

**INSTITUTION BUILDING IN POST-PEACE ACCORDS EL SALVADOR:  
DEVELOPMENT OF THE OMBUDSMAN FOR THE DEFENSE OF HUMAN RIGHTS**

Laura Nuzzi O'Shaughnessy  
Department of Government  
St. Lawrence University  
Canton, New York

Michael Dodson  
Department of Political Science  
Texas Christian University  
Fort Worth, Texas

Donald W. Jackson  
Department of Political Science  
Texas Christian University  
Fort Worth, Texas

**DRAFT: NOT FOR CITATION OR PUBLICATION WITHOUT THE PERMISSION OF  
THE AUTHORS**

Paper prepared for delivery at the Annual Meeting of the Latin American Studies  
Association Meeting, Chicago, Illinois, September 24-27, 1998

## **Introduction**

On July 2, 1998 the Salvadoran National Assembly elected Lic. Eduardo Peñate Polanco to be the nation's third Procurator for the Defense of Human Rights (PDDH). Peñate's election came after more than three months of often bitter wrangling among the political parties in the assembly, during which time the work of the procurator's office nearly ground to a halt. PDDH staff went unpaid and investigations of human rights abuses could not be carried forward without the signature of the Ombudsman. However, far from bringing a sense of relief or accomplishment to the human rights community in El Salvador, Peñate's election provoked an intensely negative reaction. Prominent human rights NGOs quickly pointed out that the man elected to be Procurator was himself under investigation by the Procurator's office for human rights abuses. Indeed, within days of his election, the press was reporting that investigations into Peñate's previous conduct as a trial judge raised serious questions about his fitness for the high office of Procurator for Human Rights. In response to this firestorm, the assembly invoked a procedural rule that gives it 30 days to verify the qualifications of persons it has elected to office. On the last day of that 30-day period--over the strenuous objections of the political parties that had originally nominated Peñate--the majority party coalition confirmed Lic. Peñate Polanco as Ombudsman for the Defense of Human Rights.

The intensely partisan political struggle that surrounded the election of a new Procurator to replace the outgoing Dra. Victoria Marina de Avilés raises important questions for scholars interested in El Salvador's post-Peace Accords transition, and particularly for those interested in the country's efforts to institutionalize the rule of law and to enhance the protection of human rights. Observers familiar with El Salvador will note the strong similarity between the recent long delay in electing an Ombudsman and the equally long delay in electing the magistrates of the Supreme Court of Justice in 1994. Both elections revealed the strong tensions that exist between primary Peace Accords goals on one hand and the partisan interests of Salvadoran political actors on the other. The Peace Accords sought to complement the demilitarization of Salvadoran society by encouraging a better balance among the executive, legislative and judicial powers. A central thrust of this goal was to lessen executive influence over courts and the judicial process, and to create an autonomous human rights watchdog agency, albeit within the executive branch. Constitutional reforms thus empowered the legislature to elect justices of the Supreme Court and the Procurator for Human Rights. The fact that it took three months to elect a new Supreme Court in the summer of 1994 demonstrated the depth of

partisan political conflict over these reforms in the immediate post-Peace Accords environment.<sup>1</sup> In a similar way, the long delay in electing the Procurator for Human Rights reflects the degree of partisan division over the proper role of a human rights ombudsman that exists in El Salvador today. It also raises important questions about the kinds of political obstacles that can impede the best efforts of international actors to promote the rule of law and institutionalize the protection of human rights. Both incidents suggest that none of the political actors is committed to placing judicial independence or human rights above partisan interests.

In this paper we will treat the development of the PDDH as one key element in the broader effort to establish the rule of law in El Salvador. After briefly reviewing the origins and early experience of the PDDH under the tutelage of the United Nations Observer Mission in El Salvador (ONUSAL), we will examine the elections of the the three individuals who have now held the Ombudsman's office. We will pay particularly close attention to the ways in which partisan (party) politics has shaped institution building in the case of the Procurator for Human Rights. As we will show, the bitter partisanship that made election of the current Ombudsman so difficult derived, in part, from divergent evaluations of the record established by the outgoing Procurator, Dra. de Avilés. Thus, we will examine that record in some detail. As many as thirty candidates were put forward for consideration during the protracted process of the most recent election. Among these candidates, no one with a strong record in human rights work received serious consideration. This fact also needs to be examined and assessed from the standpoint of institutional development.

## **Theoretical Considerations**

El Salvador exemplifies some of the key features of the so-called "Third Wave" democracies that have not followed the pattern of the more established or advanced democracies in Europe or the United States. That is, El Salvador moved rapidly in the 1990s towards what Andreas Schedler calls the "democratic domestication of the state" before strong state institutions had been developed and before the rule of law was firmly established.<sup>2</sup> At the time the Chapultepec Accords were being negotiated (1990-92), El Salvador was at best an authoritarian regime with aspirations of becoming an "electoral democracy." It still had a long way to go to become a "liberal democracy."

A distinctive feature of the Salvadoran case is the degree to which the UN brokered peace negotiations weakened such authoritarian enclaves as the army and the security forces and facilitated the consolidation of electoral democracy. UN Secretary General Boutros Boutros-Ghali dispatched his personal representative, Alvaro de Soto, to take an active, direct role in the peace negotiations.<sup>3</sup> The final agreement addressed the most antidemocratic aspects of the political system. Specifically, the Accords sought to limit the power of the armed forces and simultaneously strengthen the justice system. They provided for constitutional reforms to establish the independence of the judiciary and strengthen due process in the criminal justice system, and called for the creation of a national Procurator for the Defense of Human Rights.

Following the signing of the Chapultepec Accords, the already well established presence of ONUSAL helped to create a context favorable to institutional and legal reform. The extraordinarily interventionist role played by the UN in El Salvador<sup>4</sup> thus created propitious conditions for the sorts of reforms that might generate greater respect for human rights. The US Agency for International Development had been working to promote legal and judicial reform in El Salvador since the 1980s but had not achieved very impressive results, in part, perhaps because the program “was primarily focused not on democracy but on combatting leftist insurgencies in the region.”<sup>5</sup>

In the post-Peace Accords era there has been a renewed emphasis on rule of law programs and it was in this atmosphere that the office of the Procurator for the Defense of Human Rights came into being. The PDDH bears the imprimatur of the Chapultepec Accords and, as a consequence, has enjoyed the tutelage of diverse external donors and development agencies. Clearly, the PDDH has benefitted from (and indeed relied upon) the substantial reservoir of intellectual, human and budgetary resources provided by these external donors--especially vis-à-vis the commitments made out of domestic resources. In short, the technical support to found and develop this institution has been substantial. However, as Carothers has aptly noted, “the primary obstacles to such reform are not technical or financial, but political and human.”<sup>6</sup> If El Salvador is to continue its transition toward becoming a liberal democracy, it will have to meet new standards in which “the government is embedded in a comprehensive legal framework, its officials accept that the law will be applied to their own conduct, and the government seeks to be law-abiding.”<sup>7</sup>

If it is to be successful, the course charted by the Peace Accords to reach this state of affairs must pass directly through a process of meaningful judicial reform and the establishment of a strong and widely respected Human Rights Ombudsman. That course, however, involves several stages, each one of which takes the country deeper along the path of reform. Carothers invites us to divide these stages into three basic categories. The first category of reform concentrates on revising the constitution and writing new laws. Substantial reform of this type has been achieved in post-Peace Accords El Salvador. The second category of reform involves strengthening the institutions of the justice system by redesigning them to achieve greater efficiency and accountability. Again, substantial reform of this type has also been achieved over the past five or six years with the creation of a civilian police force trained to respect human rights<sup>8</sup>, some purging of the judiciary<sup>9</sup>, the strengthening of the PDDH, and so forth. In the end, however, the third and most critical type of reform is not technical but political. At the deepest level, the rule of law requires that government officials and political leaders accept the autonomy and independence of those institutions charged with protecting the rights of citizens and upholding the law. As Carothers puts it, “they must give up the habit of placing themselves above the law,” which often requires “sweeping changes in the values and attitudes of those in power.”<sup>10</sup> Bearing in mind Carother’s cautious suggestion that mastering the third category may take generations, we will examine and evaluate the development of the Procurator for the Defense of Human Rights in El Salvador in terms of the three categories discussed above. In relation to the category three reforms, we will look specifically at the government’s willingness to commit resources to the institution and its resolve to staff the institution with appropriate professionals who are committed to the protection of human rights.

### **Origins of the National Procurator for the Defense of Human Rights**

The origins of the PDDH are to be found in two related objectives of the Salvadoran peace accords: promoting reconciliation and democratization in society, and guaranteeing unrestricted respect for human rights. In pursuit of these ends the government and guerrilla negotiators reached two important agreements. One agreement provided for establishment of the Truth Commission and the other for the creation of the PDDH.

The Truth Commission report, *From Madness to Hope*, focused sharply on the historic failure of the Salvadoran justice system. The Commission urged comprehensive reforms to promote greater judicial independence and called for the resignations of all

members of the existing Supreme Court, while also attacking the foundations of impunity by naming human rights violators, including senior members of the army high command and the chief justice of the Supreme Court. Finally, “to ensure that the massive violations of human rights so characteristic of El Salvador’s past not be repeated, the Commission recommended a whole series of specific measures involving new laws and institutions relating to human rights and their guarantees.”<sup>11</sup> The most important of these new institutions were the National Civilian Police (PNC) and the PDDH. The PNC represented a reconceptualization of the policing function, disentangling it from military control. Police officers were to be trained at a newly established police academy where the curriculum included instruction in human rights issues.

The PDDH was also created to combat antidemocratic abuses of state authority. Its legal mandate is extremely broad and includes: “. . .receiving complaints about human rights violations, notification of all arrests and authority to visit detainees; and oversight of judicial compliance with due process requirements.”<sup>12</sup> These provisions suggest that the PDDH is likely to invest considerable resources in scrutinizing the behavior of police and the courts. The PDDH is also charged with educating the citizenry about human rights. Despite the breadth of its responsibilities, however, the PDDH must rely on powers of persuasion and moral authority to be effective because it lacks enforcement powers. On the other hand, with the broad investigative powers that enable the PDDH to examine the actions of other state entities and review the records of public officials, the office has the potential to be a proactive force in the democratization and liberalization of the state.

The office of the PDDH in El Salvador was created through constitutional reform in April 1991. The idea to create an Ombudsman had been fostered by human rights NGOs and church groups even before the formal peace process got under way and it was endorsed by prominent FMLN leaders.<sup>13</sup> UN personnel who facilitated the negotiations also supported the idea and were instrumental in drafting the human rights accord, which was signed between the government and the FMLN in July 1990. However, neither of the parties at the bargaining table considered human rights issues per se (and certainly not the creation of an Ombudsman) to be their highest priority. The most important issue on the table, and the most contentious, was reform of the Armed Forces. Unable to agree on this issue, and fearful that the talks would collapse altogether, the two sides accepted the initiative of the UN mediators to sign a human rights agreement “largely as a confidence-building measure” to salvage the talks.<sup>14</sup> The human rights agreement was broadly

drawn, opening the way for the UN verification mission. It was under the rubric of this sudden but extraordinary human rights agreement that the impetus for constitutional reform occurred, which led to creation of the PDDH. At that early stage of the peace process neither the FMLN nor the government was heavily invested in creating a vigorous, independent Human Rights Procurator inasmuch as each had more urgent priorities.

The April 1991 reforms of the constitution aimed, in part, to reduce executive dominance within the political system. For that reason the Legislative Assembly was given the power to elect some key officials in the executive branch. While Article 191 of the reformed constitution placed the PDDH within the Public Ministry, an executive branch agency, Article 192 provided for a three year term of office and for election by a two thirds vote of the Assembly. The requirement of a two thirds vote created the possibility that each triennial election would involve intense political bargaining, since it was unlikely any single party could command such a majority by itself. But would that bargaining lead to consensus in behalf of a professionally qualified candidate by neutralizing the most partisan choices? Such an outcome certainly would be consistent with the “new politics” of consensus envisioned by reformers and champions of democratization. Or, would the partisanship of the “old politics” in El Salvador intrude? Would the office be allocated on the basis of “quotas of power” within the Assembly? Would partisanship make it impossible to elect any professionally qualified candidate?

### **Electing the Human Rights Procurator: 1992, 1995, 1998**

When the Legislative Assembly set about to elect the country’s first Ombudsman in the spring of 1992, human rights NGOs quickly put forward candidates who met the legal requirements. Most prominently, these included being a licensed lawyer, having substantial experience and achievement in the field of human rights, and being of demonstrable moral character. In the immediate post-Accords atmosphere candidates who possessed these qualifications were perceived by leaders of the governing party as “leftist” and pro-FMLN. (We should bear in mind that the FMLN was just then gaining status as a legal party and, as yet, had no representation in the Assembly). Given that there were no deputies of the left in the Assembly, there was little chance that this view could even be debated, or that any candidate so perceived would receive serious consideration. As a result, candidates actively promoted by human rights activists in civil society were never in the running.

What sort of candidate could pass muster in an assembly that had been elected while the war was still going on? ARENA agreed to a candidate put forward by the Christian Democrats, Carlos Mauricio Molina Fonseca. While Molina was a man of substantial reputation as an attorney, he had no background in human rights work. Thus, technically his election violated an important provision of the constitution. It also placed the initial tasks of establishing the credibility of the office and strengthening the institution in the hands of an individual who had little preparation for the job and few links to the wider human rights community. In one critic's vivid phrase, Molina's election (together with his subsequent handling of the office) rendered the PDDH, from its very birth, something of a "political orphan."<sup>15</sup>

On one side, in the fashion of the "old politics," Christian Democrats expected Molina to make numerous appointments of party loyalists, as was the custom in the executive branch under the old patronage system. To his credit, Molina resisted these pressures and tried to make key appointments more on a merit basis. This posture soon alienated the Ombudsman from his own political base in the Christian Democratic Party. From another vantage point, many in the human rights community were deeply disappointed that, in their view, the office of Human Rights Procurator had been allocated on the basis of partisan politics rather than professional criteria. They drew back from offering active collaboration in its early development. In the meantime, ARENA had little interest in seeing the office strengthened and the FMLN was preoccupied with other aspects of the Peace Accords at this time. Thus, the PDDH in El Salvador began its existence in something of a political vacuum, lacking the support it needed to establish itself as a viable actor in the political system. Although a man of integrity, Molina Fonseca's cautious approach to human rights work and his initial reluctance to cooperate with ONUSAL's human rights verification activities only aggravated the situation. The links between ONUSAL and the strengthening of the PDDH will be explored further below.

El Salvador's Procurator law permits reelection of a sitting Ombudsman. Some have interpreted the surge of activism during Molina's final six months in office as strong evidence that he wished to be reelected. If that was the case, his desires were thwarted by the changed character of politics in the country, and within the Assembly, in 1995. For one thing, the FMLN was now a legal political party with deputies in the Assembly. Indeed, a former guerrilla leader, Ana Guadalupe Martínez had been elected vice-president of the Assembly. In addition, the Christian Democratic Party was in the midst



of a bitter internal struggle over issues of leadership and policy. The factional divisions were deep enough to weaken the party significantly and reduce its capacity to “manage” the election of a candidate to the office it controlled.

Into the breach stepped the newly formed Democratic Party (PD), led by Guadalupe Martínez, which had recently split off from the FMLN. The previous year the PD had formed an alliance with ARENA, endorsing ARENA’s controversial economic policies, and Guadalupe had become close to ARENA’s legislative leader, Gloria Salguero Gross (vividly illustrating the old adage that “politics makes strange bedfellows”). This odd coalition of left-wing and right-wing parties was in a position to elect a new Ombudsman. Guadalupe Martínez put forward the name of the adjunct procurator for children’s rights, Dra. Victoria Marina de Avilés, and Salguero Gross persuaded her fellow ARENA deputies to support the nomination. Rubén Zamora, the presidential candidate of the left-center coalition in 1994, and a respected Salvadoran politician, also actively supported de Avilés’ candidacy, as did the human rights NGOs. The latter, after having been somewhat marginalized in the 1992 election, lobbied quite hard for election of the adjunct procurator. Women’s groups such as Las Dignas and Ser Mujer, together with the Salvadoran Commission on Human Rights and the Human Rights Institute of the Central American University all mobilized in behalf of de Avilés’ election. Under these transitory conditions, human rights activists in El Salvador got the strong Procurator they had been looking for. As will be explained in the next section of the paper, by the time Dra. de Avilés had finished her term any repetition of the left-right coalition that placed a human rights activist in the Procurator’s office was highly unlikely.

The 1998 election of the Human Rights Procurator took place under yet a new set of political circumstances. The 1997 legislative elections had weakened ARENA’s majority while increasing the representation of the FMLN and other smaller center-left parties. Meanwhile, the internal struggles of the PDC had been resolved around the strong new leadership of one of the factions. The Christian Democrats were again in a position to play the role of power broker and were eager to influence the selection of the Ombudsman. In coalition with the PDC and the PCN (rightist National Conciliation Party), ARENA fell just short of the votes needed to elect the Procurator. An impasse seemed likely because both ARENA and the FMLN had enough votes to veto the other’s choices. The odds that the Procurator’s election would become a political football in the Assembly were further heightened by a trend toward the repolarization of Salvadoran

politics, after the brief period of pluralism and consensus building that followed the Peace Accords.<sup>16</sup>

In the words of one Salvadoran political analyst, “the criteria used in this election had nothing per se to do with the Procurator for the Defense of Human Rights. It had to do with political alliances and what was possible by virtue of those alliances. What you see [in the results] is purely the result of alliances among political parties.”<sup>17</sup> According to one prominent Deputy (not affiliated with the right or left), the four month struggle to elect the Ombudsman unfolded in three phases. The mechanism adopted in the first phase, at the suggestion of the FMLN, was to have all parties in the Assembly place their nominees’ names into a hat anonymously. The ostensible purpose of this procedure was to encourage each party to put forward the strongest candidates they could support for the position. Instead, two tendencies appeared among the parties in the debate over the initial list of eleven candidates. One tendency abandoned all pretense to partisanship, insisting that the selection should be based on the distribution of votes among the parties. This position was met by the view that each party was entitled to veto any candidate it found unacceptable. Such posturing had the effect of rendering the election process partisan to an extreme degree, entrapping the Assembly in a standoff that could drag on for months.

ARENA made it clear from the beginning that it would not countenance the reelection of Dra. de Avilés on the grounds that her leadership of the PDDH was clearly hostile to the interests of ARENA and displayed “a frank preference for the left.”<sup>18</sup> Therefore, her name did not appear in the initial list of eleven nominees but her adjunct procurator, Victor Urquilla, did make the list. Indeed his name remained when the list had been winnowed to five names by eliminating nominees who did not meet the legal requirements. Those five nominees were interviewed by the Political Commission of the Assembly. According to one interviewee, the questioning was entirely “*intracendente*” from the point of view discovering whether the candidates understood human rights.” The point of the questioning was to determine what political criteria the candidates would bring to the administration of justice or the conduct of the state with regard to human rights.<sup>19</sup> These interviews led to the elimination of the three candidates who were most obviously qualified in terms of experience in the human rights field and brought an end to the election’s first phase.

As the second phase began, only two candidates remained from the original list. One was a party activist in the PDC and the other a militant in the PCN. These candidates “were almost without qualifications for the job, but were very closely identified as party loyalists.”<sup>20</sup> Even so, each was able to muster a majority in the legislature, though not enough votes to attain the necessary two-thirds. As the election process began to drag on, ARENA announced that, as the governing party, it would not be proper for them to impose a candidate to an office that would be scrutinizing their performance. When the FMLN, which was deeply enmeshed in the selection of its nominee for the 1999 presidential race, failed to respond to this somewhat disingenuous announcement (ARENA had already exercised its veto several times in the process) ARENA appeared to be taking a nonpartisan high ground. In vetoing the two remaining candidates, the FMLN appeared to be practicing the “old politics” of partisan self-interest, which was the enemy of consensus. Behind this facade, ARENA and its allies were busy reforming the procurator law so that it specifically barred the adjunct procurator from serving beyond the term of the Procurator who had appointed him, effectively leaving the PDDH headless and getting Urquilla out of the way.

The third phase began, then, with the Procurator’s office having been stripped of its leadership and with no clear prospect that the Assembly could find a consensus candidate. At this stage, by early summer of 1998, pressure on the Assembly to act was increased by the donor nations and organizations that were funding the office, and a chorus of criticism began to appear in the Salvadoran press. In the face of that rising pressure, ARENA leaders persuaded Ruben Zamora, a distinguished legislator representing the Democratic Convergence (CD) party, to approach all the parties and develop a new list of candidates whom he referred to as “nonsinners.” This ironic term referred not to their moral qualifications but to the fundamental issue of “whether the individuals were veto proof, or not.”<sup>21</sup> Zamora’s efforts produced another list, completely different from the list of phase one, of nine candidates who appeared to be legally qualified. As the interparty debate over those candidates began, it was soon apparent that the two most obviously qualified candidates were threatened by the partisan veto—even on this list. Under severe pressure to break the deadlock, and having once again cancelled out the prominent (and evidently well qualified) nominees put forward by the left and the right, the Assembly now fell back to a relatively unknown candidate, a judge whose name had been put forward by the PDC. An initial and hurried background check not turning up any evidence against his fitness for the job, the FMLN agreed to support him and the election was finally consummated in early July. As was

explained at the outset, within days of his election, Eduardo Peñate, had become a *cause celebre* in his own right as news filtered out that his record as a judge was tainted by poor performance evaluations and charges of corruption. The FMLN and its coalition partners quickly repudiated the election results and called for Peñate's removal through the legislative review process mentioned earlier. But the die was cast. The PDC once again had a party militant at the head of the PDDH. By supporting Peñate, the PCN won ARENA and PDC support to put its candidate at the head of the Controller's Office (Corte de Cuentas), and ARENA had made the PDDH "safe" by taking the institution out of the hands of the left.

### **Building the Legitimacy of the Human Rights Procurator**

Although it was a primary achievement of the Peace Accords, the office of Human Rights Procurator did not immediately establish a high profile nor did it receive serious support from the Salvadoran government. During roughly the first half of Carlos Molina Fonseca's tenure a principal goal was to open offices in all departments of the country. Although this goal was achieved, the regional offices were weak due to lack of resources, technical training, and a clear sense of mission.<sup>22</sup> In fact, the central office also suffered a severe lack of resources. After being elected, Molina went without an office for months and his budget was severely inadequate: "if it had not been for international cooperation, he would not have been able to do anything."<sup>23</sup> The United Nations Development Program (UNDP) provided much of the funding and technical assistance that enabled the office to function, while ONUSAL received and investigated human rights complaints during most of Molina's tenure. The most effective cooperation between ONUSAL personnel and the Ombudsman occurred in the departmental delegations, where understaffed offices could scarcely have functioned without UN assistance. The practice of taking complaints jointly, which provided opportunities for training and mentoring, was crucial to getting the PDDH up and running at the local level.<sup>24</sup> Meanwhile, for most of Molina Fonseca's tenure the national office took far fewer human rights complaints than ONUSAL.

ONUSAL began its work of monitoring human rights in El Salvador in July 1991, six months before the signing of the Chapultepec Accords. Given the futility of the existing justice system in the face of human rights violations, ONUSAL established a high profile through its focus on case work. ONUSAL called constant attention to human rights violations and its work demonstrated the link between the Peace Accords and the

rights of individuals. One consequence of ONUSAL's effectiveness was that Salvadorans with human rights complaints bypassed their own courts and the PDDH in seeking redress. ONUSAL's original mandate was to monitor human rights and strengthen Salvadoran institutions.<sup>25</sup> However, during ONUSAL's first three years of operation (covering more than half of Molina's term of office), the first task overshadowed the second. Somewhat belatedly, UN officials signed an agreement with the Ombudsman in late July, 1993 to work more closely with the PDDH in the areas of institution building. However, direct collaboration, such as joint verification of cases, did not begin until September, 1994, near the end of Molina Fonseca's term of office. Thereafter, until ONUSAL closed its doors in April 1995, UN collaboration with the PDDH was increasingly close.

Whereas Carlos Molina Fonseca was slow to seek cooperation with the UN and pursued a cautious, low profile approach to establishing the legitimacy of the PDDH, his successor, Dra. de Avilés, a former labor lawyer who had served as an Adjunct Procurator for Childrens' Rights under Molina, was aggressive from the outset. In the face of an inadequate budget, and convinced that the PDDH was not fulfilling its "very broad mandate," de Avilés actively encouraged cooperation with external donors.<sup>26</sup> Indeed, she came to regard the technical support program administered by the United Nations Development Program (PNUD), funded by Holland, Sweden, Norway and Finland, as the "backbone" of the PDDH in El Salvador. Again, in contrast to Molina, she openly expressed her view that the ARENA government "sees us as political enemies" and was, for that reason, more inclined to hamper than to facilitate the work of the PDDH.<sup>27</sup>

The UNDP's project to strengthen the PDDH focused on three areas: 1) rationalizing office procedures, 2) training staff to conduct human rights investigations, and 3) developing a classification scheme that defined what rights fall within the purview of the Ombudsman's mandate. Taking these points in reverse order, we note the accuracy of de Avilés' claim that El Salvador's Procurator law provides the Ombudsman with a sweeping mandate, which encompasses first, second, and third generation human rights. To say the mandate exceeds the resources of the office or the expectations of the political culture is merely to state the obvious. Aware of the need to set priorities (thereby deferring or deemphasizing some aspects of the legal mandate), ONUSAL gave priority to the investigation of complaints and coordinating the work of the regional and national offices in this activity.<sup>28</sup> Over the last six months of ONUSAL's tenure in El Salvador, and throughout the period of the reduced mission known as MINUSAL, the PDDH took over

those tasks completely and substantially upgraded the professionalism of its work. Demonstrating its institutional development in the area of investigations, in the first half of 1995 the PDDH processed a higher number of cases per month than ONUSAL had during 1994.<sup>29</sup>

Thus, under Dra. de Avilés' stewardship, the PDDH began to assume a higher profile. The new procurator made the investigation of cases the highest priority, both for the national and for the regional offices. By vigorously pursuing complaints against other state institutions--especially the police and courts--she established the independence of the Procurator's office, thereby promoting one important feature of the rule of law. Also, by processing thousands of cases brought by ordinary citizens, she raised the level of public confidence in the PDDH.

De Avilés strengthened the PDDH by asserting its authority to investigate the actions of government and its agents, be they members of the PNC or of the judiciary. For example, in the first three months of 1996, over 65% of the valid complaints received were against the PNC: lack of due process constituting the single largest category. Significantly, the second largest category of complaints (20%) were lodged against the judiciary.<sup>30</sup> By the end of her tenure, her caseload increased by seven fold over that of her predecessor. Almost 80% of these cases were resolved either by resolution, mediation or conciliation.<sup>31</sup>

The PDDH also completed 90 human rights awareness campaigns, of which 35 were conducted in the prisons. These latter programs evolved as a result of de Avilés' participation in defusing a potential prison riot in 1997 in Santa Ana, in which prisoners had organized a "death lottery" to protest overcrowding and poor living conditions.

### **The Departmental Delegations**

From 1995-1998 the work of the thirteen departmental delegations also became more active and more visible. To gain first hand knowledge of the challenges faced by the departmental delegations, we interviewed delegates in San Miguel, Santa Ana, Cuscatlàn, San Vicente, and Usulutàn, as well as in the national office. Establishing effective department delegations was crucial to the institutionalization of PDDH. They were the local face of the national office, which most Salvadorans are unlikely to visit.

At the department delegations where we conducted interviews it appeared that personnel were not merely waiting for complainants to walk through the door. Rather,

they had adopted a proactive approach to the work. On a weekly or bi-weekly basis the delegates visit areas or locales where human rights violations may be most likely to occur: penitentiaries, municipal jails, police stations, health centers and hospitals, military installations, or courts, for example.<sup>32</sup> Department delegates tried to respond in a timely manner to every complaint brought to them, usually within two weeks.

This arduous schedule was greatly complicated by a lack of resources. At the department level most offices were staffed by fewer than ten staff persons and of those, normally only three or four are professional staff who manage cases and analyze and follow complaints. Each delegation had one vehicle, which makes on site investigation difficult under the best of circumstances. The Usulután office was illustrative. The office employed seven persons, three of whom conducted human rights investigations. It had one vehicle, and had responsibility for 23 towns and villages with 350,000 inhabitants. In Cuscatlán, a predominantly rural department, a single investigation frequently consumed the whole day and tied up the office's one vehicle. These realities mandated a very careful setting of priorities within the caseload.<sup>33</sup>

The departmental delegations were staffed by highly motivated and capable individuals. With one exception, the delegates themselves were lawyers. Most were young, having received their law degrees in the early 1990s. A number of them had worked previously as judicial advisors in one of the departmental offices before being placed in charge of a delegation. All acknowledged that their offices were understaffed and overworked, and that their own salaries were low in light of their professional training. It appeared to be their commitment to human rights that keeps them going. From 1994 to July 1998 the turnover in the departmental delegations was minimal: only one delegate left to seek a better position. The impact of Lic. Peñate's appointment at the departmental level is unknown at this point.

Younger delegates were more likely to have been trained at the national office of the PDDH which also held meetings and workshops for department delegates. However, such training activity was limited due to scarcity of resources. Others argued that further training never received high priority or support from the national office and thus was never institutionalized. We now turn to both of these issues: PDDH resources/budget and institutionalization .

In fact, professional positions within the Public Ministry are among the lowest paid in the government. When the PDDH began operations in 1992 it received a budget of 29 million colones to cover the expenses of three delegations. The PDDH opened ten new delegations throughout the country over the next three years, but without any further increase in budget. In 1996 the PDDH budget was actually reduced to 27 million colones and in 1997 the PDDH received no increase in revenues. The current budget (1998) increased to 30 million colones when international donors intervened to fend off further possible reductions. While this amounted to a 10% increase over its 1997 allocation, the current figure constituted an increase of 3 per cent over its original 1992 allocation. This stretching of resources to the breaking point threatens the Ombudsman's office with a loss of competent personnel, who clearly can earn more substantial salaries elsewhere. Why do some professionals stay on? As one departmental delegate put it to us: "I endure because I like the work, and because I have faith in God and in the process. . . . We know that it is the state that is obstructing us."<sup>34</sup>

While it was clear that the priority of the PDDH was casework during the tenure of Dra. de Avilés, criticism has been raised of the ombudsman for her failure to develop the PDDH as an institution, with rationalized procedures for taking and compiling complaints, clear and established priorities and reliable administrative support. In the words of one critic there was no "strategic plan" and complaints were taken randomly. For example, the PDDH never developed and strengthened its internal Institute for Human Rights, which could have carried on the *capacitación* work initiated within the prisons, within civil society and at the departmental level. It is also alleged that the PDDH let its external donors determine its priorities.

Others argued that Dra. de Avilés overly politicized her office to the extent that it became clear by the middle of her term that she would not be reappointed. For example, when the PDDH took on "high profile cases" such as that of Ramón Mauricio García-Prieto or Manuel Adriano Vilanova, she not only investigated them but also held a press conference to call attention to the cases. Moreover, her conclusions placed culpability within government offices. In the case of García Prieto, the PDDH report dismissed robbery as the motive for his death,. Instead it placed the blame on irregular armed groups which were still operating as well as untimely and poor quality investigative work by the Attorney General's Office.<sup>35</sup> In the case of Vilanova, the Ombudsman's report alleged that he had been killed by members of the PNC and that his case had not been well investigated due to an extralegal entity which operated within the PNC structure.<sup>36</sup>



Both of these cases were alleged to have been responsible for another potential reduction in the 1997 PDDH budget. In this instance funding was restored due to the personal intervention of the Procurator with President Calderón. She spoke directly with him and argued that she was doing her job as it was mandated in the Constitution.<sup>37</sup> While it is difficult to establish a direct causal relationship between these cases, donor interventions and subsequent budget reductions or additions, several knowledgeable Salvadorans who were familiar with the PDDH, all made the same allegations.

In her defense one could argue that it was difficult to give priority to institutionalizing procedures when flagrant and numerous violations of human rights were occurring on a daily basis. At the same time, one wonders now, if in the absence of rationalized procedures and in light of the election of Lic. Peñate, what the future holds for the PDDH. In her own words de Avilés captured both the achievement and the weakness of her tenure:

The PDDH in three years accomplished much,...it succeeded in generating a credibility that this nation had lost in its legal institutions....the great problem that we have is that human rights continue being seen as rights of the left and the rights of subversives."

### **Public Perceptions of Human Rights and the Work of the Ombudsman**

After six years of defending the human rights of Salvadoran citizens what opinion do Salvadorans have of the Ombudsman's Office? To answer this question a nation-wide survey was conducted by the University Institute of Public Opinion (IUDOP) of the Central American University. The survey of 1,119 adults from urban and rural areas was sponsored by the European Union and Texas Christian University. The survey was conducted between July 13 and August 9, 1996 and had a sampling error of 4 per cent. Respondents were interviewed in their homes and were selected based on quotas by department, social sector, sex and age. These categories were then further divided into six social sectors ranging from high to marginal.<sup>38</sup>

Our questions in the 1996 survey were designed to probe the relationship between support for the PDDH and support for the Peace Accords. In so doing we replicated some of the findings of Gibson and Caldeira in their study of the European Court of Justice.<sup>39</sup> In general Salvadorans professed not to be well informed about the Peace Accords. In the

IUDOP survey only 24 percent of respondents thought they were “very well” or “well” informed about the Accords.<sup>40</sup> On the other side, 57 percent considered themselves to be “not very well” informed and an additional 17.9 percent knew nothing about the Accords. We also found, however, that Salvadorans had a generally favorable view of the Peace Accords (43 percent thought the Accords were good for the country as compared to 10.1 percent who thought they were bad for El Salvador) while 67.8 percent indicated they would regret it if the Accords were abandoned. Finally, the survey revealed a statistically significant relationship between a favorable disposition toward the Peace Accords and support for the PDDH, a finding that was consistent with those of Gibson and Caldeira in their study of the Court of Justice of the European Union (they found a relationship between positive attitudes toward the European Union in general and support for the Court of Justice).<sup>41</sup>

Our 1996 study showed that Salvadorans did associate the PDDH and the PNC with the protection of human rights. Although no single institution received high marks from the public, these post-Accord institutions fared well in comparison to other institutions such as the central government, the Supreme Court or human rights NGO’s. Indeed, our respondents displayed consistently strong aspirations with regard to the role the PDDH might play in Salvadoran society. The public's perspective on the PDDH was also strongly compatible with the rule of law.

To complement our August 1996 survey of public opinion we analyzed three other surveys done by IUDOP in March 1995, September 1995 and February 1998.<sup>42</sup> All the surveys had similar sample sizes (1200 respondents), a sampling error of 4 %. The reader should recall that the March 1995 survey was conducted immediately after the election of Dra. de Avilés, the September 1995 survey was conducted within six months of her election, while the February 1998 survey coincided with the end of her tenure. The discussion which follows reflects a preliminary tabular (but not statistical) analysis as at the time of this writing we did not have the data sets for these surveys.

A comparison of these survey results revealed again that from September 1995 to February 1998 both the PDDH and the PNC enjoyed increasing support as defenders of human rights. However, three interesting findings should be mentioned. First, the percentage support for the PDDH was almost three times that of the PNC. Secondly, the support for the PNC decreased by 72% from March 1995 to August 1996, before increasing

once again. Finally, the support for the PDDH showed a steady increase of 19% over the three year period. (see table 1)

Table 1

Which of the following institutions best defends human rights in the country?

Date	No one	NGO's	PDDH	National Police
February 1998	19.5	7.1	35.8	11.6
August 1996	17.4	N.A.	28.7	7.9
September 1995	12.0	19.9	32.0	7.9
March 1995	20.8	46.1	30.1	28.5

Tables 2 and 3 evaluated the work of the Ombudsman and assessed the measure of generalized trust that respondents had in the office. Favorable responses increased gradually from 57.3% to 63.3 % from 1995 to 1998 when respondents were asked: "How would you evaluate the work of the Procurator?" (Table 2).

Table 2

How would you evaluate the work of the Procurator (see various versions)? †

Date	Very Bad	Bad	Average	Good	Very Good
February 1998a	1.9	7.5	23.3	53.2	10.1
August 1996b	Unfavorable 9.4		Neither favorable nor unfavorable 17.3		Favorable 67.3
September 1998c	0.8	4.3	19.3	58.5	10.5
March 1995d	1.4	8.7	Average 27.1	50.5	6.8

† Don't know responses deleted for all surveys.

a Has what you have heard or read given you a favorable impression of the Procurator?

b Has what you have heard or read given you a favorable impression of the Procurator

c ...How would you evaluate the work of the Procurator up to now?

d How would you evaluate the work of the Procurator up to now?

Measures of trust in the PDDH increased by 58 % in less than two years. In August 1996, 54.5 % of respondents thought that the decisions of the Ombudsman were made in a just manner; by February of 1998 the percentage had risen to 86.5% (Table 4) These measures are well above those for other more longstanding governmental institutions, such as the judiciary, the legislature and the presidency.

Table 4

The decisions of the PDDH are made in a just manner.

Date	Strongly agree	Agree	Undecided	Disagree	Strongly disagree
February 1998	29.6	38.9	15.8 (No sabe)	8.5	7.1
August 1996	24.6	29.9	12.0	8.6	10.3

As we examine the PDDH from the perspective of institution-building it is useful to separate the office of the Ombudsman from its incumbent. Thus, when asked specifically in the 1998 survey to evaluate the current procurator, Dra. de Avilés, 65% of the respondents said good or very good. ( Table 5)

Table 5

How would you evaluate the work of the current Procurator, Dra. de Avilés? (February 1998)

Very bad	Bad	Average	Good	Very good	No response
2.0	6.5	20.5	52.3	12.6	6.1

What do these statistics tell us? We would argue that the recognition of the PDDH as an institution was positive and stable over the three year tenure of De Avilés, and that the favorable opinion of the work of the office increased from 57.3% to 63.3% during the same time period. Some of these positive responses must be attributable to Dra. de Avilés' tenure and visibility but they also may lend support to the argument that the PDDH as an institution began to put down roots. An interesting finding was the response to the question: "Which is more important, the Procurator's Office as an institution or the Procurator as a person?" From September 1995 to February 1998 more than half the survey respondents said the institution, 20% said the procurator and 16-18% said both were important. (Table 6)

Table 6

Which is more important, the Procurator's Office as an institution or the Procurator as a person?

Date	Institution	Both	Person	Don't Know
February '98	52.9	18.0	20.4	8.8
September '95	57.2	16.2	19.4	7.2

### Conclusion

This analysis of the Ombudsman's Office for the Defense of Human Rights raises important questions about the possibilities for successful consolidation of democratic institutions in the light of a successfully brokered peace accord. El Salvador is one of the successful examples<sup>43</sup> of warring parties coming together under the auspices of the United Nations to reach wide-ranging agreement on a series of unprecedented accords which attempted to demilitarize Salvadoran society and to institute the rule of law. The accords also sought to strengthen the separation of powers. To lessen the dominance of the executive branch, constitutional reforms gave the legislature the power to appoint the Procurator for the Defense of Human Rights. Despite the largely successful evolution of the PDDH over the past six years, the intensely partisan debate and the long delay over the election of Lic. Peñate would indicate that a meaningful role for the Ombudsman has not been thoroughly accepted by the Legislative Assembly. Their disregard for the PDDH stands in sharp contrast to the consistent support shown for the office in the general public. The larger political struggles currently at play in El Salvador reflect themselves in Lic. Peñate's appointment and in the tension between the "new politics" of consensus-building and professionalism, and the "old politics" of patronage and *cuotas de poder*.

---

<sup>1</sup> Election of an entirely new Supreme Court had been recommended by the Truth Commission, whose March 1993 report had condemned the sitting court for its complicity in human rights violations. The governing party, ARENA, had appointed the old court and, after constitutional reforms and its own re-election in March 1994, sought to impose all the members of the new court. Resistance to this move by the opposition parties was intense, but it was probably pressure by the United Nations that led ARENA to agree to elect the magistrates on something other than partisan grounds.

<sup>2</sup> Andreas Schedler, "What is Democratic Consolidation?," *Journal of Democracy*, 9, 2 (April 1998), pp. The key distinctions between electoral, liberal and advanced democracy are discussed in Schedler's article.

<sup>3</sup> Jack Child, *The Central American Peace Process, 1983-1991: Sheathing Swords, Building Confidence* (Boulder: Lynne Rienner Publishers, 1992), pp. 134-35.

<sup>4</sup> c William Stanley and David Holiday, "Under the Best of Circumstances: ONUSAL and Dilemmas of Verification and Institution Building in El Salvador," presented at the North South Center, April, 1996.

- 
- <sup>5</sup> Thomas Carothers, "Democracy Assistance: The Question of Strategy," *Democratization*, 4, 3 (Autumn 1997), pp. 109-132.
- <sup>6</sup> Thomas Carothers, "The Rule of Law Revival," *Foreign Affairs*, 77, 2 (March/April 1998), pp. 95-106.
- <sup>7</sup> *Ibid.*, p. 96.
- <sup>8</sup> William Stanley, The Protection Racket State
- <sup>9</sup> Michael Dodson, Donald W. Jackson and Laura Nuzzi o'Shaughnessy. Human Rights and the Salvadoran Judiciary: The Competing Values of Independence and Accountability: in The International Journal of Human Rihts, Vol. 1, No. 4 ( Winter 1997) pp.50-65
- <sup>10</sup> *Ibid.*, p. 100.
- <sup>11</sup> Thomas Buergenthal, "The United Nations Truth Commission for El Salvador," in Neil J Kritz, ed., *Transitional Justice*, Vol. I (Washington, D.C.: United States Institute of Peace, 1995), p. 317.
- <sup>12</sup> *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador*, (New York: Lawyers Committee for Human Rights, 1995), p 107.
- <sup>13</sup> Authors interview [Rafael Guido Bejar] San Salvador, June 11, 1996
- <sup>14</sup> *Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador* (New York: Lawyers Committee for Human Rights, 1995), p 5.
- <sup>15</sup> Author interview [Guido Bejar], San Salvador, June 11, 1996
- <sup>16</sup> Author interview [Ruben Zamora], San Salvador, July 21, 1998. One prominent legislator, who played a key role in the 1998 election of the Ombudsman, put it this way: "in the early years after the Accords were signed there was a kind of rapprochement that produced some decisions made by multiparty consensus [including the 1995 Procurator election]. . . .but, in the last year or two, one can sense the weakening of the political dynamic in favor of pluralism. . . .Perhaps the clearest examples of repolarization can be found in the actions of the Assembly."
- <sup>17</sup> Author interview [Guido Bejar], San Salvador, July 23, 1998.
- <sup>18</sup> Author interview [Francisco Díaz], San Salvador, July 21, 1998.
- <sup>19</sup> Author interview [Francisco Diaz], San Salvador, July 21, 1998.
- <sup>20</sup> Author interview [Ruben Zamora], San Salvador, July 21, 1998.
- <sup>21</sup> Author interview [Ruben Zamora], San Salvador, July 21, 1998.
- <sup>22</sup> Author interview [Ernesto Borda], San Salvador, November 10, 1995
- <sup>23</sup> Author interview [Guido Bejar], San Salvador, June 11, 1996
- <sup>24</sup> Author interview [Erika Preminger], Guatemala City, June 20, 1996
- <sup>25</sup> *Improvising History*, p 11.
- <sup>26</sup> Author interview [Dra Victoria de Avilés], San Salvador, June 11, 1996.
- <sup>27</sup> *Ibid.*, pp. 108-10.
- <sup>28</sup> Author interviews [Ernesto Borda], San Salvador, November 11, 1995; [Eduardo Urquilla], San Salvador, November 21, 1995  
Author interviews [Ernesto Borda], San Salvador, November 11, 1995; [Eduardo Urquilla], San Salvador, November 21, 1995
- <sup>29</sup> *Informe 94-95* (San Salvador: Programa de las Naciones Unidas para el Desarrollo, 1995), p 22.
- <sup>30</sup> "Falta Investigación seria, para descubrir autores del crimen," Conciencia, Epoca III, Año 3, No 058, October 21, 1996. p. 11. and "La justicia debe deducir la responsabilidad penal cuanto antes," in Conciencia, Epoca III, Año 3, No. 059, October 28, 1996.
- <sup>31</sup> The number of cases processed increased from 6,000 (1992-1995) to 42, 725 (1995-1998) Author Interview, Victoria de Aviles July 23, 1998
- <sup>32</sup> Author interview, [Lic René Turcios], Usulután, June 14, 1996.
- <sup>33</sup> Author interview [Lic José Enrique Valdez], Cuscatlàn, November 21, 1995.
- <sup>34</sup> Author interview [Lic René Turcios], Usulutàn, June 14, 1996.

---

<sup>35</sup>Protección a los derechos humanos. El derecho a la vida, caso: Ramon Mauricio García-Prieto Giralt, PDDH-PNUD, 1996

<sup>36</sup> Victoria de Avilés, *Protección a los derechos humanos: El derecho a la vida, caso: Manuel Adriano Vilanova Volver*, PDDH-PNUD, 1996.

<sup>37</sup> Author interview, Victoria de Avilés, July 23, 1998

<sup>38</sup> "Los Salvadoreños opinan sobre el sistema de justicia y los derechos humanos" Boletín de prensa, IUDOP, Universidad Centroamericana, Año XI, No 5., p. 5.

<sup>39</sup> Gibson and Calderia

<sup>40</sup> *Encuesta Sobre Derechos Humanos y El Sistema Judicial*, a public opinion survey carried out by the Instituto Universitario de Opinión Pública of the Universidad Centroamericana "José Simeón Cañas" in San Salvador. The survey was jointly sponsored by the Instituto de Derechos Humanos de la UCA, the European Union, and Texas Christian University.

<sup>41</sup> For a complete discussion see, Jackson, D.W., Dodson, M and O'Shaughnessy, L.N. "Protecting Human Rights: The Legitimacy of Judicial System Reforms in El Salvador," forthcoming in the Bulletin of Latin American Research.

<sup>42</sup> Encuesta sobre derechos humanos y los retos del nuevo procurador, March 1995, Sondeo sobre la procuraduría para la defensa de los derechos humanos, September 1995,

<sup>43</sup> For a good discussion of successful and unsuccessful peace accords see Fen Osler Hampson. Why Peace Agreements Succeed or Fail. (Washington, D. C :USIP Press, 1996).