to perform its duty. With a previous history of democracy and without an ambience of distrust towards the authorities the mandate that was given in the constitution might very well have been to “Ensure that human rights are respected and guaranteed”. The actions necessary for this task to be fulfilled could have been left for the legislator to decide on, and would thus have been subject to more flexibility. Why is it necessary to put in the constitution that the human rights ombudsman shall write reports and publicize those? One would say that that follows quite naturally in the course of exercising public authority. Though, as Dagoberto Gutierrez said, “*in case a good public officer comes into office it has to be there in the constitution for him to lean upon in case someone tried to stop him from doing his job*”.¹²⁰ An investigation conducted on behalf of the United Nations Development Program, UNDP, and the Swedish, Norwegian and Danish embassies frankly said that with such a wide mandate there existed a necessity to define it and make it operational to a higher extent than what had been done so far.¹²¹ On the other hand it can be argued that a wide mandate is a necessity in a society prone to limit the actions of its critics. Dagoberto Gutierrez said that in another society the attributions would look different but that in El Salvador it was necessary to put all possible attributions into the constitution, in order to create a varied buffet for the civil servant to choose from.¹²² This had to do with the factual state of the Salvadorian society with no tradition of a State governed by law. Mirna de Cornejo says that she is proud of having such a wide law in El Salvador giving the staff of the PDDH a wide spectrum to work within.¹²³

One thing of great importance is to have a clear definition of what is meant by a Human Right. What is it really that the PDDH is put to guard? In Decree 183, human rights are defined to be “*the civil, political, economic, social and cultural rights and those of the third generation of rights considered in the constitution, laws and treaties currently in force, as well as those vested in declarations and approved principles of the United Nations or the Organization of American States*”.¹²⁴ Using the words of David Miller, presented in chapter three, the PDDH is put to guard a thick list of rights not only encompassing the civil, political, economical, social and cultural rights but also the so called third generation of rights, that is the rights of solidarity.¹²⁵ This widening of the notion of

¹¹⁹ Informe de labores Julio-Septiembre de 2001 p 8

¹²⁰ Interview with Dagoberto Gutierrez

¹²¹ Identificación de áreas prioritarias en al Procuraduría para la defensa de los derechos humanos de El Salvador

¹²² Interview with Dagoberto Gutierrez My translation, in original “Hay que meterlo! Por si llega un buen funcionario al cargo, pueda decir - allí está en la Constitución”.

¹²³ Interview with Mirna de Cornejo

¹²⁴ Art. 2, Ley de la Procuraduría para la Defensa de los Derechos Humanos My translation, in original “...los civiles y políticos, económicos, sociales y culturales y los de la tercera generación contemplados en la Constitución, Leyes y Tratados vigentes; así como los contenidos en declaraciones y principios aprobados por la Organización de las Naciones Unidas o la Organización de Estados Americanos”.

¹²⁵ The so called third generation of rights include rights not expressly recognized by the 1966 covenants such as

Human Rights may be unfortunate. Looking at the situation in the PDDH today I would say that this wide definition might contribute to the idea that all rights by law are possible to claim before the PDDH. Today it is, for example, a fact that a huge number of the cases brought to the PDDH concerns claims between individuals that do not involve the State in any form.¹²⁶ Rafael Aquino, working in the department of denunciations where people who want to report violations on human rights come, says that people come to the department wanting the staff to help them solve claims between individuals. Lately there has been an increase in the number of cases treating defaults, debts not paid on time etc. Issues concerning working terms have also increased. Aquino sees this as a demonstration of the present situation in the country. People simply search for help anywhere they can.¹²⁷

The present ombudsman said in a telecast interview that when she assumed the office she received a dead institution, that the PDDH has a limited budget, but that the Salvadorian people believed in the institution. She also said that there currently was taking place an increase of the academic level of the work conducted by the ombudsman, which was satisfactory. Beatrice de Carrillo also saw a new role for the institution, the role as a mediator and a pacifying instance. This she said had even led to lives being saved.¹²⁸ When the Informe de labores for July 2001 until June 2002 was presented de Carrillo said that this period had signified a renovation of the PDDH, the institution had found its historical course and positioned itself where the constitution meant it to be since the Peace Accords.¹²⁹

the right to development, the right to environment and the right to peace. To this group of rights is attached the notion that the rights should benefit, besides individuals, even groups and peoples and that for their fulfilment it is necessary with global co-operation based on international solidarity. The use of the term ‘third generation of rights’ is a matter of controversy. See further Rosas Allan in Eide Asbjörn, Krause Catarina and Rosas Allan p 243 and forward.

¹²⁶ Interview with among others David Morales

¹²⁷ Interview with Rafael Aquino, PDDH staff member of the Department of denunciations.

¹²⁸ Telecast interview with Beatrice de Carrillo in Canal 2, El Salvador, 2001-10-19

¹²⁹ Palabras de la Procuradora para la Defensa de los Derechos Humanos, en ocasión de la presentación del informe de labores de julio 2001 a junio 2002. Speech by Beatrice de Carrillo held when the Informe de Labores for the period July 2001 till June 2002 was presented, URL: <http://www.pddh.gob.sv/inf01.htm>

8 Opinions on the PDDH, presentation and analysis of the interview results

The 'Procuraduría' of El Salvador has, from the beginning of its activity, been closely related to the tragic events undergone by this country in recent years, performing its functions with outstanding effort and recognised rigor and effectiveness.¹³⁰

As will be seen in the following chapter, the people interviewed did not share the very high thoughts of the work performed by the PDDH that Jorge Luis Maiorano, Defensor del Pueblo in Argentina, expressed above.¹³¹

According to the results of an inquiry made in 2001 by the institute of public opinion, CID-Gallup, the

¹³⁰ Maiorano Jorge Luis (2000) p 264, my underlining

¹³¹ The opinion expressed by Maiorano is especially difficult to understand since it was published in the year 2000 when most people seem to agree on as well the lack of rigor as of effectiveness that the PDDH demonstrated due to

PDDH was the State agency rendering the highest percentage of confidence from the Salvadorian population. It reached a number of 48 % of confidence enjoyed, which rendered it a third position over all only outnumbered by the churches and the media in El Salvador.¹³² What must be taken into consideration though is that the investigation equally showed that 52 % of the consulted people did not have any confidence in the PDDH. It is not too much to say that the leading position of the PDDH does not so much show great confidence towards the PDDH, as it points out the great lack of confidence towards the other State agencies. A situation which is of course very serious indeed. As an example it can be mentioned that the judicial system according to the same Gallup poll only enjoys some kind of confidence from 34 % of the population and the Salvadorian Parliament a mere 31 %.¹³³ The low numbers for the PDDH are explained by some as a result of the disastrous period of the former ombudsman Peñate Polanco and they assume that the popularity numbers are now rising and will continue to do so with the new ombudsman de Carrillo. Confronted with the results of this poll several of the interviewed stated that they had no confidence in such an investigation since they agreed on the opinion that popularity numbers are easily manipulated. And in which case, as one of the NGO representatives said, if the PDDH being a non-repressive organ only positions itself a few percentage points above the police, a State body which per se is repressive, what are then the good news?¹³⁴ The PDDH itself however has taken pride in the poll results and even put an advertisement in one of the newspapers in El Salvador thanking the Salvadorians for their confidence.¹³⁵

The Central American Human Rights commission CODEHUCA points out two main problems considered valid for all the different PDDH “colleagues” in Central America, namely the politicizing attached to the election of the ombudsman and the lowering of the budget for the institution.¹³⁶

Amnesty International, hereafter Amnesty, said in a letter dated 2001-05-10 addressed to the President of the Salvadorian parliament that Amnesty from the creation of the PDDH saw this institution as one of the most important institutions to come out of the Peace Accords.

*Since the creation of the PDDH in March 1992 as the armed conflict in El Salvador had come to an end, Amnesty International (AI) considers it as one of the most important institutions created by the Peace Accords. We share the great hopes for the future of protection of human rights that came from its creation.*¹³⁷

the institutional crisis suffered by the institution.

¹³² La Prensa Gráfica, 2001-11-06, *Instituciones en las que tiene confianza*

¹³³ La Prensa Gráfica, 2001-11-06, *Instituciones en las que tiene confianza*

¹³⁴ Interview with NN

¹³⁵ La Prensa Gráfica, 2001-11-06

¹³⁶ El Desafío de la Independencia (2001) p 71

¹³⁷ Letter from Amnesty International to Mr Walter Araujo, president of the Salvadorian parliament signed by Javier Zúñiga, regional director for America, Number of reference: TG AMR 29/02/01 My translation, in original “Desde la creación de la PDDH en marzo de 1992 al final del conflicto armado en El Salvador, Amnestía Internacional (AI) la consideró como una de las instituciones más importantes que surgieron de los Acuerdos de Paz. Compartimos las grandes esperanzas para el futuro de la protección de los derechos humanos que surgieron de su creación.”

The organisation pointed out that in the view of Amnesty, the PDDH has faced severe problems, quantitative as well as qualitative ones from 1998 and forward which has had a bad impact on the view of the public towards the institution. These problems originated from the politicizing of the office, which caused delays in appointing a new ombudsman after the termination of office of Victoria Marina de Avilés in 1998. During the term of office of both Eduardo Peñate Polanco and Marcos Valladares the institution deteriorated and lost credibility according to Amnesty.¹³⁸

In order to make the following presentation as clear and comprehensive as possible the opinions given during the interviews will be presented in different groups. First the opinions given by representatives from NGOs present in El Salvador, whose answers will be presented in relation to the corresponding questions, then the opinions of representatives from the two major political parties, ARENA and the FMLN and finally the opinions from PDDH representatives will be presented. After the presentation of the interview results I will in section 8.4 discuss those in the light of the legal paragraphs that have appeared as fundamental for the functioning of the PDDH, and that way focus on the possible shortcomings of the law.

8.1 NGOs

In the following part the relevant answers given in the interviews conducted with persons representing NGOs present in El Salvador will be presented and discussed.

Considering the question if the PDDH has lived up to the expectations laid down in the Peace Accords, the constitution and the law, that is to contribute to reconciliation and democratization in El Salvador, there exists the widely comprehended opinion that the PDDH has had its days of glory and its days of disaster in this respect.¹³⁹ The beginning of the institutional life of the PDDH is seen as promising but appointing the third ombudsman Peñate Polanco was a major mistake and is by many seen as something close to a kiss of death for the institution. Today the PDDH is still suffering the consequences of his period as ombudsman.¹⁴⁰ María Julia Hernández, Tutela Legal¹⁴¹, answers that there have been times when the PDDH raised hopes that the original goal was accessible, however as soon as this was about to be

¹³⁸ Letter from Amnesty International to Mr Walter Araujo, president of the Salvadorian parliament signed by Javier Zúñiga, regional director for America, Number of reference: TG AMR 29/02/01

¹³⁹ Interview with Juan Carlos Sanchez

¹⁴⁰ Interview with Juan Carlos Sanchez and interview with Edmé Iglesias

¹⁴¹ Tutela Legal is the human rights organization of the Catholic Church in El Salvador.

achieved, the institution was destroyed.¹⁴² This answer clearly demonstrates the opinion that the functioning of the PDDH is not so much up to the institution as to other factors in the Salvadorian society. What was clear from this and other similar answers was the opinion that there are parts of the Salvadorian society that are seen by the Human Rights NGOs as very negative towards the PDDH and as actively counteracting it. The answer also highlights the institutional weakness of the PDDH as something that makes it prone to be badly affected by the actions of external counteracting factors. One of the interviewed people questions who the PDDH was supposed to reconcile? If the focus was thought to be the State on one hand and its citizens on the other then the other side of the coin would be to offer compensation in some form. In that aspect what was pointed out was that the PDDH has taken up a too cautious attitude towards the non-fulfilment of the recommendations of the Truth Commission. In order to foster a true reconciliation of the society the measures prescribed by the Truth Commission ought to have been carried through. Seeing that they were not, the PDDH ought to have responded firmly, something, which until now has not occurred.¹⁴³

The viewpoint put forward by the majority is that the PDDH still remains as something necessary in the Salvadorian society of today. The point of focus may have shifted but the institution per se continues to play an important role, or at least El Salvador should need it to play that role. Jorge Murcia, Consorcio de ONGs¹⁴⁴, says that the organisations he represents have always considered the PDDH as something necessary.¹⁴⁵ It is of course always difficult to assess whether something is absolutely necessary or whether it is something positive, which one prefers to keep. The answers shift between these two positions. Something that functions as the PDDH originally was supposed to function is considered necessary also today, but whether this something should or/and have to be the PDDH itself or if it could equally be replaced by something else is somewhat an open question. But since the PDDH already exists it would of course be the easiest alternative if it could better perform what its mandate says it should do. The institution however was created in a context of war and a situation of constant violations of the human rights of the population. It was created to stand as a guarantee for the population in general and for the political opposition which was then leaving the clandestine life and as such the PDDH was extremely important. Today that situation has changed, today's human rights violations are in their great majority of a different kind and not anymore the outflow of a systematic governmental policy¹⁴⁶

In the collective mind the institution is not any longer displayed as a fundamental part of the State governed

¹⁴² Interview with María Julia Hernandez

¹⁴³ Interview with NN

¹⁴⁴ Consorcio de ONGs de Derechos Humanos is an umbrella organization encompassing four different non-governmental human rights organizations in El Salvador: Comisión de Derechos Humanos de El Salvador DHES, Comité de Familiares y Víctimas de la violación a los Derechos Humanos 'Marianella García Villas', CODEFAM, Departamento de Derechos Humanos de la Iglesia Luterana, DDH-SL and Centro para la Promoción de Derechos Humanos Madeleine Lagadec,CPDH

¹⁴⁵ Interview with Jorge Murcia

¹⁴⁶ Interview with NN

*by law, as a fundamental piece in guarding their rights facing the State.*¹⁴⁷

The population has to recognize the institution as something that belongs to them, which today it does not do. In order to realize this, the PDDH has to find its space, which until now remains unclear.¹⁴⁸

Edmé Iglesias, Fundación Olof Palme¹⁴⁹, argued that if the PDDH disappears then seventy per cent of the Peace Accords would disappear since the PDDH was one of the institutions that were set to give validity to the accords.¹⁵⁰

The question on eventual problems the PDDH is encountering, opened up for wide discussions of several aspects of the PDDH and its work that the interviewed found problematic. The principal problems noted in the answers can be derived from the political context in which the PDDH performs its task. Jorge Murcia points out the risk that the PDDH plays a partisan role. This problem can be derived from the way the ombudsman is elected by the members of Parliament.

*I vote for your candidate if you give me an associate secretary for women, an associate secretary for the environment, or I vote on your candidate if the PDDH does not say anything, if it keeps quiet about the contamination that we have, etc.*¹⁵¹

This problem is not a purely theoretical one looking at the reasoning of d'Aubuisson about the way the different parties in the Parliament distributed the powers of certain areas of influence between them.¹⁵² Also Beatrice de Carrillo admitted that she had been given curricula for certain people with the expectation that she would find positions for them within the PDDH, something that she, however, had no intention to do in any inappropriate way.¹⁵³

Edmé Iglesias put forward the opinion that the ombudsman ought to be elected in a different and more democratic way. The politicians, she argued, are not representative of the Salvadorians.¹⁵⁴

¹⁴⁷ Interview with NN my translation, in original “En la conciencia colectiva no existe mas la visualización de esa institución como una pieza fundamental del Estado de Derecho ...como un elemento fundamental de la defensa de sus derechos frente al Estado”

¹⁴⁸ Interview with NN

¹⁴⁹ Fundación Olof Palme is an organization that works with projects related to children's rights. The organization was born out of a project started in 1983 in response to the needs of the children without parents due to the war. It is, despite its name, an entirely Salvadorian organization.

¹⁵⁰ Interview with Edmé Iglesias

¹⁵¹ Interview with Jorge Murcia, my translation, in original “..yo voto por tu candidato si vos me das una secretaría adjunta de la mujer, secretaría adjunta de la ambiente, o yo voto por tu candidato, pero si la Procuraduría no dice, se mantiene callada sobre la contaminación que tenemos, etc.”

¹⁵² See the interview with D'Aubuisson under section 8.2.1

¹⁵³ Interview with Beatrice de Carrillo

¹⁵⁴ Interview with Edmé Iglesias

Several of the interviewed put forward the problem of the institutional budget as a problem. As Juan Carlos Sanchez from Fespad¹⁵⁵ puts it; the PDDH is the State body given the smallest budget.¹⁵⁶ Here one of the interviewed argues that the government has to understand the role of the institution in the Salvadorian society and assume responsibility for it which would mean granting the PDDH an allowance that would cover its costs for performing its mandate. With the situation being as it is today there exists a risk that the international financial help for the institution substitutes the responsibility of the government¹⁵⁷

*One must not confuse what is the international support for the consolidation of the institution with what is the responsibility of the State in fortifying and make solid the institutional operationality.*¹⁵⁸

Not only external factors are seen as problematic. One of the NGO representatives says that the way the PDDH leads its activities per se is a basis for problems. The institution is too much focused on solving individual cases and comparing numbers of solved cases under different administrations instead of trying to solve the underlying problems causing the violations.¹⁵⁹ As will be seen further on this problem is also recognized within the PDDH.

Concerning eventual problems emanating from the legal framework of the PDDH, most people interviewed agreed on that problems connected with the contents, in the case such problems existed, were of secondary importance.

*But the laws in this country, when they are not applied or when they are exercised with such difficulty... I would like to try under normal conditions whether the law is good or not.*¹⁶⁰

As can be understood by the quotation above is that in El Salvador as well as in many other countries there is a lot more to say about a law than what is regulated within it. If the law is not seen as something that has to, or even ought to, be followed several problems can be found even with a law that in writing seems to be excellent. Most of the people interviewed did not see any major problems with the constitution in the parts addressing the PDDH nor with the law, rather they said that the law was a good piece of legal work, even one of the best.¹⁶¹

¹⁵⁵ Fespad is an organization, created in 1988, working with unions, small rural and urban communities etc. teaching on how to use the law as a tool for development.

¹⁵⁶ Interview with Juan Carlos Sanchez

¹⁵⁷ Interview with NN

¹⁵⁸ Interview with NN, my translation, in original “No hay que confundir lo que es el apoyo internacional para la consolidación de la institución de lo que es la responsabilidad del Estado en hacer fuerte, consolidar el funcionamiento institucional.”

¹⁵⁹ Interview with NN

¹⁶⁰ Interview with Benjamin Cuéllar, my translation, in original “Pero las leyes aquí en este país, cuando no se aplican o cuando son objetos de tanta dificultad para que se cumplan. Me gustaría probar en condiciones normales si la ley es buena o no.”

¹⁶¹ Interview with María Julia Hernández

*The ombudsman who has this law, if he or she uses it, has a wonder of a mandate.*¹⁶²

This “wonder of a mandate” was however also viewed as a possible cause of problems for the institution, leaving it up to the particular staff member to choose what he or she wishes to do within its frames.¹⁶³

There were some other points that were mentioned as problematic by some. The most important of these had to do with the way the ombudsman is elected. Art 192 paragraph 1 in the constitution reads:

*The ‘Fiscal General de la República’, the ‘Procurador General de la República’, and the Ombudsman for the protection of the Human Rights will be elected by a qualified majority of two thirds of the elected deputies.*¹⁶⁴

Forming part of the ‘Ministerio Público’, the PDDH shares the way of election with the other two major agencies in this: the Fiscal General de la República and the Procurador General de la República. The titulars of the institutions are all elected by at least 56 of the 84 members of parliament.¹⁶⁵ This process is seen with great suspicion by several of the NGOs working in the human rights field. María Julia Hernández says that the way the titular is elected contributes to politicize the office leaving the faith of the institution into the hands of the deputies.¹⁶⁶ Jorge Murcia states that the process of election is manipulated by the parliament and says that the election could be done in a different way. One option is to elect the titular in direct elections where the entire population could take part. Another option he sees as more feasible is that the sectors and bodies involved in the human rights questions put forward some candidates for the parliament to choose between. That is a sort of pre-selection of the same sort as the one, which in El Salvador is used to elect the members of the Supreme Court, a professional option.¹⁶⁷ This opinion put forward by a few of the NGO-representatives was strongly contradicted by Beatrice de Carrillo who saw this opinion as a demonstration of the miscomprehension of the very idea behind the PDDH. She said that

*The PDDH in El Salvador is not a typical popular leader. It is not the typical representative for claims against the State, this is also a very big mistake of the NGOs. [The PDDH is] an entity of the State that shall control the State itself, it is not a counterpart, it is an unbiased arbitrator between the State and the civil society, totally autonomous.*¹⁶⁸

¹⁶² Interview with María Julia Hernández, My translation, in original “...el Procurador o Procuradora que tiene esta ley si la ejerce tiene una maravilla de mandato...”

¹⁶³ Interview with Juan Carlos Sanchez

¹⁶⁴ Constitución explicada (2001) p 134 My underlining and translation, in original “El Fiscal General de la República, el Procurador General de la República y el Procurador para la Defensa de los Derechos Humanos, serán elegidos por la Asamblea Legislativa por mayoría calificada de los dos tercios de los Diputados electos”

¹⁶⁵ Constitución explicada (2001) p 134-135

¹⁶⁶ Interview with María Julia Hernández

¹⁶⁷ Interview with Jorge Murcia

¹⁶⁸ Interview with Beatrice de Carrillo My translation, in original “El PDDH en El Salvador no es un típico caudillo popular. No es el típico representante para reivindicaciones en contra del Estado, eso es gravísimo error también de

There are also people among the representatives for the NGOs who view the way of election as legitimate since the way the ombudsman is elected in El Salvador does not differ much from how similar bodies are elected in other countries, that is by their respective parliaments.¹⁶⁹ Juan Carlos Sanchez does not consider the system of politicians choosing the ombudsman that much of a problem as the fact that there does not exist a clear elective system. The lack of such a system has caused situations where the PDDH, as well as other State bodies, have found themselves without a proper leadership. This was for example the situation after Peñate Polanco was forced to leave his office. There did not exist a consensus on whether a new ombudsman ought to be elected directly or whether the election was to be postponed until Polanco's original period of office had expired.¹⁷⁰ What is quite surprising and naturally worrying is that there does not exist a consensus in the Salvadorian society around the foundations of the PDDH, namely its very construction. Suppose there was suddenly a question about whether Swedish NGOs should have a direct influence on the election of the Swedish parliamentary ombudsmen. In this case it is totally clear for all parties in the society that the ombudsman is elected by the members of the Swedish parliament. Maybe this is one of the major problems of the PDDH, a problem that has its roots in the lack of democratic institutionality of the Salvadorian State. The institution was in a way created out of a vacuum and each actor put its own preconceptions upon it without anyone putting too much of an effort into trying to get the concepts straight once and for all. A construction open enough for everybody to put their needs and aspirations upon is also certain to create great deceptions. What can be seen in this area is a clear demonstration of what Garretón called the clash between the ethical-symbolic logic and the politico-statist logic where the division between the State and the social society is clear.

Under the question what future challenges for the PDDH may consist of, different views were ventilated. There existed a consensus, though, that one great challenge for the future consisted of getting the institution to work as it was planned to work, a challenge considered to be hard and difficult enough. Another widely comprehended view was that a major challenge for the PDDH is to regain the trust in the organization from the Salvadorian citizens. A trust that, as many put it, was destroyed under the government of Peñate Polanco.¹⁷¹ One of the interviewed said that a major challenge would be teaching the Salvadorians how to claim their rights, since that is a knowledge missing in the El Salvador of today. People simply are not aware of their rights as citizens and are therefore not claiming their rights. The opposite aspect of the task would be to teach the institutions of the State what their responsibilities are. In conclusion the PDDH ought to show the population that it has rights and the State that it should respect those rights. *"It is a very tough thing to do ...that reality is now very far away from being accomplished"*¹⁷²

los ONGs [la PDDH es] una entidad del Estado para controlar al Estado mismo, no es contraparte, es arbitro imparcial entre el Estado y la sociedad civil, totalmente autónomo..."

¹⁶⁹ Interview with NN

¹⁷⁰ Interview with Juan Carlos Sanchez

¹⁷¹ For an example see interview with Edmé Iglesias

¹⁷² Interview with NN My translation, in original "Es una fregada enorme ..aquí está muy lejos de alcanzar esa reali-

My impression is that in order to get an institution that has failed to live up to the goals set forth for it to work, it takes something more than just hopes for a better future government. It takes a well-founded strategy on how to realise this. Here the NGOs could contribute with suggestions. Rather than complaining that would eventually be more useful.

8.2 The political parties

Here I have chosen to interview representatives from ARENA and the FMLN for two reasons. Firstly since these are the major parties in the Salvadorian parliament today and secondly since were they the parties signing the Peace Accords in 1992, ARENA as the party governing El Salvador and the FMLN as the guerrillas.

8.2.1 ARENA

Asked whether ARENA has a sympathetic attitude towards the PDDH, Roberto d'Aubuisson answers affirmatively, saying that he considers the institution to be vital for the democratization of the country. However, according to d'Aubuisson, what ARENA does not approve of are the bad employees and leaders the PDDH has had. He also says that the PDDH was proposed and created by the FMLN so that the left wing party should have certain quotas of power. This since *“generally people belonging to the left wing have stuck to these niches in order to make politics at least partial but surely oriented all along with their ideological philosophy”*¹⁷³. This tendency can accordingly be seen in the two female title holders, de Avilés and de Carrillo, who have clearly demonstrated their inclination for the left, that is for the FMLN, according to d'Aubuisson. The solution to the problems of the PDDH can thus not be found in legal reforms but in a change of the staff and the attitude of the leaders of the institution. Maybe one possible change could be to change the requisites for votes when once electing a new ombudsman. D'Aubuisson suggests the possibility to elect a new ombudsman with 43 votes. This would make the process easier and not as vulnerable to “over-negotiation” which leads to a situation of *“I give you, you give me”*. The prevailing situation has led to the PDDH always, with the exception of the period of the first ombudsman when the FMLN did not yet have political influence, having ended up in the hands of the FMLN. The other important institutions have in the same way ended up dominated by the other political parties. Thus the Corte de Cuentas has traditionally ended up under the influence of PCN, the “Procuraduría General de la República” under PDC and the “Fiscalía General de la República” has been run mostly under the auspices of ARENA. But this situation of influence has only been managed in a wrongful way in the case of the PDDH according to

dad”

¹⁷³ Interview with Roberto d'Aubuisson My translation in original “son generalmente gente de izquierda que han agarrado estos nichos para hacer política al menos partidaria pero si orientada a su filosofía ideológica...”

d'Aubuisson. With the current situation d'Aubuisson says, the PDDH does not enjoy any confidence among the population.

If the PDDH was removed the only ones that would take to the streets to reclaim it would be those of the FMLN, some of them, not all! Because no one sees the real use for the population as they are operating it today, except from those of the left, the political left, that uses it as a political tool.¹⁷⁴

Gloria Salguero Gross, ARENA, former speaker of the Salvadorian parliament during the period when Victoria de Avilés was elected ombudsman has a different opinion. She thinks that de Avilés was a good ombudsman and that everything indicates that de Carrillo will do a good job as well. She was of the opinion that the election of Victoria de Avilés as ombudsman together with the then newly elected Supreme Court gave a stability much needed to the country at that moment.¹⁷⁵

The both “areneros” do have varying opinions about many things near the PDDH and the respective ombudsmen. While Salguero Gross points at the meritorious work conducted by de Carrillo in order to obtain international funding, d'Aubuisson talks about her as wasting the institution's funds on flight tickets. Considering that d'Aubuisson was the one selected to talk with me when I asked for an interview with one of the ARENA deputies about the PDDH my belief is that his opinions about the PDDH are the ones that are the most representative for the standpoints of the deputies of ARENA today. This may however be a miscomprehension.

8.2.2 FMLN

Nidia Díaz, ex-deputy in the parliament now candidate of the FMLN for the Central American Parliament says that she considers the PDDH to be equally or even more important in the Salvadorian society today than at the time of signing the Peace Accords. This because of the expansion of human rights that has occurred since then now including even social and economic rights etc. This has given the PDDH new important tasks in guarding these rights of the Salvadorian population. She points at the problem that lies in the government viewing human rights as belonging to the left, but she also points out that those fighting the most for human rights and those having collaborated most with the PDDH in El Salvador have been those of the political left.

Logically there have been people that have thought that they could intervene within the PDDH, many NGOs started to put pressure and saying they would like the PDDH to direct itself more in favour of the

¹⁷⁴ Interview with Roberto d'Aubuisson My translation, in original “si se quita la PDDH los únicos que van a salir son los del FMLN a la calle, y algunos no todos, porque nadie la ve el uso real a la población así como la están manejando ahorita, salvo los de izquierda, político de izquierda, que la usan para, como una herramienta política”

¹⁷⁵ Interview with Gloria Salguero Gross

*poorest, and this has put pressure, right?*¹⁷⁶

But she adds that the FMLN never has wanted to try to place people within the institution.

The big challenge for the PDDH under de Carrillo will be to regain the credibility of the institution towards the citizens so that these have an institution that defends them against arbitrariness from the State.¹⁷⁷

8.3 Voices from within the PDDH

The opinions on the work of an institution from within, that is from the people working there or who have worked there, are interesting to hear. Not least since the opinions of the work of the PDDH from outside many times have been very critical. Interestingly enough so are the opinions from within as well. A lot of criticism is made about the way the PDDH has been run under the previous ombudsmen. What stands out here is the lack of clear objectives and the lack of a clear institutional vision from external actors, that is from the politicians and the NGOs, as well as from the leadership of the institution itself. The present ombudsman, Beatrice de Carrillo, claims the most important task of the PDDH to be functioning as a guardian of the institutional structure of the State. It is more or less fulfilling the work that in other countries may fall on the desk of a constitutional court. This work would more be centred towards policy questions and treating the main human rights problems in the country and not so much be centred around the work of solving individual cases of alleged violations of someone's human rights.¹⁷⁸ The very load of individual claims is seen as a huge problem for the institution and something of an impossibility to deal with functionally and efficiently by the staff of the PDDH.¹⁷⁹ A lot of institutional energy is wasted by continuously solving the same type of individual cases when what really would make a difference nationally would be to emit resolutions, which deal with the underlying problem. As an example is mentioned the problem with the PNC concerning police brutality, bad treatment etc., which contributes with a great deal of the cases brought to the PDDH. Instead of dealing with these cases individually there would be a greater benefit in going to the roots of the problems, for example addressing the problem of the poor education of the police force.¹⁸⁰

David Morales claims that the very inefficiency of the institution due to among other things bad leadership, organisation and a lack of a clear institutional vision in the past opened up for alternative ways of

¹⁷⁶ Interview with Nidia Díaz, My translation, in original “Lógicamente hay gente que ha pensado que podía intervenir dentro de la PDDH, muchas ONGs empezaron a presionar que querían esto, que la PDDH se volviera más a favor, verdad, de la gente más pobre, y eso ha presionado verdad.”

¹⁷⁷ Interview with Nidia Díaz

¹⁷⁸ Interview with Beatrice de Carrillo

¹⁷⁹ Interviews with David Morales and Mirna de Cornejo

¹⁸⁰ Interview with Mirna de Cornejo

work within the institution and within the regional offices. This blurs the existing statistics of emitted resolutions and cases solved. This point is confirmed by Mirna de Cornejo, PDDH department of La Libertad, who says that during the office of Peñate Polanco it was simply pointless to open up files since they would not have been given a resolution within several years. It was easier to handle cases in a more unofficial and practical way.¹⁸¹ These actions by the PDDH have thus remained unregistered and are not to be found in any statistics something which further has contributed to a vision from the outside of the PDDH as a totally non functioning institution. Mirna de Cornejo says that even though the PDDH for several years did not work centrally due to internal problems, the work of the departmental representations continued uninterrupted since the representations consisted of small groups of committed people that did not change. This made them continue with their normal work even though they lacked organizational support from above, that is from the central PDDH.¹⁸²

Contesting the negative opinions from the NGOs concerning the system of election of the ombudsman, de Carrillo claims it to be the result of a misconception of the PDDH from the NGOs. The institution has from the beginning, due to the historical lack of knowledge of this kind of institution, been seen by the NGOs as belonging to their sphere of influence where they would be in their right to influence. This concept is very much mistaken, says de Carrillo, and instead the PDDH finds itself in a position above all of the NGOs working in the human rights field. They belong to different spheres since the PDDH is part of the ‘Ministerio Público’. *“The PDDH is not the typical popular leader, it is not the typical representative for demands against the State, this is also a very grave mistake of the NGOs, who always have insisted on that”*.¹⁸³ Instead the PDDH is a part of the State with the task of controlling the State itself, which can be compared to the parliamentary ombudsman that exists in Sweden. The problems that have arisen during the elections are due to the lack of democracy and the present political structure with two major political, deadly opponents with no small parties to counterweight them, but the system of election *per se* is good.¹⁸⁴

The great challenge that de Carrillo sees is to strengthen the institution internally to make it an entity that whatever happens and whoever assumes power will survive and remain standing.

*That is the most difficult task since I have to see how to get edifice, how to get my funds raised, how I can educate non-educated personnel how to purge the institution from the illicit people that have gathered in the interior of the institution during the years of abandonment.*¹⁸⁵

Those working in the PDDH coincide with the views of the NGOs regarding the lack of support from the government. De Carrillo even says that she is by no means counting on a second term of office. She will

¹⁸¹ Interview with Mirna de Cornejo

¹⁸² Interview with Mirna de Cornejo

¹⁸³ Interview with Beatrice de Carrillo

¹⁸⁴ Interview with Beatrice de Carrillo

see it as a measure of having performed her work well if she is not re-elected.¹⁸⁶

One problem concerning the work of the PDDH is the poor material standard. The PDDH is lacking the tools necessary for the staff to perform the work in an optimal manner. There is an enormous lack of computers and other technical aids, for example the library of the institution does not even have a copying machine which may very well be the least of its problems in this area. This situation naturally makes the work of the staff more time consuming as well as more difficult. It is also a hindrance towards fulfilling the legal standards demanded of the PDDH. The personnel receiving the complaints and denunciations from the public do so in working conditions that hinder them to uphold the demands on secrecy laid upon the PDDH by law.¹⁸⁷ David Rivas mentioned that the budget for the PDDH was enough to cover the salaries and the premises, but in order to finance the actual work and training of personnel the institution had to rely on funding from the international co-operation.¹⁸⁸

There also seems to exist a consensus among the interviewed that the personnel of the PDDH do not in its totality reach up to the academically qualitative standards that are necessary for the work. The explanations for this state of affairs differ; lacking continuous training of the staff, politically placed people unfit for the job that are impossible to get rid of, people lacking the right commitment for their task etc. Another explanation is that the most qualified usually do not stay long in the PDDH since the lawyers in the PDDH are paid a very low salary compared to the situation in other State bodies.¹⁸⁹

8.4 Possible problems rising out of the constitutional and legal mandate of the PDDH

The former Swedish Equal Opportunities ombudsman¹⁹⁰ Lena Svenaeus, said during a seminar treating the Swedish ombudsmen that the Equal Opportunities ombudsman used to be called a toothless tiger. Her ambition was to strengthen the institution giving it teeth in form of good lawyers, professional public relations officers and a high working spirit. Soon however she found out that that was not enough, the law had to be altered. The law was modified and she was satisfied until she found out that nothing had changed in society. People being discriminated were still not given any compensation. She says that she found out that the problem was that the court chosen to judge these cases had not altered its way of sentencing, rather it stuck to old praxis.¹⁹¹ Thinking about possible elements of hindrance for the PDDH, the material studied and the interviews conducted have pointed towards the conclusion that its legal founda-

¹⁸⁵ Interview with Beatrice de Carrillo

¹⁸⁶ Interview with Beatrice de Carrillo

¹⁸⁷ Interview with Rafael Aquino

¹⁸⁸ Interview with David Rivas

¹⁸⁹ Interviews with David Morales and Rafael Aquino

¹⁹⁰ Jämställdhetsombudsmannen, JämO

¹⁹¹ Lena Svenaeus, during a seminar called Den svenska ombudsmannen - argusöga eller maktens gisslan? Held

tion and the regulations concerning its activities can be sorted out as not inflicting any major problems on the institution. This means that if the PDDH encounters a problem in performing its work it is not likely that the roots to that problem are to be found in the construction of the law but rather in other factors. In theory as well as in practice the law seems to constitute a sound basis for the work of the PDDH. The people interviewed support this view as has been seen earlier in this chapter. There could be small adjustments made, but these would be more of a hypothetical nature. In this situation it is of greater interest to look at the law with the factual situation in mind and discussing the contents of the law from the point of view of the interview results. I have chosen to focus on a few articles in Decree 183 that I believe mirror areas of specific interest in analyzing the situation of the PDDH.

8.4.1 The personal qualities of the ombudsman

Art 5

To be OMBUDSMAN it is required: to be Salvadorian¹⁹², layman, over thirty five years old, national lawyer, having recognized experience in promotion, education and protection of the human rights and wide knowledge in this field, to be of well-known morality and competence, being in full possession of citizen rights and having been so during the six years preceding the assumption of office.¹⁹³

Art 6

Those who can not be elected OMBUDSMAN are: those elected in popular elections, the government ministers, the vice-ministers, the judges of the Supreme Court, their spouses or relatives within the fourth grade of consanguinity or second of affinity, the members of political parties who have positions in the directive organs, those in the military who are or have been enlisted or have been members of armed groups of any kind, and those who have been sentenced for violations of the human rights.¹⁹⁴

Art 7

The position as OMBUDSMAN is incompatible; with holding another public office and with exercising his profession, except activities of a teaching or cultural character; with active participation in political parties; with holding executive posts in labour unions or employers' organizations and with the capacity as Minister of anyone religious worship.¹⁹⁵

during the Human Rights days in Stockholm November 18th -19th 2002

¹⁹² In order to make possible the assumption of office by Beatrice de Carrillo this requisite was amended. Before year 2001 the ombudsman had to be Salvadorian by birth, but today the prerequisite is to be a Salvadorian citizen. Being a Salvadorian citizen by means of neutralization is therefore sufficient.

¹⁹³ My translation, in original "Para ser PROCURADOR se requiere: ser salvadoreño (before this read por nacimiento), del estado seglar, mayor de treinta y cinco años, abogado de República, reconocida trayectoria en la promoción, educación y defensa de los derechos humanos y con amplios conocimientos en ese campo, de moralidad y competencia notorias, estar en goce de los derechos de ciudadano y haberlo estado en los seis años anteriores al desempeño de su cargo."

¹⁹⁴ My translation, in original "No podrán ser elegidos PROCURADOR: los funcionarios de elección popular, los Ministros o Viceministros de Estado, los Magistrados de la Corte Suprema de Justicia, sus cónyuges o parientes dentro del cuarto grado de consanguinidad o segundo de afinidad, los integrantes de partidos políticos que desempeñen cargos en los órganos de dirección, los militares de profesión que estén o hayan estado de alta o quienes pertenezcan o hayan pertenecido a grupos armados de cualquier naturaleza y los que hubiesen sido condenados por violación a los derechos humanos."

¹⁹⁵ My translation, in original "El cargo de PROCURADOR es incompatible: con el desempeño de otro cargo público y con el ejercicio de su profesión, excepto las actividades de carácter docente o cultural; con la participación activa en partidos políticos; con el desempeño de cargos directivos en organizaciones sindicales o empresariales y con la calidad de Ministro de cualquier culto religioso."

What is expressed in the three above-mentioned paragraphs is nothing but the wish for neutrality of the ombudsman, a construction that is not particular or strange in any sense. In a country experiencing such great antagonism between different sectors as El Salvador did at the time when the PDDH was created it is no wonder that the engineers of the institution tried to neutralize this societal tension. For the PDDH to have any possibilities to function in a divided society it was of course of greatest importance to gain trust for the ombudsman of the new institution. This is also pointed out as the number one prerequisite by Giddings, Sladeczek and Diez Bueso who also stress that it therefore is crucial, especially so in States with recent history of authoritarian government, that the procedures of appointment, dismissal, selection of staff and funding function well. This since those things will determine the perception of the citizens concerning the position of the institution.¹⁹⁶ What is clear from the interviews is that the ambition of the law has not been fulfilled. The ombudsmen have never managed to be seen as neutral by both the influential parts of the Salvadorian society. The respective ombudsmen have been accused for political affiliation as well as of being indebted to either political parties or groups of interest for being supported by those during the election process. This has created a situation where the entire institution has suffered from lacking support, morally as well as economically.

Even the easily understandable prerequisite expressed in article five, to have recognized experience in promotion, education and protection of the human rights, is not unlikely to cause problem for the ombudsman. Since the human rights area is thought of by many as an area of leftist influence, people with too much protagonism in this area are unlikely to be elected since they are viewed upon with great suspicion by the political right.

8.4.2 The task of the PDDH

Art 11 and art 12, see section 7.3

If El Salvador would get a more democratic society, the mandate of the PDDH could be slightly narrowed to concretize it, but as the situation is today it is considered wiser to keep the area of manoeuvre as wide as possible.¹⁹⁷ This, however is an issue where one can view it differently. There is also a clear risk having a mandate, which is impossible to fulfil. It may create frustration from within the PDDH as well as from the society if the institution can not comply with its mandate, and thus threaten the credibility of the institution. It can also create a situation where the PDDH demands a budget greater than what was originally planned. This since it otherwise cannot comply with the full mandate. Looking at the budget statistics this seems to be the case. With a mandate that cannot be covered in its totality it is up to the present ombudsman to decide which parts should be prioritized. That this is done is openly admitted by the PDDH it-

¹⁹⁶ Giddings Philip, Sladeczek Vladimir and Diez Bueso Laura (2000) p 455

¹⁹⁷ Interview with David Morales

self.¹⁹⁸ This way the focus of the institution may shift extensively depending on the present ombudsman, which may make long-term planning of the work of the PDDH more difficult. This has been an actual problem for the PDDH. It can also be discussed whether these shifts do not make the ombudsmen more focused and more exposed to criticism, which may not only harm them personally but also the PDDH itself. One last possible problem with such a wide mandate is that it makes it more difficult to assess the PDDH. One cannot compare how the institution is complying with its mandate as a whole and it makes it more difficult to compare its efficiency over time.

8.4.3 The budget

Art 19

To keep the PDDH working it will have a special budget and its special salary law. To assure control over the budget the Ombudsman will establish the measures that he finds appropriate without effecting the control corresponding to the Corte de Cuentas of the Republic.¹⁹⁹

Art 20

The Ombudsman can request technical or financial assistance from governments or specialized international organs.²⁰⁰

Art 22

The patrimony of the PDDH will consist of:

- 1) Contributions and subsidies from the Central Government;*
- 2) Inheritances, legacies and donations to the institution*
- 3) Resources from the assisting programs of Governments or international organs; and*
- 4) Other incomes²⁰¹*

One of the main problems since the creation of the PDDH has been the question of the institutional budget. During the years the institution has grown and today it employs about 375 people around the country.²⁰² Contrary to what many seem to think, the annual budget approved by the parliament has not been systematically cut down, rather as can be seen by the annual reports of the PDDH, the annual budget has been more than tripled since the creation of the institution. It has developed from a mere 10.6 million colones in 1993 to 36.5 million in 2001. Another thing to ask is whether this budget has ever provided means sufficient to cover the needs of the institution. The budget asked for from the PDDH and the money received already in the beginning showed great discrepancy. Whereas in '92 the difference was only

¹⁹⁸ Informe de labores julio - septiembre de 2001 p 8

¹⁹⁹ My translation in original "Para su funcionamiento, la Procuraduría tendrá un presupuesto especial y su propia Ley de Salarios. Para efectos de control presupuestario, el Procurador establecerá los mecanismos que estime convenientes, sin perjuicio de la fiscalización que corresponde a la Corte de Cuentas de la República."

²⁰⁰ My translation in original "El Procurador podrá solicitar asistencia técnica o financiera a gobiernos u organismos internacionales especializados."

²⁰¹ My translation in original "El patrimonio de la Procuraduría estará constituido por: 1º) Los aportes y subsidios del Gobierno Central; 2º) Herencias, legados y donaciones hechas a su favor; 3º) Recursos de los programas de asistencia de Gobiernos u organismos internacionales; y 4º) Otros ingresos."

²⁰² Rodríguez Rescia Victor (2001)

a “mere” two million colones, 9.33 – 7.26, the corresponding numbers for ‘96 were 55.4 – 29.99 that is a difference amounting to almost 16 million.²⁰³

Table 2. The annual budget for the PDDH²⁰⁴

<i>Year</i>	<i>Budget in million colones</i>
1993	10,63
1994	21,36
1995	28,44
1996	29,99
1997	30,84
1998	34,84
1999	37,97
2000	36,5
2001	36,5

What is remarkable is that international donors contribute a great deal to the institutional budget. The main donors have been UNDP, ONUSAL, UNICEF; RAADA BARNER²⁰⁵, and the Canadian, Swedish, Irish and French co-operation. This financial co-operation diminished substantially during the administration of Peñate Polanco due to discontent with his administration.²⁰⁶ There are of course some problems involved when it comes to international financing of this kind. Beatrice de Carrillo expresses the point of view that the international co-operation has not always served the best interests of the institution and more than helping to institutionalize the PDDH, money have been “wasted” on different side projects. This is why she says that international financial co-operation will be welcomed during her administration if it serves the institution, in other cases the PDDH will do better without the extra money.²⁰⁷

²⁰³ Informe de labores 95-96, p 152

²⁰⁴ Informe de labores 92-93, p 9, Informe de labores 95-96, p 152, Informe de labores 00-01, p 12

²⁰⁵ Probably a bad spelling of the Swedish name of the organisation Save the Children.

²⁰⁶ Rodríguez Rescia Victor (2001)

²⁰⁷ Interview with Beatrice de Carrillo

9 Conclusions

As earlier discussed in chapter three, democracy and human rights can be seen as interacting and mutually reinforcing. The lack of one of the two can accordingly threaten the other. This latter alternative is particularly clear in a country as El Salvador. In a process of creating peace and stability as well as an ambience of trust in the society I definitely believe that institutions guarding the fulfilment of the human rights of the population are of crucial importance. In a society where the human rights of the population have been constantly violated for a long period of time it will be necessary to address this with special methods and/or special institutions. This has been seen in various countries where truth commissions, human rights ombudsmen and ad hoc-courts for war crimes etc have been created. The respect for the human rights has increased in post-war El Salvador when it comes to the civil and political rights of the Salvadorians as was acknowledged by Benjamín Cuéllar but the situation is not as positive regarding the social, economic and cultural rights of the population. This opinion was widely embraced among the people interviewed.

In the case of El Salvador the human rights issue can very much be seen as the issue that conditions the development of the democratization process which, most people would agree on, is far from completed. The lack of willingness to handle the human right violations during the war continues to raise obstacles to reconciliation of the society. The way the human rights issue is perceived by the political right, that is as a forum for influence of the political left is also a great impediment for a widespread acknowledgement of

human rights issues in El Salvador. My impression from my visit in El Salvador and the interviews held there as well as from the discussions I had with others than those interviewed is that the lack of trust towards the sitting government and the State bureaucracy has very much to do with the past. The shortcomings of the policies elaborated from what Garretón called the politico-statist logic, that is the focus on the building of the democratic State leaving human right issues unsolved and swept under the carpet are now showing in El Salvador. This is a good example of the importance of including human rights in the notion of democracy. Without such a view democracy will exist in theory only and its advantages will not be perceived among the inhabitants. If this is so then the important impetus for participation will be at risk, which will further endanger democracy.

The goals for the PDDH were set high, and one can hardly say that they have been fulfilled. But the answer to the initial question if the institution has fulfilled its purpose cannot stop with that statement. More interesting is to try to see and explain *why* the institution has not lived up to the expectations laid upon it. I think that one of the main reasons to be found to that question is the lack of institutional consolidation. Dagoberto Gutierrez talked about having the idea of an institution rather than the figure of an ombudsman. Instead what came out as a result of the creation seems very much to have been the model of the ombudsman with a strong focus on the ombudsman and little institutional structure to protect the PDDH in case of a less fortunate choice of ombudsman by the Salvadorian parliament. This could also be seen in view of the election of the third ombudsman, Peñate Polanco, where a less fortunate choice resulted in deviated international support and an almost total deterioration of the institution. Rodríguez Rescia supports this view in his report.²⁰⁸ It is not reasonable that a new person on top of the organisation means a totally different orientation of the activities performed by it. That way it may be extremely difficult to work with issues that demand long periods of work and focusing, as are questions where the aim is to change values and norms, for example the work with the Salvadorian police force. That the institution needs a person in charge with strong protagonism is clear, but I do not think that it is good with too much focus on him or her and little on the development of the rest of the institution as very much seems to be the situation today.

Returning to the initial questions asked I am now going to address them and try to summon up the results and conclusion I have reached.

- **Has the PDDH contributed to the development of reconciliation and democratization in El Salvador?**

Obviously a well functioning PDDH would not constitute the solution to all the human rights problems of El Salvador. However, an institution that does not function well is certainly not living up to the goals of

²⁰⁸ Víctor Rodríguez Rescia (2001)

reconciliation and democratization addressed in the introduction of the peace accords and the proper law. In a certain way it can be said that the PDDH has contributed to democratization. At least now there does exist an institution, which the Salvadorian citizens can turn to with their complaints. That is something necessary in a democratic society. The judiciary in El Salvador did at the end of the civil war not enjoy the confidence of many and it was unlikely that a great deal of the people would consider going to the courts with their problems as a good solution. The creation of the PDDH may in that context be seen as an intent to create something new that would not be hindered by former ballast. Since there can hardly be said to have existed such an institution before the creation of the PDDH the creation *per se* can be said to have contributed to democratization.

The question whether the PDDH has contributed to reconciliation of the Salvadorian society is more difficult to answer in an affirmative way. It is clear that the position of the ombudsman is a highly sensitive one where the person in question must count on a great deal of suspicion from its surroundings. Here I find that the political polarisation of the country plays an especially unfortunate role. This can be illustrated by the election of Beatrice de Carrillo, who seems to be viewed by suspicion by both political sides as well as by several NGOs although she can also count upon substantial support from many. When, speaking from conviction, the ombudsman says that she will most likely not be re-elected and that she will see that as a demonstration of having performed her job well then that is a clear evidence of the failure of the Salvadorian society. The task of an ombudsman is to criticize and this has to be properly acknowledged and not seen as making a political standpoint. It may well be possible for one person to be partial, but it is difficult to promote the interests of both sides and at the same time be working against them.²⁰⁹ In a climate of such political suspicion it will be hard to find anyone who is considered to be fulfilling his or her professional duties without encountering scepticism concerning possible biases. Anyone having worked actively with human rights issues before coming forward as a candidate for the PDDH will have enormous problems in appearing as non-political. On the other hand, someone who has not been prominent in the area of human rights will be seen as useless and a probable political marionette by others. This is, I think, one of the greater problems the PDDH, as well as El Salvador, face for the future - the mutual distrust, which is so widespread in the Salvadorian society. I would thus answer to the question on whether the PDDH has contributed to reconciliation that it has not, the institution itself rather serves as a sad demonstration of just how divided and irreconciled the Salvadorian society is.

If the remaining polarization of the Salvadorian society, as I see it, is the main reason for the failure of the PDDH I believe a second reason, which *per se* very well can be seen as an outflow of the former, is to be found in the differing conceptions on which role the PDDH should play. I would also dare to say that

²⁰⁹ In the course of the interviews I encountered the opinion that de Carrillo was placed in the PDDH by the right and was thus indebted in a way that would make impossible any firm positioning from her towards the government and the public administration. I also met with the position that she by criticising certain actions taken by the government had proved herself as going the errands of the left.

what was mentioned in chapter three, about problems with remaining legacies from the past authoritarian regime, plays an important role here. Especially the legacies concerning the political actors and the generalised presence of authoritarian values in the society. The traditional antagonisms between today's main political actors remain from the days of the civil war and since the party in power is the same as in those days it is not too daring a point of view to feel a touch of presence of authoritarian values remaining in El Salvador. Together these legacies have hindered the evolution of the PDDH as an institution of reconciliation and rather made it a lame one with small possibilities of real success. As a conclusion the PDDH may very well be seen as an important step towards an increased democratization but it is a huge mistake to view its existence as a proof of a democratized society. Democratization, as found earlier on in this dissertation is an ongoing process that has no end, and in the case of El Salvador, even if the path is found and the journey begun, a lot remains to be done.

- **What kind of problems, legal and/or political, does the PDDH face?**

The more general problems have already been addressed in discussing the previous question. Other problems that I have found concern the electoral process when a new ombudsman is elected, and yet another is the problem of lacking financial means. This has been discussed more in detail in the previous chapter. Also what I find very serious is the lack of a vision of the PDDH as an institution which has to function regardless of whom is in charge. This does also mean that a person assuming leadership has to take into consideration the work of his or her predecessors. This would mean that it can not be right to do what the present ombudsman said she was doing - starting from zero with the incoming claims, leaving the old ones to be taken care of by means of internationally funded projects. For the people turning to an institution such as the PDDH it is important to know that their claims are just as important should they be filed before a change in the leading post as afterwards. To rely on the international donors to solve a crisis of an overload of cases without resolutions when the time is right is not what I can see as a sustainable solution to the problem. As an institution created as a part of the "Ministerio Público" it is a task for the institution itself and of course for the Salvadorian State, by means of assuring a sufficient budget, to create a working system. If the government in power does not ultimately understand the importance of the PDDH and its own responsibility for its functioning or non-functioning, the institution is foredoomed to spend its days in an endless struggle where the international community will provide artificial breathing as long as there among its members remains an interest for the whereabouts of Central America in general and El Salvador in particular. And this interest can without too much controversy be said to have lost strength since the days when the Peace Accords were signed. Now other parts of the world seem to attract more interest. A promising step has however been taken in the year that has passed since my stay in El Salvador. In *NotiPDDH*, the Internet newsletter of the PDDH, from 18 July 2002, the new way of working with cases is presented. Now the work shall be focused on searching the impact of the violations on a national level, that is the kind of work that as well Beatrice de Carrillo as Mirna de Cornejo advocated during the inter-

views.

... the respect for the Human Rights in El Salvador could be substantially better with the implementation of the ombudsman for human rights. But, the access to democracy will only be possible when the citizen who knows his rights and his obligations, exercises those from the institutions of the State due to conviction rather than due to force²¹⁰

Another serious problem is of course the lack of knowledge about one's human rights among the population. If the PDDH is to be an effective institution in guarding the rights of the population it has to receive information about violations from the citizens. Here the information plays an important role and different information campaigns could contribute a lot. Information is also something that may foster a culture where people feel part of society as citizens who can claim their rights. As discussed earlier in the dissertation the very feeling of belonging to a context is crucial as an impetus to engage in it. And commitment fosters the civic spirit that Putnam put forward as essential for a functional democracy. Committed inhabitants who have the means sufficient to make themselves heard are thus of crucial importance for a country to enhance its level of democracy and that is what the PDDH ought to aim at.

- **How do other Human Rights actors in El Salvador see the PDDH?**

It is easily seen that the people working with human rights in El Salvador, from what I have gathered by my interviews, do believe in the PDDH and attribute a great importance to its mere existence. It has equally been obvious that there are several factors that are seen as very problematic when it comes to the true functioning of the PDDH. Several of the interviewed people have expressed great fears that the institution will not be allowed to perform its task properly by the government and other powers that are against the purpose of the PDDH. It is clear that the NGOs have their own picture of how the PDDH should function and they see their own participation in its shaping as natural and necessary. What I found quite interesting is that while fiercely criticising the government for being one-eyed not too much of self-criticism was to be found on how the NGOs viewed their own role. Rather, as I saw it, the attitudes of the NGOs themselves may well contribute to the remaining lack of civic spirit in El Salvador. Criticism towards people favoured by the NGOs was responded on as being raised only to discredit that person as well as the institution just the way the other side, the government, responded to criticism raised by the NGOs themselves. Maybe this is the most serious impediment to true democratization in a country such as El Salvador. In a society with little transparency the fear that any weakness admitted by one side will be magnified and used by the other side to destroy the objectives of the former can be so strong that neither side will admit any weaknesses or faults committed by the people supported by them. This way both sides will mutually reinforce the closeness of the society.

²¹⁰ Exposición de motivos del anteproyecto de la ley orgánica de la PDDH

Finally, and maybe not very encouragingly, I end this dissertation by quoting Dagoberto Gutierrez who gave a striking verbal picture of how he pictured the PDDH today.

...the PDDH is like a building bombed in the second world war. A building, which remains standing but is not the building it once was before it was bombed. The walls remain standing but it has no roof, the walls stand but there are no floors, it has no doors. Like the houses bombed during the war. They stopped being homes but also being houses. That is PDDH today. And it is true what they are telling you, it is as the last thing to remain.²¹¹

In short: the PDDH is weak, it has many problems to fight but still it does exist and is today to a certain extent visualized in the Salvadorian society, which somehow is a source of hope for the future of human rights protection in El Salvador. Its existence is a step towards democracy and if it in the future is given the possibility to assume its proper task it *may* also play a significant role in reconciling the Salvadorian society...

²¹¹ Interview with Dagoberto Gutierrez My translation, in original "...la PDDH es como un edificio bombardeado en la segunda guerra mundial. Que se mantiene en pie pero ya no es el edificio de antes de lo que la bombardearon. Se mantienen en pie las paredes, pero no tiene techo, tiene paredes pero no tiene piso, no tiene puertas. Como las casas que bombardeaban durante la guerra. Que dejaron de ser hogares, pero también de ser casas. Eso es la PDDH

References

Printed material

Beetham David, *Democracy and Human Rights* (1999) Polity Press, Cornwall

Byrne Hugh, *El Salvador's Civil War A Study of Revolution* (1996) Lynne Rienner Publishers, Boulder

Constitución explicada (2001) Fespada ediciones, San Salvador

Dahl Robert A., *After the revolution? Authority in a good society* (1990) Yale university press, Michigan USA

De la Locura a la Esperanza, La guerra de 12 años en El Salvador, Informe de la Comisión de la Verdad para El Salvador (1992-1993) Naciones Unidas

Diamond Larry, **Hartlyn** Jonathan, **Linz** Juan J., and **Lipset** Seymour Martin (Ed.) *Democracy in Developing Countries Latin America* (1999) Lynne Rienner Publishers Inc., USA

Domingo Pilar and **Sieder** Rachel (Ed.), *Rule of Law in Latin America: The International Promotion of Judicial Reform*(2001) Institute of Latin American Studies University of London, Great Britain

Eide Asbjørn, *Economic, social and cultural rights as human rights* in Eide Asbjørn, Krause Catarina and Rosas Allen (Ed.) *Economic, Social and Cultural Rights A Textbook* (1995) Martinus Nijhoff Publishers, Dordrecht

Eide Asbjørn and **Rosas** Allen, *Economic, social and cultural rights: a universal challenge* in Eide Asbjørn, Krause

hoy. Y tiene razón lo que te dicen, es como lo último que va quedando.”

Catarina and Rosas Allen (Ed.) *Economic, Social and Cultural Rights A Textbook* (1995) Martinus Nijhoff Publishers, Dordrecht

El Desafío de la Independencia VIII informe de las Procuradurías de los Derechos Humanos de Guatemala, El Salvador y Nicaragua; Comisionado Nacional de los Derechos Humanos en Honduras; Defensoría de los Habitantes de Costa Rica, Defensoría del Pueblo de Panamá; y *el Ombudsman* de Belice (2001) CODEHUCA INGRAF S.R.L.

El Salvador, länder i fickformat, Sydamerika (1998) Utrikespolitiska Institutet

Garretón Manuel Antonio, *Human rights in Democratization Processes* in Jelin Elizabeth and Hershberg Eric (Ed.) *Constructing Democracy Human Rights, Citizenship, and Society in Latin America* (1996) Westview Press, Boulder

Giddings Philip, **Sládecek** Vladimir and **Díez Bueso** Laura, *The Ombudsman and Human Rights* in Gregory Roy and Giddings Philip (Ed.) *Righting Wrongs The Ombudsman in Six Continents* (2000) IOS Press, The Netherlands

Informe sobre Desarrollo Humano El Salvador 2001 (2001) PNUD

Jelin Elizabeth, *Human Rights in Transition - Latin American Societies Coping with Their Past and Constructing Their Future* in Behar Jaime (Ed.) *Inequality, democracy and sustainable development in Latin America* (2000) Institute of Latin American Studies Stockholm University Edsbruk

Johnstone Ian, *Rights and Reconciliation UN Strategies In El Salvador* (1995) Lynne Rienner Publishers Inc, Boulder

Kirilova Eriksson Maja, *Skydd av Mänskliga Rättigheter det interamerikanska systemet* (2002) Iustus Förlag, Göteborg

La Rue Frank, *The Right to Truth in Central America* in Sieder Rachel (Ed.) *Impunity in Latin America* (1995) Institute of Latin American Studies, Great Britain

Los Acuerdos de Paz, Acuerdos de El Salvador: en el camino de la paz, Preparada por la Misión de Observadores de las Naciones Unidas en El Salvador (ONUSAL), Editorial ARCOIRIS

Maiorano Jorge Luis, *The Defensor del pueblo in Latin America* in Gregory Roy and Giddings Philip (Ed.) *Righting Wrongs The Ombudsman in Six Continents* (2000) IOS Press, The Netherlands

Putnam Robert D., *Den fungerande demokratin Medborgarandans rötter i Italien* (1997) SNS Förlag, Stockholm

Rodríguez Rescia Víctor, *Informe final Consultoría para la elaboración de un informe analítico sobre la situación actual del sistema de protección de los derechos humanos en El Salvador* (2001)

Rosas Allen, *So-called Rights of the Third Generation* in Eide Asbjørn, Krause Catarina and Rosas Allen (Ed.) *Economic, Social and Cultural Rights A Textbook* (1995) Martinus Nijhoff Publishers, Dordrecht

Steiner Henry J. and **Alston** Philip, *International Human Rights in Context Law, Politics, Morals* (2000) Oxford University Press, Great Britain

Torres-Rivas Edelberto, *Insurrection and civil war in El Salvador* in Doyle Michael W., Johnstone Ian and Orr Robert C. (Ed.), *Keeping the peace Multidimensional UN operations in Cambodia and El Salvador* (1997)

Valenzuela Arturo, *Chile: Origins and Consolidation of a Latin American Democracy* in Diamond, Hartlyn, Linz och Lipset (Ed.) *Democracy in Developing Countries Latin America* (1999) Lynne Rienner Publisher, Boulder

Identificación de áreas prioritarias en al Procuraduría para la defensa de los derechos humanos de El Salvador

Magazine and newspaper articles

Cardenas Sonia Combining legal and political approaches: recent scholarship on human rights in Latin America - in Latin American Research Review, 2000, Vol 35 Issue 2 s 252-268

La Prensa Gráfica, 2001-11-06, Instituciones en las que tiene confianza

Official documents

Acuerdos de México, México D.F., 27 de Abril de 1991

Acuerdos de Paz, Chapultepec, México

URL. <http://www.cepaz.org.sv/cepaz98/INTRODUCCION.htm> (2001-09-25)

Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties Under Article 16 and 17 of the Covenant, El Salvador (1996)

URL. <http://www1umn.edu/humanrts/esc/elsalvador1996.html>

Ley de la Procuraduría para la defensa de los derechos humanos, Decreto No 183

URL. <http://www.pddh.gob.sv/Leyregla.htm> (2001-09-11)

Materials from the PDDH

Informe de labores 1992-1993, Carlos Mauricio Molina Fonseca (1993)

Informe de labores julio 95 - junio 96, Dra. Victoria Marina Velásquez de Avilés(1996) Libros de Centroamérica, San Salvador

Informe de labores junio 2000 - mayo 2001, Dr. Marcos Alfredo Valladares Melgar (2001) Talleres Gráficos UCA, San Salvador

Informe de labores Julio-Septiembre de 2001, Dra. Beatrice de Carrillo (2001), San Salvador

Interviews conducted

The names of the people interviewed that have been quoted in the dissertation are marked by extra bold type.

Avilés de Victoria, ex-ombudsman, 2001-11-14

Aquino Rafael, staff member in the department of denunciation of the PDDH, 2001-11-26

Barsera Alberto, Reuters El Salvador, 2001-11-21

Bran Luis, APSO, 2001-11-12

Carrillo de Beatrice, PDDH, 2001-11-22

Cornejo de Mirna, Director of the local PDDH in Santa Tecla, 2001-12-05

Cuéllar Benjamín, Director of Instituto de Derechos Humanos de la Universidad Centroamericana Simeon Cañas, IDHUCA, 2001-

d'Aubuisson Roberto, member of parliament for ARENA, 2001-11-29

Díaz Nidia, candidate for the Centroamerican parliament for the FMLN, signatory of the Peace accords for the FMLN, 2001-11-20

Gutiérrez Dagoberto, signatory of the Peace Accords for the FMLN, 2001-11-19

Hernández Maria Julia, Director of Tutela Legal, 2001-11-22

Iglesias Edmé, Director of Fundación Olof Palme, 2001-11-12

Mejilla Azucena, Director of Pro-busqueda, 2001-11-19

Morales David, Associate ombudsman for civil and individual rights, 2001-11-14

Murcia Jorge Alberto, Director of Consorcio de ONGs de Derechos Humanos, 2001-11-14

Rivas David, director of Asociación de Periodistas de El Salvador, APES, ex director of the communication of the PDDH during the period of office of Victoria de Avilés 2001-11-23

Salguero Gross Gloria, candidate for the Centroamerican parliament for ARENA, former Speaker of the Salvadorian Parliament, 2001-11-14

Sanchez Juan Carlos, staff member of Fespad, 2001-11-

Other interview with employee at an international organization present in San Salvador who wished to remain in anonymity in order to speak more freely. In the footnotes quoted as NN.

Other materials

Miller David, speech titled Human Rights in a Multicultural World, held during the Human Rights days in Stockholm November 18th -19th 2002

Svenaesus Lena, talk given during a seminar around the organization of the Swedish ombudsmen on the Human Rights days in Stockholm November 18th -19th 2002

El Salvador at a glance URL: http://www.worldbank.org/data/countrydata/aag/slv_aag.pdf

Exposición de motivos del anteproyecto de la ley orgánica de la PDDH

Landfakta El Salvador, Sida, February 2000

Letter dated 2001-05-10 from Amnesty International to Mr Walter Araujo, president of the Salvadorian parliament, signed by Javier Zúñiga, regional director for America, No. of reference: TG AMR 29/02/01

Röda Korset, Ratificeringslista över stater som ratificerat FN:s konventioner om de mänskliga rättigheterna 2001-11-26

Palabras de la Procuradora para la Defensa de los Derechos Humanos, en ocasión de la presentación del informe de labores de julio 2001 a junio 2002. Speech by Beatrice de Carrillo held when the Informe de Labores for the period July 2001 until June 2002 was presented,

URL: <http://www.pddh.gob.sv/inf01.htm>

Situación de los Derechos Humanos en Centroamérica Enero-Diciembre 2000

Telecast interview with Beatrice de Carrillo in Canal 2, El Salvador, 2001-10-19